Chapter 836 — Airports and Landing Fields

2021 EDITION

AIRPORTS AND LANDING FIELDS

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GENERAL PROVISIONS

836.005 Definitions. When used in the laws of this state relating to aviation, unless the context otherwise provides:

(1) "Air navigation facility" means any facility other than one owned or operated by the United States used in, available for use in, or designed for use in, aid of air navigation, including airports and any structures, mechanisms, lights, beacons, markers, communicating system or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking-off, navigation and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(2) “Aircraft” means any contrivance used or designed for navigation of or flight in the air, but does not mean a one-person motorless glider that is launched from the earth’s surface solely by the operator’s power.

(3) “Airport” means any area of land or water, within or without this state, that is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas that are used, or intended for use, for airport buildings or other airport facilities or rights of way, together with all airport buildings and facilities located thereon.

(4) “Airport hazard” means any structure, object of natural growth, or use of land, that obstructs the airspace required for the flight of aircraft in landing or taking off at an airport, or is otherwise hazardous to such landing or taking off.

(5) “Aviation” means the science and art of flight and includes but is not limited to:

(a) Transportation by aircraft;

(b) The operation, construction, repair or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing and maintenance of parachutes;

(c) The design, establishment, construction, extension, operation, improvement, repair or maintenance of airports or other air navigation facilities; and

(d) Instruction in flying or ground subjects pertaining thereto.

(6) “Civil aircraft” means any aircraft other than a public aircraft.

(7) “Department” means the Oregon Department of Aviation.

(8) “Municipality” means any county, city, town, village, borough, authority, district or other political subdivision or public corporation of this state. “Municipal” means pertaining to a municipality as defined in this section.

(9) “Operation of aircraft” or “operate aircraft” means the use, navigation or piloting of aircraft in the airspace over this state or upon any airport within this state.

(10) “Person” means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(11) “Pilot” means any individual certificated by the federal government to operate an aircraft or an individual in training for such certification who possesses a valid student pilot certificate issued by the appropriate federal agency.

(12) “Public aircraft” means any aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(13) “State” or “this state” means the State of Oregon and territory over which any municipality of the State of Oregon has jurisdiction. [Formerly 492.010; 1989 c.102 §1; 1993 c.741 §93; 1999 c.935 §36; 2003 c.14 §506]

STATE ASSISTANCE

836.010 Availability of services of department. The Director of the Oregon Department of Aviation may, insofar as is reasonably possible, make available the Oregon Department of Aviation’s engineering and other technical services with or without charge, to any person requesting such services in connection with the planning, acquisition, construction, improvement, maintenance or operation of airports or air navigation facilities. [Formerly 492.020]

836.015 Financial assistance by director. The Director of the Oregon Department of Aviation as authorized by the State Aviation Board may render financial assistance by grant or loan, or both, to any municipality or municipalities acting jointly in the planning, acquisition, construction, improvement, maintenance or operation of an airport owned or controlled, or to be owned or controlled by such municipality or municipalities, out of appropriation made by the legislature for such purposes. The

financial assistance may be furnished in connection with federal or other financial aid for the same purposes. [Formerly 492.030]

836.020 Department as municipal agent. The Oregon Department of Aviation shall, upon request, act as agent of any municipality or municipalities acting jointly, in accepting, receiving, receipting for and disbursing federal moneys and other moneys, public or private, made available to finance in whole, or in part, the planning, acquisition, construction, improvement, maintenance or operation of a municipal airport or air navigation facility. The department shall upon request, act as its or their agents in contracting for and supervising such planning, acquisition, construction, improvement, maintenance or operation. All municipalities are authorized to designate the department as their agent for such purposes. [Formerly 492.040]

836.025 Establishment of airports and air navigation facilities by department. (1) The Oregon Department of Aviation may, on behalf of and in the name of the state, out of moneys made available for such purposes, plan, establish, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police airports and air navigation facilities, either within or without the state, including the construction, installation, equipment, maintenance and operation at such airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers.

(2) For such purposes the department may, by purchase, gift, devise, lease, condemnation or otherwise, acquire property, real or personal, or any interest therein, including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit safe and efficient operation of the airports or to permit the removal, elimination, obstruction-marking or obstruction-lighting of airport hazards, or to prevent the establishment of airport hazards. In like manner the department may acquire existing airports and air navigation facilities; provided it shall not acquire or take over any airport or air navigation facility owned or controlled by a municipality of this or any other state without the consent of the municipality. [Formerly 492.050]

836.030 Disposal of property. The Oregon Department of Aviation as authorized by the State Aviation Board may by sale, lease, or otherwise, dispose of any property mentioned in ORS 836.025, any airport, air navigation facility, or portion thereof or interest therein. The disposal by sale, lease or otherwise shall be in accordance with the laws of this state governing the disposition of other property of the state, except that in the case of disposals to any municipality or state government or the United States for aviation purposes incident thereto, the sale, lease, or other disposal may be effected in such manner and upon such terms as the department may deem in the best interest of the state. [Formerly 492.060]

836.035 Effect of statute on airport zoning. ORS 836.005 to 836.120, 836.200, 836.205, 836.215, 836.220 and 836.240 do not limit any right, power or authority of the state or a municipality to regulate airport hazards by zoning. [Formerly 492.070]

836.040 Joint exercise of power. The Oregon Department of Aviation may exercise any powers granted by ORS 836.025 to 836.050 jointly with any municipalities or agencies of the state government, with other states or their municipalities, or with the United States. [Formerly 492.080]

836.045 Condemnation by department. In the condemnation of property authorized by ORS 836.025, the Oregon Department of Aviation as authorized by the State Aviation Board shall proceed in the name of the state in the manner provided by ORS chapter 35. For the purpose of making surveys and examinations relative to any condemnation proceedings, it shall be lawful to enter upon any land in the manner provided by ORS 35.220, doing no unnecessary damage. Notwithstanding the provisions of any other statute, or the charter of any municipality, the department may take possession of any property to be condemned at any time after the commencement of the condemnation proceedings. The

department shall not be precluded from abandoning the condemnation of any such property in any case where possession thereof has not been taken. [Formerly 492.090; 2003 c.477 §13]

836.050 Condemnation of railroad or public utility property. (1) No operating property of any public utility, as defined in ORS 757.005, or any telecommunications carrier as defined in ORS 133.721, shall be condemned pursuant to ORS 836.025 and 836.045 unless the Public Utility Commission, after notice and hearing in accordance with the rules of procedure of the commission, has found that public convenience and necessity require such condemnation. All administrative expenses incurred in any such hearing shall be paid by the party not prevailing therein.

