

RESOLUTION NUMBER R-295796

ADOPTED ON NOVEMBER 27, 2001

WHEREAS, Church on the Move, Owner, and Sprint PCS, Permittee, filed an application with the City of San Diego for a permit to construct and operate a wireless communication antenna facility located at 4481 Estrella Avenue, and legally described as Lots 1 through 10, Block C, Belmont Subdivision, Map No. 1476, in the Mid-City Communities Plan area, in the RM-1-2 zone; and

WHEREAS, on September 20, 2001, the Planning Commission of the City of San Diego considered Conditional Use Permit/Planned Development Permit [CUP/PDP] No. 41-0213-01, and pursuant to Resolution No. 3172-PC voted to approve the permit; and

WHEREAS, Georgia Bankston appealed the Planning Commission decision to the Council of the City of San Diego; and

WHEREAS, the matter was set for public hearing on November 27, 2001, 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 it adopts the following findings with respect to Conditional Use Permit/Planned Development Permit No. 41-0213-01:

**I. CONDITIONAL USE PERMIT FINDINGS - MUNICIPAL CODE SECTION 126.0305**

- 1. The proposed development will not adversely affect the applicable land use plan.**

The Mid-City Communities Plan does not specifically address communication antenna facilities as a land use issue. However, pursuant to the San Diego Municipal Code,

communication antenna facilities are permitted in all zones citywide with the appropriate permit process. The Conditional Use Permit and Planned Development Permit have been conditioned to ensure that the facility will be harmonious with the residential nature of the surrounding neighborhood. Permit conditions include specific architecturally integrated design features and restrictions on the hours of routine maintenance and site visits to normal business hours, Monday through Friday. Therefore, the proposed development would not adversely affect the Mid-City Communities Plan or the City of San Diego General Plan and Progress Guide.

**2. The proposed development will not be detrimental to the public health, safety, and welfare.**

The Telecommunication Act of 1996 preempts local governments from regulating the placement, construction and modification of wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communication Commission's [FCC] regulations concerning such emissions." Therefore, based on the above, the project would not result in any significant health or safety risks to the surrounding area.

**3. The proposed development will comply to the maximum extent feasible with the regulations of the Land Development Code.**

The project proposes a wireless communication facility located within a new pedestal element at the base of a 65 foot high steeple on the roof of an existing church. The project is requesting a deviation from the maximum 35 foot height limit of the underlying RM-1-2 zone to construct the pedestal at approximately forty feet. The proposed pedestal element would supplement the architectural style of the church and integrate with the existing steeple. Therefore, the proposed project is not increasing the degree of nonconformity existing on the current site. Deviations to the underlying zone development regulations are permitted through the Planned Development Permit (Process Four) if the applicable findings can be made. Additionally, the project complies with the communication antenna regulations by integrating the facility with the existing church and providing total screening of the antennas and associated equipment. Therefore, the project will comply to the maximum extent feasible with the regulations of the Municipal Code.

**4. The proposed use is appropriate at the proposed location.**

The proposed project is located in a neighborhood that is primarily residential land use consisting of a mix of single-family homes, apartments and condominiums. The Church on the Move site is a nonresidential use in a multi-family residential zone which is preferable to other residentially zoned and residentially used properties in the vicinity. Additionally, the existing church structure provides the necessary height for the antenna facility to provide coverage east of Fairmont Avenue. The proposed project is sited and designed as to be well integrated with the existing church building to the extent that all system components will be completely screened from public view. Therefore, staff feels that the proposed use is appropriate at the proposed location.

**II. PLANNED DEVELOPMENT PERMIT FINDINGS - MUNICIPAL CODE SECTION 126.0604**

- 5. The proposed development will not adversely affect the applicable land use plan.**

Please refer to Finding No. 1 above.

- 6. The proposed development will not be detrimental to the public health, safety, and welfare.**

Please refer to Finding No. 2 above.

- 7. The proposed development will comply with the regulations of the Land Development Code.**

Please refer to Finding No. 3 above.

- 8. The proposed development, when considered as a whole, will be beneficial to the community.**

The project proposes to construct and operate a wireless communication antenna facility located at 4481 Estrella Avenue. The project would provide needed cellular phone coverage for Sprint PCS customers living and working in the Mid-City community of the Kensington and Talmadge neighborhoods. Additionally, the proposed design would not effect the existing nonconforming 65 foot high church steeple. The proposed design also architecturally integrates the new pedestal base element with the existing church by using a similar design theme and finish materials. Therefore, the proposed development, when considered as a whole, is beneficial to the community.

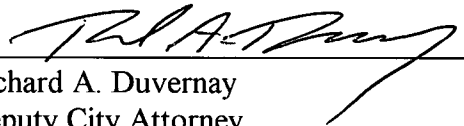
- 9. Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.**

The proposed wireless antenna facility has been designed to architecturally integrate with the existing church building. The requested deviation to the RM-1-2 height limit is necessary to achieve the proposed integration while preserving the existing steeple. Alternative designs that comply with the development regulations of the underlying zone would preclude the benefit of completely enclosing the antennas (such as facade mounting the antennas to the existing steeple) and would not be as well integrated with the existing structure.

