

**TOWN OF  
APPLE VALLEY, CALIFORNIA**

**AGENDA MATTER**

**Subject Item:**

**A REQUEST TO MODIFY TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE BY AMENDING CHAPTER 9.78 “WIND ENERGY CONVERSIONS SYSTEMS (WECS)” AS IT RELATES TO THE INSTALLATION AND PERMITTING REQUIREMENTS OF ROOF-MOUNTED 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. 431 in its entirety and read by title only.
5. **Introduce** Ordinance No. 431, amending Title 9 "Development Code" of the Town of Apple Valley Municipal Code Section 9.78 "Wind Energy Conversion Systems (WECS)" as it relates to the site development standards and permitting requirements for all roof-mounted 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

At the July 26, 2011 Town Council meeting, the Council initiated a Development Code Amendment to modify Development Code Section 9.78 "Wind Energy Conversion Systems" by adding development standards and criteria specific to roof-mounted wind energy conversion systems (WECS). The existing ordinance was adopted by the Town Council on February 9, 2010. The recent emergence of roof-mounted WECS has created an affordable, renewable energy alternative for many homeowners. It is the Town's desire to promote the use of alternative energies; therefore, it is the desire of Council to amend the Development Code by providing detailed site development standards specific to roof-mounted WECS.

During the regularly scheduled Planning Commission meeting of September 21, 2011, a public workshop was held to discuss development standards and permitting requirements for roof-mounted WECS. By consensus, the Commission agreed to modify regulations relating to lot size, setbacks, height, location, and permitting requirements. On November 2, 2011, the Planning Commission held a public hearing for Development Code Amendment No. 2011-003. Staff presented for the Commission's consideration Planning Commission Resolution No. 2011-006, which is a culmination of the discussion and direction provided to staff during the workshop of September 21, 2011.

In summary, the Development Code modifications recommended by Planning Commission Resolution No. 2011-006 include the following:

- Allowing the installation of roof-mounted WECS by right of zone with a minimum lot size of 18,000 square feet;
- Allowing the quantity of roof-mounted WECS at a ratio of one (1) unit per acre with a Development Permit for two (2) to five (5) units or a Conditional Use Permit for six (6) units or more;
- The maximum height permitted for a roof-mounted WECS remains consistent with the height permitted by the applicable zoning designation; however, a property owner may apply for a Development Permit that will allow a maximum height of fifty (50) feet. Heights greater than fifty (50) feet may be allowed with a Conditional Use Permit.
- Within multi-family projects, a roof-mounted WECS may not be installed upon any dwelling unit. Installation on community buildings or other accessory structures would be permitted.

A strike-through/underlined version of the proposed Code modification is within the attached Planning Commission staff report from the November 2, 2011 public hearing for Development Code Amendment 2011-003.

**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.

- 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: Development Code Amendment No. 2011-003 will modify the Town's Development Code by expanding the number of properties eligible to receive approvals for the use of roof-mounted 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. 2011-003 will not be detrimental to the public health, safety or welfare.

#### **NOTICING**

Development Code Amendment No. 2011-003 was advertised as a public hearing in the Apple Valley News newspaper on December 30, 2011 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. 431 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 and permitting requirements for all roof-mounted wind energy conversion systems located within the Town of Apple Valley.

#### Attachments:

Planning Commission Staff Report and Minutes for September 21 and November 2, 2011  
Planning Commission Resolution No. 2011-006  
Draft Ordinance No. 431

**ORDINANCE NO. 431**

**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 PARAGRAPH 2 OF SECTION 9.78.020 “APPLICABILITY”, PARAGRAPH 6 OF SECTION 9.78.040 “DEFINITIONS” AND PARAGRAPH 1 THROUGH SUBSECTION G OF SECTION 9.78.050 “PRIVATE, NON-COMMERCIAL, WECS” OF CHAPTER 9.78 “WIND ENERGY CONVERSION SYSTEMS (WECS) AS IT RELATES TO ROOF-MOUNTED WIND ENERGY CONVERSION SYSTEMS.**

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 April 27, 2010; 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 are proposed to paragraph 2 of Section 9.78.020 “Applicability”, paragraph 6 of Section 9.78.040 “Definitions” and paragraph 1 through subsection G of Section 9.78.050 “Private, Non-commercial, WECS” of chapter 9.78 “Wind Energy Conversion Systems (WECS) as it relates to roof-mounted wind energy conversion systems within the Town of Apple Valley; and
- (iv) On December 30, 2011, Development Code Amendment No. 2011-003 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 November 2, 2011, the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised public hearing on Development Code Amendment No. 2011-003, inviting testimony from the public and adopted Planning Commission Resolution No. 2011-006 recommending adoption of this Ordinance; and
- (viii) Development Code Amendment No. 2011-003 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. 2011-003 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 the second paragraph of Section 9.78.020 "Applicability" as follows:

"Unless otherwise stated within this Chapter, 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."

