

# LAND USE – HOT TOPICS

---

MARCH 2025

BRIANNA J. SCHROEDER

SCHROEDER@AGLAW.US

# Agenda

---

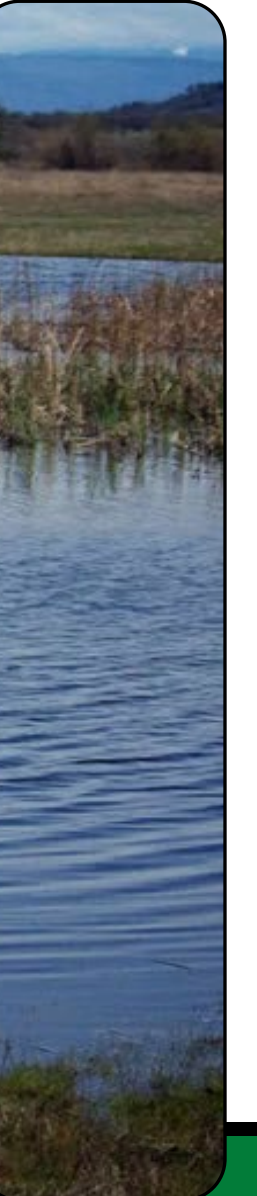
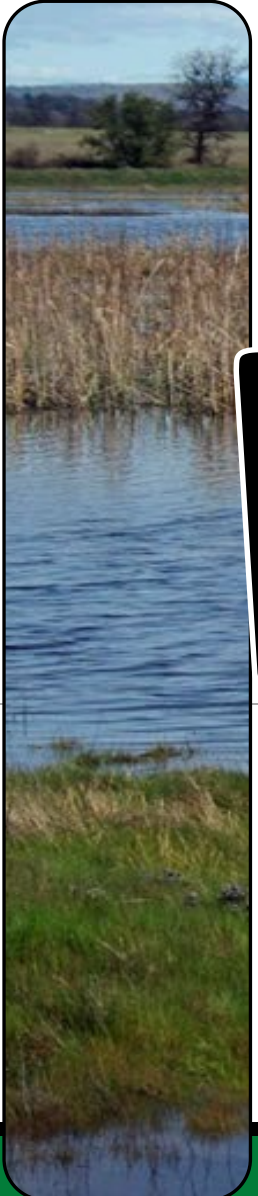
Water

Moratoria

Notice

*#HomeRule*

*Water*



# Water

Historically s

ORDINANCE NO. 2023-26-CM

**HIGH VOLUME WATER EXPORT AND RADIAL COLLECTOR WELL MORATORIUM**

WHEREAS, the General Assembly has granted Home Rule authority to Tippecanoe County to exercise powers necessary for the effective government as to local affairs including such powers necessary or desirable in the conduct of its affairs (IC 36-1-3); and

WHEREAS, the County has authority to regulate excavation, drilling, and other movement of earth below ground level (IC 36-7-2-6); and

WHEREAS, the County may promote economic development (IC 36-7-2-7); and

WHEREAS, the County may regulate conduct or use or possession of property that might endanger the public health, safety or welfare (IC 36-8-2-4); and

WHEREAS, the County may regulate any business use of a watercourse (IC 36-8-2-7);  
and

WHEREAS, the County may maintain and control watercourses, regulate the taking of water from a watercourse, and regulate conduct that might affect the temperature or flow of water in a watercourse (IC 36-8-2-8, 10, 11);

ate approach

# Local Water Ordinances

Overlay Districts

Conservation Districts

Comprehensive Plans / County Plans

Zoning

**ORDINANCE NO. 1738**  
CITY OF WESTFIELD

IN CITY COUNCIL FEBRUARY 3, 2022

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF WESTFIELD, ADOPTED JANUARY 21, 1971.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WESTFIELD, AS FOLLOWS:

That Code of Ordinances, City of Westfield, Division 1 of Article IV of Chapter 13, Wetlands Protection, be amended by deleting Division 1 of Article IV of Chapter 13, Sections 13 60 through 13 69.2 in their entirety and substituting therefore the following:

**DIVISION 1. WETLAND PROTECTION ORDINANCE**

**SECTION 13-60. PURPOSE**

The purpose of this ordinance is to protect the wetlands, related water resources, and adjoining land areas in the City of Westfield by controlling activities deemed to have impact upon wetland functions and values, and contributing to the following interests:

- a. Protection of public and private water supply
- b. Protection of ground water supply
- c. Flood control
- d. Storm damage prevention
- e. Prevention of pollution
- f. Protection of fisheries
- g. Protection of wildlife habitat

**SECTION 13-61. JURISDICTION**

Except as permitted by the Westfield Municipal Conservation Commission (hereafter referred to as Conservation Commission) or as provided in this ordinance, no person shall remove, fill, dredge, alter or build upon or within 100 feet of any bank or beach; or within 100 feet of any marsh, wet meadow, bog, or swamp; upon or within any lake, pond, river, stream, or intermittent stream; upon or within any land under said waters; upon any land subject to flooding or groundwater inundation.

