

# STAFF REPORT



## COMMUNITY DEVELOPMENT

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**DATE:** October 29, 2024

**TO:** Justin Hess, City Manager

**FROM:** Patrick Prescott, Community Development Director  
VIA: Fred Ramirez, Assistant Community Development Director - Planning  
Scott Plambaeck, Planning Manager  
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BY: Fatima Benitez, Associate Planner

**SUBJECT:** Adoption of a Resolution Denying an Appeal of the Planning Commission’s Approval of Project No. 23-0005025, an Administrative Use Permit for a Wireless Telecommunication Facility Located at 800 South Main Street, and a De Novo Consideration to Conditionally Approve Project No. 23-0005025, an Administrative Use Permit for a Wireless Telecommunication Facility Located at 800 S. Main Street

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### **RECOMMENDATION**

Adopt A RESOLUTION OF THE COUNCIL OF THE CITY OF BURBANK DENYING AN APPEAL OF THE PLANNING COMMISSION’S APPROVAL OF PROJECT NO. 23-0005025, AND CONDITIONALLY APPROVING AN ADMINISTRATIVE USE PERMIT TO ALLOW A NEW UNMANNED ROOF-MOUNTED WIRELESS TELECOMMUNICATION FACILITY ON AN EXISTING COMMERCIAL OFFICE BUILDING LOCATED AT 800 S. MAIN STREET, BASED ON THE FINDINGS OF FACT AND SUBJECT TO THE ATTACHED CONDITIONS OF APPROVAL.

### **EXECUTIVE SUMMARY**

The Appellant, Nicolette LeFebre (“Appellant”), on behalf of the appellant group, submitted an appeal of the Planning Commission’s decision to deny an appeal of the Community Development Director’s (“Director”) decision to approve an Administrative Use Permit (“AUP”) and conditionally approve Project No. 23-0005025, an AUP for a new unmanned roof-mounted wireless telecommunication facility (“WTF”) on the roof of an existing 35-foot tall, three-story commercial office building (“Project”) located at 800 S Main Street (“Project Site”) (Attachment 2).

As outlined in this report, it is staff’s assessment that the appeal did not include the substantial evidence required to demonstrate that the Project should be denied or further conditioned based on applicable local regulations in the Burbank Municipal Code (“BMC”) and applicable federal regulations related to the City’s review and approval of WTFs. It is staff’s opinion that the required findings of fact to approve the AUP can still be made, subject to ongoing compliance with the recommended Conditions of Approval attached to the proposed Resolution. Therefore, staff recommends that Council deny the appeal of the Planning Commission’s approval and conditionally approve the AUP to install a roof-mounted wireless telecommunication facility at 800 S Main Street.

**BACKGROUND**

**Project Description**

The Project is to install a roof-mounted wireless telecommunication facility on an existing three-story commercial office building located at 800 S Main Street. The proposed WTF will be comprised of three sectors with two antenna mounts on each sector for a total of six antenna mounts. Each sector will have one antenna for a total of three antennas combined as shown on the roof plan of the project plans (as shown in Attachment 9). Consistent with all other WTFs as defined in BMC Section 10-1-203, these separate components comprise one singular WTF. The facility will also include accessory equipment, including but not limited to remote radio units, cable trays, and miscellaneous rooftop equipment. The WTF will occupy three areas on the roof of the building for a total area of 365.88 square feet and include a 10’-0” high visual screen and will have a setback from the edge of the roof ranging between 10’-0” and 44’-2”, as shown on the Project plans (Attachment 9). The antenna arrays will be constructed with a fiberglass reinforced plastic visual screen enclosure measuring 10’-0” in height to fully screen the equipment from the public right-of-way and adjacent properties. No changes are proposed to the existing square-footage and exterior façade of the commercial office building.

<b>Table 1: General Property and Surrounding Land Use Information</b>	
Address	800 S. Main Street
Cross Streets	S. Main Street, W. Valencia Avenue, and W. Elmwood Avenue
Assessor’s Parcel Number	2451-031-001
General Plan Designation	Rancho Commercial
Zoning	Majority of the Property which includes the Project Site (including area where proposed WTF will be located) is zoned Neighborhood Business (NB); a small portion of the property is developed with surface parking and is zoned Single Family Residential (R-1).
Property Size	Approximately 1.12 acres
Current Development	The Project Site is currently improved with a 35-foot tall, three-story commercial office building, surface, and semi-subterranean parking.

Street Classification and Width	Main Street is a Collector Street with 48'-50'-wide street and a 5'-6'-wide sidewalk
Surrounding Neighborhood:	Neighborhood Business (NB) and Residential zoned lots improved with commercial office and residential uses.
North	
South	Neighborhood Business (NB) and Residential zoned lots improved with a gas station.
East	Residential (Single-Family and Multifamily) zoned lots with existing residential uses.
West	Rancho Business Park (RBP) and Rancho Commercial (RC) zoned lots improved with existing commercial uses.

A detailed project description of the Project site and surrounding area is summarized in Attachment 4.

*Project History*

A summary of the Project history is provided below.

AUP Application Submitted	October 20, 2023
Application Deemed Complete	January 18, 2024
Supplemental Project Information/ Clarifications Received from Applicant	January 2024 through May 2024
First Public Notice Mailed	April 8, 2024
Second Public Notice Mailed	May 17, 2024
Director's Conditional Approval of AUP	June 5, 2024
Appellant Submitted an Appeal of the Director's Decision to Approve the AUP	June 18, 2024
Final Day to Appeal Director's Decision	June 20, 2024
Planning Commission's Denial of the Appeal and Conditional Approval of the AUP	July 22, 2024
Appellant Submitted an Appeal of the Planning Commission's Decision to Approve the AUP	August 6, 2024

A detailed project history is summarized on page 3 of Attachment 4.

*Planning Commission Review and Approval*

On July 22, 2024, the Planning Commission held a public hearing to review an appeal of the Community Development Director's decision to conditionally approve Project No. 23-0005025, an AUP to allow a new roof-mounted WTF on an existing commercial building located at 800 S. Main Street. The appeal included seven contentions in opposition to the Director's decision. A complete analysis of the Appellant's seven contentions and the City's responses to those contentions, as adopted by the Planning Commission, is contained in the Planning Commission Staff Report (Attachment 4) and Planning Commission Resolution No. 3472 (Attachment 3).

During the hearing, the Appellant raised new contentions that staff addressed when requested to do so by the Planning Commissioners. Upon consideration, the Planning Commission voted 3-0 to deny the appeal of the Director's decision. A complete record of the Planning Commission hearing, including additional contentions raised by the Appellant and staff's responses, is included in the July 22, 2024, Planning Commission Minutes (Attachment 5). Further, as required by BMC Section 10-1-1907.2(A), the Planning Commission exercised de novo review and conditionally approved the AUP for the Project, finding that all the findings required by BMC Section 10-1-1956 could be made. (See Attachments 3 and 4).

