



THE CITY OF SAN DIEGO

Today's date: October 19, 1998

Files: Property File - T706

Permit File - Pac Bell Mobile
Paradise Mesa Standpipe

Pacific Bell Mobile Services
6170 Cornerstone Court, Suite 180
San Diego, CA 92121

Attention: Mr. Mark Appel

Re: Right of Entry Permit - Paradise Mesa Standpipe

The City of San Diego ("City") hereby grants permission to Pacific Bell Mobile Services ("Permittee") to enter upon the above-referenced City-owned property ("permit area"), as delineated on the attached Exhibit "A," upon the following terms and conditions:

1. This permit is granted with the understanding and condition that this use will not interfere, in any way, with other users located in or around the permit area or the operations of the Information and Technology Department. If the City determines the condition of the property is unsatisfactory or if City believes that continued use of this permit would expose City to undue risks of liability, City may, without penalty or liability, immediately terminate this permit.
2. Permittee's use of the permit area shall be limited to the placement of PCS Communication facility on City's Paradise Mesa Standpipe Communications Complex. The location and placement of the communication facility is more specifically described in the site plans marked as Exhibit "C". The City reserves the right to use the remainder of the parcel as it deems fit. In the event such use or future use will involve the placing of a structure on the

parcel which will interfere with Permittee's operations, City will provide Permittee ninety (90) days prior written notice of such intended use.

3. Consideration to City for granting this permit shall be a \$360 non-refundable one-time processing fee and a \$1,250 monthly permit fee commencing on the effective date hereof. Permit fees are payable at the office of the City Treasurer on or before the first day of each month. The first and last month's permit fees will be prorated as necessary to achieve payment on the first of the month. Payments postmarked or paid in person after the first of the month will be subject to a 5 percent late charge if 1 to 15 days past due, and to an additional 5 percent late charge if 16 or more days past due. In no event shall the late charge be less than \$25. Permittee agrees that it will not modify, replace, add or remove equipment without the prior written authorization from City Real Estate Assets Division.
4. This permit shall be in effect on the first day of the calendar month following execution by City and shall in no event exceed a total period of 3 (three) years.
5. Permittee certifies that a policy of public liability and property damage insurance and property damage insurance, in which the City is named as additional insured, has been secured in an amount of not less than \$1,000,000.00 (One Million Dollars) combined single limit liability with an occurrence claims form and that said policy shall be kept in force for the duration of this permit. This policy shall cover the subject permit area as well as any secured or unsecured access routes to permit area. All insurance companies must be satisfactory to City and licensed to do business in California. A certificate shall be filed with the City Real Estate Assets Department upon execution of this permit. Permittee shall keep a current certificate on file with the City Real Estate Assets Department at all times.
6. Permittee agrees to defend, indemnify, protect, and hold the City, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Permittee's employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly

connected with the development or operation of the permit area or the work and operations to be performed by Permittee, its employees, invitees, guests or agents under this agreement, and all expenses of investigating and defending against same; provided, however, that Permittee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the City, its agents, officers, or employees.

7. Permittee agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Permittee's use of the permit area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
8. All risks in connection with Permittee's use of the permit area and any damages to the improvements thereon, thereunder, or in the vicinity thereof shall be borne in full by Permittee to the extent attributable to Permittee's use. Upon 30 days written notice, Permittee shall at its expense, repair any damage occurring during construction and/or installation and/or during operations of the permit area.
9. Permittee shall not use the permit area in any manner which, in the opinion of the City Manager, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.
10. This permit is revocable at any time on ninety (90) days prior written notice by either party, except in the case of a breach of the terms of this permit, where as, this permit shall be subject to immediate termination. It is mutually agreed that the City of San Diego shall not be obligated for any loss, financial or otherwise, which may be incurred by Permittee as a result of termination of this permit, and, further, that Permittee expressly waives any claim for expense or loss which Permittee might incur as a result of termination of this permit.
11. Permittee shall at its sole cost and expense comply with all the requirements of all municipal, state, and federal authorities now in effect or which may

hereafter be in effect, which pertain to the permit area. Each radio or electronic transmitter covered by this permit shall be operated by the holder of a current and valid Federal Communications Commission (FCC) license or Interdepartmental Radio Advisory Committee (IRAC) authorization applicable thereto. A legible copy of each applicable license or authorization shall at all times be posted on the cabinet or rack of each transmitter being operated. Each such copy shall indicate each person or entity authorized under the license of authorization to operate the transmitter.

