PLANNING COMMISSION AGENDA

REGULAR MEETING

Date: June 9, 2011

Time: 6:30 P.M.

COMMISSION MEMBERS

Chris Elvert, Chair

William A. Muller, Vice Chair

Bill Jensen, Commissioner

Julie Jensen, Commissioner

Paul Russ, Commissioner

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Dave Reno, Principal Planner

Jeff M. Malawy, Assistant City Attorney

CITY OF HESPERIA
9700 Seventh Avenue
Council Chambers
Hesperia, CA 92345
City Offices: (760) 947-1000

The Planning Commission, in its deliberation, may recommend actions other than those described in this agenda.

Any person affected by, or concerned regarding these proposals may submit written comments to the Planning Division before the Planning Commission hearing, or appear and be heard in support of, or in opposition to, these proposals at the time of the hearing. Any person interested in the proposal may contact the Planning Division at 9700 Seventh Avenue (City Hall), Hesperia, California, during normal business hours (7:30 a.m. to 5:30 p.m., Monday through Thursday, and 7:30 a.m. to 4:30 p.m. on Fridays) or call (760) 947-1200. The pertinent documents will be available for public inspection at the above address.

If you challenge these proposals, the related Negative Declaration and/or Resolution in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to the public hearing.

In compliance with the American with Disabilities Act, if you need special assistance to participate in this meeting, please contact Dave Reno, Principal Planner (760) 947-1200. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.10235.104 ADA Title 11]

Documents produced by the City and distributed less than 72 hours prior to the meeting regarding any item on the Agenda will be made available in the Planning Division, located at 9700 Seventh Avenue during normal business hours or on the City's website.

JUNE 9, 2011

AGENDA
HESPERIA PLANNING COMMISSION

Prior to action of the Planning Commission, any member of the audience will have the opportunity to address the legislative body on any item listed on the agenda, including those on the Consent Calendar. PLEASE SUBMIT A COMMENT CARD TO THE COMMISSION SECRETARY WITH THE AGENDA ITEM NUMBER NOTED.

CALL TO ORDER 6:30 p.m.

A. Pledge of Allegiance to the Flag
B. Invocation
C. Roll Call:

Chair Chris Elvert
Vice Chair William Muller
Commissioner Bill Jensen
Commissioner Julie Jensen
Commissioner Paul Russ

JOINT PUBLIC COMMENTS

Please complete a "Comment Card" and give it to the Commission Secretary. Comments are limited to three (3) minutes per individual. State your name and address for the record before making your presentation. This request is optional, but very helpful for the follow-up process.

Under the provisions of the Brown Act, the Commission is prohibited from taking action on oral requests. However, Members may respond briefly or refer the communication to staff. The Commission may also request the Commission Secretary to calendar an item related to your communication at a future meeting.

CONSENT CALENDAR

D. Approval of Minutes: May 12, 2011 Planning Commission Meeting Draft Minutes. -1-

PUBLIC HEARINGS

1. Consideration of Conditional Use Permit CUP11-10117, to construct a 71-foot high wireless communications facility within Live Oak Park at 17427 Live Oak Park. (Applicant: T-Mobile West Corp.; APN: 0410-122-15) (Staff Person: Daniel Alcayaga) 1-1

2. Consideration of Development Code Amendment DCA11-10159, revising the Alternative Energy Technology Ordinance to allow roof-mounted windmills in residential areas as well as other ordinances to implement adjustments to the height and setback regulations for windmills and to eliminate the site plan review requirement for solar energy systems (Applicant: City of Hesperia; Affected area: Citywide) (Staff Person: Stan Liudahl) 2-1

3. Consideration of Development Code Amendment DCA11-10165, to revise Hesperia Municipal Code Section 16.20.095 regarding parking of commercial vehicles in nonresidential zones. (Applicant: City of Hesperia; Affected area: Citywide) (Staff Person: Stan Liudahl) 3-1

PRINCIPAL PLANNER'S REPORT

The Principal Planner or staff may make announcements or reports concerning items of interest to the Commission and the public.

E. DRC Comments 4-1

F. Major Project Update

PLANNING COMMISSION BUSINESS OR REPORTS

The Commission Members may make comments of general interest or report on their activities as a representative of the Planning Commission.

ADJOURNMENT

The Chair will close the meeting after all business is conducted.

I, Kathy Stine, Planning Commission Secretary for City of Hesperia, California do hereby certify that I caused to be posted the foregoing agenda on Thursday, June 2, 2011 at 5:30 p.m. pursuant to California Government Code §54954.2.

Kathy Stine
Planning Commission Secretary

DRAFT

HESPERIA PLANNING COMMISSION MEETING
REGULAR MEETING
May 12, 2011
MINUTES

The Regular Meeting of the Planning Commission was called to order at 6:32 p.m. by Chair Elvert in the Council Chambers, 9700 Seventh Avenue, Hesperia, California.

CALL TO ORDER 6:32 p.m.

A. Pledge of Allegiance to the Flag

B. Invocation

C. Roll Call:
Chair Chris Elvert
Vice Chair William Muller
Commissioner Bill Jensen
Commissioner Julie Jensen
Commissioner Paul Russ

Present: Chris Elvert
William Muller
Bill Jensen
Julie Jensen
Paul Russ

JOINT PUBLIC COMMENTS

Chair Elvert opened Public Comments at 6:34 p.m.

No comments to consider.

Chair Elvert closed Public Comments at 6:34 p.m.

CONSENT CALENDAR

D. Approval of Minutes: April 14, 2011 Planning Commission Meeting Draft Minutes.

Motion by Paul Russ to approve April 14, 2011 Planning Commission Meeting Draft Minutes with consideration of Green Sheet item (Attachment 1). Seconded by William Muller and passed with the following roll call vote:

AYES: **Chris Elvert, William Muller, Bill Jensen, Julie Jensen, and Paul Russ**
NOES: **None**

PUBLIC HEARING

1. Consideration of Conditional Use Permit CUP11-10116, to construct a 75-foot high wireless communications facility adjacent to the play fields within Hesperia Junior High School at 10275 Cypress Avenue (Applicant: T-Mobile West Corp.; APN: 0408-232-08) (Staff Person: Stan Liudahl)

Senior Planner Stan Liudahl gave a PowerPoint presentation.

Bill Jensen questioned the health threat of microwave on students.

Stan Liudahl responded by stating that studies have shown no conclusive evidence of negative effects on humans.

Assistant City Attorney Jeff Malawy stated that the City has no authority on this issue and no discretionary decisions can be made on the basis of dangers from emissions.

Chair Elvert opened the Public Hearing item at 6:42 p.m.

Susan Chung, Representative for T-mobile, addressed the issues of microwaves and said that extensive studies have been done and have found that there are no adverse health effects. She also stated that predicting how many more cell sites is impossible since people will get more phones and change carriers and populated areas will change.

Chair Elvert closed the Public Hearing item at 6:45 p.m.

Motion by Paul Russ to adopt Resolution No. PC-2011-20, as presented approving Conditional Use Permit CUP11-10116. Seconded by Bill Jensen and passed with the following roll call vote:

AYES: **Chris Elvert, William Muller, Bill Jensen, Julie Jensen, and Paul Russ**
NOES: **None**

2. Consideration of Conditional Use Permit CUP11-10151, to establish the sale of beer and wine as part of a restaurant/catering business at 13567 Main Street (Applicant: Gabrielle Major; APN: 3057-011-10) (Staff Person: Lisette Sanchez Mendoza)

Assistant Planner Lisette Sanchez-Mendoza gave a PowerPoint presentation.

Chair Elvert opened the Public Hearing item at 6:52 p.m.

Gabrielle Major, applicant for the project stated that the site will be an authentic English pub style restaurant. She stated she wanted to create a nice restaurant in Hesperia.

Chair Elvert closed the Public Hearing item at 6:53 p.m.

Motion by Julie Jensen to adopt Resolution No. PC-2011-22, as presented approving Conditional Use Permit CUP11-10151. Seconded by Paul Russ and passed with the following roll call vote:

AYES: **Chris Elvert, William Muller, Bill Jensen, Julie Jensen, and Paul Russ**
NOES: **None**

3. Consideration of Conditional Use Permit CUP11-10147, to construct a 12-screen motion picture theatre with ancillary uses including the sale of beer and wine for on-site consumption in conjunction with Variance VAR11-10144, to allow the building and its towers to exceed the maximum allowable 35-foot and 52.5-foot height limitations; and Tentative Parcel Map TPM11-10145, to create three parcels on five gross acres within the Pedestrian Commercial (PC) District of the Main Street and Freeway Corridor Specific Plan located on the southeast corner of Smoketree Street and Ninth Avenue (Applicant: Cinema West; APNs: 0407-262-01 & 0407-263-01) (Staff Person: Stan Liudahl)

Stan Liudahl gave a PowerPoint presentation.

Julie Jensen had concerns regarding the alcohol sales and the fear of giving it to a minor in the dark theatre.

Dave Reno stated that the theatre will be subject to the same rules as any other business selling alcohol enforced by ABC.

William Muller asked about signals and traffic flow in the area.

Senior Engineer Tom Thornton responded that the City will monitor the area and use developer fees if improvements are needed.

Chris Elvert stated concerns about security and discussion ensued.

Chair Elvert opened the Public Hearing item at 7:16 p.m.

Dave Corkill, applicant for the project addressed the Commission's questions and concerns.

Patricia McLemore of Hesperia had questions regarding the hours of operation, noise levels and special venues.

Dave Corkill addressed the noise issues and stated that the hours of operation are typical of any theatre and discussion ensued.

Chair Elvert closed the Public Hearing item at 7:32 p.m.

The Commission discussed the land use for the area and the intention to have more restaurants locate in the vicinity so that it becomes a destination point.

Motion by Paul Russ to adopt Resolution No. PC-2011-17, as presented approving Conditional Use Permit CUP11-10147 and Resolution No. PC-2011-18, as presented approving Variance VAR11-10144 and Resolution No. PC-2011-19, as presented approving Tentative Parcel Map TPM11-10145. Seconded by Julie Jensen and passed with the following roll call vote:

AYES: **Chris Elvert, William Muller, Bill Jensen, Julie Jensen, and Paul Russ**
NOES: **None**

4. Consideration of Site Plan Review SPR09-10210, to establish an event center on a portion of 103 acres located on the south side of Lemon Street, 450 feet east of Choiceana Avenue. (Applicant: Jim and Gail Hasty; APN: 0411-191-69) (Staff Person: Daniel Alcayaga)

Paul Russ recused himself to the audience since his property is next to the project site.

Senior Planner Daniel Alcayaga gave a PowerPoint presentation.

Chair Elvert opened the Public Hearing item at 7:47 p.m.

Applicants Jim and Gail Hasty addressed the Commission regarding the paving project with MWA being adopted as part of the site plan.

Tom Thornton responded that Engineering has reviewed and accepted those plans.

Jim Hasty stated that he had some easement dedication concerns and wanted the City to accept the dedication at the time that the road is improved and discussion ensued.

Ron Kidd with DGRK, the engineer on the project, addressed drainage issues with Engineering and discussion ensued.

Tom Thornton clarified the drainage issues and stated that the preliminary hydrology study addressed the issues.

Commissioner Paul Russ, speaking as a neighbor of the site, stated that he is in favor of the project.

Chair Elvert closed the Public Hearing item at 7:59 p.m.

William Muller stated concern regarding onetime events and asked if the applicant will deal with traffic mitigation in the area.

Dave Reno stated that if a larger event was scheduled with more people, the applicant would need to be issued a Special Event Permit with additional mitigations.

Motion by Bill Jensen to adopt Resolution No. PC-2011-06, as presented approving Site Plan Review SPR09-10210. Seconded by Chris Elvert and passed with the following roll call vote:

AYES:	**Chris Elvert, William Muller, Bill Jensen, and Julie Jensen**
RECUSE:	**Paul Russ**
NOES:	**None**

PRINCIPAL PLANNER'S REPORT

E. DRC Comments

Dave Reno informed the Commission that the Advanced Disposal Site Plan Review will be forthcoming.

F. Major Project Update

Dave Reno gave an update regarding the Ranchero Road underpass.

PLANNING COMMISSION BUSINESS OR REPORTS

Chair Elvert informed the Commission that he will be on vacation during the next Planning Commission Meeting on June 9, 2011.

Julie Jensen commended staff on their hard work over the past years in dealing with outside agencies to get the Ranchero Road Underpass underway.

ADJOURNMENT

Chair Elvert closed the meeting at 8:13 p.m. to Thursday, June 9, 2011.

Chris Elvert
Commission Chair

_____

By: Kathy Stine,
Commission Secretary

_____

Ed Hewitt spoke in favor of the dispensaries and felt there was compelling testimony from the public who need options for their care.

Kevin Sasser of Victorville was speaking for his wife who had passed away and had chronic pain. Marijuana helped her tremendously and he was in favor of dispensaries.

Holly Smith of Victorville was a medical assistant that worked for a pain clinic and felt that the option of marijuana was better than the addictive pain medication.

Chair Elvert closed Public comment at 8:39 p.m.

Chris Elvert clarified that the Commission was not in the position to decide whether marijuana was beneficial or not but to decide whether the City of Hesperia can safely regulate it and have it dispensed within the City limits. He also stated that he would like staff to bring back an ordinance that the Commission can vote on and pass on to the City Council.

Paul Russ stated that he was conflicted because of pain he has endured and gave his medical background. He had to work and never had marijuana but in the same situation again, he would find a dispensary. He stated he can see the individual need but was concerned about the greater abuse and crime and needs to see more actual statistics.

Julie Jensen stated that she did not support the original ban by the Council (in 2005) and she is for the dispensaries. She has had personal experience with family members who had cancer and because of medical marijuana; her cousin received relief and was able to raise her children. She stated that the City should not promote legislation that discriminates against a specific segment of our community. Julie Jensen stated she will only support the alternative option that Staff recommended.

William Muller concurred with Paul Russ that the stories are heart wrenching and there are people that legally use it and others that do it recreationally. He would like to see the State sell medical marijuana through our local drug stores. He stated that we need to look at the community at large. He commented that the audience represents a handful of people in a 90,000 populated city. He felt like the medical community was the answer to dispensing marijuana without crime and the other uncontrolled aspects.

