Yates County Planning Board Referral Form

Municipality and Referring Agency: Town Board/Town of Italy

Project Address: none

Zoning District: N/A

Applicant (Name & MAILING):

Property Owner (Name & MAILING):

Reason for Referral (Prox. to Cty Rd., State Rd., Muni Boundary, etc.): GML 239-m

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Application Type

- Area Variance
- Use Variance
- Special Use Permit
- Site Plan
- Subdivision
- Text Amendment
- Map Amendment
- Other: moratorium

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Project Description

The Town Board proposes to renew its moratorium on "High Impact Industrial Uses" pending completion of regulations pertaining thereto. See memo submitted herewith.

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Supporting Documents Required (IF N/A, include explanation)

- Municipal Application
- Tax Map or Plat
- SEQ
- Site Plan *
- Variance Criteria **
- Subdivision Plat
- Other

*If Site Plan Review, Site Plan MUST be detailed and meet the municipal requirements.
**All Variance referrals (Area/Use) MUST include detailed justifications associated with reason/s for appeal.

Certification: With the following signature, I certify that this application provides a complete description of the proposed local action and is a complete application pursuant to NYS General Municipal Law Article 12b, Section 239-m, part c.

Edward J. Brockman, Town Attorney obo Italy Town Clerk, Referring Official

Provision of required information is the responsibility of the referring agency. Failure to provide such information may result in a significant delay in processing.

Submit To: Yates County Planning Department, Sbonshak@yatescounty.org or 417 Liberty St. Suite 1093, Penn Yan, NY 14527
Local Law Filing
162 Washington Avenue, Albany, NY 12231

(Use this form to file a local law with the Secretary of State.)
Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Italy

Proposed Local Law A of the year 2014

A Local Law to impose a six (6) month moratorium on the installation, construction, operation of and the submission and processing of applications for High Impact Industrial Use within the Town of Italy.

Be it enacted for a period of six (6) months by the Town of Italy as follows:

Section 1. Authority

This Local Law is adopted pursuant to the provisions of the Municipal Home Rule Law of the State of New York and Article 16 of the Town Law of the State of New York, with the procedural provisions of the Municipal Home Rule Law controlling.

Section 2. Short Title

This Local Law shall be known as the “Town of Italy High Impact Industrial Use Moratorium Law of 2014.”

Section 3. Definition:

For the purposes of this Local Law the following shall have the meanings indicated:

1. Ambient Noise Level - The lowest recorded LA90 value taken over a continuous four (4) hour period with one-minute equivalent sound levels recorded and the ambient noise level determined as the lowest LA90 value for any continuous ten-minute period of a series taken between the hours of 10PM and 4AM. Measurements must be taken in the absence of precipitation and when the wind speed is not greater than 4.5 meters per second (10 mph). Measurement procedure must meet ANSI S12.9, Part 3. Such measurements shall be made between December 1 and the following March 15.

2. Code Enforcement Officer (CEO) – The duly appointed Code Enforcement Officer of the Town of Italy or any Deputy or Assistant appointed or designated by the Town Board.

3. Deleterious Substance – Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of ‘industrial waste’, ‘hazardous’, ‘toxic’, or similar substances so long as such items are employed by persons in one or more specific businesses or industries: (a) below regulatory concern radioactive material, or any radioactive material which is not below regulatory concern, but
which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, (b) crude oil or natural gas drilling fluids, (c) crude oil or natural gas exploration, drilling, production of processing wastes, (d) crude oil or natural gas drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material), (e) solution mining brine or mineral brines, (f) any chemical, waste oil waste emulsified oil, mud sediment, chemicals that was used or produced in the drilling, development transportation, processing or refining of crude oil or natural gas, (g) soil contaminated in the drilling, transportation, processing or refining of crude oil or natural gas, (h) drill cuttings from crude oil or natural gas wells, (i) any wastes associated with the exploration, drilling, production or treatment of crude oil or natural gas, or (j) any waste classified as “Solid Waste” under 40 C.F.R. section 261.4(b)(5) [i.e. “Solid wastes which are not hazardous wastes,”], exempting therefrom animal manure.

4. **Deleterious Substance Disposal/Storage Facility** – Any of the following: (a) tanks or any construction (metal, fiberglass, concrete, etc.), (b) impoundments, (c) pits, (d) evaporation ponds, or (e) other facilities, in any case used for the storage or treatment of deleterious substances that: (i) are being held for initial uses, (ii) have been used and are being held or subsequent reuse, (iii) are being held or treatment, or (iv) are being held or storage.

5. **Explosive Materials** – Substances capable of undergoing decomposition or combustion with great rapidity, evolving much heat and producing a large volume of gas. The reaction products fill a much greater volume that that occupied by the original material and exert an enormous pressure, which can be used for blasting and for propelling, i.e.: TNT, dynamite, nitroglycerin and ammonium nitrate.

6. **High Impact Industrial Use** – Industrial uses or operations that are more likely than not to generate or involve any five (5) or more of the following impacts in the Town at any time during such use or operation:
   a. substantial surface disturbance;
   b. the presence, production, collection, handling, manufacture, use, storage, transfer or disposal of any deleterious substance;
   c. high-frequency high-impact truck traffic;
   d. an industrial use operation which, whether due to its nature or to a desire or need by the operator to employ financial resources most efficiently, or otherwise, is usually not limited to typical work days and morning to early evening hours, but rather instead is often conducted at any and all times of the day and night;
   e. open air industrial use;
   f. open storage;
   g. flammable or explosive materials are present, used, produced, stored or disposed of;
   h. a private electric power generation facility;
   i. large scale water use;
   j. construction or use of more than 45,000 square feet of impervious surface;
   k. construction or use of a staging facility;
   l. construction of pipelines, roadways and/or other infrastructure necessary to move or transmit materials to or produced at a proposed project site;
   m. construction and/or installation of electrically transmission system components;
n. generation of noise in excess of 6 dBA above measured (L90) ambient level on an “A”
weighed scale at the property line of any owner not participating into proposed
project.

7. **High-Frequency, High-Impact Truck Traffic** - Any one of the following: (a) more than
twenty (20) one-way trips by high-impact trucks to or from the site of the proposed use during
any twenty four (24) hour period at any time during the duration of the use; or (b) more than fifty
(50) one-way trips by high-impact truck to or from the site of the proposed use during any seven
(7) day period at any time during the duration of the use; or (c) more than seven hundred (700)
one-way trips by high-impact truck to or from the site of the proposed use during any three
hundred sixty five (365) day period during the duration of the use.
   a. **GROSS VEHICLE WEIGHT RATING** --- The weight specified by the
manufacturer as the maximum load weight (truck plus cargo) of a vehicle.
   b. **HIGH-IMPACT TRUCK** --- A truck or tractor, as defined in the Vehicle and
Traffic Law, with three or more axles, or ten or more wheels, and capable of
hauling a gross vehicle weight of 34,000 pounds or more. High-impact truck
does not include exempted vehicles.
   c. **EXEMPTED VEHICLES** --- Any of the following: (a) vehicles for
agricultural or logging use, (b) school buses or other mass transit buses, (c)
emergency vehicles, (d) military vehicles driven by active duty military
personnel, or (e) trucks used in the construction, repair or maintenance of
state, county, or Town roads or other public structures or property (f) Vehicles
driven as part of a daily commute between home and a worksite or delivery
destination.

