

Local Law No. 3 of 2009

A LOCAL LAW GOVERNING WIND ENERGY
FACILITIES IN THE TOWN OF ITALY

Be it hereby enacted by the Town Board of the Town of Italy as follows:

Section 1.

Section 3.5, Establishment of Districts, of the Town of Italy Zoning Law, is hereby amended to read in its entirety as follows:

For the purpose of this Zoning Law the Town of Italy is hereby divided into the following districts:

AR- Agricultural-Residential District
LS - Lakeshore Residential District
H - Hamlet District
C- Conservation/Public Lands District
SO - Scenic Protection Overlay District
WE - Wind Energy Incentive Zone

The boundaries of these districts are shown on the map entitled “Zoning Map, Town of Italy, Yates County, New York,” as adopted by the Town Board and amended from time to time. Said map and all notations on it or amendments to it are incorporated by reference into this Law and made part of it.

Section 2.

Section 8.6, Exemptions, of the Town of Italy Zoning Law, is hereby amended to add subparagraph L to read in its entirety as follows:

L. Except as noted in Section 9.6, Industrial Wind turbines located in a Wind Energy Incentive Zone, but only if the environmental review of the proposed Industrial Wind turbines includes a Visual Impact Assessment which considers the potential visual impact of the IWT Facility, including impacts on Scenic Protection Overlay Districts.

Section 3.

Section 9.2 A, Uses Allowed by Special Use Permit, of the Town of Italy Zoning Law, is hereby amended to add subparagraph B to read in its entirety as follows:

B. The following uses are permitted in the Wind Energy Incentive Zone (WE) (as defined on the Town of Italy Official Zoning Map) in the Town of Italy, subject to receipt of a Special Use Permit from the Town Board in accordance with Section 9.6 of this Law.

1. Industrial Wind turbines.

Section 4.

Section 9.3 Prohibited Uses, of the Town of Italy Zoning Law, is hereby amended to read in its entirety as follows:

A. Any facility, other than Industrial Wind turbines in a Wind Energy Incentive Zone, over 140 feet in height.

B. All down-wind design wind turbines.

Section 5.

Section 9.6 Regulating the Installation of Industrial Wind turbines and Associated Energy Facilities, of the Town of Italy Zoning Law, is hereby deleted in its entirety, and replaced by the Section 9.6, Wind Energy Incentive Zone, which shall read in its entirety as follows:

SECTION 9.6 WIND ENERGY INCENTIVE ZONE

A. Wind Energy Incentive Zone.

The Town Board of the Town of Italy hereby adopts the rules and procedures for creating Wind Energy Incentive Zones and the issuance of Special Use Permits to promote the effective and efficient use of the Town's wind energy resource through industrial wind turbines (IWT), and to regulate the placement of such systems so that the public health, safety, and welfare will not be jeopardized.

B. Authority

1. The Town Board of the Town of Italy adopts this Section under the authority granted by:

Article IX of the New York State Constitution, § 2(c) (6) and (10).

New York Statute of Local Governments, § 10 (1), (6), and (7).

New York Municipal Home Rule Law, § 10 (1) (i) and (ii) and § 10 (1) (a) (6), (11), (12), and (14).

The supersession authority of New York Municipal Home Rule Law, § 10 (2) (d) (3).

New York Town Law, Article 16 (Zoning), including but not limited to Town Law §261-b (Incentive Zoning).

New York Town Law § 130(1)(Building Code), (3)(Electrical Code), (5)(Fire prevention), (7)(Use of streets and highways), (7-a)(Location of driveways), (11)(Peace, good order and safety), (15)(Promotion of public welfare), (15-a)(Excavated lands), (16)(Unsafe buildings), (19)(Trespass), and (25)(Building lines).

New York Town Law § 64(17-a) (protection of aesthetic interests) and (23) (General powers).