**SECTION 13-62. DEFINITIONS**

**ALTER** — Shall include, without limitation, the following actions when undertaken in resource areas subject to this ordinance:

**ORDINANCE NO. 2023-47**

**AN ORDINANCE AFFECTING THE USE OF LAND IN ORANGE COUNTY, FLORIDA BY AMENDING, CREATING, AND REPEALING CERTAIN PROVISIONS OF THE ORANGE COUNTY CODE, CHAPTER 15, ARTICLE X, KNOWN AS THE CONSERVATION ORDINANCE PERTAINING TO WETLANDS AND SURFACE WATERS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the purpose of Chapter 15, Article X, (Wetland Conservation Areas), Orange County Code is the protection of Orange County's natural resources and, consistent with Section 163.3177(6)(d), Florida Statutes and the adopted Orange County Comprehensive Plan 2010 - 2030, to develop principles, guidelines, and standards for conservation. The land development regulations implemented in the article provide support for the Comprehensive Plan's goals, objectives, and policies of protecting quality and quantity of water sources and waters, soils and native vegetative communities, conserving wildlife, wildlife habitat and aquatic habitat, and protecting existing natural spaces; and

**WHEREAS**, Chapter 15, Orange County Code has several articles that have designated environmentally sensitive lands for greater protection based on locally determined criteria, and are more specifically contained in Article XI (Econlockhatchee River Protection), Article XIII (Wekiva River Protection), and Article XVIII (Environmental Land Stewardship); and

**WHEREAS**, Orange County is currently undertaking a revision to its comprehensive plan with "Vision 2050 Comprehensive Plan" to provide an updated roadmap for future growth and to ensure continued preservation of natural resources in light of increasing development pressures

# Overlay Districts

---

Special zoning “layer” placed over existing zoning base zones



Special provisions in addition to underlying zone



Examples

Airports

Highways

Solar

Natural Resources

# Overlay Districts

## Procedure

- New zoning ordinance
- I.C. 36-7-4-600 *et seq.*
- Notice, public hearing, APC + CC

