

**PLANNING COMMISSION AGENDA ITEM NO. E.1**  
**03/19/2024**

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**SUBJECT:** Conditional Use Permit for a new wireless facility on an existing PG&E lattice tower.

**DEPARTMENT:** Community Development Department

**STAFF:** Erik Nolthenius, Planning Manager  
Sarah Yuwiler, Associate Planner

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### **TITLE/RECOMMENDATION**

An application for a conditional use permit (CUP 23-009) to locate and operate a wireless communications facility and add a 12-foot high extension to an existing PG&E lattice tower for New Cingular Wireless/AT&T to allow for twelve new antennas, remote radio heads/remote radio units, and a ground-based equipment enclosure, along with other ancillary equipment to be located east of the Trilogy community, adjacent to the PG&E substation and west of State Route 4 (APN 010-050-002).

Staff recommends that the Planning Commission adopt Resolution No. 24-010, approving Conditional Use Permit No. 23-009, subject to the associated findings and conditions.

The project qualifies as a Class 1 categorical exemption under the California Environmental Quality Act (CEQA Guidelines Section 15301 – Existing Facilities) in that it consists of the construction of a new small facility or structure and only minor modifications are being made to an existing facilities or structures.

### **OWNER/APPLICANT**

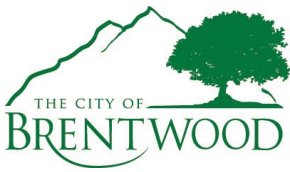
Matt Moore, Complete Wireless Consulting, Inc., on behalf of New Cingular Wireless, PCS, LLC, doing business as AT&T Mobility

### **GENERAL PLAN**

Public Facility (PF)

### **ZONING/SURROUNDING LAND USES**

PF (Public Facility)



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### PREVIOUS ACTION(S)

Previous actions related to this agenda item that were taken by the Planning Commission and City Council are listed below. To view prior actions and materials, and Brentwood Municipal Code references in the staff report, as applicable:

- Visit [www.brentwoodca.gov/meetings](http://www.brentwoodca.gov/meetings), and select the meeting date(s) desired to see the reference materials and videos.
- Visit [www.brentwoodca.gov/municipalcode](http://www.brentwoodca.gov/municipalcode) to research references to the Brentwood Municipal Code and search by the code section(s) cited.

On June 14, 2016, the City Council adopted Ordinance No. 971, approving Rezone No. 16-001 to amend the Brentwood Municipal Code by adding Chapter 17.795 (Wireless Facilities Not Covered Under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012).

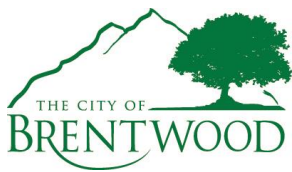
On May 17, 2022, the Planning Commission adopted Resolution No. 22-009, approving a Conditional Use Permit for the current project scope which authorized New Cingular Wireless/AT&T to locate and operate a wireless telecommunications facility on and beneath an existing PG&E lattice tower, including twelve new antennas, RRH/RRUs, and a ground based equipment enclosure, along with ancillary equipment.

### BACKGROUND

On May 17, 2023, the Conditional Use Permit authorizing the wireless telecommunications facility expired without the applicant submitting the required building permit or a time extension for the Conditional Use permit. The applicant would still like to move forward with the project and therefore submitted the current Conditional Use Permit on November 20, 2023 in attempt to regain approval for the site.

Wireless telecommunications facilities are regulated at the Federal, State, and local level:

- **Federal.** Nationally, these facilities are subject to laws passed by Congress, which has exercised this power to adopt numerous laws in this regard. Cities and states across the country are bound to comply with these laws. In addition, Congress has vested regulatory authority in this area in the Federal Communications Commission (FCC), which has enacted regulations and rules governing telecommunications facilities. Under this power, the FCC has sole national authority to provide all health and safety regulations connected with



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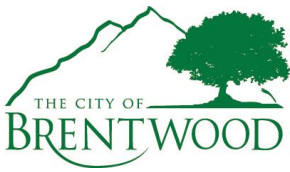
radio frequencies (RF) emissions. Congress's Telecommunications Act of 1996 prohibits State and local governments from denying cellular sites based upon electromagnetic frequency transmissions, as long as these facilities comply with the FCC regulations for radio frequency emissions.