C. Findings

1. The Town Board of the Town of Italy finds and declares that:

a. Wind energy is an abundant, renewable, and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on

nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.

b. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.

c. IWT Facilities represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects.

d. If not properly regulated, installation of IWT Facilities can create drainage problems through erosion and lack of sediment control for facility sites and access roads, and harm farmlands through improper construction methods.

e. IWT Facilities may present a risk to bird and bat populations if not properly sited.

f. If not properly sited, IWT Facilities may present risks to the property values of adjoining property owners.

g. IWT Facilities are significant sources of noise, which, if unregulated, can negatively impact adjoining properties.

h. Construction of IWT Facilities can create traffic problems and damage local roads.

i. IWT Facilities can cause electromagnetic interference issues with various types of communications.

j. By limiting IWT Facilities to two (2) limited zones in the southern periphery of the Town, impacts of such facilities will be minimized while providing significant benefits and amenities to all Town residents and property owners.

D. Definitions

1. For the purposes of this Section 9.6 only, the following terms shall have the meanings indicated:

a. EAF — Environmental Assessment Form used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

b. ENVIRONMENTAL MONITOR — a professional engineer or other qualified consultant(s) to monitor post-approval (including construction, post-construction, and decommissioning phases) activities of any entity issued a special use permit under this section.

c. RESIDENCE — means any dwelling suitable for habitation existing, or for which a building permit has been issued, in the Town of Italy on the date that a specific application is deemed complete, including seasonal homes, cabins, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, senior housing, schools, or other buildings used for educational purposes. A residence may be part of a multi-dwelling or multipurpose building, but shall not include correctional institutions.

d. SEQRA — the New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617.

e. A WEIGHTED SOUND PRESSURE LEVEL (LA) — The sound pressure level measured in decibels (dBA) and equal to 20 times the logarithm to the base 10 of the ratio of root mean square sound pressure to a reference sound pressure, weighted by frequency band following standard practice. The reference sound pressure in air is $2 * 10^{-5}$ Pascals.

f. EQUIVALENT SOUND PRESSURE LEVEL - The average A-weighted sound pressure level which gives the same total energy as the varying sound level during a given period of time. Also referred to as LA_{eq} for purposes of this section, the minimum period to be utilized in calculating or measuring a LA_{eq} is one hour.

g. PARTICIPATING PROPERTY OWNER - an entity which has entered into a lease, setback easement, or other contractual arrangement with the applicant covering land in the Town of Italy.

h. NON-PARTICIPATING PROPERTY OWNER - an entity which has not entered into any contractual arrangement with the applicant covering land in the Town of Italy.

i. SPECIAL USE PERMIT as used in this Section 9.6, is the permit issued by the Town Board to allow IWT Facilities. The Special Use Permit, and the application, review, and approval procedures of this Section 9.6 include the approval by the Town Board of a site plan for the IWT Facilities.

j. SITE — The parcel(s) or portion(s) of parcel(s) of land where the IWT Facility, or any part of an IWT Facility, is to be placed. The Site could be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple contiguous lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements.

k. TOTAL HEIGHT — The height of the tower at the furthest vertical extension of the IWT.

l. INDUSTRIAL WIND TURBINE FACILITY (IWT Facility) — Any IWT or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads, and accessory structures, and temporary construction or staging areas.

m. WIND ENERGY INCENTIVE ZONE — an overlay district which encompasses part or parts of one or more underlying districts and that establishes requirements for IWT Facilities.

E. Permits Required

1. No IWT Facility shall be constructed, reconstructed, modified, or operated in the Town of Italy except in compliance with this Section.

2. No IWT Facility shall be constructed, reconstructed, modified, or operated in the Town of Italy, except in a Wind Energy Incentive Zone, with a special use permit approved pursuant to this Section. No special use permit for an Industrial Wind Turbine Tower may be

granted for any site not located in one of the two Wind Energy Incentive Zones and no special use permit for any Industrial Wind Turbine Tower may be granted unless the Town Board shall have first approved the benefits and/or amenities being offered by the applicant in return for the granting of the zoning incentive of permitting the siting of such Industrial Wind Turbine Tower(s).

3. Notwithstanding any other provision of this Zoning Ordinance, Special Use Permits for IWT Facilities shall be issued by the Town Board.

