

Original Questions:

1. Can a community/township identify and protect certain viewsheds? *See response below.*
2. Are we allowed to enact a scenic viewshed ordinance that protects our viewsheds? *See response to question V1.*
3. Can you provide innovative examples of turbine siting not based solely on the zoning of a parcel that take natural resources into consideration, specifically resources that are not protected by existing regulations, such as viewsheds? *See response to question DD8.*
4. Will the view spaces be considered before turbine placements on ridges? *Project specific, but see response to question V1.*
5. Do people have any legal right over their view of other residents' property? *See response below.*
6. What is the overall width of the proposed wind towers (base and at the top)? At what distance will you be able to see a portion of these towers? I am trying to understand the percentage of property in Benzie County that will have sightings of these towers. *Project specific.*

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.

V1. Can a community/township identify and protect certain viewsheds?

Response: Yes, the Township can identify and protect viewsheds in a zoning ordinance, subject to the limitations discussed in Question D1, to the extent that the regulations are related to valid zoning purposes identified in the Michigan Zoning Enabling Act. Michigan courts have recognized that aesthetics are a proper concern of zoning but have also held that an otherwise legitimate use of a property cannot be excluded solely due to aesthetic objections to the use. For an example of a reasonable zoning regulation, see the model wind energy zoning ordinances discussed in Question D4, which requires that wind turbines be sited in a manner that avoids state, federal, or locally-recognized viewsheds. In addition, the land use plan could be amended to identify wind zones or areas, and the township could enact an overlay district ordinance, with PUD and/or special use permit provisions.

V5. Do people have any legal right over their view of other residents' property?

Response: No. In the absence of a statute or private easement or contract, landowners generally do not have a private right to limit their neighbors' use of their property unless the use rises to the level of a nuisance or trespass. See response to question BB1. Courts have held that a landowner generally does not have a right to air, light, and view over an adjoining property, although the Michigan Supreme Court has held that a property owner cannot construct a fence solely with the malicious intent to block light and air from a neighbor's property. As a result, although local governments may regulate to protect viewsheds as part of a valid exercise of zoning power, the effect of a neighbor's lawfully constructed structure on the viewshed is not likely to rise to the level of a nuisance in the absence of malice. The only practical way views can be protected would be through the land use plan and zoning ordinance measures. It is also possible to protect viewsheds through a purchase of development rights ordinance backed by a township bond measure to fund it.