(2) No operating property of any railroad, as defined in ORS 824.200, shall be condemned pursuant to ORS 836.025 and 836.045 unless the Oregon Department of Aviation, after notice and hearing, has found that public convenience and necessity require such condemnation. All administrative expenses incurred in any such hearing shall be paid by the party not prevailing therein. [Formerly 492.100; 1995 c.733 §50; 1999 c.1093 §20]

836.055 Commercial concessions at state airports and air navigation facilities. (1) In operating an airport or air navigation facility owned or controlled by the state, the Oregon Department of Aviation, as authorized by the State Aviation Board, may enter into contracts, leases and other arrangements, for a term not exceeding 30 years for noncommercial arrangements or 50 years for commercial arrangements:

(a) Granting the privilege of using or improving the airport or air navigation facility, or any portion or facility of, or space in, the airport or air navigation facility, for commercial purposes;

(b) Conferring the privilege of supplying goods, commodities, things, services or facilities at the airport or air navigation facility; or

(c) Making available services to be furnished by the department or its agents at the airport or air navigation facility.

(2) In each case the department may establish the terms and conditions and fix the charges, rentals or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the expenses of operation to the state; provided, that in no case shall the public be deprived of its rightful, equal and uniform use of the airport, air navigation facility, or portion or facility of the airport or air navigation facility. [Formerly 492.110; 2021 c.526 §7; 2021 c.630 §41a]

836.060 Operation of state airports by private persons. (1) The Oregon Department of Aviation as authorized by the State Aviation Board may by contract, lease or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed 30 years the privilege of operating, as agent of the state or otherwise, any airport owned or controlled by the state; provided, that no such person shall be granted any authority to operate the airport other than as a public airport, or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the department might not have undertaken under ORS 836.055.

(2) The department shall grant no exclusive right for the use of any airway, airport, or air navigation facility under its jurisdiction. This subsection shall not prevent the making of contracts, leases, and other arrangements pursuant to this section or ORS 836.055. [Formerly 492.120]

836.065 Liens of state for repairs, improvements or services to personal property. To enforce the payment of any charges for repairs to, or improvements, or storage or care of any personal property made or furnished by the Oregon Department of Aviation or its agents in connection with the operation of an airport or air navigation facility owned or operated by the state, the state shall have liens on such property, which shall be enforceable by the department as provided by law. [Formerly 492.130]

836.070 Use of federal and other moneys. The Oregon Department of Aviation as authorized by the State Aviation Board may accept, receive, receipt for, disburse and expend federal moneys, and

other moneys, public or private, made available to accomplish, in whole or in part, any of the purposes of this chapter and ORS chapters 835 and 837. In accepting federal moneys under this section, the department shall have the same authority to enter into contracts on behalf of the state as is granted to the department with respect to federal moneys accepted on behalf of municipalities. [Formerly 492.140]

836.072 Use of moneys from increase in taxes; rules. (1) Moneys from the increases in taxes by the amendments to ORS 319.020 by sections 1 and 3, chapter 1037, Oregon Laws 1999, shall be used by the Oregon Department of Aviation to establish and fund a program to maintain and preserve the pavements used for runways, taxiways and aircraft parking areas at public use airports in this state.

(2) Projects for maintenance and preservation of pavements at public use airports that are identified in the plan developed under ORS 835.015 are eligible for funding under this section. The following expenses of projects selected may be funded under this section:

(a) Construction expenses;

(b) Engineering expenses; and

(c) Administrative expenses.

(3) The Director of the Oregon Department of Aviation shall prepare a list of recommended projects. Factors to be used by the director include, but are not limited to:

(a) The age and condition of pavements;

(b) An airport's role in the state's aviation system, as described by the plan developed under ORS 835.015; and

(c) Local financial participation in projects.

(4) The director shall forward the list of recommended projects to the State Aviation Board for approval.

(5) The department may adopt such rules as it deems necessary for implementation of the airport pavement preservation program.

(6) No more than 55 percent of the combined tax revenue from aircraft fuel used or distributed by a dealer and aircraft fuel usable in aircraft operated by turbine engines may be used for operating expenses of the department.

(7) For purposes of this section, "operating expenses of the department" includes, but is not limited to, expenses for personal services, central business operating services described in ORS 835.017 (1), supplies and capital outlay. [1999 c.1037 §5; 2001 c.104 §318; 2001 c.378 §2; 2010 c.107 §§7,8; 2011 c.630 §35]

Note: 836.072 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 836 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

836.075 State airway system. The Oregon Department of Aviation as authorized by the State Aviation Board may designate, design and establish, expand or modify a state airway system which will serve the interest of the state. It may chart such airways system and arrange for publication and distribution of such maps, charts, notices and bulletins relating to such airways as may be required in the public interest. The system shall be supplementary to and coordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, whether publicly or privately owned, provided that such facilities conform to federal safety standards. [Formerly 492.150]

836.080 Exemptions from ORS 836.085 to 836.120. (1) The provisions of ORS 836.085 to 836.120 do not apply to airports owned or operated by the United States.

