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6 **CITY OF LONG BEACH**
7 **ADMINISTRATIVE APPEAL HEARING**
8 **PER LONG BEACH MUNICIPAL CODE CHAPTER 15.34.030.L**

9 **KASSIE HERNANDEZ,**) **HEARING OFFICER’S FINDINGS AND**
10 **Appellant,**) **RECOMMENDATION**
11 **vs.**)
12 **CITY OF LONG BEACH,**)
13 **Respondent/Permitting**)
14 **Authority**)
15 **CROWN CASTLE NG WEST LLC,**)
16 **Real Party in Interest /**)
17 **Permit Applicant**)

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19 **I. INTRODUCTION**

20 This appeal came on regularly for hearing before Administrative Hearing Officer
21 Jonathan C. Navarro on October 19, 2020 at 3:00 PM via WebEx virtual hearing. The WebEx
22 hearing was administered by Daniel Ramirez with the Public Works Department (“PWD”) for
23 the City of Long Beach. The Appellant, Kassie Hernandez, appeared *pro se* with her sister Liz
24 Hernandez (resides at the same address as Appellant). The City of Long Beach (“City” or
25 “Respondent”) appeared and was represented by Erin Weesner-McKinley, Esq. with the Office
26 of the City Attorney for the City of Long Beach. Licensee Crown Castle NG West LLC
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HEARING OFFICER’S FINDINGS AND RECOMMENDATION

1 (“Crown” or “Applicant”) appeared and was represented by Stephen Garcia. The PWD for the
2 City of Long Beach was represented by Joshua Hickman and Pablo Leon.

3 The following member(s) of the public also appeared, but did not provide any comments:
4 Katie Baxendale, Laurella Theus, Barbara Breeden, and Daisy Uy-Kimpang.

5 **II. STATEMENT OF FACTS**

6 The facts in this matter are not in dispute. On or around August 6, 2019, Crown
7 submitted an application (“Application”) for a permit to the City for the installation of a “small
8 cell” wireless telecommunications facility (“WTF”) in the public right-of-way. (See
9 Respondent’s Group Exhibit, Page 1). The Application process is governed by Chapter 15.34 of
10 the Long Beach Municipal Code (“LBMC”) that includes requirements and applicable standards
11 for WTFs in the public right-of-way to ensure that the proposed WTF complies with said
12 requirements and standards. WTF means equipment installed for the purpose of providing
13 wireless transmission of voice, data, images, or other information including but not limited to,
14 cellular telephone service, personal communications services, and paging services, consisting
15 of equipment, antennas, and network components such as towers, utility poles, transmitters,
16 base stations, conduits, pull boxes, electrical meters, and emergency power systems. WTF does
17 not include radio or television broadcast facilities, nor radio communications systems for
18 government or emergency services agencies. LBMC 15.34.020.EE. “Public right-of-way”
19 means any public highway, street, alley, sidewalk, parkway, parking lot, and all extensions or
20 additions thereto which is either owned, operated, or controlled by the City, or is subject to an
21 easement or dedication to the City, or is a privately-owned area within City’s jurisdiction
22 which is not yet dedicated, but is designated as a proposed public right-of-way on a tentative
23 subdivision map approved by the City. LBMC 15.34.020.S.
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1 The Application sought a permit for the installation of a proposed WTF in the public
2 right-of-way in front of the property located at 1057 E. 70th Street, which is in a residential
3 zoning district. The proposed WTF will be integrated into an existing light pole at the site that is
4 designated as “ATTLYN23M1” in the Application (“Site”). As proposed, the WTF will be
5 integrated into a new light pole that will replace the existing light pole at the Site. The existing
6 light pole, including the luminaire, is twenty-seven (27) feet three (3) inches high. (See
7 Respondent’s Gr. Ex., p. 200). The replacement light pole, with luminaire and antenna mount,
8 would be five (5) inches higher, for a new height of twenty-seven (27) feet eight (8) inches. (Id.
9 at p. 201). An antenna will be placed in a shroud at the top of the new light pole and painted to
10 match the color of the pole. (Id. at pp. 202-203). An equipment box, also painted to match the
11 pole, will be mounted on the pole out of reach of pedestrians. (Id.).