4. No Special Use Permit for an IWT Facility shall be approved without the provision of amenities to the community in accordance with this Section, as approved by the Town Board.

5. Transfer. No transfer of any IWT Facility or Special Use Permit, nor sale of the entity owning such facility including the cumulative sale of more than 30% of the stock of such entity since the date of application (not counting sales of shares on a public exchange), will occur without prior approval of the Town, which approval shall be granted upon written acceptance of the transferee of the obligations of the transferor under this Section, and the transferee's demonstration, in the sole discretion of the Town Board, that it can meet the technical and financial obligations of the transferor. No transfer shall eliminate the liability neither of the transferor nor of any other party under this Section unless the entire interest of the transferor in all facilities in the Town is transferred and there are no outstanding obligations or violations. Annually, by January 15th, any holder of a Special Use Permit under this Section shall provide written notice to the Town of Ownership of the permitted IWT Facilities as of the preceding January 1st.

7. Notwithstanding the requirements of this Section, replacement in kind or modification of a IWT Facility may occur without Town Board approval when (1) there will be no increase in Total Height; (2) no change in the location of any element within the IWT Facility; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the IWT Facility.

F. Applicability

1. The requirements of this Section shall apply to all IWT Facilities proposed, operated, modified, or constructed after the effective date of this Section. Non-operating facilities shall be removed in accordance with this Section 9.6

2. IWT Facilities may be either principal or accessory uses. A different existing use or an existing structure on the same Site shall not preclude the installation of an IWT Facility or a part of such facility on such Site. IWT Facilities constructed and installed in accordance with this Section shall not be deemed expansions of a nonconforming use or structure.

G. Incentives permitted for Industrial Wind Turbines.

A. Purpose and intent. The Town Board finds that the Town of Italy possesses a unique resource in its wind energy. Pursuant to Town Law § 261-b, the Town may grant zoning incentives for IWT Facilities to property developers to encourage the provision of certain community benefits or amenities, such as parks, open space, public active and passive recreational opportunities, and other physical, social, or cultural benefits or amenities that are in compliance with the Town Comprehensive Plan. The creation of Wind Energy

Incentive Zones is hereby authorized, in accordance with the procedures established by this Section.

- B. Allowable benefits for which incentives may be granted. The following may be offered either on or off the site of the subject application:

Affordable housing;

Permanent conservation of natural areas or agricultural lands;

Provision of passive or active open space and related improvements;

Public Parks and recreational facilities;

Child-care or elder-care facilities;

Public access to waterfronts;

Economic Development, including the creation and funding of a Local Development Corporation pursuant to NPCL § 1411 for any of the purposes permitted thereunder;

Equipment acquisition or upgrades for any equipment needed or helpful for Town purposes;

Construction, expansion, or repair of Town buildings;

Public trails and trail linkages;

Road Improvements and maintenance;

Cultural or historic facilities deeded to municipality or qualified not-for-profit agencies; or

Any other benefits or amenities deemed beneficial to the community by the Town Board

Any combination of amenities and/or cash in lieu of any amenity(ies). Amenities may be received at one time or over a period of years.

- H. Applications for IWT Facility
Special Use Permits

1. An application for Special Use Permit for IWT Facilities shall include all information as required under Article 11, Section 11.10.B, including the requirement for a Site Plan (Section 11.10.B.6) meeting the requirements under Article 12, Section 12.3.A.-T. In addition, Special Use Permit applications for IWT facilities within the Wind Energy Incentive Zone shall include the following:

a. Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation. If the applicant is not the owner of the proposed IWT Facilities, the application shall include name, address, and telephone number of the owner. A complete statement of all benefits and/or

amenities being offered by the applicant, including monetary values thereof, in return for the requested zoning incentive shall be included. The completeness of such statement shall be a determination of the Town Board in its sole discretion.

b. Name and address of each participating property owner. If the property owner, other than an agency subject to SEQRA, is not the applicant, the application shall include a letter or other written permission signed by the participating property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.

c. Address, or other property identification, of each proposed tower location, including Tax Map section, block, and lot number.

d. A description and overall sketch plan of the entire IWT Facility, including the number and maximum rated capacity of each IWT and all related infrastructure.

e. A Site Plan prepared by a licensed engineer meeting the requirements under Article 12, Section 12.3.A-T and clearly showing the following.