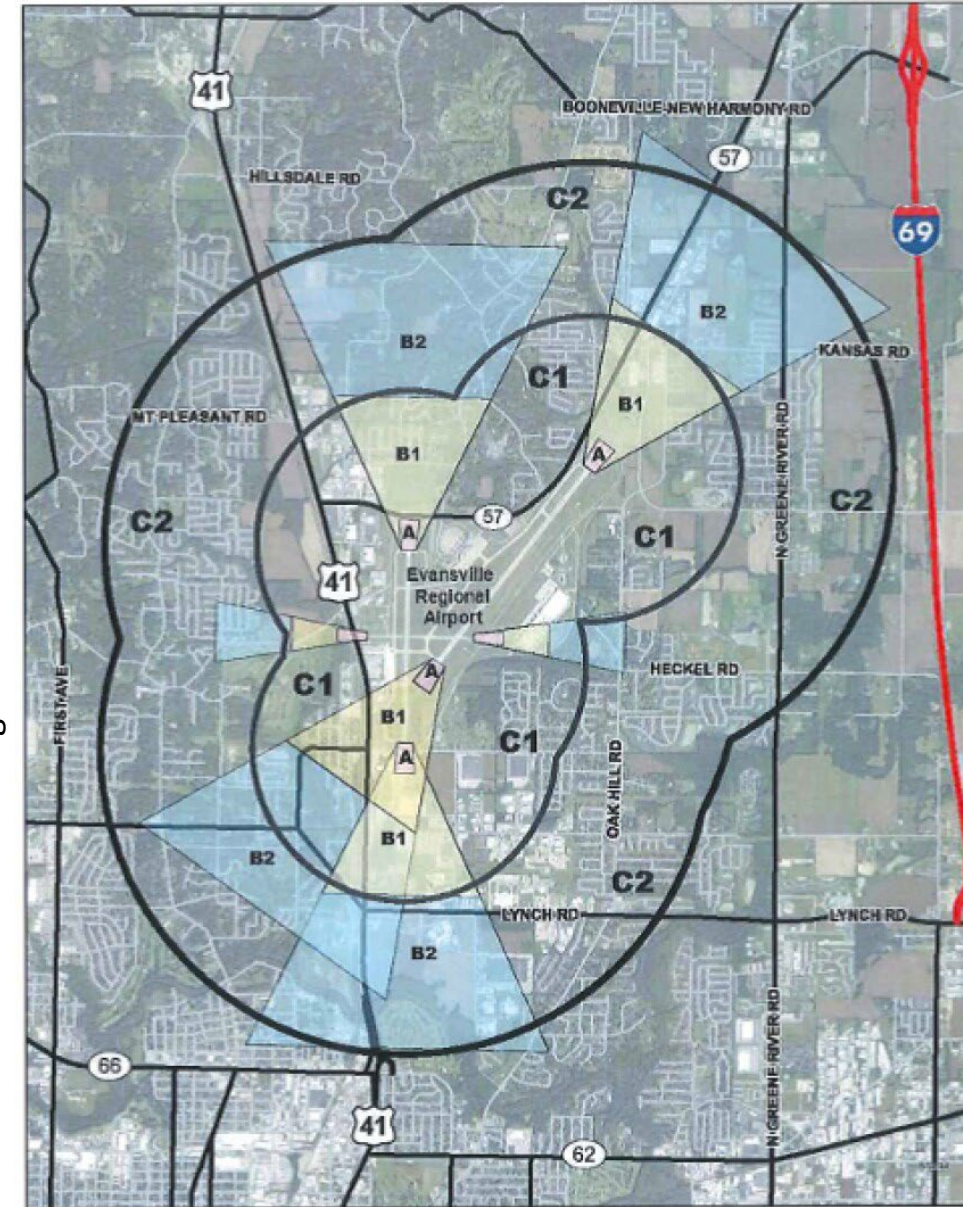
## Advantages

- Additional protection without negotiating case-by-case basis
- Existing zoning ordinances can be enhanced without starting from scratch

## Challenges

- Complicated
- Adds additional layer of requirements to development proposals

## Airport Overlay Zone and Subzone Boundaries



Proposed Evansville Regional Airport Overlay Zone  
Source: News.WNIN.org

### Legend

Interstate	C2	A
Major Roads	C1	B1

# Water Ordinances & Emerging Contaminants

---

Microplastics

PFAS

Pharmaceuticals



# Possible Preemption Issues

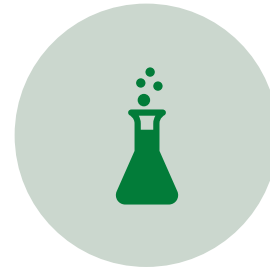
---



ENVIRONMENTAL  
PROTECTION AGENCY



INDIANA DEPARTMENT  
OF ENVIRONMENTAL  
MANAGEMENT



INDIANA OFFICE OF  
STATE CHEMIST



INDIANA BOARD OF  
ANIMAL HEALTH

# Indiana Home Rule

---

State grants local governments all the powers they need for the effective operation of government as to local affairs. I.C. § 36-1-3-2

Local governments have broad powers and any doubt as to the existence of a power of a local government unit shall be resolved in favor of its existence. I.C. § 36-1-3-3-3



## Indiana Home Rule Exception

---

Local government does not have the “power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.”

I.C. § 36-1-3-8(7)