14 Upon four (4) subsequent rounds of reviews and plan revisions—the latest being
15 February 11, 2020—the City approved the Application on March 2, 2020. (See approval stamp
16 on Respondent’s Gr. Ex., pp. 195-211). Thereafter, pursuant to LBMC 15.34.030.K., a notice of
17 the approval was mailed out on March 19, 2020, and a posted notice was placed on the pole in
18 front of Appellant's home and on the Site on March 30, 2020. (See Respondent’s Gr. Ex., pp.
19 217-218 [proof of mailing] and pp. 219-220 [proofs of posting]). Said posted notice triggered the
20 commencement of the 10-day appeal period under LBMC §15.34.030.L. The deadline for filing
21 an appeal was April 9, 2020. Appellant filed the Appeal on April 8, 2020. (See Respondent’s Gr.
22 Ex., p.1).

25 **III. LEGAL AUTHORITY FOR APPEAL**

26 LBMC 15.34.030.L. (Appeal of Tier B Wireless Right-of-Way Facility Permit)
27 provides ...
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- 1 1. Appeal Allowed. The applicant for a Tier B Wireless Right of Way Facility
2 Permit, and/or any person owning or residing at property that is adjacent to
3 or across the street to the location of a proposed Tier B Wireless
4 Telecommunications Facility, may appeal an approval or denial of an
5 application for a Tier B Wireless Right-of-Way Facility Permit. An appeal
6 must be in writing and must be submitted to the City Clerk within ten (10)
7 business days of the date the notice was mailed and posted as required under
8 Subsection 15.34.030.K.2, above.
- 9 2. Public Hearing Required. If an appeal is timely submitted, an independent
10 hearing officer selected by the City shall hold a public hearing. The City
11 Clerk shall set a date for the hearing that is at least fifteen (15) business
12 days, but no more than sixty (60) business days, after the City Clerk's receipt
13 of the appeal, unless the applicant and any person submitting an appeal agree
14 to a later hearing date.
- 15 3. Notice of Public Hearing Date. At least ten (10) business days before the
16 public hearing, the City Clerk shall notify in writing any person submitting
17 an appeal, the applicant, and any City department that reviewed the
18 application of the date set for the public hearing. The City Clerk shall follow
19 its regular procedures for notifying the general public of the hearing.
- 20 4. Public Hearing Record. The public hearing record shall include:
 - 21 a. The application and the Department of Public Works' approval of the
22 application;
 - 23 b. Any written determination from the Department of Public Works;
 - 24 c. Any further written evidence from any City departments submitted either
25 prior to or during the hearing;
 - 26 d. Any written submissions from the applicant, any person submitting an
27 appeal, or any other interested person submitted either prior to or during
28 the hearing; and
 - e. Any oral testimony from any City departments, the applicant, any person
submitting a protest, or any interested person taken during the hearing.
5. Hearing Officer Determination. The Hearing Officer shall issue a written
resolution containing its determination within fourteen (14) business days
following the close of evidence at the conclusion of the public hearing on
the appeal. The resolution shall include a summary of the evidence and the
ultimate determination whether to grant, grant with modifications, or deny
the appeal.

1 6. Notice of Determination on Appeal.

2 a. The City Clerk shall promptly mail a notice of a determination on an
3 appeal to both the applicant, to any neighborhood association identified by
4 the Department of Development Services for any neighborhood within three
5 hundred (300) feet of the approved wireless telecommunications facility, and
6 to any person who either filed a protest, submitted evidence, or appeared at
the hearing, and whose name and address are known to the Department of
Public Works.

