

## Lighthouse Wind/Apex Clean Energy LLC Lease is OUTRAGEOUS!

**The following comments are from Suzanne Albright of the Great Lakes Wind Truth organization. The comments were made at the April 29, 2015 program opposing the Apex Clean Energy LLC (Lighthouse Wind project) program held at the Barker, NY fire hall and attended by about 230 people.**

I'm here to talk about the "Wind Energy Lease" that Apex Clean Energy is offering to you and your neighbors for the purpose of constructing a wind power plant on your farms and properties .

I have been an anti-wind activist since 2009 when the New York Power Authority proposed a wind factory in the waters of Lake Ontario with the commitment: they "would not build this project where it wasn't wanted"

They were convinced it would be welcomed for the multiple benefits they were promising. Project has since been scrapped, in part because it became exceedingly clear- IT WAS NOT WANTED any place where practical offshore of counties bordering Lake Ontario WHEN property owners - taxpayers learned what a sham wind energy really is.

I posed that question to Dan Fitzgerald of Apex on 2/4/15, and he responded they would "NOT BREAK LOCAL, STATE, FED. LAWS & STAKEHOLDER INPUT INCORPORATED. – I'm convinced: when you become familiar with how Apex is proposing to violate your rights, everyone of you will take a stand in opposing this travesty.

What Apex calls a lease= a 35 page EASEMENT that Apex has generated with NO INPUT from the property owner, the landlord, a document that basically permits Apex, and whatever unknown company ultimately buys the lease from them, to turn your property into an industrial power plant for 49 years.

In fact, the lease is not directly between you and Apex. It is between you and one of several Apex LLCs, separate limited liability companies formed by Apex to own this project. So, there is already the potential for several different tenants...

So, let's look- at a few highlights of this document in simply stated terminology - then you decide whether this is something you are interested in, something you could live near, whether you believe Apex is a company you want to do business with, & whether you believe that the terms of this proposal fits into the culture of your towns. And let's not forget- Does it violate any ordinances or laws?

I call this document "The Surrendering and Desecration of Your Property"

# THE SURRENDERING AND DESECRATION OF YOUR PROPERTY

## Highlights of a Wind Energy Lease Offered to Somerset and Yates Landowners

☒ 1.4: The Development Period of the Lease begins on the date the lease is signed and could last up to seven years. During this initial term of the Lease, the rent paid is \$750 annually, or \$10 per acre if the Lease covers more than 75 acres (see 1.8).

(YOUR PROPERTY COULD BE TIED UP FOR SEVEN YEARS AND THE ONLY INCOME YOU WILL RECEIVE IS \$750 PER YEAR IN RENT.)

☒ 4.1.2: They can construct, replace, relocate and operate any and all equipment WITHOUT LIMITATION (inc. turbine generators, towers, but also above and underground electrical lines, substations, interconnection facilities, operations and maintenance buildings, transformers, roads, fences, Met Towers, “machinery”, office and guest facilities, staging areas, power generation facilities, and more.

(SO MUCH FOR LIVING IN AN AGRICULTURALLY OR RESIDENTIALLY ZONED DISTRICT! POWER SUBSTATIONS? - ATTACHMENT #1.-POWER SUBSTATION! THAT MIGHT BE RIGHT NEXT TO A MAINTENANCE BUILDING, A STAGING AREA, OR ANY OTHER OF THESE ITEMS!)

☒ 4.1.4: Generate audio, visual and electrical effects, as well as shadow flicker, radio interference, and “other effects”. Rotors of wind turbines on adjacent properties can overhang onto YOUR property.

(BUT DON'T WORRY, ACCORDING TO THEM, NONE OF THIS WILL HARM OR EVEN BOTHER YOU, YOUR LIVESTOCK, OR YOUR NEIGHBORS, WELL, EXCEPT MAYBE THE “OTHER AFFECTS”, TV??

And, IF YOUR NEIGHBOR ALSO SIGNS ON, THEY DON'T HAVE TO WORRY ABOUT SETBACKS FROM YOUR PROPERTY LINE!)

☒ 4.3: They will have the right of access “over and across ALL portions” of your property.

(THAT'S PRETTY STRAIGHT FORWARD. BE CAREFUL- FAMILY PICNICS OR EVENTS SUCH AS A GRADUATION PARTY. THEY MIGHT NEED TO ACCESS YOUR BACK YARD THAT DAY WITH BULLDOZERS OR CEMENT TRUCKS.)

☒ 5.10: You have the right to audit the computations of their Operating Rent to you EVERY TWO YEARS only, by an accountant you choose, ONLY at their site (could be anywhere in the country), and ALL AT YOUR EXPENSE. No copy can be made of the records and documents reviewed in the audit and a confidentiality agreement must be signed, presumably so you cannot share the results of the audit with your neighbors.

