ROLL CALL

Harry Baumgartner, Jr.	Jerome Markley
Angie Dial	Keith Masterson
Jarrod Hahn	Mike Morrissey
Bill Horan	Tim Rohr
Richard Kolkman	John Schuhmacher
Finley Lane	

Michael Lautzenheiser, Jr., Director

The November 8, 2012 meeting of the Area Plan Commission was called to order at 7:45 p.m. by President Jerome Markley. Nine members were present for roll call. Jarrod Hahn and Mike Morrissey were absent

APPROVAL OF MINUTES:

The minutes from the November 1, 2012 meeting were not complete as of the November 8, 2012 meeting.

NEW ITEMS:

A12-11-33 CHESTER TWP. & LIBERTY TWP. Multiple locations. Wells County Wind, LLC (APEX) requests approval for a modification of petition A11-12-27 for Phase 1 of a Large WECS project with 45 – 1.7MW turbines. The multiple properties are zoned A-1.

A12-11-34 CHESTER TWP. & NOTTINGHAM TWP. Multiple locations. Wells County Wind, LLC (APEX) requests approval for a modification of petition A11-12-28 for Phase 2 of a Large WECS project with 42 – 1.7MW turbines. The multiple properties are zoned A-1.

(THESE WERE DISCUSSED TOGETHER)

Michael Lautzenheiser, Jr. explained that these petitions are modifications from the petitions that were approved at the March 1, 2012 meeting. Each of the requested modifications to the petitions can either be approved, approved with conditions, or denied. However, this does not change the fact that the overall petition was approved at the meeting on March 1, 2012.

Bob Ehereman, Attorney with Haller & Colvin in Fort Wayne representing Apex Wind Energy, stated that the petition is a modification to a prior approval. He went over the appeal that the Wells County Concerned Citizens filed and the discussions that occurred, which addressed their issues that were brought up at the last public hearing. He advised that many of these modifications came as a result of those negotiations. The ordinance does allow for the modifications to a previously approved development plan to be heard before the board. Mr. Ehereman explained the difference between the BZA and the APC per Indiana law. He also stated that development plans must be approved if it meets the specific and definite standards in the zoning ordinance. He advised that the modification should be treated no different than the first petition; in that it should be reviewed to verify that it would meet the set standard per the ordinance. He summarized the modification request by listing the changes:

- Adding two turbines to the Phase 2 project area.
- Flexibility to change the turbine model and location within the same parcel.
- Voluntarily increasing minimum setback for non-participating residence to 1200ft.
- Incorporating a sound testing and complaint resolution process as condition to the permit.

- Voluntarily decreasing the sound threshold for non-participating residences to 48 dbA.
- Revising the existing shadow flicker condition to account for cloud cover and incorporate a complaint resolution process.
- Committing to install state-of-the-art lighting for FAA.

He stated that the Director of the Area Plan Commission identified 24 unique modifications that the petitioner is seeking. The Director had the modifications listed in three categories: as is, changes that are recommended to be approved by the APC that Apex agrees with, and suggested options that require further discussion. Then, Mr. Ehereman listed the modifications and which of the categories each of them fell into. He went into further detail on the changes in the category where the suggested options needed further discussion. He started with Change #4, the setback for non-participating dwellings from 1000ft to 1200ft. There are three residences, one in Huntington County and two in Jay County that are located closer than the 1200ft, but they do meet the 1000ft setback for the ordinance. Mr. Ehereman stated that Apex intends to offer the landowner a Participation and Support Agreement and will comply with this provision prior to seeking an improvement location permit.

Rob Propes, development manager for the Apex Wind Energy, addressed Change #6 with the breaking system requirements for the large WECS. The ordinance requires a redundant braking system for the turbines. He stated that the blade pitch systems acts as the main braking system. However, the turbine is also equipped with a mechanical brake located at the output shaft of the gearbox, which is an auxiliary brake.

Then, Mr. Propes went on to explain Change #10 about a sound complaint process and that Apex supports the Director's recommended changes in Option #1. A sound complaint process is not required by the ordinance. He went into further detail about Option #1 to have the sound test at the turbine. Option #1 states that there will be multiple ways to file a complaint, all complaints will be logged, Apex will investigate each complaint, make their best effort to correct the issue, and if that is not done then the APC Director can issue an ordinance violation. He also explained Option #2 and stated that the main difference is that the second option has the sound test done at the complainant's residence, which Apex believes would not be possible to complete the requirement accurately due to the fact that there would be uncertainty on where the noise was being produced. Mr. Propes went on to explain sound maps and how they are produced.

Next, Mr. Propes addressed Change #11 & #12 on the modifications to the shadow flicker conditions. He explained the shadow flicker model for the 65% cloud cover and where the data for it was obtained. He then listed variables that were not taken into account in the model:

- Vegetation or other physical barriers
- Wind direction
- Turbine blades modeled as large solids
- Humidity, dust and smoke

All of these would further reduce the shadow flicker. Apex would offer Participation and Support Agreements to the 15 non-participating residences who, according to the model map, could experience 30 hours of shadow flicker or more a year. He also advised that Apex has voluntarily created a shadow flicker complaint process. Mr. Propes pointed out that there is no standard in the ordinance on which to go by. The ordinance stated that the project must minimize shadow flicker on existing dwellings. Apex's project layout has shadow flicker on dwellings between 30-44 hours per year. He explained that with this layout 132 non-participating dwellings in Phase 1 of the project are at or below 30 hours of shadow flicker per year and Phase 2 has 182 non-participating dwelling fall in that same range. Also implemented to reduce shadow flicker is the increase in the in the turbine setback to 1200ft from non-participating homes. He then stated that out of the two phases, 15 non-participating dwellings receive up to a maximum of nearly 44 hours of shadow flicker, which these residents would be offered the Participation and Support Agreement for annual compensation. For these 15, if they choose not to participate, then

there would be further mitigation offered to them. Mr. Propes then discussed why providing mitigation to non-participants who receive over 15 hours of shadow flicker a year is overly burdensome. He stated that their 30 hour model is already a very restrictive standard, which equals an average of about 5 minutes of shadow flicker per day.