(2) The Oregon Department of Aviation as authorized by the State Aviation Board may, from time to time, to the extent necessary, exempt any class of airports, pursuant to a reasonable classification or grouping, from any rule or regulation promulgated under ORS 836.085 to 836.120, or from any requirement of such a rule or regulation, if it finds that the application of such rule, regulation or

requirement would be an undue burden on such class and is not required in the interest of public safety. [Formerly 492.160]

836.085 Approval of airport sites; fee. Except as provided in ORS 836.080, the Oregon Department of Aviation as authorized by the State Aviation Board shall provide for the approval of proposed airport sites and the issuance of certificates of such approval. The following apply to this section:

(1) A nonrefundable fee of $75, together with an amount not to exceed $300 established by the department for the cost of inspecting and approving an airport site for potential approval, shall accompany the application for site approval.

(2) The department shall determine approval of airport sites under this section based on the conditions under ORS 836.095. [Formerly 492.170; 1997 c.585 §1]

836.090 Application for site approval; rules. Subject to the rules of procedure adopted by the State Aviation Board providing for such approvals, any municipality or person desiring or planning to construct or establish an airport must, prior to the construction or establishment of the proposed airport, submit to the Oregon Department of Aviation an application for approval of the site which shall include an outline plan and written description of the project, showing particularly the airport location in respect to surrounding topography that could affect the airport location. [Formerly 492.180]

836.095 Approval criteria and conditions. (1) The Oregon Department of Aviation shall with reasonable dispatch grant approval of a proposed airport site if it is satisfied that the site is adequate for the proposed airport, that such proposed airport, if constructed or established, will conform to minimum standards of safety and that safe air traffic patterns could be worked out for such proposed airport and for all existing airport and approved airport sites in its vicinity. In determining whether an airport site is adequate for a proposed airport, the department shall evaluate all of the following aspects of the site:

(a) All real property devoted to or to be used in connection with any aviation activity at the proposed airport.

(b) The location of the airport in relation to any surrounding topography, trees or structures that could affect the safety of the airport.

(c) The location and configuration of the proposed airport's runways and operation areas in relation to those of existing and approved airports or airport sites in the vicinity that could affect the safety of aircraft operating from the proposed airport, or from other airports.

(2) An approval of a proposed airport site may be granted under this section subject to any reasonable conditions which the department may deem necessary to effectuate the purposes of ORS 836.085 to 836.120, and shall remain in effect, unless sooner revoked by the department, until a license for an airport located on the approved site has been issued pursuant to ORS 836.105. [Formerly 492.190]

836.100 Revocation of approval. The Oregon Department of Aviation may, after notice and opportunity for hearing to holders of certificates of airport site approval under ORS 836.095, revoke such approval when it reasonably determines:

(1) That there has been an abandonment of the site as an airport site;

(2) That there has been a failure within two years, to develop the site as an airport or to comply with the conditions of the approval; or

(3) That prior to commencement of construction and because of change of physical or legal conditions or circumstances the site is no longer usable for the aviation purposes for which the approval was granted. [Formerly 492.200]

836.105 Licensing of airports; fees; rules. Except as provided in ORS 836.080, the Oregon Department of Aviation is authorized to provide for the licensing of airports and the annual renewal of

such licenses. The following apply to this section:

(1) The department may charge license fees for each original license and for each renewal. The fee to be paid for each original license and each renewal is as follows:

AIRPORT CLASSIFICATION AND FEE SCHEDULE	
Category I Airport - Commercial Service	$ 150
Category II Airport - Urban General Aviation	$ 100
Category III Airport - Regional General Aviation	$ 75
Category IV Airport - Local General Aviation	$ 50
Category V Airport - Remote Access	$ 30

(2) Upon the adoption of a rule providing for such licensing, the department shall with reasonable dispatch, upon receipt of an application for an original license and the payment of the required fee, issue an appropriate license if it is satisfied that the airport conforms to minimum standards of safety and that safe air traffic patterns can be worked out for such airport and for all existing airports and approved airport sites in its vicinity.

(3) All licenses shall be renewable annually upon payment of the required fees.

(4) Licenses and renewals may be issued subject to any reasonable conditions that the department may deem necessary to effectuate the purposes of ORS 836.085 to 836.120. [Formerly 492.210; 1997 c.585 §2; 2015 c.450 §3]

836.110 Revocation of license; refusal of renewal. The Oregon Department of Aviation may, after notice and opportunity for hearing to the licensee, revoke any airport license or renewal thereof, or refuse to issue a renewal, when it shall reasonably determine:

(1) That there has been an abandonment of the airport as such;

(2) That there has been a failure to comply with the conditions of the license or renewal thereof; or

(3) That because of change of physical or legal conditions or circumstances the airport has become either unsafe or unusable for the aviation purposes for which the license or renewal was issued. [Formerly 492.220]

836.115 Public hearing regarding site or license; transcripts. In connection with the grant of approval of a proposed airport site or the issuance of an airport license under ORS 836.085 to 836.110, the Oregon Department of Aviation may, on its own motion or upon the request of an affected or interested person, hold a hearing open to the public on any issue. Hearing transcripts shall be provided to requesting parties, at cost. [Formerly 492.230]

836.120 Unlicensed airport operation prohibited. Except as provided in ORS 836.080, no person, municipality or officer or employee thereof, shall operate an airport without an appropriate license for such, as is duly required by rule or regulation issued pursuant to ORS 836.105. [Formerly 492.240]

MUNICIPAL AIRPORTS

836.200 Authority to establish airports. All municipalities of this state, separately or jointly or in cooperation with the federal government or state, may acquire, establish, construct, expand or lease,

control, equip, improve, maintain, operate, police and regulate airports for the use of aircraft, either within this state or within any adjoining state, and may use for such purposes any available property owned or controlled by such municipalities or political subdivisions. All municipalities shall notify the Oregon Department of Aviation of, and allow the department to participate in an advisory capacity in, all municipal airport or aviation system planning. [Formerly 492.310]

836.205 Acquisition of lands declared to be for public purpose. All lands heretofore or hereafter acquired, owned, leased, controlled or occupied by municipalities, for the purposes specified in ORS 836.200 are declared to be acquired, owned, leased, controlled or occupied for public and governmental and municipal purposes. [Formerly 492.320]

836.210 Delegation of authority to develop and maintain airports; regulations for charges, fees and tolls. Municipalities of this state which establish airports, or which acquire, lease or set apart real property for such purposes, may:

(1) Delegate the authority for the planning, construction, equipment, improvement, maintenance and operation thereof in any offices, board or body of such municipality.