8. **Industrial Wind Generation Facility** – A group of industrial scale wind powered electric
generation turbines together with the lands they occupy and all supporting infrastructure
including, but not limited to, electric collection systems, sub station, access roads and
construction staging area(s), which is designed to function as a major electric generating facility
producing 25 Megwatts or more with the output to be sold to and place upon the New York
power grid.

9 **Injection Well** - A bored, drilled or driven shaft whose depth is greater than the largest
surface dimension, or a dug hole whose depth is greater than the largest surface dimension,
through which fluids (which may or may not include semi-solids) are injected into the subsurface
and ninety (90) percent or more of such fluids do not return to the surface within a period of
ninety (90) days. The definition of Injection Wells does not include: (a) single family septic
systems that receive solely residential waste, (b) drainage wells used to drain surface fluids,
primarily storm runoff, into the ground, (c) geothermal wells associated with the recovery of
geothermal energy for heating or production of electric power, or (d) bore holes drilled to
produce potable water to be used as such.
   **UNDERGROUND INJECTION** --- Subsurface emplacement of
Natural Gas and/or Petroleum Extraction, Exploration or Production
Wastes by or into an injection well.
10. Large Scale Water Use - Any water withdrawal or sequestering water use of over 100,000 gallons of water in any thirty (30) day period from water resources within the Town. Large scale water use does not include water withdrawn for agriculture use, for emergency uses such as fire fighting, or for drinking, recreational, cooking, washing, or sanitary purposes and used within the Town.

   a. WATER; WATER RESOURCES --- All streams, ditches, lakes, ponds, marshes, vernal pools, watercourses, waterways, wells, springs, drainage systems, and all other bodies or accumulations of water, surface or underground, intermittent or perennial, which are contained in, flow through or border upon the Town or any portion thereof.

   b. WATER WITHDRAWAL --- Removal or capture of water from water resources within the Town.

11. Natural Gas - methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

12. Natural Gas and/or Petroleum Extraction Activities - the digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.

13. Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes - Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of “industrial waste,” “hazardous,” or “toxic,” and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, (b) crude oil or natural gas drilling fluids, (c) crude oil or natural gas exploration, drilling, production or processing wastes, (d) crude oil or natural gas drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material), (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of crude oil or natural gas, (f) soil contaminated in the drilling, transportation, processing or refining of crude oil or natural gas, (g) drill cuttings from crude oil or natural gas wells, or (h) any other wastes associated with the exploration, drilling, production or treatment of crude oil or natural gas. This definition specifically intends to include some wastes that may otherwise be classified as “solid wastes which are not hazardous wastes” under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes does not include (i) animal manure and/or recognizable and non-
recognizable food wastes, or (ii) waste generated by agriculture use.

14. **Natural Gas and/or Petroleum Extraction, Exploration Extraction, Exploration or Production Wastes Disposal/Storage Facility** - Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.), (b) impoundments, (c) pits, (d) evaporation ponds, or (e) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

15. **Natural Gas and/or Petroleum Exploration or Production Wastes Dump** - Land upon which Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

16. **Natural Gas Compression Facility** - Those facilities or combination of facilities that move natural gas or oil from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

17. **Natural Gas Processing Facility** - Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO₂ separated from natural gas streams.

18. **Open Air Industrial Use** – An industrial use that includes storage outside of an enclosed building of raw materials, components, equipment, products, byproducts, waste, deleterious substances or other materials, either as a primary activity, or as an accessory use or incidental to another activity or use.

19. **Open Storage** – The holding, keeping or storage outside of an enclosed building of any chemicals, petroleum products, or deleterious substances, in total quantities of greater than two hundred (200) pounds or two hundred fifty (250) hours at any time during the use.

20. **Private Electric Power Generation Facility** – One or more power generators of more than 1000 horsepower in the aggregate, fueled by diesel, oil, gas, propane or other fossil fuel, the primary function of which is the provision of electricity to an industrial use.

22. **Staging Facility** – A vehicle storage or parking facility or location capable of use for the storage, parking or operation of more than twenty (20) high impact trucks at the same time.

23. **Substantial Surface Disturbance** – A development activity which will likely disturb the existing surface or more than two (2) acres of land.

24. **Town** – The Town of Italy
25. **Town Board** – The duly elected Town Board of the Town of Italy

**Section 4. Legislative Purpose and Findings**

A. The purpose of this Local Law is to enable the Town of Italy to prevent High Impact Industry as well as the processing of any application for High Impact Industry within the Town of Italy for a reasonable time pending the Town Zoning Board and Town Board completing and adopting regulations controlling High Impact Industrial Uses in the Town of Italy and possible amendment of the Town Comprehensive Plan.

B. It is further the purpose of this Local Law to fulfill the Town’s pre-construction constitutional, statutory and legal obligations to protect and preserve the public health, welfare and safety of the citizens of the Town of Italy, as well as to protect the value, use and enjoyment of property in the Town by temporarily prohibiting the submission and processing of applications for and commencement of operation of any High Impact Industrial Use within the Town.

C. The Town Board finds that the following concerns must be considered with respect to the commencement of operation of any High Impact Industrial Use in the Town of Italy and the possible adoption of regulations with respect thereto:

1. The Town of Italy presently has no zoning or other regulations related to certain High Impact Industrial Uses.

2. The Town Board has requested the Town Planning Board to examine how the Town could protect itself from unregulated operation of high impact industrial uses, by adoption of appropriate regulations for the Town.

3. Public comment at Town Board meetings has indicated that High Impact Industrial Uses in other areas produce unanticipated negative impacts on aquifers, wells and local highway infrastructure, along with other potential negative impacts on a community.

4. Accordingly, any High Impact Industrial Use may have an adverse impact upon the health, safety, welfare and comfort of residents of the community, particularly adversely impacting residents in the vicinity of such high impact industrial uses.

5. The scenic and aesthetic attributes of the Town of Italy as they relate to the use of land in the Town for residential, recreational and tourism purposes and the potential negative impact thereon by high impact industrial uses should be considered.

6. That High Impact Industrial Uses in the Town of Italy may have an adverse affect upon real estate values in the Town of Italy.

7. That the Town Board of the Town of Italy has legitimate goals and aims in protecting the aesthetic and scenic resources as well as real estate values and other natural resources within the Town.
8. That high impact industrial uses without adequate protection for resources, may cause the Town to forever lose those resources.

9. That the aesthetics, view, vistas, visual impacts, noise impacts, safety, water resources, highway infrastructure, environmental and overall well being of the residents of the Town of Italy must be considered and are the responsibility of the Town Board as relates to adoption of regulations pertaining to high impact industrial uses.

D. That to allow High Impact Industry Use without addressing the above factors may have a permanent, significant and substantial negative impact on the nature and quality of life in the Town of Italy and on the health, safety, general welfare and comfort of its residents and their natural resources.

E. That to preserve the resources and character of the Town of Italy, to consider further the concerns of the residents and property owners of the Town of Italy, and to address further the needs of those residents and property owners, the Town of Italy finds that it requires further time to study the impacts, high impact industrial uses in the Town of Italy.

F. The Town Board hereby finds that a further moratorium of six (6) months duration, coupled with a hardship waiver procedure and mechanism for persons seeking to begin high impact industrial uses within the Town of Italy, will achieve the balancing of interests between the public need to safeguard the resources and character of the Town of Italy, the health, safety and general welfare of its residents, and the rights of individual property owners, persons or businesses engaging in the high impact industry uses during such period.