Bill Jensen would like to hear more information on the medical side. He gave personal background information and acknowledged what could be a monetary gain for the City. He stated he broke his back and wasn't allowed to use marijuana for pain but could use vicodin or oxycontin in the military. He said he knew the value of marijuana medically but could not use it since it would end his military career. He posed the question of how does the City protect themselves against the evils that can come out of this as opposed to good. He also wanted statistics on crime and direction from staff on how the ordinance should be written.

City of Hesperia
STAFF REPORT

DATE: June 9, 2011

TO: Planning Commission

FROM: Dave Reno, AICP, Principal Planner

BY: Daniel S. Alcayaga, AICP, Senior Planner

SUBJECT: Conditional Use Permit CUP11-10117; Applicant: T-Mobile West Corp.; APN: 0410-122-15

RECOMMENDED ACTION

It is recommended that the Planning Commission adopt Resolution No. PC-2011-25, approving Conditional Use Permit CUP11-10117.

BACKGROUND

Proposal: A Conditional Use Permit to construct a 71-foot high wireless communications facility in the form of a stadium light pole within Live Oak Park.

Location: The property address is 17427 Live Oak Street (Attachment 1).

Current General Plan, Zoning and Land Uses: The site is within the Main Street and Freeway Corridor Specific Plan (MSFC-SP) General Plan Land Use designation and Public/Institutional Overlay (PIO) zone district. The surrounding land is designated and zoned as noted on Attachment 2. The proposed 71-foot high stadium light pole will be located south of the baseball field within the Green Flag RC race track area. The surrounding properties are almost entirely vacant. Commercial development is located to the east along "I" Avenue (Attachment 3).

ISSUES/ANALYSIS

Land Use: T-Mobile West, the service provider, has demonstrated on a service plan that there is a service gap which necessitates installation of an additional wireless communications facility in the area (Attachment 4). The proposed facility will provide the necessary coverage to improve the network in this area as well as provide coverage for two additional carriers. The wireless communications facility encompasses a 71-foot high stadium light pole and mechanical equipment within a 288 square foot enclosed lease area (Attachment 5).

The elevations and photosimulation of the proposed light pole illustrates its ability to blend into the neighborhood, as there are other stadium light poles in the park (Attachments 6 and 7). Attachment 5 also shows the facility's ground equipment surrounded by an eight-foot high block wall. The wall height is appropriate in order to limit access to the equipment from the park. The proposed wireless communications facility is consistent with the General Plan land use and zoning standards, including accessory structure height. The PIO District does not include a height limitation.

Drainage: According to the Master Plan of Drainage, a local drainage facility runs through Live Oak Park and appears to flow near the proposed facility. As a result, a grading plan and drainage study will be required before the project can be constructed. The applicant is required to demonstrate that the project will not interfere with the current drainage flows and/or safely directs flows around the equipment shelter.

Street Improvements: Public street improvements are not required.

Environmental: Approval of the conditional use permit is exempt from the requirements of the California Environmental Quality Act by Section 15303, New Construction or Conversion of Small Structures.

Conclusion: The project is consistent with the City's intent to locate new wireless facilities on existing buildings and structures, or to conceal their appearance through other means (i.e. use of stadium light poles and other stealth technologies). The project meets the standards of the Development Code and staff recommends approval.

FISCAL IMPACT

None.

ALTERNATIVES

1. Provide alternative direction to staff.

ATTACHMENTS

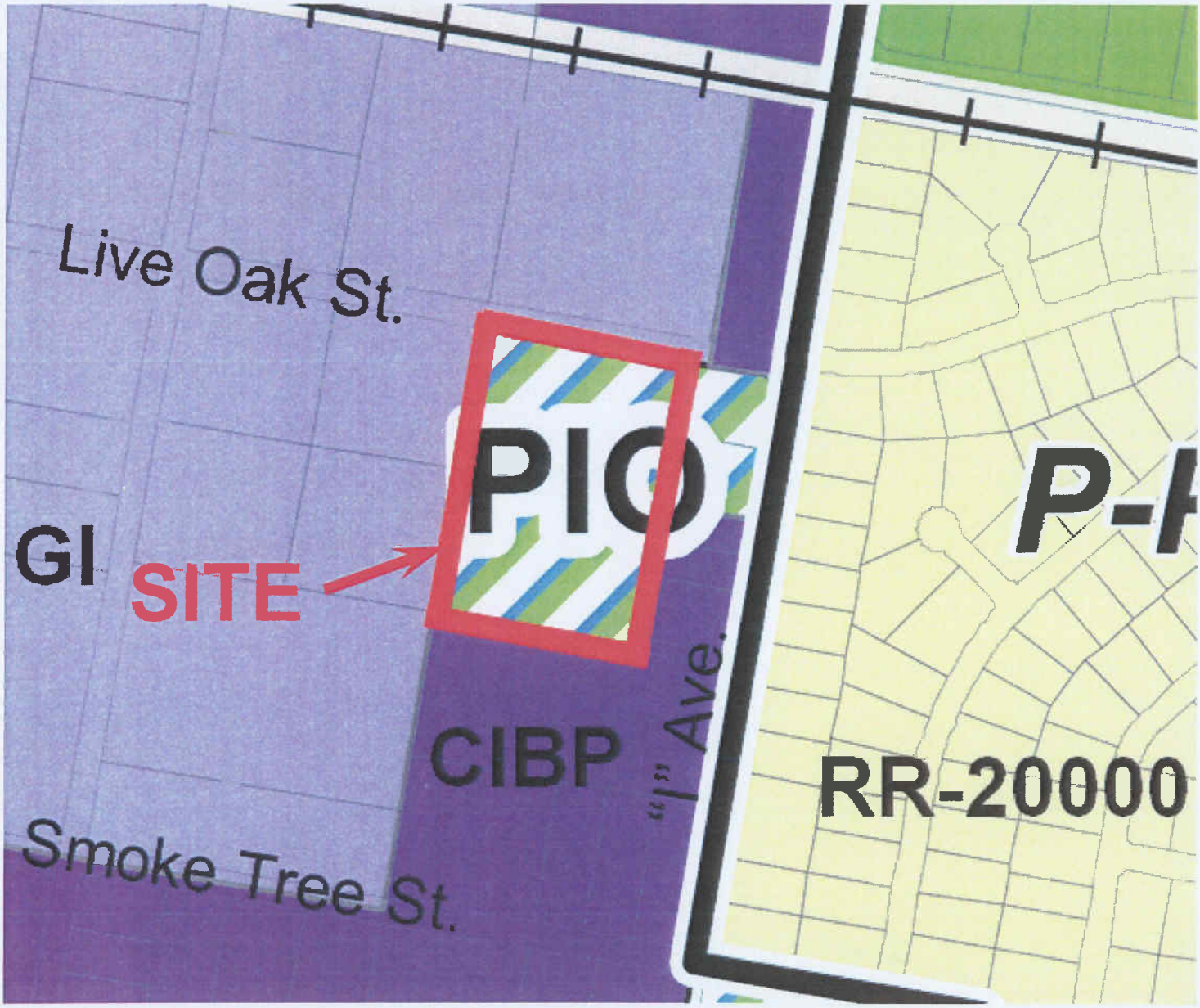
1. Location map
2. General Plan land use and zoning map
3. Aerial photo
4. Service plan
5. Site Plan
6. Elevations of the light pole
7. Photo simulation of the light pole
8. Photo simulation of the light pole
9. Resolution No. PC-2011-25, with list of conditions

ATTACHMENT 1

APPLICANT(S): T-MOBILE WEST CORP.	**FILE NO(S):** CUP11-10117
LOCATION: 17427 LIVE OAK STREET	**APN(S):** 0410-122-15
PROPOSAL: CONSIDERATION OF A CONDITIONAL USE PERMIT TO CONSTRUCT A 71-FOOT HIGH WIRELESS COMMUNICATIONS FACILITY AT LIVE OAK PARK	**N** ↑

LOCATION MAP

ATTACHMENT 2



APPLICANT(S): T-MOBILE WEST CORP.	**FILE NO(S):** CUP11-10117
LOCATION: 17427 LIVE OAK STREET	**APN(S):** 0410-122-15
PROPOSAL: CONSIDERATION OF A CONDITIONAL USE PERMIT TO CONSTRUCT A 71-FOOT HIGH WIRELESS COMMUNICATIONS FACILITY AT LIVE OAK PARK	**N** ↑

GENERAL PLAN LAND USE AND ZONING MAP

ATTACHMENT 3

APPLICANT(S): T-MOBILE WEST CORP.	**FILE NO(S):** CUP11-10117
LOCATION: 17427 LIVE OAK STREET	**APN(S):** 0410-122-15
PROPOSAL: CONSIDERATION OF A CONDITIONAL USE PERMIT TO CONSTRUCT A 71-FOOT HIGH WIRELESS COMMUNICATIONS FACILITY AT LIVE OAK PARK	**N** ↑

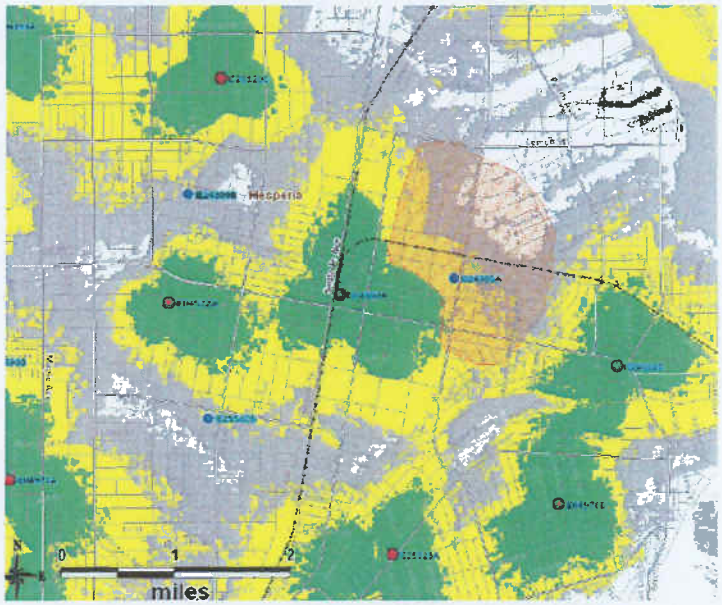
AERIAL PHOTO

ATTACHMENT 4

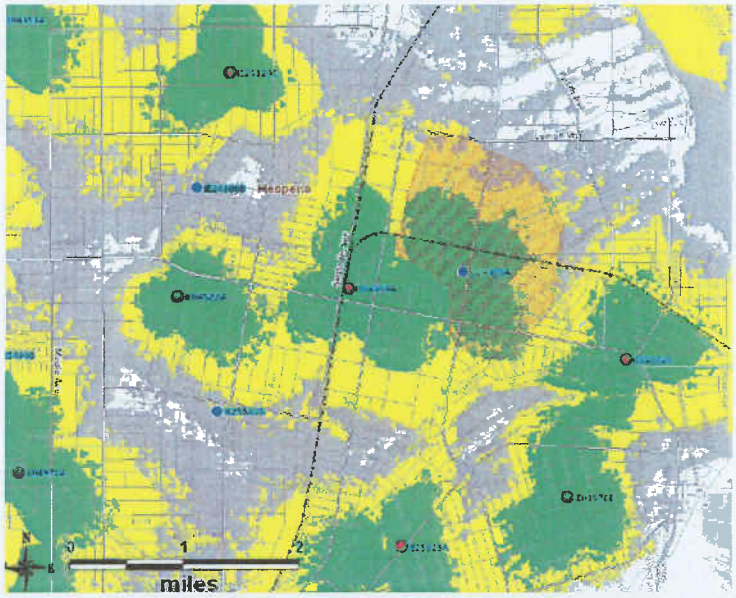
Indoors

In vehicle

Outdoors



Service without the facility

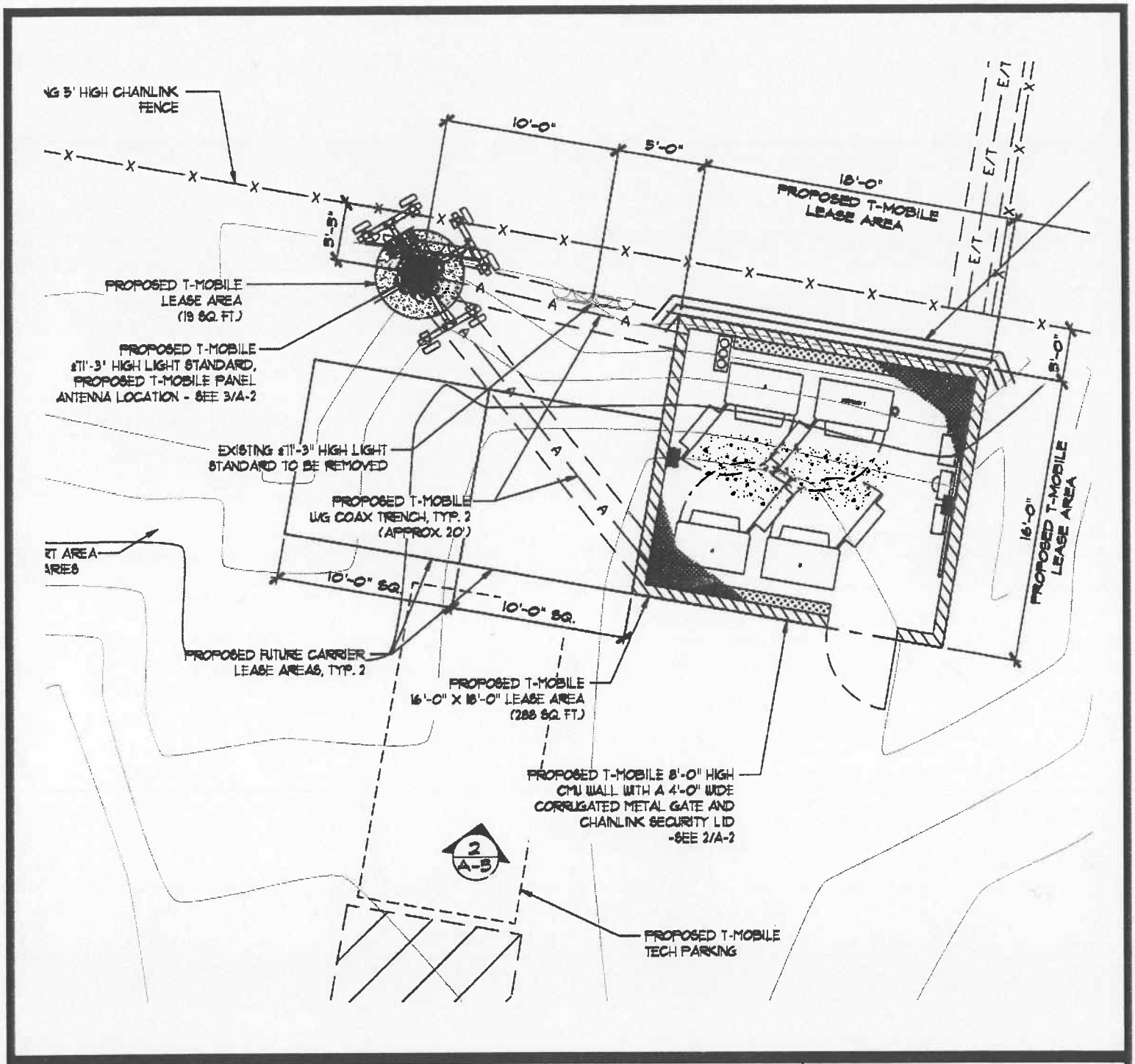


Service with the facility

APPLICANT(S): T-MOBILE WEST CORP.	**FILE NO(S):** CUP11-10117
LOCATION: 17427 LIVE OAK STREET	**APN(S):** 0410-122-15
PROPOSAL: CONSIDERATION OF A CONDITIONAL USE PERMIT TO CONSTRUCT A 71-FOOT HIGH WIRELESS COMMUNICATIONS FACILITY AT LIVE OAK PARK	**N** ↑