12. Upon expiration or earlier termination of this permit at the direction of City, Permittee shall at its sole cost remove all materials and repair and/or restore the permit area to its original condition, including any hazardous or toxic waste remediation, to the satisfaction of the City Manager.
13. Permittee shall not sublease or assign any rights granted by this permit nor any interest therein without the prior written approval of the City Manager. Approval of any such proposed assignment may be withheld at the sole and absolute discretion of the City Manager. Any assignment by operation of law shall automatically terminate this permit.
14. No signs shall be displayed on the permit area without the prior written consent of the City Manager.
15. Maintenance of the permit area shall be the sole responsibility of Permittee during the entire term of this permit.
16. Permittee agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the permit area.
17. Beginning with the second year of this permit and continuing each year thereafter, the permit fee will be increased annually on the commencement date defined in item 4 (four) of this permit. The monthly increase shall be 6% (Six percent) of the preceding year's monthly permit fee.
18. Permittee agrees that City and its agents may enter the Permit Area at any and all reasonable times to inspect the same, to maintain any service

provided by City to Permittee hereunder, to make such repairs, alterations, additions and improvements which City shall consider necessary for the protection, improvement or preservation of Permit Area or as may be required by this Permit or by law, and otherwise to protect any and all rights of the City. During the course of any permitted entry to the Permit Area, City shall not alter, tamper with, adjust, move, or otherwise affect the equipment or the operation thereof without prior notice to Permittee, except in the event of an emergency.

19. City will not be liable for the following: (i) any loss or damage to the property of Permittee or of others in or on the Permit Area itself, by theft or otherwise, (ii) any injury or damage to persons within the Permit Area resulting from fire, explosion, falling debris, gas, electricity, water, rain, or leaks from any part of Permit Area or from the pipes, or from the roof of the Permit Area, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature, (iii) any injury or damage caused by other Permittees or any person(s) either in the Permit Area or elsewhere in the Permit Area, or by occupants adjacent to the Permit Area, or by the public or by construction of any private, public or quasi-public work, or (iv) any latent defect in construction of the permit area structure.
20. Any holding over after the expiration of said term of permit with the consent of city, shall be construed to be a tenancy from month to month and is revocable with 30 days notice from either party, and shall otherwise be on the terms and conditions herein specified, so far as applicable.
21. City reserves the right to reassign Permittee an equivalent amount of space in a different location when and if the facility has been upgraded and reconfigured. Permittee agrees to cooperate fully with CITY and its contractors during any renovation, repair, or other alteration of the facility. Permittee acknowledges that its antenna(s) may be relocated as a result of the renovation, repair, or other alteration of the facility. City warrants that every effort will be made to ensure continuous, uninterrupted broadcast/receiving capability during any conversion.
22. Permittee agrees to abide by the terms of the "On-Air Compatibility Tests" as outlined in Exhibit B attached hereto and by reference made part of this

agreement. Permittee agrees to notify the Communications and Electrical departments of the City of San Diego and of any changes in licensed frequencies to be used at the site.

23. For administrative purposes, any activity covered by this agreement which requires permission or consent of City shall be referred to the Real Estate Assets Department of the City of San Diego for handling by the appropriate parties.
24. This activity has been reviewed with the California Environmental Quality Act (CEQA) and has been determined to be exempt per Section 15268.
25. Permittee recognizes and understands that this permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest. Permittee further agrees that such tax payment shall not reduce any fee paid the City of San Diego hereunder and that such tax shall be paid by Permittee before becoming delinquent.

If you should require additional information or have any questions, please call Jim Lovewell, Property Agent, at 236-6792.