Section 5. Imposition of Moratorium

A. For a period of six (6) months from and after the effective date of this Local Law: (i) no applications for the commencement of high impact industrial uses shall be accepted or processed by the Town of Italy; (ii) no previously submitted applications for any purpose related to high impact industrial uses will be further processed by the Town of Italy; (iii) the granting of any permit for same by any Board or Officer of the Town is prohibited; and (iv) installation, construction or erection of equipment or apparatus for High Impact Industry uses is prohibited within the geographic limits of the Town of Italy, except as provided in Section 6 of this Local Law.

B. For the purpose of this Local Law, an application shall be deemed to mean any pending or future request for official action by the Town Board, Town Code Enforcement Officer, Town Highway Superintendent or other Officer, official, employee, agent or designee thereof of the Town of Italy which request and/or approval would in any way commence, further or continue a process whereby High Impact Industry Use, or any part or component thereof, is or may be undertaken, commenced, constructed or erected.

C. Exempted herefrom are existing businesses and/or operations in the Town of Italy which would presently fall into the definition of high impact industrial use or fall into that definition by expansion or increase of any present use or operation. Also specifically exempted are any agricultural, municipal or educational uses or activities.

Section 6. Alleviation of Extraordinary Hardship
A. The Town Board of the Town of Italy may authorize exceptions to the moratorium imposed by this Local Law when it finds, based upon evidence presented to it, that deferral of action on an application for high impact industrial use, the delay in commencement of such use or operation, or any part or component thereof and/or the operation of an industrial wind electrical generator facility for the duration of the moratorium, would impose an extraordinary hardship on a landowner or applicant.

B. An application for an exception based upon extraordinary hardship shall be filed with the Code Enforcement Officer of the Town of Italy, including a fee of One Thousand and 00/100 Dollars ($1,000.00) for each geographic site proposed for High Impact Industry uses claimed to be subject to extraordinary hardship, by the landowner or the applicant upon the consent of the landowner. The application shall provide a recitation of the specific facts that are alleged to support the claim of extraordinary hardship and shall contain such other information and/or documentation as the Town Board or its designee, shall prescribe as necessary for the Town Board to be fully informed with respect to the application.

C. A public hearing on any application for an exception to this Local Law based upon extraordinary hardship shall be held by the Town Board at a meeting of the Town Board no later than forty-five (45) days after the complete application for extraordinary hardship has been filed with the Code Enforcement Officer. The Town Board shall determine, by motion duly adopted, when an application based upon extraordinary hardship is complete.

D. In reviewing an application for an exception based upon a claim of extraordinary hardship, the Town Board shall consider the following criteria:

1. The extent to which the applicant has, prior to the effective date of this Local Law, received any final development approval for the proposed development and has obtained all the requisite leases, rights of way or other necessities for high impact industrial uses.

2. The extent to which the proposed high impact industrial uses would cause significant environmental degradation, adversely impact adjacent natural resource areas, cause public health, comfort or safety concerns and/or have a negative impact upon the Town of Italy, considering all the factors set forth in Section 4 of this Local Law.

3. Whether the moratorium will expose a property owner or applicant to substantial monetary liability to a third person or would leave the property owner or applicant completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the property.

4. The extent to which actions of the applicant were undertaken in good faith belief that the proposed high impact industrial uses would not lead to significant environmental degradation, undue adverse impacts on public health or safety, and/or have a negative impact upon the Town of Italy considering the factors set forth in Section 4 of this Local Law.

E. Mere delay or concern that regulations may be adopted or that the existing comprehensive plan may be amended is insufficient to constitute an extraordinary hardship under this section.
F. At the conclusion of the public hearing and after reviewing the evidence and testimony placed before it, the Town Board shall, in its sole discretion, act upon the application for an exception based upon extraordinary hardship. The Town Board may approve, deny or approve in part and deny in part the application being acted upon.

Section 7. Penalties

A. For the purposes hereof any person, in that person’s individual capacity or acting as an employee, agent or officer of an entity, violating the provisions hereof, shall be subject to prosecution pursuant hereto.

B. A violation of this Local Law is hereby declared to be an offense punishable by a fine not to exceed $250.00 or imprisonment for a period not to exceed fifteen (15) days, or both such fine and imprisonment, together with any other civil remedies available at law including injunctive relief. Each day that a violation exists shall be a separate prosecutable offense pursuant hereto.

Section 8. Superseding and Repealer Provisions

This local law shall supersede the applicable sections of Article 16 of the Town Law, including, but not necessarily limited to Sections, 130, 261, 262, 263, 264, 265, 267, 268, 269 and 274-a, and Executive Law Section 381 to the extent inconsistent with the same and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law or any other statute determined to be in conflict with the provisions hereof as pertains to industrial wind turbine towers, and/or industrial wind energy facilities, as defined herein.

Section 9. Validity

In the event that any section, sentence, clause or phrase of this Local Law is held to be invalid or unconstitutional by any court of competent jurisdiction, said holding shall in no way affect the validity of the remaining portions of this Law.

Section 10. Effective Date

This Local Law shall become effective upon filing with the Secretary of State of the State of New York subsequent to having been duly adopted by the Town Board of the Town of Italy.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only)

I hereby certify that the local law annexed hereto, designated as Local Law No. of the year 2013, of the Town of Italy was duly passed by the Town Board on , in accordance with the applicable provisions of law.

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _.
above.

Debbie Craig, Italy Town Clerk

(SEAL)

Date:

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality)

STATE OF NEW YORK )
COUNTY OF YATES ) ss:

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Edward J. Brockman, Town Attorney
Town of Italy
Date:
TO:          Yates County Planning Board
FROM:        Edward J. Brockman, Town Attorney
DATE:        March 18, 2014
RE:          Moratorium on High Impact Industrial Uses (HIIU)

The Town Board referred the subject to the Town Planning Board/ZBA (Zoning Board) for the purpose of examining into development of regulations pertaining to HIIU. The Zoning Board has reported back recommendations with respect thereto.

The Town Board is now undertaking a review of those recommendations toward possibly adopting regulations for HIIU. The process is expected to take a number of months.
G.M.L. §239 REFERRAL TO THE YATES COUNTY PLANNING BOARD

YCPD Office Log #  2013-3b
Date Received  MAY - 8 2013

From:  Town Board of the Town of Italy
To:    Yates County Planning Board, 417 Liberty St., Penn Yan, NY 14527
Applicant:  Town Board of the Town of Italy
1. Location:  
2. Tax Map #:  N/A
2a. Zoning District:  N/A
3. Type of Application or Proposal:
   □ Use Variance  □ Area Variance  □ Special Use Permit
   □ Subdivision Review  □ Site Plan Review  □ Zoning Text Amendment
   □ Zoning Map Amendment (Rezoning)  □x Other Moratorium Ext.
3b. Date of meeting at which the local board expects to take final action:  
4. Applicable Sections of Zoning Code:  Moratorium Extension
5. Description:  
6. Reason Referred:  500’ from  N/A
7. Enclose the complete application including the following:
   □ SEQR Documentation
   □ Detailed Description
      • Type of Business
      • Hours of Operation
      • Number of Employees
      • Anticipated Traffic
   □ Site Plan
      • Title, Scale, North Arrow, Dimensions
      • Portion of the Property to be Developed
      • Streets, Easements, Utilities
      • Driveways, Parking (Existing & Proposed)
      • Structures (Existing & Proposed)
      • Landscape Features (i.e., streams, ponds, hedges) (Existing & Proposed)
      • Lighting & Signage (Location and content)
      • Grading Plan, Drainage & Erosion Control (During & After Construction)

As declared in G.M.L. §239-l, m, and n, it is in the public interest to have the Yates County Planning Board review certain actions that may have inter-community and countywide impacts. Within thirty days of a complete submittal of the referred matter (or at least two days before the referring board’s final action), the County Planning Board shall report its recommendations thereon to the referring agency. If the County Planning Board fails to report within 30 days, the body having jurisdiction to act may do so without such report.