SERVICE PLAN

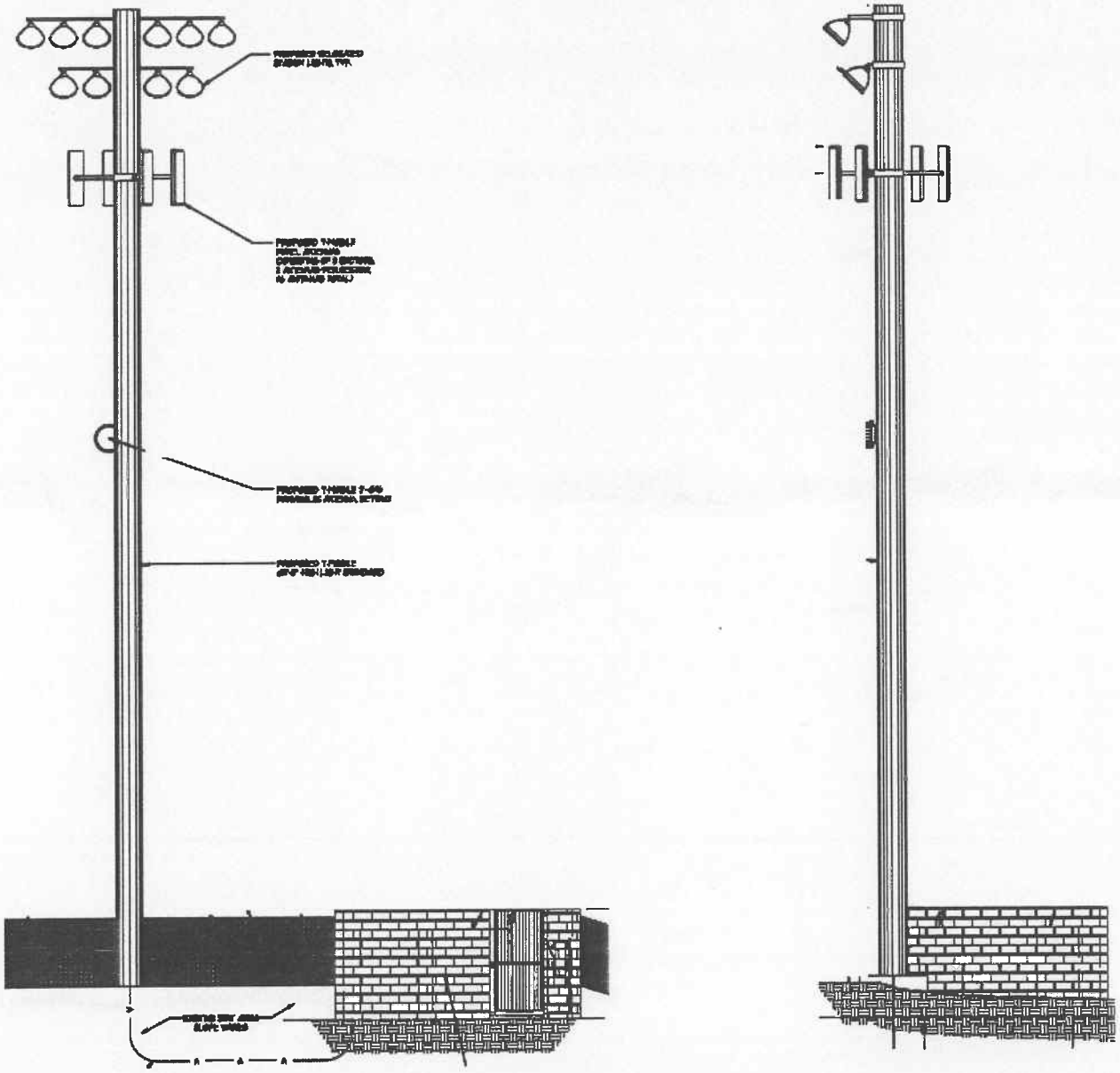
ATTACHMENT 5



APPLICANT(S): T-MOBILE WEST CORP.	**FILE NO(S):** CUP11-10117
LOCATION: 17427 LIVE OAK STREET	**APN(S):** 0410-122-15
PROPOSAL: CONSIDERATION OF A CONDITIONAL USE PERMIT TO CONSTRUCT A 71-FOOT HIGH WIRELESS COMMUNICATIONS FACILITY AT LIVE OAK PARK	**N** ↑

SITE PLAN

ATTACHMENT 6



APPLICANT(S): T-MOBILE WEST CORP.	**FILE NO(S):** CUP11-10117
LOCATION: 17427 LIVE OAK STREET	**APN(S):** 0410-122-15
PROPOSAL: CONSIDERATION OF A CONDITIONAL USE PERMIT TO CONSTRUCT A 71-FOOT HIGH WIRELESS COMMUNICATIONS FACILITY AT LIVE OAK PARK	**N** ↑

ELEVATIONS OF THE STADIUM LIGHT POLE

ATTACHMENT 7

APPLICANT(S): T-MOBILE WEST CORP.	**FILE NO(S):** CUP11-10117
LOCATION: 17427 LIVE OAK STREET	**APN(S):** 0410-122-15
PROPOSAL: CONSIDERATION OF A CONDITIONAL USE PERMIT TO CONSTRUCT A 71-FOOT HIGH WIRELESS COMMUNICATIONS FACILITY AT LIVE OAK PARK	**N** ↑

PHOTOSIMULATION OF THE STADIUM LIGHT POLE

ATTACHMENT 8

APPLICANT(S): T-MOBILE WEST CORP.	**FILE NO(S):** CUP11-10117
LOCATION: 17427 LIVE OAK STREET	**APN(S):** 0410-122-15
PROPOSAL: CONSIDERATION OF A CONDITIONAL USE PERMIT TO CONSTRUCT A 71-FOOT HIGH WIRELESS COMMUNICATIONS FACILITY AT LIVE OAK PARK	**N** ↑

PHOTOSIMULATION OF THE STADIUM LIGHT POLE

RESOLUTION NO. PC-2011-25

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HESPERIA, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT TO CONSTRUCT A 71-FOOT HIGH WIRELESS COMMUNICATIONS FACILITY WITHIN LIVE OAK PARK AT 17427 LIVE OAK STREET (CUP11-10117)

WHEREAS, T-Mobile West Corp. has filed an application requesting approval of Conditional Use Permit CUP11-10117 described herein (hereinafter referred to as "Application"); and

WHEREAS, the Application applies to land within Live Oak Park, which is within the Public-School (P-School) General Plan land use designation and Zone District at 17427 Live Oak Street and includes Assessor's Parcel Number 0410-122-15; and

WHEREAS, the Application, as contemplated, proposes to construct a 71-foot high wireless communications facility on the subject property; and

WHEREAS, the subject site is within the Green Flag RC race track area as part of Live Oak Park. The surrounding properties are almost entirely vacant. Commercial uses exist to the east along "I" Avenue; and

WHEREAS, the subject site as well as surrounding properties are within the Main Street and Freeway Corridor Specific Plan (MSFC-SP) General Plan Land Use designation; and

WHEREAS, the subject site is within the Public/Institutional Overlay (PIO) zone district as part of the Main Street and Freeway Corridor Specific Plan. The properties to the north and west are within the General Industrial (GI) zone district. The properties to the south and east are within the Commercial Industrial Business Park (CIBP) zone district; and

WHEREAS, the project is categorically exempt from the requirements of the California Environmental Quality Act by Section 15303, New Construction or Conversion of Small Structures; and

WHEREAS, on June 9, 2011, the Planning Commission of the City of Hesperia conducted a duly noticed public hearing pertaining to the proposed Application, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF HESPERIA PLANNING COMMISSION AS FOLLOWS:

Section 1. The Planning Commission hereby specifically finds that all of the facts set forth in this Resolution are true and correct.

Section 2. Based upon substantial evidence presented to this Commission during the above-referenced June 9, 2011 hearing, including public testimony and written and oral staff reports, this Commission specifically finds as follows:

(a) The site for the proposed use is adequate in size and shape to accommodate the proposed use, because the site can accommodate all proposed improvements, without infringing on required setbacks or easements.

(b) The proposed use will not have a substantial adverse effect on abutting property, or the permitted use thereof.

(c) The proposed project is consistent with the goals, policies, standards and maps of the adopted Land Use Plan, Development Code and all applicable codes and ordinances adopted by the City of Hesperia.

(d) The site for the proposed use will have adequate access based upon the required access easement from the site to Cajon Street.

(e) The proposed project is consistent with the adopted General Plan of the City of Hesperia.

Section 3. Based on the findings and conclusions set forth in this Resolution, this Commission hereby approves Conditional Use Permit CUP11-10117, subject to the conditions of approval as shown in Attachment "A."

Section 4. The Secretary shall certify to the adoption of this Resolution.

ADOPTED AND APPROVED this 9th day of June 2011.

_____
Chris Elvert, Chair, Planning Commission

ATTEST:

_____
Kathy Stine, Secretary, Planning Commission

ATTACHMENT 'A'

List of Conditions for Conditional Use Permit CUP11-10117

Approval Date: June 9, 2011
Effective Date: June 21, 2011
Expiration Date: June 21, 2014

This list of conditions apply to a conditional use permit to construct a 71-foot high wireless communications facility within Live Oak Park at 17427 Live Oak Street. Any change of use or expansion of area may require approval of a revised conditional use permit application (Applicant: T-Mobile West Corporation; APN: 0410-122-15).

The use shall not be established until all conditions of this conditional use permit application have been met. This approved conditional use permit shall become null and void if all conditions have not been completed within three (3) years of the effective date. Extensions of time of up to twelve (12) months may be granted upon submittal of the required application and fee prior to the expiration date.
(Note: The "Init" and "Date" spaces are for internal city use only).
Init Date

SUBMITTAL OF PUBLIC IMPROVEMENT PLANS SHALL INCLUDE THE FOLLOWING:

___ _____ 1. **Building Construction Plans.** Five complete sets of construction plans, prepared and wet stamped by a California licensed Civil or Structural Engineer or Architect, shall be submitted to the Building Division with the required application fees for review. (B)

___ _____ 2. **Drainage Study.** The Developer shall submit a Final Hydrology / Hydraulic study identifying the method of collection and conveyance of tributary flows from off-site as well as the method of control for increased run-off generated on-site. (E)

___ _____ 3. **Utility Non-interference / Quitclaim Document(s).** The Developer shall provide non-interference and or quitclaim letter(s) from *any* applicable utility agencies for *any* utility easements that affect the proposed project. All documents shall be subject to review and approval by the Engineering Department and the affected utility agencies. **The improvement plans will not be accepted without the required documents and approval from the affected agencies.** (E)

___ _____ 4. **Plan Check Fees.** Along with improvement plan submittal, the Developer shall pay applicable plan-checking fees. **Improvement Plans and requested studies shall be submitted as a package. (E)**

___ _____ 5. **Soils Report.** The Developer shall provide soils reports to substantiate the foundation design. (B)

___ _____ 6. **Indemnification.** As a further condition of approval, the Applicant agrees to and shall indemnify, defend, and hold the City and its officials, officers, employees, agents, servants, and contractors harmless from and against any claim, action or proceeding (whether legal or administrative), arbitration, mediation, or alternative dispute resolution process), order, or judgment and from and against any liability, loss, damage, or costs and expenses (including, but not limited to, attorney's fees, expert fees, and court costs), which arise out of, or are in any way related to, the approval issued by the City (whether by the City Council, the Planning Commission, or other City reviewing authority), and/or any acts and omissions of the Applicant or its employees, agents, and contractors, in utilizing the approval or otherwise carrying out and performing work on Applicant's project. This provision shall not apply to the sole negligence, active negligence, or willful misconduct of the City, or its officials, officers, employees, agents, and contractors. The Applicant shall defend the City with counsel reasonably acceptable to the City. The City's election to defend itself, whether at the cost of the Applicant or at the City's own cost, shall not relieve or release the Applicant from any of its obligations under this Condition. (P)

CONDITIONS REQUIRED PRIOR TO BUILDING PERMIT ISSUANCE:

___ _____ 7. **Facility Requirements.** The stadium light pole, antennae and all other equipment installed upon the pole shall be installed consistent with the approved elevations and photo simulations. (P)

___ _____ 8. **Consistency with Approved Graphics.** Improvement plans for off-site and on-site improvements shall be consistent with the graphics approved as part of this conditional use permit application and shall also comply with all applicable Title 16 and Engineering Division requirements. (E, P)

___ _____ 9. **Access Easement.** An access easement shall be recorded, allowing access from a public right-of-way to the wireless communications facility for the benefit of each wireless communications provider using the site for construction and maintenance of the wireless communications facilities during the operating life of the facility. As an alternative, the access easement requirement may be satisfied by an easement established as part of a recorded lease agreement. The easement and the required application and fees shall be submitted to the Planning Division prior to review and approval by the City. (P)