(2) Provide by regulation for charges, fees and tolls for the use of such airport and civil penalties for the violation of such regulations. [Formerly 492.330]

836.215 Municipal acquisition of property for airports. Private property, or any interest therein of whatever kind, and an easement for the operation of aircraft and all operations incidental thereto, to and from the property for the purposes specified in ORS 836.200, may be acquired by any municipality, by gift, grant, purchase, lease or contract, if the municipality is able to agree with the property owners on the terms of acquisition. If the municipality and the property owners are unable to agree upon terms, private property may be acquired by condemnation in the manner provided in ORS chapter 35. As an alternative, the municipality, if a port, may condemn the private property, or any interest therein, for the operation of aircraft and all operations incidental thereto, in the same manner and procedure as is provided by statute for condemnation of property by corporations organized for construction and operation of railroads. [Formerly 492.340; 2001 c.104 §319]

836.220 Source of airport funds. The purchase price or compensation for real or other property acquired in accordance with ORS 836.215 and the cost and expenses for the development, improvement, maintenance and operation of airports, may be paid for by appropriation of moneys available; or entirely or in part from the proceeds of the sale of bonds of the municipality, as the governing body of the municipality may determine, subject, however, to the authorization therefor at a regular or special election, if such authorization is a prerequisite to the issuance of bonds of the municipality for public purposes generally. [Formerly 492.350]

836.230 Use of funds from operation. The officials of any municipality acquiring, establishing, developing, operating, maintaining or controlling an airport under authority of ORS 836.200 may use for such purposes funds derived from operation of the airport. [Formerly 492.360]

836.240 Authorization to budget and levy taxes. Any municipality acting under authority of ORS 836.200 may provide in its annual budget and tax levy an amount of money necessary for the maintenance and operation of such airports. [Formerly 492.370]

836.245 Authority as supplemental. The authority conferred by ORS 836.200, 836.205, 836.215, 836.220 and 836.240 is in addition and supplemental to the authority conferred by any other law. [Formerly 492.380]

836.250 Acquisition by municipality of real property contiguous to airport; subsequent use or disposition; financing acquisition or use. (1) In addition to the authority conferred upon them by any

other law, any municipality of this state acquiring, establishing, developing, operating, maintaining or controlling an airport under ORS 836.200 to 836.245, may acquire real property, or any interest therein of whatever kind, contiguous to the airport by gift, grant, purchase, lease or contract for future development and expansion of the airport or its facilities. Until needed for such future development and expansion, the municipality may use the real property or interest therein so acquired by renting, leasing, controlling or occupying it.

(2)(a) If any real property owned by any municipality referred to in subsection (1) of this section and held for the use of an airport or its facilities is determined not to be needed for such purposes by the governing body of a municipality controlling the airport, such governing body may lease, occupy, use, sell, convey or dispose of such real property.

(b) Except as provided in subsection (3) of this section, any sale of real property under paragraph (a) of this subsection shall be made in accordance with the provisions of ORS 275.110 and 275.120. The proceeds of any sales made by the municipality shall apply against any indebtedness acquired under ORS 836.220. If no indebtedness exists, such funds shall be deposited to the general fund of such municipality.

(3) Sales of real property by the Port of Portland shall be governed by applicable federal laws and regulations and by the provisions of ORS chapters 777 and 778.

(4) All funds needed by any municipality to carry out any provision of this section may be provided in the same manner as funds may be provided under ORS 836.220 or 836.240, or both. [Formerly 492.390; 2003 c.139 §1]

836.300 [Formerly 492.520; 1995 c.285 §10; repealed by 1997 c.859 §14]

836.305 [Formerly 492.530; 1995 c.285 §11; repealed by 1997 c.859 §14]

836.310 [Formerly 492.540; repealed by 1997 c.859 §14]

836.315 [Formerly 492.550; repealed by 1997 c.859 §14]

836.320 [Formerly 492.560; repealed by 1997 c.859 §14]

836.325 [Formerly 492.570; repealed by 1997 c.859 §14]

836.330 [Formerly 492.580; repealed by 1997 c.859 §14]

836.335 [Formerly 492.590; repealed by 1997 c.859 §14]

MISCELLANEOUS

836.340 Procedure for relocation of public utility property. (1) No airport zoning regulations adopted under authority of ORS 836.600 to 836.630 shall require the alteration or relocation of the operating property of any public utility, as defined in ORS 757.005, without the consent of such utility or unless the Public Utility Commission, after notice and hearing in accordance with the rules of procedure of the commission, determines that such alteration or relocation is justified by the public interest.

(2) All administrative expenses incurred in any such hearing shall be paid by the party not prevailing therein. All actual and necessary expenses incurred in making such alteration or change, if any, shall be borne by the municipality. [Formerly 492.600; 1995 c.733 §51; 1997 c.859 §1]

836.345 [Formerly 492.610; repealed by 1997 c.859 §14]

836.350 [Formerly 492.629; repealed by 1997 c.859 §14]

836.355 [Formerly 492.630; repealed by 1997 c.859 §14]

836.360 [Formerly 492.640; repealed by 1997 c.859 §14]

836.365 [Formerly 492.650; repealed by 1997 c.859 §14]

836.370 [Formerly 492.660; repealed by 1997 c.859 §14]

836.375 [Formerly 492.670; repealed by 1997 c.859 §14]

836.380 [Formerly 492.680; repealed by 1997 c.859 §14]

836.385 [Formerly 492.690; repealed by 1997 c.859 §14]

836.390 [Formerly 492.700; repealed by 1997 c.859 §14]

836.395 [Formerly 492.710; repealed by 1997 c.859 §14]

836.400 [Formerly 492.510; repealed by 1997 c.859 §14]