(THIS IS A BIG ONE, IN MY OPINION. THEY ARE CONTRACTED TO PAY YOU AN OPERATING RENT, AND THERE IS A LENGTHY CALCULATION OF THIS IN THE CONTRACT, BUT FOR THE PURPOSE OF THIS TALK, I WANT TO REVIEW THE AUDIT PROCESS. YOU, NOT THEM, CAN AUDIT THE BOOKS EVERY 2 YEARS - AND YOU CHOOSE THE ACCOUNTANT, BECAUSE YOU PAY FOR IT- NOT THEM!

FURTHER, BY YEAR 2, WHO KNOWS WHO WILL OWN THIS “LEASE”, OR WHERE THEY KEEP THEIR RECORDS. CAN YOU AFFORD TO HIRE AN ACCOUNTANT, SEND HIM OR HER TO OREGON, PAY ALL EXPENSES? AND THE CONFIDENTIALITY AGREEMENT PREVENTS A GROUP OF NEIGHBORS FROM SHARING THE COSTS OF ONE AUDIT. A REPUTABLE BUSINESS WOULD AUDIT THEIR OWN BOOKS ANNUALLY AT THEIR EXPENSE AND PROVIDE A COPY OF THE AUDIT TO YOU, UNLESS THEY WANT TO MAKE AN AUDIT UNFEASIBLE.)

☒ 6.1-6.2: They state they will pay their bills and not permit any liens against the property. HOWEVER, if they fail to comply and a lien is then enforced against your property, you have the right to pay the lien(s) yourself and bill them for your expenses.

(IN OTHER WORDS, THEY MIGHT NOT PAY THEIR BILLS, AND IN FACT, APEX HAS ALREADY PUT LANDOWNERS IN THE POSITION OF HAVING LIENS FILED AGAINST THEIR PROPERTIES, AND IF NOT SETTLED, THEY WILL BE UNABLE TO OBTAIN A CLEAR TITLE TO THEIR LAND AND HAVE THEIR CREDIT DESTROYED. FURTHER, THE LIEN HOLDER CAN FILE A LAWSUIT TO FORECLOSE THE LIEN, AND THE LANDOWNER WILL BE LIABLE!)

☒ 6.7: They will reimburse you ONE TIME for ALL damage to your land, crops and livestock over the life of this lease. Further, they are NOT responsible for soil compaction, and therefore the inability to grow crops or raise livestock in the future.

(THEY CAN COMPACT YOUR SOIL, BUT THEIR ROADS ON YOUR PROPERTY WILL BE POSTED, AND IF YOU CROSS THEIR ROADS AND CAUSE ANY DAMAGE, YOU WILL REIMBURSE THEM FOR THE COST OF ANY REPAIRS.)

☒ 7.6.3: You cannot hold them responsible for the “generation, manufacture, production, use, storage, release, discharge, disposal, transportation or presence of any substance” that is NOW or in the future classified as hazardous or toxic, on or under your land, even if such substances are now safely buried or encapsulated and they disturb it during their construction work! In fact, in such case, YOU WILL HAVE TO HAVE THE SUBSTANCES REMOVED AT YOUR EXPENSE.

(IS THAT UNBELIEVABLE? IF GENERATIONS OF AGRICULTURAL CHEMICALS SUCH AS FUELS, PESTICIDES, SOLVENTS, HERBICIDES, FUNGICIDES OR VETERINARY CHEMICALS ARE FOUND IN THE SOIL, YOU WILL HAVE IT REMOVED AT YOUR EXPENSE? I CAN ONLY SPEAK FOR THE ALBRIGHT FARM, BUT I CAN TELL YOU THAT 2-3 GENERATIONS AGO, STORAGE AND DISPOSAL OF THOSE SUBSTANCES WAS NOT STRICTLY CARRIED OUT OR MONITORED.)

☒ 7.7: If you still have a mortgage on your property, you will be required to obtain a “non disturbance and subordination agreement” from your lender as requested by Apex in its sole discretion. Such agreements basically state that your lender will not interfere with the terms of this lease. The lease does not indicate who has to pay the costs for obtaining these agreements, which means that the property owner will have to pay. At the very least, this could be expensive. Second, if this project violates the terms of your mortgage, you could be in default and your lender could foreclose your mortgage!

(THIS CLAUSE IS PRETTY COMPLICATED, BUT BASICALLY MEANS THAT IF YOU ARE FORCED INTO FORECLOSURE BY YOUR LENDER, THEIR RIGHTS, THE WIND LEASE, WILL BE PRESERVED, (EVEN WHEN THERE IS A NEW OWNER.)

☒ 9.1- 9.2 and 9.6: At any time, without your consent, they can sell this lease to ANYONE, and to multiple other entities. They could sell each turbine to someone different, leaving you with multiple tenants! Apex will then be released from ALL obligations and liabilities! They are now gone, and you are left with multiple unknown tenants.

