

Local Law ___ of 2023

A Local Law to Amend Sections 366 and 367 of the Town of Groton Land Use Code

Be it enacted by the Town Board of the Town of Groton, New York, as follows:

Section 1. Section 366 of the Town of Groton Land Use Code is hereby amended to read:

Section 366. Green Energy Production

366.1 Purpose. It is the purpose of this section to provide for and encourage Green Energy Production installations that allow constituents to be self-sufficient but also minimize adverse impacts on neighboring properties.

366.2 Definitions: The following definitions shall apply to this Section 366 and Section 367 (Green Energy Systems - Large Scale) The definitions of Green Energy Production shall apply unless otherwise indicated in this Addendum.

BUILDING-MOUNTED SOLAR ENERGY SYSTEM - A solar panel system located on the roof of any legally permitted building or structure for the purpose of producing electricity for onsite or offsite consumption. A Building-Mounted Solar Energy System shall include any related Solar Thermal Energy Systems located on a roof, building, or structure.

GROUND-MOUNTED SOLAR ENERGY SYSTEM - A Solar Energy System that is anchored to the ground and attached to a pole or other mounting system, detached from any other structure. A Ground-Mounted Solar Energy System shall include any related Solar Thermal Energy Systems.

LARGE-SCALE GREEN ENERGY SYSTEM [Definition to be added - should this cover large-scale solar and wind?]

LARGE-SCALE SOLAR ENERGY SYSTEM - A Solar Energy System that feeds electricity directly into the grid, is ground mounted and is larger than four thousand (4,000) square feet in total area, including solar collectors, the enclosure and/or fence surrounding the Solar Energy System per each lot or per adjacent lots under common ownership or under common operation. A Large-Scale Solar Energy System shall include any Solar Thermal Energy Systems. **[HSE Note: Recommendation to discuss pros and cons of distinguishing between two types of large-scale systems such as those that are above 4,000 sf but below a certain threshold (e.g., 5 acres or 1 MW AC production) and used primarily for on-site consumption versus larger commercial scale projects used primarily to put energy into the grid because some of the requirements/procedures later in the law may warrant making a distinction]**

LARGE SCALE WIND INSTALLATION. Shall include wind turbines that have a primary function of transferring electricity to a public electric grid but may also be for onsite use.

PERMITTEE – The party holding a Town Board Special Permit- granted pursuant to this Solar Energy Law.

QUALIFIED SOLAR INSTALLER – A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations, and has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition.

SMALL BIOMASS INSTALLATION. [Definition to be inserted]

SMALL-SCALE SOLAR ENERGY SYSTEM. A ~~small~~Small-scale ~~Scale solar~~ Solar installation-Energy System is a Ground-Mounted Solar Energy System includes the production of electricity through solar photovoltaic cells, panels or arrays, and/or solar installations for the heating of air or water and has a total surface area not exceeding 4,000 square feet. Energy produced shall be used completely or partially on site and be secondary to the use of the premises for other lawful purposes.- [Please confirm small-scale is intended to cover only ground-mounted below 4,000 sf and that all building-mounted systems (regardless of size) are treated separately)]

SMALL-SCALE WIND INSTALLATION. A small-scale wind installation shall be a wind turbine used to produce electricity to be used completely or partially on site and be secondary to the use of the premises for other lawful purposes.

SOLAR ENERGY EQUIPMENT - Electrical energy storage devices, material, hardware, inverters, or other electrical equipment, infrastructure, and conduit of photovoltaic devices associated with Solar Panels and with the production of electrical energy.

SOLAR ENERGY SYSTEM - An electrical generating system composed of a combination of both Solar Panels and Solar Energy Equipment.

SOLAR PANEL - A photovoltaic device capable of collecting and converting solar energy into electrical energy.

SOLAR THERMAL ENERGY SYSTEMS - Solar hot water technology consisting of solar thermal equipment and any related Solar Energy Equipment. Thermal energy is transferred to a heat transfer system via a collector and heat exchanger.

STORAGE BATTERIES: Devices that store energy and make it available in an electrical form.