Very truly yours,

11-12-98



for

JANE E. VICKERS, Deputy Director
Real Estate Assets Department

JBL:jmj-n

Attachments

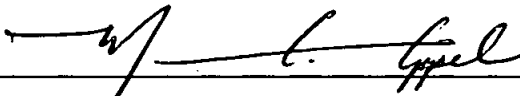
cc: County Assessor
Richard Chuck

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Pacific Bell Mobile Services
October 19, 1998
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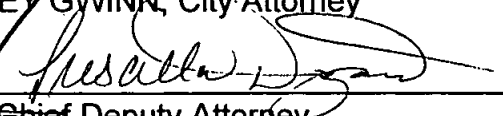
THE ABOVE IS ACKNOWLEDGED AND ACCEPTED THIS 22ND DAY OF JUNE, 1998.

PACIFIC BELL MOBILE SERVICES

BY: 

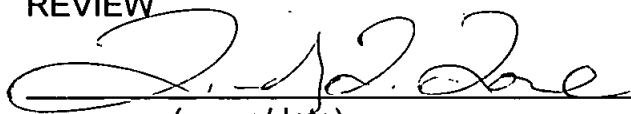
APPROVED AS TO FORM AND LEGALITY

CASEY GWINN, City Attorney

BY: 

Chief Deputy Attorney

DEVELOPMENT SERVICES/LAND DEVELOPMENT
REVIEW


(name/date)