**Section 4.** Amend the sixth paragraph "Wind Energy Conversion System (WECS) of Section 9.78.040 "Definitions" by adding the following:

- 1. Freestanding WECS** means the device stands independently or requires attachment to a monopole or other structure intended solely for WECS support.
- 2. Roof-mounted WECS** means the device is supported entirely by the roof of an existing structure. Roof-mounted WECS do not require discretionary review unless otherwise noted within this Chapter."

**Section 5.** Amend the first paragraph and subsections A through G of Section 9.78.050 "Private, Non-commercial, WECS" to read as follows:

**"9.78.050 PRIVATE, NON-COMMERCIAL, WECS** (*Amended Ord. 403*)

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. Notwithstanding the foregoing, and except as otherwise stated in this Chapter, roof-mounted WECS that conform with the requirements of this Chapter are permitted and do not require issuance of a Development Permit.

### **A. Lot Size.**

1. Freestanding WECS shall not be installed upon a lot or recorded parcel of less than two (2) net acres in size.
2. Roof-mounted WECS shall not be installed upon a lot or recorded parcel of less than 18,000 square feet in size.

**B. Setback Requirements.**

1. Freestanding WECS must be located behind the rear of the primary structure.
2. Freestanding 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.**

1. Roof-mounted WECS are subject to the maximum height permitted within the applicable zoning designation. Additional height, not to exceed fifty (50) feet, may be permitted with the Planning Commission's review and approval of a Development Permit. Additional height, in excess of fifty (50) feet may be granted with the review and approval of a Conditional Use Permit.
2. 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.
5. Roof-mounted WECS located within multi-family projects may be installed on detached garages, community buildings or other non-dwelling structures, and may not be installed upon any dwelling unit.

**F. Net-Metering.** Private, noncommercial WECS may be net-metered with written authorization provided by the utility company.

**G. Multiple WECS Standards**

1. **Freestanding WECS.** Only one (1) unit 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.
2. **Roof-mounted WECS.** One (1) unit is permitted per lot or recorded parcel that is between 0.4 to two (2) acres in size subject to a building permit. Additional units are allowed at a ratio of one (1) roof-mounted WECS per additional acre.

Two (2) to five (5) units require Planning Commission review and approval of a Development Permit. Six (6) or more units require the approval of a Conditional Use Permit. ”

**Section 6.** 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 7.** 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 8.** Effective Date. The Ordinance shall become effective thirty (30) days after the date of its adoption.

**Section 9.** 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.

APPROVED AND ADOPTED by the Town Council and signed by the Mayor and attested by the Town Clerk this 24<sup>th</sup> day of January, 2012.

\_\_\_\_\_  
Honorable Barb Stanton, Mayor

ATTEST:

\_\_\_\_\_  
Ms. La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Mr. John Brown, Town Attorney

\_\_\_\_\_  
Mr. Frank Robinson, Town Manager



## TOWN OF APPLE VALLEY PLANNING COMMISSION

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### STAFF REPORT

<b>AGENDA DATE:</b>	September 21, 2011 – Workshop Item
<b>CASE NUMBER:</b>	Roof-Mounted Wind Energy Conversion Systems
<b>APPLICANT:</b>	Town of Apple Valley
<b>PROPOSAL:</b>	Discussion of development standards and permitting requirements for roof-mounted wind energy conversion systems (WECS) within the Town of Apple Valley. Staff is seeking the Commission's guidance in creating appropriate language to be offered within a draft Planning Commission Resolution.
<b>LOCATION:</b>	Town-wide
<b>EXISTING GENERAL PLAN DESIGNATIONS:</b>	All Land Use Designations.
<b>EXISTING ZONING:</b>	All Zoning Designations.
<b>ENVIRONMENTAL DETERMINATION:</b>	Staff has determined that 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.
<b>PROJECT PLANNER:</b>	Ms. Pam Cupp, Associate Planner
<b>RECOMMENDATION:</b>	Discuss the information presented and provide direction to staff.