836.410 Permanent closure of public use airport; rules. At least 180 days before permanent closure of a public use airport, as defined by the Oregon Department of Aviation by rule, a person responsible for the operation of the airport shall notify the department of the planned closure. [2007 c.317 §1]

Note: 836.410 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 836 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

836.500 Marks and lights on structures or obstructions; acquisition of right or easement. Every municipality which develops or operates an airport may acquire the right or easement for a term of years or perpetually, to place and maintain suitable marks for the daytime, and to place, operate and maintain suitable lights for the nighttime marking of buildings or other structures or obstructions, to enhance the safety of aircraft utilizing such airport. Such rights or easements may be acquired by grant, purchase, lease or condemnation in the same manner as is provided in ORS chapter 35. [Formerly 492.760]

836.505 Designation of landing places on public lands; rules governing user. (1) Landing places for aircraft may from time to time be designated, set apart and marked by the Oregon Department of Aviation or other public officials who are in charge of any land owned or controlled by the state or by any municipality, or park commission.

(2) Such officials may make reasonable rules and regulations subject to the approval of the State Aviation Board governing the use of the landing places by aviators and other persons, and may change the rules and regulations from time to time. The rules and regulations shall be such as will promote the safe and orderly use of the airports affected. All aviators and other persons using such landing places shall at all times comply with all such rules and regulations. [Formerly 492.770]

836.510 Use of certain ocean beaches as landing fields. Except as permitted under ORS 836.520, no person shall use for a landing field for aircraft any part of the Oregon shore of the Pacific Ocean between high and low tide, commonly known as the “beach,” and which by law has been made a state recreation area, except for an emergency. [Formerly 492.780]

836.515 Petition to set aside shore as landing field. Any person, municipality or municipal corporation desiring to use for a landing field for aircraft any part of the Oregon shore of the Pacific Ocean described in ORS 836.510 shall petition the State Aviation Board to set aside and designate a particular area of the shore for a landing field for aircraft. The petition shall clearly describe the area sought for such purpose and shall contain information giving the type and number of aircraft which will use such field, the extent to which and the purpose for which such field shall be so used, together with such other information as the board may require. Before the petition is filed with the board it shall be approved in writing by the Oregon Department of Aviation. [Formerly 492.790]

836.520 Action on petition; order setting aside area for landing field; user permits; revocation of order or permit. The State Aviation Board shall give due consideration to each petition submitted under ORS 836.515, and may in its discretion order a public hearing in the vicinity in which it is proposed to establish the landing field, at which hearing all persons interested may appear and be heard. If after due consideration the board is of the opinion that the best interests of the general public will be served by granting the petition, an order may be made which shall be entered in the minutes of the board. The order shall provide that the described area shall be set aside as a landing field for aircraft and the order may authorize the issuance of a permit to the applicant to use the field for said purpose. The permit shall contain such conditions and safeguards with respect to policing and other matters incident to the public welfare as the board deems proper for the safety of the general public. The board may, for a violation of any of the terms or conditions of the permit, recall and cancel the same. The board may in its discretion vacate the order setting aside the area for a landing field whenever in the judgment of the board the interests of the general public warrant such action. [Formerly 492.800]

836.525 Enforcement of ORS 836.510 and 836.520. The law enforcing agencies authorized to enforce the laws of the state with respect to the rules of the road and the regulation of motor vehicles using the public highways of the state are likewise authorized to enforce ORS 836.510 and 836.520. [Formerly 492.810]

836.530 Rules and standards; orders; appeals; fees. (1) In addition to any other rulemaking authority, the Director of the Oregon Department of Aviation may adopt rules:

(a) To define physical hazards to air navigation and determine whether specific types or classes of objects or structures constitute hazards. Rules defining physical hazards and determining whether specific types or classes of objects or structures constitute hazards may be adopted only after a fact-finding process and must be supported by substantial evidence.

(b) Establishing standards for lighting or marking objects and structures that constitute hazards to air navigation.

(c) Establishing standards for mitigating physical hazards to air navigation by altering the height or location of objects and structures.

(d) Establishing standards for mitigating hazards to air navigation by altering approach surface standards or installing navigational aids.

(e) Establishing a fee to cover the costs of tall structure evaluations.

(2) In accordance with the rules adopted under this section, the director shall do the following:

(a) Determine whether specific objects or structures constitute a hazard to air navigation.

(b) Determine responsibility for installation and maintenance of lighting or marking and for alteration of the height or location of specific objects or structures that constitute hazards to air navigation.

(c) Issue orders to require that specific objects or structures determined to be hazards to air navigation be marked or lighted in accordance with rules adopted under this section.

(d) Make recommendations to the Federal Aviation Administration to require that airports alter approach surface standards or install navigational aids for the purpose of mitigating hazards to air navigation.

(3) Rules and standards adopted under this section are limited to and may not be more restrictive than current federal norms, including but not limited to, regulations and circulars, pertaining to objects affecting navigable airspace.

(4) Any person or entity required to comply with an order issued under this section may contest the order as provided under ORS chapter 183. [Formerly 492.820; 1999 c.935 §37; 2009 c.399 §3; 2021 c.566 §1]

836.535 Hazards to air navigation prohibited; exceptions. (1) A person may not construct an object or structure that constitutes a physical hazard to air navigation, as determined by the Oregon Department of Aviation in coordination with the governing body with land use jurisdiction over the property.

(2) Subsection (1) of this section does not apply:

(a) To construction of an object or structure that is utilized by a commercial mobile radio service provider; or

(b) If a person received approval or submitted an application for approval from the Federal Aviation Administration or the Energy Facility Siting Council established under ORS 469.450 to construct an object or structure that constitutes a physical hazard to air navigation. [2009 c.399 §2]

LOCAL GOVERNMENT AIRPORT REGULATION

836.600 Policy. In recognition of the importance of the network of airports to the economy of the state and the safety and recreation of its citizens, the policy of the State of Oregon is to encourage and support the continued operation and vitality of Oregon's airports. Such encouragement and support extends to all commercial and recreational uses and activities described in ORS 836.616 (2). [1995 c.285 §2]

836.605 Definitions for ORS 836.600 to 836.630. As used in ORS 836.600 to 836.630:

(1) "Aircraft" means helicopters and airplanes but not hot air balloons or ultralights.

