

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

A REQUEST TO MODIFY THE PROVISIONS OF THE DEVELOPMENT CODE BY AMENDING SECTION 9.78 “WIND TURBINES” OF TITLE 9 “DEVELOPMENT CODE” OF THE APPLE VALLEY MUNICIPAL CODE AS IT RELATES TO SITE DEVELOPMENT STANDARDS FOR ALL WIND ENERGY CONVERSION SYSTEMS LOCATED WITHIN THE TOWN OF APPLE VALLEY.

Recommended Action:

**Move to open the public hearing and take testimony.
Close the public hearing. Then:**

1. **Determine** that, pursuant to Section 15061(b)(3) of the State Guidelines to Implement the California Environmental Quality Act (CEQA), the project is exempt from environmental review because the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA.
2. **Find** the facts presented within the staff report support the required Findings for approval of an amendment to the Development Code, and adopt the Findings.
3. **Find** that the proposed Town Council Ordinance is consistent with the Goals and Objectives of the adopted Town of Apple Valley General Plan and that it is necessary to preserve the health, safety and general welfare of the citizens of Apple Valley.
4. **Move** to waive the reading of Ordinance No. 403 in its entirety and read by title only.
5. **Introduce** Ordinance No. 403, amending Title 9 “Development Code” of the Town of Apple Valley Municipal Code by amending Section 9.78 “Wind Turbines” of Title 9 “Development Code” of the Apple Valley Municipal Code as it relates to site development standards for all wind energy conversion systems located within the Town of Apple Valley.
6. **Direct** staff to file a Notice of Exemption.

Proposed by: Planning Division

Item Number _____

Town Manager Approval: _____ **Budgeted Item** Yes No N/A

Town Council Meeting: January 26, 2010

Summary Statement:

It is the Town's desire to promote the use of alternative energies. At the July 28, 2009 Town Council meeting, the Council initiated a Development Code Amendment to review existing wind turbine regulations. The existing ordinance was adopted by the Town Council on December 11, 2001. During the past eight years, technological advancements have brought forth new designs that provide consumers with a broader range of options with which to utilize wind generated energy.

Subsequent to the Council's direction, at the September 16, 2009 Planning Commission meeting, staff presented the Commission with a brief overview of the available wind turbine technologies and existing site development standards within Apple Valley. Additionally, the Commission was provided with a matrix that identified wind turbine site development standards adopted by several other communities.

During the regularly scheduled Planning Commission meeting of October 21, 2009, a public workshop was held that provided interested individuals the opportunity to discuss, in an open forum, how the current wind turbine site development standards could be changed to promote the use of wind generated energy. Several individuals associated with the wind turbine industry offered information and comments that assisted the Planning Commission in its discussions.

On December 2, 2009, the Planning Commission held a public hearing for Development Code Amendment No. 2009-006. Staff presented for the Commission's consideration Planning Commission Resolution No. 2009-007, which is a culmination of the discussion and direction provided to staff during the workshop of October 21, 2009. Commission discussion focused primarily upon the issue of lot size. Finding that lot size was one of the most important components to this Development Code Amendment, the Commission had difficulty with its decision. Two Commissioners supported a minimum lot size of one (1) net acre and two Commissioners supported a minimum lot size of two and one-half (2½) acres. After in depth discussion, the Commission compromised on a recommendation for a minimum lot size of two (2) net acres.

The City of Hesperia is currently reviewing its site development standards for the placement of wind turbines. Similar to Apple Valley, Hesperia is also struggling with making a determination relating to lot size requirements. Its Planning Commission recommended a two (2) acre minimum, while staff is providing an alternate proposal for permitting wind turbines on lots with a minimum size of 30,000 square feet. Hesperia is concerned with making the appropriate determination and has scheduled further wind turbine discussions for January 19, 2009.

Wind energy technology is rapidly evolving and, therefore, designs may be developed in the near future that would be more appropriate for lots less than two (2) acres in size. Historically, Apple Valley has taken a conservative approach when deciding upon the relaxation of Development Code standards. Staff recommends that the Council continue with this approach. Should the need arise, further modifications can be brought forth for consideration at a later date.

In summary, the changes recommended by Planning Commission Resolution No. 2009-007 include a reduction to setbacks, an increase to the height restrictions and a reduction to the minimum lot size required for the installation of a wind energy

conversion system. In addition, non-substantive modifications have been incorporated to address current industry standards. Recommended changes to the existing Development Code are provided below. The underline represents new text and the ~~strikeout~~ represents text to be deleted. The Town Council should discuss these possible changes and add to them, delete them or modify them, as appropriate.

CHAPTER 9.78 ~~WIND TURBINES~~ WIND ENERGY CONVERSION SYSTEMS (WECS) (ADDED BY ORD. 241)

9.78.010 PURPOSE

This Chapter is intended to establish regulations and procedures for the review of any WECS proposed for installation within the Town of Apple Valley that are not otherwise permitted or regulated in this Development Code. It is intended to provide a mechanism to take advantage of renewable, green energy while in order to minimizing potential adverse effects on surrounding properties and infrastructure or on the public health, safety and welfare.

