

## RESOLUTION NUMBER R-301044

ADOPTED ON NOVEMBER 15, 2005

WHEREAS, Title 21 of the Public Utilities Code, Section 5023 requires a program of noise monitoring to validate the location of the noise impact boundary when this boundary extends into incompatible land uses; and

WHEREAS, the San Diego County Regional Airport Authority, Owner/Permittee, filed an application with the City of San Diego for a public right-of-way use permit to install and maintain nine airport noise monitoring stations on new 20-foot poles within the public right-of-way within the following communities and zones:

<b><u>Proposed Monitoring Station</u></b>	<b><u>Street Location</u></b>	<b><u>Community and Council District</u></b>	<b><u>Applicable Zones</u></b>
3	Eighth Ave & Dale St at 1650 Eighth Ave	Centre City, Cortez Hill (Council Dist. 2)	Centre City Planned District (CCPD-C), Airport Approach Overlay Zone (AAOZ), Airport Environs Overlay Zone (AEOZ), CCDC Redevelopment
4A	Juniper St & Second Ave at 2321 Second Ave	Uptown (Council Dist. 2)	Mid City Communities Planned District MCCPD-MR-1000, AAOZ, AEOZ
5A	Fir St & Columbia St at 1835 Columbia St	Centre City (Council Dist. 2)	Centre City Planned District CCDP-C, AAOZ, CCDC Redevelopment
8	Oleander Pl and Amaryllis Dr at 3738 Amaryllis Dr	Peninsula (Council Dist. 2)	RS-1-7, AAOZ, AEOZ, Coastal Height Limit
14A	Sunset Cliffs Blvd. and Cape May Ave at 2051 Sunset Cliffs Blvd. (Bethany Evangelical Lutheran Church)	Ocean Beach (Council Dist. 2)	RM-1-1, Coastal Overlay Zone (City jurisdiction, non-appealable), AAOZ, AEOZ, Coastal Height Limit, Ocean Beach Emerging Historic District
18	Nutmeg St and Brant St at 426 W. Nutmeg St	Uptown (Council Dist. 2)	RS-1-1, AAOZ, AEOZ
23	North Jetty Rd and Mission Blvd. at 700 N. Jetty Rd	Mission Beach (Council Dist. 2)	Mission Beach Planned District Zone, R-S, Coastal Overlay Zone (State jurisdiction), First Public Road Sensitive Coastal Overlay Zone, Special Flood Hazard Area, AEOZ, Coastal Height Limit

25A	Santa Barbara St between Niagara Ave Newport Ave at 4390 Niagara Ave	Peninsula (Council Dist. 2)	RS-1-7 Coastal Overlay Zone (City jurisdiction, non-appealable), AAOZ, AEOZ, Coastal Height Limit, Coastal Permit (City jurisdiction, non- appealable)
26	Gateway Center Way adjacent to Dennis Allen Park at 3836 Gateway Center Ave	Southeast (Council Dist. 8)	RS-1-7, AEOZ, Mount Hope Redevelopment Project Area, Southeast Development Corp. (SEDC)

(See City Manager Report No. CMR-05-219, Project No. 67657, Peninsula, Uptown, Ocean Beach, Mission Beach, Centre City, Southeast Community Plan Area, Districts 2 and 8); and

WHEREAS, on August 25, 2005, the Planning Commission of the City of San Diego considered Public Right-of-Way Use Permit No. 249359, and pursuant to Resolution No. 3832-PC voted to approve the Permit; and

WHEREAS, Robert Epler 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 15, 2005, 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 Public Right-of-Way Use Permit No. 249359:

**A. PUBLIC RIGHT-OF-WAY USE PERMIT SAN DIEGO MUNICIPAL CODE SECTION 126.0905**

1. **The proposed encroachment is reasonably related to public travel, or benefits a public purpose, or all record owners have given the applicant permission to maintain the encroachment on their property.** The project benefits a public purpose by monitoring aircraft noise from San Diego International Airport [SDIA] at Lindbergh Field in compliance with Title 21 of the California Noise Standards which mandates aircraft noise monitoring of SDIA operations. In addition, the monitoring sites assist Airport staff in responding to noise complaints, enforcing departure curfews and determining eligibility for its

Quieter Home Program, a residential sound attenuation program in the highest noise-impacted neighborhoods surrounding SDIA.

**2. The proposed encroachment does not interfere with the free and unobstructed use of the public right-of-way for public travel.** The proposed encroachment would not interfere with the free and unobstructed use of the public right-of-way for public travel due to the design. All improvements are designed so as to preclude conflict with vehicular or pedestrian traffic. The equipment boxes are designed and located so as to avoid conflict with public use of the sidewalk and roadway.

**3. The proposed encroachment is not detrimental to the public health, safety or welfare.** The proposed encroachment would not pose any danger to pedestrians using the right-of-way or vehicular travel through the right-of-way. Public Right-of-Way Use Permit No. 249359 includes specific conditions that would ensure the poles are maintained in a safe manner including a traffic control plan for installation and maintenance activities.