(2) "Airports" means the strip of land used for taking off and landing aircraft, together with all adjacent land used in 1994 in connection with the aircraft landing or taking off from the strip of land, including but not limited to land used for the existing commercial and recreational airport uses and activities as of December 31, 1994. [1995 c.285 §3]

836.608 Airport operation as matter of state concern; local planning documents to recognize airport location; limitations on use; expansion of facility. (1) The continued operation and vitality of airports registered, licensed or otherwise recognized by the Department of Transportation on December 31, 1994, is a matter of state concern.

(2) A local government shall recognize in its planning documents the location of private-use airports and privately owned public-use airports not listed under ORS 836.610 (3) if the airport was the base for three or more aircraft, as shown in the records of the Department of Transportation, on December 31, 1994. Local planning documents shall establish a boundary showing areas in airport ownership, or subject to long-term lease, that are developed or committed to airport uses described in ORS 836.616 (2). Areas committed to airport uses shall include those areas identified by the airport owner that the local government determines can be reasonably expected to be devoted to airport uses allowed under ORS 836.616 (2).

(3)(a) A local government shall not impose limitations on the continued operation of uses described in ORS 836.616 (2) that existed at any time during 1996 at an airport described in subsection (2) of this section. A local government shall allow for the growth of uses described in ORS 836.616 (2) that existed at any time during 1996 at an airport described in subsection (2) of this section. A local government shall not impose additional limitations on a use approved by the local government prior to January 1, 1997, for an airport described in subsection (2) of this section. Notwithstanding subsection (4) of this section, the construction of additional hangars or tie-downs by the owner of an airport

described in subsection (2) of this section, basing additional aircraft and increases in flight activity shall be permitted at an airport described in subsection (2) of this section.

(b) A local government may authorize the establishment of a new use described in ORS 836.616 (2) at an airport described in subsection (2) of this section following a public hearing on the use. The hearing shall be for the purpose of establishing compliance with adopted clear and objective standards relating to the compatibility and adequacy of public facilities and services as provided under subsection (5) of this section. Standards and requirements as adopted by the local government shall further the policy of ORS 836.600 to the maximum extent practicable.

(4) Growth of an existing use on an airport as described in subsection (3)(a) of this section that requires a building permit shall be allowed as an administrative decision without public hearing unless the growth:

(a) Cannot be supported by existing public facilities and services and transportation systems authorized by applicable statewide land use planning goals;

(b) Forces a significant change or significantly increases the costs of conducting existing uses on surrounding lands; or

(c) Exceeds the standards of ORS 215.296 (1) if the airport is adjacent to land zoned for exclusive farm use.

(5) A local government shall authorize a new use described in subsection (3)(b) of this section provided the use:

(a) Is or will be supported by adequate types and levels of public facilities and services and transportation systems authorized by applicable statewide land use planning goals;

(b) Does not seriously interfere with existing land uses in areas surrounding the airport; and

(c) The local government reviews the use under the standards described in ORS 215.296 if the airport is adjacent to land zoned for exclusive farm use.

(6) An applicant for a new use under subsection (5) of this section may demonstrate that the standards for approval will be satisfied through the imposition of conditions. Any conditions imposed shall be clear and objective.

(7) A local government may adopt standards and requirements for the establishment of new airports, the expansion of existing airports and the regulation of uses and activities at airports serving as the base for two or fewer aircraft on December 31, 1994, as shown in the records of the Department of Transportation. The standards and requirements shall comply with applicable statewide land use planning laws.

(8) The Land Conservation and Development Commission shall adopt rules regulating the height of structures to protect approach corridors at airports described in subsection (2) of this section and at publicly owned airports that are the base for two or fewer aircraft. [1997 c.859 §3]

Note: 836.608, 836.612 and 836.623 were added to and made a part of 836.600 to 836.630 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

836.610 Local government land use plans and regulations to accommodate airport zones and uses; funding; rules. (1) Local governments shall amend their comprehensive plan and land use regulations consistent with the rules for airports adopted by the Land Conservation and Development Commission under ORS 836.616 and 836.619. Airports subject to the rules shall include:

(a) Publicly owned airports registered, licensed or otherwise recognized by the Department of Transportation on or before December 31, 1994, that in 1994 were the base for three or more aircraft; and

(b) Privately owned public-use airports specifically identified in administrative rules of the Oregon Department of Aviation that:

(A) Provide important links in air traffic in this state;

(B) Provide essential safety or emergency services; or

(C) Are of economic importance to the county where the airport is located.

(2)(a) Local governments shall amend their comprehensive plan and land use regulations as required under subsection (1) of this section not later than the first periodic review, as described in ORS 197.628 to 197.651, conducted after the date of the adoption of a list of airports by the Oregon Department of Aviation under subsection (3) of this section.

(b) A state agency or other person may provide funding to a local government to accomplish the planning requirements of this section earlier than otherwise required under this subsection.

(3) The Oregon Department of Aviation by rule shall adopt a list of airports described in subsection (1) of this section. The rules shall be reviewed and updated periodically to add or remove airports from the list. An airport may be removed from the list only upon request of the airport owner or upon closure of the airport for a period of more than three years. [1995 c.285 §4; 1997 c.859 §2]

836.612 Approval or expansion of land use activities subject to prior court decisions. Nothing in ORS 836.608 or 836.616 is intended to allow the approval or expansion of a land use activity inside the boundaries of an airport if the activity has been limited or prohibited by the decision of a court of competent jurisdiction rendered prior to August 13, 1997. [1997 c.859 §6]

Note: See note under 836.608.