STORAGE BATTERY SYSTEMS. [Include definition, e.g. “One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time (not to include a stand-alone 12-volt car battery or an electric motor vehicle”]

TOWN BOARD SPECIAL PERMIT- A permit issued by the Town Board pursuant to the provisions of this ~~law~~Section 366 and in accordance with Section 442 ~~for the construction and operation of a Large Scale Solar Energy System.~~

TCLP: The Toxicity Characteristic Leaching Procedure

366.3 Small-Scale Solar ~~Installations~~Energy Systems. ~~A small-scale solar installation includes the production of electricity through solar photovoltaic cells, panels or arrays, and/or solar installations for the heating of air or water and has a total surface area not exceeding 4,000 square feet. Energy produced shall be used completely or partially on site and be secondary to the use of the premises for other lawful purposes.~~ [This language appears in the definition]

A Small-Scale Solar Energy System shall be subject to the following requirements:

- a. **Height.** ~~A Small-Scale Ground Mounted~~ Solar Energy System shall not exceed twenty (20) feet in height.
- b. **Setback.** Small-Scale Solar Energy System fencing shall be Seventy-five (75) feet from the side and back lot lines of the property owner's lot and Energy System panels must but be at least Twenty-five (25) feet from the fence to the closest edge of the panel. The front lot lines shall be One Hundred Fifty (150) feet from the centerline of the road to the fence.

366.4 Building-Mounted Solar Energy Systems. Building-Mounted Solar Energy Systems that use the energy onsite or offsite shall be exempt from Town Board Site Plan Review. [HSE Note: Do you want this to be the case for both residential and commercial?]

- a. Building-Mounted Solar Energy Systems that use the electricity onsite or offsite are permitted through a building permit as an accessory use, when attached to any lawfully permitted building or primary structure that has been issued a Certificate of Completion, a Certificate of Occupancy or has been certified by a New York State Engineer to be New York State Building Code Compliant.
- b. Height. Shall not result in an increase of the overall structure height by six (6) feet or more.

366.4.5 Small Biomass Installations. A small-scale biomass unit used to produce electricity shall not exceed 1,000 square feet. Energy produced shall be used completely or partially on site and be secondary to the use of the premises for other lawful purposes. All installations shall meet all Minimum Yard Depth and Maximum Lot Coverage Regulations required for the district in which the property is located. (See Sections 342 - 348.) All installations shall meet all State and/or Federal emission regulations. [HSE Note: Does the Town want to include provisions for biomass installations greater than 1,000 sf?]

366.5-6 Small Scale Wind Installations. ~~A small-scale wind installation shall be a wind turbine used to produce electricity to be used completely or partially on site and be secondary to the use of the premises for other lawful purposes.~~

For the purpose of this section 366, the Fall Zone is defined as an area having a radius at least equal to the highest point of the propeller and/or any attached antennas. ~~Said area~~The Fall Zone shall be located entirely on property owned by the applicant; shall not include public roads; and shall not contain any structure used as habitable space.

All installations shall meet all Minimum Yard Depth Regulations, plus the distance of the Fall Zone, as well as Maximum Lot Coverage Regulations required for the district in which the property is located. (See Sections 342 - 348.)

All Small-Scale Wind Installations shall require a Special Permit from the Town Board. [HSE Note: Please confirm this should be added]

[HSE Note: Does the Town want to add any other specific requirements to Small-Scale Wind Installations?]

Facilities requiring a tower over 41 feet shall provide certification of seismic design and shall be inspected every five years for structural integrity by a New York State licensed engineer at the cost of the applicant, who shall provide a copy of the inspection report to the Code Enforcement Officer. [Added from Section 442 proposed amendments]

366.7 Storage Batteries Systems shall be installed with an additional building permit and shall be placed in a secure container or enclosure when in use. Battery systems requiring cooling, shall be situated away from residences so noise is minimized, unless other mitigating measures are arranged. Storage Batteries no longer in use, must be disposed of in a timely manner in accordance with the laws and regulations of the Town of Groton, Tompkins County, New York State, and all other applicable laws and regulations. [HSE Note: This language appeared in Section 366.3 but seemed better fit to be a stand-alone provision since it applies to all systems, not just small-scale systems]

366.6-7 Building Permits. No ~~Small Scale Green Energy Production devices~~Solar Energy Systems, Storage Batteries Systems, Small Biomass Installation, and/or Small-Scale Wind Installation ~~and/or systems~~ shall be constructed or installed without first obtaining a building permit from the ~~Code Official~~Code Enforcement Officer and shall be installed by a qualified installer.