9.78.020 APPLICABILITY

No WECS shall be erected, placed, displayed, or maintained in any district within the Town of Apple Valley, except as specifically allowed in this Chapter. The number, design, type and size of such WECS, as outlined in this Chapter, are intended to be minimum standards which do not necessarily ensure compatibility with building architecture, the neighborhood, and community appearance. Therefore, in addition to these standards, consideration shall be given to a WECS relationship to the overall appearance of the subject property as well as the surrounding community. Compatible design, simplicity and effectiveness, and conformance to the design guidelines provided by Chapters 9.31 "Residential Design Standards", 9.37 "Commercial and Office District Design Standards" and 9.47 "Industrial Design Standards" of this Code, are to be used in determining approvals.

A Development Permit approved by the Planning Commission, as provided in Chapter 9.17 "Development Permits" of this Code shall be required prior to the installation of any and all WECS. The Commission may approve, conditionally approve, modify or deny requests for the installation of WECS. The Commission may establish conditions and limitations necessary to minimize detrimental effects on surrounding property and/or the general public.

A Development Permit allows for the architectural/aesthetic review of structures permitted by this Code for the various zoning districts. A Development Permit is not required if a Conditional Use Permit has been submitted and approved where the Commission has addressed the aesthetics and site design issues required under a Development Permit.

9.78.030 ADMINISTRATION

A. Administration. The Director is authorized by the Town Council to administer and enforce the provisions of this Chapter, unless otherwise provided in this Chapter. The Director may designate a representative to act in his/her place.

B. Interpretation

1. This Chapter shall be interpreted in a manner which best fulfills the intent of its provisions.
2. Questions arising from the application of the Chapter shall be interpreted by the Director. If any inconsistency still exists in the interpretation, an appeal application shall be referred to the Planning Commission for its determination.

C. Appeals

1. Any decision or determination by the Director may be appealed to the Planning Commission in accordance with the provisions of this Development Code.

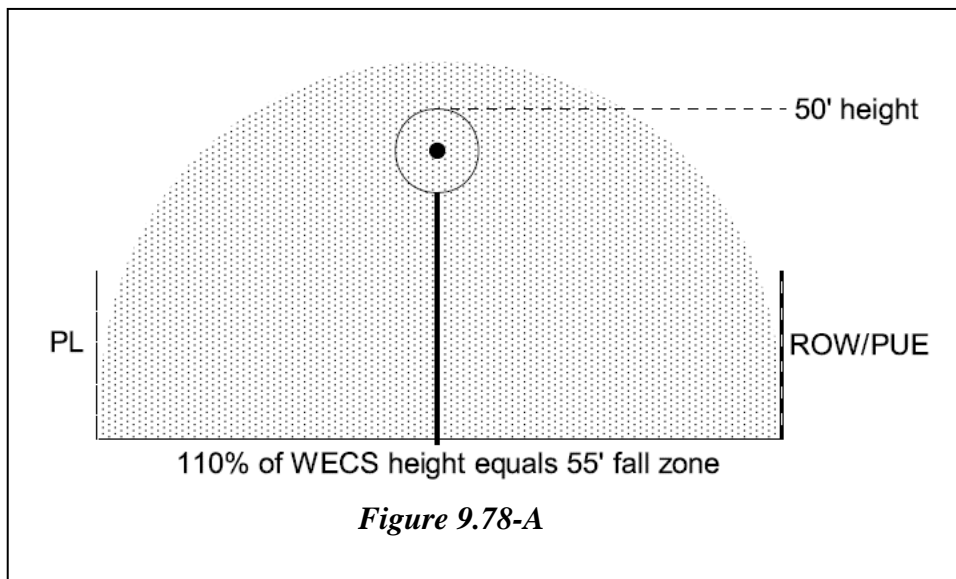
2. Any decision of the Planning Commission may be appealed to the Town Council in accordance with the provisions of this Development Code.

9.78.040 DEFINITIONS

Small Wind Turbine. A wind activated alternative energy generating device with a maximum output of 1,500 Watts, measuring no more than ten (10) feet in length, 100 pounds in weight and using individual blades of no more than six (6) feet in length.

Large Wind Turbine. A wind activated alternative energy generating device with a maximum output of more than 1,500 Watts, measuring more than ten (10) feet in length, 100 pounds in weight and using individual blades of more than six (6) feet in length.

Fall Zone. The potential fall area for wind energy conversion systems (WECS). The fall area is measured by using 110 percent of the total height as the radius around the center point of the base of the tower. (Figure 9.78-A)



Height. The vertical distance from ground level to the top of the WECS, including the blade when at its highest point.

Net-Metering Service. A service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period. Net Metering does not allow the sale of power back to the electric company or into the wholesale electricity market.

Overspeed Control. A mechanism used to limit the speed of blade rotation to below the safe design limits of the WECS.

Private, Non-Commercial WECS. A single WECS installed on a developed property for the purposes of providing energy for on-site consumption.

Wind Energy conversion System (WECS). A device designed or used for the purpose of converting wind energy into electrical or mechanical power, including all interconnection and auxiliary equipment.

