

ORDINANCE NO. 2024-_____
AN ORDINANCE REGULATING CARBON SEQUESTRATION
IN WARREN COUNTY, INDIANA

WHEREAS, the Indiana Legislature passed laws regulating underground storage of carbon dioxide; and

WHEREAS, the Warren County Commissioners previously adopted the Zoning Ordinance pertaining to county zoning and land use controls (the “Ordinance”); and

WHEREAS, the County may lawfully regulate and restrict the use of land for trade, industry, residence or other purposes in accordance with a comprehensive plan and in designs to further the health, safety, convenience and welfare of its citizens as set forth in Indiana Code §36-7-4-201; and

WHEREAS, pursuant to Indiana Code § 36-1-3, et. seq. a government unit has all powers necessary and desirable in the conduct of its affairs, though not granted by statute, for the effective operation of government as to its local affairs; and

WHEREAS, the sequestration of carbon is a recent technological development, and the Warren County Commissioners believe further study is needed to insure the health, safety and welfare of its citizens; and

WHEREAS, the County intends to establish a process for permitting and approving the use of land in the County for the sequestration of carbon dioxide that is not inconsistent with federal and state law;

WHEREAS, the adoption of an ordinance regulating carbon sequestration is necessary and appropriate to achieve and secure the benefits of these projects and to avoid and/or minimize the risks, dangers, and inconvenience to health, safety and general welfare of the citizens of the County;

NOW, THEREFORE BE IT ORDAINED by the Warren County Commissioners that the following standards are required for the approval and permitting of a Carbon Sequestration Project in Warren County, Indiana.

EXECUTIVE SUMMARY

This Ordinance has been promulgated to lawfully regulate and restrict the use of land in the County for the sequestration of liquid carbon dioxide to secure the public health and general welfare of its citizens.

I. DEFINITIONS

For purposes of this Article, unless the context otherwise requires:

"Affected Person" means any Person with a legal right or interest in the property, including but not limited to a landowner, a contract purchaser of record, a Person possessing the property under a lease, a record lienholder, and a record encumbrancer of the property.

"Applicant" means a Project Owner who applies for a Special Exception Permit for a Carbon Sequestration Project pursuant to this Ordinance.

"Application" means the documents and information an Applicant submits to the County for purposes of obtaining a Special Exception Permit as well as the related process and procedures for considering the application pursuant to this Ordinance.

"Board of Zoning Appeals" means the Warren County Board of Zoning Appeals established pursuant to Indiana Code Chapter 36-7-4 900 series and Article XIII of this Zoning Ordinance.

"Carbon Sequestration Project" means any project that involves the underground storage of carbon dioxide in a reservoir pursuant to at least one (1) UIC Class VI permit.

"County" or "the County" means Warren County, Indiana.

"In-Service date" is the date any carbon injection begins in any pore space located in the County.

"Landowner" means a Person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and includes a farm tenant.

"Occupied Structure" means a Building or Structure that has been inhabited or used for residential, commercial, industrial, educational, healthcare-related or agricultural

purposes at any time during the twelve (12) months preceding an application for a Conditional Use Permit pursuant to this Article.

"Person" means an individual, a corporation, a limited liability company, a government or governmental subdivision or agency, a business trust, an estate, a trust, a partnership or association, or any other legal entity.

“Project Owner” means any Person engaged in or organized for the purpose of owning, operating, or controlling a Carbon Sequestration Project.

"Property Owner" means the owner or owners, together with his, her, its or their heirs, successors and/or assigns, of the land or property under which, a Carbon Sequestration Project, or any part of it, including any related facilities, may be located and which is subject to the regulations and restriction of this Zoning Ordinance. Property Owner includes a Landowner and also includes a Person with whom a Project Owner negotiates or offers to execute an Independent Agreement with respect to a Project.

"Reclamation" means the restoration and repair of damaged real property, personal property, land or other areas under which liquid carbon dioxide is injected or from where it is removed as close as reasonably practicable to the condition, contour, and vegetation that existed prior to the construction or prior to the removal of the liquid carbon dioxide, as applicable.

"Reclamation Cost" means the cost of Reclamation and includes the cost to restore or repair roads, bridges, or county property as well as the cost to restore or repair all real and personal property of Property Owners and Affected Persons.

"Special Exception Permit" means a special exception or conditional use or use limitation authorized and approved by the Board of Zoning Appeals in the manner and according to the standards provided in Article X of this Zoning Ordinance.

“Storage Facility” means the subsurface area consisting of the extent of a carbon dioxide plume which is required to be delineated on an approved UIC Class VI permit of a storage operator.

"Zoning Ordinance" or "the Zoning Ordinance" means the collection of land use and zoning regulations known as the Warre County Zoning Ordinance, as provided and made effective in Article 1 of the ordinance known as the Warren County Zoning Ordinance.