REVISED: November 19, 2004
May 6, 2013

Yates County Planning Board
C/o Yates County Planning Department
417 Liberty Street
Penn Yan, New York 14527

**Re: Town of Italy – General Municipal Law §239-m Referral: Proposed Local Law Establishing A Further Moratorium on High Impact Industrial Uses**

To Whom It May Concern:

Pursuant to motion by the Town Board and at the direction of the Town Clerk of the Town of Italy, we enclose herewith the proposed Local Law establishing a six-month moratorium on high impact industrial uses within the Town of Italy, for review by the Yates County Planning Board. This referral is made pursuant to §239-m of the General Municipal Law of the State of New York.

Also enclosed is a §239-m Referral form.

The Town Board will be holding a public hearing on the Local Law extending the moratorium on May 14, 2013.

In the event that you request further information or documentation please advise us accordingly.

Sincerely,

Edward J. Brockman

Edward J. Brockman

EJB/lcb

Enclosure

Margaret Dunn, Supervisor
Local Law Filing

162 Washington Avenue, Albany, NY 12231

(Use this form to file a local law with the Secretary of State.)
Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Italy

Proposed Local Law D of the year 2013

A Local Law to impose a further six (6) month moratorium on the installation, construction, operation of and the submission and processing of applications for High Impact Industrial Use within the Town of Italy.

Be it enacted for a period of Six (6) months by the Town of Italy as follows:

Section 1. Authority

This Local Law is adopted pursuant to the provisions of the Municipal Home Rule Law of the State of New York and Article 16 of the Town Law of the State of New York, with the procedural provisions of the Municipal Home Rule Law controlling.

Section 2. Short Title

This Local Law shall be known as the “Town of Italy High Impact Industrial Use Moratorium Extension Law of 2013.”

Section 3. Definition:

For the purposes of this Local Law the following shall have the meanings indicated:

1. Ambient Sound Level – The measured (L90) sound pressure level in dBA on an “A” weighted scale at the property line of any non-participating property owner who are subject to noise impacts from the High Impact Industrial Use being proposed.

2. Code Enforcement Officer (CEO) – The duly appointed Code Enforcement Officer of the Town of Italy or any Deputy or Assistant appointed or designated by the Town Board.

3. Deleterious Substance – Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of ‘industrial waste’, ‘hazardous’, ‘toxic’, or similar substances so long as such items are employed by persons in one or more specific businesses or industries: (a) below regulatory concern radioactive material, or any radioactive material which is not below regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, (b) crude oil or natural gas drilling fluids, (c) crude oil or natural gas exploration, drilling, production of processing wastes, (d) crude oil or natural gas drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any...
other liquid or semi-liquid material), (e) solution mining brine or mineral brines, (f) any chemical, waste oil waste emulsified oil, mud sediment, chemicals that was used or produced in the drilling, development transportation, processing or refining of crude oil or natural gas, (g) soil contaminated in the drilling, transportation, processing or refining of crude oil or natural gas, (h) drill cuttings from crude oil or natural gas wells, (i) any wastes associated with the exploration, drilling, production or treatment of crude oil or natural gas, or (j) any waste classified as “Solid Waste” under 40 C.F.R. section 261.4(b)(5) [i.e. “Solid wastes which are not hazardous wastes,”], exempting therefrom animal manure.

4. **Deleterious Substance Disposal/Storage Facility** – Any of the following: (a) tanks or any construction (metal, fiberglass, concrete, etc.), (b) impoundments, (c) pits, (d) evaporation ponds, or (e) other facilities, in any case used for the storage or treatment of deleterious substances that: (i) are being held for initial uses, (ii) have been used and are being held or subsequent reuse, (iii) are being held or treatment, or (iv) are being held or storage.

5. **Explosive Materials** – Substances capable of undergoing decomposition or combustion with great rapidity, evolving much heat and producing a large volume of gas. The reaction products fill a much greater volume that that occupied by the original material and exert an enormous pressure, which can be used for blasting and for propelling, i.e.: TNT, dynamite, nitroglycerin and ammonium nitrate.

6. **High Impact Industrial Use** – Industrial uses or operations that are more likely than not to generate or involve any five (5) or more of the following impacts in the Town at any time during such use or operation:
   a. substantial surface disturbance;
   b. the presence, production, collection, handling, manufacture, use, storage, transfer or disposal of any deleterious substance;
   c. high-frequency high-impact truck traffic;
   d. an industrial use operation which, whether due to its nature or to a desire or need by the operator to employ financial resources most efficiently, or otherwise, is usually not limited to typical work days and morning to early evening hours, but rather instead is often conducted at any and all times of the day and night;
   e. open air industrial use;
   f. open storage;
   g. flammable or explosive materials are present, used, produced, stored or disposed of;
   h. a private electric power generation facility;
   i. large scale water use;
   j. construction or use of more than 45,000 square feet of impervious surface;
   k. construction or use of a staging facility;
   l. construction of pipelines, roadways and/or other infrastructure necessary to move or transmit materials to or produced at a proposed project site;
   m. construction and/or installation of electrically transmission system components;
   n. generation of noise in excess of 6 dBA above measured (L90) ambient level on an “A” weighted scale at the property line of any owner not participating into proposed project.
7. **High-Frequency, High-Impact Truck Traffic** - Any one of the following: (a) more than twenty (20) one-way trips by high-impact trucks to or from the site of the proposed use during any twenty four (24) hour period at any time during the duration of the use; or (b) more than fifty (50) one-way trips by high-impact truck to or from the site of the proposed use during any seven (7) day period at any time during the duration of the use; or (c) more than seven hundred (700) one-way trips by high-impact truck to or from the site of the proposed use during any three hundred sixty five (365) day period during the duration of the use.
   a. **GROSS VEHICLE WEIGHT RATING** --- The weight specified by the manufacturer as the maximum load weight (truck plus cargo) of a vehicle.
   b. **HIGH-IMPACT TRUCK** --- A truck or tractor, as defined in the Vehicle and Traffic Law, with three or more axles, or ten or more wheels, and capable of hauling a gross vehicle weight of 34,000 pounds or more. High-impact truck does not include exempted vehicles.
   c. **EXEMPTED VEHICLES** --- Any of the following: (a) vehicles for agricultural or logging use, (b) school buses or other mass transit buses, (c) emergency vehicles, (d) military vehicles driven by active duty military personnel, or (e) trucks used in the construction, repair or maintenance of state, county, or Town roads or other public structures or property (f) Vehcles driven as part of a daily commute between home and a worksite or delivery destination.