(1) Property lines and physical dimensions of the Site.

(2) Location and elevation of each proposed IWT.

(3) Location of all existing and proposed above ground utility lines on the Site or within one radius of the Total Height of the IWT, transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.

(4) Location and size of all existing and proposed structures within a circle with a radius equal to the Total Height of the proposed IWTs, plus 100 feet.

(5) To demonstrate compliance with the setback requirements of this Section, circles drawn around each proposed IWT tower location equal to each setback requirement of this Section.

(6) Location of residences within 1375 feet of each proposed IWT tower.

(7) All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, fencing, and temporary construction or staging areas.

f. Vertical drawing of the IWT showing Total Height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each IWT of the same type and Total Height.

g. Landscaping Plan depicting vegetation describing the area to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations.

h. Lighting Plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such

determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determination is submitted.

i. Decommissioning Plan: The applicant shall submit a decommissioning plan, which shall include: 1) the anticipated life of the IWT Facility; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) the method of ensuring that funds will be available for decommissioning and restoration; 5) the method, such as by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and 6) the manner in which the IWT Facility will be decommissioned and the Site restored, which shall include removal of all structures and debris to a depth of three feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner. The Plan shall include the Decommissioning Bond required by this Section.

j. Complaint Resolution: The application will include a complaint resolution process to address complaints from residents. The process may use an independent mediator or arbitrator and shall include a time limit for acting on a complaint. All complaints shall be directed to applicant and the Town shall be provided written copy of all complaints within five business days of receipt of complaint.

k. An application shall include information relating to the construction/installation of the IWT Facility as follows:

(1) A construction schedule describing commencement and completion dates; and

(2) A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles,

l. Completed Part 1 of the Full EAF or a Draft Environmental Impact Statement for the particular IWT facility.

m. For each proposed IWT, include make, model, photograph or color rendering of the IWT and support tower, and manufacturer's specifications, including noise emission data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.

n. All applications submitted pursuant to this Section shall be subject to SEQRA.

o. Any application for a Special Use Permit pursuant to this Section shall include the following studies:

(1) Shadow Flicker: The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker will be caused by the IWTs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems.

(2) Visual Impact: Applications shall include a visual impact study of the proposed IWT Facility as installed, including impacts on and to Scenic Protection Overlay Districts. Such study shall include computerized photographic simulations demonstrating the visual impacts from strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

(3) A fire protection and emergency response plan, and a spill prevention and control plan, created in consultation with the fire and ambulance district(s) having jurisdiction over the proposed Zone and meeting all State and Federal requirements as applicable.

(4) Noise Analysis: a noise analysis shall be provided by a competent acoustical consultant documenting the noise levels associated with the proposed IWT Facility. The study shall document noise levels at property lines and nearby residences sufficient to demonstrate compliance with the requirements under part N of this section. The noise analysis shall provide pre-existing ambient noise levels and include low frequency noise.

(5) Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact on values of properties adjoining IWT Facility Sites, including properties across public roads from the Site.

(6) Documentation that the IWT Facility will not interfere with the path of microwave transmissions.

(7) Storm Water Pollution Prevention Plan, consistent with New York State Department of Environmental Conservation requirements.

(8) Tower design information sufficient to demonstrate compliance with wind-loading requirements.

(9) A Wetlands Delineation Report.

(10) A blasting study, including proposed methods of protecting water wells.

(11) A road impact study, including methodology for determining pre-construction conditions and remediating any damage.

p. A statement, signed under penalty of perjury, that the information contained in the application is true and accurate.

I. Application Review Process

1. Applicants may request a pre-application meeting with the Town Board.

2. Fifteen copies of the application and any subsequent amendments shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. If any variances are requested, variance application fees shall be paid at the time of the submission of the application.