II. APPLICABILITY

The special exception requirement shall apply to all Carbon Sequestration projects in the County.

III. PROHIBITION

No Person shall construct or operate a Carbon Sequestration Project without having fully complied with the provisions of this Ordinance. No Carbon Sequestration Project shall be permitted in a residential zoning district (R-1, R-2 or R-3).

IV. APPLICATION REQUIREMENTS

Prior to the implementation of a Carbon Sequestration Project, the Project Owner shall obtain approval for the following: (1) a Special Exception Permit from the Warren County Board of Zoning Appeals to permit a Carbon Sequestration Project and (2) a Request for Variance for any variances anticipated on the Carbon Sequestration project as described below and in Article XIII of the Zoning Ordinance.

A. Application for a Special Exception Permit

1. The application shall be filed with the County Building Commissioner's Office and shall include the following items:

a. The information required for a Special Exception Permit as described in Article X of this Zoning Ordinance, including all required forms prescribed by the County Building Commissioner.

b. A permit that has been obtained or that the applicant is in the process of obtaining from the U.S. Environmental Protection Agency for a Class VI injection well for carbon dioxide sequestration.

c. A valid permit issued by the State of Indiana pursuant to Indiana Code Sections 14-39-2-5 through -7, as those sections may be amended from time to time.

d. A map and a list containing the names and addresses of all Affected Persons in the County. The map and list shall include all Property Owners who have executed any independent agreements or who have been or will be contacted about the execution of an independent agreement.

e. A set of plans and specifications showing the dimensions and locations of the pore injection sites, including plans and specifications for all related facilities and above-ground structures.

- f. A copy of any standard or template independent agreement the Project Owner proposes to execute with Property Owners in the County.
- g. Copies of all seismic surveying reports of the underground geology relied upon by the Applicant, sufficient to permit the County to have the seismic surveying reports reviewed by its own consultants to determine the suitability of the location selected by the Applicant.
- h. g. An Emergency Response and Hazard Mitigation Plan as required pursuant to Section VIII of this Ordinance.
- i. An Economic Development Agreement approved by the Warren County Commissioners.
- j. All applicable fees required pursuant to Section V of this Ordinance.

B. The Application for Variance

- 1. Contemporaneously with the Application for a Special Exception, the Applicant shall submit an Application for Variance for any variances sought as part of the Carbon Sequestration Project. A single Application for Variance may be submitted for all variances sought.
- 2. In determining whether to approve the Application for Variance, the BZA shall determine whether the Application satisfies each of criteria set forth in §134 of the Zoning Ordinance, and make written findings thereof.
- 3. The fee for any variances is included in the Application fee.

V. FEES

The fee for the Special Exception shall be payable at the time of submission of the Application. The fee shall be \$20,000.00. The Application fee shall be used to defray the costs associated with the Application for a Special Exception, including professional fees and expenses.

VI. INTEGRATION OF OWNERSHIP INTERESTS

If all the owners of a pore space do not agree to integrate their interests under Indiana Code 14-39-2-4 and contemporaneously with the Department of Natural Resources issuing an order requiring the owners to integrate their interests, the Project Owner must demonstrate the following to the County Zoning Director:

A. That the Project Owner has made a good faith effort to obtain the consent of all pore space owners located within the proposed storage facility;

B. That the Project Owner has obtained the consent of the owners of the pore space underlying at least seventy percent (70%) of the surface area above the proposed storage facility; and

C. That all pore space owners who do not agree to integrate their interests to develop the pore space as a proposed storage facility for the underground storage of carbon dioxide are equitably compensated.

VII. SETBACKS

A Carbon Sequestration Project shall not be constructed, used, sited, or located, in violation of the setback requirements listed below. In addition, the terms of an Independent Agreement regarding a Storage Facility shall conform to the setback requirements listed below. All distances shall be measured from the center of the proposed well boring to the portion of the existing use nearest the center of the proposed well boring. The minimum setback distances for a Carbon Sequestration Project are:

A. From the town limits of an incorporated town or boundaries of a school building, not less than one mile.

B. From the town limits of an unincorporated town, not less than one-half of one mile.

C. From a church, nursing home, long-term care facility, or hospital, not less than one-half of one mile.

D. From a public park or public recreation area, not less than one-quarter of one mile.

E. From any Occupied Structure, not less than one-quarter of one mile.

F. From a confined animal feeding operation or facility, not less than 1,000 feet.

G. From an electric power generating facility with a nameplate capacity of 5MW or more, an electric transmission line operating at 69kV or higher, an electric transmission substation, a public drinking water treatment plant, or a public wastewater treatment plant, not less than 1,000 feet.

If a Property Owner has executed an Independent Agreement prior to the effective date of this Article and the Independent Agreement provides for setback requirements that are greater than the setback requirements this Article, then the Project Owner shall comply with the terms of the Independent Agreement with the Property Owner.

