

**31.3.6 Permits – Particular Uses – Power Generators.** A county finding that wind turbines are a conditional use in a commercial zone is not reversible error, even though wind turbines are not listed as a conditional use in the zone, where the balance of the decision clearly demonstrates the county in fact utilized its authority to approve uses that are similar to listed permitted and conditional uses in the zone to approve the wind turbines. *Burgermeister v. Tillamook County*, 73 Or LUBA 291 (2016).

**31.3.6 Permits – Particular Uses – Power Generators.** Where findings identify an applicable conditional use standard that requires that conditional uses must not impair permitted uses on surrounding property, but the decision includes no findings of fact or findings explaining why the decision maker believed proposed wind turbines satisfied that standard, remand is required for adequate findings. *Burgermeister v. Tillamook County*, 73 Or LUBA 291 (2016).

**31.3.6 Permits – Particular Uses – Power Generators.** A code provision that requires the applicant for a wind energy facility to obtain the signature of residential landowners consenting to reducing a two-mile setback between the facility and residences violates the Delegation Clause, Article I, section 21, of the Oregon Constitution, because the signature requirement effectively allows neighbors to “veto” the application, for any or no reason, and without appeal or review. *Iberdrola Renewables v. Umatilla County*, 67 Or LUBA 149 (2013).

**31.3.6 Permits – Particular Uses – Power Generators.** State law that generally makes EFSC the sole authority to determine what constitutes the “applicable substantive criteria” when EFSC evaluates an application for a wind power generation facility preempts a county code provision that purports to dictate the county code requirements that will be included in the “applicable substantive criteria” applied in EFSC proceedings. *Iberdrola Renewables v. Umatilla County*, 67 Or LUBA 149 (2013).

**31.3.6 Permits – Particular Uses – Power Generators.** A county ordinance that allows a private residential landowner or a city council to unilaterally “waive” a two-mile setback from wind towers to a lesser distance, potentially to a zero setback, violates the Article I, section 21, delegation clause of the Oregon Constitution, because it authorizes an entity other than the county to determine whether there is a setback at all and if so the extent of that setback. *Cosner v. Umatilla County*, 65 Or LUBA 9 (2012).

**31.3.6 Permits – Particular Uses – Power Generators.** A county ordinance that allows a private residential landowner or a city council to “waive” a two-mile setback from wind towers and substitute a lesser or no setback violates the Due Process Clause of the U.S. Constitution, because it grants wind tower project neighbors the arbitrary and standardless power to determine whether and to what extent there is a setback for wind tower development. *Cosner v. Umatilla County*, 65 Or LUBA 9 (2012).

**31.3.6 Permits – Particular Uses – Power Generators.** Under DEQ’s noise regulations a wind energy generation facility may add 10 decibels to the background ambient noise level. In determining whether the facility violates that noise standard the operator may assume that the background ambient noise level is 26 decibels or actually measure the background ambient noise level and the operator’s selection of the assumed 26 decibel background ambient noise level at one

measuring location and time does not preclude the operator from selecting actual measured background ambient noise level at other measurement locations and times. *Mingo v. Morrow County*, 63 Or LUBA 357 (2011).

**31.3.6 Permits – Particular Uses – Power Generators.** Ancillary local government decisions pertaining to the siting of energy generating facilities that might otherwise fall under the definition of land use decisions subject to LUBA’s jurisdiction are nevertheless subject to the exclusive jurisdiction of the Oregon Energy Facility Siting Council, with direct review by the Oregon Supreme Court. *Thomas v. City of Turner*, 42 Or LUBA 39 (2002).

**31.3.6 Permits – Particular Uses – Power Generators.** OAR 660-06-025(4)(i) allows power generation facilities on forestlands without a Goal 4 exception, provided such facilities do not remove more than 10 acres of land from resource use. OAR 660-33-130(23) includes similar provisions for power generation facilities on agricultural lands without a Goal 3 exception, but requires that the power generation facilities not remove more than 20 acres of land from resource use. *DLCD v. Douglas County*, 28 Or LUBA 242 (1994).