From there, Mr. Propes went on to Change #13, the shadow flicker complaint resolution process. This was modified by the Director and Apex agrees with the change, except they would like to add a first step, which would be that Apex has a third party produce a shadow flicker map to determine if the complainant's residence is receiving 30 hours or more of shadow flicker per that model. If less than 30 hours, then there would be no further action. He explained that the complaint process is similar to the noise complaint process. If the complaint is warranted then types of mitigation would be offered or a Participation and Support Agreement would be signed. All finding on the complaint would be provided to the APC office and the Director would determine if there was a violation or not.

Bob Ehereman explained Change #21 about the utilization of public right of way to lay the collection lines for the project. He stated that prior to Apex obtaining Improvement Location Permits; they will seek temporary construction easements from property owners to work outside of the public right of way. They will also work on securing permission from the county to use the public right of way for the limited areas that they need for routing the underground collection lines. He explained that Apex realizes that landowner and county permission is a condition of the development plan approval and must be met before the issuance of a permit.

The next change that Mr. Ehereman discussed was Change #22 about Apex's request for the flexibility to change the location of turbine access roads and collection lines. He addressed the fact that this is not prohibited by the county's zoning ordinance. Any change to the turbine model or the location of the turbine would still have to meet the same requirements of the zoning ordinance.

The final change Mr. Ehereman addressed was Change #23, the time limitation for changing the turbine model or location on the same parcel. He stated that the Director had proposed two options, a five year and a two year time period. Apex believes that the five year time period would be the necessary amount of time to bring the project to completion. Then Mr. Propes stated the reasons that the five year time period for the flexibility of the location and model is preferred. He stated that due to the size of this project, there are a vast number of variables that could delay the ability to construct. He restated that any relocation of a turbine would be on the same parcel and that it would still be subject to the ordinance standards.

In conclusion, Mr. Ehereman went through the ordinance requirements one by one and stated whether they were met or not. The general information on the project was supplied to the APC. The setbacks have all been met. Color and finishing will be met along with the safety requirements. The decommissioning plan, discontinuation and removal plan, and agreement for use repair and improvement will all be completed before obtaining Improvement Location Permits. The project plan layout, the utility layout plan, and noise & shadow flicker analysis plan are completed and requested to approve as is. The "As-Built" plans will be completed once the project is finished. Mr. Ehereman stated that the modified petition meets all of the development plan standards of the county ordinance.

Chuck Brooks, 3098 E 1100 S, questioned the statement that Apex made about if the turbine exceeds the manufacturers noise output level. He was confused by that statement when Apex said that they would limit the sound level to 48 decibels. What is the individual decibel output for the turbines?

Kevin Davis, Vice President of Development for Apex, explained the advances with wind turbine technology to minimize the noise output. He expressed his confidence in the sound models and Apex doesn't ever want to exceed the sound threshold. Bob Ehereman further explained that the governing

standard will be 48 decibels for non-participating residences. This will be the standard for which the sound complaint process will be measured. Mr. Davis commented on how the turbines layout took the sound into account. He explained how sound travels and how the sound model was calculated. He stated that the turbines are positioned for the 48 dbA for non-participating dwellings.

Dean Cassiday, 2794 W 200 S, stated that he approved of the Apex plan and commented that they had a lot of consideration for the project area.

Mark Gates, 4938 W 400 S, questioned the options on the sound test for the turbines. If the reading is done at the turbine, how can this identify that the decibel level at the house is 48 dbA if there are multiple turbines around the dwelling? He also questioned the accuracy of the sound model.

Rob Propes restated Mr. Gates question and then said that the sound models do take into account the number of turbines around each dwelling. He explained that there is a science to creating the models and the models are generated by licensed individuals. Mr. Ehereman commented that if the model was incorrect and the findings and analysis wrong, then it would be up to the APC to determine a violation.

Aaron Clark, 2677 S 500 W, expressed his anger with the project and also questioned how the noise ordinance would be enforced.

Mr. Ehereman re-explained the noise complaint process. He stated that this would help the county to enforce the sound decibel level part of the ordinance.

Phillip Stoller, 226 White Bridge Ct, questioned the Support and Participation Agreement that Apex is offering to some of the non-participating residences if those individuals so choose. He also wondered what would occur to that agreement if Apex no longer owns the project due to transfer of ownership or bankruptcy.

Mr. Propes stated that that the agreements would still be enforced if either of those instances should happen. The new owner would be bound to honor those recorded documents due to the fact that the documents "run" with the land.

Mike Russell, 6763 S 200 W, questioned the way that the sound testing would be done if there was a complaint about the noise. He addressed his concerns that testing at the base of the turbine would not be fair or accurate to the home owner because of the fact that the testing is not done at the person's home. He explained his concerns through an example of standing under a speaker versus being in front of it. The sound is less under the speaker and louder in front of it. He wondered why it wouldn't be the same for the turbines.

Mr. Propes explained that sound continuation from the turbine would cause the decibels to decrease. He then stated that the sound model assumed that the turbine was at its loudest possible decibel. Kevin Davis re-stated that the model is overly conservative. Mr. Propes explained the sound testing protocol. Stating that the test would be done during the first year of operation to determine if they are operating as they are supposed to and then every three years there will be a random sample of turbines tested to verify that they are still up to par.

Neil Dollar, 10828 S 400 W, stated that he has been next to a turbine and that there is a slight sound, but there is more noise from vehicles traveling down the road. He expressed his approval for the project.