- **State.** Although the Federal Government controls many aspects of telecommunications regulation, including the sale of the airwaves, states have jurisdiction over facility siting issues. In California, these are governed by the Public Utilities Commission.
- **Local.** Depending on the type of facility proposed, local jurisdictions have some degree of authority over siting, design, and aesthetic issues concerning the placement of cellular equipment and related support structures.

In 2012, the Federal government enacted the *Middle Class Tax Relief and Job Creation Act of 2012* (the "Act"). Though difficult to tell from its title, the Act put into place provisions aimed at streamlining the local application process for certain telecommunications facilities. Under § 6409(a) of the Act, states and local governments "may not deny, and shall approve" any request to collocate, remove, or replace transmission equipment at an existing wireless tower or base station so long as such collocation or modification does not substantially change such structure's physical dimensions. In other words, under § 6409(a) of the Act, a proposal for new equipment on existing towers must be administratively approved by the local government if the proposal would not substantially change the visual impact of the overall structure.

Subsequently, the City Council adopted two ordinances to amend the Brentwood Municipal Code (BMC) to regulate telecommunications applications in two basic groups:

<b>Wireless facilities covered by the Act (BMC Chapter 17.790)</b>	<b>Wireless facilities <i>not</i> covered by the Act (BMC Chapter 17.795)</b>
In compliance with the Act, these applications are subject to streamlined processing, and the City has less discretion over their approval.	For permit applications that do not meet the criteria for expedited processing under BMC 17.790, approval procedures are outlined in Chapter 17.795 and apply to new facilities and to collocations or modifications to existing facilities that are not eligible for or not submitted for approval pursuant to Section 6409(a).



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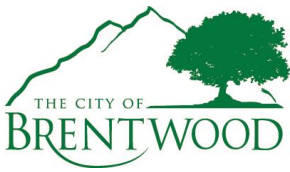
For those facilities not subject to the streamlined processing requirements under Section 6409(a) and BMC Chapter 17.790, the Act and Federal regulations allow greater local control over applications. For example, the City may, at its discretion, require a public hearing for the approval of a conditional use permit for a wireless facility not covered by the Act. In addition, Chapter 17.795 lists application requirements and procedures, requires a pre-application meeting between the applicant and City staff when an application seeks exemptions from the application submittal requirements, lists development standards for the various types of facilities, and lists standard conditions of approval. The intent of these provisions is to preserve as much local control as allowable under Federal law, while streamlining the process for wireless carriers to the extent possible.

This application is being processed under the provisions of Chapter 17.795 and, as such, local authority is allowed as to siting, design, and the local development standards. It is important to note that, as previously mentioned, the FCC continues to have sole national authority to provide all health and safety regulations connected with radio frequency (RF) emissions.

### **PROJECT DESCRIPTION**

The applicant, Matt Moore of Complete Wireless Consulting on behalf of New Cingular Wireless/AT&T, is requesting approval of a conditional use permit (CUP 23-009) to locate and operate a wireless telecommunications facility on top of an existing 122-foot, 6-inch high PG&E transmission tower. Approval of this application would allow for the installation of a 12-foot high "top hat" antenna extension to establish a wireless communications facility on the top of the existing transmission tower, in addition to the construction of a 17-foot, 2-inch by 17-foot, 2-inch ground-based equipment enclosure. The enclosure would be located within the legs of the existing PG&E tower on a 2.53-acre vacant parcel (APN 010-050-002) owned by PG&E at the edge of the Trilogy development, directly west of State Route 4. The parcel is located adjacent to a PG&E substation owned and operated by PG&E and accessed via John Muir Parkway.

The ground-based equipment pad, located inside the footprint of the PG&E tower, is proposed to be enclosed within an eight-foot-high precast concrete wall with a split face concrete masonry unit (CMU) appearance. Six antennas will be placed below the PG&E tower's conductors at a centerline height of 62 feet from finished grade, while the remaining six antennas will be placed at a 130-foot centerline height on a 12-foot high "top hat" design above the PG&E tower, resulting in an overall height of 134 feet, 6-inches from finished grade. Additionally, nine Remote Radio Heads (RRHs



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interchangeably referenced as Remote Radio Units or RRUs) will also be placed below the conductors near a height of 62 feet from finished grade.