836.615 [1995 c.285 §5; repealed by 1997 c.859 §4 (836.616 enacted in lieu of 836.615)]

836.616 Rules for airport uses and activities. (1) Following consultation with the Oregon Department of Aviation, the Land Conservation and Development Commission shall adopt rules for uses and activities allowed within the boundaries of airports identified in ORS 836.610 (1) and airports described in ORS 836.608 (2).

(2) Within airport boundaries established pursuant to commission rules, local government land use regulations shall authorize the following uses and activities:

(a) Customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tie-downs, construction and maintenance of airport facilities, fixed-base operator facilities and other activities incidental to the normal operation of an airport;

(b) Emergency medical flight services;

(c) Law enforcement and firefighting activities;

(d) Flight instruction;

(e) Aircraft service, maintenance and training;

(f) Crop dusting and other agricultural activities;

(g) Air passenger and air freight services at levels consistent with the classification and needs identified in the State Aviation System Plan;

(h) Aircraft rental;

(i) Aircraft sales and sale of aviation equipment and supplies; and

(j) Aviation recreational and sporting activities.

(3) All land uses and activities permitted within airport boundaries, other than the uses and activities established under subsection (2) of this section, shall comply with applicable land use laws and regulations. A local government may authorize commercial, industrial and other uses in addition to those listed in subsection (2) of this section within an airport boundary where such uses are consistent with applicable provisions of the acknowledged comprehensive plan, statewide land use planning goals and commission rules and where the uses do not create a safety hazard or limit approved airport uses.

(4) The provisions of this section do not apply to airports with an existing or approved control tower on June 5, 1995. [1997 c.859 §5 (enacted in lieu of 836.615)]

836.619 State compatibility and safety standards for land uses near airports; rules. Following consultation with the Oregon Department of Aviation, the Land Conservation and Development Commission shall adopt rules establishing compatibility and safety standards for uses of land near airports identified in ORS 836.610 (1). [1997 c.859 §8 (enacted in lieu of 836.620)]

836.620 [1995 c.285 §6; repealed by 1997 c.859 §7 (836.619 enacted in lieu of 836.620)]

836.623 Local compatibility and safety requirements more stringent than state requirements; criteria; water impoundments; report to federal agency; application to certain activities. (1) A local government may adopt land use compatibility and safety requirements that are more stringent than the minimum required by Land Conservation and Development Commission rules for issues other than water impoundments where such regulations are within its authority. Local government action regarding new water impoundments shall comply with subsection (2) of this section. If a local government receives information in a hearing on a land use application alleging that public safety requires a higher level of protection than the minimum established in commission rules and if the information is supported by evidence, the governing body shall consider the information and adopt findings explaining the bases for any decision regarding the need for more stringent requirements. Land use requirements regarding safety and compatibility shall consider the effects of mitigation measures or conditions that could reduce safety risks and incompatibility.

(2) The following requirements and conditions shall apply to safety risks associated with potential bird strike hazards resulting from new water impoundments proposed in close proximity to an airport identified under ORS 836.610 (1):

(a) No new water impoundments of one-quarter acre or larger shall be allowed:

(A) Within an approach corridor and within 5,000 feet from the end of a runway; or

(B) On land owned by the airport or airport sponsor where the land is necessary for airport operations;

(b) A local government may adopt regulations that limit the establishment of new water impoundments of one-quarter acre or larger for areas outside an approach corridor and within 5,000 feet of a runway only where the local government adopts findings of fact, supported by substantial evidence in the whole record, that the impoundments are likely to result in a significant increase in hazardous movements of birds feeding, watering or roosting in areas across the runways or approach corridors. The local government shall consider the effects of mitigation measures or conditions that could reduce safety risks and incompatibility;

(c) A local government may adopt regulations that limit the establishment of new water impoundments of one-quarter acre or larger between 5,000 feet and 10,000 feet of a runway outside an approach corridor and between 5,000 feet and 40,000 feet within an approach corridor for an airport with an instrument approach only where the local government adopts findings of fact, supported by substantial evidence in the whole record, that the impoundments are likely to result in a significant increase in hazardous movements of birds feeding, watering or roosting in areas across the runways or approach corridors. The local government shall consider the effects of mitigation measures or conditions that could reduce safety risks and incompatibility;

(d) If a local government receives information and supporting evidence in the hearing process that alleges a significant increase in hazardous movements of birds feeding, watering or roosting in areas across the runways or approach corridors, the local government shall consider the information and evidence and adopt findings as required by paragraphs (b) and (c) of this subsection explaining the bases for any decision regarding the need to limit the establishment of new water impoundments of one-quarter acre or larger; and

(e) Notwithstanding the requirements of paragraphs (a) to (c) of this subsection, wetlands mitigation required for projects located within the areas identified in paragraphs (a) to (c) of this subsection shall be authorized where it is not practicable to provide off-site mitigation.

(3) A local government that receives information under subsection (2)(d) of this section shall forward the information to the Federal Aviation Administration for review and comment prior to any final action by the local government to impose a compatibility or safety standard more stringent than required by rule of the Land Conservation and Development Commission.

(4) Subsection (2) of this section does not apply to a storm water management basin established by an airport identified under ORS 836.610 (1) or agricultural water impoundments in which the water is

used directly for growing crops such as cranberries or rice.

(5) Subsection (2)(a) to (c) of this section does not apply to seaplane landing areas.

(6) As used in this section, "significant" means a level of increased flight activity by birds across approach corridors and runways that is more than incidental or occasional, considering the existing ambient levels of flight activity by birds in the vicinity. [1997 c.859 §9]

Note: See note under 836.608.

836.625 Application to airport uses of land use limitations in farm use zones; effect on tax assessment. (1) The limitations on uses made of land in exclusive farm use zones described in ORS 215.213 and 215.283 do not apply to the provisions of ORS 836.600 to 836.630 regarding airport uses.

