

**TOWN OF ITALY TOWN BOARD**  
**State Environmental Quality Review Act**  
**SEQRA FINDINGS**

Pursuant to Article 8 of the Environmental Conservation Law, the State Environmental Quality Review Act ("SEQRA"), the Town of Italy Town Board ("Town Board"), acting as Lead Agency, makes the following findings:

- Name of Action:** Incentive Zoning and Special Use Permit Application by Ecogen, LLC and Ecogen Energy Transmission, Inc. (collectively "Ecogen") for Wind Energy Facility ("Pending Application")
- Description of Action:** The proposed action is the issuance of incentive zoning approval, a special use permit and several variances by the Town Board for the construction and operation of a 17-unit, wind turbine electrical generating facility, electrical substation and associated infrastructure in the Wind Energy Incentive Zone of the Town of Italy.
- Location:** Emerson Road and Clute Road Wind Energy Incentive Zones in the Town of Italy, Yates County, New York
- Agency Jurisdiction:** The Town Board has the authority under the Town Zoning Law, as amended by Local Law No. 5 of 2009 (the "Wind Energy Facilities Law" or "WEFL"), to approve or disapprove incentive zoning applications and amenities and benefits proposals and to issue or deny Special Use Permits and any necessary variances for Wind Energy Facilities contained within the Wind Energy Incentive Zones of the Town.

**Date Final Generic Environmental Impact Statement Filed:**

The FGEIS for Wind Energy Facilities Law was filed on December 10, 2008.

**The SEQRA Review of the Proposed Action**

The Town Board, acting as Lead Agency, conducted a generic environmental review when the Comprehensive Plan Amendments and Wind Energy Facilities Law were reviewed and adopted. This included the adoption of a Positive Declaration, the preparation and filing of a Draft Generic Environmental Impact Statement ("DGEIS"), conducting a public hearing on the DGEIS, having a public and agency review and comment period, the preparation and filing of a Final Generic Environmental Impact

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Statement ("FGEIS"), and the adoption of a SEQRA Findings Statement ("WEFL SEQRA Findings Statement"). Following completion of the generic environmental review, the Town Board adopted the Comprehensive Plan Amendment and Wind Energy Facilities Law were adopted.

When reviewing a specific application for incentive zoning approval, the Town Board has four possible options with regard to additional environmental review, if any (*see* 6 NYCRR § 617.10(d) and FGEIS § 1.2.2):

- (1) No further SEQRA compliance is required if a subsequent site specific action will be carried out in conformance with the conditions and thresholds established for such actions in the GEIS or its Findings Statement;
- (2) A supplemental Findings Statement must be prepared if the subsequent proposed action was adequately addressed in the GEIS but was not addressed or was not adequately addressed in the findings statement for the GEIS;
- (3) A supplement to the GEIS must be prepared if the subsequent proposed action was not addressed or was not adequately addressed in the GEIS and the subsequent action involves one or more significant environmental effects; or
- (4) A negative declaration must be prepared if a subsequent proposed action was not addressed or was not adequately addressed in the GEIS and the subsequent action will not result in any significant environmental effects.

This Findings Statement is in compliance with option (2) because the proposed action involves one or more significant environmental impacts that could not be adequately addressed in the generic environmental review due to the lack of site-specific information and data.

In addition to the Town of Italy's generic environmental review, the Steuben County Industrial Development Agency ("SCIDA") conducted a generic environmental review for a potential wind energy development in the Town of Italy and in the adjacent Town of Prattsburgh. At the time of that review, in 2006, SCIDA found that the Town of Italy did not have jurisdiction over a wind energy development, stating that since the Town, at that time, had not yet developed or adopted its Zoning Law it was not an involved agency. With the adoption of a Zoning Law, the Town of Italy became an Involved Agency and may be required to make SEQRA Findings with respect to SCIDA's review. Since the SCIDA environmental review was also a generic review, pursuant to 6 NYCRR § 617.10(d), the Town has the same four options with respect to making Findings as detailed above.

This Findings Statement is in compliance with option (2) because the proposed action involves one or more significant environmental impacts that could not be adequately addressed in the SCIDA Generic Findings Statement due to the lack of site-specific information and data. In addition, the SCIDA environmental review did not address or

did not adequately address specific environmental issues found to be important to the Town of Italy during the development of its Comprehensive Plan, Zoning Law, and Wind Energy Facilities Law. This Findings Statement details the areas where the Town of Italy Findings do not agree with those of SCIDA with respect to the wind energy project proposed by Ecogen in the Town of Italy.

