

STAFF REPORT



COMMUNITY DEVELOPMENT

DATE: July 22, 2024

TO: City Planning Commission

FROM: Fred Ramirez, Assistant Community Development Director *sp-Dir FT*
Scott Plambaeck, Planning Manager *SB*
Amanda Landry, Principal Planner *AD*
Greg Mirza-Avakyan, Senior Planner *G.M.*
By: Fatima Benitez, Associate Planner *F.B.*

SUBJECT: Project No. 24-0003035, An Appeal of the Community Development Director's Decision to Conditionally Approve Project No. 23-0005025, an Administrative Use Permit (AUP) to Install a New Unmanned Roof-Mounted Wireless Telecommunication Facility on an Existing Commercial Building Located at 800 S Main Street

RECOMMENDATION:

Staff recommends the Planning Commission deny the appeal of the Community Development Director's (Director) decision and conditionally approve Project No. 23-0005025, an Administrative Use Permit (AUP) to install a new unmanned roof-mounted wireless telecommunication facility on an existing commercial building located at 800 S Main Street, by adopting the following:

"A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BURBANK DENYING THE APPEAL OF THE COMMUNITY DEVELOPMENT DIRECTOR'S APPROVAL OF PROJECT NO. 23-0005025, AND APPROVING AN ADMINISTRATIVE USE PERMIT TO ALLOW A NEW UNMANNED ROOF-MOUNTED WIRELESS TELECOMMUNICATION FACILITY (WTF) 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." (EXHIBIT A)

EXECUTIVE SUMMARY

The Appellant, Nicolette LeFebvre ("Appellant"), on behalf of the appellant group, submitted an appeal of the Community Development Director's decision to conditionally

approve Project No. 23-0005025, an Administrative Use Permit (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 B).

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). Rather, 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 Conditions of Approval attached to the proposed Resolution. Therefore, staff recommends that the Planning Commission deny the appeal of the Director's decision 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 commercial 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 6 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 (Exhibit E). Consistent with all other WTFs as defined in Burbank Municipal Code (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 (Exhibit E). 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.

One of the two WTF antenna sectors of the facility are proposed to be located on the North corner of the building facing the existing parking lot along S Main Street. The second antenna sector is located towards the Southeast corner of the building facing W Valencia Avenue. 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. The accessory equipment will be centrally located on the roof behind an existing mechanical wall, which is proposed to be increased in height to screen the proposed equipment from the general public's view. No changes are proposed to the existing square-footage and exterior façade of the commercial office building.

Project Site and Surrounding Context

The 1.12-acre Project Site is located at 800 S Main Street. The Project Site is split zoned, with the majority of the site, including the existing commercial building on which the WTF is proposed to be located, zoned Neighborhood Business (NB) and has a Burbank2035 General Plan Land Use designation of Rancho Commercial. A small portion of the site, accessible from S Main Street, is developed with surface parking and not impacted by the Project, and is zoned Single-Family Residential (R-1).

The Project Site is a corner lot and occupies an entire block frontage facing S Main Street, with additional frontages along W Elmwood Avenue and W Valencia Avenue. The Project Site is currently developed with an existing, 35-foot tall, three-story commercial office building. Surface and semi-subterranean parking is also provided on site.

The following table summarizes general property information for the Project Site and surrounding land uses.

Table 1: General Property and Surrounding Land Use Information	
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 Project Site (including area where proposed WTF will be located) is zoned Neighborhood Business (NB) but has a small portion, developed with surface parking, 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
<u>Surrounding Neighborhood:</u>	
North	Neighborhood Business (NB) and Residential zoned lots improved with commercial office and residential uses.
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.

Required Permits and Approval Process

The Project Site is primarily zoned Neighborhood Business (NB) and is residentially adjacent. Pursuant to BMC Section 10-1-1118(C), building mounted WTFs that are residentially adjacent may be permitted in non-residential zones (except open space) through approval of an Administrative Use Permit (AUP). Under BMC Section 10-1-203, residentially adjacent is defined as any commercially or industrially zoned property located within 150 feet of any residentially zoned property (measured at the two (2) properties' closest points). The Project Site is directly adjacent to and within 150 feet of residentially zoned property, and therefore an AUP is required for the Project.