As detailed in the applicant's written statement, AT&T is seeking to improve communications services to residences, businesses, public services, and area travelers in the city by proposing to place its equipment on an existing PG&E transmission tower. AT&T states that the proposed facility is needed to bring improved wireless communication capacity and coverage to the southeastern area of the city, which will expand AT&T's existing network, improve call quality, signal strength, and wireless connection services.

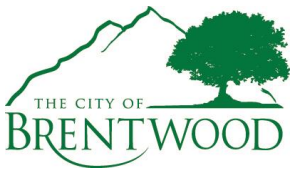
## **ANALYSIS**

### **General Plan Consistency - Public Facility (PF)**

The project site is located within the Public Facility (PF) designation of the City's General Plan, which is consistent with the site's PF (Public Facility) zoning. The PF designation applies to land areas reserved for government offices and facilities, public agency offices and facilities, and public utility facilities. The proposed project is a request to locate a wireless facility on an existing PG&E utility tower, which is considered a public utility facility, and is further consistent with the Public Facility designation of the City's General Plan. Additionally, the project is consistent with General Plan Policy LU 1-4 ("require new development to occur in a logical and orderly manner..."), as the proposal is to locate a wireless facility on an existing PG&E utility tower, rather than constructing a new tower specifically for the wireless facility. In other wireless facility proposals, wireless providers have proposed to construct a new freestanding tower to locate the antennas and equipment. In this case, the request to locate the facility on an existing PG&E utility tower has alleviated the need for a separate structure. The project is also consistent with Policy LU 1-5 ("encourage new development to be contiguous to existing development") as the adjacent parcel is a PG&E substation that is developed as a public utility facility.

### **Zoning Consistency - Public Facility**

As referenced above, the site is zoned PF (Public Facility) in which the purpose is to provide areas for public facilities such as government offices, community centers, schools, and parks. BMC Chapter 17.795 specifies the required permits for different types of facilities. A Conditional Wireless Facilities Permit is required for any new facility and collocation or modification to existing facilities for the following types of facilities:



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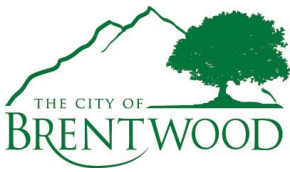
- all unconcealed facilities,
- all facilities in “discouraged” locations,
- all camouflaged (non-stealth) facilities in preferred locations, and
- all other facilities that do not meet the criteria for either an administrative wireless facilities permit under Section 17.795.040(B) or a Section 6409(a) collocation/ modification permit under Section 17.790.

BMC Section 17.795.020 defines “camouflaged” as a wireless facility to which the applicant applies some concealment techniques in order to blend the equipment in to the surrounding area or to appear to be an object that is congruent with its environment, but the equipment or concealment technique is readily apparent to the observer. In this case, the project would be considered a camouflaged (non-stealth) facility, as a draft condition of approval is included to require that all tower-mounted equipment be painted to match the tower and appear as part of the tower.

Wireless telecommunication providers typically prefer to mount antennas as high as possible, whether on an existing feature or on a new structure. Generally, cellular sites with substantially elevated antennae cover a greater range than those with antennae mounted closer to the ground. With a greater range per cellular site, carriers are able to reduce the number of individual sites necessary to adequately service a given area. BMC Section 17.795.090 (C)(2) states that a wireless facility must not exceed the applicable height limit for structures in the applicable zone. The PF zone does not have its own height regulations, but rather refers to the commercial office zone regulations, which allow for varied height depending on the adjacent zone. However, per BMC Section 17.210.004(E)(4), structures greater than two stories or 30 feet and not abutting a residential zone may be permitted subject to conditional use permit approval. In this case, the CUP for the additional height would be considered with the CUP request for the use. Given that the BMC explicitly allows for structures of more than two stories or 30 feet with a CUP, and in light of the conditions imposed, staff recommends development at the proposed height be approved.