### **APPEAL OF THE PLANNING COMMISSION'S DECISION**

Under BMC Sections 10-1-1959 and 10-1-1907.3(A)(1), the Planning Commission's decision on a WTF AUP may be appealed to the Council. On August 6, 2024, the Appellant, on behalf of the appellant group, submitted an appeal of the Planning Commission's decision to approve the requested AUP to install a roof-mounted WTF on an existing building located at 800 S. Main Street (Attachment 2). Based on the material included in the appeal, it is staff's understanding that the appeal includes 15 new contentions forming Appellant's basis for the appeal. The Appellant's original contentions and staff's response are included in the staff report provided to the Planning Commission (Attachment 4). The 15 new contentions made by the Appellant are:

1. The public notices were deficient because they were inconsistent, confusing, and not transparent because the project description was insincere and the City withheld evidence from the community. Also, not all schools within 1,000 feet of the Project Site were notified.
2. The findings required to approve an AUP were not satisfied for the following reasons:
  - The use is detrimental to existing uses or to uses specifically permitted in the zone in which the proposed use is to be located because the Project is detrimental to residents and businesses health, safety, and property values, and to children.
  - The Project use is incompatible with other uses in the general area because the Project is proposed in a school and residential zone and is incompatible with the health and safety of children and will negatively affect the small businesses.
  - The proposed Project conditions do not protect the public health, safety, convenience, and welfare because a 5G telecommunications antenna contributes to air pollution and radiation exposure.
3. On August 13, 2021, the US Court of Appeal for the D.C. Circuit ruled the Federal Communications Commission ("FCC") ignored scientific evidence and failed to

provide a reasoned explanation for its determination that its 1996 regulations adequately protect the public against harmful effects of wireless radiation, and ordered the FCC to provide a reasoned determination as to whether the evidence warrants a change to the 1996 radiofrequency (“RF”) limits. Since the FCC has not responded to the Court or disclosed the new updated findings, the documentation provided by Dish Cellular stating they are in compliance is false.

4. The Project does not comply with height restrictions.
5. The Project does not close any coverage gap. The facility is not a co-location and is a brand-new installation, therefore, not eligible for a co-located building mounted AUP.
6. The applicant failed to provide proof that they attempted to find alternative placement for the telecommunication facility in violation of the FCC Telecommunication Act of 1996.
7. The Project is not a minor alteration to the use of the land therefore, the CEQA exemption under CEQA Guidelines Section 15303 is not applicable.
8. The parcel of the land at 800 S. Main Street is partially zoned for R-1 Single Family Residential, which impacts the permitting process in that the permit grants a non-conforming use of the land. The permit runs with the land and the permit is invalid as the most conservative use of the land is residential, which would not work with the 5G towers proposed at this site.
9. Insurers rank 5G and electromagnetic radiation as a “high” risk and claim existing concerns regarding potential negative health effects from electromagnetic fields (EMF) are only likely to increase.
10. Numerous cities and towns are passing ordinances to restrict 5G and the proliferation of wireless telecommunication antennas near homes and schools with the authority they have.
11. The FCC has not updated their regulations since 1991.
12. The Project will disrupt the existing wildlife near the Project Site.
13. One 5G telecommunication facility catches on fire per month.
14. Allowing these antennas to be installed opens new opportunities for all wireless communication companies to participate in locating more antennas atop of 800 S.

Main Street at their own discretion without approval or oversight from the City ever again. Thus, building infrastructure clutter, causing not only the look and feel to change, but changing the use of the building as a wireless communications facility. Even with a retainer wall built to maintain aesthetics, it would create a much larger look, making it aesthetically incompatible and unpleasing.

15. Firefighters in California won an exemption from cell towers when an independent study ruled the negative health effects and impaired judgment they were experiencing directly related to RF-EMR after they were placed on top of their fire station.

## **ANALYSIS**

### **Procedure and Standard of Review**

The Council must consider and act on the appeal, as well as the underlying Project application, by holding a de novo public hearing (BMC Section 10-1-1907.3(A)(2)). “De novo” means that all issues relating to the project determination are subject to review and considered anew.<sup>1</sup> During the public hearing, Council must make its own determination as to whether the facts presented support approval or denial of the project application.<sup>2</sup> Therefore, Council must now consider and act on the appeal of the Planning Commission’s WTF AUP approval, as well as conduct a new hearing on the Project application itself.

### **Appeal Contains No Information Justifying Reversal of Planning Commission’s Decision**

The Appellant’s contentions and their description of the supporting evidence that are the basis for the appeal are summarized below, followed by the City’s response. The complete appeal form and supplemental letter are attached (Attachment 2). For the reasons outlined in the following City responses, City staff concludes the appeal should be denied. None of the contentions provided by the Appellant present any additional information that would alter the ability to make the required findings to approve the AUP, and none of the contentions support overturning the Planning Commission’s decision.

1. *Contention #1: The public notices were deficient because they were inconsistent, confusing, and not transparent because the project description was insincere and the City withheld evidence from the community. Also, not all schools within 1,000 feet of the Project Site were notified.*

City’s Response: The Project was noticed in accordance with all applicable City regulations. BMC Section 10-1-1959(B) requires the following notices be provided prior to the Director’s determination on an AUP: (1) notice of the Director’s

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<sup>1</sup> *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1221.

<sup>2</sup> See *Lagrutta v. City Council* (1970) 9 Cal.App.3d 890, 895.

proposed decision must be mailed to the project applicant, as well as all property owners and occupants within 1,000 feet of the project site, and to all other parties who request such notice; and (2) at least 10 business days prior to the scheduled decision date, one four foot by eight foot sign must be posted on the project site.

For this Project, all property owners and occupants within the 1,000-foot radius of the Project site were provided with mailed public notices. Advance notices were issued on April 8, 2024 and May 17, 2024, ahead of the Director's decision on June 5, 2024. In addition, a notice was published in the Burbank Leader and a project sign was posted onsite on April 10, 2024. The mailing labels provided by the applicant and used to send the public notices included the addresses of all existing schools within 1,000 feet of the Project Site, including the locations at 720 S. Main Street, 349 W. Valencia Avenue, 420 S. Mariposa Street, and 906 S. Main Street. Staff has confirmed Burbank Unified School District was also included in the mailing labels provided by the applicant.

Finally, the public notices were not inconsistent or otherwise content-deficient. Each notice included accurate Project descriptions that provided the public with advanced notice of the proposed Project features. The City did not withhold evidence from the community during issuance of these notices. Both notices described the Project as a request to install a roof-mounted wireless telecommunication facility on an existing commercial office building, and the second notice clarified additional Project features in response to some confusion staff received from the public following the first public notice about the Project. Specifically, the second advanced public notice clarified the different components comprising the facility, including the six antennas with accessory equipment and fiberglass screening enclosure.