# Home Rule Preemption

---



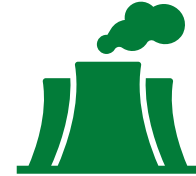
Fact-specific



Local control



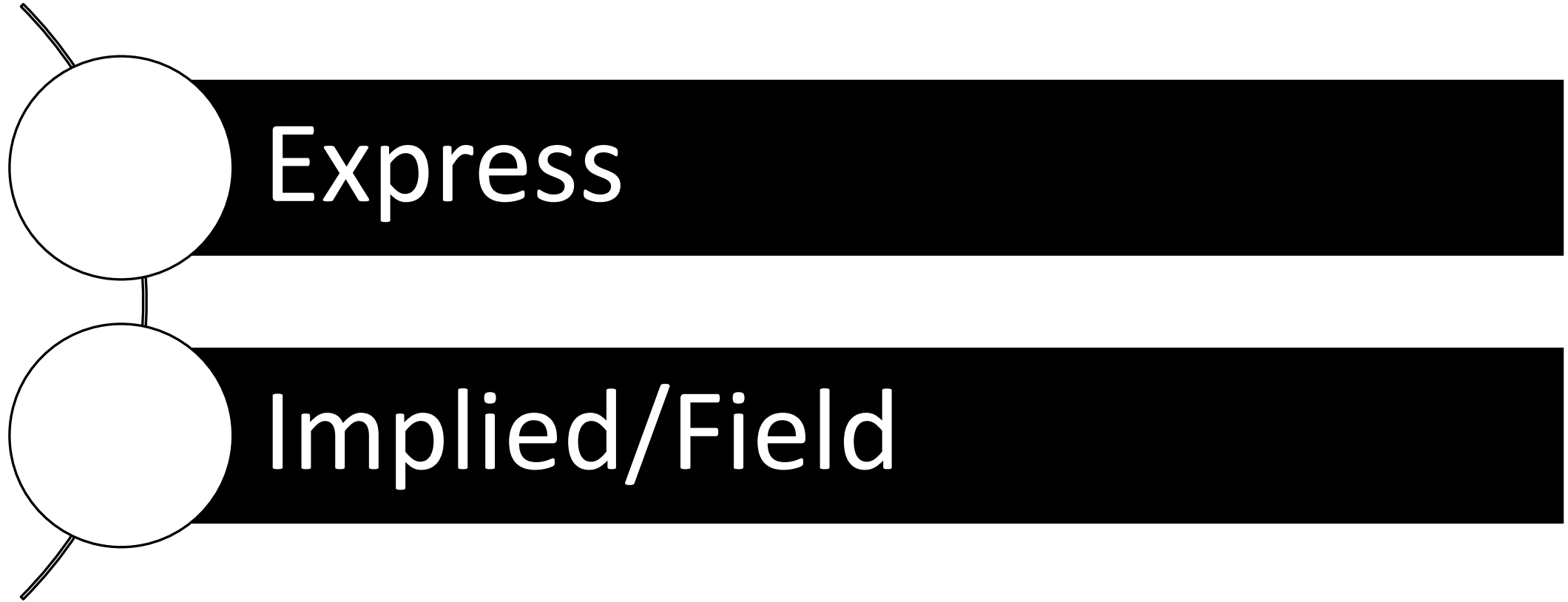
Consistency  
statewide



What is next?

# Preemption

---



# Express Preemption in Indiana

---

## Office of the Indiana State Chemist: IC 15-6-2-50

### MEMORANDUM

**To:** Kevin McDowell  
**From:** Jodi Stein  
**Date:** January 25, 2018  
**Re:** Does the State Chemist's regulation of the storage and use of fertilizer material preempt regulation by a local governmental unit?

**Short Answer:** Yes, by express statutory declaration.

The Office of the State Chemist administers the statutory guidelines on the regulation of fertilizer material, with study and advice from the fertilizer advisory board.<sup>1</sup> See I.C. §15-16-2-24(c); I.C. §15-16-2-25(a)(2). The Office of the State Chemist is statutorily permitted to adopt rules concerning the “distribution and use of fertilizer material” and is also statutorily mandated to adopt rules concerning “the staging, management, and land application of fertilizer material.” I.C. §15-16-2-44(a) and (c). These rules are contained in 355 IAC 8.

“Any attempt to create confusion between the state’s regulation of commercial fertilizer under Indiana Code § 15-16-2 *et seq.* and the state’s regulation of fertilizer material under 355 IAC 8 is misguided and unpersuasive.”



# *Avon v. W. Central Conservancy Dist.*

Indiana Supreme Court

Can Avon pass an ordinance limiting the mass water withdrawal from a subsurface aquifer?

Yes! #HomeRule

# B&S of Ft. Wayne v. Ft. Wayne

- Nothing in the state regs indicate state's intent to occupy the field of the regulation of adult cabarets
- State just regulates alcohol and requires approval for floor plan for dancing
- Nothing in the city ordinance was unreasonable or inconsistent with state regulations





# Duke Energy v. Noblesville

---

City ordinance required Duke to obtain demo and building permits for new facilities

First utilities were regulated locally...1913 Shively Act shifted power to state agency...Home Rule Act in 1980 shifted back

Municipal ordinances presumptively apply to regulated power utilities (not automatically preempted), but IURC decides whether ordinance goes too far

“The IURC alone has the power and expertise to find a local ordinance unenforceable and then replace the ordinance with its own regulation—thus ensuring effective and reliable statewide utility service while also protecting local communities...”