___ _____ 10. **Co-location Agreement.** The applicant shall record a co-location agreement permitting at least two other wireless communications providers to place at least two other communications facilities upon the site. The co-location agreement shall be binding for the life of the facility. The agreement and the required application and fees shall be submitted to the Planning Division prior to review and approval by the City. (P)

___ _____ 11. **AQMD Approval.** The Developer shall provide evidence of acceptance by the Mojave Desert Air Quality Management District. (B)

___ _____ 12. **Utilities.** The wireless communications facility shall be served by independent utility connections and shall be separately metered. (B, P)

___ _____ 13. **Removal Bond.** The applicant shall submit a bond and/or letter of credit acceptable to the City in an amount to cover the cost of removing the entire wireless communications facility in the event that the communications facility is abandoned or after 30 years from its date of establishment, whichever occurs first. The bond or letter of credit and the required application and fees shall be submitted to the Planning Division prior to review and approval by the City. As an alternative, the removal bond requirement may be included as part of a recorded lease agreement. (P)

___ _____ 14. **Wall Requirements.** A eight-foot high solid wall shall be used to screen and secure the mechanical equipment and other appurtenant elements of the wireless communications facility. The use of barbed wire or other types of fencing is not permitted. (P)

___ _____ 15. **Grading Plan.** The Developer shall design a Grading Plan with existing contours tied to an acceptable City of Hesperia benchmark. The grading plan shall indicate the wireless communication facility, equipment shelter "footprints," and proposed wall enclosure, as a minimum. The site grading and shelter pad preparation shall include the recommendations provided by the Preliminary Soils Investigation. All proposed walls shall be indicated on the grading plans showing top of wall (tw), top of footing (tf), and the finish grade (fg) elevations. (E)

CONDITIONS REQUIRED PRIOR TO CERTIFICATE OF OCCUPANCY:

___ _____ 16. **Utility Clearances.** The Building Division will provide utility clearances after required permits and inspections for the facility. Utility meters shall be permanently labeled. (B)

___ _____ 17. **On-Site Improvements.** All on-site improvements as recorded in these conditions, and as shown on the approved site plan, floor plan, and elevations shall be completed in accordance with all applicable Title 16 requirements. The wireless communications tower, equipment shelter, landscaping, and fencing shall also be designed consistent with the approved site plan, elevations and photo simulations. In addition, all co-locations shall be designed consistent with and shall not detract from the aesthetic look of the light pole, equipment shelter building materials and perimeter fencing. Any exceptions shall be approved by the Deputy Director of Development Services / Community Development. (P)

THE FOLLOWING ARE CONTINUING CONDITIONS. FAILURE TO COMPLY WITH THESE CONDITIONS MAY RESULT IN REVOCATION OF THE CONDITIONAL USE PERMIT:

___ _____ 18. **Maintenance of the Facility**. The light pole, landscaping, perimeter fencing, and all related equipment shall be maintained in good condition during the life of the wireless communications facility. (P)

___ _____ 19. **Use of Generator(s).** A generator will only be allowed for backup emergency power to the facility and shall be located within the approved fenced area. Use of a generator to provide power for any other purpose is prohibited unless specifically approved by the Deputy Director of Development Services / Community Development. (P)

___ _____ 20. **Removal Bond.** The applicant shall maintain the bond and/or letter of credit acceptable to the City. The bond or letter of credit shall not expire before the end of the 30-year term in which the facility is to be used. Neither the bond nor the letter of credit shall be released until the facility's removal is verified by the Planning Division. (P)

___ _____ 21. **Abandonment of the Facility.** Should the facility fail to be used as approved for more than 180 consecutive days or should its 30-year effective life expire, then the applicant shall cause the removal of the light pole, fencing and all related equipment at its sole cost and expense. The light pole and related equipment shall be removed no later than 30 days after the facility has been abandoned. Failure to remove the facility in accordance with this condition shall result in forfeiture of the bond and/or letter of credit posted with the City so that the City will have the funds to cause its removal. The bond shall not be released until the facility's removal is verified by the Planning Division. (P)

IF YOU NEED ADDITIONAL INFORMATION OR ASSISTANCE REGARDING THESE CONDITIONS, PLEASE CALL THE APPROPRIATE DIVISION LISTED BELOW:

(P)	**Planning Division**	**947-1200**
(B)	**Building Division**	**947-1300**
(E)	**Engineering Division**	**947-1414**
(F)	**Fire Prevention Division**	**947-1012**
(RPD)	**Hesperia Recreation and Park District**	**244-5488**

City of Hesperia
STAFF REPORT

DATE: June 9, 2011

TO: Planning Commission

FROM: Dave Reno, AICP, Principal Planner

BY: SL Stan Liudahl, AICP, Senior Planner

SUBJECT: Consideration of Development Code Amendment DCA11-10159, revising the Alternative Energy Technology Ordinance as well as other ordinances to implement adjustments to the height and setback regulations for windmills; Applicant: City of Hesperia; Area affected: Citywide

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RECOMMENDED ACTION

It is recommended that the Planning Commission adopt Resolution No. PC-2011-21, approving DCA11-10159, amending the Alternative Energy Technology Ordinance as well as other ordinances to implement adjustments to the height and setback regulations for windmills.

BACKGROUND

The City Council adopted the Alternative Energy Ordinance on February 16, 2010. Since then, staff has processed two applications to install windmills on commercial and industrial uses and received requests to install them on residential rooftops. These requests have been generated by rebate and incentive programs as well as by the development of smaller, lighter and more efficient windmills. These new machines produce energy at lower wind speeds and create less noise. Finally, a change to the procedures for solar energy is necessary, as state law limits the City's review authority.

The current Ordinance only allows roof-mounted wind turbines in non-residential areas. Due to design improvements, contractors are now requesting that they be allowed on residential roofs. The 52.5-foot height limitation for tower-mounted windmills has also been an issue. Alternative energy contractors and consumers have requested taller windmills on larger residential and agricultural lots.

On April 14, 2011, the Planning Commission held an Alternative Energy Technology Workshop. During this workshop alternative energy technology contractors and consumers reaffirmed their request to install roof-mounted windmills upon single-family residences, allowing them at a greater height than the current 52.5-foot restriction, and reducing the minimum setback below 1.1 times windmill height (Attachment 1). At the conclusion of the workshop, the Commission directed staff to draft a proposed amendment to the Alternative Energy Technology Ordinance and bring the amendment back for consideration. Specific direction was given to allow windmills on residential rooftops on 15,000 square foot lots, and to eliminate the site plan review requirement for residential roof-mounted solar energy systems facing streets, due to changes in state law.

ISSUES/ANALYSIS

Proposed Alternative Energy Technology Ordinance Revisions

I. WINDMILLS

1. Roof-mounted windmills on developed residential and agricultural lots

The Alternative Energy Ordinance currently allows roof-mounted windmills only within nonresidential zones. This restriction was discussed at length prior to its adoption due to concerns regarding aesthetics, noise, and the potential damage to structures. Since then, advances in windmill design have reduced the size and noise of roof-mounted windmills. One manufacturer's windmill weighs only 60 pounds and meets the 55 dB(A) nighttime noise standard less than ten feet away. Early in May of this year, staff received one reported failure of a roof-mounted windmill on a nonresidential building. In this case, the windmill itself suffered a structural failure and the mounting was not at fault. Any windmill installed on a structure will require engineered plans and permits to ensure that the installation or operation will not cause damage to the structure. This revision would allow roof-mounted windmills on residential rooftops. This proposed revision is noted under Section 16.16.064 in Exhibit "A" of the resolution.

2. Roof-Mounted Windmill Lot Size and Height Limitations

During the workshop, a number of Commissioners suggested allowing roof-mounted windmills on 15,000 square foot lots, consistent with the tower-mounted windmill requirement. All windmills must meet the 55 dB(A) standard at the property boundary. Therefore, no additional noise impact will occur. Nonresidential developments are currently allowed rooftop windmills up to 50 feet high or the height regulation of the zone district, whichever is greater. This Ordinance will treat roof-mounted windmills in residential and agricultural zones in the same manner. Consequently, the special height increases allowed by Section 16.20.060 will be amended to provide a distinction between roof-mounted and tower-mounted windmills. Finally, an over-the-counter permitting procedure was recommended. Staff has proposed allowing rooftop windmills on developed residential lots 15,000 square feet and larger as identified within Section 16.16.064. However, a change to the permitting procedure is not recommended.

3. Exception Allowing an Increase in Tower-Mounted Windmill Height on 2 1/2-Acre Lots

A contractor and consumer stated that the height limitation for tower-mounted windmills is overly restrictive and that a taller windmill should be allowed, especially on 2 ½-acre lots. It was suggested by a contractor that the allowable height be increased from 52.5 feet to 60 feet for 1/3-acre lots and 80 feet to 100 feet on larger lots (Attachment 2). Information from the industry indicates that a tower height of between 60 and 100 feet is needed to optimize efficiency. This Ordinance will allow 70-foot high windmills on 90,000 square foot lots with approval of a minor exception. Greater height was not considered for lots of less than 2 ½ acres, as the narrower lots cannot meet the 1.1 setback standard, which ensures that a falling windmill will not impact adjacent properties. This revision is noted under Section 16.16.063(A)(4).

4. Reduction of the Side and Rear Yard Setback for Tower-Mounted Windmills

The current Ordinance requires that tower-mounted windmills be a minimum of 1.1 times its overall height from the side and rear property lines. This requires that a 50-foot high windmill be located behind the primary building and at least 55 feet from the side and rear property lines. Consequently, a windmill of this height would not be able to be placed on a typical 1/2-acre lot or many of the narrow 100-foot wide one-acre lots. Windmills are required to be engineered to meet building code structural requirements. Therefore, it is unlikely for any tower-mounted windmill to fall. Consequently, staff supports reducing the setback to equal the windmill height. This proposed revision is noted under Section 16.16.063(A)(1) in Exhibit "A" of the resolution.

5. Exception Allowing Windmills Closer to the Front Yard than the Primary Building

The current Ordinance requires windmills to be located behind the primary building. Staff permitted a windmill at 17620 Mojave Street, which was unable to meet the windmill setback requirement, due to the location of the primary building. The home is within the rear 25 percent of the lot, 29 feet from the rear property line. This Ordinance will allow windmills up to 25 percent closer to the front property line than the primary building with approval of a minor exception. However, this will not allow any windmill within the front yard setback area nor exempt the windmill from meeting the noise standard at the property boundaries. This revision is noted under Section 16.16.063(A)(1).

II. SOLAR ENERGY SYSTEMS

Health and Safety Code Section 17959.1 states that a city or county shall administratively approve solar energy installations. In order to deny a permit, the jurisdiction must make written findings based upon substantial evidence that the system will have a specific adverse impact upon the public health and safety and that there are neither satisfactory mitigation measures nor alternatives which would reduce or avoid the specific adverse impact to a reasonable level.

Government Code Section 65850.5 provides statewide standards to promote development of solar energy by providing timely and cost-effective administrative review of these systems for installation within residential, agricultural, and business areas. The law prohibits local jurisdictions from adopting ordinances which create unreasonable barriers to development of solar energy systems and specifically identifies design review for aesthetic purposes as an unreasonable barrier. Denial of a permit shall be limited to public health and safety issues as enforced by the building official and the findings for denial are similar to that within Health and Safety Code Section 17959.1. Strangely, Section 65850.5 provides the Planning Commission review authority for appeal of the building official's decision. Since the Commission does not have discretion regarding building codes, this provision isn't enforceable.

Civil Code Section 714 contains limitations for Conditions, Covenants, and Restrictions (CC & Rs) in residential developments. Any CC & R document which prohibits installation of solar energy systems is invalid under this law. Unlike the other two laws, this Section allows reasonable restrictions which do not increase its cost by more than $2,000 or decrease its efficiency by more than 20 percent. The City will review the rooftop design of solar energy systems consistent with Civil Code Section 714, but will encourage systems to be designed approximately parallel to the roof plane.

The current regulations will be amended to eliminate the site plan review requirement for all solar systems, allowing these systems to be installed upon residential roofs facing streets and on nonresidential roofs with issuance of a building permit. Ground-mounted solar energy systems will also be approved administratively within the rear yard of developed residential lots when a roof-mounted system isn't feasible and on developed nonresidential properties where these systems will not interfere with required parking, landscaping, and other improvements. These revisions are noted under Section 16.16.064.

ORDINANCE AMENDMENTS TO IMPLEMENT THE ALTERNATIVE ENERGY REVISIONS

The City's code concerning variances and minor exceptions currently does not contain provisions enabling the revisions outlined within this Ordinance. The special height limits section will also be amended, limiting its applicability to tower-mounted windmills. The recommended changes to the Development Code are identified within Exhibit "A." Additions to the resolution Exhibit "A" are shown using red underlined text and ~~deletions are represented by strikethroughs~~.

Environmental: Approval of the Development Code Amendment is exempt from the requirements of the California Environmental Quality Act by Section 15303, New Construction or Conversion of Small Structures and Section 15061(b)(3) of the CEQA Guidelines. The proposed Ordinance does not expand the allowable uses or grant entitlements not already permitted by the Development Code.

CONCLUSION

Staff supports this Development Code Amendment, as it will continue to promote installation of windmills and solar energy systems and be consistent with state law.

FISCAL IMPACT

None.

ALTERNATIVES

1. The Planning Commission may allow roof-mounted windmills on lots smaller than 15,000 square feet. Currently, tower-mounted windmills are limited to lots at least 15,000 square feet in area. Consequently, a new aesthetic impact upon neighborhoods would result. As such, staff does not support this alternative.
2. Establishment of an over-the-counter permitting procedure was discussed. This will necessitate review of the engineering design at the counter, which will take at least an hour to review. This may be longer than a customer is willing to wait and staff may not be available to do so immediately. Consequently, staff does not support this alternative.
3. Staff supports allowing windmills up to 70 feet high on 90,000 square foot or larger lots, as these lots are wide enough to ensure that a falling windmill would not impact an adjacent lot. The Planning Commission may consider tower-mounted windmills more than 52.5 feet in height on lots less than 20,000 square feet in area. The minimum windmill setback regulation will not allow more than 45 feet in height on ½-acre lots, as most are 100 feet wide. Some one-acre lots are also 100 feet wide, which would also limit these lots to a 45-foot high windmill. Since the setback regulation prevents falling windmills from impacting adjacent lots, staff does not recommend this alternative.