2. *Contention #2: The findings required to approve an AUP were not satisfied for the following reasons:*

- *The use is detrimental to existing uses or to uses specifically permitted in the zone in which the proposed use is to be located because the Project is detrimental to residents and businesses health, safety, and property values, and to children. <https://ehtrust.org/cell-tower-at-schools-health-effects-safety-faqs/> (In violation of the AUP finding required by BMC § 10-1-1956(2)).*
- *The Project use is incompatible with other uses in the general area because the Project is proposed in a school and residential zone and is incompatible with the health and safety of children and will*

*negatively affect the small businesses. (In violation of the AUP finding required by BMC § 10-1-1956(3)).*

- *The proposed Project conditions do not protect the public health, safety, convenience, and welfare because a 5G telecommunications antenna contributes to air pollution and radiation exposure. (In violation of BMC § 10-1-1956(6)).*

City's Response: The findings required to issue an AUP for the proposed WTF Project are satisfied, including the findings referred to by the Appellant (findings contained in BMC Sections 10-1-1956(2), (3), and (6)). The Appellant's challenge to the AUP findings state that the Project is detrimental to, incompatible with, and will otherwise detrimentally affect the health and safety of residents and children. To support this argument, Appellants cite to an article entitled "Cell Tower At Schools Health Effects Safety FAQs" located on a third-party website (Environmental Health Trust). The article refers to RF emissions from cell towers and related health effects. Appellants also state that 5G WTFs contribute to air pollution and radiation exposure.

However, the Federal Telecommunications Act of 1996 expressly preempts any state or local government regulation on the placement, construction, and modification of personal wireless service facilities based on environmental effects of RF emissions if the facilities comply with the Federal Communications Commission's (FCC's) regulations concerning such emissions (47 U.S.C. Section 332(c)(7)(B)(iv)). This means that the City is precluded from regulating or denying a WTF project based on environmental effects (including health impacts) from RF emissions unless it is demonstrated that the project would not meet the FCC's RF emission regulations (47 U.S.C. § 332(c)(7)(B)(iv)). The City's WTF regulations are consistent with this federal preemption. As stated in BMC Section 10-1-1118(A), the City's uniform WTF standards are "not intended to, and [do] not; regulate those aspects of WTFs that are governed by the Federal Communications Commission (FCC)."

To the fullest extent allowed by federal law, the City does: (1) require WTF applicants to provide verification of compliance with the federal regulations on RF emissions as part of the application submittal requirements (BMC § 10-1-1118(C)(1)); (2) prohibit WTFs from generating RF emissions in excess of FCC regulations (BMC § 10-1-1118(D)(3)(I)); and (3) require WTF applicants to conduct periodic testing and reporting demonstrating ongoing compliance with federal regulations (BMC § 10-1-1118(E)). In this case, the applicant demonstrated that the Project will comply with current FCC RF emission regulations by providing a Radio Frequency-Electromagnetic Energy (RF-EME) Site Compliance Report prepared



by an independent third party (Attachment 7). The report indicates that the Project, as conditioned with the proposed AUP Conditions of Approval, will comply with current FCC regulations. Therefore, the City may not consider any further potential environmental or health effects from RF emissions in evaluating the required AUP findings for the Project.

The Project is compatible with other uses in the general area of the Project Site. Per BMC Section 10-1-1118(A), the purpose of the City WTF standards are “to address the adverse visual impacts of these facilities through appropriate design, siting, screening techniques, and locational standards, while providing for the communication needs of residents and businesses.” The Project Site is within the Neighborhood Business (NB) Zone and is residentially adjacent. Within the NB Zone, building mounted WTFs, such as the proposed Project, are permitted when residentially adjacent with the issuance of an AUP. The provision of mobile service for communication and data transfer is compatible with the needs of commercial and residential uses occurring on the same lot, within the underlying zone, and more broadly in the general Project area. The Applicant has provided documentation, including coverage maps, that the proposed WTF will provide wireless and data coverage for a portion of Burbank that currently has no coverage by Dish Wireless. In addition, the use will have no impact on the ability of other uses in the surrounding area to operate. The WTF is commercial in nature and operates in a manner similar to other commercial equipment such as equipment generators, broadcast or radio equipment, emergency wireless transmitters that may be found at other commercial or industrial businesses in the general area, in addition to providing vital telecommunications services for the general public.

While the Appellant contends that the Project will be detrimental to property values, there is no evidence in the record supporting this contention. Any decision to deny the construction of a WTF must be supported by substantial evidence contained in written record. (47 U.S.C. § 332(c)(7)(B)). Here, there is no substantial evidence that shows the Project will be detrimental to the property values of the surrounding neighborhood.

Finally, as described further in the AUP findings analysis, the proposed Conditions of Approval for the Project are necessary to protect the public health, safety, convenience, and welfare. Among other things, the proposed conditions incorporate the BMC requirements for ongoing testing, reporting, and compliance with applicable FCC regulations regarding RF emissions. This means that the Project must remain in compliance with current FCC RF emissions regulations, as well as any future updates to these regulations.

3. *Contention #3: On August 13, 2021, the US Court of Appeal for the D.C. Circuit ruled that the FCC ignored scientific evidence and failed to provide a reasoned explanation for its determination that its 1996 regulations adequately protect the public against harmful effects of wireless radiation, and ordered the FCC to provide a reasoned determination as to whether the evidence warrants a change to the 1996 RF limits. Since the FCC has not responded to the Court or disclosed the new updated findings, the documentation provided by the Dish Cellular stating they are in compliance is false.*

City's Response: Dish Wireless and other carriers are required to comply with existing regulations and standards set by the FCC. (BMC §§ 10-1-1118(C)(1)), 10-1-1118(D)(3)(I)), 10-1-1118(E)). Dish Wireless has provided a Radio Frequency-Electromagnetic Energy (RF-EME) Site Compliance Report demonstrating compliance with the current local and federal standards and regulations that were in place at the time of the application submittal and which remain in place today. (Attachment 7). The Report indicates that the Applicant will be compliant with FCC regulations if the mitigation measures identified in the Report are implemented, such as installing caution signs to ensure disclosure of occupational health and safety information for persons performing maintenance on the facility itself or the rooftop where the facility is located. The Report found that at ground level, the proposed WTF "generally results in no possibility for exposure to approach the [FCC's] Maximum Permissible Exposure (MPE) levels."<sup>3</sup> This is confirmed in the Report's calculations that show that maximum predicted emissions at ground level are less than half of one percent of both general population and occupational MPE levels.<sup>4</sup> The measures identified in the Report mitigate higher emissions occurring exclusively within the immediate rooftop-level eight-foot vicinity of the proposed facility (which area is not accessible to the public), and will ensure the WTF complies with applicable FCC regulations.<sup>5</sup> Staff has incorporated these measures into the Project's Conditions of Approval to ensure ongoing compliance. The City cannot speculate on potential future changes to federal requirements and therefore applicants are only required to demonstrate compliance with current regulations.

Furthermore, the Appellant's contention that FCC rules and regulations warrant and will be changed in the future is speculative and does not mean that the Applicant's documentation showing the Project complies with existing FCC RF emissions regulations is false. However, if FCC RF emissions regulations change in the future, the Project must continue to show compliance with the updated regulations through submittal of updated RF emissions compliance reports and related certifications. (BMC § 10-1-1118(E)(2)). If future reports demonstrate that

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<sup>3</sup> Attachment 7, Page 73

<sup>4</sup> Attachment 7, Page 77

<sup>5</sup> Attachment 7, Page 77

emissions may exceed FCC standards, the Community Development Director may require modifications to the WTF or other mitigation measures to ensure ongoing compliance with FCC regulations. (BMC § 10-1-1118(E)(3)). These requirements are restated in the Project's Conditions of Approval. As such, the Applicant has properly demonstrated compliance with current FCC regulations pertaining to RF emissions. Possible future changes to the FCC regulations have no bearing on the subject application, as no new FCC standards are in place today that modify the current requirements for approval.

