

IC 8-1-41**Chapter 41. Default Standards for Wind Power Devices**

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IC 8-1-41-1 Applicability; "wind energy ready community"

Sec. 1. (a) Except as provided in subsections (b) and (c), and subject to IC 36-7-4-1109 and section 9 of this chapter, the standards set forth in sections 10 through 16 of this chapter, or standards less restrictive than the standards set forth in sections 10 through 16 of this chapter, apply to a project owner that, after June 30, 2022, files an initial application for a project to install or locate one (1) or more wind power devices in a unit that qualifies as a wind energy ready community under subsection (d).

(b) Subject to a unit's planning and zoning powers under IC 36-7, this chapter does not apply to a property owner that seeks to install a wind power device on the property owner's premises for the purpose of generating electricity to meet or offset all or part of the need for electricity on the premises, whether through distributed generation, participation in a net metering program offered by an electricity supplier (as defined in IC 8-1-40-4), or otherwise.

(c) Unless a standard set forth in sections 10 through 16 of this chapter is already agreed to before July 1, 2022, by the parties involved, the standard does not:

(1) apply to any proposal, request, or application that:

- (A) concerns the permitting, construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in a unit;
- (B) is submitted by a project owner to a unit before July 1, 2022; and
- (C) is pending approval or has been approved as of July 1, 2022;

as set forth in IC 36-7-4-1109;

(2) affect the:

- (A) permitting;
- (B) construction;
- (C) installation;
- (D) siting;
- (E) modification;

- (F) operation; or
- (G) decommissioning;

of one (1) or more wind power devices in a unit that before July 1, 2022, has approved such permitting, construction, installation, siting, modification, operation, or decommissioning; or

- (3) affect any:
 - (A) economic development agreement; or
 - (B) other agreement;

entered into before July 1, 2022, with respect to the permitting, construction, installation, siting, modification, operation, or decommissioning of one (1) or more wind power devices in one (1) or more units.

(d) As used in this section, "wind energy ready community" means a unit that has voluntarily adopted:

- (1) the standards set forth in sections 10 through 16 of this chapter; or
- (2) standards less restrictive than the standards set forth in sections 10 through 16 of this chapter.

As added by P.L.90-2022, SEC.1.

IC 8-1-41-2 "Dwelling"

Sec. 2. As used in this chapter, "dwelling" means any building, structure, or part of a building or structure that is occupied as, or is designed or intended for occupancy as, a residence by one (1) or more families or individuals.

As added by P.L.90-2022, SEC.1.

IC 8-1-41-3 "Nonparticipating property"

Sec. 3. (a) As used in this chapter, "nonparticipating property" means a lot or parcel of real property:

- (1) that is not owned by a project owner; and
- (2) with respect to which:
 - (A) the project owner does not seek:
 - (i) to install or locate one (1) or more wind power devices or other facilities related to a wind power project (including power lines, temporary or permanent access roads, or other temporary or permanent infrastructure); or
 - (ii) to otherwise enter into a lease or any other agreement with the owner of the property for use of all or part of the property in connection with a wind power project; or
 - (B) the owner of the property does not consent:
 - (i) to having one (1) or more wind power devices or other facilities related to a wind power project (including power lines, temporary or permanent access roads, or other temporary or permanent infrastructure) installed or located; or
 - (ii) to otherwise enter into a lease or any other agreement with the project owner for use of all or part of the property in connection with a wind power project.

(b) The term does not include a lot or parcel of real property otherwise described in subsection (a) if the owner of the lot or parcel consents to participate in a wind power project through a neighbor agreement, a participation agreement, or another similar arrangement or agreement with a project owner.

As added by P.L.90-2022, SEC.1.

IC 8-1-41-4 "Permit authority"

Sec. 4. (a) As used in this chapter, "permit authority" means:

- (1) a unit; or
- (2) a board, a commission, or any other governing body of a unit;

that makes legislative or administrative decisions concerning the permitting, construction,

installation, siting, modification, operation, or decommissioning of wind power devices in the unit.

(b) The term does not include:

- (1) the state or any of its agencies, departments, boards, commissions, authorities, or instrumentalities; or
- (2) a court or other judicial body that reviews decisions or rulings made by a permit authority.

As added by P.L.90-2022, SEC.1.