7 **IV. LEGISLATIVE BACKGROUND FOR WIRELESS TELECOMMUNICATIONS**
8 **FACILITIES**

9 **1. Federal and State Laws and Regulations**

10 In 1996, Congress conducted a major overhaul of the telecommunications law in almost
11 62 years in the Telecommunications Act of 1996 (“Act”). The goal of this new law is to let
12 anyone enter any communications business—to let any communications business compete in any
13 market against any other. The Federal Communications Commission (“FCC”) was then tasked
14 to create fair rules for this new era of competition. The advent of the newest generation of
15 wireless broadband technology known as “5G” requires the installation of thousands of “small
16 cell” wireless facilities. These facilities have become subject to a wide variety of local
17 regulations. *City of Portland v. United States* (9th Cir. 2020) No. 18-72689, p. 29. The
18 Federal Communications Commission (FCC) in 2018 therefore promulgated orders relating to
19 the installation and management of small cell facilities, including the manner in which local
20 governments can regulate them. *Id.* Sections 253(a) and 332(c)(7) of the Act provided FCC with
21 the statutory authority for limiting local regulation on the deployment of [5G] technology that
22 reflects congressional intent in 1996 to expand deployment of wireless services. *Id.* at p. 30.
23 These limitations provide that local government regulations:
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- 1 a. shall not unreasonably discriminate among providers of functionally equivalent
2 services, 47 U.S.C. § 332(c)(7)(B)(i)(I);
- 3 b. shall not prohibit or have the effect of prohibiting the provision of personal
4 wireless services, 47 U.S.C. § 332(c)(7)(B)(i)(II);
- 5 c. a local government ... shall act on any request for authorization to place,
6 construct, or modify personal wireless service facilities within a reasonable period
7 of time after the request is duly filed with such government¹. 47 U.S.C. §
8 332(c)(7)(B)(ii).
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10 d. No State or local government or instrumentality thereof may regulate the
11 placement, construction, and modification of personal wireless service facilities
12 on the basis of the environmental effects of radio frequency emissions to the
13 extent that such facilities comply with the Commission's regulations concerning
14 such emissions. 47 U.S.C. § 332(c)(7)(B)(iv).

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16 Those provisions authorize the FCC to preempt any state and local requirements that “prohibit or
17 have the effect of prohibiting” any entity from providing telecommunications services. *Id. See*
18 *also* 47 U.S.C. § 253(a), (d). Consequently, the FCC promulgated orders limiting local
19 governments in regulating the deployment of 5G technology in order to remove the barriers to
20 entry for businesses to compete in the telecommunications market.

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22 California case law and statutory authorities provide additional regulatory guidance for
23 installation of WTFs. Wireless providers are granted a statewide franchise to engage in the
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26 ¹ The FCC has specifically shortened the shot clock for approving/denying applications for installation
27 of WTFs on existing infrastructure (i.e., collocation) from 90 to 60 days and from 150 to 90 days for all
28 other collocation applications. *Accelerating Wireless Broadband Deployment by Removing
Barriers to Infrastructure Inv.*, 33 FCC Rcd. 9088 (2018), ¶¶ 104–05, ¶ 132, ¶ 136).

1 telecommunications business. Pub. Util. Code § 7901; *see also T-Mobile West LLC v. City and*
2 *County of San Francisco* (2019) 6 Cal.5th 1107, 1117). In *T-Mobile*, the California Supreme
3 Court held that while the California legislature did not intend to deprive local governments of
4 the ability to impose aesthetic regulations and public safety issues, local agencies must
5 nonetheless respect that statewide franchise when making decisions on proposed facilities. *Id.*
6 Further, California Public Utilities Commission (“PUC” or “Commission”) reserves the right to
7 preempt local decisions about specific sites “when there is a clear conflict with the
8 Commission’s goals and/or statewide interests.” (PUC, General order No. 159-A (1996) p. 3
9 (General Order 159A), available at < <http://docs.cpuc.ca.gov/PUBLISHED/Graphics/611.PDF>>)
10 Generally, the PUC will step in if statewide goals such as “high quality, reliable and widespread
11 cellular services to state residents” are threatened. (*T-Mobile West, supra*, 6 Cal.5th at 1124,
12 citing General Order 159A, at p. 3.).