4. *Contention #4: The Project does not comply with height restrictions. The property is a neighborhood business zone and already bridges municipal code by 10 feet. The proposed antennas would add an additional 10 ½ feet further violating the code with a discrepancy of over 20 feet. Denial of a prior WTF project at 1711 N. Avon was based on height restrictions alone, and has set a precedent.*

City's Response: Pursuant to BMC Section 10-1-1118(D)(4)(a), building mounted WTFs, including any screening devices, cannot exceed a height of 15 feet above the existing roof or parapet, whichever is higher, of the building on which it is mounted unless approved through a Conditional Use Permit (CUP). As shown on the plans provided by Applicant (Attachment 9), the roof-mounted WTF structure is less than 15 feet in height; therefore, a CUP is not required and the proposed WTF is less than the maximum height allowed for the Project.

The Project involves construction of a WTF without any modifications to the underlying office building on which the WTF will be located. The underlying existing three-story commercial office building is legal non-conforming as it relates to the building's construction, inclusive of the existing height. While changes to the underlying office building would be evaluated under the development standards applicable to buildings within the Neighborhood Business zone (listed in BMC § 10-1-2417), the development standards applicable to the WTF are separate and distinct and located in BMC Section 10-1-1118 and the proposed WTF is not subject to the height requirements in BMC Section 10-1-2417(A).

Finally, contrary to the Appellant's assertion, the former project referred to by the Appellants at 1711 N. Avon was not denied solely based on height, but also denied based on noise generation from air conditioning units, which was found to be detrimental to adjacent properties. The former project is distinguishable from the current Project in part because it was evaluated under the WTF development standards that existed in 2011, which were subsequently amended by the City in 2015, and involved project elements not present in the currently proposed WTF. In addition, the former project was in the R-1 Zone and therefore required approval through issuance of a Conditional Use Permit, unlike the current Project that is

located in the Neighborhood Business Zone. In any case, the current Project is evaluated based on its unique Project features and applicable development standards currently in place, independent of any separate and former project reviews.

5. *Contention #5: The Project does not close any coverage gap. The facility is not co-located and is brand new installation for a single company therefore, not eligible for a co-located building mounted AUP.*

City's Response: Pursuant to BMC Section 10-1-1118(C)(5), a gap in coverage analysis is only required for WTFs within the Single-Family Residential (R-1) Zone. The existing commercial building on which the WTF is proposed is located entirely on those portions of the property that are zoned Neighborhood Business (NB), a non-residential zoning designation and has a General Plan designation of Rancho Commercial. There is no requirement to demonstrate a coverage gap for WTF placed outside of the Single Family Residential (R-1) Zone, such as the proposed WTF in this Project which is located in the Neighborhood Business (NB) Zone. (See BMC § 10-1-1118).

The Applicant has provided documentation, including coverage maps, that the proposed WTF facility will provide wireless and data coverage for a portion of Burbank, which currently has no coverage by Dish Wireless. The Project is the first wireless facility proposed by Dish Wireless within the City. Though the project does not close any coverage gap, it will provide coverage for Dish Wireless customers to an area that currently has none. The Project is described as a building mounted WTF comprised of three sectors with two antenna mounts one each sector for a total of six antenna mounts. Each sector will have one antenna for a total of three antennas combined. The Project is not a co-location and staff has not described the Project as such. All public notices have described the Project as a new roof-mounted wireless telecommunication facility (Attachment 10). Furthermore, pursuant to Table 10-1-1118(C) of the BMC, building mounted WTFs, including new proposed facilities that are within nonresidential zones and are residentially adjacent are permitted through the approval of an AUP.

6. *Contention #6: The applicant failed to provide proof that they attempted to find alternative placement for the telecommunication facility in violation of the FCC Telecommunications Act of 1996.*

City's Response: The Appellant has not furnished a citation to the section within the Federal Telecommunications Act of 1996 or related FCC regulations that requires an alternative site analysis prior to approval of a WTF such as the facility proposed within the Project, and staff is unaware of such a requirement. At a local

level, the BMC requires an alternative site analysis for WTFs that are proposed within the Single Family Residential (R-1) Zone (BMC § 10-1-1118(C)(5)). However, this requirement is only applicable to projects in the Single-Family Residential Zone and does not apply to projects proposed within the NB Zone. Although the legal parcel on which the proposed WTF is located is split-zoned, the existing commercial building where the proposed WTF will be located is entirely within the Neighborhood Business Zone. By contrast, the only structure within the parcel that sits within the R-1 zone is a portion of the commercial building's adjacent surface parking lot. Consistent with the City's past practice of evaluating the project proposal based on the underlying zoning and General Plan land use designation applicable to the actual physical location of the proposed Project structure and/or use, the current Project is evaluated under the standards applicable to the Neighborhood Business Zone and is not subject to an alternative site analysis requirement.

7. *Contention #7: The Project is not a minor alteration to the use of the land. Therefore, the CEQA exemption under CEQA Guidelines Section 15303 is not applicable.*

City's Response: The Project is categorically exempt from the California Environmental Quality Act (CEQA). Pursuant to Section 15303 of the CEQA Guidelines, new construction of a limited number of small facilities or structures, installation of small new equipment and facilities in small structures, and conversion of small structures from one use to another where only minor exterior modifications are made are categorically exempt from CEQA review. The categorical exemption is intended for small-scale projects such as a building mounted wireless facilities. This Project involves building a new small WTF totaling 365.88 square feet on top of an existing building without significant modifications to the building's structure. There are no unusual circumstances that would preclude the use of this exemption, and none of the exceptions to the Categorical Exemptions listed in Section 15300.2 of the CEQA Guidelines apply to this Project. Therefore, the CEQA exemption is appropriate for the Project.

8. *Contention #8: The parcel of the land at 800 S. Main Street is partially zoned for R-1, Single Family Residential, which impacts the permitting process in that the permit grants a non-conforming use of the land. The permit runs with the land and the permit is invalid as the most conservative use of the land is residential, which would not work with the 5G towers proposed at this site.*

City's Response: As stated above, while a part of the legal parcel on which the Project is proposed is within the R-1, Single Family Residential zone, the Project WTF itself is situated on the roof of an existing commercial structure that is located

entirely within the Neighborhood Business zone; a nonresidential zone. The only structure within the larger legal parcel that sits within the R-1 zone is a portion of the commercial building's adjacent surface parking lot. The applicable development standards and related permitting processes are therefore those that apply to WTFs within the NB Zone. If the Project proposed to locate the WTF on the portion of the legal parcel that was zoned Single-Family Residential, then the City would apply the development standards applicable to the Single-Family Residential Zone. However, as stated, the Project lies entirely within the Neighborhood Business Zone and is therefore governed by the procedures applicable to that zone.