366.8 Miscellaneous. The installation of any Solar Energy System, as provided by this law, does not carry with it a right to a clear line of sight to the sun. It is the responsibility of the applicant, installer or developer to gain any and all permits, easements or agreements to maintain a line of sight to the sun, if necessary. [HSE Note: This language appeared in Section 366.3 but seemed better fit to be a stand-alone provision since it seems to apply to all systems, not just small-scale systems]

Section 2. Section 367 of the Town of Groton Land Use Code is hereby amended to read:

Section 367. Green Energy Production - Large Scale [HSE Note: Consider combining Sections 366 and 367 into one section]

367.1 Purpose. ~~This Addendum is adopted~~ It is the purpose of this section to advance and protect the public health, safety, and welfare of Town of Groton, including:

- a. Protecting our environment and resources for future generations by allowing alternative energy sources while minimizing the potential for negative impacts of Green Energy Systems [this phrase is not defined] on environmental resources such as agricultural lands, wetlands, streams, forests, wildlife, and other valued resources.
- b. Managing commercial renewable energy development to provide a balance between energy needs that provide energy alternatives while respecting our rural agricultural landscape; and allow for alternative Landowner Income Stream.
- c. Maintaining a balance between property rights of individual landowners, property rights and property values of adjacent landowners, and the rights of community at large.
- d. Minimize the potential for unintended consequences of State and Federal energy policies that may not have considered the unique qualities and character of our community.

367.2 Applicability The requirements of this ~~law~~ Section, as amended, shall apply to all Green Energy Systems installed or modified after ~~September 12, 2023~~ the effective date of the local law to amend this Section 367, excluding general maintenance and normal repairs of such Green Energy Systems. Any repairs that are material in nature, in the judgment of the Town Board, shall be subject to the requirements of this law. The requirements of this law must be met and a Town Board Special Permit issued as required by this Section 367 unless otherwise exempt, prior to or simultaneously with the application for or receipt of any required building permits.

367.3. Definitions. The definitions of Section 366 shall apply unless otherwise defined herein.

~~a.—~~

~~b.— A Special Permit shall cease to be valid if Green Energy System is not fully operational within two (2) years from the date of the issuance of the Solar Permit. In the event a Town Board Special Permit for a Large Scale Green Energy System ceases to be valid pursuant to this Section, any construction to date shall be deemed to be abandoned.~~

~~e. A Town Board Special Permit shall cease to be valid if a building permit is not issued within one (1) year from the date of the issuance of the Special Permit. A permit may be extended for up to a year by approval of the Town Board.~~

~~d. The installation of any Green Energy System, as provided by this law, does not carry with it a right to a clear line of sight to the sun. It is the responsibility of the applicant, installer or developer to gain any and all permits, easements or agreements to maintain a line of sight to the sun, if necessary. [Moved this language]~~

367.3-4 Large-Scale Wind Installations. Shall include wind turbines that have a primary function of transferring electricity to a public electric grid but may also be for onsite use.

For the purpose of this section 367 the Fall Zone is defined as an area having a radius at least equal to the highest point of the propeller and/or any attached antennas. Said area shall be located entirely on property owned or leased by the applicant or for which the applicant has obtained an easement; shall not include public roads; and shall not contain any structure used as habitable space. All installations shall meet all Minimum Yard Depth Regulations, plus the distance of the Fall Zone, as well as Maximum Lot Coverage Regulations required for the district in which the property is located. (See Sections 342 – 348) [Should the definition of “Fall Zone” be the same as for small scale wind installations (i.e., should the Fall Zone for small-scale include easement areas?)]

~~Facilities requiring a tower over 41 feet shall provide certification of seismic design and shall be inspected every five years for structural integrity by a New York State licensed engineer at the cost of the applicant, who shall provide a copy of the inspection report to the Code Enforcement Officer. [Added from Section 442 proposed amendments]~~

[HSE Note: Are there any other specific requirements you want to apply to Large-Scale Wind Installations?]

367.4-5 Large-Scale Solar Installations. A large-scale solar installation shall include any solar photovoltaic cell, panel, or array over 4000 square feet on any one lot that has a primary function of transferring electricity to a public electric grid but may also be for onsite use. [See comment above regarding recommendation to discuss potential for having two distinctions among “large-scale” projects.]