### **Conditional Use Permit**

BMC Chapter 17.795 requires that the proposed wireless facility conform to all the criteria for a standard conditional use permit in accordance with BMC Section 17.830.005. The Planning Commission has the authority to approve, conditionally approve, or deny applications for conditional use permits. A conditional use permit may be granted only if the proposal conforms to all of the following general criteria, as well as to all other applicable specific criteria:



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*A. The location, size, design and operating characteristics of the proposed development must be compatible with and must not adversely affect the livability of appropriate development of abutting properties and the surrounding neighborhood. Consideration shall be given but not limited to:*

*1. Harmony in scale, bulk, coverage and density;*

One of the primary concerns in reviewing a conditional use permit application is the effect of the proposed use on surrounding properties, such as compatibility with the scale, bulk, coverage, and density of both existing and proposed land uses on surrounding lots. The Project is designed in a manner that is sensitive to nearby developments in that the antennas are located on an existing PG&E tower and all ground-mounted equipment is screened from view within a CMU enclosure underneath the PG&E tower; access is provided via John Muir Parkway and not through any residential neighborhood or commercial development; and the wireless facility is positioned on a PG&E tower measured approximately 545 feet away from the closest residential receptors. The scale of the antennas is minor in proportion to the overall tower structure. PG&E towers are a preferred location due to the height-dependent nature of wireless facilities, and the design and concealment of the facility offers the least intrusive means to provide wireless service.

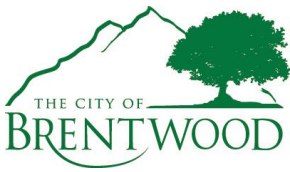
*2. The availability of public facilities and utilities;*

The site is served by the appropriate existing public facilities and utilities including potable and non-potable water, sewer services, storm drain improvements, electricity, communication cables, and solid waste facilities.

*3. The harmful effect, if any, upon desirable neighborhood character or the planned specialization of retail, commercial, or community service areas.*

The proposed use will be located on a site designated and zoned for public utility use and will be co-located on an existing PG&E tower; therefore, there would be no harmful effect upon the desirable neighborhood character. The facility is proposed to be located





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approximately 545 feet from the nearest residential use, providing an adequate buffer for nearby homes. The PG&E tower is located in between the PG&E substation and State Route 4. The proposed antenna/equipment being added is consistent with the existing utility facilities in the direct vicinity.

*4. Generation of traffic and the capacity of surrounding streets.*

The proposed project will be located within the confines of an existing PG&E tower footprint, and the use itself generates minimal traffic to the site, except as necessary for installation of new equipment and necessary periodic maintenance. The project site is adequately served by John Muir Parkway and not through any residential neighborhood.

*5. Any other relevant impact of the development.*

The wireless facility would not have any other relevant impacts, as the use would be contained within the footprint of an existing facility on the site and is not expected to generate any noise, lighting glare, or other negative impacts on the surrounding developments.

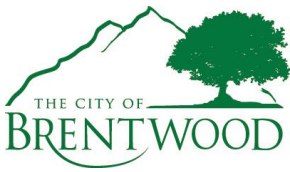
*B. The location, design, landscaping and screening, and overall site planning of the proposed development will provide an attractive, useful and convenient living, working, shopping or community-service area.*

The Project, as conditioned, is of integrated and harmonious design and is designed to be a part of or blend with the PG&E tower and adjacent substation environment, in that the new equipment would be contained within a solid enclosure and the antennas are of non-reflective material and conditioned to be painted to match the existing PG&E transmission tower. The Project is designed with particular attention to location, design, landscaping and screening, and overall site planning.

**Conditional Use Permit (Wireless Facilities Criteria)**

BMC Section 17.795.060 provides further criteria specific to a conditional wireless facilities permit, which the Planning Commission may conditionally approve when the proposal meets all the following requirements:





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- A. Public Hearing Notice. Public hearing notice has been duly given in accordance with BMC Section 17.800.009.

The City has distributed a Notice of Public Hearing to all property owners of record within 300 feet of the Project Site and published it in the Brentwood Press on March 8, 2024 in accordance with City policies, including BMC Section 17.800.009, and Government Code Section 65090, and a public hearing notice sign was posted on the site during the same timeframe.

