

Original Questions:

1. Explain the pooling arrangements Duke will make with some farmers. How will they affect the locals around the turbine who don't have a lease? Do they benefit in any way? **Project specific.**
2. Are the landowners hosting the windmills being fairly compensated? **Project specific.**
3. How much money will landowners make? **Project specific.**
4. Who is really getting rich from this? Duke or the farmers/land leasees? **Project specific.**
5. What parties will benefit the most financially from this project? **Project specific.**
6. Property owners with leases for the wind turbines receive a financial benefit. What compensation process is available to an adjacent property owner who may encounter health issues or property devaluation due to the turbine's existence? **See response below.**
7. Why are federal and state lands not being considered for industrial size wind turbines? **See response below.**
8. Why aren't public lands considered for locations? **See response to question F7.**
9. How many acres of public land will be taken for the proposed project and what will be the remuneration for taxpayers and citizens of Michigan for taking land that is currently in the public trust? **Project specific.**
10. Can the township restrict already conserved property in any way? **Moved to D22 "Township Governance".**
11. I own 30 acres in Luce County and am willing to allow windmills to be installed, but I understand inland isn't be looked at and small parcels aren't considered. Is this true? Couldn't adjoining properties, if all gave consent, create a large enough buffer? **Needs further clarification.**
12. I would like to know how I can find out if my property is a good wind site. Is it possible to "test" the site somehow? Rent a turbine for 6 months or so and see the results? And how much can that cost? And lastly, is there a directory that I can use to choose a business in my area? **See response below.**
13. How does a lending institution, such as a local bank, recognize this long-term lease and its equitable value? Could a leaseholder borrow 80% of the projected \$12,000/100 acres? What is the REAL value of this lease? **See response below.**
14. Would there be an option for landowners to renegotiate certain terms of a lease after this report is published and new information is learned? Is this something a wind developer would be open to? **Project specific.**
15. Are non-disclosure clauses in wind royalty leases that cover items other than payment schedules both legal and typical? **See response below.**
16. Are wind rights severable? That is can someone sell property and keep the wind rights? Can someone speculate in wind rights? If a lease is signed for a piece of property does the lease stay with the property, or can the original lessee sell the property and continue profiting from the lease? **See response below.**

Questions and Responses:

These questions may have been recategorized and reorganized. Some may have been sent to another "theme" area (this will have been explained in red under the "Original Questions" section). In other cases two or more questions will be answered with one response.

- G6. **Property owners with leases for the wind turbines receive a financial benefit. What compensation process is available to an adjacent property owner who may encounter health issues or property devaluation due to the turbine's existence?**

Response: Compensation for non-participating landowners varies from project to project depending on the developer and any possible township ordinances. There is precedent for "good neighbor agreements" that provide a fixed annual fee to non-participating landowners. These payments can range in value. However, in

return for payment the landowner may agree not to challenge or otherwise interfere with the operation of the project, including on the basis of noise impacts.

G7. Why are federal and state lands not being considered for industrial size wind turbines?

Response: Federal and state lands are being considered for wind energy development across the United States. Some of the best wind resources are often found on public lands. There are different processes for getting a permit on state and federal land. For example, development on federal lands triggers the preparation of an environmental impact assessment. For more information about the siting process for federal lands, see the Bureau of Land Management's Programmatic EIS requirements at <http://windeis.anl.gov/>

G12. I would like to know how I can find out if my property is a good wind site. Is it possible to "test" the site somehow? Rent a turbine for 6 months or so and see the results? And how much can that cost? And lastly, is there a directory that I can use to choose a business in my area?

Response: It is not clear if this question is asking about a small turbine for a home/farm or about having a utility scale turbine sited on one's property. Many states have anemometer loan programs. See <http://www.windpoweringamerica.gov/> to see if your state has one. It is unlikely that an interested resident could rent a turbine for 6 months but you may be able to get an anemometer put up at your site for 6 months to a year. If not, you may find nearby wind speed data being collected at weather stations or airports nearby for the last few years.

G13. How does a lending institution, such as a local bank, recognize this long-term lease and its equitable value? Could a leaseholder borrow 80% of the projected \$12,000/100 acres? What is the REAL value of this lease?

Response: The answer depends on the lending institution. Generally, the leaseholder should be able to borrow against that value. However, this depends on how the particular lender values the lease. Because wind leases are relatively new, it may be the case that some bankers are less experienced with the topic and may need additional resources.

G15. Are non-disclosure clauses in wind royalty leases that cover items other than payment schedules both legal and typical?

Response: Non-disclosure clauses are common and are typically legal. Landowner groups and local governments have approached this differently. In South Dakota, there was attempt to have the leases filed publicly with the county clerk or another public official. In Wyoming, the state legislature is considering a unitization law that would make profits from a wind turbine shared with the owners of surrounding property whose own wind rights are being affected by the development. The North Dakota State University's Agricultural Extension Service put together a 2009 report for potential landowners considering leases. It is available at www.ag.ndsu.edu/pubs/agecon/market/ec1394.pdf. In addition, Windustry has a similar guidebook available at <http://www.windustry.org/leases>.

G16. Are wind rights severable? That is can someone sell property and keep the wind rights? Can someone speculate in wind rights? If a lease is signed for a piece of property does the lease stay with the property, or can the original lessee sell the property and continue profiting from the lease?

Response: A landowner may grant an easement or lease to another to use his or her land for just about any use so long as it is lawful under the zoning ordinance or other laws and regulations. This would include a wind easement - a perpetual right to use the land for wind generation - to a party who does not own the land.

While there is no legal authority in Michigan that answers the question of whether a landowner could sever and retain such an easement upon selling the property, then grant the easement to another party, the law

of property, easements and licenses, and contracts would apply. Essentially, rights to use land and to extract minerals, such as oil and gas, are recognized as rights transferred apart from the ownership of the land. On the other hand, water rights, which cannot be extracted because water passes through and is not part of the land, are not severable. Water's moving and flowing character through or over land is used to benefit the land for reasonable uses. Unlike oil and gas, the landowner does not own the water but enjoys a right to use it. In some instances, such as bottled water or municipal water systems, water itself is transferred for use elsewhere, so long as the transfer does not unreasonably interfere with other adjacent landowners who use and enjoy the water.

While there is no case law or statute in Michigan directly addressing these issues, wind moves over land as air currents, and in that sense is more like water. So water law could be applied as a rough analogy. The landowner enjoys the benefit of wind passing over the land because of location, and as landowner has a right to use the currents, i.e. the wind, but does not own the wind in the sense that it can be sold. This is comparable to water passing through a hydroelectric dam that may be used to produce energy that can be transferred and sold.

A lease typically stays with the land - there is an owner and tenant. However, once a lease is signed and revenues produced, it would seem that a landowner who sells his or her property could retain the right to receive revenues from the benefit of the lease as a matter of contract or agreement with the new owner.