~~**367.6 Building Mounted Solar Energy Systems.** Building Mounted Solar Energy Systems that use the energy onsite or offsite shall be exempt from Town Board Site Plan Review.~~

~~e. Building Mounted Solar Energy Systems that use the electricity onsite or offsite are permitted through a building permit as an accessory use, when attached to any lawfully permitted building or primary structure that has been issued a Certificate of~~

~~Completion, a Certificate of Occupancy or has been certified by a New York State Engineer to be New York State Building Code Compliant.~~

- d. ~~Height.~~ Shall not result in an increase of the overall structure height by six (6) feet or more. **[Moved this to Section 366]**

367.6. Special Permit Requirements.

- a. A Special Permit shall be required for the following projects: **[list types of projects; e.g., Large-Scale Solar Energy System, Small-Scale Wind Energy System, Large-Scale Wind Energy System, Biomass?]**

e.b. A Special Permit shall cease to be valid if Green Energy System is not fully operational within two (2) years from the date of the issuance of the Solar Permit **[Is the “Solar Permit” the Special Permit for the Solar Energy System or related Building Permit?]**. In the event a Town Board Special Permit for a Large-Scale Green Energy System ceases to be valid pursuant to this Section, any construction to date shall be deemed to be abandoned.

f.c. A Town Board Special Permit shall cease to be valid if a building permit is not issued within one (1) year from the date of the issuance of the Special Permit. A permit may be extended for up to a year by approval of the Town Board.

~~**367.7 Ground-Mounted Solar Energy Systems.** Ground-Mounted Solar Energy Systems, other than Large-Scale Solar Energy Systems, are permitted by a building permit as accessory structures for residential use.~~

~~**Height.** Ground-Mounted Solar Energy System would exceed twenty (20) feet in height.~~

~~**Setback.** All installations shall meet all Minimum Yard Depth and Maximum Lot Coverage Regulations required for the district in which the property is located. (See Sections 342–348.)~~

367.8-7 Approval Standards Application Requirements for Large-Scale Solar Systems **[HSE Note: Should these requirements also apply to wind projects?]**

Large-Scale Solar Energy Systems **[and wind projects?]** are permitted through the issuance of a Town Board Special Permit, subject to the requirements set forth in ~~this~~ Section 442 ~~of the Town of Groton Land Use & Development Code~~ and shall include the following provisions below. Notwithstanding anything in the ~~Town Board Site Plan Review Law~~ Town of Groton Land Use & Development Code to the contrary, applications for the installation of a Large-Scale Solar Energy System shall be reviewed by the Town Board which can include approval, approval with conditions, or denial.

Application Requirements:

- a. *Equipment Specifications*: The equipment specification sheets shall be documented and submitted for all significant components, including but not limited to, photovoltaic panels, mounting systems, and inverters that are to be installed.
- b. *EPA TCLP Certification*: All Panels to be installed shall have undergone EPA TCLP Certification and Documentation of such shall be provided to the Town Board.
- c. *Projected production plan* showing the annual amount of energy that will be generated and transmitted for each one-year period during the life of the project. **[HSE Note: You may consider asking for a nameplate capacity of system instead]**
- d. ~~*Comprehensive*~~ *Stormwater Pollution Prevention Plan (SWPPP)*: Shall be submitted regardless of the claimed soil disturbance acreage, meeting the requirements set forth in the New York State Department of Environmental Conservation SPDES General Permit For Stormwater Discharges from Construction Activity
- e. *A Decommissioning Plan* according to section [367.9.3] and shall include a Panel End of Life Plan that includes but is not limited to replacement due to defect, malfunction, or upgrade by project proponent and any and all subsequent operators of the facility.
- f. *Host Community Agreement* that is mutually agreed upon between the applicant and the Town Board. **[See comments above regarding distinctions between different large-scale projects; host community agreements may not be appropriate in all circumstances involving “large-scale” projects as currently defined - generally only see these with larger scale projects]**
- g. *Agricultural Activity*. If an applicant intends to include agricultural activities in conjunction with Ground Mounted Solar, applications shall include a detailed site plan with the dimensions and clearances that define allowance(s) for access of agricultural equipment, facilities to maintain animal care and feasibility of agricultural related activities on the site. For buried utilities and conduit, 30 inches or more of soil cover is recommended to allow for adequate root growth for desired agricultural use.

367.9-8 Special Permit Standards (Large Scale Solar)

- a. **Height**. Large-Scale Solar Energy Systems shall not exceed twenty (20) feet in height.
- b. **Setback**. Energy System fencing shall be Seventy-five (75) feet from the side and back lot lines of the property owner’s lot and Energy System panels must but be at least Twenty-five (25) feet from the fence to the closest edge of the panel. The front lot lines shall be One Hundred Fifty (150) feet from the centerline of the road to the fence.
- c. **Lot Size**. Large-Scale Energy Systems shall be located on lots with a minimum lot size of 5 acres.
- d. **Lot Coverage**. The enclosed or fenced in area of a Large-Scale Solar Energy System shall not exceed 75% of the lot on which it is installed.