Pursuant to BMC Section 10-1-501, uses are only allowed as described in the use table comprising Section 10-1-502, unless authorized by other provisions of the Code. Under BMC Section 10-1-502, WTFs are permitted in locations as outlined in BMC Section 10-1-1118. BMC Table 10-1-1118(C) permits building mounted WTFs in non-residential zones. An AUP is required if the nonresidential zone is residentially adjacent. The Project was reviewed, and staff determined all the required findings from BMC Section 10-1-1956 for an AUP can be made. Therefore, the Project has met the necessary requirements to obtain approval of the requested AUP and complies with the applicable zoning regulations of the Project Site.

9. *Contention #9: Insurers rank 5G and electromagnetic radiation as a "high" risk and claim existing concerns regarding potential negative health effects from electromagnetic fields (EMF) are only likely to increase.*

City's Response: This information could not be independently verified; however, the practices of private insurance companies have no bearing on the analysis of the proposed Project or the required AUP findings. Further, federal law precludes the City from regulating or denying a WTF project based on environmental effects (including health impacts) from 5G and electromagnetic radiation unless it is demonstrated that the project would not meet the FCC's emission regulations (47 USC 332(c)(7)(B)(iv)). As a result, to the fullest extent allowed by federal law, the BMC: (1) requires applicants for a WTF to provide documentation of compliance with FCC regulations pertaining to RF emissions upon submittal of a WTF application (BMC 10-1-1118(C)), (2) prohibits a WTF from generating RF emissions in excess of FCC standards or other applicable regulations (BMC 10-1-1118(D)(3)(k)), and (3) once a WTF is installed, requires ongoing inspection, testing, and reporting to the City of continued compliance with FCC standards (BMC 10-1-1118(E)). The Applicant has provided an RF-EM Site Compliance Report (Attachment 7) to provide verification of compliance with the FCC's regulations on RF emissions as part of the application submittal requirements, and

therefore, no further potential health impacts from RF emissions may be considered. Further, as a condition of approval, the WTF owner/operator will be required to provide periodic reporting demonstrating ongoing compliance with federal regulations. Therefore, without further changes to applicable FCC regulations relating to RF emissions, the City cannot deny the Project based on the opinion provided by insurance companies.

10. *Contention #10: Numerous cities and towns are passing ordinances to restrict 5G and the proliferation of wireless telecommunication antennas near homes and schools with the authority they have. Communities that have passed ordinances to restrict cell antennas near homes and schools include numerous cities in California such as Los Altos, Petaluma, Mill Valley, Malibu, Santa Barbara, Encinitas, Fairfax, Palo Alto, Walnut City, and San Diego County. Regarding the current Burbank Municipal Code, there have been no updates in over 10 years and the Burbank codes need to be updated to keep up with the ever changing technological advances. Knowing that other cities in California have codified minimal distances from schools and residents, proves that this kind of objective standard can be implemented and does not run afoul of FCC regulations.*

City's Response: Regulations for wireless facilities from other local jurisdictions do not apply to this Project. This Project is only subject to locally adopted Burbank regulations, as well as state, and federal regulations.

The City's regulations for wireless facilities were last updated in 2015, and are in full compliance with all federal regulations. The City, along with other jurisdictions, must comply with federal regulations that limit local authority over zoning requirements for the placement, construction, and modification of WTFs.<sup>6</sup> Specifically, cities cannot enforce regulations that would "effectively prohibit" the provision of wireless services,<sup>7</sup> which includes any regulation that prevents a wireless service provider from closing a significant gap in the provider's own service coverage.<sup>8</sup> These limitations were evaluated and considered during the City's last updates to the WTF regulations contained in BMC Section 10-1-1118. To address the interests of the community in limiting WTFs on private property within R-1 Zones, the City requires evidence of a significant gap in coverage, as well as an alternative site analysis, prior to approving a WTF in an R-1 Zone.

Currently, there are no City regulations requiring minimum distances between WTFs and homes and schools, so therefore no such requirement applies to this

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<sup>6</sup> 47 U.S.C. 332(c)(7)(A)-(B); Sprint Telephony PCS, L.P. v. County of San Diego (9th Cir. 2008) 543 F.3d 571, 576.

<sup>7</sup> 47 U.S.C. 332(b)(7)(B)(i)(II).

<sup>8</sup> MetroPCS, Inc. v. City and County of San Francisco (9th Cir. 2005) 400 F.3d 715, 733, *abrogated on other grounds by T-Mobile S., LLC v. City of Roswell* (2015) 574 U.S. 293.

Project. In addition, even if the City revisits the regulations for WTFs, any future modification to the WTF development standards cannot be applied to the current Project application as the current Project is evaluated against the development standards that exist today.

11. *Contention #11: The FCC has not updated their regulations since 1991 and subsequent documents show biological effects and illness from wireless radiation exposure below the FCC's accepted RF-emissions levels. <https://ehtrust.org/environmental-health-trust-et-al-v-fcc-key-documents/>*

City's Response: Local jurisdictions are responsible for ensuring that projects comply with the applicable regulations at the time of application submittal and facilities must comply with the existing regulations, regardless of how often they are updated. The City's review of the Project application is based solely on existing local and federal standards and regulations applicable at the time of the application submittal and cannot rely on any potential federal regulations sought by the public that have not yet been adopted. The City encourages public advocacy to influence or demand change of the FCC's rules and regulations for wireless telecommunication facilities that will help address community concerns. However, until such changes are made to the FCC's RF emissions regulations or to the federal law that preempts local governments from considering health effects of RF emissions in WTF projects, the City is unable to consider additional studies or opinions suggesting that federal RF emissions regulations are deficient.

However, as stated above, after Project approval, the Project must continue to comply with FCC regulations regarding RF emissions. Therefore, if FCC regulations change in the future and the Project no longer complies with FCC standards, then the City can require the Project to modify its location or design, and implement any other mitigation measures necessary to ensure ongoing compliance with FCC standards. (BMC § 10-1-1118(E)(3)).

12. *Contention #12: The Project will disrupt the existing wildlife near the Project Site – specifically, two Cooper's Hawks in a magnolia tree in an adjacent lot. The emissions by 5G technologies can disrupt the magnetic "compass" that many migrating birds and insects use for navigation. The same radiation can also interfere with the orientation of insects, spiders, and mammals -which are the food sources of Cooper's Hawks and other birdlife present in the area immediately surrounding the proposed project site. <https://ehtrust.org/study-finds-wireless-radiation-affects-wildlife/>*

City's Response: As stated previously, the Federal Telecommunications Act of 1996 prohibits cities from regulating the placement, construction, and modification



of WTFs based on environmental effects of RF emissions including any contentions of potential effects to wildlife if the facility complies with the FCC's regulations concerning such emissions. (47 U.S.C. § 332(c)(7)(B)(iv)). The Applicant submitted a Radio Frequency- Electromagnetic Energy (RF-EME) Site Compliance Report prepared by an independent third party (Attachment 7) that confirms the Project's compliance with existing FCC RF emissions regulations. The City is therefore precluded from denying the Project based on potential environmental effects stemming from the Project's RF emissions on local wildlife.