Upon submittal of an AUP application, the Director must investigate and render a written decision to approve, approve with conditions, or disapprove the AUP application (BMC 10-1-1959(A)-(B)). Although an AUP does not require a public hearing to be held prior to the issuance of a determination letter, public notification of the Director's proposed decision is required. For all projects requiring an AUP, an on-site sign is posted at least 10 days before the Director's decision, and mailed public notices are sent to all property owners and tenants within 1,000 feet of the project site notifying recipients of the Director's decision as well as the appeal procedure. As the Project is exempt from Development Review pursuant to BMC Section 10-1-1914(4) (Exhibit M), it is not subject to review by the Rancho Review Board pursuant to BMC Section 10-1-2453.

To approve an AUP, the Director must affirmatively make the following findings from BMC Section 10-1-1956:

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 BMC.
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.
3. The use will be compatible with other uses in the general area in which the use is proposed to be located.
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.
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.

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

Furthermore, all WTFs must comply with applicable development and design standards listed in BMC 10-1-1118. Once issued, an AUP for a WTF is valid for 10 years. (BMC 10-1-1118(C)(4)). At that time, an applicant may re-apply for a new AUP to continue use and operation of the WTF.

Additional Requirements for WTF Approval - Federal Telecommunications Act of 1996

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*, Exhibit K). To be considered "substantial," the written evidence must reasonably support denial based on failure to satisfy local regulations.¹ 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.

Project Timeline

A summary of the project milestones is provided below.

Application Submitted	October 20, 2023
Supplemental Project Information/ Clarifications Received from Applicant	January through May
Application Deemed Complete	January 18, 2024
First Public Notice	April 8, 2024
Second Public Notice	May 17, 2024
Decision Date	June 5, 2024
Appeal Period	June 20, 2024
Date Appeal was submitted.	June 18, 2024

¹ 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.

On October 20, 2023, Rob Searcy, on behalf of Dish Wireless, submitted an AUP application for a proposed WTF on an existing commercial office building (Exhibit C). Prior to the issuance of the determination letter, public notices were sent out to all properties within the 1,000-foot radius from the Project Site (Exhibit F). The first public notices were sent out on April 8, 2024. Staff was informed that one of the addresses within the 1,000-foot radius from the Project Site did not receive the first notice. In order to ensure all properties received information about the proposed Project, staff sent out a second public notice on May 17, 2024. Prior to the decision date, staff received public comments about health and safety concerns the Project may cause due to RF emissions, as well as concerns about the Project Site's close proximity to schools within the neighborhood.

On June 5, 2024, the conditionally approved AUP decision letter was issued by the Director to the applicant (Exhibit D). Any person, including the applicant, had the opportunity to appeal the project within the 15-day appeal period, which ended on June 20, 2024, by 5:00 p.m.

Appeal

On June 18, 2024, Nicolette LeFebvre, on behalf of an appellant group of 31 individuals, submitted an appeal of the Director's Decision (Exhibit B). Based on the material included in the appeal, is staff's understanding the appeal makes seven contentions:

1. The Project failed to follow proper noticing procedure.
2. The Project does not comply with the National Environmental Policy Act (NEPA).
3. The City failed to show how the Project complies with the "Children's Protection Act."
4. The proposed Project violates "FCC 14-3 5.050."
5. The Project does not comply with the height requirements for structures in a single-family residential neighborhood.
6. Exposure to Radiofrequency-Electromagnetic Energy (RF-EM) is dangerous and the FCC does not provide information on the health and safety of RF radiation.
7. The facility is a fire hazard.

Pursuant to BMC Sections 10-1-1959 and 10-1-1907.2(A)(1), the Director's decision on a WTF AUP may be appealed to the Planning Commission. The Planning Commission

must consider and act on the appeal, as well as the underlying project application, by holding a de novo public hearing. (BMC 10-1-1907.2(A)(2)). Generally, “de novo” means that all issues relating to the project determination are subject to review and considered anew.² During the public hearing, the Planning Commission must make its own determination as to whether the facts presented support approval or denial of the project application.³ Therefore, the Planning Commission must now consider and act on the appeal of the WTF AUP approval, as well as conduct a new hearing on the Project application itself.