**4. The proposed encroachment does not interfere with the record owners' use or enjoyment of their property.** The proposed encroachment is limited to a 20-foot pole in the public right-of-way. Each location was selected on a site-by-site case evaluation in order to avoid any conflict of use impacts. Adjacent property owners will continue to have full benefits of their properties and its access.

**5. The proposed encroachment does not adversely affect the land use plan.** The poles are located between the curb and the road right-of-way. Therefore, the roadway land use per City Circulation Element of the General Plan will not be affected or altered. Adjacent property owners will continue to have full benefits of their properties and its access. Installation of utilities in the public right-of-way is compatible with the underlying zones of the selected locations. These utilities cannot be undergrounded because the noise monitoring equipment must be able to record aircraft overflights. The equipment cannot be mounted on existing buildings or other utilities due to data quality objective as specified in Title 21, 5080.3, "Performance Specifications" and 5080.5, "Environmental Precautions and Requirements" regarding vibration, acoustic noise, and electrostatic/magnetic interference. Monitoring station locations were selected to facilitate locating the maximum extent of the noise impact boundary. Noise monitoring data will be used to help determine the noise contours which are used to help determine noise compatible land uses.

**6. The proposed encroachment is not harmful to the aesthetic character of the community.** The aesthetic character of the community will not be affected by the installation of the noise monitoring poles. The poles were carefully selected to blend with the colors of the surrounding urban environment. The location of the poles were selected to minimize such impact. The poles will be powered by solar energy and communications will be transmitted via wireless data modems, thereby eliminating addition of overhead utilities to each location.

**7. The proposed encroachment does not violate any other Municipal Code provisions or other local, state or federal law.** The proposed encroachment is permitted within the public right-of-way with an approved Public Right-of-Way Use Permit. The proposed encroachment would not violate any other Municipal Code provisions or any other local, state or

federal laws. The project allows the Airport Authority to comply with State Law - Title 21 of California Noise Standards.

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

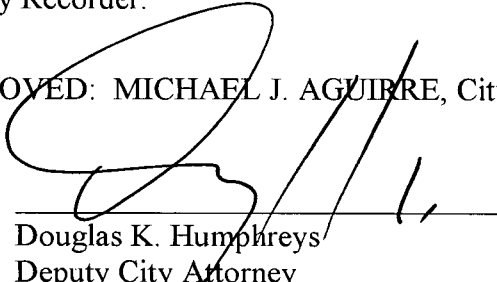
BE IT FURTHER RESOLVED, that the appeal of Robert Epler, pertaining to the Public Right-of-Way Use Permit for proposed monitoring stations 3, 4A, 5A, 14A, 18, 23, 25A, and 26 is denied; the decision of the Planning Commission is sustained; and Public Right-of-Way Permit No. 249359, pertaining to the Public Right-of-Way Use Permit for proposed monitoring stations 3, 4A, 5A, 14A, 18, 23, 25A, and 26, is granted to the San Diego County Regional Airport Authority, Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

BE IT FURTHER RESOLVED that the appeal of Robert Epler, pertaining to the Public Right-of-Way Use Permit for proposed monitoring station 8, is continued to a future date that shall be approximately ninety days.

BE IT FURTHER RESOLVED, that the City Clerk shall cause a certified copy of this resolution, with attached exhibits, attested to him under seal, to be recorded in the Office of the County Recorder.

APPROVED: MICHAEL J. AGUIBRE, City Attorney

By

  
\_\_\_\_\_  
Douglas K. Humphreys  
Deputy City Attorney

DKH:pev  
11/21/05  
Or.Dept:Clerk  
R-2006-531  
MMS #2801

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

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER 423983

**PUBLIC RIGHT-OF-WAY USE PERMIT NO. 249359**  
**AIRPORT NOISE MONITORING STATIONS – PROJECT NO. 67657**  
**CITY COUNCIL**

This Public Right-of-Way Use Permit No. 249359 is granted by the Council of the City of San Diego to the San Diego County Regional Airport Authority, Owner/ Permittee, pursuant to San Diego Municipal Code [SDMC] sections 126.0905 and 126.0906. The project site is located within portions of the public right-of-way in the following communities: Peninsula, Uptown, Ocean Beach, Mission Beach, Centre City and Southeast. The project site is legally described as portions of the public-right of-way located between the curb and adjacent property lines at eight locations as shown on Exhibit "A," dated November 15, 2005, on file in the Development Services Department and attached hereto and summarized as follows:

- Station 3 (8<sup>th</sup> Ave/Date St)
- Station 4A (2<sup>nd</sup> Ave/Juniper St)
- Station 5A (Columbia St/Fir St)
- Station 14A (Cape May Ave/Sunset Cliffs Blvd)
- Station 18 (Nutmeg St/Brant St)
- Station 23 (Coastal Zone – North Jetty Rd/Mission Blvd)
- Station 25A (Santa Barbara St Between Niagara and Newport Aves)
- Station 26 (Gateway Center Way adjacent to Dennis Allen Park)

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to install, establish, and maintain eight airport noise monitoring poles within the identified communities, described and identified by size, dimension, quantity, type, and location on the approved exhibits.