Bonnie Brooks, 3098 E 1100 S, questioned the increase for the amount of time from two years to five years. She stated that it would be too large of a grace period for Apex to change their mind.

Bob Ehereman stated that any changes would still have to comply with the zoning standards at the time the petition was filed and under Indiana law the ordinance would apply to the project for at least three years. The five years would put a cap on the time for changes.

Kevin Davis explained that the concept of a time limit was just introduced with this modification. Apex's perspective is that the time limit should be five years due to the amount of money and time that they have already invested into the project.

Kristin Cochran, 414 W. Wood Creek Dr., questioned the sound ordinance in regards to existing dwellings on non-participating properties and if the 48 decibels would apply to newly constructed homes. She questioned if this could limit where she was able to build.

Andy Antrim, attorney for the Area Plan Commission, explained that in order for a new building a permit would be needed from the APC and at this time there are reciprocal setbacks. The setbacks are such that your new dwelling would still need to be the same distance away from the turbine as the turbine would be from an existing dwelling.

Michael Lautzenheiser, Jr. stated that under the current ordinance that it would limit where an individual could build a dwelling. He admitted that the reciprocal setback is a bad thing. However, if the reciprocal setback is removed from the ordinance, then the APC is no longer responsible for protecting the residence from a decibel level higher than 48 dbA or 50 dbA. It would be the homeowner's responsibility to review the project map to determine what sound level their proposed site for a new house falls in.

Marilyn Boxell provided the board with a handout. She commented on the reciprocal setback and the fact that you can't build a house on your own property because of it.

Ted Claghorn, 4536 E 650 S, also commented on the reciprocal setback and questioned if the 1200ft setback from non-participating properties would need to be maintained if he chose to construct a new dwelling. The board informed him that only the 1000ft setback would need to be in place for new construction. He then questioned if that setback could be reduced. Mr. Claghorn expressed that the current ordinance does not abide by the United States Constitution and it denies him of his property rights.

Mr. Lautzenheiser stated that under the current ordinance an individual could petition the Board of Zoning Appeals to allow the reciprocal setback to be reduced. He restated that the APC's goal is to undo the reciprocal setback requirement or reduce it to where it is significantly less than the 1000ft.

Troy Cale, 7830 S 100 E, commented on the possibility of the project being sold off or going bankrupt. He stated that he's seen the turbines in Ohio and that if the life expectancy of the project is 20 years, then after that time the county is stuck with this mess. He question what has been put in place to get rid of the turbines.

Rob Propes addressed the question that Mr. Cale brought up with a scenario of possible bankruptcy and explained how the bond with the county would cover the removal. He stated that the bond would be in place before construction and the bond does account for inflation.

Susan Durham, 11421 S. Meridian Rd., explain that she has three issues with the project. She expressed her anger that Apex has changed turbines again and also the fact that they want to be able to move them without going before the APC again, when she would have to come to the office if she wanted to move something on her property. She stated that it's only fair that they meet the same standards as everyone else. She also addressed her concerns if she were to sign the agreement with Apex and they went bankrupt that none of the agreements would be honored due to the fact that they don't need to have a

bond for the agreements. She stated that with the modification there would be ten turbines around her property in addition to a new proposed CAFO. She then addressed her concerns with her property being devalued due to all of this.

Jack Pace, 4994 W 1100 S, commented on the 2 mile setback for the wind farms from Bluffton. He also commented on the CAFO ordinance and the fact that there is a mile setback from Bluffton. He stated that with these setbacks in place the board has made it to where the town cannot grow.

Lesley Gaskill, 798 E 350 S, stated that she wasn't aware of this project until a year ago. She expressed her concerns about this project dividing the community. She does not believe that the wind turbines can be sustained without the help of tax dollars.

William Poulson, 3781S 300 W, stated that he is for the wind project because it will help support the fire departments and the Southern Wells School district. He commented on how much noise comes off of Old 303 and does not believe that the turbines will create too much noise.

Frank Nunley, 2600 S 300 W, commented on how he doesn't blame Apex for coming in or the people for taking money. He stated that he is upset with how the landscape would look with the turbines in the area.

Jack Pace expressed his feelings about the wind turbines dividing the county and neighbors. He then went on to discuss the change to the Ag land. He also went on to discuss the issues with CAFOs in the area. He advised the audience to attend all of the county meetings each month.

Dan Zumbrun, 5429 W 500 S, question the reciprocal setback. He also commented on how the setback should be increased from 1200ft to 2000ft and have that measurement from the property line and not the home. He also questioned the process on how the ordinance can be changed. He also questioned the Participation and Support Agreement that he received in the mail.

Michael Lautzenheiser, Jr. explained the process to amend the zoning ordinance. He stated that it would be discussed at a public meeting, language would be drafted, and the board would vote a public meeting with a recommendation to pass or not to pass the amendment to the county commissioners and town boards. The County Commissioners and town boards are the final say on amendments because if they approve it then it becomes part of the ordinance. He advised Mr. Zumrun of when the next APC meeting was and where.

Phillip Stoller commented on the County Council's approval of the tax abatement for Wind Capital Group. He also discussed the Constitution and the rights of land owners. He does not believe that the setback should be to the dwelling. He stated that the setback should be from the property line.

Kim Eltzroth, 4985 W 100 S, commented that she is not in the Apex project area, but there is leased land to Wind Capital Group around her. She stated her frustration on not being able to use her land as she would like, if there were to be a turbine next to her property.

Lesley Gaskill questioned the ten year tax abatement for Apex and when they would apply. She also questioned if anyone on the County Council has a lease with Apex. She asked if the project could sustain without the tax abatement. She commented on the fact that it could be possible to stop the project if they don't get the money from the government. She also asked what would occur if the County Council vote ended in a tie. Could the abatement still pass?