ANALYSIS

Appeal of the Community Development Director’s Decision

The Planning Commission must consider and act on the appeal pursuant to BMC 10-1-1907.2(A). Each of 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 full appeal submittal is attached to this report as Exhibit B. For the reasons outlined in the City’s responses below, City staff believes the appeal should be denied.

1. Contention #1: The Project failed to follow proper noticing procedure. The first public notice was not transparent as the description of the project was insincere and the City spoliated evidence from the community. The City did not notify everyone within 1,000-foot radius from the Project Site. Finally, allowing the applicant to send out the notices is a conflict of interest.

City Response: The project was reviewed and noticed in accordance with all applicable City regulations noted in BMC Title 10: Zoning Regulations. BMC 10-1-1959(B) outlines the following notice requirements for an AUP: (1) one four foot by eight foot sign must be posted on the project site no less than 10 business days before the Director’s scheduled decision date; and (2) notice of the Director’s proposed decision to approve the application, with or without conditions, must be mailed to the applicant and to all property owners and occupants within 1000 feet of the project site for which the Administrative Use Permit is being sought. For this Project, a sign was posted on the Project Site on April 10, 2024, and the initial Project notice was sent to property owners and occupants within 1000 feet of the Project Site on April 8, 2024. Staff was subsequently informed that one business located at 720 S Main Street was not provided with a mailed notice. Staff confirmed that the mailing labels omitted this address, and required the applicant to provide new mailing labels with the required signed affidavit acknowledging the map maker provided all the

² Breakzone Billiards v. City of Torrance (2000) 81 Cal.App.4th 1205, 1221.

³ See Lagrutta v. City Council (1970) 9 Cal.App.3d 890, 895.

mailing labels for properties that are within the 1,000-foot radius of the Project Site. A second public notice was issued on May 17, 2024 to all property owners and occupants within 1000 feet of the Project Site. As explained, the initial omission of the business located at 720 S. Main Street was corrected by sending a new initial notice to that property, and including that property in the second advance public notice.

The notices that were provided in advance of the decision for the Project included accurate Project descriptions that provided the public with advanced notice of proposed Project features, beyond the noticing requirements of the BMC. The City did not spoliage 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 (Exhibit F). Specifically, the second public notice clarified that although the Project consists of different components, including three sectors and a centrally located accessory equipment area, they are considered one wireless telecommunication facility as defined in BMC Section 10-1-203.

Finally, the appellant is incorrect in stating that the applicant sent the public notices. Staff prepared the public notices and mailed them out using the mailing labels provided by the applicant. As with all projects requiring mailed notice, the applicant is required to furnish the City with a list of address labels for all properties that are entitled to receive notice under the BMC, which assists with cost and resource recovery in processing such projects. While one address was unintentionally omitted from the initial address labels, the applicant promptly corrected this omission.

2. Contention #2: The Project does not comply with the National Environmental Policy Act (NEPA) regulations.

City Response: NEPA requires federal agencies to assess the potential environmental impacts of federal agency actions prior to making decisions. In some cases, local agency actions made by cities, counties, or states can be required to undergo NEPA review if federal funds are used to finance the underlying local project. Here, the Project is proposed by a private party, DISH Wireless, and seeks a City-issued permit (the AUP) pursuant to the City of Burbank's BMC Title 10: Zoning Regulations, which requires no action by federal agencies. Furthermore, this Project is not federally funded. Therefore, NEPA does not apply to the Project.