15 **2. The City’s Telecom Ordinance**

16 On May 1, 2018, the City adopted LBMC §15.34, Wireless Telecommunications
17 Facilities in the Public Rights-Of-Way (“Telecom Ordinance). The Telecom Ordinance governs
18 the installation of WTFs within the jurisdiction of the City of Long Beach, and the City’s scope
19 of regulatory authority for the installation of WTFs is limited to this ordinance. The Telecom
20 Ordinance provides for the requirements and standards for WTFs in the public right-of-way.
21 These include comprehensive permit requirements and standards (LBMC 15.34.030.B),
22 application process requirements (application, review, and approval) (LBMC 15.34.030.D),
23 conditions of approval (LBMC 15.34.030.F), notice following approval (LBMC 15.34.030.K),
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1 and the appeal process of a Tier B² WTF permit (LBMC 15.34.030.L). The Telecom Ordinance
2 also provides for, among others, compliance and modifications, of WTFs after installation
3 (LBMC 15.34.030.N; LBMC 15.34.030.S).

4 **V. STATEMENT OF ISSUES OF APPEAL BEFORE THE HEARING OFFICER**

5 By letter dated April 8, 2020, Appellant stated her objections with regard to the appeal
6 notice process and the health risks associated with the proposed WTF. More specifically,
7 Appellant stated that “[w]e were not given enough notice, let alone enough information about what
8 is actually being installed and who is going to be profiting off of this WTF; [t]here was only ONE
9 notice and it was facing in a direction away from my house so I was not able to see it. If I was not
10 able to see it right away, I’m almost sure the rest of my neighbors and community did not see this
11 Notice. Appellant further stated that “I believe that the 5G towers have numerous effects on one’s
12 health. New networks generate radiofrequency radiation that can damage DNA and lead to cancer,
13 disrupt cell metabolism, and potentially lead to other diseases through the generation of stress
14 proteins.” Because Appellant lives across Hamilton Middle School (1060 70th St, Long Beach, CA
15 90805) where many young children attend, she is concerned that many of these young students who
16 attend the middle school will be exposed to unhealthy amounts of radiation from the proposed WTF.
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20 Upon receipt of Appellant’s letter, the Long Beach City Clerk’s office then scheduled a
21 formal hearing with regard to Appellant’s objections.

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27 ² “Tier B Wireless Telecommunications Facility” means a wireless telecommunications facility
28 where the proposed location for the facility is in a Planning Protected Location, Coastal Zone
Protected Location, or Zoning Protected Location.

1 **VI. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY PARTIES**

2 **1. Appellant’s Evidence**

3 During the WebEx virtual hearing on October 19, 2020, this hearing officer explained to
4 all the participants the guidelines for the hearing. These include examination of witnesses and
5 presentation of evidence. It was stated on the record that the hearing officer received the City’s
6 submission package³ in advance of the hearing both in hardcopy and electronic format. The
7 hardcopy was received at this hearing officer’s business address and included a Proof of Service
8 indicating that the hardcopy was sent to said business address, the Appellant’s address on record,
9 and the Applicant’s address on record in care of its representative, Stephen Garcia. The package
10 also included a Proof of Service that the electronic copy was transmitted to the email addresses
11 of the hearing officer, the Appellant, and the Applicant’s representative. During the hearing, all
12 parties acknowledged receipt of the City’s submission package.
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15 In addition to the April 8, 2020 letter from Appellant, Appellant raised additional issues
16 on the record during the hearing. Appellant’s first issue deals with an alleged conflict of interest
17 with a current member of the Long Beach City Council, Rex Richardson, who represents the
18 Ninth District in Long Beach. Appellant’s concern is that Rex Richardson’s alleged employment
19 with Applicant somehow factored in with the permit application process for the proposed WTF.
20 Appellant did not provide additional evidence with regard to Rex Richardson’s alleged
21 employment with Applicant or the alleged conflict of interest with the permit application process
22 for the proposed WTF. The second issue raised by Appellant during the hearing deals with an
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27 ³ The City’s submission package included a copy of Appellant’s letter dated April 8, 2020.
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1 apparent mistake made by the Long Beach City Clerk's office in processing the appeal submitted
2 by Appellant.