3. The Town Board shall, by resolution, within 62 days of receipt, or such longer time if agreed to by the applicant, determine if the application is complete. An application shall be deemed complete if all information required under this Section is included and is adequate for the required review. The Town Board, at its sole discretion, may waive one or more requirements of the application that are otherwise normally required if, in its opinion, the lack of such information is inconsequential or irrelevant to the current application is not a hindrance to its consideration of the proposed Special Use Permit. The reasons for such waiver shall be set forth in the application record and in the official minutes of the Board.

4. If the application is not officially deemed complete and adequate, the Town Board or their designated reviewer shall provide the applicant with a written statement listing the missing or inadequate information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of IWTs proposed is increased.

5. Upon determination that an application is complete, including the grant of any waiver by the Town Board, the Town Clerk shall file and transmit the application to the Town Board members within five business days. The applicant shall post the completed application and any accepted environmental impact statements on the internet on its own web site or one created for the specific proposed project materials with the costs of such posting borne by the applicant.

6. The Town Board shall hold at least one public hearing on the application to be conducted within 62 days of its determination that the application is complete. Notice shall be given by first class mail to all Town of Italy property owners on record at the Real Property Services Office of Yates County as of the date of application. Notice shall be published in the Town's official newspaper, no less than ten or more than twenty days before any hearing, but, where any hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required except as required under SEQRA. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The then current assessment roll of the Town shall be used to determine ownership and mailing addresses.

7. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested variances pertaining to the application or be held separately at the discretion of the Town Board.

8. Notice of the project shall also be given to all other agencies as required by law.

9. SEQRA Review. Applications for IWT facilities are deemed Type I actions under SEQRA. The Town may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review.

10. Upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Town Board shall approve, approve with conditions, or deny the applications, in accordance with the standards and criteria in this Section. Such decision shall be made by resolution of the Town Board within 62 days of the close of the Public Hearing on the application, or, in the case where an Environmental Impact Statement is required pursuant to SEQRA, within 62 days of the filing of a Final Environmental Impact Statement, whichever is later.

J. Criteria and Process for Issuance of Special Use Permits

1. Upon completion of the review process, the Town Board shall, upon consideration of the standards and criteria in this Section and the record of its SEQRA review, issue a written decision setting forth the reasons for approval, conditions of approval, or disapproval. For IWT facilities, if approved, the Board decision shall state the amenities to be provided.

2. In its deliberations regarding the granting of a Special Use Permit for IWT Facilities within the Wind Energy Incentive Zone, the Town Board shall consider the following:

a. The determinations as required under Article 11, Section 11.10.A.1)-7), as applicable to the pending application.

b. The review criteria as required under Article 12, Section 12.4.A.-K., as applicable to the pending application.

3. In order to grant a Special Use Permit for an IWT Facility within the Wind Energy Incentive Zone, the Town Board must make the determination that the benefits and amenities to the community, whether offered by the applicant or imposed by the Town Board as a condition of its decision, substantially and significantly outweigh any detrimental impacts that may result from the proposed project.

4. If approved, Town Board will issue a Special Use Permit for each IWT Facility upon satisfaction of all conditions for said Permit, and direct the Code Enforcement Officer to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this Section. Every Special Use Permit approved pursuant to this Section shall include the four conditions listed in Article 11, Section 11.10.C.3.a)-d).

5. A copy of the resolution of approval by the Town Board shall be filed with the Town Clerk within ten days of its passage and a copy mailed to the applicant by first class mail.

6. If any approved IWT Facility is not substantially commenced within one year of issuance of the permit, the special use permit shall expire.