8. **Industrial Wind Generation Facility** – A group of industrial scale wind powered electric generation turbines together with the lands they occupy and all supporting infrastructure including, but not limited to, electric collection systems, sub station, access roads and construction staging area(s), which is designed to function as a major electric generating facility producing 25 Megwatts or more with the output to be sold to and place upon the New York power grid.

9 **Injection Well** - A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and ninety (90) percent or more of such fluids do not return to the surface within a period of ninety (90) days. The definition of Injection Wells does not include: (a) single family septic systems that receive solely residential waste, (b) drainage wells used to drain surface fluids, primarily storm runoff, into the ground, (c) geothermal wells associated with the recovery of geothermal energy for heating or production of electric power, or (d) bore holes drilled to produce potable water to be used as such.
   **UNDERGROUND INJECTION** --- Subsurface emplacement of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes by or into an injection well.

10. **Large Scale Water Use** - Any water withdrawal or sequestering water use of over 100,000 gallons of water in any thirty (30) day period from water resources within the Town. Large scale water use does not include water withdrawn for agriculture use, for emergency uses such as fire
ponds, or (e) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

15. **Natural Gas Compression Facility** - Those facilities or combination of facilities that move natural gas or oil from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

16. **Natural Gas Processing Facility** - Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO₂ separated from natural gas streams.

17. **Open Air Industrial Use** – An industrial use that includes storage outside of an enclosed building of raw materials, components, equipment, products, byproducts, waste, deleterious substances or other materials, either as a primary activity, or as an accessory use or incidental to another activity or use.

18. **Open Storage** – The holding, keeping or storage outside of an enclosed building of any chemicals, petroleum products, or deleterious substances, in total quantities of greater than two hundred (200) pounds or two hundred fifty (250) hours at any time during the use.

19. **Private Electric Power Generation Facility** – One or more power generators of more than 1000 horsepower in the aggregate, fueled by diesel, oil, gas, propane or other fossil fuel, the primary function of which is the provision of electricity to an industrial use.

20. **Staging Facility** – A vehicle storage or parking facility or location capable of use for the storage, parking or operation of more than twenty (20) high impact trucks at the same time.

21. **Substantial Surface Disturbance** – A development activity which will likely disturb the existing surface or more than two (2) acres of land.

22. **Town** – The Town of Italy

23. **Town Board** – The duly elected Town Board of the Town of Italy
fighting, or for drinking, recreational, cooking, washing, or sanitary purposes and used within the Town.

a. WATER; WATER RESOURCES --- All streams, ditches, lakes, ponds, marshes, vernal pools, watercourses, waterways, wells, springs, drainage systems, and all other bodies or accumulations of water, surface or underground, intermittent or perennial, which are contained in, flow through or border upon the Town or any portion thereof.

b. WATER WITHDRAWAL--- Removal or capture of water from water resources within the Town.

11. Natural Gas - methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

12. Natural Gas and/or Petroleum Extraction Activities - the digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.

13. Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes - Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste," "hazardous," or "toxic," and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, (b) crude oil or natural gas drilling fluids, (c) crude oil or natural gas exploration, drilling, production or processing wastes, (d) crude oil or natural gas drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material), (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of crude oil or natural gas, (f) soil contaminated in the drilling, transportation, processing or refining of crude oil or natural gas, (g) drill cuttings from crude oil or natural gas wells, or (h) any other wastes associated with the exploration, drilling, production or treatment of crude oil or natural gas. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes does not include (i) animal manure and/or recognizable and non-recognizable food wastes, or (ii) waste generated by agriculture use.

14. Natural Gas and/or Petroleum Extraction, Exploration Extraction, Exploration or Production Wastes Disposal/Storage Facility - Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.), (b) impoundments, (c) pits, (d) evaporation
Section 4. Legislative Purpose

A. The purpose of this Local Law is to enable the Town of Italy to prevent High Impact Industry as well as the processing of any application for High Impact Industry within the Town of Italy for a reasonable time pending the Town Zoning Board and Town Board completing and adopting regulations controlling High Impact Industrial Uses in the Town of Italy and possible amendment of the Town Comprehensive Plan.

B. It is further the purpose of this Local Law to fulfill the Town’s pre-construction constitutional, statutory and legal obligations to protect and preserve the public health, welfare and safety of the citizens of the Town of Italy, as well as to protect the value, use and enjoyment of property in the Town by temporarily prohibiting the submission and processing of applications for and commencement of operation of any High Impact Industrial Use within the Town.

C. The Town Board finds that the following concerns must be considered with respect to the commencement of operation of any High Impact Industrial Use in the Town of Italy and the possible adoption of regulations with respect thereto:

1. The Town of Italy presently has no zoning or other regulations related to certain High Impact Industrial Uses.

2. The Town Board has requested the Town Planning Board to examine how the Town could protect itself from unregulated operation of high impact industrial uses, by adoption of appropriate regulations for the Town.

3. Public comment at Town Board meetings has indicated that High Impact Industrial Uses in other areas produce unanticipated negative impacts on aquifers, wells and local highway infrastructure, along with other potential negative impacts on a community.

4. Accordingly, any High Impact Industrial Use may have an adverse impact upon the health, safety, welfare and comfort of residents of the community, particularly adversely impacting residents in the vicinity of such high impact industrial uses.

5. The scenic and aesthetic attributes of the Town of Italy as they relate to the use of land in the Town for residential, recreational and tourism purposes and the potential negative impact thereon by high impact industrial uses should be considered.

6. That High Impact Industrial Uses in the Town of Italy may have an adverse affect upon real estate values in the Town of Italy.

7. That the Town Board of the Town of Italy has legitimate goals and aims in protecting the aesthetic and scenic resources as well as real estate values and other natural resources within the Town.
8. That high impact industrial uses without adequate protection for resources, may cause the Town to forever lose those resources.

9. That the aesthetics, view, vistas, visual impacts, noise impacts, safety, water resources, highway infrastructure, environmental and overall well being of the residents of the Town of Italy must be considered and are the responsibility of the Town Board as relates to adoption of regulations pertaining to high impact industrial uses.

D. That to allow High Impact Industry Use without addressing the above factors may have a permanent, significant and substantial negative impact on the nature and quality of life in the Town of Italy and on the health, safety, general welfare and comfort of its residents and their natural resources.

E. That to preserve the resources and character of the Town of Italy, to consider further the concerns of the residents and property owners of the Town of Italy, and to address further the needs of those residents and property owners, the Town of Italy finds that it requires further time to study the impacts, high impact industrial uses in the Town of Italy.

F. The Town Board hereby finds that a further moratorium of six (6) months duration, coupled with a hardship waiver procedure and mechanism for persons seeking to begin high impact industrial uses within the Town of Italy, will achieve the balancing of interests between the public need to safeguard the resources and character of the Town of Italy, the health, safety and general welfare of its residents, and the rights of individual property owners, persons or businesses engaging in the high impact industry uses during such period.

Section 5. Imposition of Moratorium

A. For a period of six (6) months from and after the effective date of this Local Law: (i) no applications for the commencement of high impact industrial uses shall be accepted or processed by the Town of Italy; (ii) no previously submitted applications for any purpose related to high impact industrial uses will be further processed by the Town of Italy; (iii) the granting of any permit for same by any Board or Officer of the Town is prohibited; and (iv) installation, construction or erection of equipment or apparatus for High Impact Industry uses is prohibited within the geographic limits of the Town of Italy, except as provided in Section 6 of this Local Law.