*13. Contention #13: One 5G telecommunication facility catches on fire per month.*

City's Response: This contention could not be independently verified by staff. The appellant did not furnish staff with documentation or any other evidence relating to fire issues caused by any wireless telecommunication facility in the City or elsewhere. Further, staff routed the Project to the City's Fire Department and Building & Safety Division of the Community Development Department for review and no safety concerns were identified. In addition, Burbank Fire Department records did not identify any fire incidents of 5G facilities within the City. Therefore, the contention is speculative, and no evidence exists that the project poses a fire threat beyond similar types of facilities operating within the City.

*14. Contention #14: Allowing these antennas to be installed opens up new opportunities for all wireless communication companies to participate in locating more antennas atop of 800 S. Main Street at their own discretion without approval or oversight from the City ever again. Thus, building infrastructure clutter, causing not only the look and feel to change, but changing the use of the building as a wireless communications facility. Even with a retainer wall built to maintain aesthetics, it would create a much larger look, making it aesthetically incompatible and displeasing.*

City's Response: All wireless facilities must undergo City oversight regardless of whether or not they are permitted by-right, via an AUP or a CUP. The City oversight of each site-specific request includes a comprehensive zoning review as noted in BMC Section 10-1-1118 (which includes development standards for co-located facilities), and all applicants must comply with the same RF emissions standards applicable to all such projects. Appellant's contention that approving the Project will lead to infrastructure clutter because of future opportunities to install new WTFs on this site is speculative. The current Project is analyzed according to the Project features submitted under the current Project application, without consideration of future speculative uses. The current Project satisfies all aesthetic development requirements contained in BMC Section 10-1-1118, including proper aesthetic screening. Nevertheless, if future WTFs are proposed at this location, the City will

review such applications against the WTF development standards in place at that time.

15. *Contention #15: Firefighters in California won an exemption from cell towers when an independent study ruled the negative health effects and impaired judgment they were experiencing directly related to RF-EMR after they were placed on top of their fire station. <https://ehtrust.org/firefighter-unions-opposing-cell-towers/>*

City's Response: Federal law precludes the City from regulating or denying a WTF project on the basis of environmental effects (including health impacts) from RF emissions unless it is demonstrated that the project would not meet the FCC's RF emission regulations. (47 USC 332(c)(7)(B)(iv)). As a result, to the fullest extent allowed by federal law, the BMC: (1) requires applicants for a WTF to provide documentation of compliance with FCC regulations pertaining to RF emissions upon submittal of a WTF application (BMC 10-1-1118(C)), (2) prohibits a WTF from generating RF emissions in excess of FCC standards or other applicable regulations (BMC 10-1-1118(D)(3)(k)), and (3) once a WTF is installed, requires ongoing inspection, testing, and reporting to the City of continued compliance with FCC standards (BMC 10-1-1118(E)). The Applicant has provided an RF-EM Site Compliance Report (Attachment 7) to provide verification of compliance with the federal regulations on RF emissions as part of the application submittal requirements. Further, as a condition of approval, the WTF owner/operator will be required to provide periodic reporting demonstrating ongoing compliance with federal regulations.

The Appellants furnished a link to an article referencing California's Assembly Bill (AB) 57, which was adopted by the State in 2015. AB 57 added Section 65964.1 to the California Government Code, which provides that a collocation or siting application for a WTF is "deemed approved" if it satisfies certain criteria and a city or county fails to approve or disapprove the application within specified time periods (often referred to as "shot clocks"). AB 57 included an exemption from the "deemed approved" process for WTFs that are placed on fire department facilities. This exemption does not prevent a WTF from being placed on a fire department facility, but rather prevents a WTF application involving a fire department facility from being automatically "deemed approved" if the local government fails to adhere to the applicable shot clock periods when processing these applications. Section 65964.1 provides that the fire department exemption is "due to the unique duties and infrastructure requirements for the swift and effective deployment of firefighters," and does not refer to concerns relating to RF emissions.<sup>9</sup>

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<sup>9</sup> See Cal. Gov. Code 65964.1(i).

However, as explained above, even if independent studies observe health related issues from RF emissions, the City can only regulate a WTF based on RF to the extent a facility fails to comply with the FCC's applicable RF standards. Here, because the Project complies with FCC RF standards, health effects from related RF emissions from the WTF may not be considered and cannot be the basis for regulation or denial of the Project.

*WTF Administrative Use Permit – Required Findings and Compliance with Federal Telecommunications Act of 1996*

As explained above, Council must consider and act on the Project application at a de novo hearing pursuant to BMC Section 10-1-1907.3(A)(2), and determine whether the facts presented support approval or denial of the Project application. The Project requires an AUP pursuant to BMC Section 10-1-1118(C). To approve an AUP the findings listed in BMC Section 10-1-1956 must be satisfied.

Furthermore, local authority to approve or deny a WTF application by any state or local government is subject to limitations established by federal law. Therefore, in addition to the City's local regulatory process for approval of a WTF, the Federal Telecommunications Act of 1996 ("Telecom Act") requires that any decision to deny a request to place, construct, or modify a WTF must be supported by substantial evidence contained in written record (47 U.S.C. 332(c)(7)(B); see *excerpt*, Attachment 12). To be considered "substantial," the written evidence must reasonably support denial based on failure to satisfy local regulations.<sup>10</sup> Substantial evidence would generally be considered written studies, documentation, or technical analysis directly regarding the proposed project indicating it does not comply with applicable local, state, or federal laws. Also under the Telecom Act, a jurisdiction is prohibited from considering the environmental effects of radio frequency ("RF") emissions (including health effects) of the proposed facility if the WTF will operate in compliance with federal regulations. Therefore, if a WTF project complies with federal RF emissions regulations, cities may not consider personal beliefs or other opinions about health effects from RF emissions of wireless telecommunication facilities during review of proposed projects.

The following analysis is provided in consideration of the requisite findings contained in BMC Section 10-1-1956 for approval of the AUP:

- (1) *The use applied for at the location set forth in the application is properly one for which an administrative use permit is authorized by the Burbank Municipal Code.*

Per BMC Table 10-1-1118(C), the proposed new WTF use as a roof-mounted facility on an existing building located entirely within a non-residential zoning district, such as

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<sup>10</sup> *MetroPCS, Inc. v. City and County of San Francisco* (9th Cir. 2005) 400 F.3d 715, *abrogated on other grounds by T-Mobile S., LLC v. City of Roswell* (2015) 574 U.S. 293.

the NB Zone, requires approval of an AUP if proposed in a residentially adjacent location (within 150 feet of a residential zone). The Project Site encompasses the existing building upon which the WTF is being proposed and the site abuts the R-1 (Single-Family Residential) zoning district to the Northeast. Therefore, the Project is permitted subject to the approval of an AUP.

- (2) *The use is not detrimental to existing uses or to uses specifically permitted in the zone in which the proposed use is to be located.*

The proposed Project is not detrimental to existing or permitted uses within the NB Zone that it is located in. The design of the facility includes a new 10'-0" tall roof screen that is complementary to the design of the existing building, consistent with the design requirements in BMC Section 10-1-1118(D)(3)(b) and will not result in a visual or aesthetic impact to the surrounding commercial and residential uses. The applicant has also indicated that the operation of the WTF will not generate noise exceeding City regulations, or generate traffic, waste, or other adverse impacts in excess of what is typical of commercial and industrial uses permitted or conditionally permitted in the NB Zone. A noise study was included as part of the AUP Application (Attachment 7), which states that the maximum noise level from any of the proposed equipment that can be heard by any residential property in the vicinity of the Project is 42.4 dBA, which is below the City's most restrictive allowable noise generation level of 45 dBA.