K. Standards for IWT Facilities

1. The following standards shall apply to all IWT Facilities, unless specifically waived by the Town Board as part of a permit.

a. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.

b. No television, radio, or other communication antennas may be affixed or otherwise made part of any IWT or IWT support tower, except pursuant to the telecommunications provisions of the Town Zoning Code. Applications may be jointly submitted for IWT and telecommunications facilities.

c. No advertising signs are allowed on any part of the IWT Facility, including fencing and support structures.

d. Lighting of tower. No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Site plan. Security lighting shall be designed to minimize light pollution, including the use of light hoods, low glare fixtures, and directing lights at the ground.

e. All applicants shall use measures to reduce the visual impact of IWT Facilities to the extent possible. IWTs shall use tubular support towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Individual IWTs within a Wind Energy Incentive Zone shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Zone, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the support tower, hub, or blades of the IWT.

f. The use of guy wires is prohibited.

g. No IWT Facility shall be installed in any location where its proximity to existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No IWT Facility shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that an IWT Facility is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference, to the extent not pre-empted by the jurisdiction of the Federal Communications Commission, is grounds for revocation of the Special Use Permit for the specific IWT Facility or IWTs causing the interference.

h. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all applicable rules and regulations.

i. IWT Facilities shall be designed to minimize the impacts of land clearing and the loss of open space areas. The use of previously developed areas will be given priority wherever possible.

j. IWT Facilities shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.

k. IWT Facilities and related infrastructure shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.

l. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable laws and regulations.

m. Construction of any IWT Facility shall be limited to the hours of 7 a.m. to 8 p.m.

n. All environmental impacts and zoning requirements for substations required to serve IWT Facilities shall be considered with the Special Use Permit applications.

o. The Town of Italy shall be named as an additional insured under the general liability policy of the applicant, the amount of which insurance shall be no less than an amount to be determined by the Town Board given the nature and scope of the project proposed by the applicant.

p. Any construction or ground disturbance involving agricultural land shall be done in accordance with the NYS Department of Agriculture and Markets' publication titled Guidelines for Agricultural Mitigation for Wind Power Projects.

L. Required Safety Measures

1. Each IWT shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.

2. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage and at least one sign shall be posted at the base of each tower and any building, containing emergency contact information, including a local telephone number with 24 hour, 7 day a week coverage. The Town Board may require additional signs based on safety needs.

3. No climbing pegs or tower ladders shall be located closer than 12 feet to the ground level at the base of the any IWT support structure.

4. The minimum distance between the ground and any part of the rotor or blade system shall be 20 feet.

5. IWT Facilities shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.

6. Accurate maps of the underground facilities shall be filed with the Town and with "Dig Safely New York (1-800-962-7962)" or its successor.

M. Traffic Routes

1. Construction of IWT Facilities poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for IWT Facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (1) minimizing traffic impacts from construction and delivery vehicles; (2) minimizing IWT Facility related traffic during times of school bus activity; (3) minimizing wear and tear on local roads; and (4) minimizing impacts on local business and agricultural operations. Permit conditions may require remediation during construction, limit IWT Facility related traffic to specified routes, and include a plan for disseminating traffic route information to the public, and all applicable state, county, and municipal highway authorities and superintendents whose roads are included in the IWT Facility traffic routes plan. Notification to all applicable highway authorities and superintendents will include the number and type of vehicles and their size, their maximum gross weight, the number of round trips, and the dates and time periods of expected use of designated traffic routes.

2. The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of an IWT Facility. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Town Board, sufficient to compensate the Town for any damage to local roads.

N. Setbacks for Industrial Wind Turbines

Minimum setbacks for an Industrial Wind Turbine shall be sufficient to meet the maximum noise limits specified in subsection 1 or as specified in subsection 2, whichever is larger.