B. For the purpose of this Local Law, an application shall be deemed to mean any pending or future request for official action by the Town Board, Town Code Enforcement Officer, Town Highway Superintendent or other Officer, official, employee, agent or designee thereof of the Town of Italy which request and/or approval would in any way commence, further or continue a process whereby High Impact Industry Use, or any part or component thereof, is or may be undertaken, commenced, constructed or erected.

C. Exempted herefrom are existing businesses and/or operations in the Town of Italy which would presently fall into the definition of high impact industrial use or fall into that definition by expansion or increase of any present use or operation. Also specifically exempted are any agricultural, municipal or educational uses or activities.

Section 6. Alleviation of Extraordinary Hardship
A. The Town Board of the Town of Italy may authorize exceptions to the moratorium imposed by this Local Law when it finds, based upon evidence presented to it, that deferral of action on an application for high impact industrial use, the delay in commencement of such use or operation, or any part or component thereof and/or the operation of an industrial wind electrical generator facility for the duration of the moratorium, would impose an extraordinary hardship on a landowner or applicant.

B. An application for an exception based upon extraordinary hardship shall be filed with the Code Enforcement Officer of the Town of Italy, including a fee of One Thousand and 00/100 Dollars ($1,000.00) for each geographic site proposed for High Impact Industry uses claimed to be subject to extraordinary hardship, by the landowner or the applicant upon the consent of the landowner. The application shall provide a recitation of the specific facts that are alleged to support the claim of extraordinary hardship and shall contain such other information and/or documentation as the Town Board or its designee, shall prescribe as necessary for the Town Board to be fully informed with respect to the application.

C. A public hearing on any application for an exception to this Local Law based upon extraordinary hardship shall be held by the Town Board at a meeting of the Town Board no later than forty-five (45) days after the complete application for extraordinary hardship has been filed with the Code Enforcement Officer. The Town Board shall determine, by motion duly adopted, when an application based upon extraordinary hardship is complete.

D. In reviewing an application for an exception based upon a claim of extraordinary hardship, the Town Board shall consider the following criteria:

1. The extent to which the applicant has, prior to the effective date of this Local Law, received any final development approval for the proposed development and has obtained all the requisite leases, rights of way or other necessities for high impact industrial uses.

2. The extent to which the proposed high impact industrial uses would cause significant environmental degradation, adversely impact adjacent natural resource areas, cause public health, comfort or safety concerns and/or have a negative impact upon the Town of Italy, considering all the factors set forth in Section 4 of this Local Law.

3. Whether the moratorium will expose a property owner or applicant to substantial monetary liability to a third person or would leave the property owner or applicant completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the property.

4. The extent to which actions of the applicant were undertaken in good faith belief that the proposed high impact industrial uses would not lead to significant environmental degradation, undue adverse impacts on public health or safety, and/or have a negative impact upon the Town of Italy considering the factors set forth in Section 4 of this Local Law.

E. Mere delay or concern that regulations may be adopted or that the existing comprehensive plan may be amended is insufficient to constitute an extraordinary hardship under this section.
F. At the conclusion of the public hearing and after reviewing the evidence and testimony placed before it, the Town Board shall, in its sole discretion, act upon the application for an exception based upon extraordinary hardship. The Town Board may approve, deny or approve in part and deny in part the application being acted upon.

Section 7. Penalties

A. For the purposes hereof any person, in that person’s individual capacity or acting as an employee, agent or officer of an entity, violating the provisions hereof, shall be subject to prosecution pursuant hereto.

B. A violation of this Local Law is hereby declared to be an offense punishable by a fine not to exceed $250.00 or imprisonment for a period not to exceed fifteen (15) days, or both such fine and imprisonment, together with any other civil remedies available at law including injunctive relief. Each day that a violation exists shall be a separate prosecutable offense pursuant hereto.

Section 8. Superseding and Repealer Provisions

This local law shall supersede the applicable sections of Article 16 of the Town Law, including, but not necessarily limited to Sections, 130, 261, 262, 263, 264, 265, 267, 268, 269 and 274-a, and Executive Law Section 381 to the extent inconsistent with the same and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law or any other statute determined to be in conflict with the provisions hereof as pertains to industrial wind turbine towers, and/or industrial wind energy facilities, as defined herein.

Section 9. Validity

In the event that any section, sentence, clause or phrase of this Local Law is held to be invalid or unconstitutional by any court of competent jurisdiction, said holding shall in no way affect the validity of the remaining portions of this Law.

Section 10. Effective Date

This Local Law shall become effective upon filing with the Secretary of State of the State of New York subsequent to having been duly adopted by the Town Board of the Town of Italy.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only)

I hereby certify that the local law annexed hereto, designated as Local Law No. of the year 2013, of the Town of Italy was duly passed by the Town Board on __________, in accordance with the applicable provisions of law.

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph __________.
above.

Debbie Craig, Italy Town Clerk

(SEAL)

Date:

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality)

STATE OF NEW YORK  )
COUNTY OF YATES  ) ss:

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Edward J. Brockman, Town Attorney
Town of Italy
Date:
G.M.L. §239 REFERRAL TO THE YATES COUNTY PLANNING BOARD

YCPD Referral #  2012-54  Date Received  8.31.12

Referring Municipality: Town of Italy

Referring Agency (check one): ☒ Municipal Board  ☐ Planning Board  ☐ Zoning Board of Appeals

Applicant (Name & Address): N/A

Email

Property Owner (IF different than Applicant): N/A

Email

Tax Map #: N/A

Type of Application:

☐ Use Variance  ☐ Area Variance  ☐ Special Use Permit

☐ Subdivision Review  ☐ Site Plan Review  ☐ Zoning Text Amendment

☐ Zoning Map Amendment (Rezoning)  ☒ Other High Impact Industrial

Project Description: The Town Board proposes to adopt a moratorium on industrial uses in the Town of Italy.

Detailed Description of Current Zoning & Explanation of Desired Relief: N/A

Supporting Documentation Included with This Referral (please check all that apply):

☐ Municipal Application  ☐ SEQR Documentation  ☐ Project Narrative

☐ Site Plan  ☐ Location Map  ☐ Subdivision Plat

☒ Other: proposed Local Law

Certification: With the following signature I certify that this application provides a complete description of the proposed local action and is a complete application pursuant to NYS General Municipal Law Article 12b, section 239-m, part c. Provision of required information is the responsibility of the applicant and referring agency. Failure to provide such information may result in a significant delay in processing.

Signature: [Signature]
Local Law Filing
162 Washington Avenue, Albany, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Italy

proposed Local Law C of the year 2012

A Local Law to impose a six (6) month moratorium on the installation, construction, operation of and the submission and processing of applications for High Impact Industrial Use within the Town of Italy.

Be it enacted for a period of Six (6) months by the Town of Italy as follows:

Section 1. Authority

This Local Law is adopted pursuant to the provisions of the Municipal Home Rule Law of the State of New York and Article 16 of the Town Law of the State of New York, with the procedural provisions of the Municipal Home Rule Law controlling.

Section 2. Short Title

This local law shall be known as the “Town of Italy High Impact Industrial Use Moratorium Law of 2012.”