9.01 Exhibit "A"

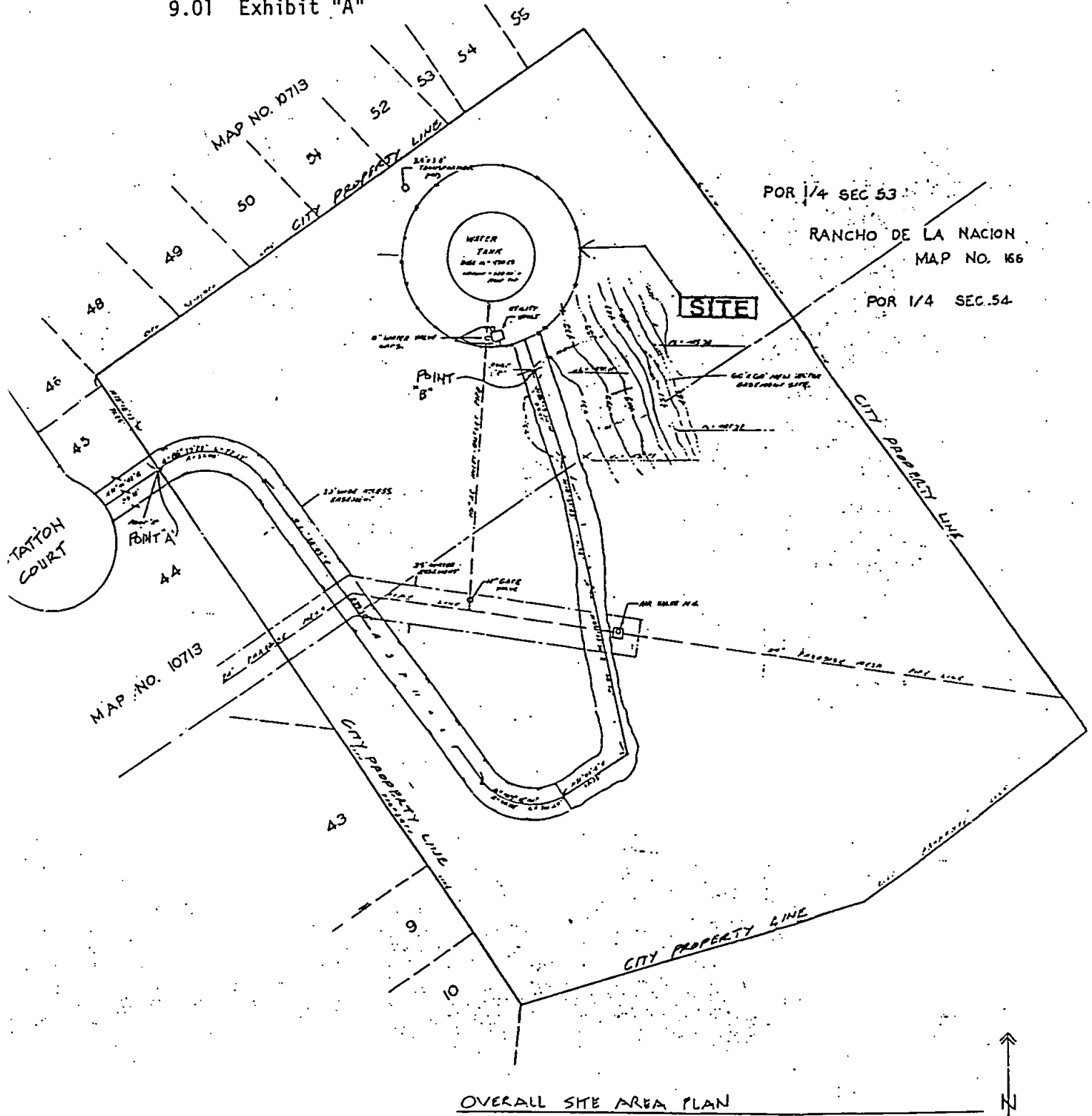


EXHIBIT B

CITY OF SAN DIEGO LAND USE "ON THE AIR" TEST INSTRUCTIONS AND PROCEDURES

1. Explanation

Prior to City's approval of an application for a new radio-electronic use authorization or modification of an existing authorization, pre-installation or pre-use tests will be required. Such tests will determine whether or not radio frequency interference or degraded performance will result to the existing authorized radio electronic type uses at the facility.

Should the interference problems result, it will be the responsibility of the user implementing the new installation to initiate mutually agreeable actions of the parties involved to settle the problem among themselves.

Permittee/Lessees may recognize the right of prior authorizees and withhold approval of a radio-electronic authorization application or authorization modification pending settlement of interference problems between the applicant and other users.

2. Pre-installation or pre-use Testing

A. It will be the responsibility of the applicant to make the complete arrangements and conduct all tests in a technically sound manner.

(1) A listing of all radio-electronic land use Permittee/Lessees operating at the facility will be obtained from the City.

B. It will be the responsibility of the applicant to notify all radio-electronic Permittee/Lessees at the facility of the tests and details thereof, at least 14 days in advance of the tests.

(1) The notification shall be in the form of letter to each listed Permittee/Lessee giving a technical summary of the test and shall specify the date and hour the test will start. The letter of notification shall request the Permittee/Lessees to have a qualified representative present for the test to observe for possible interference problems and with authority to sign an interference or noninterference certification on behalf of the Permittee/Lessee.