3 At the conclusion of the hearing, Appellant requested that this hearing officer consider a
4 petition that was signed by residents in the surrounding neighborhood where the proposed WTF
5 will be installed. Appellant was then given until October 20, 2020 to submit said petition in
6 electronic format via e-mail to the recipients in the distribution list that the City used in
7 submitting its package. Appellant sent the signed petition via email on October 20, 2020.
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9 **2. The City's Evidence**

10 In advance of the formal hearing, the City submitted the following evidence
11 (Respondent's Group Exhibit) in support of its opposition to the appeal:
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- 13 • April 8, 2020 Appeal Letter to the City of Long Beach from Kassie Hernandez
14 (Respondent's Group Exhibit Page 1)
- 15 • Crown Castle NG West LLC's August 6, 2019 City of Long Beach Application
16 (Respondent's Group Exhibit Pages 2-11)
- 17 • Crown Castle Master License Agreement (MLA) (which includes Crown Castle's
18 maintenance obligations) (Respondent's Group Exhibit Pages 12-68)
- 19 • Ericsson Radio Description - Radio 2203; Noise Analysis No. 1 (Respondent's
20 Group Exhibit Pages 69-117)
- 21 • Ericsson Radio Description - Radio 2205; Noise Analysis No. 2 (Respondent's
22 Group Exhibit Pages 118-154)
- 23 • Propagation Maps - AT&T Wireless Network Densification (Respondent's Group
24 Exhibit Pages 155-159)
- 25 • Structural Analysis (Respondent's Group Exhibit Pages 160-182)
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- 1 • RF Emissions Compliance Report (Respondent’s Group Exhibit Pages 183-194)
- 2 • March 2, 2020 - Approved Application (Respondent’s Group Exhibit Pages 195-
- 3 211
- 4 • Tier B Justification (Respondent’s Group Exhibit Pages 212-213)
- 5 • Mailing List (Respondent’s Group Exhibit Page 214)
- 6 • Mailing Map (Respondent’s Group Exhibit Page 215)
- 7 • March 15, 2020 - Proof of Mailing Preparation by Laura Emerson of Susan W.
- 8 Case, Inc. (Respondent’s Group Exhibit Page 216)
- 9 • March 19, 2020 - USPS Proof of Mailing (Respondent’s Group Exhibit Page 217)
- 10 • March 30, 2020 - Proof of Posting No. 1 (Respondent’s Group Exhibit Page 218)
- 11 • March 30, 2020 - Proof of Posting No. 2 (Respondent’s Group Exhibit Page 219)

14 The City offered no additional evidence on the record during the hearing.

15 **VII. DISCUSSION**

16 **1. Sufficiency of Notice**

17 Appellant’s first issue is that she was not provided sufficient notice. (Respondent’s Gr.
18 Ex., p. 1). To the extent Appellant refers to the insufficiency of the process and manner of
19 providing notice to the public, Appellant’s argument is without merit. Appellant timely filed her
20 appeal upon being provided a notice by the City. (*See* LBMC § 15.34.030.L.1 [“...any person
21 owning or residing at property that is adjacent to or across the street to the location of a proposed
22 Tier B Wireless Telecommunications Facility, may appeal an approval or denial of an
23 application for a Tier Wireless Right-of-Way Facility Permit.”]). As required by the Telecom
24 Ordinance, a mailed notice of the approval for the Site was sent on March 19, 2020, a posted
25 notice was placed on the pole adjacent to Appellant’s home on March 30, 2020, and a notice was
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1 posted on the Site on March 30, 2020. (Respondent’s Gr. Ex., pp. 216-217 [proof of mailing];
2 pp. 218-219 [proofs of posting]).