Windfarm. Multiple WECS installed at a single property or area for the purpose of generating larger quantities of electrical or mechanical power for transmission to a public or private utility.

9.78.050 PRIVATE, NON-COMMERCIAL, WECS

- A. The installation of a private, non-commercial, WECS is permitted ~~as an accessory use~~ within any ~~Residential, Commercial/Office or Industrial~~ zoning designation upon approval of a Development Permit ~~approved~~ by the Planning Commission. The Development Permit review process grants the Planning Commission authority to modify these requirements based upon neighborhood compatibility.
1. **Lot Size.** WECS shall not be installed upon a lot or recorded parcel less than ~~five (5) acres~~ two (2) net acres in size.
 2. **Setback Requirements.**
 - a. WECS must be located behind the rear of the primary structure.
 - b. WECS shall be setback a distance equal to the fall zone from any property line, overhead utility lines, utility easement or right-of-way.
 3. **Height.** Roof-top mounted WECS are subject to the maximum height permitted within the applicable zoning designation. There is no maximum height for a free-standing WECS, provided that the structure meets the minimum setback requirements.
- ~~A Small WECS shall not be installed or located within one hundred (100) feet from any property line.~~
3. ~~A Small WECS shall not be installed within fifty (50) feet of another structure on site, unless directly mounted upon that structure.~~
 4. ~~A Small WECS shall not be located within 250 feet of a residential structure located upon an adjoining lot or recorded parcel.~~
 5. ~~No portion of a Small WECS, including any blade, guy wire or supporting structure, shall exceed a height of thirty-five (35) feet.~~
 4. **Noise.** No WECS shall generate a sound level in excess of 50 dBA, as measured at the nearest property line, during the hours of 7:00 a.m. to 10:00 p.m., nor a level in excess of 40 dBA during the hours of 10:00 p.m. to 7:00 a.m. except during extreme weather conditions.
 5. **Design Standards.**
 - a. During the Development Permit review process, each WECS shall be reviewed by the Planning Commission to ensure the WECS are installed in a manner that will not significantly detract from existing views.
 - b. WECS must consist of non-reflective materials.
 - c. Monopole mounted WECS are preferred.
 - d. WECS requiring the use of guyed wires are discouraged; however, guyed wires may be permitted based upon neighborhood compatibility.
 6. **Net-Metering.** Private, noncommercial WECS may be net-metered with written authorization provided by the utility company.
 7. Only one (1) WECS shall be permitted per developed lot. Any additional WECS, or any WECS located on a vacant parcel, will be considered a “windfarm” and subject to the Planning Commission’s review and approval of a Conditional Use Permit.
 7. ~~Each Wind Turbine shall be screened from view of any public right of way and adjoining property, as determined by the Planning Commission during Development Permit review.~~
 8. Each WECS shall be operated and maintained in sound working order in conformance with the manufacturer's specifications at all times. This maintenance shall include the physical appearance of the device so it does not present an unsightly appearance. A copy of the manufacturer's specifications and use instructions shall be submitted with any application for review by the Planning Commission and/or Town Council and shall be retained within the public hearing record/file for that application.

9. Any WECS that is not operated for a continuous period of six (6) months shall be considered abandoned, and the owner of such WECS shall remove the same within thirty (30) days of receipt of written notice from the Town notifying the owner of such abandonment. If the owner does not remove the equipment, along with all associated and ancillary equipment, devices, structures or support for that WECS, or does not request a hearing before the Planning Commission on the issue of whether the equipment is abandoned and subject to removal, the Town may remove the equipment and store it in a secure location. The owner shall have fourteen (14) days from the date the Town provides the owner with written notice of removal of the equipment, and notification of the current location of equipment, to reclaim the equipment. If the equipment is not reclaimed in accordance with this section, the Town may dispose of the equipment in accordance with the Town's existing policy for disposal of abandoned or lost property.

Failure to remove an abandoned WECS within said thirty (30) days shall be grounds to remove the device at the owner's expense.

10. A Building Permit, issued by the Town of Apple Valley, shall be obtained prior to the installation of a WECS system.
11. Every WECS shall be installed strictly per the Manufacturer's Installation specifications, or as modified and certified by an Engineer licensed by the State of California.
12. The Commission may impose Conditions of Approval that are necessary to address health, safety, community welfare and community aesthetic issues or concerns raised during the Development Permit review.
13. Noticing of the Development Permit shall include all properties within 1,000 feet of the site requesting the installation of a WECS.
14. No WECS, or associated and ancillary equipment, batteries, devices, structures or support(s) shall be located within any required front, side or rear yard setback area.
15. No wiring between a WECS and ~~another WECS~~, or the main or accessory structure on site, or any associated and ancillary equipment, batteries, devices, structures or support(s) for any WECS, shall be located above ground level.
16. When a WECS system is removed from a site, all associated and ancillary equipment, batteries, devices, structures or support(s) for that system shall also be removed.