(2) The provisions of this section do not affect the eligibility of a zone for special assessment under ORS 308A.050 to 308A.128. [1995 c.285 §7; 1997 c.859 §11; 1999 c.314 §77]

836.630 Siting of new airports to comply with land use laws; limitation on rules. (1) Nothing in ORS 836.600 to 836.625 shall be interpreted to allow the siting of a new airport except as provided in ORS chapters 197 and 215 and in conformance with all applicable land use regulations and ordinances.

(2) The Oregon Department of Aviation shall propose and the Land Conservation and Development Commission shall adopt rules under ORS 836.616 and 836.619 that are no more restrictive than the commission determines necessary to effect the policy established in ORS 836.600.

(3) The provisions of ORS 836.600 to 836.630 and any rules established hereunder shall be liberally construed to further the policy established in ORS 836.600. [1995 c.285 §8; 1997 c.859 §12]

836.635 [1995 c.285 §9; repealed by 1997 c.859 §14]

THROUGH THE FENCE OPERATIONS

836.640 Definitions for ORS 836.640 and 836.642. As used in this section and ORS 836.642:

(1) "Airport boundary" includes the combined public and private properties that are permitted to have direct access to the airport runway by aircraft.

(2) "Customary and usual aviation-related activity" includes activities described in ORS 836.616 (2) and includes activities that a local government may authorize pursuant to ORS 836.616 (3).

(3) "Pilot site" means a rural airport identified to participate in the pilot program pursuant to ORS 836.642.

(4) "Rural airport" means an airport described in ORS 836.610 (1) that principally serves a city or metropolitan statistical area with a population of 500,000 or fewer.

(5) "Through the fence operation" means a customary and usual aviation-related activity that:

(a) Is conducted by a commercial or industrial user of property within an airport boundary; and

(b) Relies, for business purposes, on the ability to taxi aircraft directly from the property employed for the commercial or industrial use to an airport runway. [2005 c.820 §2; 2009 c.11 §100; 2009 c.398 §1; 2016 c.35 §1]

836.642 Program for through the fence operations; rules. (1) The Oregon Department of Aviation shall establish a pilot program at up to six rural airports to encourage development of through the fence operations designed to promote economic development by creating family wage jobs, by increasing local tax bases and by increasing financial support for rural airports. To the extent practicable, the airport sponsor of a pilot site shall use public-private partnerships that incorporate:

(a) Innovative and creative technologies for increasing airport usability and safety;

(b) Innovative and creative performance of aviation services to make the services more competitive and useful for the public;

(c) Development of the pilot site as a setting for customary and usual aviation-related activities to develop and thrive, in concert with the goals of the Oregon Business Development Department; and

(d) Shared responsibility for:
(A) Establishing and meeting the fiscal needs of the pilot site;
(B) Maintaining safety of operations; and
(C) Maintaining positive community relations and compatibility with existing uses.
(2) The pilot program shall operate at:
(a) The Aurora State Airport; and
(b) Not more than five additional rural airports that volunteer to participate and are selected by the Oregon Department of Aviation with the concurrence of the county in which each rural airport is located.
(3) The Oregon Department of Aviation, by rule, shall provide standards and guidelines for through the fence operations that:
(a) Ensure that the operations provide financial support to the pilot sites in compliance with Federal Aviation Administration regulations;
(b) Require submission, review, approval and, as appropriate, revision of a facility site plan for each through the fence operation so that the real property covered by the site plan can be incorporated into the airport boundary and coordinated with the other aspects of the airport master plan;
(c) Ensure that the operations are conducted according to a written contract between the commercial or industrial user of property within the airport boundary and the airport sponsor;
(d) Ensure that pilot sites continue to operate in a safe manner and to fulfill their roles in Oregon's emergency response system;
(e) Preserve investments in pilot sites and the level of service provided by pilot sites;
(f) Facilitate orderly management of pilot sites;
(g) Provide equitable and uniform treatment of airport tenants and users at pilot sites;
(h) Advance economic development through qualified customary and usual aviation-related activities within the airport boundaries of pilot sites;
(i) Encourage well-ordered economic development within the airport boundaries of the pilot sites;
(j) Facilitate and foster good relations with the communities surrounding the pilot sites;
(k) Enable conformity with approved airport master plans;
(L) Make pilot sites available for public use on reasonable terms; and
(m) Assist pilot sites in developing financial self-sufficiency through the use of innovative funding and economic development programs.
(4) The Department of Land Conservation and Development, the county and a city, if any, within whose jurisdiction a pilot site is located shall coordinate with the Oregon Department of Aviation to ensure that the applicable comprehensive plans and land use regulations, including airport zoning classifications pursuant to ORS 836.600 to 836.630, facilitate through the fence operations and support the development or expansion of the pilot site consistent with applicable statewide land use planning requirements.
(5) The Oregon Business Development Department shall assist the pilot sites to:
(a) Identify, qualify for and apply for funding from appropriate grant and loan programs; and
(b) Develop innovative short-term and long-term funding opportunities.
(6) To the extent practicable, the airport sponsors shall utilize innovative airport infrastructure and operations funding to support the pilot sites including, but not limited to:
(a) Airport districts as provided in ORS chapter 838;
(b) Economic development programs administered by the Oregon Business Development Department;
(c) Tax increment financing to provide funding for airport-related infrastructure;
(d) United States Department of Agriculture Rural Development grants or low-interest loans; and
(e) Programs, including funding for short line railroads under ORS 367.067, designed to facilitate development of intermodal transportation projects. [2005 c.820 §3; 2009 c.398 §2]

PENALTIES

836.990 Civil penalties. (1) In addition to any other penalty provided by law, the Director of the Oregon Department of Aviation may impose a civil penalty not to exceed $2,500 for each violation of ORS 836.505 or any rule adopted or order issued under ORS 836.505.

(2) The director shall impose civil penalties under this section in the manner provided in ORS 183.745.

(3) All penalties recovered by the Oregon Department of Aviation under this section shall be paid into the State Treasury and deposited to the credit of the State Aviation Account. Such moneys shall be used by the department for the purpose of carrying out ORS 836.505. [2019 c.226 §1]

Note: 836.900 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 836 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.