Allison Alma questioned the infringement of people's property rights.

Michael Lautzenheiser, Jr. explained that removing the reciprocal setback as a condition to the approval. He also restated what he said earlier about discussing the ordinance change of the reciprocal setbacks at the next APC meeting. He then went on to re-explain what reciprocal setbacks were.

Darlene Schibley, 1291 E 1050 N, explained the Wells County Constitutional Patriots.

Bill Day, 211 ½ W. Wabash, questioned if the 6-4 vote on March 1, 2012 could be over turned and the project re-voted because he believes that it was a bad decision. Mr. Lautzenheiser stated that there could not be a re-vote.

15-05 Requirements

Change #1

(1) Does the Large WECS project's petition filing include the construction information and specifications, including the equipment name, nameplate generating capacity, height, blade length, hazard signage, a copy of the standard product specification sheet, and maintenance schedule?

a. Does The Petition Meet the Requirement? **YES**

b. Explain: **The permit binder includes the technical specification sheets for the GE 1.7 MW-100 wind turbine. Apex is contemplating the use of the GE 1.7 MW turbine for the Wells County Wind Project with a 96 meter hub height, and a 100 meter rotor diameter. Hazard signage for high voltage areas will meet or exceed industry standards. The maintenance and inspection schedule for the GE 1.7MW – 100m turbine (or similar model turbine) will be used as a guide for maintaining the wind turbines.**

Conditions: None
Motion: Bill Horan
Second: John Schuhmacher
Vote: 9-0

Change #2 & #3

(2) Does the Large WECS project meet the property line setback requirements?

a. Does The Petition Meet the Requirement? **YES**

b. Explain: **The project has been sited so that all wind turbines are a minimum of 1.1 x total tip height (542 feet) from a non-participating property line and 184 feet (Horizontal Extension plus twenty feet) from a participating property line.**

<AND>

(3) Does the Large WECS project meet the Public Road Right-of-Way setback requirements?

a. Does The Petition Meet the Requirement? **YES**

b. Explain: **The project has been sited so that all wind turbines are a minimum of 1.1 x total tip height (542 feet) from the edge of all public road right-of-ways.**

Conditions: None
Motion: Keith Masterson
Second: Bill Horan
Vote: 9-0

Change #4

(4) Does the Large WECS project meet the Residential dwelling setback requirements?

a. Does The Petition Meet the Requirement? **YES**

b. Explain: **The project has been sited so that all wind turbines are a minimum of 1,000 feet from all participating residential dwellings. The project has also been**

sited so that all wind turbines are a minimum of 1,200 feet from all non-participating residential dwellings. This setback exceeds the WECS non-participant setback requirement by 200 feet.

Conditions: **1.** Turbines A-05, A-07, I-13, E-11, and H-13 must be moved as to meet the 1,200 foot setback if the home is a non-participating residence or to meet the 1,000 foot setback if the home is a participating residence. **2.** The Area Plan Commission will pursue an ordinance amendment starting at their next regular meeting in regard to the reciprocal residential setback.
Motion: Bill Horan
Second: Richard Kolkman
Vote: 9-0

Change #5

(5) Does the Large WECS project meet the Cities and Towns boundaries setback requirement?

a. Does The Petition Meet the Requirement? **YES**
b. Explain: **The project boundaries are not proximate to any cities or town setback requirements. The following is a listing of the closest turbine to each of the towns identified in the WECS ordinance:**
Bluffton: Minimum distance, two miles. Distance to closest turbine 3.93 miles.
Ossian: Minimum distance, two miles. Distance to closest turbine 13.38 miles.
Uniondale: Minimum distance 1/2 mile. Distance to closest turbine, 9.38 miles.
Zanesville: Minimum distance, 1/2 mile. Distance to closest turbine, 14.19 miles.
Markle: Minimum distance, 1/2 mile. Distance to closest turbine, 8.04 miles.
Vera Cruz: Minimum distance, 1/2 mile. Distance to closest turbine, 8.84 miles.
Poneto: Minimum distance, 1/4 mile. Distance to closest turbine, 2.78 miles.

Conditions: None
Motion: Finley Lane
Second: Harry Baumgartner, Jr.
Vote: 9-0

Change #6

(8) Does the Large WECS project meet the braking system requirements?

a. Does The Petition Meet the Requirement? **YES**
b. Explain: **Primary braking is accomplished through the blade pitch system which feathers the blade out of the wind. Any single feathered rotor blade is designed to slow the rotor, and each rotor blade has its own back-up to provide power to the electric drive in the event of a grid line loss.**

The turbine is also equipped with a mechanical brake on the high-speed shaft of the gearbox. This brake is only applied as an auxiliary brake to the main aerodynamic brake to prevent rotation of the machinery as required by certain service activities.

Conditions: None
Motion: Bill Horan
Second: Finley Lane
Vote: 9-0

Change #7

(9) Does the Large WECS project meet the FAA/Lighting requirements?

a. Does The Petition Meet the Requirement? **YES**

b. Explain: **The WECS project will comply with the most current FAA lighting guidelines. Apex will make commercially reasonable efforts to utilize FAA approved, state-of-the-art lighting that minimizes ground scatter to reduce light emissions perceived by residents.**

Conditions: None
Motion: Keith Masterson
Second: Tim Rohr
Vote: 9-0

Change #8

(10) Does the Large WECS project meet the Noise requirements?

a. Does The Petition Meet the Requirement? **YES**
b. Explain: **Apex Wind Energy will meet the noise requirements established by the WECS ordinance for all participating landowners within this project. The noise threshold in the ordinance is established at 50 dbA.**

Apex Wind Energy is also proposing a more stringent voluntary sound emission standard of 48 dbA at the residence of all non-participating landowners within the project area, as well as a sound testing protocol and complaint process. We are proposing to incorporate the sound standard and these processes as written commitments to our modified permit.