4. Staff recommends that the setback be reduced from 1.1 times the windmill height to the windmill height. This provides little reduction in the setback. While it could result in a slight chance of a falling windmill impacting an adjacent property, the setback is easier to calculate. The Commission may consider a further reduction in the minimum side and rear yard setback requirement for tower-mounted windmills as follows:

    a. Installation up to the minimum side and rear yard setback requirement of the zone district may be allowed if the windmill is designed to exceed the 85 MPH building code wind load requirement by 50 percent.
    b. A minimum five-foot setback may be considered without an upgraded design, consistent with the minimum side yard setback in many residential zones.

    Alternative B will not provide any additional structural strength to ensure that a windmill will not fall. That, and the minimum distance from the side and rear property lines to meet the 55 dB (A) nighttime noise limitation would likely require a greater setback than Alternative B.

5. Provide alternative direction to staff.

ATTACHMENTS

1. Written comments submitted by George Stanford for the April 14, 2011 workshop and this meeting
2. Written comments submitted by Guasti Construction Inc. for the April 14, 2011 workshop
3. Resolution No. PC-2011-21, recommending adoption of DCA11-10159, with Exhibit "A"

ATTACHMENT 1

To – City of Hesperia

In the interest of Encouraging Renewable Energy we would like the City Council to consider the following idea for change on item

#1 of Exhibit "A" of 16.16.063. These ideas are based on the type of unit at City Hall.

#1. Set back from property line to be a minimum of 5 ft. to center of pole.

EXHIBIT "A"

Chapter 16.08 Definitions

16.08.889 Wind farm. "Wind farm" for purposes of this chapter shall be multiple windmills on a lot or parcel in which the windmills are not accessory to a primary use, with the intent to provide energy to a location other than the site that the windmills are located.

16.08.890 Windmill. "Windmill" for purposes of this chapter shall include wind machines and similar accessory structures harnessing wind energy.

Chapter 16.16 Zone Districts
Article III. Additional Uses

16.16.063 Alternative Energy Technology standards.

A. Windmills as defined by Section 16.08.890 shall be permitted in accordance with Section 16.16.064 and subject to the provisions as provided herein.

1. The structure and all appurtenant equipment for all tower-mounted windmills shall be located behind the primary building, not within the front or street side yard, and a minimum of 1.1 times the overall structure height from the side and rear property lines. Guy wires may encroach into the minimum setbacks, but shall not encroach over property lines.
2. The structure may need to be farther from the property lines based upon the required specifications regarding noise identified in Section 16.16.063(A)(3).
3. Specifications on the noise produced by the windmill shall be submitted for windmills within all zone districts, identifying the distance from the structure to the property line to meet the City's Noise Ordinance. The setback shall be increased should the manufacturers' specifications evidence that the windmill would exceed the evening noise standard at any property line.
4. Tower-mounted windmills shall not exceed the height limitation of the zone district in conjunction with the special height increases of Section 16.20.060. The height shall be measured to the top of the blades or rotors or any other portion of the windmill, which extends farthest above ground level. The blades and rotors of the windmill shall be a minimum of 15 feet above ground level at the lowest point to ensure the safety of persons and property beneath. Approval of additional height beyond the special height increases within Section 16.20.060 shall require approval of a variance.
5. Multiple tower-mounted windmills are allowed subject to compliance with the minimum setback and accessory structure lot coverage limitations as well as in conformance with the Noise Ordinance. The area of a windmill is defined as the circular area measured horizontally at the farthest spread of the rotors/blades of the windmill from the pole in determining accessory structure lot coverage.
6. Roof-mounted windmills shall not exceed 50 feet or the height regulation of the zone district, whichever is greater. Approval of a minor exception is needed to exceed the height restriction by up to 10 percent and approval of a variance shall be required to exceed the allowed height beyond 10 percent. Roof-mounted windmills do not qualify for the special height increases of Section 16.20.060. The height shall be measured from the ground to the top of the blade/rotor or any other portion of the windmill.

April 28, 2011

Dave Reno
City of Hesperia
Hesperia, CA

Dear Dave,

In the interest of encouraging renewable energy, not to discourage it, S/W Wind Power designed a special wind generator for residential neighborhoods across America and the Planet. In the park behind your office there is one, as you know the noise level is less than a normal condensing unit. See attached fact sheet **thus eliminates the set back requirements** that are presently required because of noise levels for the neighbor. It is designed to stand up in a minimum of 140 mph wind thus eliminates the set back requirements, as the purpose long ago for set backs was so when the unit blows over in a strong wind it would not blow on the neighbors property. **Thus eliminating the set back requirements**, the buildings on the property will blow away before the unit blows down. There has never been one that has blown down even in the tornadoes in the Midwest.

Very Sincerely,

George Stanford

TO- CITY OF HESPERIA

SAVING OUR PLANET AND MAKING IT A BETTER AND HEALTHER PLACE FOR OUR FUTURE GENERATIONS TO LIVE.

LET US **ENCOURAGE** NOT DISCOURAGE THE USE OF RENEWABLE ENERGY.

The following is a few suggestions for the City Of Hesperia to include in their permitting process for the Wind Energy Systems. Many government agencies a crossed America are following these requirements in an effort to **ENCOURAGE** the use of Wind Energy. Santa Barbara County, Kern County, San Bernardino County, Clark County and the City of Hesperia are either in the process of or has all ready adopted the following:

1) All charges for Planning and Building permit are waived

2) Minimum property size to be a net of 18000 Square Feet.
(PLEASE SEE ATTACHED INFORMATION SHEET ABOUT THIS REQUIREMENT)
3) Mono poles (no wires) tested up to 141 MPH winds to have the same set back requirements as building set backs.

4) An accessory wind energy saver that is 55 feet or less in height and generates less than 5.0 Kilowatts shall be exempt from the requirement to obtain an accessory energy system permit From planning.

For extensive information please go to the following sites:
"windenergy.com" then clicks S/W wind power"
"AWEA.com"

BIG NEWS FOR THE PLANET AND OUR WELL BEING!!!!

We just installed the WIND ENERGY SAVER at the Hesperia City hall. It is being donated by Doctor Two in an effort to encourage wind energy in all of America. You may see this unit at any time at the City Hall in Hesperia CA. 92345 or there is one at our nations capitol in Washington DC. For further questions please call Mark 760-881-1044

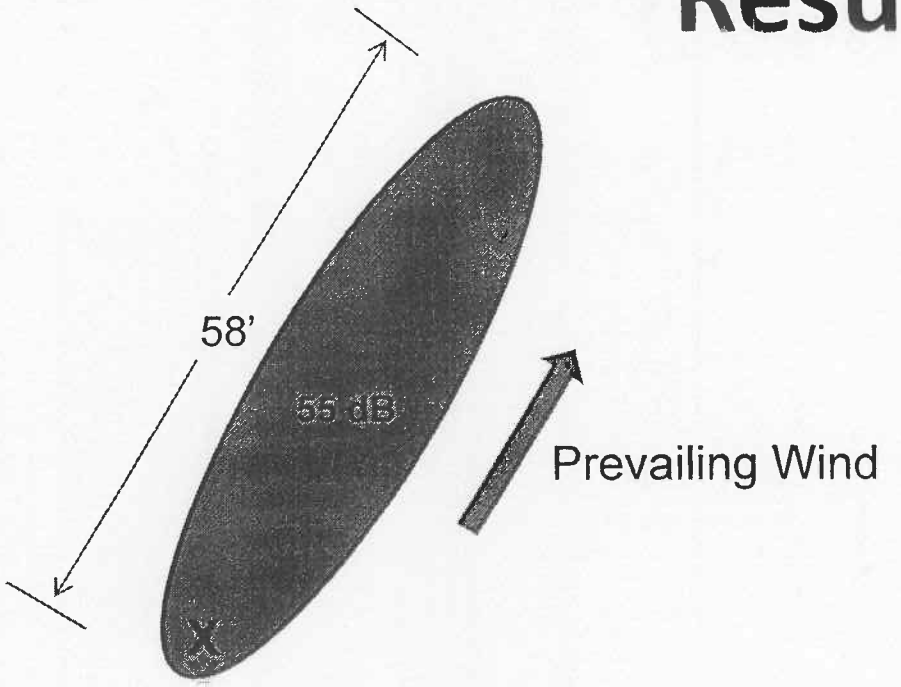
Note that human hearing is relatively insensitive to low bass (below 100 Hz), and also compresses at higher sound levels.

Here are some typical sounds, and their levels.

Sounds	dB SPL
Rocket Launching	180
Jet Engine	140
Thunderclap, Air Raid Siren 1 Meter	130
Jet takeoff (200 ft)	120
Rock Concert, Discotheque	110
Firecrackers, Subway Train	100
Heavy Truck (15 Meter), City Traffic	90
Alarm Clock (1 Meter), Hair Dryer	80
Noisy Restaurant, Business Office	70
Air Conditioning Unit, Conversational Speech	60
Light Traffic (50 Meter), Average Home	50
Living Room, Quiet Office	40
Library, Soft Whisper (5 Meter)	30
Broadcasting Studio, Rustling Leaves	20
Hearing Threshold	0

http://www.jimprice.co 12/16/2009

Results



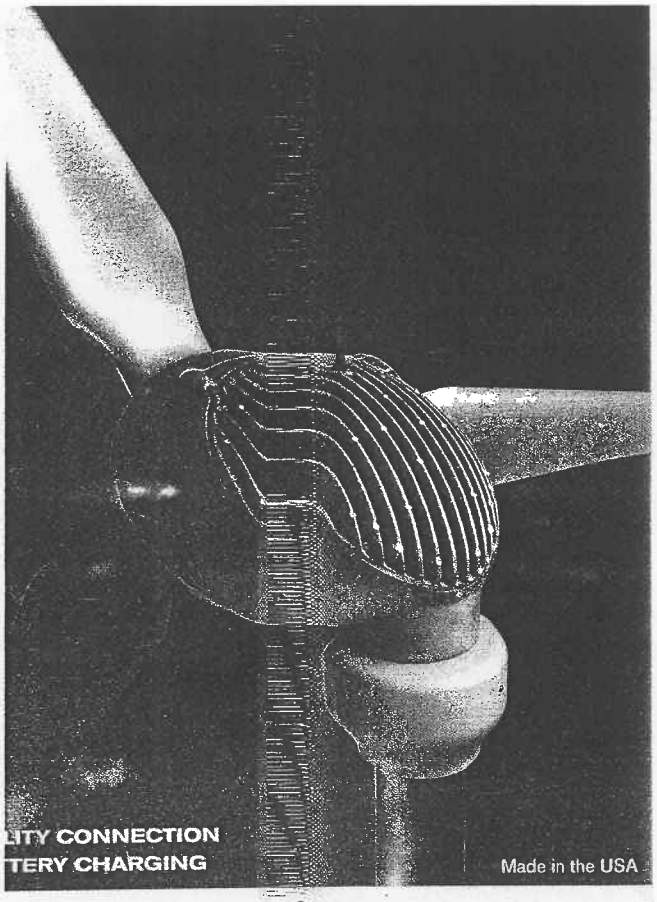
Skystream on 33' (10 M) tower

The charts translate to a sound pressure level (observer perception) of 55 dBA at a slant distance of 17.6 m from the rotor hub. For the wind turbine operating in a typical background noise of 44 dBA, the sound pressure level (observer perception) would be 55 dBA at a slant distance of 18.4 m from the rotor hub. Sound perception is heard downwind from the machine and dissipates as the distance increases.

SKYSTREAM 3.7®

A revolutionary residential power appliance for utility-connected homes.

- Quiet operation
- Blends into the environment
- Designed for long life
- Low cost of energy
- Rated at 2.4 kW



SKYSTREAM 3.7®

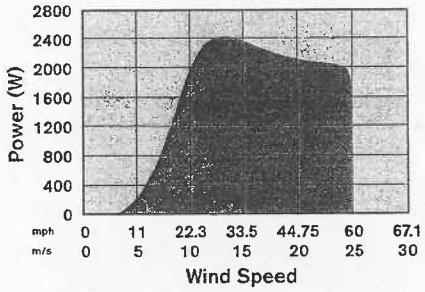
2.4 KW RESIDENTIAL POWER APPLIANCE

Take Control of Your Energy Needs

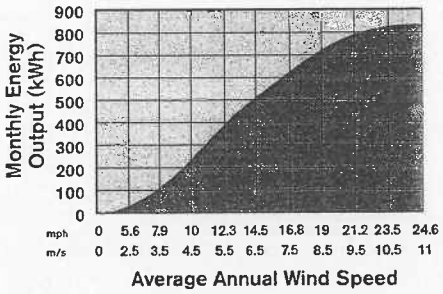
Designed for homes and small businesses, the Skystream 3.7® converts wind into clean electricity you can use. It's the first compact, user-friendly, all-inclusive wind generator (with controls and inverter built in) designed to provide quiet, clean electricity in very low winds.

With a rated capacity of 2.4 kW, Skystream can provide anywhere from 40%-90%[1] of a household's or small business's total energy needs. And because it operates at a low RPM, Skystream is as quiet as the trees blowing in the wind.

POWER[2]



MONTHLY ENERGY



Technical Specifications

Rated Capacity	2.4 kW
Rotor Diameter	12 ft (3.72 m)
Weight	170 lb (77 kg)
Swept Area	115.7 ft² (10.87 m²)
Type	Downwind rotor with stall regulation control
Direction of Rotation	Clockwise looking upwind
Blades	(3) Fiberglass reinforced composite
Rated Speed	50 - 330 rpm
Maximum Tip Speed	216.5 ft/s (66 m/s)
Alternator	Slotless permanent magnet brushless
Yaw Control	Passive
Grid Feeding	120/240 VAC Split 1 Ph, 60 Hz 120/208 VAC 3 Ph compatible, 60 Hz (Check with dealer for other configurations)
Battery Charging	Battery Charge Controller kit available for battery charging systems
Braking System	Electronic stall regulation with redundant relay switch control
Cut-in Wind Speed	8 mph (3.5 m/s)
Rated Wind Speed	29 mph (13 m/s)
User Monitoring	Wireless 2-way interface
Survival Wind Speed	140 mph (63 m/s)
Warranty	5 year limited warranty

FIVE YEAR WARRANTY

Southwest Windpower
1801 W. Route 66
Flagstaff, AZ 86001 USA
928.779.9463
www.skystreamenergy.com

Makers of Skystream 3.7® / AIR / Whisper

[1] Actual savings is based on wind speed at the site and monthly energy consumption.
[2] Data measured and compiled by USDA-ARS Research Lab, Bushland, TX.