- e. **Storage Batteries Systems.** When Storage Batteries are included as a part of the Solar Energy System, they are required to be installed with an additional building permit and must be placed in a secure container or enclosure when in use. Battery systems requiring cooling, shall be placed on the farthest portion of the lot away from neighboring homes to minimize noise, unless other mitigating measures are arranged. Storage Batteries no longer in use, must be disposed of in a timely manner in accordance with the laws and regulations of the Town of Groton, Tompkins County, New York State, and all other applicable laws and regulations.
- f. **Fencing.** All Large-Scale Solar Energy Systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the emergency contact information shall be placed on the entrance and perimeter of the fencing as required in the judgment of the Town Board. The type of fencing shall be approved by the Town Board and shall be a maximum of 8 feet and a minimum of 6 feet in height. All Fencing shall be interior to require Vegetation Visual and Sound Screening.
- g. **Utility Connections:** To the extent reasonably practicable, all utility connections for any Large-Scale Solar Energy Systems shall be placed underground, depending upon the appropriate soil conditions, shape and topography of the site and any requirements of the National Electrical Code utility. Electrical transformers for utility connections may be above ground if required by the utility provider. For overhead powerlines and utility power pole installation, ensure that pole placement and the height of the wire will not interfere with the ability to access lands with harvest equipment. Buried Utilities along Town Right-of-Ways are subject to a Commercial Road Work Permit.
- h. **Lighting:** All Lighting on site shall be ~~Dark~~-Sky-sky Lightingcompliant. The Town Board may permit motion-activated or staff-activated security lighting around the equipment of a Large-Scale Solar Energy System or accessory structure. Such lighting should only be activated when the area within the fenced perimeter has been entered. Lighting shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.
- i. **Notifications.** Notwithstanding anything to the contrary in the Site Plan Review Law or SEQRA, any notifications required pursuant to the Site Plan Review Law or SEQRA with respect to any Solar Energy System shall be sent to all landowners within one (1) mile of the boundary of the parcel on which the proposed site is located.
- j. The project must be installed by a **Qualified Solar Installer** and shall be built, operated and maintained to acceptable Industry standards, including but not limited to the most recent, applicable standards of the Institute of Electric and Electronic Engineers (“IEEE”) and the American National Standards Institute.
- k. **Inspections:** The Town may cause to inspect all facets of said System’s placement, construction, modification and maintenance. Any inspections required by the Town Board that require specialized solar expertise and are beyond ~~its~~-the Code Enforcement Officer’s scope or ability shall be at the expense of the applicant and/or the operator of the System.

1. **Location:** Large-Scale Solar Energy Systems shall not be located in the following areas unless otherwise approved by the Town Board in conjunction with the Solar Permit approval process provided in this section:
 1. Areas of potential environmental sensitivity, including Unique Natural Areas as designated by the Tompkins County Environmental Management Council, flood plains, historic sites, airports, state-owned lands, conservation easements, trails, parkland, prime soils, and wetlands as identified by Tompkins County, the New York State Department of Environmental Conservation or the United States Army Corps of Engineers; and
 2. On slopes of greater than fifteen percent (15%).
- p. **Other.** The Town Board may impose conditions on its approval of any Town Board Special Permit under this Section in order to enforce the standards referred to in this Section or in order to discharge its obligations under SEQRA.
- q. **Ownership Changes.** If the owner or operator of the Large-Scale Solar Energy System changes, the Special Permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the decommissioning plan. A new owner or operator of the Large-Scale Solar Energy System shall notify the Code Enforcement Officer of such changes in ownership or operator within 30 days of the ownership change.