Commitment: Include the above stated sound standard.
Motion: Tim Rohr
Second: Bill Horan
Vote: 9-0

Change #9

<u>Sound Testing Protocol</u>
During the first year of operation, and every three (3) years thereafter, Apex Wind Energy will, at its own expense, test turbines for sound compliance by an accredited third-party acoustical engineer using the International Electrotechnical Commission (IEC) 61400-11 standard. The Area Plan Commission Director shall sign off on the accredited third-party acoustical engineer prior to beginning the test protocol. Testing will be performed on a random sampling of three (3) turbines and will be performed in close proximity to such turbines at various wind speeds as defined in the IEC standard to ensure compliance with the turbine manufacturer's stated sound power output. Copies of the results of such tests shall be forwarded within five (5) business days of their receipt by Apex Wind Energy to a representative of the Wells County Concerned Citizens and to the Wells County Area Plan Commission.
All of the costs associated with sound testing and the evaluation procedure will be the sole responsibility of Apex Wind Energy.

Commitment: Include the above stated sound testing protocol.
Motion: Tim Rohr
Second: John Schuhmacher
Vote: 9-0

Change #10

<u>Complaint Process for Noise</u>

Process to address complaints related to turbine sound:

Prior to construction, Apex Wind Energy will communicate to neighboring residents within three thousand one hundred feet (3,100 feet) of a turbine, the Towns and permitting agencies, Area Plan Commission Office, and the 911 dispatch center the contact name and address of our Construction Manager (and, prior to the end of construction, an Operations Manager). Apex Wind Energy will also establish a toll free number to its local operations and maintenance office that will be accessed within 24 hours by operations personnel. Complaints by neighboring residents or others may be made through the following channels:

i. Calling Apex Wind Energy's local operations office and speaking directly with operations personnel;
ii. Writing to Apex Wind Energy at its local address or at its principal place of business;
iii. Filing a complaint in person at Apex Wind Energy's operations building.
iv. Calling the Wells County Area Plan Commission Office and speaking directly with their employees (260)824-6407;
v. Writing to the Wells County Area Plan Commission Office at its local address 223 W. Washington St. Bluffton, IN 46714; or
vi. Filing a complaint in person at the Area Plan Commission's office 223 W. Washington St. Bluffton, IN 46714.

Apex Wind Energy will keep a log of the name and contact details of the complainant and the actions taken to resolve the complaint. This log will be available to any party to this Settlement Agreement and the ~~County~~ Area Plan Commission for inspection upon request. The parties to this Settlement Agreement and the Area Plan Commission will also have live access to the digital log in a format amenable to all parties if requested.

In the event the ~~County~~ Area Plan Commission receives a complaint related to turbine sound, the ~~County~~ Area Plan Commission shall notify Apex Wind Energy in writing of the details of such complaint within five (5) days.

Upon receipt of a sound complaint, Apex Wind Energy will within five (5) business days investigate the complaint by first visiting the home of the complainant to determine which turbine, if any, could be the source of the potential sound issue. Apex Wind Energy will then employ appropriate method(s) to determine whether the turbine is exceeding the Sound Standard. The method(s) may include sound meter testing at the base of the relevant turbines and/or audible and visual inspection of turbine components. Apex Wind Energy will deliver the detailed results of such determination in writing to the Area Plan Commission promptly upon completion of such investigation.

If a mechanical issue with the turbine(s) near the dwelling is found to be in excess of the manufacturer's stated sound power output as measured by a hand-held device at the base of the turbine. As an alternative, Apex Wind Energy may offer the complaining non-participating landowner a Participation and Support Agreement. Apex Wind Energy will make best efforts to correct the issue within fifteen (15) business days of identifying the issue. Apex Wind Energy will deliver a detailed written summary of the resolution to the Area Plan Commission promptly upon completion of such resolution.

If the results indicate that there are no mechanical issues with the turbine and the turbine is in excess of the manufacturer's stated sound power output as measured by a hand-held device at the base of the turbine, Apex Wind Energy will work with the turbine manufacturer to resolve the issue which may include modification of equipment to reduce sound levels. As an alternative, Apex Wind Energy may offer the complaining non-participating landowner a Participation and Support Agreement. Apex Wind Energy will make best efforts to implement any such solution within fifteen (15) business days. Apex Wind Energy will deliver a detailed written summary of the resolution to the Area Plan Commission promptly upon completion of such resolution.

If Apex Wind Energy determines there are no mechanical issues with the turbine and that the turbine is operating within the manufacturer's stated sound power output, no further action will be taken by Apex Wind Energy. Apex Wind Energy will deliver the detailed findings of the inspection in writing to the Area Plan Commission promptly upon completion of such inspection. The Area Plan Commission Director, upon reviewing the detailed findings of such inspection, shall determine whether the potential complaint is valid. Upon making such determination, the Area Plan Commission will deliver a written notice detailing such determination to Apex Wind Energy and the complainant. Any determination may be appealed to the Board of Zoning Appeals as authorized by the Wells County Zoning and Floodplain Management Ordinance and Indiana Code.

If the Area Plan Commission Director finds that the complaint has not been substantially resolved as stated in the above subsections then The Wells County Area Plan Commission Office will issue an ordinance violation as authorized by the Wells County Zoning and Floodplain Management Ordinance and Indiana Code. Any violation may be appealed to the Board of Zoning Appeals as authorized by the Wells County Zoning and Floodplain Management Ordinance and Indiana Code.