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

BE IT FURTHER RESOLVED, that the appeal of Georgia Bankston is denied; the decision of the Planning Commission is upheld; and Conditional Use Permit/Planned Development Permit No. 41-0213-01 is granted to Church on the Move, Owner, and Sprint PCS, Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By   
Richard A. Duvernay  
Deputy City Attorney

RAD:lc  
01/25/02  
Or.Dept:Clerk  
R-2002-851  
Form=permitr.frm  
Reviewed by Patrick Hooper

**RECORDING REQUESTED BY**  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES DEPARTMENT  
PERMIT INTAKE, MAIL STATION 501

**AND WHEN RECORDED MAIL TO**  
**CITY CLERK**  
**MAIL STATION 2A**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**CONDITIONAL USE PERMIT/  
PLANNED DEVELOPMENT PERMIT NO. 41-0213-01  
SPRINT PCS: CHURCH ON THE MOVE  
CITY COUNCIL**

This Conditional Use Permit/Planned Development Permit [CUP/PDP] No. 41-0213-01 is granted by the Council of the City of San Diego to Church on the Move, Owner, and Sprint PCS, Permittee, pursuant to San Diego Municipal Code [SDMC] sections 141.0405 (Communication Antenna Regulations), 126.0303 (Conditional Use Permits), and 126.0602 (Planned Development Permits). The 0.7 acre site is located at 4481 Estrella Avenue in the RM-1-2 Zone of the Mid-City Communities Plan Area. The project site is legally described as Lots 1 through 10, Block C, Belmont Subdivision, Map No. 1476.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner and Permittee to construct and operate a wireless communication antenna facility described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A," dated November 27, 2001, on file in the office of the Development Services Department. The facility shall include:

- a. A total of nine panel antennas (three arrays of three antennas each); completely enclosed in a new pedestal element at the base of the existing church steeple and associated electronic equipment installed within the existing church.
- b. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted Community Plan, California Environmental Quality Act guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this permit, and any other applicable regulations of the Land Development Code in effect for this site.

1. Construction or demolition must commence and be pursued in a diligent manner within 36 months after the effective date of final approval 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. Any such Extension of Time must meet all the Municipal/Land Development Code requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein 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 in the office of the San Diego County Recorder.
3. Unless this permit has been revoked by the City of San Diego the property included by reference within this permit shall be used only for the purposes and under the terms and conditions set forth in this permit unless otherwise authorized by the City Manager.
4. 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.
5. The utilization and continued use of this permit shall be subject to the regulations of this and any other applicable governmental agencies.
6. 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 including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial modifications to the building and/or site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.
8. Before issuance of any building permits, complete working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," dated November 27, 2001, on file in the Development Services Department. No changes, modifications or alterations shall be made unless appropriate applications or amendment of this permit shall have been granted.

9. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings 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. It is the intent of the City that the Owner of the property which is the subject of this Permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner of the property be allowed the special and extraordinary rights conveyed by this Permit, but only if the Owner complies with all the conditions of the Permit.

In the event that any condition 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, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) 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 new 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.

10. This Conditional Use Permit/Planned Development Permit and corresponding use of this site shall expire on **November 27, 2011**. Upon expiration of this permit, the facilities and improvements described herein shall be removed from this site and the property shall be restored to its original condition preceding approval of this permit.

11. Prior to the expiration date of this Conditional Use Permit, the Permittee may submit a new Conditional Use Permit application to the City Manager for consideration with review and a decision by the appropriate decision maker at that time.

12. Routine maintenance and calibration of the system and all of the associated equipment shall be limited to normal business hours between 8:00 AM and 5:00 PM, Monday through Friday, so as to avoid disturbance of the surrounding residential neighborhood.

13. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as condition of approval of this permit. Where there is a conflict between a condition (including exhibits) of this permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.

14. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and the exhibits (including, but not limited to, elevations and cross sections) or the

maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific condition of this permit. In the case of CUP/PDP No. 41-0213-01, a height deviation has been granted to allow a forty foot pedestal element at the base of the existing 65-foot church steeple. No other deviations from the underlying zone are requested or approved as part of this project.

15. A topographical survey conforming to the provisions of the Municipal/Land Development Code may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the permittee.

16. Any future requested amendment to this permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.

17. The construction and installation of the proposed pedestal element located at the base of the existing steeple shall not alter, convert or modify the existing steeple in any way. The steeple shall not be used to brace, mount or otherwise affix the new element to the roof of the church.

APPROVED by the Council of the City of San Diego on November 27, 2001, by Resolution No. R-295796.

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AUTHENTICATED BY THE CITY MANAGER

By \_\_\_\_\_

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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.

**CHURCH ON THE MOVE**

Owner

By \_\_\_\_\_

**SPRINT, PCS**

Permittee

By \_\_\_\_\_

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1180 et seq.**

1/24/02  
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