**Facts and Conclusions Relied on to Support the Decision:**

Having reviewed the Pending Application materials and plans submitted by Ecogen, Parts 1, 2 and 3 of the Environmental Assessment Form, the FGEIS and WEFL SEQRA Findings Statement, the voluminous public record compiled on this application, and the SCIDA Generic EIS and Findings Statement, the Town Board has determined the following:

- The Pending Application does not avoid areas with grades in excess of 15% contrary to the Town's WEFL SEQRA Findings regarding construction on steep slopes. In fact, based upon the submitted plans, it appears that construction of five of the proposed WTG's and the proposed meteorological tower will involve substantial grading and clearing in areas with slopes in excess of 15%. These are designated as WTG's # 15, 16, 17, 18, and 19. In addition, the proposed meteorological tower and the access road leading to WTG's #15, 16 and 17 will also involve substantial grading and clearing in areas with slopes in excess of 15%. Other turbines and roadways will involve construction and clearing in areas containing steep slopes to a lesser extent.
- The WEFL SEQRA Findings Statement concludes that visual impacts to the Town of Italy and its citizens from wind energy facilities will be unavoidable and significant and that amenities and benefits are to be included as part of the application for wind development project to offset and compensate for such impacts.
- The Pending Application for the project proposed by Ecogen includes a visual impact assessment. This includes viewshed mapping and photograph simulations for pre-and post-construction conditions from several dozen locations. The visual impact assessment demonstrates the degree of impact to be expected, which is large and significant for the community.
- The public testimony and application demonstrated substantial concern with visual impacts of shadow flicker on two or more residences. The Pending Application does not adequately address this concern or offer sufficient amenities or benefits to offset these impacts.
- The Pending Application includes a proposal for amenities and benefits offered by Ecogen to the Town to offset and compensate for unavoidable visual impacts. The Town Board hereby finds that the proposed amenities and benefits package does not

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adequately offset or compensate for the significant visual impact to the community. The proposed amenities and benefits package is in fact less than the Town (and other affected municipalities) would receive if the Project were fully taxable, does not address or mitigate the visual impacts of the project and fails to address significant adverse impacts to nearby non-participating properties.

- As detailed in the WEFL SEQRA Findings Statement, the Town of Italy Wind Energy Facilities Law requires setbacks from non-participating property lines and non-participating residences that will ensure that noise levels do not exceed levels that are considered excessive for residential areas. Given the quiet background noise levels in the Town, potentially significant noise impacts may occur in some areas and under some conditions even with setbacks of industrial wind turbines in compliance with the Law. The WEFL SEQRA Findings Statement requires that these unavoidable impacts must be offset by the amenities and benefits provided to the Town and its citizens by any proposed industrial wind energy facilities.
- The Pending Application includes a noise impact study asserting compliance with the minimum standards contained in the Town Zoning Law. However, significant concerns were voiced in the public hearings about the noise resulting from the actual operations of wind energy facilities in Cohocton and other areas. Since noise levels drop with distance, noise impacts may be further mitigated through project changes that result in increased setbacks of the industrial wind turbines from critical noise receptors. This would most likely result in a decrease in the total number of industrial wind turbines that can be accommodated within the project boundaries. Ecogen has not offered such further mitigation.
- The Town Board concludes that the noise impacts that will result from the proposed project will be significant and will affect a large area of the Town located near the proposed industrial wind energy facility, as anticipated in the generic environmental review conducted by the Town. The Town Board finds that the amenities and benefits proposed in the application are not adequate to offset these impacts. In particular, the amenities and benefits package is less than the Town would receive if the project were fully taxable, does not address or mitigate the significant adverse noise impacts and does not address impacts to nearby non-participating properties.
- The Pending Application includes proposals for a post-construction complaint resolution process and post-construction noise monitoring. The Town Board finds that the complaint resolution process as proposed is not adequate or sufficient to protect the Town and its citizens from potential adverse impacts of the project. In addition, the Town Board finds that the post-construction noise monitoring, as proposed, will not be adequate for assessing compliance of the project with the noise setbacks, noise levels and other specifications regarding noise levels as presented in the Pending Application.

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- It is clear that the proposed Ecogen project will alter the existing community character by increasing ambient noise levels in the project vicinity and by altering the visual setting and aesthetic appearance for much of the Town, including Viewsheds and Scenic Vistas as designated under the Town Comprehensive Plan and Zoning Law. The Town Board finds that the amenities and benefits as proposed by the applicant are not adequate to offset the adverse impacts related to these significant and unavoidable impacts.

