31.3.6 Permits – Particular Uses – Power Generators. That two applicants for conditional use permits for two solar facilities are contemporaneously seeking partition approval to create two 320-acre parcels from the same parent tract for the proposed facilities does not establish that the proposed facilities will not be on a "single tract," for purposes of OAR 660-033-0130(38)(f), where there is no evidence, findings, or conditions that such partitions have or will become final and that the two 320-acre parcels have been or will be conveyed, by deed, to third parties. *ODFW v. Lake County*, 81 Or LUBA 300 (2020).

31.3.6 Permits – Particular Uses – Power Generators. A condition of approval requiring an applicant for a conditional use permit for a solar facility to continue working privately with ODFW to agree on a wildlife habitat mitigation plan, outside a public participatory process, and return to the county for approval of the mitigation plan only if the applicant is unable to reach agreement with ODFW, is not sufficient to establish compliance with OAR 660-033-0130(38)(j)(G) for the reasons stated in Gould v. Deschutes County, 216 Or App 150, 171 P3d 1017 (2007), where it does not require a subsequent county proceeding on the mitigation plan and where it does not specify that the subsequent proceeding will be infused with the same participatory rights as the initial conditional use permit proceeding. *ODFW v. Lake County*, 81 Or LUBA 300 (2020).

31.3.6 Permits – Particular Uses – Power Generators. Where the record contains evidence that the fire safety measures required for a proposed solar facility exceed those required for an existing Christmas tree farm and extensive observations of fires involving solar panels but no evidence of incidents of injury to fire suppression personnel from electrified solar panels, a conclusion that the solar facility will not "significantly increase risks to fire suppression personnel" for purposes of OAR 660-006-0025(5)(b) is supported by substantial evidence, even though electrical equipment is present on a solar facility and not present on a Christmas tree farm. *York v. Clackamas County*, 81 Or LUBA 20 (2020).

31.3.6 Permits – Particular Uses – Power Generators. A condition of approval requiring an applicant that has applied to site a solar facility in an area currently used for growing Christmas trees to offer a fire safety training course to the local fire district is inadequate to establish that "[t]he proposed use will not * * * significantly increase risks to fire suppression personnel" for purposes of OAR 660-006-0025(5)(b) and local code provisions implementing that rule. *Chang v. Clackamas County*, 80 Or LUBA 321 (2019).

31.3.6 Permits – Particular Uses – Power Generators. An approximately 80-acre photovoltaic solar power generation facility is not "industrial development" for purposes of OAR 660-004-0022(3)(c). *1000 Friends of Oregon v. Jackson County*, 80 Or LUBA 521 (2019).

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).