Moratoria



# Moratoria

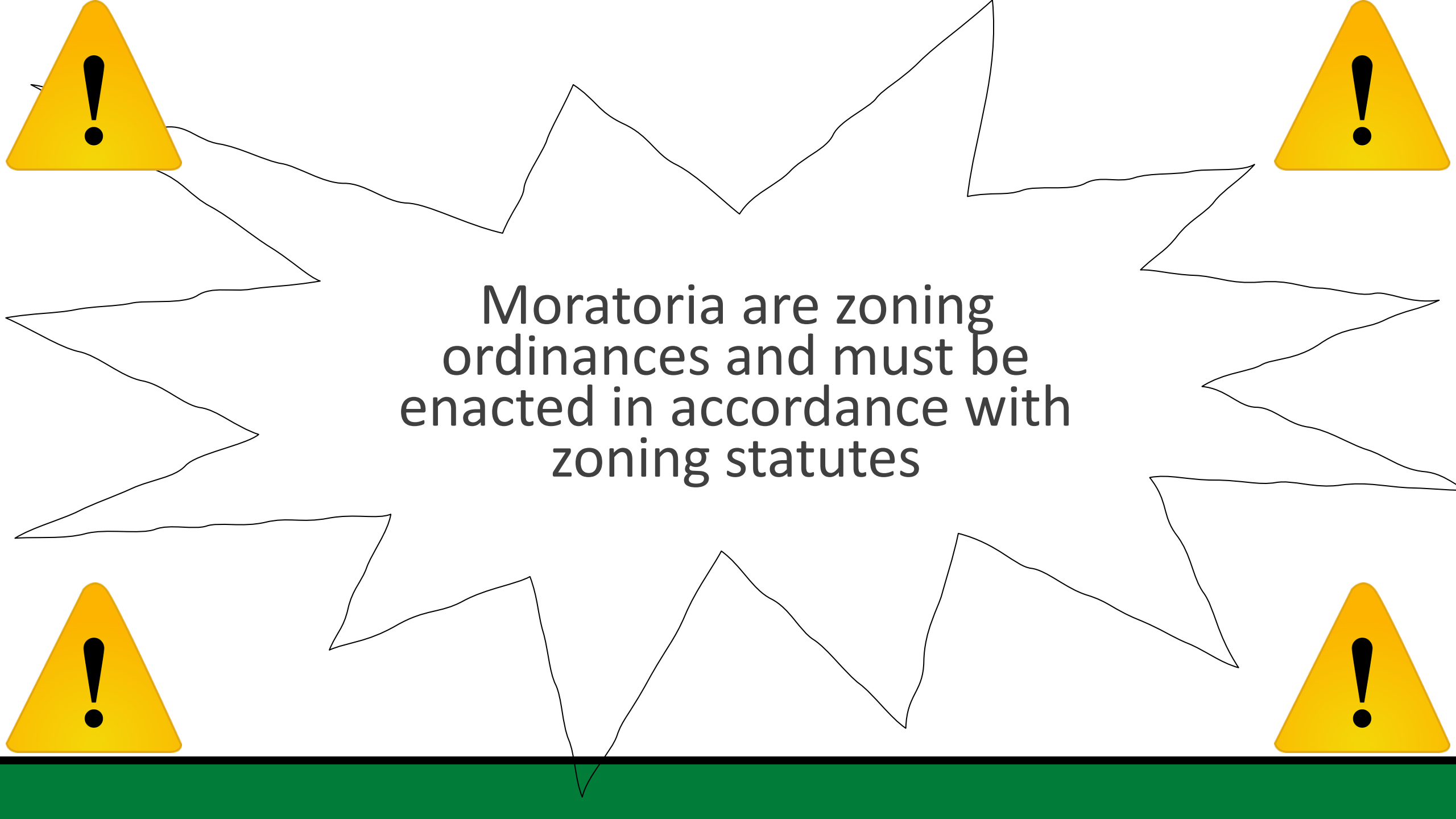
---

Ban on development

Preserving status quo in the face of a previously untested land use

Quintessential zoning





Moratoria are zoning ordinances and must be enacted in accordance with zoning statutes