- B. Deemed-Approval Notice. No more than 30-days before the applicable timeframe for review expires, the applicant must provide written notice to the Community Development Department and all persons entitled to notice in accordance with BMC Section 17.800.009.

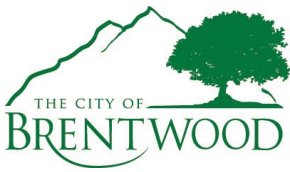
The Federal Communication's Commission (FCC) has established timeframes ("shot clocks") for state and local governments to act on any request for authorization to place, construct, or modify personal wireless services. The proposed application falls under a 90-day shot clock, as the new facility is proposed to be built on an existing PG&E tower, which begins when an application is filed but can be tolled ("paused") by a timely incomplete notice and can be extended by a mutual agreement, known as a tolling agreement, between the applicant and the approving agency. In this case, the application is scheduled before the Planning Commission on March 19, 2024 which is 75 days after the submittal of the application and well within the 90-day shot clock. The applicant provided City staff with notice within a timely fashion.

- C. Standard Conditional Use Permit Criteria. The proposed wireless facility conforms to all the criteria for a conditional use permit in accordance with BMC Section 17.830.005.

See the findings in the section above entitled "Conditional Use Permit."

- D. BMC Chapter 17.795 Compliance. The proposed wireless facility conforms to all the applicable criteria set out in Chapter 17.795, unless the applicant demonstrates that its proposal qualifies for the exception contained in Section 17.795.160(A).

The proposed wireless facility conforms to all the applicable criteria set out in BMC Chapter 17.795. As identified in the Project Support Statement



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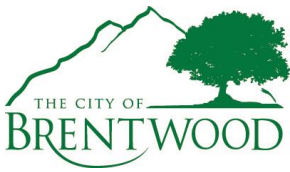
prepared by AT&T, rather than proposing several freestanding facilities, the existing PG&E tower provides an effective approach to allow the facility to blend in with the surrounding environment. The wireless facility is proposed adjacent to a PG&E substation, and the facility is located approximately 545 feet from the nearest residence. Strict compliance with the maximum height of two stories would preclude an effective design solution as the range of the equipment would be severely reduced and additional cellular locations would be required throughout Brentwood to fill gaps in the network created by the decreased range. In accordance with Chapter 17.795.160(A) of the Municipal Code, the proposed location of the facility is the least intrusive means for the carrier to achieve its coverage and capacity goals.

- E. Least Intrusive Means. The applicant provided factual evidence and meaningful comparative analysis to show that all alternative locations and designs identified were technically infeasible or not potentially available.

AT&T's support statement includes an Environmental Noise Assessment, Radio Frequency Compliance Report, and Coverage and Capacity Data. As proposed, the ground based equipment would be enclosed within a secured eight-foot-high concrete masonry unit (CMU) wall. The twelve antennas would be non-reflective and painted to match the existing PG&E transmission tower. In accordance with Chapter 17.795 of the Municipal Code, the proposed location of the facility is the least intrusive means for the carrier to achieve its coverage and capacity goals. This analysis demonstrates that alternative locations identified were technically infeasible or not potentially available. Rather than proposing several freestanding facilities, AT&T would collocate the wireless facility on an existing PG&E tower to achieve the required height for service and provide an appropriate design that will blend in to the surrounding environment.

**DATE OF NOTICE**

The City of Brentwood published a public hearing notice in the Brentwood Press and mailed it to all property owners within 300 feet of the site on March 8, 2024. The applicant also posted the project site with the required signage. The City has not received any public comments regarding this project.



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**ENVIRONMENTAL DETERMINATION**

The proposed project qualifies as a Class 1 categorical exemption under the California Environmental Quality Act (CEQA Guidelines Section 15301 – Existing Facilities) in that it consists of the construction of a new small facility or structure and only minor modifications are being made to an existing facilities or structures.

**ATTACHMENT(S)**

1. Planning Commission Resolution No. 24-010
2. Project Plans date stamped received February 2, 2024
3. Project Support Statement
4. Noise Study
5. Photo Simulations
6. RF Study
7. Propagation Maps