Printed on recycled paper with vegetable inks using 100% new wind energy

2-13
PLANNING COMMISSION

SUGGESTED GUIDELINES FOR **LOCAL** GOVERNMENT FOR WINDENERGY SYSTEMS TO **ENCOURAGE** RENEWABLE ENERGY AND NOT TO DISCRIMANATE AGAINST THE CITIZEN THAT WANTS TO HELP OUR PLANET

MINIMUM LOT SIZE	MAXIMUM HEIGHT	MAXIMUM SOUND LEVEL	GUY WIRES	PERCENTAGE OF OWNERS THAT THIS RULE **ELIMANATES**
5000 sq ft	29'	45 decibels at 90'	NO	**18%**
18,000 sq ft	42'	45 decibels at 90'	NO	**56%**
40,000 sq ft	44'	45 decibels at 90'	NO	**79%**
80,000 sq ft	45'	45 decibels at 90'	NO	**81%**
210,000 sq ft	100'	70 decibels at 90	optional	**87%**

Wind energy systems to have same setback requirements as buildings up to 45 Decibels at 90 ft. Above 45 decibels at 90 ft to be a minimum of a 50' set back.

All units must be designed for wind survival of at a minimum of 100 mph.

All units to be certified by the **CALIFORNIA ENERGY COMMISSION**

All fees for planning and building departments are waived in effort to encourage the use of renewable energy.

MINIMUM PROPERTY SIZE FOR WIND ENERGY SYSTEMS:

LET US **ENCOURAGE** NOT DISCOURAGE THE USE OF RENEWABLE ENERGY

At the **beginning** and **ending** of the presentation show the picture of the United States Capital building with the wind energy saver in the front while playing "America the Beautiful"

A lot of the local government requirements across America regarding minimum property size is still from 1 acre, 2-1/2 acres, 5 acres, there is a few with even 20 acres thus eliminating approximately 87 % of the American citizens that wish to have a WIND ENERGY saver in their back yard, they are being denied this VERY IMPORTANT devise by local government while state and the federal governments are in full support of saving the planet and even paying as much as 60% of the cost of the unit for the citizen

INSERT SUGGESTED GUIDELINES HERE

Very tall guy wire units are still made and are adequate for what they were designed for at that time. These are the type that made the old rules such as the 110% of the length of pole set back from property line as they would blow over in a little more than a strong wind. The purpose of the setback was so when it blows down it would not land on the neighbor's property. The modern units will still be standing after the buildings blow over. Some local governments has even dictated to the owner of the property the same set backs from buildings on the persons own private property. This is putting the freedom of Americans to access new renewable energy technology in jeopardy by a small local government.

You might relate changes in the laws to be made for Wind Energy Systems for today's new modern products to that of the laws that are changed for our needs and desires on our highways. Just two generations ago driving from the Los Angeles basin up and over the Cajon Pass Route 66 to Victorville and far beyond the speed limit was 25 to 55 MPH. It was comprised of two lanes. About 80% of it was "No Passing Zones" There were 1500 cars per day traveled the route. Local Government had to change the regulations to fit our needs and wants. There are 87,000 cars per day that travel the route presently. So the road had to be widened to 10 lanes in stead of two, elimating the no passing lanes. Also the Speed Limit was raised from 25 to 55 MPH to 70 MPH.

We **MUST** make changes in our energy wants and needs to STOP importing $350 Billion worth of oil every year and rapidly increasing. Also the way it is produced with fossil fuels today with the well running dry and pollution is destroying our atmosphere. The planet may not be habitable in another two generations if we do not make changes **RIGHT NOW !!!!!**

Some local governments are still trying to adopt some of the old rules that were designed for the wind mills of yesterday, 80 feet or more in height and are held up with guy wires and very noisy for close neighbors. It was not uncommon for these units to blow over in a stronger than normal wind thus the reason for set back requirements from property lines of 110% of the length of the pole. There is some of the anti renewable energy local governments that are dictating that a person that owns his own property must set his system so far from his own buildings that you can not find a place on about 90% of the properties to install the unit. What happened to the freedom in America to choose??????

There have been a lot of changes since these rules were made from two to thirty years ago in the esthetics, sound levels, and strength against Hurricanes in the latest Wind Systems. The Skystream 3.7 is designed especially for an 18,000 square foot property and being it is very **GOOD** looking, noise level is ½ of an air conditioning unit and shorter than some existing power poles in your front yard. For an example there is now wind energy savers designed to fit 5000 square foot properties such as the 1.2KW FALCON and newer vertical axis type wind energy savers.

Our goal is to inform all local governments that they need to keep all existing rules that they have accumulated over the last 20 plus years and make all new rules for urban areas with the new units with all the latest technology. WE are hoping that all local governments in America will get along side the US government and the state Governments and allow its citizens to put a Wind Energy saver in their back yard so as they can take advantage of all the benefits given by the State and Federal. Also for the low income families are now allowed to supplement their income with a wind energy saver that produces more energy than they require, the power company will pay the owner for the surplus energy they have generated. (INSERT THE LAW NUMBER AB?)

(Picture # 49) This 350 foot high Wind Energy Saver is going straight into the grid right next door to user saving a lot of loss in transportation. Believe it or not this giant would fit on a 10,000 sq ft lot. It also is generating enough energy to furnish 10 homes or 12 cars. The noise level is less than the freeway noise. There is no Fossil fuel being sucked out of the earth and ZERO pollution being put into our environment for the Energy it is producing.

In an effort to eliminate all the obnoxious high voltage transmission lines being built across America, Emitting off all that radiation on to the wildlife and humans that get near them and not to even mention how they destroy the looks of America's beautiful landscape.

Transporting electricity in transmission lines is something like carrying a bucket of water with holes in the bucket. If you carry it far enough, there will not be any left in the bucket when you get there. There is 30% of our energy lost by the time it reaches the user through these transmission lines.

Also hopefully we will eliminate the need for the very ugly and dangerous power poles we have in our front yards and streets today. When they blow over in a strong wind or the transformer on the pole explodes when hit by lightning destroying property and life.

(Make a Mickey Mouse animation for this) Instead of driving our car down to put a very explosive and air polluting liquid in the tank and actually put our loved ones in the vehicle and drive around with 20 gallons of very high explosive and dangerous liquid, when every home in America has a wind energy saver, we get home merely plug in our vehicle to the wind energy saver eliminating the explosive liquid, saving an enormous amount of money,

There is a tremendous amount of radiation that comes off of these lines that is a hazard to the lives of our wildlife and us humans.

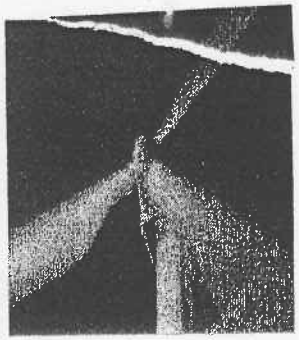
We need to allow every American citizen to let him do his or her part in reducing some of the 1.9 MILLION TONS of carbon dioxide that we are now putting into our atmosphere **every day** in the United States of America and creating global warming and changing the earth in a negative way for our future generations.

You now can see in person one of these devises that save you money and our planet!! At our nations capitol in Washington DC or at the City of Hesperia, city hall in Hesperia CA. 92345.

The power companies do not want and are not able to keep building new grid systems and keep the cost of electricity down to the level an average wage earner can afford to have electricity. That is why it is an emergency for our local governments to do every thing possible for the Local Citizen to have his own on-site inexpensive generation **ASAP**.

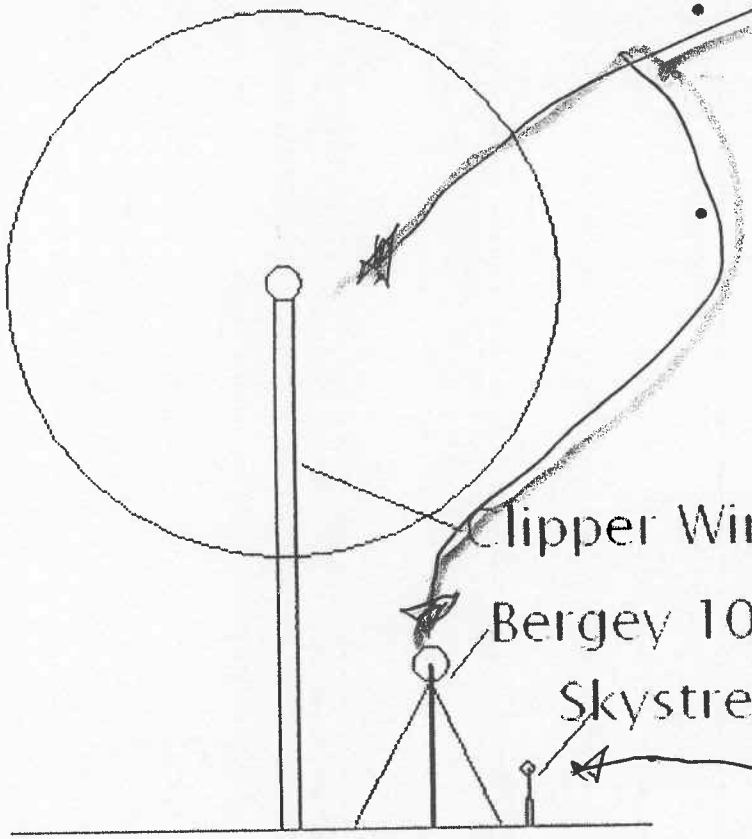
DAVE YOUR EXHIBIT "A" #1 IS WRITTEN FOR THESE TYPES

Prevailing Wind Power



Size Comparisons

- The Skystream 3.7 is designed to be compatible with typical residential scaling.
- The Skystream is much smaller than most turbines visible from roadways.



SEPARATE RULES NEED WRITTEN FOR THIS ONE

ATTACHMENT 2

Hesperia City Council Members,

Work shop meeting on alternative energy on 4/14/11

To whom it may concern, we here at Guasti Construction are asking you to consider changing your alternative energy legislation on small wind. Currently, your **Residential** laws restrict the height of your wind systems to **52' to the tip of the blade at 12 o' clock on 1/3 of an acre.** We would like to see this height be changed to **60' to the top of the fixed structure** given they had the room (large enough lot) for the setbacks to be met. We would also like to see homeowners with larger lots be able to get taller towers maybe 80' up to 100'. Lets put into affect a system that would govern the tower heights based on lot size much like San Bernardino County.

In your **Commercial and Industrial** areas we are suggesting a **height of 100' to the top of the fixed structure.** The reason for this is in your commercial and industrial areas you find, businesses on acreage. Businesses use a lot of power and therefore would require a larger wind system, most of these systems require a 100' tower.

Wind is encouraged by the State of California, with a rebate program that covers $30,000 toward the cost of a Bergey wind turbine. There is also a 30% federal tax credit that also encourages these projects to move forward. San Bernardino County set up a plan, which waved the fees for green projects. Thus, showing they were becoming a green county. This helped to encourage homeowners to go forward with alternative energy options. Hesperia should follow in San Bernardino County's footsteps and instate a program that will offer assistance for homeowners moving toward alternative energy solutions.

Best regards,

Joe and Bev Guasti

Owners of Guasti construction Inc.

ATTACHMENT 3

RESOLUTION NO. PC-2011-21

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HESPERIA, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL ADOPT A DEVELOPMENT CODE AMENDMENT REVISING THE ALTERNATIVE ENERGY TECHNOLOGY ORDINANCE AS WELL AS OTHER ORDINANCES TO IMPLEMENT ADJUSTMENTS TO THE HEIGHT AND SETBACK REGULATIONS FOR WINDMILLS (DCA11-10159)

WHEREAS, On January 5, 1998, the City Council of the City of Hesperia adopted its Ordinance No. 250, thereby adopting the Hesperia Municipal Code; and

WHEREAS, the City Council adopted Ordinance No. 2009-12 on February 16, 2010, establishing an Alternative Energy Technology Ordinance to provide for wind and solar energy generation systems in the City; and

WHEREAS, The regulations adopted under Ordinance No. 2009-12 regarding alternative energy technology requires modification, which also necessitates revision of the regulations regarding variances and minor exceptions and the special height limits to implement adjustments to the height and setback regulations for windmills; and

WHEREAS, The City of Hesperia Development Code shall be amended as per the attached Exhibit A; and

WHEREAS, It is the City's intent to promote sustainable energy practices, by encouraging use of technologies harnessing wind and solar energy; and

WHEREAS, The proposed Development Code amendment is exempt from the requirements of the California Environmental Quality Act by Section 15303, New Construction or Conversion of Small Structures and Section 15061(b)(3) of the CEQA Guidelines, as there is no possibility that the proposed Development Code revision regarding structures harnessing wind and solar power can have a significant adverse effect on the environment with the provisions in the Ordinance; and

WHEREAS, On June 9, 2011, the Planning Commission of the City of Hesperia conducted a duly noticed public hearing pertaining to the proposed Development Code Amendment and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF HESPERIA PLANNING COMMISSION AS FOLLOWS:

Section 1. The Planning Commission hereby specifically finds that all of the facts set forth in this Resolution are true and correct.

Section 2. Based upon substantial evidence presented to the Commission, including written and oral staff reports, the Commission specifically finds that the proposed Ordinance is consistent with the goals and objectives of the adopted General Plan.

Section 3. Based on the findings and conclusions set forth in this Resolution, this Commission hereby recommends adoption of Development Code Amendment DCA11-10159, amending the current Alternative Energy Technology Ordinance as well Article VI of Chapter 16.12 and Section 16.20.060 as shown on Exhibit "A."

Section 4. That the Secretary shall certify to the adoption of this Resolution.

ADOPTED AND APPROVED on this 9th day of June 2011.

Chris Elvert, Chair, Planning Commission

ATTEST:

Kathy Stine, Secretary, Planning Commission

EXHIBIT "A"

16.16.063 Alternative Energy Technology Standards.

A. Windmills as defined by Section 16.08.890 shall be permitted in accordance with Section 16.16.064 and subject to the provisions as provided herein.