Commitment: Include the above stated complaint process.
Motion: Bill Horan
Second: John Schuhmacher
Vote: 9-0

Change #11 & #12

(16) Does the Large WECS project meet the shadow flicker requirements?

a. Does The Petition Meet the Requirement? **YES**

b. Explain:

~~Change #11~~

~~The permit will establish a permissible threshold of 30 hours of shadow flicker per year;~~

~~The 30 hours per year shadow flicker threshold assumes a 65% discount for cloud cover based on long-term meteorological data captured by the Ft. Wayne airport;~~

~~If a landowner registers a complaint with respect to shadow flicker with the County, the County will determine if the complaint is warranted by referencing a third-party generated shadow flicker map to determine if the landowner's~~

~~home, as located at the issuance of this permit, is located with a zone that has the potential to receive greater than 30 hours per year of shadow flicker; and~~

~~If the County determines that one or more of the turbines is causing more than 30 hours per year of shadow flicker upon any non-participating residential dwelling, Apex will be required to offer one or more of the following remedies to the affected landowner: install awnings or plant trees to mitigate the shadow flicker, or otherwise sign complainant under a Participation and Support Agreement as a means of compensation.~~

~~Apex would like the Area Plan Commission to recognize that the proposed 30 hours per year shadow flicker threshold, modeled with localized cloud cover as the only discount, represents a conservative overestimation for the following reasons:~~

~~a. Shadow flicker models conservatively assume that the turbine will be spinning 100% of the time and, as a result, overestimate total shadow flicker hours. In reality, due to planned maintenance and low wind speeds, turbines are only spinning 75% – 80% of the time;~~
~~b. Shadow flicker models do not take existing obstructions into account, i.e. trees, shrubs, lack of windows where shadows would fall, and therefore overestimate total shadow flicker hours;~~
~~c. Shadow flicker models assume that turbines will always face perpendicular to the sun, which is done by modeling the turbine as a sphere or ball, and therefore produces an overestimate of total shadow flicker hours; and~~
~~d. Shadow flicker models do not account for fog, humidity and dust in the air which greatly reduces the intensity and ability to perceive shadows cast by a turbine.~~

Change #12
In order to do this, Apex Wind Energy uses trusted 3rd party modeling to verify the overall impact of shadow flicker within the bounds of the project region. The modeling uses very conservative guidelines for assessing the overall amount and frequency of predicted shadow flicker cast from each proposed turbine location. The models only include the use of a cloud cover discount, which accounts for many days throughout a typical year in which cloud cover eliminates shadow flicker. The presence of vegetation, aerosol scattering, blade rotation frequency, and wind direction are not factored into the model even though they carry heavy discount factors in the calculation of shadow flicker – this is done intentionally to insure that we will always meet the requirements. The Wells County Wind Farm array is designed to keep shadow minimized from nearby non-participating residences by placing turbines in a fashion to avoid areas of major shadow flicker. Shadow flicker impact has also been reduced organically as a consequence of increasing the physical distance between the turbine and non-participating homes to 1,200 feet.

The layout is now designed to keep the vast majority of non-participating homes under 30 modeled hours a year of shadow flicker, or less than 5 minutes a day on average. It's also important to note that Apex has designed the layout to reduce the shadow flicker impact for project participant dwellings to no more than 50 modeled hours a year or under 9 minutes a day on average.

The current layout for Phase 1 of the project includes 132 non-participating residential dwellings that are at or below 30 modeled hours per year of shadow

flicker, and seven non-participating residential dwellings that are above 30 modeled hours of shadow flicker per year, with no non-participating dwelling in excess of ~~42.52~~ 44 modeled hours of shadow flicker per year.

Conditions: Change in "excess of 42.52 hours" to "in excess of 44 hours."
Motion: Bill Horan
Second: Keith Masterson
Vote: 9-0

Change #13

Complaint Process for Shadow Flicker

Process to address complaints related to shadow flicker:

a) **Prior to construction, Apex Wind Energy will communicate to neighboring residents within three thousand one hundred feet (3,100 feet) of a turbine, the Towns and permitting agencies, Area Plan Commission Office, and the 911 dispatch center the contact name and address of our Construction Manager (and, prior to the end of construction, an Operations Manager). Apex Wind Energy will also establish a toll free number to its local operations and maintenance office that will be accessed within 24 hours by operations personnel. Complaints by neighboring residents or others may be made through the following channels:**

i. **Calling Apex Wind Energy's local operations office and speaking directly with operations personnel;**

ii. **Writing to Apex Wind Energy at its local address or at its principal place of business;**

iii. **Filing a complaint in person at Apex Wind Energy's operations building.**

iv. **Calling the Wells County Area Plan Commission Office and speaking directly with their employees (260)824-6407;**

v. **Writing to the Wells County Area Plan Commission Office at its local address 223 W. Washington St. Bluffton, IN 46714; or**

vi. **Filing a complaint in person at the Area Plan Commission's office 223 W. Washington St. Bluffton, IN 46714.**

Apex Wind Energy will keep a log of the name and contact details of the complainant and the actions taken to resolve the complaint. This log will be available to any party to this Settlement Agreement and the Area Plan Commission for inspection upon request. The parties to this Settlement Agreement and the Area Plan Commission will also have live access to the digital log in a format amenable to all parties if requested.

In the event the Area Plan Commission receives a complaint related to turbine sound, the Area Plan Commission shall notify Apex Wind Energy in writing of the details of such complaint within five (5) days.

Upon receipt of a shadow flicker complaint, Apex Wind Energy will within five (5) business days investigate the complaint by first visiting the home of the complainant to determine which turbine(s), if any, could be the source of the potential shadow flicker issue. Apex Wind Energy will then reference a third-party generated shadow flicker map to determine if the complainant's residence is located in a zone within a zone that has the potential to receive greater than the applicable shadow flicker level. Apex Wind Energy will deliver the detailed results of such determination in writing to the Area Plan Commission promptly upon completion of such investigation.