## **BACKGROUND**

At the July 26, 2011 Town Council meeting, the Council initiated a Development Code Amendment to modify Development Code Section 9.78 "Wind Energy Conversion Systems" by adding development standards and criteria specific to roof-mounted wind energy conversion systems (WECS). The existing ordinance was adopted by the Town Council on February 9, 2010. The recent emergence of roof-mounted WECS has created an affordable, renewable energy alternative for many homeowners. It is the Town's desire to promote the use of alternative energies; therefore, it is the desire of Council to amend the Development Code by providing detailed site development standards specific to roof-mounted WECS.

## **DISCUSSION**

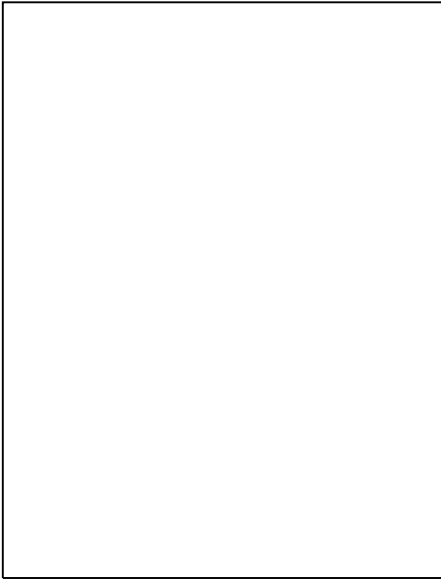
While formulating recently revised Development Code Section 9.78 "Wind Energy Conversion Systems", allowing roof-mounted WECS was a point of discussion by the Planning Commission. Realizing that the technology is new, and that a proliferation of roof-top wind turbines would be aesthetically detrimental, the Commission was not in favor of allowing this type of device for properties less than two (2) acres in size. The idea that multiple turbines would be installed on any single roof top was not a consideration or point of discussion.

During the past year, there has been an increased level of inquiries as to Town regulations relating to roof-mounted WECS; however, only one (1) project has been formally submitted and subsequently approved by the Town Council. Distributors of roof-mounted WECS have contacted elected officials and city staffers throughout the region attempting to have their product identified as a permitted use. Recently, the City of Hesperia modified its regulations to allow roof-mounted WECS in all residential zones.

The United States Energy Commission reports that the average California household consumes approximately 580 kilowatt hours of electricity per month. The roof-mounted WECS pictured within this report have an estimated monthly output of 1,800 watts, which is equal to 1.8 kilowatt hours per month, which is based upon an average wind speed of twelve (12) miles per hour. The prevailing winds in Apple Valley range from 5-10 knots/hour (6 to 12 mph) from the south/southwest to the northeast. Roof-mounted WECS are an emerging technology, with efficiency that remains questionable based upon the the need to install multiple devices in order to achieve optimal energy production.

Manufacturers of roof-mounted WECS report that, when operating in a fifteen (15) mile per hour wind, the units reviewed will produce a noise level below forty (40) dBA at the property line (anticipating a fifteen [15]-foot minimum side yard setback. The Development Code permits a maximum noise level of fifty (50) dBA as measured at the property line. As the wind speed increases, so will the noise produced. Most outdoor air conditioning units are 76 decibels or louder. A typical lawn mower is 107 decibels, and a normal conversation is 60 – 70 decibels. It is unlikely that noise would have a negative impact upon adjacent properties.

There is a wide assortment of roof-mounted wind turbines designed for residential, commercial, and industrial uses. Below are some photos showing examples of roof-mounted wind turbines. The units vary in the amount of energy generated; however, the units typically produce less than 1.8 Kw per month.



San Diego County



16011 El Paso Drive, Apple Valley

Staff visited the commercial site in Hesperia. The wind was quite strong when the pictures were taken; however, only one (1) of the installed turbines appeared to be operating properly.

17494 Main Street, Hesperia



17494 Main Street, Hesperia





In order to facilitate a productive and organized discussion, staff has provided a list of items for the Planning Commission's consideration.

**Minimum Lot Size Requirements** - The Commission may wish to consider reducing the minimum lot size for roof-mounted WECS from the existing two (2) acre minimum to a one (1)-acre minimum. The County of San Bernardino permits any WECS, including roof-mounted, that do not exceed thirty-five (35) feet in height by right-of-zone with a building permit. The City of Hesperia allows roof-mounted WECS in all residential zones. The number of units permitted is based upon the lot size and its existing accessory structure provisions. Staff would recommend reducing the minimum lot size for a roof-mounted WECS to one (1) acre.