~~**B.** The installation of a private, non-commercial, Large WECS is expressly prohibited within the R-LD, Low Density Residential, R-E, Estate Residential, R-EQ, Equestrian Residential, R-SF, Single Family Residential, and R-M, Multiple Family Residential, Zoning Districts and is permitted within the R-VLD, Very Low Density Residential, R-A, Residential Agriculture, and PRD, Planned Residential Districts, and any Commercial/Office or Industrial Zoning District upon approval, by the Planning Commission, of a Development Permit, subject to the following:~~

- ~~1. A Large WECS shall not be installed upon a lot or recorded parcel of less than ten (10) acres in size.~~
- ~~2. A Large WECS shall not be installed or located within three hundred (300) feet from any property line.~~
- ~~3. A Large WECS shall not be installed within one hundred, fifty (150) feet of another structure on site, unless directly mounted upon that structure.~~
- ~~4. A Large WECS shall not be located within 500 feet of a residential structure located upon an adjoining lot or recorded parcel.~~
- ~~5. No portion of a Large WECS, including any blade, guy wire or supporting structure, shall exceed a height of seventy five (75) feet.~~
- ~~6. No Large WECS shall generate a sound level in excess of 50 dBA, as measured at the nearest property line, during the hours of 7:00 a.m. to 10:00 p.m., nor a level in excess of 40 dBA during the hours of 10:00 p.m. to 7:00 a.m.~~

- ~~7. Each Large WECS shall be screened from view of any public right of way and adjoining property, as determined by the Planning Commission during Development Permit review.~~
- ~~8. Each Large WECS shall be operated and maintained in sound working order in conformance with the manufacturer's specifications at all times. This maintenance shall include the physical appearance of the devices so that it does not present an unsightly appearance. A copy of the manufacturer's specifications and use instructions shall be submitted with any application for review by the Planning Commission and/or Town Council and shall be retained within the public hearing record/file for that application.~~
- ~~9. Any Large WECS that is not operated for a continuous period of six (6) months shall be considered abandoned, and the owner of such WECS shall remove the same within thirty (30) days of receipt of written notice from the Town notifying the owner of such abandonment. If the owner does not remove the equipment, along with all associated and ancillary equipment, devices, structures or support for that WECS, or does not request a hearing before the Planning Commission on the issue of whether the equipment is abandoned and subject to removal, the Town may remove the equipment and store it in a secure location. The owner shall have fourteen (14) days from the date the Town provides the owner with written notice of removal of the equipment, and notification of the current location of equipment, to reclaim the equipment. If the equipment is not reclaimed in accordance with this section, the Town may dispose of the equipment in accordance with the Town's existing policy for disposal of abandoned or lost property.

Failure to remove an abandoned Large WECS within said thirty (30) days shall be grounds to remove the device at the owner's expense.~~
- ~~10. A Building Permit, issued by the Town of Apple Valley, shall be obtained prior to the installation of a Large WECS system.~~
- ~~11. Every Large WECS shall be installed strictly per the Manufacturer's Installation specification, or as modified and certified by an Engineer licensed by the State of California.~~
- ~~12. The Commission may impose Conditions of Approval that are necessary to address health, safety, community welfare and community aesthetic issues or concerns raised during the Development Permit review.~~
- ~~13. Noticing of the Development Permit shall include all properties within 1,500 feet of the site requesting the installation of a Large WECS.~~
- ~~14. No Large WECS, or associated and ancillary equipment, batteries, devices, structures or support(s) shall be located within any required front, side or rear yard setback area.~~
- ~~15. No wiring between a Large WECS and another WECS, or the main or accessory structure on site, or any associated and ancillary equipment, batteries, devices, structures or support(s) for any WECS, shall be located above ground level.~~
- ~~16. When a Large WECS system is removed from a site, all associated and ancillary equipment, batteries, devices, structures or support(s) for that system shall also be removed.~~

9.78.060 BUFFERING AND SCREENING OF PRIVATE, NON-COMMERCIAL, WIND TURBINES

A. General

- ~~1. Buffers such as landscaping, earth berms and decorative architecturally treated walls, shall be used to minimize impacts to adjacent properties.~~
- ~~2. Where screening is required, a combination of elements shall be used, including solid masonry wall, berms and landscaping.~~