If the results indicate that one or more of the turbines is the cause more than the applicable shadow flicker level upon any non-participating residential dwelling, APEX Wind Energy will be required to offer one or more of the following remedies to the affected complainant: install awnings, install blinds, and plant trees to mitigate the shadow flicker. As an alternative, Apex Wind Energy may offer the complaining non-participating landowner a Participation and Support Agreement. Apex Wind Energy will make best efforts to implement any such solution within fifteen (15) business days. Apex Wind Energy will deliver a detailed written summary of the resolution to the Area Plan Commission promptly upon completion of such resolution.

If Apex Wind Energy determines that one or more of the turbines does not cause more than the applicable shadow flicker level no further action will be taken by Apex Wind Energy. Apex Wind Energy will deliver the detailed findings of the inspection in writing to the Area Plan Commission promptly upon completion of such inspection. The Area Plan Commission Director, upon reviewing the detailed findings of such inspection, shall determine whether the potential complaint is valid. Upon making such determination, the Area Plan Commission will deliver a written notice detailing such determination to Apex Wind Energy and the complainant. Any determination may be appealed to the Board of Zoning Appeals as authorized by the Wells County Zoning and Floodplain Management Ordinance and Indiana Code.

If the Area Plan Commission Director finds that the complaint has not been substantially resolved as stated in the above subsections then The Wells County Area Plan Commission Office will issue an ordinance violation as authorized by the Wells County Zoning and Floodplain Management Ordinance and Indiana Code. Any violation may be appealed to the Board of Zoning Appeals as authorized by the Wells County Zoning and Floodplain Management Ordinance and Indiana Code.

Conditions: None
Motion: Bill Horan
Second: John Schuhmacher
Vote: 9-0

Change #14

(18) Does the Large WECS project meet the Interference requirements?

a. Does The Petition Meet the Requirement? **YES**
b. Explain: **The project has been sited to avoid any communications interference as stated in the Engineering Report concerning the effects upon FCC licensed RF facilities due to construction of the Wells Wind Energy Project report created by Evans Engineering Solutions.**

Conditions: None
Motion: John Schuhmacher
Second: Finley Lane
Vote: 9-0

Change #15

(21) Prior to the issuance of an Improvement Location Permit will the Large WECS project include an approved Agreement for Use, Repair, and Improvement of Roads and Repair of Drainage Facilities that meets the basic requirements?

a. Does The Petition Meet the Requirement? **YES**

b. Explain: **The Agreement for Use, Repair, and Improvement of Roads will be negotiated as a part of the Economic Development Agreement process. The Agreement for Use, Repair, and Improvement of Roads and Repair of Drainage Facilities will meet the basic requirements.**

Apex Wind Energy is adopting the Tile Repair condition outlined in our current permit.

Tile Repair Bond

Based upon tile repair map that was presented by Apex Wind aka Wells County Wind LLC, a Bond, Letter of Credit or other Surety in the amount of 100% (percent) of the estimated cost of all repairs and replacements in force before construction begins, and until repairs are completed and approved by the Wells County Surveyor, his/her agent, or an inspector hired by Wells County. Also a Bond, Letter of Credit, or other Surety for a period of 3 additional years, after repairs are completed, in the amount of 20% (percent) of the original estimated of cost. Costs shall be determined in the following manner: Estimates from a licensed P. E. from both Wells County, and Apex Wind aka Wells County Wind LLC. If the estimates are within 10% (percent) of each other, the average shall be taken. If the estimates are more than 10% (present) different a third party engineer selected by both Apex Wind aka Wells County Wind LLC, and Wells County with their estimated averaged with the next closest estimate.

Conditions: None
Motion: Keith Masterson
Second: Bill Horan
Vote: 9-0

Change #16

(23) Does the Large WECS Project's filing include a Project Layout Plan meeting the listed requirements?

a. Does The Petition Meet the Requirement? **YES**

b. Explain: **The Project Layout Plan is included in map form within the application package.**

Conditions: None
Motion: Angie Dial
Second: Harry Baumgartner, Jr.
Vote: 9-0

Change #17

(24) Does the Large WECS Project's filing include an Utility Layout Plan meeting the listed requirements?

a. Does The Petition Meet the Requirement? **YES**

b. **The Utility Layout Plan is included in map form within the application package.**

The Utility Layout Plan was included in a map that was previously submitted with the October 18, 2012 petition filing. As a result of discussions with the Wells County Plat Committee, Apex Wind Energy is providing an updated map included in this filing.

Conditions: None
Motion: Bill Horan
Second: John Schuhmacher
Vote: 9-0

Change #18

(25) Does the Large WECS Project's filing include a Noise and Shadow Flicker Analysis Plan meeting the listed requirements?

a. Does The Petition Meet the Requirement? **YES**
b. Explain: **The Noise and Shadow Flicker Analysis Plan has been included in this petition.**

Conditions: None
Motion: Tim Rohr
Second: Angie Dial
Vote: 9-0

Change #19

Flexibility to change turbine model

Apex Wind Energy requests the flexibility to change the project turbine model(s) (without the need to re-permit) to a model of equal or lesser total height (measured from the rotor blade at its highest point to the top of the surface of the tower foundation), provided that any such new model shall meet the following:

1. **the construction information and specifications, including the equipment name, nameplate generating capacity, height, blade length, hazard signage, a copy of the standard product specification sheet, and maintenance schedule requirements as stated in this petition;**
2. **setback requirements as stated in this petition;**
3. **color and finish requirement as stated in this petition;**
4. **breaking system requirement as stated in this petition;**
5. **climb prevention requirement as stated in this petition;**
6. **blade clearance requirement as stated in this petition;**
7. **FAA lighting requirement as stated in this petition;**
8. **required federal, state, and local agencies approvals as stated in this petition;**
9. **hazard signage requirement as stated in this petition;**
10. **noise requirement as stated in this petition;**
11. **shadow flicker requirement as stated in this petition;**
12. **signage requirement as stated in this petition;**
13. **interference requirement as stated in this petition;**
14. **material handling, storage, and disposal requirement as stated in this petition;**
15. **noise and shadow flicker analysis plan requirement as stated in this petition;**
16. **permitted use and lot requirements as stated in this petition;**
17. **any conditions attached to this petition; and**
18. **any commitment attached to this petition.**

Each time the turbine model is changed APEX Wind Energy shall provide the items listed above to the Area Plan Commission for inspection within 15 business days.