With respect to the SCIDA Generic SEQRA Findings, the Town Board finds that the SCIDA Generic SEQRA Findings are inadequate and do not fully identify, analyze and provide mitigation for the impacts as found for the specific Ecogen project. The reasons for this are as follows:

- The SCIDA environmental review does not address issues related to construction on steep slopes, construction in wooded areas, and the resultant impacts of such construction.
- The SCIDA Findings regarding land use are incorrect. They state that industrial scale wind energy facilities are consistent with the existing community character and that future land use patterns will remain unchanged with the presence of industrial scale wind energy facilities. The public record compiled by the Town of Italy has clearly demonstrated that the presence of a large scale industrial wind energy facility will alter the existing quiet and scenic setting of the Town of Italy, thus altering an essential character of the community. While recognizing that as early as July 2005 the Town of Italy placed an important value on its scenic character through its stated intent to establish one or more Scenic Overlay Districts, SCIDA ignored this fact on the basis that "no thorough documentation of the analysis is evident" and that the Town had not yet conducted an environmental review. While SCIDA was not aware of the analysis leading to the Town's conclusion in its adopted Comprehensive Plan, that is not a valid reason to ignore the Plan content and conclusions. It is noted that subsequently, the Town of Italy did conduct a thorough environmental review and has found that the presence of industrial scale wind energy facilities will result in a significant and unavoidable adverse impact to the existing community character and that such impact, along with all the others, can only be permitted if substantially and significantly outweighed by amenities and benefits to be provided to the Town and its citizens by any industrial wind energy project. The project as proposed by Ecogen in the Pending Application does not do this.
- The noise analysis relied upon to reach the SCIDA Findings is out of date and does not address the recent experience of residents in areas surrounding operating wind farms, including the operations in the nearby Town of Cohocton. In addition, numerous comments from the Town of Italy during the SCIDA review indicated that

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existing ambient noise levels, as utilized in the SCIDA noise analysis, were over-estimated from the measurements made and, thus, resulted in an inaccurate assessment of the potential impact of noise and the resulting recommendations regarding setbacks from residences related to noise.

- Setbacks as determined by SCIDA were found by the Town of Italy to be inadequate to protect neighboring properties and residents. Thus, the Town of Italy minimum setback to any residence on an adjacent, non-participating property is 1,375 feet, and the minimum setback to the nearest non-participating property line is 1,000 feet for any size parcel. These setbacks provide more protection for residents and property owners than the minimum setbacks as specified by SCIDA. Yet, the project proposed by Ecogen in the Pending Application does not contain sufficient amenities and benefits to offset the remaining significant adverse impacts particularly to neighboring non-participating properties.
- The SCIDA conclusion that an industrial wind energy project will have no detrimental impact on property values is inapplicable to the Town of Italy because the review did not explicitly evaluate properties in areas where, as in the Town of Italy, property values are closely tied to the existence of a quiet setting and where the viewsheds and scenic qualities are important attributes of the community.
- SCIDA is incorrect in concluding that the visual impacts of nighttime lighting of an industrial wind facility, as required by the Federal Aviation Administration, will be outweighed by the energy and local economic benefits of a wind project. Based upon the public record for the Pending Application, nighttime lighting is a significant issue to the local residents and there will be little local economic benefit from the proposed project.
- In addition, numerous public comments indicated that the energy benefits of wind energy are overstated and that this source of energy is only economically viable with significant government subsidies, as evidenced by the granting of almost \$75 million in Federal funds to the existing wind farm operation in the Town of Cohocton.
- Finally, significant concerns were raised at the public hearings with the actual noise impacts of wind energy facilities in nearby Cohocton, which had also been reviewed by SCIDA and which SCIDA claimed had adequately mitigated noise impacts.

**Certification:**

This Statement of Findings certifies that:

1. The requirements of 6 NYCRR Part 617 have been met; and

- 2. The Town Board has considered the relevant environmental impacts, facts, and conclusions disclosed in the Town FGEIS, the SCIDA FGEIS, Ecogen application materials and at the public hearings; and
- 3. The Town Board has weighed and balanced the relevant environmental impacts with social, economic, and other considerations; and
- 4. Consistent with the social, economic and other essential considerations from among the reasonable alternatives available, the action is one that does not avoid or minimize adverse environmental impacts to the maximum extent practicable and the applicant has failed to consider or offer other reasonable mitigation measures to address the significant adverse impacts of the action as proposed.
- 5. The amenities and benefits proposed as part of Ecogen's Pending Application are not adequate and do not substantially and significantly outweigh the adverse impacts that are likely to result from the proposed project.

**Town of Italy Town Board**

Margaret M. Dunn  
Signature of Responsible Official

Margaret Dunn  
Name of Responsible Official

Town Supervisor  
Title of Responsible Official

10/6/09  
Date

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