9.78.070 GENERAL REQUIREMENTS FOR THE INSTALLATION OF ANY WECS.

- A.** The safety of the design and construction of all WECS, including towers and associated equipment, shall be certified by the manufacturer or by an Engineer Licensed by the State of California.
- B.** Safety wires shall be installed on the turnbuckles on guy wires of guyed WECS towers.
- C.** All WECS towers shall be equipped with manual and automatic over-speed controls. The rotor and over-speed control design and fabrication shall conform with good engineering practices and shall be certified by the manufacturer or by an Engineer Licensed by the State of California.
- D.** All installations shall conform to the requirements of the latest adopted version of the National Electrical Code, adopted by the Town of Apple valley.
- E.** The compatibility of the tower structure with the rotors and others components of the WECS shall be certified by the manufacturer or by an Engineer Licensed by the State of California.
- F.** All WECS towers or facilities shall either have tower climbing apparatus located not closer than twelve (12) feet to the ground or be un-climbable by design for the first twelve (12) feet.
- G.** WECS sited on top of, or attached to and extending above the roof line of, an existing structure shall comply with all applicable provisions of the latest version of the Uniform Building Code, as adopted buy the Town of Apple Valley. Certification by an Engineer Licensed by the State of California shall be required. Any device located in such a manner shall be subject to the height limitations of the underlying zoning.
- H.** No part of a WECS tower or facility shall be located upon, within or extend over a drainage, utility or other established easement(s). No portion or part of the WECS shall be located on or over any property line(s). The base of any WECS or the guy wire anchors of a guyed WECS tower shall not be located in any required minimum front, side or rear setback area. No such WECS shall be located between the main structure on site and any existing or planned public right-of-way.
- I.** Clearance between any WECS and existing or planned electrical lines shall be in compliance with the requirements of the most recently adopted edition of the National Electrical Safety Code.
- J.** Efforts should be made to site WECS to reduce the likelihood of blocking or reflecting television or other communications signals and from blocking established views. If signal interference occurs, the WECS owner shall make all reasonable efforts to resolve the problem. If the problem(s) cannot be eliminated or reduced to an acceptable level by the individual experiencing the interference, then the WECS owner shall shut down and remove the source of interference within thirty (30) days from the date of receiving official notice from the Town of Apple Valley.
- K.** Nothing within this Chapter shall be construed to allow the infringement of the enjoyment rights of a property owner by another by the installation, maintenance or use of a WECS.
- L.** The owner of any WECS shall provide, as part of the submission for review by the Planning Commission of a Development Permit, proof of liability insurance that specifically addresses the installation, use and maintenance of the WECS.
- M.** Homebuilt, experimental and prototype WECS shall be allowed provided they comply with all applicable regulations detailed within this Chapter.
- N.** Intentionally left blank.
- O.** The interconnections between a wine turbine and the electric utility shall be in compliance to the most recently adopted edition of the National Electrical Safety Code and all Federal regulations. Certification shall be submitted in writing by the owner that the WECS will automatically disconnect from the utility when there is no power input from the utility.

P. Battery storage units associated with a WECS shall be in compliance with the latest adopted edition of the National Electric Code or other applicable Codes and shall be inspected by an inspector for the Town of Apple Valley.

Q. The safety of structural components of reconstructed or reconditioned WECS, and the compatibility of the rotors of reconstructed or reconditioned WECS, shall be certified by an Engineer Licensed by the State of California. The safety of electrical components of reconstructed or reconditioned WECS shall be certified by an Engineer Licensed by the State of California. The safety of all modifications to any WECS shall be certified by an Engineer Licensed by the State of California. Certification of safety is required before any Building Permit for a WECS is issued for modifications made prior to installation. Certification of the safety of modifications made after the WECS has been installed shall also be subject to the requirements of a Building Permit. Failure to have the safety of any modifications certified either prior to installation, or prior to use of a system modified after installation, shall result in the revocation of the Building Permit and any discretionary approvals granted for the WECS until such certification has been obtained and provided to the Town of Apple Valley.

FINDINGS:

Prior to the approval of any Amendment to the Development Code, the Council, based upon the advice of the Planning Commission, must make specific "Findings" as listed within the Code. Code Section 9.06.060 "Required Findings" of Chapter 9.06 "Amendments to Zoning Provisions" specifies that two (2) Findings must be made in a positive manner to approve an Amendment. These Findings, along with a comment to address each, are presented below.

9.06.060 "Required Findings

A. The proposed amendment is consistent with the General Plan; and

Comment: The General Plan provides the basic framework for land development within the Town of Apple Valley, with the Development Code furthering the intent and guidance of the General Plan by establishing the land uses permitted within the various land use districts, as well as the procedures the specific land use processes which fulfill the Plan's Goals and Policies. The General Plan specifically identifies programs and policies addressing the Town's desire to encourage the use of clean and/or renewable alternative energy sources.

B. The proposed amendment will not be detrimental to the public health, safety or welfare of the Town or its residents.

Comment: Amending the Code as proposed under Amendment No. 2009-006 will modify the Town's Development Code by expanding the number of properties eligible to receive approvals for the use of wind energy conversion systems. Expanding the use of renewable energy opportunities is beneficial to the public health by reducing hazardous carbon emissions; therefore, Development Code Amendment No. 2009-006 will not be detrimental to the public health, safety or welfare.

NOTICING

Development Code Amendment No. 2009-006 was advertised as a public hearing in the Apple Valley News newspaper on January 15, 2010 as required under Development Code Section 9.13.030 "Notice of Public Hearings".

RECOMMENDATION

Following receipt of public input and discussion by the Council, it is recommended that the Council move to introduce Ordinance No. ____ amending Title 9 "Development Code" of the Town of Apple Valley Municipal Code Section 9.78 "Wind Turbines" as it relates to modifying the site development standards for all wind energy conversion systems located within the Town of Apple Valley.