"9.78.050 PRIVATE, NON-COMMERCIAL, WECS (Amended Ord. 403)  
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."

1. **Freestanding** WECS shall not be installed upon a lot or recorded parcel of less than two (2) net acres in size."
2. **Roof-mounted WECS shall not be installed upon a lot or recorded parcel of less than one (1) net acre in size.**"

**Setback Requirements** – The existing Code requires all WECS to be located behind the rear line of the primary structure. Based upon the orientation of a structure and the prevailing wind direction, staff would recommend less restrictive guidelines relating to the placement of roof-mounted WECS. Consideration could be given to only require the setbacks for the individual zoning district for parcels of larger size, such as five (5) acres or more.

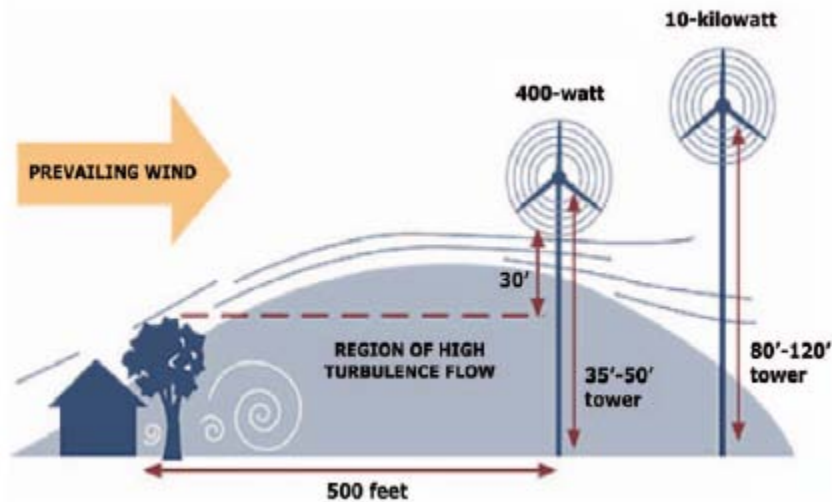
"B. Setback Requirements."

1. **Freestanding** WECS must be located behind the rear of the primary structure **and shall be setback a distance equal to the fall zone from any property line, overhead utility lines, utility easement or right-of-way.**
  2. **Roof-mounted WECS must be installed in a manner that will not significantly detract from existing views and shall be setback a distance equal to the fall zone from any property line, overhead utility lines, utility easement or right-of-way.**
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."~~

**Height Requirements** - The effectiveness and efficiency of a turbine is significantly impacted by its location and how it is sited on a lot. If there are any objects blocking the wind or creating wind turbulence, the efficiency of the turbine will be reduced. The higher the turbine can be located in the air, the more effective it will be because, generally



speaking, prevailing winds are more consistent higher up in the air. The American Wind Energy Association recommends that a turbine be twenty (20) to thirty (30) feet higher than the highest nearby object, such as a tree or a house.



To ensure the most efficient operation of roof-mounted WECS, the Commission may wish to consider permitting roof-mounted WECS at the same height allowance as free-standing WECS.

“C. Height.”

1. Roof-top mounted WECS are subject to the maximum height permitted within the applicable zoning designation. The Planning Commission may permit **additional height, subject to the applicable minimum setback required for free-standing WECS.**
2. “There is no maximum height for a free-standing WECS, provided that the structure meets the minimum setback requirements.”

**Number of WECS Permitted** – The existing Code allows only one (1) WECS per lot. Any more than one (1) is considered a “windfarm” and subject to the review and approval of a Conditional Use Permit. Staff would like to recommend the following language for consideration:

- G. Only one (1) **freestanding** WECS shall be permitted per developed lot. Any additional **freestanding** 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. **Roof-mounted WECS are permitted at a ratio of one (1) unit per net acre of land. Six (6) units or more will require the review and approval of a Conditional Use Permit.**”

With proven efficiency, a case could be made that the power generated would outweigh the aesthetic detriment caused by a proliferation multiple turbines located upon individual roof-tops. The Town is not in a consumer advocate position; however, the Town Council should give consideration to the aesthetical detriment that a proliferation of roof-mounted WECS would cause and weigh that with the lack of reviews and

documentation speaking to the efficiency of the devices. On May 11, 2011, in an article titled "Turbine Tests: Should you try and catch the wind?", Consumer Reports indicated the Small Wind Certification Council will soon be releasing ratings of twenty-two (22) wind turbine systems. These ratings are based upon performance and safety criteria developed by the American Wind Energy Association.