1. Maximum Noise Levels

a. The A-Weighted equivalent sound pressure level (LA_{eq}) generated by an IWT Facility operating at full power shall not exceed an LA_{eq} of 50 dBA or result in an increase of more than 5 dBA in the ambient LA_{eq} , whichever is larger, at the closest non-participating property line existing at the time of the Special Use Permit application and shall not result in the generation of an LA_{eq} of 45 dBA at the closest residence on a non-participating property. If the ambient sound pressure level plus 5 dBA limit is utilized, the applicant must provide continuous noise and meteorological monitoring data measured simultaneously over a minimum thirty-day period to demonstrate compliance with this requirement. The monitoring location(s) must be approved in advance by the Town Board or its designate with all measurements and equipment meeting standard professional practice. Based upon the measurements, compliance must be demonstrated at wind speeds corresponding to cut-in, $\frac{1}{4}$ power, $\frac{1}{2}$ power, $\frac{3}{4}$ power and full power output of the wind turbine based upon the manufacturer's specification of the cut-in wind speed and full power output level. Independent certification shall be provided after construction demonstrating compliance with this requirement. All modeling of noise associated with an IWT Facility shall be in conformance with ISO 9613: Part 2 – Attenuation of Sound During Propagation Outdoors using a ground absorption coefficient (G) = 0.5, a relative humidity of 50%, and a 1.2 m AGL receptor height. A digital terrain map will be utilized with the model to determine any sheltering from noise due to topography.

b. In the event audible noise due to IWT Facility operation contains a pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph a. of this subsection shall be reduced by five dBA (i.e.: Not to exceed an LA_{eq} of 40 dBA or an increase of 0 dBA over ambient.). A pure tone is defined to exist if the one-third octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two contiguous one third octave bands by five dBA for center frequencies of 500 Hz and above, by eight dBA for center frequencies between 160 Hz and 400 Hz, or by 15 dBA for center frequencies less than or equal to 125 Hz.

2. Setbacks for IWTs shall be a minimum of 1,000 feet from the turbine support tower base to the property lines of any non-participating property and a minimum of 1375 feet from any residence, permanent or seasonal located on any non-participating property .

3. Exemptions: Minimum setbacks specified under subparagraphs 1 and 2 of this subsection shall not apply to the following

a. Public roads. In the case of roads, the setback shall be equal to the turbine height plus 100 feet.

b. County-owned Property. In the case of County-owned property, the setback shall be equal to the height of the turbine plus 100 feet.

c. Setbacks to residences on participating properties shall be the height of the IWT support tower plus 100 feet. However, owners of such residences shall, if required by the Town Board, supply written evidence of their consent to locations of IWT's closer than 850 feet

d. 100 feet from state-regulated wetlands. This distance may be adjusted to be greater or lesser at the discretion of the Town Board, based on topography, land cover, land uses, and other factors.

4. All other IWT Facility structures and improvements, shall comply with the underlying zoning district regulations.

O. Noise and Setback Easements; Variances

1. In the event the noise levels resulting from an IWT Facility exceed the criteria established in this Section, or any other setback requirement is not met, a waiver may be granted from such requirement by the Town Board for participating adjoining properties:

a. Written consent from the affected property owners has been obtained stating that they are aware of the IWT Facility and the noise and/or setback limitations imposed by this Section, and that they consent to (1) allow noise levels to exceed the maximum limits otherwise allowed or (2) allow setbacks less than required; and

b. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, shall be recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefited IWT Facility in accordance with this Section, or the acquisition of the burdened parcel by the owner of the benefited parcel or the IWT Facility.

2. In any case where written consent is not obtained, a variance or waiver from the Town Board shall be required.

3. The Town Board shall have the right to waive or vary any provision of this Section 9.6, at its sole discretion, consistent with applicable law. The reasons for such waiver shall be set forth in the application record and Board minutes.

P. Abatement

1. If any IWT Facility remains non-functional or inoperative for a continuous period of one year, the applicant agrees that, without any further action by the Town Board, it shall remove said system at its own expense. Removal of the system shall be in conformance with the following:

The IWT Facility, and all associated above-grade equipment will be

a. dismantled. If resold and not scrapped, tower sections and rotors will be transported in the same manner as their delivery to the site.

IWT foundation/pedestals (if in place at time of abandonment) would be removed to two (2) feet below grade or three (3) feet below grade where the IWT site is within an active agricultural field.

It will be the responsibility of the permit holder to assure that the demolition contractor removes the construction debris to a disposal facility permitted to operate under applicable regulations at that time.

The IWT Facility site will be backfilled with suitable soils and re-graded to meet adjoining existing grades.

Topsoil will be applied to the rough graded site. The disturbed areas will be seeded with a utility mix of native grasses, fertilized and mulched. The mix and method would be consistent with the surrounding land use or vegetation.