Attachments:

Planning Commission Staff Report and Minutes for September 16th, October 21st and December 2, 2009
Planning Commission Resolution No. 2009-007
Draft Ordinance No. ____

ORDINANCE NO. 403

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY AMENDING SECTION 9.78 “WIND TURBINES” OF TITLE 9 “DEVELOPMENT CODE” OF THE APPLE VALLEY MUNICIPAL CODE AS IT RELATES TO SITE DEVELOPMENT STANDARDS FOR ALL WIND ENERGY CONVERSION SYSTEMS LOCATED WITHIN THE TOWN OF APPLE VALLEY.

The Town Council of the Town of Apple Valley, State of California, does ordain as follows:

Section 1. Recitals

- (i) Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on October 24, 2000; and
- (ii) Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley has been previously modified by the Town Council on the recommendation of the Planning Commission; and
- (iii) Specific changes to Title 9 “Development Code” of the Town of Apple Valley Municipal Code include amending Section 9.78 “Wind Turbines” of Title 9 “Development Code” of the Apple Valley Municipal Code as it relates to modifying the site development standards for all wind energy conversion systems located within the Town of Apple Valley; and
- (iv) On January 15, 2010, Development Code Amendment No. 2009-006 was duly noticed in the Apple valley News, a newspaper of general circulation within the Town of Apple Valley; and
- (v) The project is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State Guidelines to Implement CEQA, which states that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA; and
- (vi) On December 2, 2009, the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised public hearing on Development Code Amendment No. 2009-006, receiving testimony from the public and adopted Planning Commission Resolution No. 2009-007 recommending adoption of this Ordinance; and
- (viii) Development Code Amendment No. 2009-006 is consistent with Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley and shall promote the health, safety, and general welfare of the citizens of the Town of Apple Valley.

Section 2. Findings

(i) Find that the changes proposed by Development Code Amendment No. 2009-006 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

(ii) Pursuant to the State Guidelines to Implement the California Environmental Quality Act (CEQA), specifically Section 15061(b)(3), the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is exempt from, and not subject to, CEQA.

Section 3. Amend Section 9.78 "Wind Turbines" of the Development Code to read as follows:

"CHAPTER 9.78 WIND ENERGY CONVERSION SYSTEMS (WECS)

9.78.010 PURPOSE

This Chapter is intended to establish regulations and procedures for the review of any WECS proposed for installation within the Town of Apple Valley that are not otherwise permitted or regulated in this Development Code. It is intended to provide a mechanism to take advantage of renewable, green energy while minimizing potential adverse effects on surrounding properties and infrastructure or on the public health, safety and welfare.

9.78.020 APPLICABILITY

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A Development Permit allows for the architectural/aesthetic review of structures permitted by this Code for the various zoning districts. A Development Permit is not required if a Conditional Use Permit has been submitted and approved where the Commission has addressed the aesthetics and site design issues required under a Development Permit.

9.78.030 ADMINISTRATION

A. *Administration.* The Director is authorized by the Town Council to administer and enforce the provisions of this Chapter, unless otherwise provided in this Chapter. The Director may designate a representative to act in his/her place.

B. Interpretation

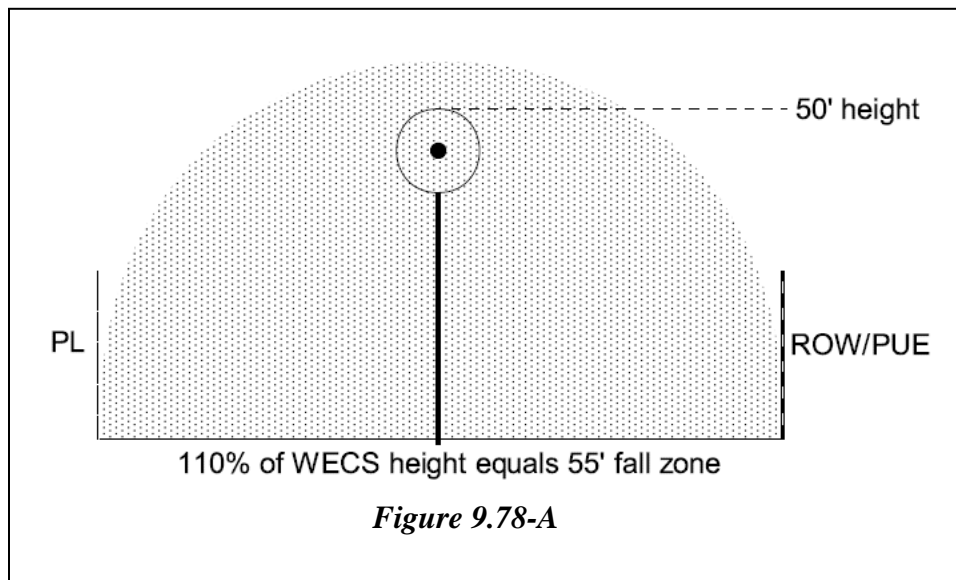
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2. Questions arising from the application of the Chapter shall be interpreted by the Director. If any inconsistency still exists in the interpretation, an appeal application shall be referred to the Planning Commission for its determination.