~~367.9.1 Energy System Report.~~

[HSE Note: The information regarding generation will likely be considered proprietary by the developer; is there a reason that the Town wants to request this? If a project is permitted tied to producing energy primarily for on-site consumption and not exceeding a certain amount above annual consumption, then the Town could issue a condition as part of any special permit that the system must comply with such production parameters] ~~The Large Scale Green Energy System owner and/or operator shall on a yearly basis provide the Town Clerk a report showing the rated capacity of the system and the amount of electricity that was generated by the system and transmitted to the grid over the most recent twelve-month period compared to the amount of energy that was projected to be generated in the application approved by the Town Board, which information shall be proprietary and confidential, not subject to FOIL. The Town Clerk shall forward such report to the Town Board, and the Code Enforcement Officer within five (5) business days of receipt of the report. The report shall also identify any change in ownership of the Green Energy System and/or the land upon which the system is located and shall identify any change in the party responsible for decommissioning and removal of the system upon its abandonment. The annual report shall be submitted no later than 45 calendar days after the end of the calendar year. Every second year, to coincide with the filing of evidence of financial security, such report shall also include a recalculation of the estimated full cost of decommissioning and removal of the Large Scale Green Energy System in accordance with the provisions of this Section 367.9.2. The Town shall require an adjustment, as appropriate, in the~~

~~amount of the surety to reflect any changes in the estimated cost of decommissioning and removal. Failure to submit a report as required herein shall be considered a violation.~~

367.9.21. Financial Surety

Prior to the issuance of a building permit and every two years thereafter, the Large-Scale Green Energy System owner and/or operator shall file with the Town evidence of financial security to provide for one hundred twenty five percent (125%) of the full cost of decommissioning and removal of the system, which amount shall ~~be subject to an annual escalator of 2%, and shall automatically be increased by two percent (2%) the following year~~ be revisited every five years to account for any adjustments in the projected costs of decommissioning. Evidence of financial security shall be in effect throughout the life of the system and shall be, in the sole discretion of the Town Board, ~~either in the form of an irrevocable letter of credit or cash security in a bond or other form of security reasonably~~ acceptable to the Town Board. ~~The irrevocable letter of credit shall include an auto-extension provision, if possible, to be issued by an A-rated institution solely for the benefit of the Town and for the benefit of the landowner if the land is leased to the operator of the system. Any letter of credit shall provide that the issuer shall notify the Town in the event such letter of credit is canceled or otherwise terminated which notice shall be made no later than seven (7) business days after such event.~~ [HSE Note: Recommended revisions to be more in line with what is generally seen among local solar laws; the letter of credit or cash security could limit solar development due to the financial requirements] ~~The Town shall be entitled to draw on the letter of credit in the event that the Large-Scale Green Energy System owner and/or landowner is unable or unwilling to commence decommissioning activities within the time periods specified herein. In the event a demand for decommissioning is made by the Town to a landowner that leases his or her property to the operator of the system, such landowner may also be entitled to draw on such letter of credit if the owner and/or operator of such system is unable or unwilling to commence decommissioning activities within the time periods specified herein. No other parties, including the owner and/or operator shall have the ability to demand payment under the letter of credit. Upon completion of decommissioning, the owner and/or landowner may petition the Town to terminate the letter of credit. In the event ownership of the system is transferred to another party, the new owner (transferee) shall file evidence of financial security with the Town at the time of transfer, and every two years thereafter, as provided herein.~~ Failure to keep a surety in place as required by this law shall result in the revocation of the Special Permit and the termination of the project unless and until such surety is restored; provided, however, that any lapse of a surety in excess of 180 days shall be deemed an abandonment of the project pursuant to Section 367.9.2 herein and subject to complete decommissioning in accordance with this law.

~~Any applicant for a Special Permit pursuant to this Section 367 shall provide~~ Written-written acknowledgment by the landowner of the decommissioning plan, which acknowledgment shall include authorization for the town or its representative to enter upon the land to carry out the decommissioning in the case it is not decommissioned in accordance with the plan.

~~Amount. The amount of the surety shall be determined by the Town Board based upon a current estimate of decommissioning and removal costs as provided in the decommissioning plan and~~

~~subsequent bi-annual reports. For purposes of this determination, any subsequent bi-annual decommissioning report shall be required to meet the same requirements as the original decommissioning cost estimate. The amount of the surety shall be adjusted by the Town Board as appropriate upon receipt of a bi-annual report containing an updated cost estimate for decommissioning and removal. [This is largely covered by the language above]~~

367.9.3-2 Decommissioning and Removal.

A Large-Scale Green Energy System [This term is not defined, is it intended to cover wind projects as well as solar?] which has been abandoned shall be decommissioned and removed. The Large-Scale Green Energy System owner and/or owner of the land upon which the system is located shall be held responsible to physically remove all components of the system within one year of abandonment. Removal of the Large-Scale Green Energy System shall be in accordance with a decommissioning plan approved by the Town Board. A schedule of fines shall be approved and adopted by the Town Board to be imposed on the Landowner in event there is a failure to comply.