**RECOMMENDATION**

Following receipt of staff comments, any public comments and discussion by the Commission, it is recommended that the Commission, by consensus, provide guidance to staff to create appropriate language to be offered within a draft Planning Commission Resolution. Staff will then schedule a public hearing and return to the Planning Commission with a Resolution for consideration. After Planning Commission adoption of the Resolution, it would then be forwarded to the Council for consideration and final action.

**Prepared By:**

**Reviewed By:**

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Pam Cupp  
Associate Planner

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Lori Lamson  
Assistant Director of Community Development

**MINUTES**  
**EXCERPT**

**TOWN OF APPLE VALLEY**  
**PLANNING COMMISSION**  
**Special Workshop Meeting**

**September 21, 2011**

**CALL TO ORDER**

At 6:00 p.m., the Special Workshop meeting of the Planning Commission of the Town of Apple Valley for September 21, 2011, was called to order by Chairman Tinsley.

**ROLL CALL**

**Planning Commission**

Roll call was taken with the following members present: Commissioner Jason Lamoreaux, Commissioner Mark Shoup, Vice-Chairman Larry Cusack and Chairman B.R. "Bob" Tinsley. Absent: Commissioner David Hernandez

**PUBLIC WORKSHOP ITEM**

**2. Roof-Mounted Wind Energy Conversion Systems**

**Applicant:** Town of Apple Valley

**Location:** Town-wide

Ms. Pam Cupp, Associate Planner, presented the staff report as filed by the Planning Division.

Ms. Cupp informed the Commission that on July 26, 2011, the Town Council requested staff initiate a Development Code Amendment to specifically identify site development standards, lot size and number of units for roof-mounted wind turbines.

Staff has gone through those items and provided some suggestive language for review; however, the information will ultimately come back to the Commission as a resolution.

Ms. Cupp explained that the Planning Division noticed this hearing workshop to at least a dozen wind energy representatives, as well as the public, and no comments had been received.

Chairman Tinsley announced there were no members of the public who wished to speak to this item. Chairman Tinsley further requested a copy of the list of those representatives that were noticed as he had been hearing from people in the community about this topic. In addition, he personally sent out emails to individuals he believed would come to this hearing.

Ms. Lori Lamson, Assistant Director of Community Development, suggested that the Commission discuss each item in the staff report one by one.



Beginning with lot size, Ms. Cupp provided recommended language for the Commission's consideration.

Discussion ensued relating to the efficiency of roof-mounted wind energy conversion systems (WECS).

Chairman Tinsley stated he would like the Town to keep an open mind on new, more efficient units and suggested allowing roof-mounted WECS on one-half (1/2)-acre lots. Upon further Commission discussion, it was the consensus to recommend a one-half (1/2)-acre lot minimum for roof-mounted WECS.

Commission discussion ensued relating to future technologies. Ms. Lamson assured the Commission that, as efficiencies of roof-mounted WECS progress, so will the need to re-examine the Town's WECS development standards.

Commissioner Lamoreaux expressed concern with the potential negative aesthetic impact posed with multiple roof-mounted WECS.

Vice-Chairman Cusack suggested the Commission create guidelines for the installation of roof-mounted WECS that would eliminate the need for a Development Permit.

Discussion ensued regarding the possible standards and processes.

The Commission moved on to discussing the need to address setbacks for roof-mounted WECS. It was the consensus of the Commission to modify the setback requirements to only identify freestanding WECS and eliminate any setback requirement for roof-mounted WECS.

Ms. Haviva Shane, Town Attorney, asked if there is anything in the proposed Development Code Amendment addressing the way the units are placed on roof tops.

Ms. Lamson explained, if the unit falls, it will land on the roof; therefore, no concern exists. At this time, she asked the Commission to address mixed use and multi-family use and informed them of staff's recommendations.

Discussion ensued relating to the number of WECS that should be permitted on any one lot. Vice-Chairman Cusack commented he would prefer not to allow roof-mounted systems with six (6) or more units.