# Moratoria

---

## New zoning ordinance procedure

- Plan Commission public hearing
  - Notice by publication
  - Notice to interested parties
  - Favorable or unfavorable recommendation
  - Certify to legislative body
- Legislative body
  - Notice of meeting per Open Door Law

# Moratoria

---

Water  
withdrawal

Solar

Batteries

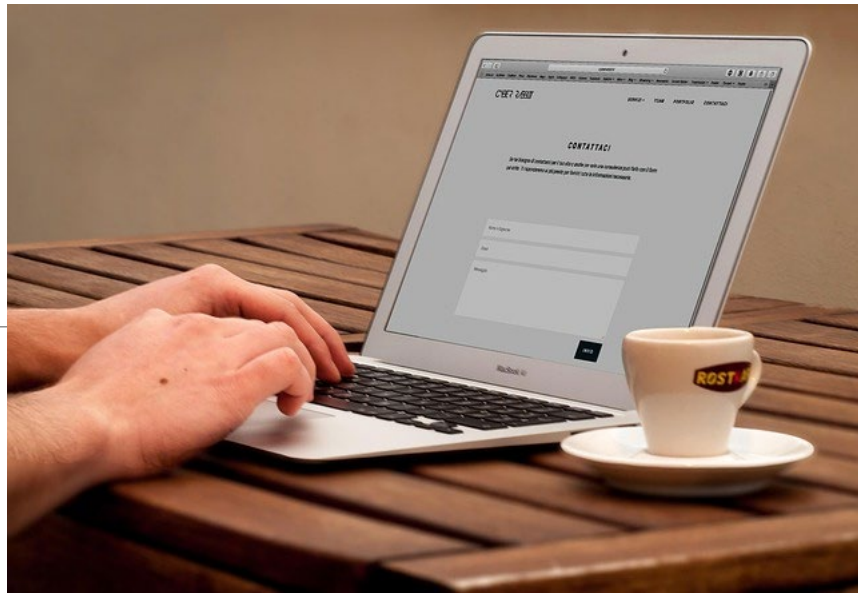
Data  
Centers

Wind

Carbon

CFOs

# Notice



PUBLISH: August 28, 2022  
13885T  
hspaxp

## LEGAL NOTICE

### NOTICE OF PUBLIC HEARING TIPTON COUNTY PLAN COMMISSION PROSPECT OVERLAY DISTRICT

Notice is hereby given that the Tipton County Plan Commission will hold a public hearing on Wednesday September 7, 2022 at 6:00 p.m., in the 1st Floor Meeting Room of the Tipton County Courthouse, 101 East Jefferson Street, Tipton, Indiana, to consider the following:

An amendment of the Tipton County Zoning Ordinance concerning an amendment to Section 403 entitled "US 31 Overlay District". Specifically, the amendment is intended to change the name of the section to "Prospect Overlay District"; add to and modify prohibited uses in the overlay district; and expand the overlay district as follows:

- That area 1000 feet on either side of the right-of-way or future right-of-way of the US 31 Corridor in Tipton County;
- That area from County Road 800 West to the centerline of the US 31 Corridor between County Road 300 South to County Road 50 North; and
- That area from the City of Tipton Zoning Jurisdiction (500 feet west of County Road 350 West) to the centerline of the US 31 Corridor between County Road 300 South to County Road 50 North.

The proposed amendment may be viewed in the Plan Commission Office at 101 East Jefferson Street, Tipton, Indiana prior to the hearing. Interested persons desiring to present their views regarding the proposed amendment, either verbally or in writing, will be given an opportunity to be heard at the above-mentioned time and place; or comments or objections may be submitted in writing in the Plan Commission Office prior to 4:00 p.m. on the day of the hearing.

The hearing may be continued from time to time as may be found necessary.  
Tipton County Plan Commission  
PUBLISH: August 28, 2022  
13886T  
hspaxp

# Notice

---

## Landowner notice for:

- Special exceptions
- Variances
- Rezones

## County notice for:

- Zoning changes
- Map changes

## State statute (I.C. 36 -7-4-600 et seq.)

- Publish notice
- Also notice to “interested parties” per local rules

## Local rules



# Questions?

---

**Brianna J. Schroeder**

Janzen Schroeder Agricultural Law LLC

[Schroeder@aglaw.us](mailto:Schroeder@aglaw.us)

[www.aglaw.us](http://www.aglaw.us)

317.855.9920