IC 8-1-41-5 "Project owner"

Sec. 5. (a) As used in this chapter, "project owner" means a person that:

- (1) will own one (1) or more wind power devices proposed to be located in a unit; or
- (2) owns one (1) or more wind power devices located in a unit.

(b) The term includes an agent or a representative of a person described in subsection (a).

(c) The term does not include an electricity supplier (as defined in IC 8-1-2.3-2).

As added by P.L.90-2022, SEC.1.

IC 8-1-41-6 "Unit"

Sec. 6. (a) As used in this chapter, "unit" refers to:

(1) a county, if a project owner, as part of a single wind power project or development, seeks to locate one (1) or more wind power devices:

- (A) entirely within unincorporated areas of the county;
- (B) within both unincorporated areas of the county and one (1) or more municipalities within the county; or
- (C) entirely within two (2) or more municipalities within the county; or

(2) a municipality, if:

- (A) a project owner, as part of a single wind power project or development, seeks to locate one (1) or more wind power devices entirely within the boundaries of the municipality; and
- (B) subdivision (1)(B) or (1)(C) does not apply.

(b) The term refers to:

(1) each county described in subsection (a)(1) in which a project owner seeks to locate one (1) or more wind power devices, if the project owner seeks to locate wind power devices in more than one (1) county as part of a single wind power project or development; and

(2) each municipality described in subsection (a)(2) in which a project owner seeks to locate one (1) or more wind power devices, if the project owner seeks to locate wind power devices in two (2) or more municipalities, each of which is located in a different county.

As added by P.L.90-2022, SEC.1.

IC 8-1-41-7 "Wind power device"

Sec. 7. As used in this chapter, "wind power device" means a device, including a windmill or a wind turbine, that is designed to use the kinetic energy of moving air to provide mechanical energy or to produce electricity.

As added by P.L.90-2022, SEC.1.

IC 8-1-41-8 "Wind power regulation"

Sec. 8. As used in this chapter, "wind power regulation" refers to any ordinance or regulation, including any:

- (1) zoning or land use ordinance or regulation; or
- (2) general or specific planning ordinance or regulation;

that is adopted by a unit and that concerns the permitting, construction, installation, siting,

modification, operation, or decommissioning of wind power devices in the unit.
As added by P.L.90-2022, SEC.1.

IC 8-1-41-9 Permit authority responsible for enforcing compliance with standards; authority to adopt less restrictive standards or to waive or make less restrictive existing standards; unit's planning and zoning powers not affected

Sec. 9. (a) A permit authority for a unit described in section 1(a) of this chapter is responsible for enforcing compliance with any standards set forth in sections 10 through 16 of this chapter that apply in the unit under section 1(a) of this chapter.

(b) A unit may:

(1) adopt and enforce a wind power regulation that includes standards that:

(A) concern the permitting, construction, installation, siting, modification, operation, or decommissioning of wind power devices in the unit; and

(B) are less restrictive than the standards set forth in this chapter;

(2) waive or make less restrictive any standard set forth in this chapter with respect to any particular:

(A) wind power device; or

(B) project to install one (1) or more wind power devices in the unit; or

(3) waive or make less restrictive any standard that is not set forth in this chapter but that is included in a wind power regulation adopted by the unit with respect to any particular:

(A) wind power device; or

(B) project to install one (1) or more wind power devices in the unit.

(c) This chapter does not affect a unit's planning and zoning powers under IC 36-7 with respect to the permitting, construction, installation, or siting of one (1) or more wind power devices in the unit.

As added by P.L.90-2022, SEC.1.

IC 8-1-41-10 Setback requirements; airport; public use highway, street, or road; nonparticipating property; utility transmission or distribution line; undeveloped residential land; state park; corporate boundaries of municipality; blade tip height limitations; waiver of restrictions by nonparticipating party

Sec. 10. (a) Subject to subsection (h), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device on property in a unit unless the distance, measured as a straight line, from the vertical centerline of the base of the wind power device to:

(1) the centerline of any:

(A) runway located on a public use airport, private use airport, or municipal airport;

(B) public use highway, street, or road; or

(C) railroad easement or right-of-way; or

(2) the property line of any nonparticipating property;

is equal to a distance that is at least one and one-tenth (1.1) times the wind power device's blade tip height, as measured from the ground to the tip of the blade.