Discussion ensued as to how many turbine units would be allowed on mixed use/multi-family properties with a consensus that the decision be based on property size, not dwelling units. It was further discussed that roof-mounted WECS should only be permitted on non-residential structures within multi-family developments.

Additional discussion ensued regarding how many roof-mounted wind turbines should be allowed per one-half (1/2)-acre, number of total units on a property, types of wind turbines, and diameter and size.

It was the consensus of the Commission to recommend one (1) roof-mounted WECS per lot with a lot size between one-half (1/2)-acre and less than two (2) acres; one (1) additional roof-mounted WECS may be allowed for each additional acre up to a five (5)

unit maximum; more than one (1) unit will require the review of a Development Permit and six (6) or more units will require the approval of a Conditional Use Permit.

Discussion ensued relating to permitted height for roof-mounted WECS. It was the consensus of the Commission to allow heights exceeding that of the zoning designation, up to fifty (50) feet with a Development Permit.

Discussion ensued relating to permitting requirements. It was the consensus of the Commission to recommend ministerial review of a building permit under specific circumstances. It was further discussed projects not meeting specific criteria would require a Development Permit or Conditional Use Permit.

Commissioner Lamoreaux suggested that language be included that addressed permitted unit sizes.

Ms. Lamson advised the Commission that staff would look at industry standards regarding diameter and size. She asked Chairman Tinsley to provide her with information on people he notified in the industry so the Town could notice them with the date and time of the next Planning Commission meeting.



## **TOWN OF APPLE VALLEY PLANNING COMMISSION**

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### **STAFF REPORT**

<b>AGENDA DATE:</b>	November 2, 2011
<b>CASE NUMBER:</b>	Development Code Amendment No. 2011-003
<b>APPLICANT:</b>	Town of Apple Valley
<b>PROPOSAL:</b>	A request to consider an amendment to Title 9 "Development Code" of the Town of Apple Valley Municipal Code amending Chapter 9.78 "Wind Energy Conversions Systems (WECS)", as it relates to the installation and permitting requirements of roof-mounted wind energy conversion systems.
<b>LOCATION:</b>	Town-wide
<b>EXISTING GENERAL PLAN DESIGNATIONS:</b>	All Land Use Designations.
<b>EXISTING ZONING:</b>	All Zoning Designations.
<b>ENVIRONMENTAL DETERMINATION:</b>	Staff has determined 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.
<b>PROJECT PLANNER:</b>	Ms. Pam Cupp, Associate Planner
<b>RECOMMENDATION:</b>	Adopt Planning Commission Resolution No. 2011-006

## **BACKGROUND AND ANALYSIS**

At the July 26, 2011 Town Council meeting, the Council initiated a Development Code Amendment to modify Development Code Section 9.78 "Wind Energy Conversion Systems" by adding development standards and criteria specific to roof-mounted wind energy conversion systems (WECS). The existing ordinance was adopted by the Town Council on February 9, 2010. The recent emergence of roof-mounted WECS has created an affordable, renewable energy alternative for many homeowners. It is the Town's desire to promote the use of alternative energies; therefore, it is the desire of Council to amend the Development Code by providing detailed site development standards specific to roof-mounted WECS.

At the September 21, 2011, Planning Commission meeting, the Commission held a workshop to discuss development standards and permitting requirements for roof-mounted WECS. By consensus, the Commission agreed to modify regulations relating to lot size, setbacks, height, location, and permitting requirements. Listed below are those items recommended for change and the suggested corrective language. Within this material, additions are noted in **bold underlined** and deletions are noted in ~~strike through~~. Included are clean-up items required for Chapter consistency.

The Commission direction was that, within specific guidelines, roof-mounted WECS should only require ministerial review of a building permit. Therefore, it is recommended that paragraph 2 of Section 9.78.020 "Applicability" be amended as follows:

**"Unless otherwise stated within this Chapter, a** 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."

During Commission discussions at the workshop, there was a question regarding whether or not a pole-mounted WECS could potentially be attached to a structure and be considered "roof-mounted." For clarification purposes, staff is recommending that paragraph 6 of Section 9.78.040 "Definitions" be amended as follows:

**"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.

**Freestanding WECS means the device stands independently or requires attachment to a monopole or other structure intended solely for WECS support.**

**Roof-mounted WECS means the device is supported entirely by the roof of an existing structure. Roof-mounted WECS do not require discretionary review unless otherwise noted within this Chapter."**