3 To the extent Appellant’s argument refers to the insufficiency of the 10-day notice is also
4 without merit. The Telecom Ordinance is clear on its face in that an appeal must be in writing
5 and must be submitted to the City Clerk within ten (10) business days of the date the notice was
6 mailed and posted. LBMC 15.34.030.L.1. By Appellant’s timely appeal letter dated April 8,
7 2020 (See Respondent’s Gr. Ex., p. 1), Appellant’s argument is also rendered moot in that she
8 exercised her right to file the appeal within 10 days of the date (March 30, 2020) the notice was
9 posted (Respondent’s Gr. Ex., pp. 218-219). For these same reasons, any apparent mistake the
10 City Clerk’s Office made in processing Appellant’s appeal is irrelevant and moot for the
11 purposes of this determination.
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14 **2. Health Effects**

15 Appellant’s second issue on appeal is the effect of 5G towers on one’s health (See
16 Respondent’s Gr. Ex., p. 1). Appellant cited numerous alleged health effects in her letter.
17 However, the City’s regulatory authority in this regard is limited and preempted by federal law.
18 47 U.S.C. § 332(c)(7)(B)(iv) (“No State or local government or instrumentality thereof may
19 regulate the placement, construction, and modification of personal wireless service facilities on
20 the basis of the environmental effects of radio frequency emissions to the extent that such
21 facilities comply with the [FCC]’s regulations concerning such emissions). The Applicant’s
22 submission of a RF Emissions Compliance Report demonstrating that the emissions from the
23 proposed WTF is within general population and occupational limits established by the FCC for
24 radio frequency emissions complies with FCC regulations. (See Respondent’s Gr. Ex., pp. 183-
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1 194). There is, therefore, no basis to deny the approved permit for the proposed WTF on the
2 basis of alleged effects of 5G towers on one's health.

3 **3. Conflict of Interest with a City Councilmember**

4 Appellant also raised an issue of an alleged conflict of interest with a current member of
5 the Long Beach City Council, Rex Richardson ("Richardson"), who represents the Ninth District
6 in Long Beach. Appellant's concern is that Richardson's alleged employment with Applicant
7 somehow factored in with the permit application process for the proposed WTF. However, there
8 is nothing on the record that Richardson was involved with the permitting process, had any
9 influence in the outcome of the Application, or would somehow benefit personally from the
10 installation of the proposed WTF. Without more, this hearing officer cannot determine that the
11 City had a conflict of interest with one of its Councilmembers in the process of approving the
12 application for the proposed WTF.
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14 **VIII. RECOMMENDATION**

15 Appellant is a credible witness. This hearing officer has no reason to doubt the veracity
16 and sincerity of Appellant's statements in either her appeal letter or during the formal hearing.
17 However, inasmuch as Appellant and her fellow residents' concerns and grievances in their
18 signed petition warrant serious consideration, Appellant has otherwise offered no legal basis or
19 relevant evidence in support of her appeal. In contrast, the City submitted a comprehensive
20 package in opposition to the appeal that included its brief and supporting legal authorities and
21 relevant evidence. The City's evidence included all the materials and documentation that the
22 Applicant submitted to the City as part of the application process. After four (4) rounds of plan
23 review and revisions, the City determined that the Applicant's proposed WTF met all the
24 applicable requirements and standards set forth in the LBMC 15.34, and approved the permit
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1 application accordingly. As stated above, this hearing officer is bound by the provisions of the
2 LBMC 15.34, and cannot look elsewhere in making its determination. Accordingly, this
3 hearing officer has found nothing on the record to determine that the Applicant's permit for the
4 proposed WTF was granted in violation of LBMC 15.34.

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6 Based on the foregoing, this hearing officer hereby recommends that Appellant's
7 appeal be denied and that Applicant's permit for the proposed WTF be upheld.

8 Dated this 6th day of November 2020

9 /s/ JONATHAN C. NAVARRO, ESQ.
10 Administrative Hearing Officer