(b) Subject to subsection (h), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device on property in a unit unless the distance, measured as a straight line, from the vertical centerline of the base of the wind power device to the nearest point on the outer wall of a dwelling located on a nonparticipating property is equal to a distance that is at least three (3) times the wind power device's blade tip height, as measured from the ground to the tip of the blade.

(c) Except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device on property in a unit unless the distance, measured as a straight

line, from the vertical centerline of the base of the wind power device to the nearest edge of the right-of-way for any utility transmission or distribution line is equal to a distance that is at least one and two-tenths (1.2) times the wind power device's blade tip height, as measured from the ground to the tip of the blade.

(d) Except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device on property in a unit unless the distance, measured as a straight line, from the vertical centerline of the base of the wind power device to the property line of any undeveloped land within the unit that is zoned or platted for residential use is equal to a distance that is at least two (2) times the wind power device's blade tip height, as measured from the ground to the tip of the blade.

(e) Except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device on property in a unit unless the distance, measured as a straight line, from the vertical centerline of the base of the wind power device to the property line of a state park is equal to a distance of at least one (1) mile.

(f) A project owner may not install or locate a wind power device within a county unless the distance, measured as a straight line, from the vertical centerline of the base of the wind power device to the corporate boundaries of any municipality within the county is equal to a distance of at least one (1) mile. However, a municipality may waive or reduce the minimum distance prescribed by this subsection with respect to the installation of one (1) or more wind power devices.

(g) Except as otherwise allowed by IC 36-7-4-1109, a permit authority, with respect to the permitting, construction, installation, or siting of any wind power device within the unit, may not set a blade tip height limitation, through a wind power regulation or otherwise, that is more restrictive than the standards of the Federal Aviation Administration under 14 CFR Part 77 concerning the safe, efficient use and preservation of the navigable airspace.

(h) The distance requirements set forth in subsections (a)(2) and (b) may be waived with respect to the siting of any one (1) wind power device, subject to the written consent of the owner of each affected nonparticipating property.

As added by P.L.90-2022, SEC.1.

IC 8-1-41-11 Shadow flicker; limits with respect to nonparticipating property; mitigation efforts; waiver of requirement with consent of nonparticipating property owners

Sec. 11. (a) Subject to subsection (c), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate one (1) or more wind power devices in a unit unless the project owner demonstrates to the permit authority that with respect to each wind power device that the project owner seeks to install or locate in the unit:

(1) the project owner has used shadow flicker computer modeling to estimate the amount of shadow flicker anticipated to be caused by the wind power device; and

(2) the wind power device has been designed such that industry standard computer modeling indicates that any dwelling on a nonparticipating property within the unit will not experience more than thirty (30) hours per year of shadow flicker under planned operating conditions for the wind power device.

(b) After a project owner installs or locates a wind power device in a unit, the project owner shall work with the owner of any affected dwelling on a nonparticipating property to mitigate the effects of shadow flicker to the extent reasonably practicable.

(c) The requirement set forth in subsection (a)(2) may be waived with respect to any one (1) wind power device, subject to the written consent of the owner of each affected nonparticipating property.

As added by P.L.90-2022, SEC.1.

IC 8-1-41-12 Signal interference

Sec. 12. Except as otherwise allowed by IC 36-7-4-1109, a wind power device installed

in a unit must be installed in a manner so as to minimize and mitigate impacts to:

- (1) television signals;
- (2) microwave signals;
- (3) agricultural global positioning systems;
- (4) military defense radar;
- (5) radio reception; or
- (6) weather and doppler radar.

As added by P.L.90-2022, SEC.1.

IC 8-1-41-13 Sound level limitations; waiver of requirement with consent of affected property owners

Sec. 13. (a) Subject to subsection (b), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device in a unit unless the project owner demonstrates to the permit authority that the wind power device will operate in a manner such that the sound attributable to the wind power device will not exceed an hourly average sound level of fifty (50) A-weighted decibels, as modeled at the outer wall of an affected dwelling.

(b) The requirement set forth in subsection (a) may be waived with respect to any one (1) wind power device, subject to the written consent of the owner of each affected property.

As added by P.L.90-2022, SEC.1.

IC 8-1-41-14 "Wind turbine light mitigation technology"; required after January 1, 2023; exceptions

Sec. 14. (a) As used in this section, "wind turbine light mitigation technology" means any technology used in connection with a wind power device to shield, limit, or otherwise mitigate the amount, intensity, character, or visibility of light emitted from the wind power device.