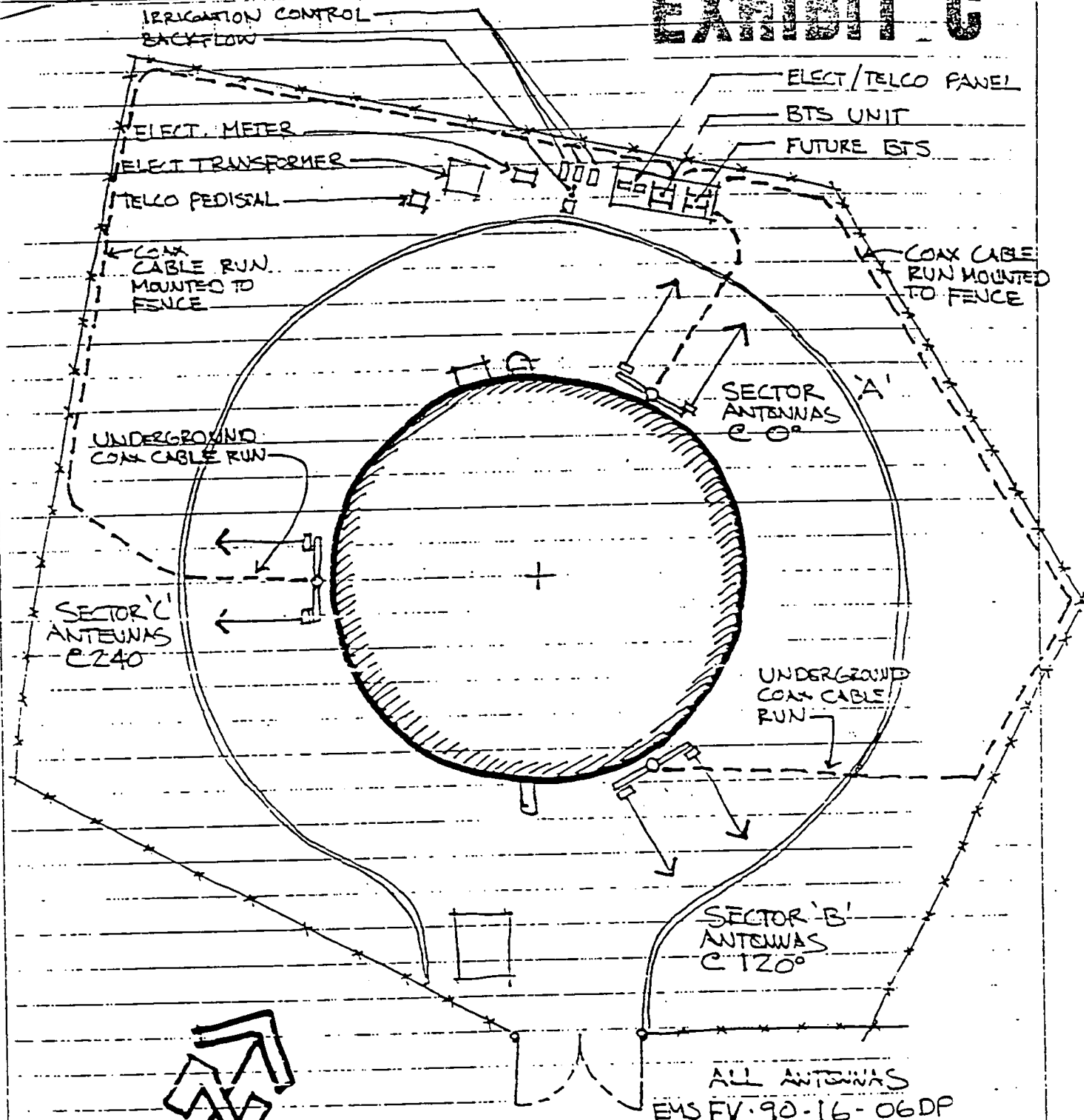
- (2) A copy of these instructions, " City of San Diego Radio-Electronic Land Use On-The-Air Test Instructions and Procedures" shall be attached to each notification and it shall be so noted in the notification letter.
 - (3) Notification to Permittee/Lessees shall be sent via U.S. Mail or hand delivered.
 - (4) The notification letter to the City Communications Engineer shall include a list of all Permittee/Lessees notified.
- C. It will be the applicant's responsibility to submit to the City Communications Engineer following the completion of the tests, a letter stating test results obtained from each Permittee/Lessee participating in the test and a list of those Permittee/Lessees who did not respond.
- D. In the event a notified Permittee/Lessee fails to send a qualified representative to observe and participate in the tests, it will be assumed by the City that the Permittee/Lessee has assured themselves that their operations will not be affected.

3. On-The-Air Tests - Technical Details

Pre-installation or pre-use on-the-air tests shall be conducted by the applicant under the following technical conditions:

- A. The applicant's transmitting and/or receiving equipment shall be of the type planned for final use at the site.
- (1) The transmitted RF power shall be the maximum to be used and authorized at the location.
 - (2) On-the-air transmitter tests shall include the use of full allowable modulation.
 - (3) Antenna height(s), location(s) and type(s) shall be the same as the final installation plan.
- B. Tests shall include on-the-air operation of all participating transmitter(s) and receiver(s) in all possible combinations with the applicant's electronic equipment.
- C. All tests will include testing with all frequencies planned for use by the applicant at the location.

EXHIBIT C



* SURVEY REQUIRED TO DETERMINE ALL HEIGHTS AND - ORIENTATIONS

PARADISE MESA
STANDPIPE

THE
STICHLER
DESIGN GROUP, INC.

Pacific Bell Mobile Services
Site Number SD-326-01

DRAWING DESCRIPTION

SITE PLAN

SHEET REF

SDG PROJECT

97362.63

95173.00

SHEET

DATE

4/22/98

DRAWN BY

DAG

SK-1