

RESOLUTION NUMBER R-287447

ADOPTED ON MAY 28, 1996

WHEREAS, Anderson Foundation, Owner, and Diablo Communications, Inc., Permittee, filed an application with The City of San Diego Development Services Department for a permit to install and operate a wireless communications facility (Conditional Use Permit No. 95-0660 and Exception From the Clairemont Mesa Height Limitation Zone) on portions of a 1.58 acre site located at 2875 Cowley Way, in the Clairemont Mesa Community Plan area, in the R-1000 Zone; and

WHEREAS, the matter was set for public hearing on May 28, 1996, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to Conditional Use Permit No. 95-0660 and Exception From the Clairemont Mesa Height Limitation Zone:

CONDITIONAL USE PERMIT FINDINGS:

1. The proposed use will fulfill an individual and/or community need and will not adversely affect the City's Progress Guide and General Plan or the adopted community plan.

The project site is designated multi-family residential in the Clairemont Mesa Community Plan and zoned R-1000. However, particular uses which fulfill individual and community needs are

permitted in residential and other zones by conditional use permit. This project will not adversely impact the General Plan nor the Clairemont Mesa Community Plan. The proposed use will upgrade communication services for several telecommunication providers seeking coverage for the Clairemont community.

2. The proposed use, because of the conditions that have been applied to it, will not be detrimental to the health, safety and general welfare of persons residing or working in the area and will not adversely affect other property in the vicinity.

Radio frequency energy transmission from the proposed antenna system would not result in health and safety risks to the surrounding area. The accepted standard for safe exposure to RF energy from a paging or PCS antenna is currently 1,233 microwatts per square centimeter. The exposure level for this facility is approximately 1.23 microwatts per square centimeter at a distance of 50 feet, well below the accepted safety standards established by the American National Standards Institute and the National Council on Radiation Protection.

3. The proposed use will comply with the relevant regulations in the Municipal Code in effect for this site.

The project would comply with all relevant regulations in the Municipal Code, with the exception that it would increase the height of a nonconforming structure. Permission to operate the facility will be granted for a period of ten (10) years, at which time the permit will become null and void.

FINDINGS FOR AN EXCEPTION TO THE CLAIREMONT MESA HEIGHT LIMITATION ZONE:

4. The granting of an exception will not interfere with public views from western Clairemont Mesa to Mission Bay and the Pacific Ocean within the surrounding area.

The site is developed with a fourteen story apartment building. The proposed antenna facility would be installed on and within an existing mechanical penthouse. The scale of the roof-top antennae facility is such that it would not interfere with public views of Mission Bay or the Pacific Ocean.

5. If there are existing structures over thirty (30) feet in height, a variation in height may be granted, provided the new structure is compatible with surrounding one, two, or three-story structures.

Since the existing building is 140 feet in height, the addition of these cylindrical antennas do not contribute to the overall bulk of the building.

6. The proposed structure may exceed the height limit to include roofline and facade variations, accents, tower elements and other similar elements, provided the element will not increase the floor area of the structure.

No new construction is proposed.

7. The proposed structure may exceed the height limit if there are topographic constraints peculiar to the land.

No new construction is proposed.

8. The proposed structure will comply with the regulations and conditions specified in the underlying zone for such structures.

Please refer to finding 3 above.

9. The granting of an exception will not adversely affect any adopted plan of any governmental agency.

Please refer to finding 1 above.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that based on the findings of the City Council, Conditional Use Permit No. 95-0660 and an Exception From the Clairemont Mesa Height Limitation Zone is hereby granted to the Anderson Foundation, Owner, and Diablo Communications, Inc., Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: JOHN W. WITT, City Attorney

By 
Richard A. Duvernay
Deputy City Attorney

RAD:lc
06/12/96
Or.Dept:Clerk
R-96-1554
Form=r.permit

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT

AND WHEN RECORDED MAIL TO
PERMIT INTAKE
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONDITIONAL USE PERMIT NO. 95-0660 AND
EXCEPTION FROM THE CLAIREMONT MESA HEIGHT LIMITATION ZONE
DIABLO COMMUNICATIONS, INC. - SORRENTO TOWER
CITY COUNCIL

This Permit is granted by the Council of The City of San Diego to the ANDERSON FOUNDATION, Owner, and DIABLO COMMUNICATIONS, INC., Permittee, pursuant to San Diego Municipal Code sections 101.0510 and 101.0452.5.