Public comments were submitted for the Project regarding potential detrimental health and safety impacts from radio frequency (RF) emissions from the facility. Local governments are precluded from considering the health effects of RF emissions from a WTF pursuant to federal regulations. The Federal Telecommunications Act of 1996 expressly preempts any state or local government regulation on the placement, construction, and modification of personal wireless service facilities based on environmental effects of RF emissions to the extent that such facilities comply with the Federal Communications Commission's (FCC's) regulations concerning such emissions (47 U.S.C. Section 332(c)(7)(B)(iv)).

However, the City can and does require that an applicant comply with objective code requirements related to development standards and aesthetics and provide verification of compliance with the federal regulations on RF emissions as part of the application submittal requirements, as well as periodic reporting demonstrating ongoing compliance with federal regulations. The applicant provided this information as part of a completed "Supplemental Application Form" for WTFs by providing a Radio Frequency – Electromagnetic Energy (RF-EME) Site Compliance Report prepared by an independent third party (Attachment 7).

The abovementioned report indicates that the Project will be compliant with FCC regulations when conditions of approval and project design features are implemented, such as installing caution signs to ensure disclosure of occupational health and safety information for persons performing maintenance on the facility itself or the rooftop where the facility is located. The Report indicates that at ground level, the type of facility proposed in the Project “generally results in no possibility for exposure to approach the [FCC’s] Maximum Permissible Exposure (MPE) levels.”<sup>11</sup> This is confirmed in the Report’s calculations that show that maximum predicted emissions at ground level are less than half of one percent of both general population and occupational MPE levels.<sup>12</sup> The measures identified in the Report (and proposed as Conditions of Approval and Project design features) account for higher emissions occurring exclusively within the immediate rooftop-level 8-foot vicinity of the proposed facility (not accessible to the public), and will ensure the facility complies with applicable FCC regulations.<sup>13</sup> Staff has incorporated these recommendations into the Project’s Conditions of Approval to ensure ongoing compliance. Further, the Applicant is required to maintain and demonstrate proper licensing for this facility on an annual basis and this requirement has been included in the Conditions of Approval.

Several public comments were submitted with information that other communities, such as within the City of Long Beach, appealed approvals of similar facilities based on health impacts, and therefore, the City of Burbank should deny the Project based on similar health impacts. However, as stated above, cities are federally preempted from considering RF emissions when reviewing a WTF application if the project complies with FCC’s RF emissions regulations. Further, any decision to deny a WTF application must be supported by substantial evidence contained in a written record. (47 U.S.C. Section 332(c)(7)(B)(iii)). The evidence must show that the specific zoning decision at issue is supported by substantial evidence in the context of applicable local regulations.<sup>14</sup> Thus, the written evidence must reasonably support denial based on failure to satisfy local regulations.<sup>15</sup> No substantial evidence has been provided demonstrating that the Project application should be denied or further conditioned based on applicable local regulations in the Burbank Municipal Code. Therefore, there is no basis for denial or further conditions of approval and this finding has been satisfied.

- (3) *The use will be compatible with other uses in the general area in which the use is proposed to be located.*

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<sup>11</sup> Attachment 7, Page 73

<sup>12</sup> Attachment 7, Page 77

<sup>13</sup> Attachment 7, Page 77

<sup>14</sup> MetroPCS, Inc. v. City and County of San Francisco (9th Cir. 2005) 400 F.3d 715, *abrogated on other grounds by T-Mobile S., LLC v. City of Roswell* (2015) 574 U.S. 293.

<sup>15</sup> Id.

Consistent with BMC Section 10-1-1118(A) (Wireless Telecommunications Facilities. Regulations and Standards), the Project is providing for the communication needs of residents and businesses. The provision of mobile service for communication and data transfer is compatible with the needs of commercial and residential uses occurring on the same lot and more broadly in the general Project area. The Applicant has provided documentation indicating that the proposed WTF facility will provide wireless and data coverage for a portion of Burbank which currently has no coverage by Dish Wireless. The Project is the first wireless facility proposed by Dish Wireless within the City. Though the Project does not close any coverage gap, it will provide coverage for Dish Wireless customers to an area that currently has none. In addition, the use will have no impact on the ability of other uses in the surrounding area to operate. The WTF is commercial in nature and operates in a manner similar to other commercial equipment such as equipment generators, broadcast or radio equipment, emergency wireless transmitters that may be found at other commercial or industrial businesses in the general area, in addition to providing vital telecommunications for the general public and emergency services.

Furthermore, the proposed WTF will be concealed from public view via perimeter screening so that it is visually compatible with the architectural design of the existing building and commercial buildings generally seen in the NB Zone and have no detrimental visual impact on the surrounding area. Therefore, as the proposed use will be compatible with the commercial uses on the same lot and with the mixed-use commercial-residential nature of the general area this finding has been satisfied.

- (4) *The site for the proposed use is adequate in size and shape to accommodate the use and all of the yards, setbacks, walls, fences, landscaping, and other features required to adjust the use to the existing or future use is permitted in the neighborhood.*

The site for the proposed facility is adequate in size and shape to accommodate the Project. The Project includes the installation of a WTF on the roof of an existing building which is located on a property that is approximately 1.12 acres in size, with street frontages along S. Main Street, W. Elmwood Avenue, and W. Valencia Avenue, and is currently developed with an existing, 35-foot-tall, three-story commercial office building. Surface and semi-subterranean parking is also provided onsite. The proposed facility would be located on the roof of the existing commercial building which is located entirely within the NB-zoned portion of the property. One of the two WTF antenna sectors of the facility is proposed to be located on the North corner of the building facing the existing parking lot fronting S. Main Street, the second antenna sector is located towards the Southeast corner of the building facing W. Valencia Avenue, and the accessory equipment will be centrally located on the roof behind an existing mechanical screen that will be increased in height to fully screen the equipment. All the facilities are proposed to be within a new 10'-0" tall roof screen,

which screens visibility of the WTF from all elevations and from the public right-of-way. The roof screens will comply with the applicable maximum height requirements listed in BMC Section 10-1-1118(D)(4)(a) and will be compatible with the existing architectural style of the building in compliance with BMC Section 10-1-1118(D)(4)(b). Additionally, the screen is set back between 10'-0" and 44'-2" from the face of the building along S. Main Street and W. Valencia Avenue. The Project as designed complies with the development standards required by BMC Section 10-1-1118 for new building-mounted (rooftop) WTF installations as provided in Attachment 11.

Public comments were submitted with references that there is a required minimum distance for WTFs from certain uses, or that other private organizations suggest such minimum distances. However, upon review of these comments, there are no applicable federal or state distance separation or setback requirements for roof-mounted WTF installations. Further, the Project complies with BMC Section 10-1-1118(D)(3)(j), which requires that a WTF may not be located within a required setback area. The City may not impose additional minimum distance requirements on this facility that are not already required under applicable laws, as such action may unreasonably discriminate among providers of functionally equivalent services in violation of federal law (47 U.S.C. Section 332(c)(7)). Therefore, no substantial evidence has been provided indicating that the Project fails to satisfy this finding.