Section 3. Definition:

For the purposes of this Local Law the following shall have the meanings indicated:

1. Code Enforcement Officer (CEO) – The duly appointed Code Enforcement Officer of the Town of Italy or any Deputy or Assistant appointed or designated by the Town Board.

2. Deleterious Substance – Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of “industrial waste”, “hazardous”, “toxic”, or similar substances so long as such items are employed by persons in one or more specific businesses or industries: (a) below regulatory concern radioactive material, or any radioactive material which is not below regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, (b) crude oil or natural gas drilling fluids, (c) crude oil or natural gas exploration, drilling, production of processing wastes, (d) crude oil or natural gas drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material), (e) solution mining brine or mineral brines, (f) any chemical, waste oil waste emulsified oil, mud sediment, chemicals that was used or produced in the drilling, development transportation, processing or refining of crude oil or natural gas, (g) soil contaminated in the drilling, transportation, processing or refining of crude oil or natural gas,
(h) drill cuttings from crude oil or natural gas wells, (i) any wastes associated with the exploration, drilling, production or treatment of crude oil or natural gas, or (j) any waste classified as “Solid Waste” under 40 C.F.R. section 261.4(b)(5) [i.e. “Solid wastes which are not hazardous wastes,”], exempting therefrom animal manure.

3. **Deleterious Substance Disposal/Storage Facility** – Any of the following: (a) tanks or any construction (mental, fiberglass, concrete, etc.), (b) impoundments, (c) pits, (d) evaporation ponds, or (e) other facilities, in any case used for the storage or treatment of deleterious substances that: (i) are being held for initial uses, (ii) have been used and are being held or subsequent reuse, (iii) are being held or treatment, or (iv) are being held or storage.

4. **Explosive Materials** – Substances capable of undergoing decomposition or combustion with great rapidity, evolving much heat and producing a large volume of gas. The reaction products fill a much greater volume than that occupied by the original material and exert an enormous pressure, which can be used for blasting and for propelling, i.e.: TNT, dynamite, nitroglycerin and ammonium nitrate.

5. **High Impact Industrial Use** – High Impact industry uses or operations that are more likely than not to generate or involve any five (5) or more of the following impacts in the Town at any time during such use or operation:
   a. substantial surface disturbance;
   b. the presence, production, collection, handling, manufacture, use, storage, transfer or disposal of any deleterious substance;
   c. high-frequency high-impact truck traffic;
   d. an industrial use operation which, whether due to its nature or to a desire or need by the operator to employ financial resources most efficiently, or otherwise, is usually not limited to typical work days and morning to early evening hours, but rather instead is often conducted at any and all times of the day and night;
   e. open air industrial use;
   f. open storage;
   g. flammable or explosive materials are present, used, produced, stored or disposed of;
   h. a private electric power generation facility;
   i. large scale water use;
   j. construction or use of more than 45,000 square feet of impervious surface;
   k. construction or use of a staging facility; or
   l. construction of pipelines, roadways and other infrastructure to move product and materials to from a proposed project site.

6. **High-Frequency, High-Impact Truck Traffic** - Any one of the following: (a) more than twenty (20) one-way trips by high-impact trucks to or from the site of the proposed use during any twenty four (24) hour period at any time during the duration of the use; or (b) more than fifty (50) one-way trips by high-impact truck to or from the site of the proposed use during any seven (7) day period at any time during the duration of the use; or (c) more than seven hundred (700) one-way trips by high-impact truck to or from the site of the proposed use during any three hundred sixty five (365) day period during the duration of the use.
   a. **GROSS VEHICLE WEIGHT RATING**— The weight specified by the manufacturer as the maximum load weight (truck plus cargo) of a vehicle.
b. HIGH-IMPACT TRUCK--- A truck or tractor, as defined in the Vehicle and Traffic Law, with three or more axles, or ten or more wheels, and capable of hauling a gross vehicle weight of 34,000 pounds or more. High-impact truck does not include exempted vehicles.

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10. **Natural Gas and/or Petroleum Extraction Activities** - the digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.

11. **Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes** - Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste," "hazardous," or "toxic," and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, (b) crude oil or natural gas drilling fluids, (c) crude oil or natural gas exploration, drilling, production or processing wastes, (d) crude oil or natural gas drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material), (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of crude oil or natural gas, (f) soil contaminated in the drilling, transportation, processing or refining of crude oil or natural gas, (g) drill cuttings from crude oil or natural gas wells, or (h) any other wastes associated with the exploration, drilling, production or treatment of crude oil or natural gas. This definition specifically intends to include some wastes that may otherwise be classified as “solid wastes which are not hazardous wastes” under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes does not include (i) animal manure and/or recognizable and non-recognizable food wastes, or (ii) waste generated by agriculture use.

12. **Natural Gas and/or Petroleum Extraction, Exploration Extraction, Exploration or Production Wastes Disposal/Storage Facility** - Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.), (b) impoundments, (c) pits, (d) evaporation ponds, or (e) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

13. **Natural Gas and/or Petroleum Exploration or Production Wastes Dump** - Land upon which Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

14. **Natural Gas Compression Facility** - Those facilities or combination of facilities that move natural gas or oil from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

15. **Natural Gas Processing Facility** - Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural
gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO₂ separated from natural gas streams.

16. **Open Air Industrial Use** – An industrial use that includes storage outside of an enclosed building of raw materials, components, equipment, products, byproducts, waste, deleterious substances or other materials, either as a primary activity, or as an accessory use or incidental to another activity or use.

17. **Open Storage** – The holding, keeping or storage outside of an enclosed building of any chemicals, petroleum products, or deleterious substances, in total quantities of greater than two hundred (200) pounds or two hundred fifty (250) hours at any time during the use.

18. **Private Electric Power Generation Facility** – One or more power generators of amore than 1000 horsepower in the aggregate, fueled by diesel, oil gas, propane or other fossil fuel, the primary function of which is the provision of electricity to an industrial use.

19. **Staging Facility** – A vehicle storage or parking facility or location capable of use for the storage, parking or operation of more than twenty (20) high impact trucks at the same time.

20. **Substantial Surface Disturbance** – A development activity which will likely disturb the existing surface or more than two (2) acres of land.

21. **Town** – The Town of Italy

22. **Town Board** – The duly elected Town Board of the Town of Italy

**Section 4. Legislative Purpose**

A. The purpose of this Local Law is to enable the Town of Italy to prevent High Impact Industry as well as the processing of any application for High Impact Industry within the Town of Italy for a reasonable time pending the Town Planning Board and Town Board completing and adopting regulations controlling High Impact Industrial Uses in the Town of Italy.

B. It is further the purpose of this Local Law to fulfill the Town’s pre-construction constitutional, statutory and legal obligations to protect and preserve the public health, welfare and safety of the citizens of the Town of Italy, as well as to protect the value, use and enjoyment of property in the Town by temporarily prohibiting the submission and processing of applications for and commencement of operation of any High Impact Industrial Use within the Town.

C. The Town Board finds that the following concerns must be considered with respect to the commencement of operation of any High Impact Industrial Use in the Town of Italy and the possible adoption of regulations with respect thereto:
1. The Town of Italy presently has no zoning or other regulations related to High Impact Industrial Uses.