Additionally, all wellheads associated with a Carbon Sequestration Project shall be setback no less than four hundred (400) feet from the property lines of any parcel on which a wellhead is located.

VIII. EMERGENCY RESPONSE AND HAZARD MITIGATION PLANS

A. If and Federal or State agency has adopted regulations specifically related to emergency preparedness, emergency response, and hazard mitigation planning for Carbon Sequestration Projects, then the Project Owner shall submit a plan that meets the requirements of this section. A plan submitted in compliance with this section shall include: (1) documentation of compliance with the Federal or State agency regulations; and (2) a detailed plan describing how the Project Owner will work with the County's law enforcement, emergency management personnel, and first responders in the event of a leak or other emergency or disaster related to the Carbon Sequestration Project.

B. If no Federal or State agency has adopted regulations specifically related to emergency preparedness, emergency response, and hazard mitigation planning for Carbon Sequestration Projects, then the Project Owner operating the Carbon Sequestration Project shall submit a plan that meets the requirements of this section. A plan submitted in compliance with this section shall include the following:

1. A map and legal description of the proposed Storage Facility showing all human occupied structures and animal husbandry facilities, by type, within two miles of the center of the proposed well boring.

2. A description of the health risks resulting from exposure of humans and animals to carbon dioxide released from a Carbon Sequestration Project, considering the concentrations of carbon dioxide in the air near to a leak or rupture, the duration in time of exposure, and the presence of other harmful substances released from a leak or rupture. The description shall identify the exposure level and duration of time that may cause a fatality of persons or animals, and the exposure level and duration that may cause intoxication or other significant adverse health effects.

3. An estimate of the worst-case discharge of carbon dioxide released in metric tons and standard cubic feet from a Carbon Sequestration Project considering the location of emergency valves that limit release of carbon dioxide and other relevant factors.

4. All information needed by county first responders, emergency response personnel, and law enforcement personnel in order to engage in local emergency management and hazard mitigation planning, equipment, and training needs. Such information includes but is not limited to:
 - a. a material data safety sheet for the materials stored in the Carbon Sequestration Project;
 - b. agency-specific response plans for law enforcement, emergency medical responders, and other response agencies;
 - c. evacuation plans for each human occupied structure;
 - d. response equipment needs for emergency response personnel, such as carbon dioxide and other chemical detectors; respirators; personal protective equipment; communications equipment; road barriers and traffic warning signs; and non-internal combustion engine evacuation vehicles;
 - e. a Carbon Sequestration Project leak or rupture emergency response training program to ensure safe and effective response by county and municipal law enforcement, emergency medical services, and other responders during the operational life of the Carbon Sequestration Project.

5. Identification of residential and business emergency response needs, including but not limited to:
 - a. a Mass Notification and Emergency Messaging System;
 - b. evacuation plans;
 - c. evaluation equipment needs especially for mobility impaired individuals;
 - d. carbon dioxide detectors, and respirators.

IX. ABANDONMENT AND DECOMMISSIONING

A. A Project Owner granted a Special Exception Permit pursuant to this Ordinance shall by certified mail notify the County and all Affected Persons in the County of the Project Owner's intent to discontinue the use of the storage facility. The notification shall state the proposed date of the discontinuance of use.

B. Upon the cessation of carbon injection, the Project Owner shall restore the land which shall include the removal of all physical material pertaining to the project improvements to a depth of 48" beneath the soil surface, and restoration of the area occupied by the project improvements to as near as practicable to the same condition that existed immediately before construction of such improvements.

C. A Project Owner shall by certified mail provide the County with a copy of the certificate of project completion issued pursuant to Indiana Code 14-39-2-13, as that section may be amended from time to time.

X. TRANSFER

A Carbon Sequestration special exception granted to a Company or Owner pursuant to this Ordinance is not transferrable. A Company, or its successors in interest, shall apply for a new Carbon Sequestration Special Exception Permit whenever the pore space, Carbon Sequestration Project or Storage Facility is transferred, or its use is materially or substantially changed or altered.

XI. PENALTY

Any person, persona, firms, partnerships or corporations, whether acting alone or in concert with any other, who violates this Ordinance shall be subject to a fine of \$2,500.00 per day, each day the violation occurs, until such violation is corrected.

XII. SEVERABILITY

Should any section or provision of this Ordinance be declared to be invalid or unconstitutional, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared to be invalid or unconstitutional.

XIII. EFFECTIVE DATE

This Ordinance shall be in effect after its final passage, approval and publication as required by law.

So Ordained this ____ day of _____, 2024.

BOARD OF COMMISSIONERS OF
WARREN COUNTY

Craig Greenwood, President

John Comer

Clay Andrews

ATTEST:

Robin Weston-Hubner, Warren County Auditor