As a result, the Project site is adequate in size and shape to accommodate the proposed use while meeting all the required local development standards noted in the Burbank Municipal Code and this finding is satisfied.

- (5) *The site for the proposed use relates to streets and highways properly designed and improved to carry the type and quantity of traffic generated or to be generated by the proposed use.*

The Project Site is primarily served by S. Main Street, a fully improved collector street, and two local neighborhood streets —W. Valencia and W. Elmwood Avenues — which abut the subject property and Project Site along the north and south, respectively. In addition, the property is improved with a surface parking lot to serve the needs of all occupants, visitors, and maintenance workers to the building. The quantity and type of traffic generated by installation of an unmanned roof-mounted wireless telecommunication facility will be limited to occasional service-related visits, consistent with traffic generated by other commercial equipment maintenance and business repair activities that can occur in a commercial zone and the Project's parking demand will not exceed capacity of the existing parking spaces available onsite. Therefore, the Project site and the existing street network can accommodate the minimal traffic generated by the Project and this finding is satisfied.

- (6) *The conditions imposed are necessary to protect the public health, convenience, safety, and welfare.*

The Project was reviewed by staff from the Community Development Department Planning and Building & Safety Divisions and the Burbank Water & Power, Fire, and Public Works Departments. The Public Works Department provided standard conditions of approval regarding not allowing structures in any public right-of-way or any public utility easements/ pole line easements; requiring all work within the public right-of-way to be approved by the Public Works Department; and no construction material can be placed in the public right-of-way without a “Street Use” permit, which have been incorporated into the conditions of approval for the Project.

In addition, as mentioned in response to findings above, conditions of approval specific to the Project have been imposed to address safety and public health concerns. These conditions include requiring the proposed WTF to maintain a minimum setback of at least 10 feet from the roof edge to minimize aesthetic impacts; requiring a sign in a visible location identifying the contact information of the responsible party in case of an emergency; and requiring the applicant, within 30 days following the activation of the facility, to provide a radio frequency emission compliance certifying the unit has been inspected and tested. Further, the conditions impose the mitigation measures required for the Project to comply with applicable FCC RF regulations. In compliance with federal requirements, these conditions will ensure the public health, convenience, safety, and welfare of the community are maintained throughout the life of the operation of the subject use, and therefore, this finding has been satisfied.

Public comments were submitted for the Project requesting additional conditions of approval, such as relocating the proposed WTF 1,000 feet away from all public and private schools. However, as discussed above, there is no applicable federal, state, or local law that requires this type of distancing for this type of facility, and therefore no legal nexus to require such additional conditions of approval.

#### Consistency with General Plan

The Project has been determined to be consistent with the Burbank2035 General Plan (General Plan) and is compatible with the objectives, policies, general land uses and programs specified therein. More specifically, the Project is consistent with General Plan Land Use Goal 1 (Quality of Life) Policy 1.5, which ensures careful review and consideration of non-residential uses with the potential to degrade quality of life, and Policy 1.8, which ensures that development in Burbank is consistent with the underlying General Plan land use designations, including individual policies applicable to each land use designation. To maintain this General Plan consistency, the Project’s development pursuant to the proposed conditions of approval will ensure ongoing compliance with the



applicable BMC Title 10: Zoning Regulations for similar Wireless Telecommunication Facilities and ongoing conformance with applicable federal laws. Additionally, the Project is consistent with the General Plan Noise Element Goal 1 (Noise Compatible Land Uses) Policy 1.1, which ensures the noise compatibility of land uses when making land use planning decisions and Goal 7 (Construction, Maintenance, and Nuisance Noise) Policy 7.2, which requires project applicants and contractors to minimize noise in construction activities and maintenance operations, as evidenced by the noise study indicating that the maximum noise level from the WTF is below the City's most restrictive allowable noise generation level. Further, the Project is consistent with the General Plan Safety Element, which generally supports any improvements that increase coordination between the City's emergency service providers and the community, as the Project will expand communication network infrastructure that can serve the communication needs of emergency personnel.

### **COMMUNITY OUTREACH**

In conformance with BMC Sections 10-1-1959(E) and 10-1-1947, staff provided public notice in The Burbank Leader, a newspaper of general circulation in the City on October 12, 2024, for the requested appeal to be heard by Council on their regular meeting of October 29, 2024, and notices were mailed, postage prepaid, to owners and occupants of property within 1000 feet of the Project Site on October 11, 2024. Notification of the Council meeting was also distributed through the City's website and social media channels.

### **ENVIRONMENTAL REVIEW**

Approval of the Project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 of the CEQA Guidelines pertaining to new construction of a limited number of small facilities or structures, installation of small new equipment and facilities in small structures, and conversion of small structures from one use to another where only minor exterior modifications are made. There are no unusual circumstances that would preclude the use of this categorical exemption. Furthermore, none of the exceptions to the Categorical Exemptions listed in Section 15300.2 of the CEQA Guidelines apply to this Project.

### **CONCLUSION**

The Project complies with all applicable local and federal regulations and there is no new substantial evidence that supports a reason to deny the Project based on local regulations. The Project as proposed has been analyzed and all the necessary findings for the City's approval of the AUP application can be met in the affirmative. Federal law prevents local governments and states from regulating wireless facilities based on the environmental or health effects of RF emissions if the project complies with FCC regulations for such RF emissions. The Project's Applicant submitted a report indicating it will comply with applicable FCC regulations pertaining to RF emissions, and the

proposed Conditions of Approval will ensure ongoing compliance with such regulations. Therefore, staff recommends that the Council adopt the attached Resolution (Attachment 1) denying the appeal of the Planning Commission's decision and conditionally approving the requested AUP to install a new unmanned roof-mounted WTF on an existing commercial building located at 800 S. Main Street based on the findings of fact and subject to the Project's compliance with the Conditions of Approval noted in the Resolution.

### **ATTACHMENTS**

Attachment 1 – City Council Resolution

Attachment 2 – Appeal Submittal (Appeal of the Planning Commission's Decision)

Attachment 3 – Planning Commission Resolution No.3472 dated July 22, 2024

Attachment 4 – Planning Commission Staff Report dated July 22, 2024

Attachment 5 – Planning Commission Minutes dated July 22, 2024

Attachment 6 – Appeal Submittal (Appeal of the Director's Decision)

Attachment 7 – AUP Application Submitted on October 20, 2023

Attachment 8 – AUP Decision Letter Dated June 5, 2024

Attachment 9 – Project Plans

Attachment 10 – Public Notices

Attachment 11 – Municipal Code Compliance

Attachment 12 – Excerpt of Communications Act of 1934 (47 U.S.C. Section  
332(c)(7)(B)(iii))

Attachment 13 – Zoning and Fair Political Practices Act Compliance Map, Aerial Photo

Attachment 14 – Correspondences Received as of October 11, 2024

Correspondences