(b) Except as otherwise allowed by IC 36-7-4-1109, after January 1, 2023, and to the extent permissible under federal law or regulations, a wind power device on property in a unit must be equipped with a wind turbine light mitigation technology, unless:

- (1) the Federal Aviation Administration denies the project owner's application to use a wind turbine light mitigation technology;
- (2) the wind turbine light mitigation technology application is pending review by the appropriate federal agencies; or
- (3) the project owner determines that the use of a wind turbine light mitigation technology is not economically feasible.

As added by P.L.90-2022, SEC.1.

IC 8-1-41-15 Damage to drainage infrastructure; repair; installation of new infrastructure

Sec. 15. This section applies with respect to a wind power device that is constructed or installed in a unit after June 30, 2022. Except as otherwise allowed by IC 36-7-4-1109, all damages to waterways, drainage ditches, field tiles, or other drainage related infrastructure caused by the construction, installation, or maintenance of a wind power device must be completely repaired by the project owner or remedied with the installation of new drainage infrastructure so as to not impede the natural flow of water. All repairs must be completed within a reasonable period of time and:

- (1) to the satisfaction of the unit; and
- (2) as stated in an applicable lease or another agreement with the landowner;

subject to applicable federal, state, and local drainage laws and regulations.

As added by P.L.90-2022, SEC.1.

IC 8-1-41-16 Decommissioning and site restoration plan; posting of surety

**bond or equivalent security; required posting increments;
adjustment of bond or security after periodic reevaluation of
decommissioning costs; costs to be net of estimated salvage
value**

Sec. 16. (a) Subject to subsection (b), and except as otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a wind power device in a unit unless the project owner submits to the permit authority a decommissioning and site restoration plan, and posts a surety bond, or an equivalent means of security acceptable to the permit authority, including a parent company guarantee or an irrevocable letter of credit, but excluding cash, in an amount equal to the estimated cost of decommissioning the wind power device, as calculated by a third party licensed or registered engineer, or by another person with suitable experience in the decommissioning of wind power devices, as agreed upon by the project owner and the permit authority. The required bond or other security shall be posted in increments such that the total amount of the bond or security posted is as follows:

(1) An amount equal to twenty-five percent (25%) of the total estimated decommissioning costs not later than the start date of the wind power device's full commercial operation. For purposes of this subdivision, the total estimated decommissioning costs shall be reevaluated by a third party licensed or registered engineer (or by another person with suitable experience in the decommissioning of wind power devices, as agreed upon by the project owner and the permit authority) in connection with the:

(A) fifth anniversary; and

(B) tenth anniversary;

of the start date of the wind power device's full commercial operation, and the total amount of the bond or security posted under this subdivision shall be adjusted as necessary after each reevaluation.

(2) An amount equal to fifty percent (50%) of the total estimated decommissioning costs not later than the fifteenth anniversary of the start date of the wind power device's full commercial operation. For purposes of this subdivision, the total estimated decommissioning costs shall be reevaluated by a third party licensed or registered engineer (or by another person with suitable experience in the decommissioning of wind power devices, as agreed upon by the project owner and the permit authority) in connection with the fifteenth anniversary of the start date of the wind power device's full commercial operation, and the total amount of the bond or security posted under this subdivision shall be adjusted as necessary after the reevaluation.

(3) An amount equal to one hundred percent (100%) of the total estimated decommissioning costs not later than the twentieth anniversary of the start date of the wind power device's full commercial operation. For purposes of this subdivision, the total estimated decommissioning costs shall be reevaluated by a third party licensed or registered engineer (or by another person with suitable experience in the decommissioning of wind power devices, as agreed upon by the project owner and the permit authority):

(A) in connection with the twentieth anniversary of the start date of the wind power device's full commercial operation; and

(B) at least once every succeeding five (5) year period after the twentieth anniversary of the start date of the wind power device's full commercial operation;

and the total amount of the bond or security posted under this subdivision shall be adjusted as necessary after each reevaluation.

(b) For purposes of this section, the estimated cost of decommissioning a wind power device, as calculated by a licensed or registered professional engineer (or by another person with suitable experience in the decommissioning of wind power devices, as agreed upon by the project owner and the permit authority), shall be net of any estimated salvage value

attributable to the wind power device at the time of decommissioning, unless the unit and the project owner agree to include any such value in the estimated cost.
As added by P.L.90-2022, SEC.1.