1. The structure and all appurtenant equipment for all tower-mounted windmills shall be located behind the primary building, not within the front or street side yard, and a minimum setback of ~~1.1 times~~ equivalent to the overall structure height from the side and rear property lines. Guy wires may encroach into the minimum setbacks, but shall not encroach over property lines.
   a. Windmill(s) may be located up to 25 percent closer to the front property line than the primary building when the primary building is located within the rear 25 percent of the lot if approved under a minor exception application pursuant to Article VI of Chapter 16.12.
   b. To allow the setback reduction above, it shall be demonstrated that the windmill(s) meet the minimum noise requirements within Section 16.16.063(A)(3) and under no circumstances shall a windmill be located within the minimum front yard setback or a recorded building setback line.

~~1.~~2. The structure may need to be farther from the property lines based upon the required specifications regarding noise identified in Section 16.16.063(A)(3).

~~2.~~3. Specifications on the noise produced by the windmill shall be submitted for windmills within all zone districts, identifying the distance from the structure to the property line to meet the City's Noise Ordinance. The setback shall be increased should the manufacturers' specifications evidence that the windmill would exceed the evening noise standard at any property line.

4. Tower-mounted windmills shall not exceed the height limitation of the zone district in conjunction with the special height increases of Section 16.20.060 except as defined below. The height shall be measured to the top of the blades or rotors or any other portion of the windmill, which extends farthest above ground level. The blades and rotors of the windmill shall be a minimum of 15 feet above ground level at the lowest point to ensure the safety of persons and property beneath.
   a. Windmills on lots 90,000 square feet or larger in net area may be increased in height another 50 percent beyond the height allowed by Section 16.20.060, which is equivalent to twice the allowable building height if approved by a minor exception application.
   ~~a.~~b. Approval of additional height beyond the special height increases within Section 16.20.060 and that allowed by a minor exception application as described above shall require approval of a variance.

5. Multiple tower-mounted windmills are allowed subject to compliance with the minimum setback and accessory structure lot coverage limitations as well as in conformance with the Noise Ordinance. The area of a windmill is defined as the circular area measured horizontally at the farthest spread of the rotors/blades of the windmill from the pole in determining accessory structure lot coverage.

6. Roof-mounted windmills shall not exceed 50 feet or the height regulation of the zone district, whichever is greater. Approval of a minor exception is needed to exceed the height restriction by up to 10 percent and approval of a variance shall be required to exceed the allowed height beyond 10 percent. Roof-mounted windmills do not qualify for the special height increases of Section 16.20.060.

The height shall be measured from the ground to the top of the blade/rotor or any other portion of the windmill.

7. Specifications on the noise produced by the windmill shall be submitted pursuant to Section 16.16.063(A)(3), identifying the distance from the structure to the property line necessary to meet the City's Noise Ordinance. The windmill shall be located so that it does not exceed the evening noise standard at any property line.
8. All windmills shall be a light gray, white, or other City-approved non-reflective color to minimize visual disruption of the area. Use of conspicuous colors is prohibited. Windmills shall not contain signs or be illuminated, unless required by state or federal law.
9. Nothing in this Development Code Amendment shall be construed to affect the structural requirements for any windmill, as enforced by the Building and Safety Division. All windmills shall require issuance of a building permit prior to installation.
10. All mechanical equipment associated with the windmill located outdoors shall be secured by a minimum five-foot high fence to prevent unauthorized access. Ladders or step bolts on the side of towers shall be a minimum of 9 feet above ground level or shall be equipped with an approved method to prevent unauthorized access.
11. Windmills shall be equipped with manual and automatic controls to limit the operational speed of the blades/rotor to the design limits of the windmill. An automatic braking, governing or feathering system shall also be provided to prevent uncontrolled rotation.
12. No windmill shall cause any electromagnetic interference.
13. Windmills shall be kept in good working order and shall be maintained in an aesthetic state. All windmills which are in a nonoperational state for 180 consecutive days or more shall be considered abandoned and shall be dismantled and removed from the property at the owner's expense.
14. Wind Farms shall be allowed in rural residential, agricultural, institutional, and industrial zone districts with approval of a conditional use permit.

B. Solar Energy Systems as defined by Section 16.08.770 shall be permitted in accordance with Section 16.16.064 and subject to the provisions as provided herein.

1. Solar systems are subject to compliance with the minimum setback and accessory structure lot coverage limitations. The area of a solar system is defined as the rectangular area of the solar panels for the purpose of determining accessory structure lot coverage.
2. Solar systems shall be kept in good working order and shall be maintained in an aesthetic state. All solar systems which are in a nonoperational state for 180 consecutive days or more shall be considered abandoned and shall be dismantled and removed from the property at the owner's expense.

Section 16.16.064 Alternative Energy Permitting Requirements

Alternative Energy Technology	**Zone District**			
	Single-family residential, rural residential and agricultural districts[1]	Multiple-family residential districts	Commercial districts[2]	Industrial and institutional districts[3]
Tower-mounted windmill	Allowed as an accessory structure on developed 15,000 square foot and larger lots.	Allowed as an accessory structure on a developed lot if approved by a Revised Site Plan Review application.	Allowed as an accessory structure on a developed lot if approved by a Revised Site Plan Review application.	Allowed as an accessory structure on developed lots.
Roof-mounted windmill	~~Not permitted.~~ Allowed as an accessory structure on developed 15,000 square foot and larger lots.	Not permitted.	Allowed as an accessory structure on a developed lot if approved by a Revised Site Plan Review application.	
Roof-mounted solar energy systems	Allowed as an accessory structure on a developed lot. Roof-mounted solar systems ~~shall not face a street unless the solar system is~~should be designed approximately parallel to the roof plane or integral to the roof material. The angle may be reduced from the optimal angle provided it does not cause greater than a 20% reduction in efficiency or increase its cost more than $2,000 over the original design's cost. Satisfactory scientific evidence providing the optimal angle and specific costs shall be submitted to the City. ~~A revised site plan review application shall be approved to allow roof-mounted solar systems to face a street. Approval of a Revised Site Plan Review shall be based upon the location of buildings, orientation of the roof planes, tree locations, or other factors which negatively affect system efficiency, preventing the system from being situated on a roof plane not facing a street.~~		Allowed as an accessory structure on a developed lot ~~if approved by a Revised Site Plan Review application~~.	

[1] This includes rural residential, as well as single-family residential, rural residential and agricultural districts within Specific Plan and Planned Development districts.
[2] This includes similar commercial districts within Specific Plan and Planned Development districts.
[3] This includes similar industrial and institutional districts within Specific Plan and Planned Development districts.

Alternative Energy Technology	**Zone District**			
	Single-family residential, rural residential and agricultural districts[4]	Multiple-family residential districts	Commercial districts[5]	Industrial and institutional districts[6]
Ground-mounted solar energy systems	Allowed as an accessory structure within the rear yard of a developed lot if ~~approved by a Revised Site Plan Review application~~a roof-mounted system is deemed infeasible. Approval shall be subject to the determination that the configuration and location of buildings, orientation of the roof planes, tree locations, or other factors which negatively affect system efficiency, prevent installation on the roof.		Allowed as an accessory structure on a developed lot provided the system does not interfere with required parking, landscaping, and other improvements ~~if approved by a Revised Site Plan Review application~~.	

ARTICLE VI. - VARIANCES AND MINOR EXCEPTIONS

16.12.210 - Purpose of provisions.
16.12.215 - General provisions.
16.12.220 - Reviewing authority.
16.12.225 - Application procedures.
16.12.230 - Approval requirements.
16.12.235 - Determination by the approval authority.
16.12.240 - Findings for parking variances.
16.12.245 - New application following denial.
16.12.250 - Appeal procedures.
16.12.255 - Voiding of variances or minor exceptions.

16.12.210 - Purpose of provisions.

The purpose of a variance or minor exception shall be to insure that no property, because of special circumstances applicable to it, due to size, shape, topography, location, or surroundings, shall be deprived of privileges commonly enjoyed by other properties in the same vicinity and zone district.

(Ord. 192 Exh. A (§ 83.06.010), 1994)

[4] This includes rural residential, as well as single-family residential, rural residential and agricultural districts within Specific Plan and Planned Development districts.
[5] This includes similar commercial districts within Specific Plan and Planned Development districts.
[6] This includes similar industrial and institutional districts within Specific Plan and Planned Development districts.

16.12.215 - General provisions.

A. In no case shall a variance or minor exception be granted to permit a use other than a use permitted in that zone district.

B. Any variance or minor exception granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and district in which such property is situated.

(Ord. 192 Exh. A (§ 83.06.020), 1994)

16.12.220 - Reviewing authority.

A. The reviewing authority may grant minor exceptions and variances from any property development standard in the city's adopted development code, subject to the procedures set forth in this article, when it is found that the strict and literal interpretation of such provisions would deny a use of property consistent with the intent and purpose of the code and the general plan.

B. Review and approval for the following minor exception requests will be through the administrative review with notice procedure, pursuant to Section 16.12.005(A)(2).

1. Fence Height. In any zone, the maximum height of any fence, wall, hedge or equivalent screening may be increased by a maximum of two feet, for more than twenty (20) percent of the total length of said wall or other screening, where the topography of sloping sites or a difference in grade between abutting sites warrants such increase in height to maintain a level of privacy, or to maintain effectiveness of screening, provided that the increased height does not encroach into the clear sight triangle area. The requirement for an exception may be waived where the requesting party is located on the low side of said wall or other screening, and the proposal does not present visual impacts to area larger than the properties directly involved in the request.

2. Setbacks. In any residential zone, the minimum setback may be decreased by not more than twenty (20) percent where the proposed setback area or yard is in character with the surrounding neighborhood and is not required as an essential open space or recreational amenity to the use of the site, and where such decrease will not unreasonably affect abutting sites.

3. Lot Coverage. In any residential zone, the maximum lot coverage may be increased by not more than ten percent of the lot area, where such increases are necessary for significantly improved site planning or architectural design, creation or maintenance of views, or otherwise facilitate highly desirable features or amenities, and where such increase will not unreasonably affect abutting sites.

4. Off-Site Parking. A maximum of twenty-five (25) percent of the required parking for a use may be located on a contiguous site, not more than three hundred (300) feet from the building entrance on the site for the use for which such parking will serve the use equally as effectively, safely and conveniently as providing such parking on the same site as the use for which it is required. For the purpose of this section, contiguous shall mean sharing a common lot line and shall not include parcels separated by a public right-of-way. The ~~planning director~~reviewing authority shall require an agreement to ensure utility, availability, and maintenance of joint use of off-site parking facilities.

5. On-Site Parking. The ~~planning director~~reviewing authority may authorize a maximum fifteen (15) percent reduction in the required on-site parking requirements when it is proven that it will not result in a traffic hazard; however, no more than four spaces shall be eliminated.

6. Height. In any district, the ~~planning director~~reviewing authority may authorize a ten percent increase in the maximum height limitation for structures, not including signs. Such increases may be approved where necessary to significantly improve the site plan or architectural design, and where scenic views or solar access on surrounding properties are not affected.

7. Signs. In any district, the ~~planning director~~reviewing authority may authorize a twenty-five (25) percent increase in the maximum sign area, or in the height of a freestanding or monument sign, where it can be determined that such increases will improve the architectural design of a site, and will not result in unsafe conditions, within the site or abutting properties.

8. Accessory Buildings and Structures. In residential and agricultural districts the maximum allowable aggregate accessory building and accessory structure area may be increased in accordance with the allowable area increases outlined within Sections 16.20.395 and 16.20.405. The granting of a minor exception shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and district in which the property is situated. In reviewing a minor exception for any area increase, the ~~planning director~~reviewing authority shall also consider special circumstances relative to the proposal such as implementation of architectural elements, increased setbacks between the structure(s) and adjacent properties, use of landscape buffers and screening devices, and other similar devices.

9. Alternative Energy Systems. The maximum height and minimum yard regulations for windmills may be adjusted pursuant to Section 16.16.063. The granting of a minor exception shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and district in which the property is situated. In reviewing a minor exception, the reviewing authority shall balance the need for the proposed placement and additional height which to increase the efficiency of the windmill with its impact potential upon the surrounding area.

~~9~~10. Other Exceptions. Exceptions may be considered, where in the opinion of the ~~planning director~~reviewing authority, such exceptions may not have a cumulative effect greater than those exceptions previously listed.

C. In calculating percentages specified in Section 16.12.220(B), rounding up of fractions shall not be permitted, and only whole numbers shall be considered.

D. Any request not listed in Section 16.12.220(B) shall be deemed a variance and shall be reviewed by the planning commission at a public hearing, pursuant to Section 16.12.005(A)(1). The hearing shall be set and notice given as prescribed in Section 16.12.010.

E. The planning commission is authorized to grant variances as prescribed in accordance with the procedure in this Title 16, with respect to development standards which include but are not limited to the following:

1. Fences, walls and screening, where the requested height exceeds more than twenty (20) percent of the total length of the wall or other screening, or where the requested variance presents visual impacts to an area greater than the properties directly involved;

2. Site area, width and depth;
3. Front, rear and side yards;
4. Coverage;
5. Height of structures;
6. Landscaping;
7. Usable open space;
8. Performance standards;
9. Parking and loading facilities;
10. Sign height, number and location.

(Ord. 2003-05 § 4 (part), 2003; Ord. 2001-13 Exh. A § 3, 2002; Ord. 288 Exh. A (part), 2000; Ord. 276 Exh. A (part), 1999; Ord. 192 Exh. A (§ 83.06.030), 1994)

16.12.225 - Application procedures.

A. An application for a minor exception or variance shall be filed with the planning ~~department~~division, along with the required fee. The signed application shall be made by the property owner, or his authorized agent.

B. An application for a minor exception or variance shall be accompanied by ~~maps~~ a site plan showing the subject property as well as the surrounding area. ~~Plans of the subject property~~The site plan shall show all existing and proposed buildings and uses, and any other data required by the planning ~~department~~ division to adequately review the application. *(Ord. 192 Exh. A (§ 83.06.040), 1994)*

16.12.230 - Approval requirements.

The following requirements may be placed upon the development project by the reviewing authority as conditions of approval. All such conditions shall be binding upon the applicants and their successors.