Decommissioning and removal of a Large-Scale Green Energy System shall consist of:

- a. Physical removal of all above ground and below ground equipment, structures and foundations, including but not limited to all solar arrays, buildings, towers, blades, security barriers, fences, electric transmission lines and components, roadways and other physical improvements to the site related to the Large-Scale Green Energy System;
- b. Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations;
- c. Restoration of the ground surface and soil;
- d. Stabilization and revegetation of the site with native seed mixes and/or plant species (excluding invasive species) to minimize erosion.
- e. Upon petition to the Town Board, the Town Board shall permit the system owner and/or landowner to leave certain underground or above ground improvements in place, provided the owner can show that such improvements are part of a plan to redevelop the site, are not detrimental to such redevelopment, and do not adversely affect community character or the environment.
- f. An estimate of the anticipated operational life of the system;
- g. Identification of the party responsible for decommissioning;
- h. Description of any agreement with the landowner regarding decommissioning;
- i. A schedule showing the time frame over which decommissioning will occur and for

completion of site restoration work;

- j. A certified and sealed cost estimate prepared by a qualified structural engineer or professional engineer, who shall be reasonably acceptable to the Town Board, estimating the full cost of decommissioning and removal of the system, including, but not limited to, the cost of solid waste disposal and the cost to clean-up any hazardous waste leakage on the property. No scrap value shall be taken into account for purposes of estimating these decommissioning and removal costs. The Town Board shall have the sole discretion to require a structural engineer or a professional engineer and regardless of which type of engineer is chosen, such engineer shall be licensed by the State of New York. The Town Board shall have the right, in its sole discretion, to have this estimate reviewed by an independent structural engineer at the system owner's and/or operator's expense;
- k. A financial plan to ensure that financial resources will be available to fully decommission the site.

367.9.4-3 Abandonment

Applicability and purpose. This section governing abandonment and decommissioning shall apply to **Large-Scale Green Energy Systems** [See comment above; does this section apply to wind projects too?]. It is the purpose of this section to provide for the safety, health, protection and general welfare of persons and property in the Town of Groton, by the Town requiring abandoned Large-Scale Green Energy Systems to be removed pursuant to a decommissioning plan. The anticipated useful life of such systems, as well as the volatility of the recently emerging solar industry where multiple solar companies have filed for bankruptcy, closed or been acquired creates an environment for systems to be abandoned, thereby creating a negative visual impact on the Town. Abandoned commercial systems may become unsafe by reason of their energy-producing capabilities, serve as an attractive nuisance and/or may create an environmental hazard.

- a. Abandonment. A Large-Scale Green Energy System shall be deemed abandoned if the system fails to generate and transmit electricity over a continuous period of one year ~~at a rate of at least 25% of its projected production based on the application approved by the Town Board for the project~~ [See comments above, as currently drafted, the Town approval is not tied to projected production; generally see abandonment as occurring when nothing is produced over a period of time]. A Large-Scale Solar Energy System also shall be deemed abandoned if following special permit approval, construction of the system is not completed within 18 months of issuance of the first building permit for the project.
- b. Extension of time. The time at which a **Large-Scale Green Energy System** shall be deemed abandoned may be extended once, by the Town Board, for an additional period of up to one year.

367.9.5-4 Decommissioning and removal by Town

If the **Large-Scale Green Energy System** ~~[same comment as above regarding defined term]~~ owner and/landowner fails to decommission and remove an abandoned facility in accordance with the requirements of this section, the Town may enter upon the property to decommission and remove the system.

Procedure. Upon a determination by the Town Board that a Large-Scale Green Energy System has been abandoned, the Code Enforcement Officer shall notify the system owner, landowner and permittee by certified mail: (a) in the case of a facility under construction, failure to complete construction and installation of the facility within 180 calendar days; or (b) in the case of a fully constructed facility that is ~~has ceased to generate electricity for a continuous period of 12 months operating at a rate of less than 25% of its projected production level as outlined in the application approved by the Town Board, to restore operation of the facility to no less than 80% of rated capacity within 180 calendar days,~~ or the Town Board will deem the system abandoned and commence action to revoke the Special Permit, and require removal of the system.

Being so notified, if the system owner, operator, landowner and/or permittee fails to perform as directed by the Code Enforcement Officer within the 180 day period, the Code Enforcement Officer shall notify the system owner, operator, landowner and permittee, by certified mail, that the Large-Scale Green Energy System has been deemed abandoned and the Town intends to revoke the Special Permit within 60 calendar days of mailing said notice. The notice shall also state that the permittee is entitled to appeal the decision of the Town Board to the Town Board. The Town Board shall schedule an appeal hearing no later than 60 calendar days from the receipt of any such written request for an appeal hearing.