(APEX HAS A HISTORY OF SELLING THESE PROJECTS, EVEN BEFORE THEY ARE FULLY BUILT. YOU HAVE NO SAY IN WHO IT IS SOLD TO, EVEN IF IT'S A SHELL CORPORATION WITH NO OTHER ASSETS. THEY CAN SUBDIVIDE YOUR PROPERTY TO AS MANY NEW OWNERS AS THERE ARE TURBINES.)

☒ 10.1- 10.6: The tenant has the right to borrow money to complete the project and to give their lender a mortgage as security for that loan without your consent. If there are multiple tenants as described previously, there could be multiple new mortgages encumbering your property. If the new tenant(s) defaults, there could be a foreclosure sale and ANYONE can bid in and take over the lease. You have no ability to terminate the lease even if a tenant files for bankruptcy if the rent is paid. However, there could be other defaults by the tenant that “shall be deemed to have been waived by landlord.”

(SO, YOU COULD HAVE MULTIPLE TENANTS, AND MULTIPLE NEW MORTGAGES ON YOUR PROPERTY. THESE ADDITIONAL ENCUMBRANCES WILL LIKELY HURT YOUR ABILITY TO SELL YOUR PROPERTY OR EVEN PLACE A NEW MORTGAGE ON YOUR PROPERTY AT ANY TIME OVER THE ENTIRE LEASE TERM, 49 YEARS!)

☒ 13.6: This Waiver of Subrogation clause states that if your insurance carrier pays a claim and there would be recourse against the tenant and, therefore, its insurance company because the tenant caused the event that resulted in the claim, your carrier will not be permitted to seek reimbursement from them or their carrier. As a result, your insurer will possibly drop you! And if they don't, be sure that your premium will go up. Why is this clause not subject to you being able to obtain affordable insurance?

(BECAUSE THE ODDS OF GETTING A NEW POLICY ARE NOT GOOD. LOOK ON THE MANY ANTI-WIND WEBSITES. THERE ARE MULTIPLE EXAMPLES OF INSURANCE COMPANIES DROPPING LANDOWNERS WHEN THEY CONTRACT WITH WIND COMPANIES- ATTACHMENT #2- ONE OF THOSE CANCELLATION LETTERS.

**WOULD YOUR LENDER ALLOW YOU TO GO WITHOUT LIABILITY INSURANCE?  
WOULD YOU GO WITHOUT IT EVEN IF YOU COULD?)**

☒ 13.7- 13.8: You must waive your constitutional right to a jury trial in regard to ANY litigation based on this lease. And if the tenant is found liable in any such lawsuit, you must accept an “actual” damage award. You are waiving your right to collect any “PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER.”

**(WHATSOEVER? YES, THAT’S A QUOTE. THE BIG WEALTHY WIND COMPANY WILL NOT HAVE TO PAY PUNITIVE DAMAGES. WHY WOULD ANYONE AGREE TO THIS?)**

☒ 15.3: When the lease terminates for any reason, the tenant has up to 18 months to “restore” your property (“to the extent it is commercially reasonable”). The lease has terminated, so they don’t have to pay you rent for those 18 months! Further, if they DO NOT restore your property, or decommission the project, YOU can pay to have it done yourself (which could be a \$1 million/turbine expense) and try to find them to seek reimbursement, “LESS THE SALVAGE VALUE OF THE OF THE WIND FACILITIES”. Isn’t it all salvage at that point?

**(THEY ADMIT THAT THEY MIGHT WALK AWAY WITHOUT REMOVING THE WIND FACTORY AND RESTORING YOUR PROPERTY. THIS MAKES SENSE, AS THEY PLAN ON SELLING IT TO WHOEVER THEY CAN TO MAKE A PROFIT, AND IT GIVES THE UNKNOWN NEW OWNER AN “OUT” WHEN THEY CAN NO LONGER MAKE A PROFIT OR SELL IT TO SOMEONE ELSE, WHEN THE TURBINES FAIL OR AGE OUT. THERE IS NO INCENTIVE FOR THEM TO RESTORE YOUR PROPERTY AND THERE IS NO RISK OF PUNITIVE DAMAGES IF THEY FAIL TO DO SO.)**

☒ 16.1: This is the confidentiality clause, which will “survive the expiration of this lease”.

**(SO, IF YOU EXPOSE THE NEW OWNERS FOR THE CARPETBAGGERS THEY ARE, THEY CAN SUE YOU FOR DIVULGING THE TERMS OF THIS LEASE, WHICH THEY HAVE VIOLATED, WHICH ARE FOREVER CONFIDENTIAL.)**

This is a small sample of what they call a “WIND ENERGY LEASE”. In reality, this is a contract that amounts to the end of your property as you know it for the next 49 years, or forever. I have barely touched on the many terms and conditions of this document tonight. It is even more complicated, and you need to be aware of all the possible ramifications of signing it, not just how much rent you might receive.