3. Contention #3: The City failed to show how the Project complies with the “Children’s Protection Act.”

City Response: The Project complies with all applicable local, state and federal permitting regulations for a WTF. Staff was unable to identify the “Children’s Protection Act” referenced by the Appellant. Staff reached out to the Appellant requesting information about the “Children’s Protection Act”, but the Appellant did not provide staff with the additional information to confirm the validity of the referenced Act and any potential compliance issues. Therefore, staff was unable to determine what legislation the Appellant is referring to and whether such legislation regulates the installation of wireless facilities with respect to children’s safety. Nevertheless, staff located a 2021 federal bill that was introduced in the House of Representatives as the “Children’s Protection Act of 2021” (H.R. 3716), which would have required federal agencies to analyze the impacts of federal rules that may negatively affect the health outcomes of a substantial number of children.⁴ This bill has not been adopted as federal law, and is not applicable to this Project.

4. Contention #4: The Project violates “FCC 14-3 5.050” requiring a separation of 1,000 feet from any other telecommunication site.

City Response: The Project complies with all applicable local, state and federal permitting regulations for a WTF. Staff researched the Appellant’s contention and could not find “FCC 14-3 5.050” referenced by the Appellant. Further, staff requested from the Appellant to provide the specific federal regulation that requires WTF to be 1,000 feet away from any other telecommunication site however, the appellant did not provide the requested information. Therefore, it is unclear what “FCC 14-3 5.050” is, or whether it applies to the Project. In general, cities retain local authority over individual zoning decisions regarding the placement, construction, and modification of WTFs, subject to the limitations listed in the federal Telecommunications Act of 1996.⁵ Here, local regulations applicable to the Project are set forth in the BMC. The BMC includes no separation requirements between WTFs. Therefore, the Project is not required to maintain a 1,000-foot separation from other telecommunications sites.

5. Contention #5: The Project does not comply with height requirements for structures in a single-family residential neighborhood.

⁴ See <https://www.congress.gov/bill/117th-congress/house-bill/3716>.

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

City Response: Although the Project Site is split zoned, the Project itself is entirely within the Neighborhood Business (NB) zone and is not subject to the Single-Family Residential development standards. Pursuant to the WTF development standards found in BMC Section 10-1-1118(D)(4)(a), new building mounted WTFs, including any screening devices, shall not exceed a height of 15 feet above the roof or parapet, whichever is higher, of the building on which it is mounted. The Project facility and visual screens will not exceed a height of 10 feet. Therefore, the Project complies with the BMC height regulations for WTFs that are applicable to structures on buildings located in the underlying NB Zone.

6. Contention #6: Exposure to Radiofrequency-Electromagnetic Energy (RF-EM) is dangerous and the FCC does not provide information on the health and safety of RF radiation. Health concerns related to RF-EM are evidenced by an independent scientific study ruling that the cause of health related issues in firefighters was caused by RF-EM from wireless facilities on or in close proximity to fire stations. This concern was recognized by the exemption for fire stations in AB-57.

City 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 (Exhibit H) 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 did not furnish staff with the independent scientific study relating to health issues in firefighters caused by RF-EM. Appellants referred to "AB-57" as an acknowledgement of the health concerns related to RF. Although appellants did not furnish a copy of AB 57 to staff, staff believes appellants are referring to 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, and simply shields WTF applications involving such facilities from being automatically “deemed approved” if a 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.⁶

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-EM 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.

7. Contention #7: The Project is a fire hazard due to electrical mechanical failure that can occur.

City Response: The Project was routed to the City’s Fire Department and Building & Safety Division of the Community Development Department for review and no safety concerns were identified. Therefore, the contention is speculative and no evidence exists to demonstrate that the design, location, or operation of the proposed WTF poses any unusual fire safety hazards.

WTF Administrative Use Permit - Required Findings

The Planning Commission must consider and act on the Project application pursuant to BMC 10-1-1907.2(A)(2). As explained above, the Commission’s review is “de novo” and the Commission must make its own determination as to whether the facts presented support approval or denial of the Project application. Here, the Project requires an AUP pursuant to BMC 10-1-1118(C). To approve an AUP, the findings listed in BMC 10-1-1956 must be satisfied.

The following analysis is provided in consideration of the requisite findings contained in BMC Section 10-1-1956 for approval of the Administrative Use Permit.

⁶ See Cal. Gov. Code 65964.1(i).