Subject to the terms and conditions set forth in this permit, permission is hereby granted by the Council of The City of San Diego to the referenced Owner/Permittee to install and operate a wireless communications facility on portions of a 1.58 acre site located at 2875 Cowley Way in the R-1000 Zone. The project site is legally described as Lot 6, Forest Park Plaza Subdivision, Map No. 7522, in the Clairemont Mesa Community Planning area.

1. This permit shall consist of the following facilities and/or site improvements as identified by size, dimension, quantity and location on the approved Exhibit "A," dated May 28, 1996, on file in the office of the Development Services Department:

- a. Thirty roof-mounted omni-directional antennas (up to twelve feet in height); and
- b. Four roof-mounted dish-type antennas (forty-two inches in diameter); and
- c. Two radio equipment cabinets installed within an existing mechanical penthouse.

2. No permit for the construction, occupancy or operation of any facility described in this permit shall be granted nor shall any activity authorized by this permit be conducted on the premises until:

- a. The Permittee signs and returns the permit to the Development Services Department; and

b. The permit is recorded by the Development Services Department in the office of the San Diego County Recorder.

3. No changes, modifications or alterations shall be made to the approved Exhibits or conditions of approval unless substantial conformity review or an amendment of this permit shall have been granted by the appropriate decisionmaker.

4. Prior to issuance of building permits, complete building construction documents, (including plans and/or detailed specifications) shall be submitted by the Owner/Permittee to the Development Services Department for approval. No changes, modifications or alterations of the approved plans for this project shall be made unless appropriate application(s) for either Substantial Conformance Review (SCR) to the approved Exhibit "A," dated May 28, 1996, for this project or an amendment(s) of this permit shall have been granted by the appropriate decisionmaker.

5. This Conditional Use Permit is granted for a period of ten (10) years from May 28, 1996, at which time it will become null and void unless a new application for a Conditional Use Permit is applied for and approved under the procedures in effect at that time. At such time as the Conditional Use Permit expires or ceases to be utilized, all antennas and equipment will be removed from the site by the last Owner/Permittee of the use.

6. This permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.

7. The continued use of this permit shall be subject to the regulations of this or other governmental agencies.

8. This permit must be utilized within 36 months after the effective Date of Final Action by the City, following all appeals. Failure to utilize the permit within 36 months will automatically void the permit unless an extension of time has been granted by the Development Services Department. Any such extension of time must meet all the San Diego Municipal Code requirements and applicable guidelines in effect at the time the extension is considered by the Development Services Department.

9. The Permittee/Applicant shall comply with all requirements of the Uniform Building Code (UBC) and secure all necessary building permits prior to construction.

10. The issuance of this permit by The City of San Diego does not authorize the applicant for said permit to violate any Federal, State or City laws, ordinances, regulations or policies.

11. All of the conditions contained in this permit have been considered and have been determined by the decisionmaker to be necessary in order to make the findings of approval required for this discretionary permit. It is the intent of the City that the holder of this permit be required to comply with each and every condition in order to be afforded special rights which the holder of the permit is obtaining as a result of this permit.

12. In the event that any condition(s) of this permit, on a legal challenge by the Owner/Permittee of this permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, then this permit shall be deemed void. However, in such event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" conditions back to the discretionary body which approved the permit for a determination by that body as to whether all of the findings necessary for the issuance of the permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed permit and the condition(s) contained therein.

13. Unless appealed, this permit shall become effective on the eleventh working day following the Date of Final Action.

APPROVED by the Council of The City of San Diego on May 28, 1996, by Resolution No. R-287447.

AUTHENTICATED BY THE CITY MANAGER

By _____

The undersigned Permittee, by execution hereof, agrees to each and every condition of this permit and promises to perform each and every obligation of Permittee hereunder.

ANDERSON FOUNDATION

Owner

By _____

DIABLO COMMUNICATIONS

Permittee

By _____

**NOTE: Notary acknowledgments
must be attached per Civil
Code Section 1180, et seq.
Form=p.ack**