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2. Any decision of the Planning Commission may be appealed to the Town Council in accordance with the provisions of this Development Code.

9.78.040 DEFINITIONS

Fall Zone. The potential fall area for the wind energy conversion system. The fall area is measured by using 110 percent of the total height as the radius around the center point of the base of the tower. (Figure 9.78-A)



Height. The vertical distance from ground level to the top of the WECS, including the blade when at its highest point.

Net-Metering Service. A service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period. Net Metering does not allow the sale of power back to the electric company or into the wholesale electricity market.

Overspeed Control. A mechanism used to limit the speed of blade rotation to below the safe design limits of the WECS.

Private, Non-Commercial WECS. A single WECS installed on a developed property for the purposes of providing energy for on-site consumption.

Wind Energy conversion System (WECS). A device designed or used for the purpose of converting wind energy into electrical or mechanical power, including all interconnection and auxiliary equipment.

Windfarm. Multiple WECS installed at a single property or area for the purpose of generating larger quantities of electrical or mechanical power for transmission to a public or private utility.

9.78.050 PRIVATE, NON-COMMERCIAL, WECS

The installation of a private, non-commercial, WECS is permitted as an accessory use within any zoning designation upon approval of a Development Permit by the Planning Commission. The Development Permit review process grants the Planning Commission authority to modify these requirements based upon neighborhood compatibility.

- A. Lot Size.** WECS shall not be installed upon a lot or recorded parcel of less than two (2) net acres in size.
- B. Setback Requirements.**
 - 1.** WECS must be located behind the rear of the primary structure.
 - 2.** WECS shall be setback a distance equal to the fall zone from any property line, overhead utility lines, utility easement or right-of-way.
- C. Height.** Roof-top mounted WECS are subject to the maximum height permitted within the applicable zoning designation. There is no maximum height for a free-standing WECS, provided that the structure meets the minimum setback requirements.
- D. Noise.** No WECS shall generate a sound level in excess of 50 dBA, as measured at the nearest property line, during the hours of 7:00 a.m. to 10:00 p.m., nor a level in excess of 40 dBA during the hours of 10:00 p.m. to 7:00 a.m. except during extreme weather conditions.
- E. Design Standards.**
 - 1.** During the Development Permit review process, each WECS shall be reviewed by the Planning Commission to ensure the WECS are installed in a manner that will not significantly detract from existing views.
 - 2.** WECS must consist of non-reflective materials.
 - 3.** Monopole mounted WECS are preferred.
 - 4.** WECS requiring the use of guyed wires are discouraged; however, guyed wires may be permitted based upon neighborhood compatibility.
- F. Net-Metering.** Private, noncommercial WECS may be net-metered with written authorization provided by the utility company.
- G.** Only one (1) WECS shall be permitted per developed lot. Any additional WECS, or any WECS located on a vacant parcel, will be considered a “windfarm” and subject to the Planning Commission’s review and approval of a Conditional Use Permit.
- H.** Each WECS shall be operated and maintained in sound working order in conformance with the manufacturer's specifications at all times. This maintenance shall include the physical appearance of the device so it does not present an unsightly appearance. A copy of the manufacturer's specifications and use instructions shall be submitted with any application for review by the Planning Commission and/or Town Council and shall be retained within the public hearing record/file for that application.
- I.** Any WECS that is not operated for a continuous period of six (6) months shall be considered abandoned, and the owner of such WECS shall remove the same within thirty (30) days of receipt of written notice from the Town notifying the owner of such abandonment. If the owner does not remove the equipment, along with all associated and ancillary equipment, devices, structures or support for that WECS, or does not request a hearing before the Planning Commission on the issue of whether the equipment is abandoned and subject to removal, the Town may remove the equipment and store it in a secure location. The owner shall have fourteen (14) days from the date the Town provides the owner with written notice of removal of the equipment, and notification of the current location of equipment, to reclaim the equipment. If the equipment is not reclaimed in accordance with this section, the Town may dispose of the equipment in accordance with the Town’s existing policy for disposal of abandoned or lost property.

Failure to remove an abandoned WECS within said thirty (30) days shall be grounds to remove the device at the owner's expense.

- J.* A Building Permit, issued by the Town of Apple Valley, shall be obtained prior to the installation of a WECS system.
- K.* Every WECS shall be installed strictly per the Manufacturer's Installation specifications, or as modified and certified by an Engineer licensed by the State of California.
- L.* The Commission may impose Conditions of Approval that are necessary to address health, safety, community welfare and community aesthetic issues or concerns raised during the Development Permit review.
- M.* Noticing of the Development Permit shall include all properties within 1,000 feet of the site requesting the installation of a WECS.
- N.* No WECS, or associated and ancillary equipment, batteries, devices, structures or support(s) shall be located within any required front, side or rear yard setback area.
- O.* No wiring between a WECS and the main or accessory structure on site, or any associated and ancillary equipment, batteries, devices, structures or support(s) for any WECS, shall be located above ground level.
- P.* When a WECS system is removed from a site, all associated and ancillary equipment, batteries, devices, structures or support(s) for that system shall also be removed.