We could only hope that your attorney would discourage you from signing this contract. And if you have an existing mortgage on your property, you should also consult with your lender to determine whether entering into such a lease would be a default under your mortgage and therefore could result in a foreclosure against you. Ultimately, if you do sign such a lease, your neighbors who don’t will likely hate you. The wind company will eventually be one or multiple unknown absentee tenants who you might never meet, and who do not care about you or your property. If you live until the end of the “lease”, you will very likely be left with a filthy, industrial junkyard.

## COMPARISON OF TWO CURRENT APEX LEASES: APRIL, 2015

### Niagara County, NY vs. Kent County, Maryland

I have here, an Apex lease that has been sent to me by an opposition leader to the Kent County Maryland project Apex is proposing there. My husband was kind enough to compare the 2 leases, and that document is here for you to review. If you don't already detest Apex, I think you will when you see the striking differences between these two lease offerings.

The Kent County Maryland lease is significantly better for the property owner than the proposed lease for the Niagara County project, in several ways.

Rent differences (could add up to a lot of money over the lease term):

1. Pre-installation rent:

- Maryland – minimum \$1,000
- New York – minimum \$750

2. Minimum operating rent:

- Maryland – minimum \$5,000 per MW of nameplate capacity of wind turbines
- New York – minimum \$4,000 per MW of nameplate capacity of wind turbines

3. Installation fee:

- Maryland – minimum \$2,500 per MW of nameplate capacity of wind turbines
- New York – minimum \$2,000 per MW of nameplate capacity of wind turbines

4. Percentage rent lease rate (multiplied times gross revenues to calculate rent):

- Maryland – 3% during 1st 10 years, 4% 2nd 10 years, 5% 3rd 10 years
- New York – 2.5% during 1st 10 years, 3% 2nd 10 years, 3.5% 3rd 10 years+

Permission required for certain installations:

In Maryland, the owner's consent is required prior to the developer installing transmission substations or operations and maintenance facilities on your property (11.14 C). No such consent is required for the Niagara County version.

Overhang of turbines on adjacent properties:

In Maryland, rotors of wind turbines located on adjacent properties cannot overhang the owner's property (11.14 A). Rotors are permitted to overhang Niagara County property.

Glare / shadow flicker problems:

In Maryland, if the property owner experiences problems with glare or shadow flicker from the wind turbines, the developer is required to mitigate those problems (4.6). There is no such requirement in Niagara County proposed leases.

### Assignment requirements:

In Maryland, if the developer wishes to transfer ownership of its lease to another party, the assignee must demonstrate its ability to perform all the terms of the lease before the developer is relieved of its obligations under the lease (7.2). There is no such requirement under Niagara County proposed leases.

### Audit differences:

In Maryland, the property owner has the right to merely request copies of the information that would verify the percentage rent amount paid by the developer, up to once every two years. In Niagara County proposed leases, you must hire and pay a CPA firm to visit the tenant's office to conduct an audit of their books and records, up to once every two years.

### Restoration timeframe:

In Maryland, the developer must restore the owner's property to its original condition within 8 months of lease termination (10.3). In Niagara County proposed leases, the tenant has up to 18 months to restore the property.

### Restoration security:

In Maryland, the developer must either maintain an escrow account or a performance bond in an amount equivalent to the estimated costs to restore the owner's property once the lease terminates, as determined by an independent engineer. In Niagara County proposed leases, the only restoration security is whatever may be "required by any applicable permits or government rules or regulations", which could be nothing! Yes, in Niagara and Orleans Counties, you will be relying on your government!

**(CLOSING): IF YOU LOOK AT THE TOWN OF SOMERSET WEBSITE HOMEPAGE, THE LAST TWO SENTENCES READ:**

**AS YOU TRAVEL THROUGH OUR TOWN, YOU WILL MEET OUR FRIENDLY RESIDENTS AND BUSINESS FOLKS. YOU WILL LOVE THE HOME TOWN FEEL OUR SMALL COMMUNITY OFFERS, A COMMUNITY WHERE WE CARE FOR ONE ANOTHER.**

**IF THIS PROJECT COMES TO FRUITION, THE TOWN MIGHT NEED TO REWRITE THOSE LAST TWO SENTENCES TO READ:**

**AS YOU TRAVEL THROUGH OUR TOWN, YOU WILL MEET OUR ANGRY, HOSTILE RESIDENTS. YOU WILL BE INTIMIDATED, POSSIBLY EVEN FRIGHTENED, BY THE ANIMOSITY FOLKS EXHIBIT TOWARD ONE ANOTHER, A COMMUNITY FOREVER DIVIDED.**