The project or facility shall include:

- a. Installation and maintenance of nine, 5-inch diameter aluminum poles, 20-feet in height above ground surface, 5 to 9 feet deep below ground surface, each equipped with a microphone, lightning rod and grounding, solar

panels, equipment box, wireless communications transmission, and battery backup installed within the public right-of-way with 11 feet of clearance for tilt-down pole maintenance.

**STANDARD REQUIREMENTS:**

1. Installation of the noise monitoring poles must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC 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 Engineer.
4. The utilization and continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
5. Issuance of this Permit by the City of San Diego does not authorize the Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
6. Before issuance of any right-of-way permit, complete working drawings shall be submitted to the City Engineer for approval. Plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.
7. 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 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 the special rights which the holder of the Permit is entitled as a result of obtaining this 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 proposed 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.

**ENGINEERING REQUIREMENTS:**

8. The precise locations of the proposed airport noise monitoring poles are subject to the approval of the City Engineer.
9. No alterations to the design, location and materials, shall be permitted unless approved by the City Engineer.

**PLANNING REQUIREMENTS:**

10. This permit does not eliminate the need to obtain necessary authorizations and/or permits from other agencies. Applicant shall obtain a Coastal Development Permit from the California Coastal Commission prior to installation at the Mission Beach (Station 23) and Ocean Beach (Station 24) sites.

11. If any existing hardscape or landscape is damaged or removed during installation or maintenance activities, it shall be the responsibility of the Permittee/ Owner, to assure that it shall be repaired and/or replaced in kind and equivalent size within fifteen days. At such time when the poles are removed, the applicant shall return the right-of-way to the existing conditions at that time.

12. 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 a 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.

13. 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.

14. The applicant shall remove or relocate, at its own expense, any encroachment within thirty days after notice by the City, or the City may cause such work to be done, and deduct or obtain costs from the applicant's permit bond, deposit or other security at the sole discretion of the City without further notice to the applicant. The applicant shall remove or relocate, at its own expense, any encroachment on shorter notice by the City in

the case of an emergency or if determined necessary by the City. If the applicant fails to remove or relocate the encroachment in the required time and manner, or if deemed necessary by the City, the City may cause such work to be done, and deduct or obtain costs from the applicant's permit bond, deposit or other security, at the sole discretion of the City, without further notice to the applicant.

15. The applicant shall agree to defend, indemnify, protect, and hold harmless the City, its agents, officers, or employees from and against any and all claims asserted or costs, liability, demands, losses, damages, or expenses or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the applicant or which the City or the record owner may sustain or incur in any manner resulting from the design, construction, maintenance, state of use, repair or presence of the encroachment, satisfactory to the City Manager and City Attorney.

The applicant shall also agree to indemnify the City for liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the applicant, its agents, officers, or employees its employees, agents, or officers, or any third party which are in combination with the active or passive negligent acts or omissions of the applicant, its employees, agents, or officers. The applicant also agrees to indemnify the City for liability arising from any claim of injury or damage by a third party sustained as a result of the design, construction, maintenance, state of use, repair or presence of the encroachment.

The applicant's duty to defend, indemnify, protect, and hold harmless shall not include any claims or liabilities arising from the established sole negligence or sole willful misconduct of the City, its agents, officers or employees. The applicant also agrees to pay any and all costs the City may incur to enforce the indemnity and defense provisions set forth above.

16. The City's rights with respect to the public right-of-way shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the encroachment.

17. The applicant shall maintain liability insurance in the amount of \$1,000,000.00 in order to protect the City from any potential claims which may arise from the encroachment. The policy shall name the City as an additional insured.

18. The applicant shall furnish a surety bond, cash deposit, or other security, in an amount acceptable to the City Manager, if required by the decision maker.

**TRANSPORTATION REQUIREMENTS:**

19. The applicant shall obtain a "Public Right-of-Way Permit for Traffic Control" prior to any work within the public right-of-way to the satisfaction of the City Engineer.

20. The applicant shall protect any City property removed as part of the project and return said property to the satisfaction of the City Engineer.



21. The applicant shall provide a Public Improvement Plan including a Traffic Control Plan to the satisfaction of the City Engineer that addresses both installation and maintenance activities.

22. The applicant shall inform the City, and the City agrees to inform the applicant, in the event of a knock-over of a station, to the satisfaction of the City Engineer.

23. The poles in the visuals shall be maintained free of the clutter (equipment box and cabinet for backup batteries) that could alert reviewers to issues of visibility being obstructed and of safety to pedestrians and other sidewalk traffic.

**INFORMATION ONLY:**

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code section 66020.

APPROVED by the Council of the City of San Diego on November 15, 2005, by Resolution No. R-301044.

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.

SAN DIEGO COUNTY REGIONAL  
AIRPORT AUTHORITY  
Owner/Permittee

By \_\_\_\_\_

By \_\_\_\_\_

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

PERMIT/OTHER – Permit Shell 11-01-04