Upon a determination by the Town Board that a Special Permit has been revoked, the decommissioning plan must be implemented, and the system removed within one year of having been deemed abandoned or the Town may cause the removal at the owner and/or landowner's expense. If the owner and/or landowner fails to fully implement the decommissioning plan within one year of abandonment, the Town may collect the required surety and use said funds to implement the decommissioning plan.

Removal by Town and reimbursement of Town expenses. Any costs and expenses incurred by the Town in connection with any proceeding or work performed by the Town or its representatives to decommission and remove a Large-Scale Green Energy System, including legal costs and expenses, shall be reimbursed either from the financial surety posted by the system owner or landowner as provided in section 367.9.2: Decommission and Removal Plan herein and/or by the owner of the land upon which such Large-Scale Green Energy System is located. Any costs incurred by the Town for decommissioning and removal that are not paid for or covered by the required surety, including legal costs, shall be assessed against the property, shall become a lien, and shall be part of the tax payment and assessed thereon, and shall be enforced and collected, with interest, by the same officer and in the same manner, by the same proceedings, at the same time and under the same penalties as are provided by law for the collection and enforcement of real property taxes in the Town.

367.10 Enforcement

Any violation of this law shall be fully subject to the enforcement provisions of Section 402 of

this code or any successor provisions thereunder; provided, however, that in lieu of the monetary fines and/or civil penalties specified in Section 402 for a First, Second or Third Violation, the monetary fines and/or civil penalties for any such violations shall be Five Hundred Dollars (\$500) per day.

367.11 Application Fee

An application fee, as determined by the Town Board, shall accompany the application for a Large-Scale Green Energy System. The amount of such required Large-Scale Green Energy System fees may be revised from time to time by the Town Board in the future by resolution.

367.12 Escrow Account

The applicant [for which types of projects?] shall deliver with its application an amount as determined by the Town Board from time to time by resolution [is the intent for a new resolution to be passed for each application or to set a set fee for each type of application?; see comment below] or as specifically agreed upon between the Town and the applicant to be held in escrow during the application review process. The sum shall be held by the Town in a non-interest-bearing account and these funds shall be available to the Town to pay for the costs of reviewing the application, including, but not limited to, the costs of consultants engaged by the Town to assist in any review of the application as well as any costs related to any related notices and/or hearings. Following grant or denial of the application, the Town shall return to the applicant any excess remaining in escrow. If the escrow account has been depleted prior to grant or denial of the application, the applicant shall deposit such funds as are then necessary for the Town to pay any outstanding fees before the Town is required to proceed with any further review of the project. [Costs to review are already covered by the Section 442 amendments; escrow accounts are not typically seen to cover just review fees; recommend discussion of potentially limiting to only circumstances where significant costs are reasonably expected to be incurred]

367.13 PILOT Agreements

Nothing in this Law shall be read as limiting the ability of the Town Board to enter into Paid Payment in Lieu of Taxes (PILOT) agreements or other agreements with any applicant to compensate the Town for expenses or impacts on the community.

367.14 Miscellaneous.

The installation of any Large-Scale Green Energy System, as provided by this law, does not carry with it a right to a clear line of sight to the sun. It is the responsibility of the applicant, installer or developer to gain any and all permits, easements or agreements to maintain a line of sight to the sun, if necessary.

367.15 Building Permits.

Large-Scale Solar Energy Systems, Storage Batteries Systems, Large-Scale Wind Installation shall be constructed or installed without first obtaining a building permit from the Code Enforcement Officer and shall be installed by a qualified installer.

367.16 Storage Batteries Systems. When Storage Batteries are included as a part of the Large-Scale Solar Energy System, they are required to be installed with an additional building permit and must be placed in a secure container or enclosure when in use. Battery systems requiring cooling, shall be placed on the farthest portion of the lot away from neighboring homes to minimize noise, unless other mitigating measures are arranged. Storage Batteries no longer in use, must be disposed of in a timely manner in accordance with the laws and regulations of the Town of Groton, Tompkins County, New York State, and all other applicable laws and regulations.

Section 3. Severability

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

Section 4. Effective Date.

This local law shall be effective immediately upon filing with the Secretary of State.