9.78.070 GENERAL REQUIREMENTS FOR THE INSTALLATION OF ANY WECS.

- A.* The safety of the design and construction of all WECS, including towers and associated equipment, shall be certified by the manufacturer or by an Engineer Licensed by the State of California.
- B.* Safety wires shall be installed on the turnbuckles on guy wires of guyed WECS towers.
- C.* All WECS towers shall be equipped with manual and automatic over-speed controls. The rotor and over-speed control design and fabrication shall conform with good engineering practices and shall be certified by the manufacturer or by an Engineer Licensed by the State of California.
- D.* All installations shall conform to the requirements of the latest adopted version of the National Electrical Code, adopted by the Town of Apple valley.
- E.* The compatibility of the tower structure with the rotors and others components of the WECS shall be certified by the manufacturer or by an Engineer Licensed by the State of California.
- F.* All WECS towers or facilities shall either have tower climbing apparatus located not closer than twelve (12) feet to the ground or be un-climbable by design for the first twelve (12) feet.
- G.* WECS sited on top of, or attached to and extending above the roof line of, an existing structure shall comply with all applicable provisions of the latest version of the Uniform Building Code, as adopted by the Town of Apple Valley. Certification by an Engineer Licensed by the State of California shall be required. Any device located in such a manner shall be subject to the height limitations of the underlying zoning.
- H.* No part of a WECS tower or facility shall be located upon, within or extend over a drainage, utility or other established easement(s). No portion or part of the WECS shall be located on or over any property line(s). The base of any WECS or the guy wire anchors of a guyed WECS tower shall not be located in any required minimum front, side or rear setback area. No such WECS shall be located between the main structure on site and any existing or planned public right-of-way.
- I.* Clearance between any WECS and existing or planned electrical lines shall be in compliance with the requirements of the most recently adopted edition of the National Electrical Safety Code.
- J.* Efforts should be made to site WECS to reduce the likelihood of blocking or reflecting television or other communications signals and from blocking established views. If signal interference occurs, the WECS owner shall make all reasonable efforts to resolve the problem. If the problem(s) cannot be

eliminated or reduced to an acceptable level by the individual experiencing the interference, then the WECS owner shall shut down and remove the source of interference within thirty (30) days from the date of receiving official notice from the Town of Apple Valley.

- K.** Nothing within this Chapter shall be construed to allow the infringement of the enjoyment rights of a property owner by another by the installation, maintenance or use of a WECS.
- L.** The owner of any WECS shall provide, as part of the submission for review by the Planning Commission of a Development Permit, proof of liability insurance that specifically addresses the installation, use and maintenance of the WECS.
- M.** Homebuilt, experimental and prototype WECS shall be allowed provided they comply with all applicable regulations detailed within this Chapter.
- N.** Intentionally left blank.
- O.** The interconnections between a wine turbine and the electric utility shall be in compliance to the most recently adopted edition of the National Electrical Safety Code and all Federal regulations. Certification shall be submitted in writing by the owner that the WECS will automatically disconnect from the utility when there is no power input from the utility.
- P.** Battery storage units associated with a WECS shall be in compliance with the latest adopted edition of the National Electric Code or other applicable Codes and shall be inspected by an inspector for the Town of Apple Valley.
- Q.** The safety of structural components of reconstructed or reconditioned WECS, and the compatibility of the rotors of reconstructed or reconditioned WECS, shall be certified by an Engineer Licensed by the State of California. The safety of electrical components of reconstructed or reconditioned WECS shall be certified by an Engineer Licensed by the State of California. The safety of all modifications to any WECS shall be certified by an Engineer Licensed by the State of California. Certification of safety is required before any Building Permit for a WECS is issued for modifications made prior to installation. Certification of the safety of modifications made after the WECS has been installed shall also be subject to the requirements of a Building Permit. Failure to have the safety of any modifications certified either prior to installation, or prior to use of a system modified after installation, shall result in the revocation of the Building Permit and any discretionary approvals granted for the WECS until such certification has been obtained and provided to the Town of Apple Valley.”

Section 8. Invalidation. The amendment by this Ordinance of Title 9 “Development Code” of the Town of Apple Valley Municipal Code as previously in effect, or of any other prior enactment, shall not be construed to invalidate any entitlement exercised or proceeding taken pursuant to such Title or other enactment while the same was in effect.

Section 9. Notice of Adoption. The Town Clerk of the Town of Apple Valley shall certify to the adoption of this ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the Town in a manner permitted under Section 36933 of the Government Code of the State of California.

Section 10. Effective Date. The Ordinance shall become effective thirty (30) days after the date of its adoption.

Section 11. Severability. If any provision of this Ordinance, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications and, to this end, the provision of the Ordinance are declared to be severable.

Adopted by the Town Council and signed by the Mayor and attested by the Town Clerk
this 26th day of January, 2010.

Honorable Peter Allan, Mayor

ATTEST:

Ms. La Vonda M-Pearson, Town Clerk

Approved as to form:

Mr. John Brown, Town Attorney

Approved as to content:

Mr. Frank Robinson, Town Manager