Conditions: None
Motion: John Schuhmacher
Second: Keith Masterson
Vote: 9-0

Change #20
Flexibility in moving turbines on the same parcel
Prior to moving a turbine APEX Wind Energy must request an updated GIS based map of the residences within 3,100 feet of the project area from the Area Plan Commission. The Area Plan Commission shall provide the GIS based map to APEX Wind Energy within 15 business days of the request. Apex Wind Energy requests the flexibility to move project turbine locations within the same real estate parcel (without the need to re-permit) upon written notice to the Area Plan Commission of new latitude and longitude coordinates, to accommodate for a variety of issues that could emerge during the final site design prior to construction, such as: optimizing the use of a participating landowners land; avoiding bed rock; avoiding wetlands; avoiding culturally significant areas, etc. These issues and others may arise as the site design is being finalized and Apex will need the flexibility to microsite turbines without needing to go through a permit review and hearing by the Area Plan Commission if the following our met:

1. **setback requirements as stated in this permit;**
2. **required federal, state, and local agencies approvals as stated in this petition;**
3. **hazard signage requirement as stated in this petition;**
4. **electrical components requirement as stated in this petition;**
5. **noise requirement as stated in this petition;**
6. **shadow flicker requirement as stated in this petition;**
7. **interference requirement as stated in this petition;**
8. **project layout plan requirements as stated in this petition;**
9. **utility layout plan requirement as stated in this petition;**
10. **noised and shadow flicker analysis plan requirement as stated in this petition;**
11. **permitted use and lot requirements as stated in this petition;**
12. **floodplain management requirements as stated in this petition;**
13. **any conditions attached to this petition; and**
14. **any commitment attached to this petition.**

Each time the turbine model is changed APEX Wind Energy shall provide the items listed above to the Area Plan Commission for inspection within 15 business days.

Conditions: None
Motion: Bill Horan
Second: Finley Lane
Vote: 9-0

Change #21
Transportation and Collection Plan
During the October 25, 2012 Plat Committee Meeting, the Committee asked how Apex Wind Energy intends to obtain the permission of landowners to temporarily use a segment of their property to accommodate larger turning radii required to move components to the site during construction. The Committee also asked how Apex Wind Energy intends to obtain permission to run their collection system on public right of way and non-leased land.

Several intersections within the project area will be temporarily improved to provide adequate turning radii for component delivery vehicles. Temporary construction easements will be obtained from the requisite landowners where these intersection improvements fall on non-participating land. The transportation plan will seek to limit the number of improvements required on non-

participating land. The plan will be revised if temporary construction easements cannot be obtained from non-participants. In addition to the aforementioned revisions, the transportation plan will be finalized based on the forthcoming results of the geotechnical analysis that Apex Wind Energy commissioned of the existing public roads.

Several locations within the project area would require agreements to install the collection system within county road right-of-way, on private non-participating property, or both. Collection line agreements for running the collection line in the county right-of-way would need to be made with the County Commissioners. Collection line agreements would also be needed were the collection system would travel across non-participating property. The utility plan will seek to limit the number of improvements required on non-participating land. The plan will be revised if collection line agreements cannot be obtained from non-participants.

Conditions: None
Motion: Tim Rohr
Second: Angie Dial
Vote: 9-0

Change #22
The Area Plan Commission formally agrees that as stated in the "Flexibility in moving turbines on the same parcel" and "Flexibility to change turbine model" conditions that APEX has the ability to move turbines on the same parcels as permitted, as well as change the turbine model, without the need to re-permit, as long as these changes do not cause the turbine to violate the Ordinance requirements as well as any other commitments or conditions of the permit.
Apex proposes to notify the Wells County Plan Offices of these changes and provide surveys prior to construction. In addition, we ask that the same process be applied to moving access roads and collection lines, which would also change if we move a turbine, as well as to further optimize the collection layout.

Conditions: None
Motion: Finley Lane
Second: John Schuhmacher
Vote: 9-0

Change #23
Apex Wind Energy agrees to a two (2) year cap on the time period in which we have the ability to move turbines, access roads, collection lines, and change turbine models without the need to re-permit these changes within the project area.

Conditions: None
Motion: Tim Rohr
Second: Finley Lane
Vote: 7-2 (Bill Horan & Jerome Markley)

Change #24
Prior to the issuance of an improvement location permit for this project the following information needs to be sent to the Area Plan Commission at least thirty (30) days prior to expected permitting date:

1. **all requirements listed in this petition shall be updated and they must meet the requirements as stated;**

2. **a survey showing all improvements and the proximities to property lines shall be completed, as well as the state plane coordinates for all PLSS corners used in the creation of the survey shall be provided;**
3. **all condition must be met; and**
4. **all written commitments must be signed and recorded.**

Conditions: None
Motion: John Schuhmacher
Second: Bill Horan
Vote: 9-0

ADVISORY:

John Schuhmacher made a motion to adjourn the meeting. Finley Lane seconded the motion and the motion passed with a vote of 9-0. The November 8, 2012 Area Plan Commission meeting adjourned at 11:50 p.m.

Jerome Markley, President

ATTEST: Michael W Lautzenheiser Jr

Michael Lautzenheiser Jr., Secretary