Where IWT Facilities are located within active agricultural fields, a qualified agricultural restoration contractor will restore those IWT Facility sites in compliance with the project's Notice of Intent to the New York State Department Agriculture and Markets after the IWT Facility, foundations and crane pads have been removed.

Removal of the system will include all above-grade transmission equipment and fencing. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the IWT Facility to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.

2. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Town Board all reports to and from the purchaser of energy from individual IWTs, if requested, necessary to prove the IWT Facility is functioning, which reports may be redacted as necessary to protect proprietary information.

3. Decommissioning Bond or Fund. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town for the removal of non-functional IWT Facilities in an amount to be determined by the Town for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York-licensed financial institution. All costs of the financial security shall be borne by the applicant.

Q. Limitations on Approvals; Easements on Town Property

1. Nothing in this Section shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the IWT Facility. Nothing in this Section shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow

to any IWT Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

2. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state law or this Section.

R. Permit Revocation

1. Testing fund. A Special Use Permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two years, or more frequently upon request of the Town Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit and this Section and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.

2. Operation. An IWT Facility shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should an IWT Facility become inoperable, or should any part of the IWT Facility be damaged, or should an IWT Facility violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after written notice from the Town Board, to cure, or diligently proceed to cure, any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.

3. Non-compliance with any condition of the Special Use Permit, including the provision of amenities and benefits to the community within the required timeframes, will be sufficient grounds for revocation of the Special Use Permit for the IWT Facility. Written notice of such non-compliance shall be provided to the owner or operator by the Town Board. The owner or operator shall have 90 days after written notice from the Town Board to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.

4. Notwithstanding any other abatement provision under this Section, if the IWT Facility is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) order revocation of the Special Use Permit for the IWT Facility and require the removal of the IWT Facility within 90 days. If the IWT Facility is not removed within this time, the Town Board shall have the right to use the security posted as part of the Decommission Plan to remove any part or all of the IWT Facility.

S. Fees

1. There shall be non-refundable Application fees as follows:
 - a. IWT Facility Special Use Permit: \$50 per ~~capacity to a total maximum of \$500.~~
 - b. The cost of all legal notices and mailings shall be assessed to the applicant.

2. Building Permits, Environmental Monitoring.

- a. The Town believes the review of building and electrical permits for IWT Facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be increased by administrative costs which shall be \$100 per permit request, plus the amount charged to the Town by any outside consultant hired by the Town to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans or certifications, and/or to conduct inspections as agreed by the parties.

- b. The applicant shall, prior to the receipt of a certificate of completion, demonstrate that the proposed facility meets the system reliability requirements of the New York Independent System Operator, or provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and/or the applicable Transmission Owner.

- c. The Town shall engage such Environmental Monitors as reasonably necessary to monitor post-approval activities (including construction, post-construction, and decommissioning phases). No building permit shall be issued unless the permittee has entered into an agreement with the Town to fund the reasonable expenses of the Environmental Monitor (s)

3. Nothing in this Section shall be read as limiting the ability of the Town to enter into Host Community Agreements, including Road Use Agreements, with any applicant to compensate the Town for expenses or impacts on the community, to the extent permitted by law. The Town may require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required pursuant to SEQRA.

4. The Town Board may amend these fees, by resolution after a properly noticed public hearing.

T. Enforcement; Penalties and remedies for violations

1. In addition to the Code Enforcement Officer, the Town Board may appoint such Town staff or outside consultants as it sees fit to enforce this Section.

2. In case of any violation or threatened violation of any of the provisions of this Section, including the terms and conditions imposed by any permit issued pursuant to this Section, in addition to other remedies and penalties here provided, the Town may institute any

appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving, and/or use, and to restrain, correct, or abate such violation, to prevent the illegal act or acts.

Section 6: Zoning District Map Adoption

The Zoning Map of the Town of Italy is hereby amended to add the Wind Energy Incentive Zone shown on the attached map, which is incorporated herein.

Section 7: Severability

Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Section 8: Effective Date

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.