The Planning Commission consensus was to modify site development standards relating to permitted lot size, setback, height, location and the number of units that should be

allowed per lot. It is recommended that paragraph 1 through subsection G of Section 9.78.050 "Private, Non-commercial, WECS" be amended as follows:

**"9.78.050 PRIVATE, NON-COMMERCIAL, WECS (Amended Ord. 403)**

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. **Roof-mounted WECS are permitted without discretionary review unless otherwise stated within this Chapter.**

**A. Lot Size.**

1. **Freestanding** WECS shall not be installed upon a lot or recorded parcel of less than two (2) net acres in size.
2. **Roof-mounted WECS shall not be installed upon a lot or recorded parcel of less than 18,000 square feet in size.**

**B. Setback Requirements.**

1. **Freestanding** WECS must be located behind the rear **line** of the primary structure.
2. **Freestanding** 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.**

1. Roof-top-mounted WECS are subject to the maximum height permitted within the applicable zoning designation. **Additional height, not to exceed fifty (50) feet, may be permitted with the Planning Commission's review and approval of a Development Permit. Additional height may be granted with the review and approval of a Conditional Use Permit.**
2. 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.
5. **Roof-mounted WECS located within multi-family projects may be installed on detached garages, community buildings or other non-dwelling structures, and may not be installed upon any dwelling unit.**

**F. Net-Metering.** Private, noncommercial WECS may be net-metered with written authorization provided by the utility company.

**G. Multiple WECS Standards**

1. **Freestanding WECS.** Only one (1) **unit 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.
2. **Roof-mounted WECS. One (1) unit is permitted per lot or recorded parcel that is between 0.4 to two (2) acres in size subject to a building permit. Additional units are allowed at a ratio of one roof-mounted WECS per additional acre. Two (2) to five (5) units require Planning Commission review and approval of a Development Permit. Six (6) or more units require the approval of a Conditional Use Permit. ”**

**FINDINGS:**

An amendment to the Development Code requires that the Planning Commission address two (2) required “Findings”, as listed within Development Code Section 9.06.060. For Commission consideration, the required Findings are listed below, along with a comment addressing each. If the Commission concurs, these comments may be adopted and forwarded to the Council for its consideration of the Development Code Amendment. If the Commission wishes modifications to the offered comments, after considering input and public testimony at the public hearing, modifications to the Findings and Code Amendment recommendations can be included into the information forwarded to the Council for consideration.

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. 2011-003 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. 2011-003 will not be detrimental to the public health, safety or welfare.

**NOTICING**

Development Code Amendment No. 2011-003 was advertised as a public hearing in the Apple Valley News newspaper on October 21, 2011.

**ENVIRONMENTAL REVIEW**

Staff has determined 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.

**RECOMMENDATION**

Following receipt of public input and discussion by the Commission, it is recommended the Commission move to approve Planning Commission Resolution No. 2011-006, forwarding a recommendation that the Town Council amend Title 9 "Development Code" of the Town of Apple Valley Municipal Code as outlined within the staff report.

**Prepared By:**

**Reviewed By:**

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Pam Cupp  
Associate Planner

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Lori Lamson  
Assistant Director of Community Development

Attachment: Planning Commission Resolution No. 2011-006

**PLANNING COMMISSION RESOLUTION NO. 2011-006**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF APPLE VALLEY, CALIFORNIA, RECOMMENDING THAT THE TOWN COUNCIL FIND THAT DEVELOPMENT CODE AMENDMENT NO. 2011-003 IS EXEMPT FROM ENVIRONMENTAL REVIEW AND AMEND TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE BY AMENDING PARAGRAPH 2 OF SECTION 9.78.020 “APPLICABILITY”, PARAGRAPH 6 OF SECTION 9.78.040 “DEFINITIONS” AND PARAGRAPH 1 THROUGH SUBSECTION G OF SECTION 9.78.050 “PRIVATE, NON-COMMERCIAL, WECS” OF CHAPTER 9.78 “WIND ENERGY CONVERSION SYSTEMS (WECS) AS IT RELATES TO ROOF-MOUNTED WIND ENERGY CONVERSION SYSTEMS.**

**WHEREAS**, Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on April 27, 2010; and

**WHEREAS**, 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

**WHEREAS**, specific changes are proposed to paragraph 2 of Section 9.78.020 “Applicability”, paragraph 6 of Section 9.78.040 “Definitions” and paragraph 1 through subsection G of Section 9.78.050 “Private, Non-commercial, WECS” of chapter 9.78 “Wind Energy Conversion Systems (WECS) as it relates to roof-mounted wind energy conversion systems within the Town of Apple Valley; and