- (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 in a non-residential zoning district, such as the NB (Neighborhood Business) zone, requires approval of an AUP if proposed in a residentially adjacent location (within 150 feet of a residential zone). The Project Site abuts the R-1 (Single-Family Residential) zoning district to the Northeast and therefore, 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. 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 (Exhibit I), 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 on the basis of 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 (Exhibit H).

The abovementioned report indicates that the applicant will be compliant with FCC regulations when mitigation measures 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.”⁷ 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.⁸ The mitigation measures identified in the Report 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.⁹ 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 on the basis of 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.¹⁰ This means that to deny the Project, the written evidence must reasonably support denial based on failure to satisfy local regulations.¹¹ No substantial evidence has been provided demonstrating that the application at issue should be denied or further conditioned based on applicable local

⁷ Exhibit H, Page 4

⁸ Exhibit H, Page 8

⁹ Exhibit H, Page 8

¹⁰ 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.

¹¹ Id.

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.*

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, including coverage maps, that the proposed WTF facility will provide wireless and data coverage for a portion of Burbank, which currently has a gap in coverage. 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.

Furthermore, the proposed WTF will be concealed from public view 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 Site 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. 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 10-1-1118(D)(4)(a) and will be compatible with the existing architectural style of the building in compliance with BMC 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 10-1-1118 for new building-mounted (roof top) WTF installations as provided in Exhibit G.

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 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 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 Project Site along the north and south, respectively. In addition, the site 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.

INTERDEPARTMENTAL REVIEW

The AUP application and plans for the Project were routed to various city departments for review. The Community Development Department Planning and Building & Safety Divisions and the Burbank Water & Power and Public Works Departments provided Project specific conditions of approval. No other department expressed concerns or provided additional conditions for the Project, including the Fire Department. All standard conditions of approval, along with Planning staff's project specific recommended conditions, were included as an attachment to the AUP decision letter (Exhibit D) and are included in the draft Planning Commission Resolution (Exhibit A).

PUBLIC NOTIFICATION AND INPUT

Prior to the issuance of the AUP determination letter, two public notices were sent out to all properties within the 1,000-foot radius from the Project Site to ensure all properties received information about the Project. In response, staff received multiple emails and phone calls, and met with two members of the public who had concerns about the Project. Staff provided clarification about the Project scope, local and federal regulations and emphasized that local governments are precluded from considering the health effects from RF emissions generated by wireless telecommunication facilities.

Public notice for the Planning Commission hearing was provided in accordance with State and local law. Notices were mailed to all property owners and occupants within a 1,000-foot radius of the Project Site, a public notice was published in the Burbank Leader newspaper and a notice was posted on-site 10 business days prior to the Planning Commission hearing. The notice directed the public to review the Project request, staff report, and associated exhibits and application via the City's website at:

<http://www.burbankca.gov/pendingprojects> or participate in the Planning Commission meeting online.

ENVIRONMENTAL REVIEW

Approval of the Project is exempt from the California Environmental Quality Act 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 exemption. Furthermore, none of the exceptions to the Categorical Exemptions listed in Section 15300.2 of the CEQA Guidelines apply to this Project. The City Planner shall file a Notice of Exemption with the Los Angeles County Clerk and submitted to the State Clearinghouse, within 5 days of the Planning Commission's decision.

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 radio frequency (RF) emissions if the project complies with FCC regulations for such RF emissions. The Project's 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 Planning Commission adopt the attached Resolution (Exhibit A) denying the appeal of the Director'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.

List of Exhibits	
Exhibit	Title
A	Resolution
B	Appeal Submittal
C	AUP Application
D	AUP Decision Letter
E	Project Plans
F	Public Notices
G	Municipal Code Compliance
H	Radiofrequency-Electromagnetic Energy Report
I	Noise Compliance
J	Administrative Hearing, City of Long Beach
K	Excerpt of Telecom Act (47 U.S.C. Section 332(c)(7)(B)(iii))
L	Zoning and Fair Political Practices Act Compliance Map, Aerial Photo
M	Development Review Exemptions