2. The Town Board has requested the Town Planning Board to examine how the Town could protect itself from unchecked operation of high impact industrial uses, by adoption of appropriate regulations on a community.

3. Public comment at Town Board meetings has indicated that High Impact Industrial Uses in other areas produce unanticipated negative impacts on aquifers, wells and local highway infrastructure, along with other potential negative impacts on a community.

4. Accordingly, any High Impact Industrial Use may have an adverse impact upon the health, safety, welfare and comfort of residents of the community, particularly adversely impacting residents in the vicinity of such high impact industrial uses.

5. The scenic and aesthetic attributes of the Town of Italy as they relate to the use of land in the Town for residential, recreational and tourism purposes and the potential negative impact thereon by high impact industrial uses should be considered.

6. That High Impact Industrial Uses in the Town of Italy may have an adverse affect upon real estate values in the Town of Italy.

7. That the Town Board of the Town of Italy has legitimate goals and aims in protecting the aesthetic and scenic resources as well as real estate values and other natural resources within the Town.

8. That high impact industrial uses without adequate protection for resources, may cause the Town to forever lose those resources.

9. That the aesthetics, view, vistas, visual impacts, noise impacts, safety, water resources, highway infrastructure, environmental and overall well being of the residents of the Town of Italy must be considered and are the responsibility of the Town Board as relates to adoption of regulations pertaining to high impact industrial uses.

D. That to allow High Impact Industry Use without addressing the above factors may have a permanent, significant and substantial negative impact on the nature and quality of life in the Town of Italy and on the health, safety, general welfare and comfort of its residents and their natural resources.

E. That to preserve the resources and character of the Town of Italy, to consider further the concerns of the residents and property owners of the Town of Italy, and to address further the needs of those residents and property owners, the Town of Italy finds that it requires time to study the impacts, high impact industrial uses in the Town of Italy.

F. The Town Board hereby finds that a moratorium of six (6) months duration, coupled with a hardship waiver procedure and mechanism for persons seeking to begin high impact industrial uses within the Town of Italy, will achieve the balancing of interests between the public need to safeguard the resources and character of the Town of Italy, the health, safety
and general welfare of its residents, and the rights of individual property owners, persons or businesses engaging in the high impact industry uses during such period.

Section 5.  Imposition of Moratorium

A.  For a period of six (6) months from and after the effective date of this Local Law: (i) no applications for the commencement of high impact industrial uses shall be accepted or processed by the Town of Italy; (ii) no previously submitted applications for any purpose related to high impact industrial uses will be further processed by the Town of Italy; (iii) the granting of any permit for same by any Board or Officer of the Town is prohibited; and (iv) installation, construction or erection of equipment or apparatus for High Impact Industry uses is prohibited within the geographic limits of the Town of Italy, except as provided in Section 6 of this Local Law.

B.  For the purpose of this Local Law, an application shall be deemed to mean any pending or future request for official action by the Town Board, Town Code Enforcement Officer, Town Highway Superintendent or other Officer, official, employee, agent or designee thereof of the Town of Italy which request and/or approval would in any way commence, further or continue a process whereby High Impact Industry Use, or any part or component thereof, is or may be undertaken, commenced, constructed or erected.

C.  Exempted herefrom are existing businesses and/or operations in the Town of Italy which would presently fall into the definition of high impact industrial use or fall into that definition by expansion or increase of any present use or operation. Also specifically exempted are any agricultural, municipal or educational uses or activities.

Section 6.  Alleviation of Extraordinary Hardship

A.  The Town Board of the Town of Italy may authorize exceptions to the moratorium imposed by this Local Law when it finds, based upon evidence presented to it, that deferral of action on an application for high impact industrial use, the delay in commencement of directional drilling and/or hydraulic fracturing operations for production of natural gas, or any part or component thereof for the duration of the moratorium, would impose an extraordinary hardship on a landowner or applicant.

B.  An application for an exception based upon extraordinary hardship shall be filed with the Code Enforcement Officer of the Town of Italy, including a fee of One Thousand and 00/100 Dollars ($1,000.00) for each geographic site proposed for High Impact Industry uses claimed to be subject to extraordinary hardship, by the landowner or the applicant upon the consent of the landowner. The application shall provide a recitation of the specific facts that are alleged to support the claim of extraordinary hardship and shall contain such other information and/or documentation as the Town Board or its designee, shall prescribe as necessary for the Town Board to be fully informed with respect to the application.

C.  A public hearing on any application for an exception to this Local Law based upon extraordinary hardship shall be held by the Town Board at a meeting of the Town Board no later than forty-five (45) days after the complete application for extraordinary hardship has been filed with the Code Enforcement Officer. The Town Board shall determine, by motion duly adopted, when an application based upon extraordinary hardship is complete.
D. In reviewing an application for an exception based upon a claim of extraordinary hardship, the Town Board shall consider the following criteria:

1. The extent to which the applicant has, prior to the effective date of this Local Law, received any final development approval for the proposed development and has obtained all the requisite leases, rights of way or other necessities for high impact industrial uses.

2. The extent to which the proposed high impact industrial uses would cause significant environmental degradation, adversely impact adjacent natural resource areas, cause public health, comfort or safety concerns and/or have a negative impact upon the Town of Italy, considering all the factors set forth in Section 4 of this Local Law.

3. Whether the moratorium will expose a property owner or applicant to substantial monetary liability to a third person or would leave the property owner or applicant completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the property.

4. The extent to which actions of the applicant were undertaken in good faith belief that the proposed high impact industrial uses would not lead to significant environmental degradation, undue adverse impacts on public health or safety, and/or have a negative impact upon the Town of Italy considering the factors set forth in Section 4 of this Local Law.

E. Mere delay or concern that regulations may be adopted or that the existing comprehensive plan may be amended is insufficient to constitute an extraordinary hardship under this section.

F. At the conclusion of the public hearing and after reviewing the evidence and testimony placed before it, the Town Board shall, in its sole discretion, act upon the application for an exception based upon extraordinary hardship. The Town Board may approve, deny or approve in part and deny in part the application being acted upon.

Section 7. Penalties

A. For the purposes hereof any person, in that person’s individual capacity or acting as an employee, agent or officer of an entity, violating the provisions hereof, shall be subject to prosecution pursuant hereto.

B. A violation of this Local Law is hereby declared to be an offense punishable by a fine not to exceed $250.00 or imprisonment for a period not to exceed fifteen (15) days, or both such fine and imprisonment, together with any other civil remedies available at law including injunctive relief. Each day that a violation exists shall be a separate prosecutable offense pursuant hereto.

Section 8. Superseding and Repealer Provisions

This local law shall supersede the applicable sections of Article 16 of the Town Law, including, but not necessarily limited to Sections, 130, 261, 262, 263, 264, 265, 267, 268, 269 and 274-a, and Executive Law Section 381 to the extent inconsistent with the same and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law or any
other statute determined to be in conflict with the provisions hereof as pertains to industrial wind

turbine towers, and/or industrial wind energy facilities, as defined herein.

**Section 9. Validity**

In the event that any section, sentence, clause or phrase of this Local Law is held to be
invalid or unconstitutional by any court of competent jurisdiction, said holding shall in no way
affect the validity of the remaining portions of this Law.

**Section 10. Effective Date**

This Local Law shall become effective upon filing with the Secretary of State of the State
of New York subsequent to having been duly adopted by the Town Board of the Town of Italy.