**WHEREAS**, on October 21, 2011, Development Code Amendment No. 2011-003 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

**WHEREAS**, pursuant to Section 15061(b)(3) of the State Guidelines to Implement the California Environmental Quality Act (CEQA), it can be determined 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 may have a significant effect on the environment, the activity is EXEMPT from further CEQA review; and

**WHEREAS**, on November 2, 2011, the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised public hearing on Development Code Amendment No. 2011-003, receiving testimony from the public; and

**WHEREAS**, Development Code Amendment No. 2011-003 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.

**NOW, THEREFORE, BE IT RESOLVED** that in consideration of the evidence presented at the public hearing, and for the reasons discussed by the Commissioners at said hearing, the Planning Commission of the Town of Apple Valley, California, does hereby resolve, order and determine as follows and recommends that the Town Council make the following findings and take the following actions:

**Section 1.** Find that the changes proposed by Development Code Amendment No. 2011-003 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

**Section 2.** Pursuant to Section 15061(b)(3) of the State Guidelines to Implement the California Environmental Quality Act (CEQA), it can be determined that the Code amendment 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, as with the proposed Code Amendment, that there is no possibility that the proposal approved under Development Code Amendment No. 2011-003 will have a significant effect on the environment and, therefore, the Amendment is EXEMPT from further environmental review.

**Section 3.** Amend the second paragraph of Section 9.78.020 "Applicability" as follows:

"Unless otherwise stated within this Chapter, 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."

**Section 4.** Amend the sixth paragraph "Wind Energy Conversion System (WECS) of Section 9.78.040 "Definitions" by adding the following:

- 1. Freestanding WECS** means the device stands independently or requires attachment to a monopole or other structure intended solely for WECS support.
- 2. Roof-mounted WECS** means the device is supported entirely by the roof of an existing structure. Roof-mounted WECS do not require discretionary review unless otherwise noted within this Chapter."

**Section 5.** Amend the first paragraph and subsections A through G of Section 9.78.050 "Private, Non-commercial, WECS" to read as follows:

**“9.78.050 PRIVATE, NON-COMMERCIAL, WECS (Amended Ord. 403)**

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. Notwithstanding the foregoing, and except as otherwise stated in this Chapter, roof-mounted WECS that conform with the requirements of this Chapter are permitted and do not require issuance of a Development Permit.

**A. Lot Size.**

1. Freestanding WECS shall not be installed upon a lot or recorded parcel of less than two (2) net acres in size.
2. Roof-mounted WECS shall not be installed upon a lot or recorded parcel of less than 18,000 square feet in size.

**B. Setback Requirements.**

1. Freestanding WECS must be located behind the rear of the primary structure.
2. Freestanding 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.**

1. Roof-mounted WECS are subject to the maximum height permitted within the applicable zoning designation. Additional height, not to exceed fifty (50) feet, may be permitted with the Planning Commission’s review and approval of a Development Permit. Additional height, in excess of fifty (50) feet may be granted with the review and approval of a Conditional Use Permit.
2. 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.

5. Roof-mounted WECS located within multi-family projects may be installed on detached garages, community buildings or other non-dwelling structures, and may not be installed upon any dwelling unit.

**F. Net-Metering.** Private, noncommercial WECS may be net-metered with written authorization provided by the utility company.

**G. Multiple WECS Standards**

1. **Freestanding WECS.** Only one (1) unit 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.

2. **Roof-mounted WECS.** One (1) unit is permitted per lot or recorded parcel that is between 0.4 to two (2) acres in size subject to a building permit. Additional units are allowed at a ratio of one (1) roof-mounted WECS per additional acre. Two (2) to five (5) units require Planning Commission review and approval of a Development Permit. Six (6) or more units require the approval of a Conditional Use Permit. ”

Approved and Adopted by the Planning Commission of the Town of Apple Valley this 2nd day of November, 2011.

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B.R. Tinsley, Chairman

ATTEST:

I, Debra Thomas, Secretary to the Planning Commission of the Town of Apple Valley, California, do hereby certify that the foregoing Planning Commission Resolution No. 2011-006 was duly and regularly adopted by the Planning Commission at a regular meeting thereof, held on the 2nd day of November, 2011, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Debra Thomas, Planning Commission Secretary