A. Requirements for special yards, open spaces, buffers, fences, walls and screening;

B. Requirements for installation and maintenance of landscaping and erosion control measures;

C. Requirements for street improvements and dedications, regulation of vehicular ingress and egress, and traffic circulation;

D. Requirements for maintenance of landscaping and other improvements;

E. Establishment of development schedules or time limits for performance or completion;

F. Requirements for periodic review by the reviewing authority;

G. Any other such conditions as the reviewing authority may deem necessary to ensure compatibility with surrounding uses, to preserve the public health, safety and welfare, and to enable the reviewing authority to make the findings required by Section 16.12.235.

(Ord. 192 Exh. A (§ 83.06.050), 1994)

16.12.235 - Determination by the approval authority.

The ~~approval~~ reviewing authority will determine the merits of the proposed minor exception or variance, and its compliance with the principles, standards, policies and goals of the general plan and the development code. Approval of any minor exception or variance shall be based upon the following minimum criteria, which shall also constitute the findings to be made by the approval authority in approving or denying an application ~~variance~~:

A. The strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of the development code;

B. There are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to other properties in the same zone;

C. The strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties in the same zone;

D. The granting of the minor exception or variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zone;

E. The granting of the minor exception or variance will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.

(Ord. 192 Exh. A (§ 83.06.060), 1994)

16.12.240 - Findings for parking variances.

The planning commission may grant a variance in order that some or all of the required parking spaces be located off-site, or that in-lieu fees or facilities be provided instead of the required parking spaces, if both of the following conditions are met:

A. The variance will be an incentive to, and a benefit for, nonresidential development;

B. The variance will facilitate access to nonresidential development by patrons of public transit facilities.

(Ord. 192 Exh. A (§ 83.06.070), 1994)

16.12.245 - New application following denial.

Following the denial or revocation of a minor exception or variance application, no application for the same or substantially the same ~~variance~~ application on the same or substantially the same site shall be filed within one year of the date of denial or revocation.

(Ord. 192 Exh. A (§ 83.06.080), 1994)

16.12.250 - Appeal procedures.

A. Prior to its effective date, any decision made on a minor exception request by the ~~planning director~~reviewing authority may be appealed to the planning commission, pursuant to the provisions of Section 16.12.055.

B. Prior to its effective date, any decision made on a variance by the planning commission may be appealed to the city council, pursuant to the provisions of Section 16.12.055.

(Ord. 192 Exh. A (§ 83.06.090), 1994)

16.12.255 - Voiding of variances or minor exceptions.

A. Any variance or minor exception granted under the provisions of this chapter shall become null and void unless:

1. The construction authorized by the variance or minor exception shall have been commenced within ~~twenty-four (24)~~thirty-six (36) months after the granting of the variance or minor exception, and pursued diligently to completion~~;~~.

2. The occupancy of land or buildings authorized by such variance or minor exception has taken place within ~~twenty-four (24)~~thirty-six (36) months after the granting of such variance or minor exception.

B. Applications for renewal may be filed for additional twelve (12) month periods. Said renewal application must be filed prior to expiration of the application.~~Where circumstances beyond the control of the applicant cause delays which do not permit compliance with the time limits established herein, the reviewing authority may grant an extension of time for a period not to exceed an additional twelve (12) months.~~

C. The reviewing authority may void any variance or minor exception for non-compliance with the conditions set forth in approving the variance or minor exception. The procedure shall be in accordance with Section 16.12.075. *(Ord. 192 Exh. A (§ 83.06.100), 1994)*

16.20.060 - Special height limits.

A. Special height limits up to fifty (50) percent greater than that specified in the land use districts or zones may be granted for the following structures, by the building official, subject to department review:

1. Cupolas, domes, skylights and gables;
2. Ornamental towers and spheres;
3. Church steeples and towers;
4. Flag poles;
5. Birdhouses;
6. Residential chimneys, flues, smokestacks and enclosures;
7. Mechanical equipment and its screening;
8. Elevator housings;
9. Bulkheads and skylights;
10. Monuments;
11. Barns, silos, grain elevators, windmills and other farm buildings or structures in rural conservation or agricultural districts;
12. Noncommercial antennae up to sixty-five (65) feet in residential districts;
13. Fire or parapet walls;
14. Fire and hose towers;
15. Stairway housing;
16. Water tanks;

17. Cooling towers, gas holders, smokestacks or other structures in industrial districts which are required by permitted industrial processes;

18. Tower-mounted ~~W~~windmills and solar energy collectors in residential or commercial districts;

19. Water towers;

20. Observation and carillon towers;

21. Radio and television station towers;

22. Distribution and transmission cables and towers;

23. Outdoor theater screens;

24. Sign spires;

25. Penthouses;

26. Other roof structures and mechanical appurtenances similar to those listed above except roof-mounted alternative energy technologies, which are regulated by Section 16.16.063.

(Ord. 250 (part), 1997; SBCC § 87.0405)

City of Hesperia
STAFF REPORT

DATE: June 9, 2011

TO: Planning Commission

FROM: Dave Reno, AICP, Principal Planner

BY: SL Stan Liudahl, AICP, Senior Planner

SUBJECT: Consideration of Development Code Amendment DCA11-10165, to revise Hesperia Municipal Code Section 16.20.095 regarding parking of commercial vehicles in nonresidential zones; Applicant: City of Hesperia; Affected area: Citywide

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RECOMMENDED ACTION

It is recommended that the Planning Commission adopt Resolution No. PC-2011-23, approving DCA11-10165, revising Section 16.20.095 regarding nonresidential parking standards.

BACKGROUND

In 1996, after considerable input, the Development Code was amended to regulate commercial vehicle parking in residential and agricultural areas, but did not address nonresidential areas. Further amendment of the Hesperia Municipal Code occurred in 2008 to limit the number of commercial vehicles allowed. Parking of commercial vehicles on vacant nonresidential lots has been a recurrent and chronic issue. It has become commonplace to observe vehicles parking on the undeveloped lots north of Main Street between Mariposa Road and Mountain Vista Avenue and in many other areas of the City. This creates increased levels of dust during windy periods as a result of vehicular trespass on private property and detracts from the City's image. In contrast to the 1996 and 2008 amendments, which regulates commercial vehicle parking on occupied residential and agricultural lots; this Ordinance will prohibit parking of all vehicles on vacant nonresidential lots. However, this Ordinance will incorporate the commercial vehicle street parking restrictions added to the residential parking standards in 1996.

ISSUES/ANALYSIS

As part of this amendment, the heading of this Section 16.20.095, as well as its introduction, will be changed from "commercial, office and institutional parking standards" to "nonresidential parking standards" in order to eliminate any confusion and ensure that this Section will apply to any property not within a residential or agricultural zone. This amendment will specifically prohibit the parking of commercial vehicles on vacant lots, but will also prohibit parking of cars, light trucks, or any other type of vehicle on undeveloped nonresidential lots. Consequently, this Ordinance will also prohibit vehicle sales on vacant properties and other trespass involving vehicles in nonresidential areas. These changes will assist Code Enforcement activities in these areas of the City affected by commercial vehicle parking. This amendment also includes non-substantive text corrections, including replacement of an incorrect code citation. The recommended changes to the Development Code are identified within the (Exhibit "A") of the Ordinance. Additions are shown on the resolution Exhibit "A" using red underlined text and ~~deletions are represented by strikethroughs~~.

Environmental: Approval of the Development Code Amendment is exempt from the requirements of the California Environmental Quality Act by Section 15061(b)(3) of the CEQA Guidelines. The proposed Ordinance does not expand the allowable uses or grant entitlements not already permitted by the Development Code.

CONCLUSION

Staff supports this Development Code Amendment, as it will prohibit parking of commercial vehicles, cars, light trucks, and all other vehicles on vacant, nonresidential properties.

FISCAL IMPACT

None.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT

1. Resolution No. PC-2011-23, recommending adoption of DCA11-10165, with Exhibit "A"

ATTACHMENT 1

RESOLUTION NO. PC-2011-23

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HESPERIA, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL ADOPT A DEVELOPMENT CODE AMENDMENT TO REVISE SECTION 16.20.095 REGARDING NONRESIDENTIAL PARKING STANDARDS (DCA11-10165)

WHEREAS, On January 5, 1998, the City Council of the City of Hesperia adopted its Ordinance No. 250, thereby adopting the Hesperia Municipal Code; and

WHEREAS, The City of Hesperia Development Code regulations regarding nonresidential parking standards requires modification; and

WHEREAS, The City of Hesperia Development Code shall be amended as per the attached Exhibit A; and

WHEREAS, It is the City's intent to prohibit parking of vehicles on vacant, nonresidential properties, which necessitates revisions to Section 16.20.095; and

WHEREAS, The proposed Development Code amendment is exempt from the requirements of the California Environmental Quality Act by Section 15061(b)(3) of the CEQA Guidelines, as there is no possibility that the proposed Development Code revision prohibiting parking on vacant nonresidential properties can have a significant adverse effect on the environment; and

WHEREAS, On June 9, 2011, the Planning Commission of the City of Hesperia conducted a duly noticed public hearing pertaining to the proposed Development Code Amendment and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF HESPERIA PLANNING COMMISSION AS FOLLOWS:

Section 1. The Planning Commission hereby specifically finds that all of the facts set forth in this Resolution are true and correct.

Section 2. Based upon substantial evidence presented to the Commission, including written and oral staff reports, the Commission specifically finds that the proposed Ordinance is consistent with the goals and objectives of the adopted General Plan.

Section 3. Based on the findings and conclusions set forth in this Resolution, this Commission hereby recommends adoption of Development Code Amendment DCA11-10165, amending Section 16.20.095 as shown on Exhibit "A."

Section 4. That the Secretary shall certify to the adoption of this Resolution.

ADOPTED AND APPROVED on this 9th day of June 2011.

Chris Elvert, Chair, Planning Commission

ATTEST:

Kathy Stine, Secretary, Planning Commission

EXHIBIT "A"

GENERAL REGULATIONS

ARTICLE IV. PARKING AND LOADING STANDARDS

16.20.077 Parking standards of calculation.
16.20.080 Parking requirements.
16.20.085 Parking standards.
16.20.090 Residential parking standards.
16.20.095 Nonresidential~~Commercial, office and institutional~~ parking standards.
16.20.100 Loading areas.
16.20.120 Civil remedies.

16.20.095 ~~Commercial, office and institutional~~Nonresidential parking standards.

In addition to standards contained in Section 16.20.085 of this article, the following parking requirements are applicable to all ~~commercial, office and institutional~~nonresidential land uses:

A. Motorcycles. Facilities with twenty-five (25) or more parking spaces shall provide at least one designated parking area for use by motorcycles. Developments with over one hundred (100) spaces shall provide motorcycle parking at the rate of one percent. Areas delineated for use by motorcycles shall meet standards set forth in Section 16.20.085(~~10~~J)~~ of this article~~.

B. Bicycles. Commercial and office areas may provide locking facilities for bicycle parking at any location convenient to the facility for which they are designated. Whenever possible, weatherproofing or facility covering should be used.

C. Transportation Plans. Facilities may decrease their required number of parking spaces, subject to the adoption by the reviewing authority of an approved transportation management plan supplied by the applicant which may include, but is not limited to, provisions for mass transit, car pooling, staggered work hours, etc.

D. Where nonresidential parking areas abut residential land use districts, they shall be screened pursuant to ~~this code~~the Development Code.

E. Parking on Undeveloped Lots in Nonresidential Areas. It is unlawful for commercial vehicles, passenger cars, light trucks, or any other type of vehicle to be located on vacant, nonresidential lots. This prohibition applies whether vehicles are parked to allow the drivers to patronize a business or make a pick-up or delivery of materials or goods to or from any building or site, are displayed for sale on a lot owned by the registered vehicle owner, or any other purpose except:

i. As part of an approved Temporary Use Permit for the sale of Christmas trees or pumpkins, a circus or carnival, or other use authorized by Section 16.12.382.
ii. A use authorized by an approved site plan review or conditional use permit.
iii. During development of the site pursuant to approved building and grading permits.

F. Street Parking in Nonresidential Areas.

1. It shall be unlawful for any person to park or leave standing on any public street, including within the public right-of-way, any commercial vehicle, except:

i. During the first twenty-four (24) hours during which the vehicle is mechanically disabled.

ii. While a commercial vehicle is making a pick-up or delivery of materials or goods to or from any building or site, provided parking is allowed within the street.

iii. No commercial vehicle shall be parked or left standing on any street or right-of-way unless it is a minimum of twelve (12) feet from the centerline of the street, or twelve (12) feet per lane, if more than one lane, and under no circumstances parked in any travel lanes.

iv. No commercial vehicle shall be parked or left standing within one hundred (100) feet of any street intersection.

(Ord. 135 Exh. A (Art. 3 § 4), 1992)

CITY OF HESPERIA
DEVELOPMENT REVIEW COMMITTEE

City Hall Joshua Room
9700 Seventh Avenue
Hesperia, CA 92345
BEGINNING AT 10:00 A.M.
WEDNESDAY, MAY 25, 2011

A. PROPOSALS:

1. JULIO BORREGO (SPR11-10169)

Proposal: A site plan review extension for SPR-2007-71, to construct a one-story, 2-unit apartment complex on 0.27 acres, zoned MDR.

Location: 16230 Orange Street (APN: 0413-083-04)

Planner: Daniel Alcayaga

City of Hesperia

CITY OF HESPERIA
DEVELOPMENT REVIEW COMMITTEE

City Hall Joshua Room
9700 Seventh Avenue
Hesperia, CA 92345
BEGINNING AT 10:00 A.M.
WEDNESDAY, JUNE 8, 2011

A. PROPOSALS:

1. RANDOLPH & DORIS BOHSE (SPR11-10177)

Proposal: A revised site plan review to install roof mounted photovoltaic panels on the roof side facing the street.

Location: 17510 Main Street (APN: 0411-291-49)

Planner: Lisette Sanchez-Mendoza

2. YEREN KHACHATURYAN (SPR11-10178)

Proposal: A revised site plan review to establish a hookah bar.

Location: 14466 Main Street, Suite 104 (APN: 0405-271-46)

Planner: Stan Liudahl

3. BATTALIA BALAMOUNDO (SPR11-10181)

Proposal: A revised site plan review to establish a boxing gym.

Location: 10182 I Avenue, Unit B (APN: 0410-032-24)

Planner: Daniel Alcayaga