

1                                   BEFORE THE LAND USE BOARD OF APPEALS  
2                                   OF THE STATE OF OREGON

3  
4                                   LANDSEM FARMS, LP,  
5                                   *Petitioner,*

6  
7                                   vs.

8  
9                                   MARION COUNTY,  
10                                  *Respondent.*

11  
12                                 LUBA No. 2002-160

13  
14                                 FINAL OPINION  
15                                 AND ORDER

16  
17                                 Appeal from Marion County.

18  
19                                 Patrick E. Doyle, Silverton, filed the petition for review and argued on behalf of  
20 petitioner. With him on the brief was Kelley and Kelley.

21  
22                                 Jane Ellen Stonecipher, Assistant Legal Counsel, Salem, filed the response brief and  
23 argued on behalf of respondent. With her on the brief was Michael J. Hansen.

24  
25                                 HOLSTUN, Board Member; BASSHAM, Board Chair; BRIGGS, Board Member,  
26 participated in the decision.

27  
28                                 REMANDED

06/05/2003

29  
30                                 You are entitled to judicial review of this Order. Judicial review is governed by the  
31 provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioner appeals a county decision that dismisses its application for conditional use approval to hold social gatherings at its private airfield.

**FACTS**

The subject property includes approximately 20 acres and is zoned Exclusive Farm Use (EFU). The county issued a conditional use permit for a private airfield on the subject property in 1972. According to the challenged decision, the subject property is developed with “a dwelling, barn, four hangers, a hanger under construction, and an airstrip.” Record 8.

Petitioner sought an administrative determination from the county regarding its rights to expand the airport authorized by the 1972 conditional use permit. The county land use hearings officer issued a decision on March 1, 2002. In that decision, the hearings officer adopted findings concerning historic use of the property for “[f]ly-ins and other gatherings, as well as bag drop competitions,” and reached conclusions about future development limits on the subject property:

“Fly-ins and other gatherings, as well as bag drop competitions were also conducted on-site in 1996. While these types of activities may be usual and customary social events, they are not ‘activities incidental to the normal operation of an airport,’ and are not allowed under ORS 836.616(2)(a). Determination of whether these social events are incidental to the use of the property under land use or other laws is not at issue here.

“\* \* \* \* \*

“It is hereby determined that the private airfield established on the subject property under [the 1972 conditional use permit] is limited to an airstrip and hanger facilities for the personal use of the property owner, and may not be expanded beyond this limited use under [the 1972 conditional use permit]. It is also determined that the airfield is subject to the provisions of ORS 836.600 *et seq.*, and \* \* \* implementing rules. Additional hangers or tie-downs may be constructed by the airport owner, and basing additional aircraft and increases in flight activity shall be permitted. Restroom, telephone, coffee making equipment, a desk, charts, maps, books and a base radio for pilot use are allowed. Flight instruction and aircraft service and maintenance are allowed

1 to the extent that they existed in 1996. Expansions of existing uses, and  
2 establishment of new uses are governed by ORS 836.608 and may require  
3 local approvals, including building permit and land use approval. In addition,  
4 no permits may be issued until any existing zoning and building code  
5 violations are resolved.” Supplemental Record 14-16.

6 Sometime after the hearings officer’s March 1, 2002 decision, petitioner submitted an  
7 application for conditional use approval under protest. The application is supported by an  
8 “Applicant’s Statement,” which describes the nature of petitioner’s request:

9 “The applicant is applying for \* \* \* conditional use [approval] to hold up to  
10 twenty-five (25) social gatherings per year.<sup>[1]</sup> These gatherings would be  
11 limited as follows:

12 “(1) Except for those uses which would require the landing strip, e.g. fly-  
13 ins, bag drops, etc., the social gatherings would be limited to the area  
14 immediately surrounding the private residence, the hangars and the  
15 parking area.

16 “(2) These gatherings would not be open to the general public.

17 “(3) There would be no more than twenty-five (25) gatherings per year.

18 “(4) The maximum number of people allowed to attend any gathering  
19 would be two hundred fifty (250).

20 “(5) Gatherings would be limited to the hours of 8:00 a.m. until 10:00 p.m.  
21 in the evening.” Record 88.

22 In an October 14, 2002 decision, the county hearings officer rejected petitioner’s  
23 arguments that the requested social events are (1) exempt from county regulation under ORS  
24 197.015(10)(d), and (2) authorized under the airport planning statutes at ORS 836.600 to  
25 836.630. The hearings officer concluded that the use for which petitioner sought conditional  
26 use approval was not allowed in the county’s EFU zone and accepted planning staff’s  
27 recommendation that the application be dismissed. Record 16. Petitioner appealed that  
28 decision to the board of county commissioners, which affirmed the hearings officer’s  
29 decision on November 7, 2002. This appeal followed.

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<sup>1</sup> Petitioners later reduced the requested number social gatherings annually to 15. Record 23.

1 **INTRODUCTION**

2 A central question in the first assignment of error concerns the scope and legal effect  
3 of Oregon’s statutes regulating outdoor mass gatherings and whether 1999 legislation that  
4 amended the ORS 197.015(10) definition of the statutory term “land use decision” has the  
5 legal effect of exempting certain gatherings that attract fewer than 3,000 persons from any  
6 obligation to comply with county land use regulations. We first consider those statutes  
7 before turning to petitioner’s assignments of error.

8 **A. Outdoor Mass Gathering Permits**

9 A comprehensive statutory scheme for regulating outdoor mass gatherings is codified  
10 at ORS 433.735. As defined by statute, a gathering is an “outdoor mass gathering” if it falls  
11 within four parameters: (1) number of participants (more than 3,000 people); (2) duration  
12 (more than 24 hours but less than 120 hours); (3) frequency (not more than one gathering  
13 each three months); and (4) location (in open spaces and without permanent structures).<sup>2</sup>

14 The key features of the outdoor mass gathering statutory regulatory scheme are  
15 summarized in outline form below:

- 16 1. Outdoor mass gatherings may not be held without a permit from the  
17 county. ORS 433.745(1).
- 18 2. The Oregon Department of Human Services (DHS) is directed to  
19 adopt health and safety rules for outdoor mass gatherings. ORS  
20 433.760.

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<sup>2</sup> ORS 433.735(1) provides:

“‘Outdoor mass gathering,’ unless otherwise defined by county ordinance, means an actual or reasonably anticipated assembly of more than 3,000 persons which continues or can reasonably be expected to continue for more than 24 consecutive hours but less than 120 hours within any three-month period and which is held primarily in open spaces and not in any permanent structure.”

Marion County has exercised its right under ORS 433.735(1) to adopt its own definition of outdoor mass gathering. The county defines large gatherings that last more than 6 hours as outdoor mass gatherings and distinguishes between gatherings of 1,000 to 3,000 persons and those that exceed 3,000 persons. The county’s unique definitions and regulation of outdoor mass gatherings is not legally significant in this case, and our focus in this opinion is on the relevant statutory provisions.

- 1           3.     If an outdoor mass gathering organizer applies for a permit, the county  
2 governing body is directed to hold a hearing on the application. If the  
3 organizer demonstrates that the gathering will comply with DHS  
4 health and safety rules, the county governing body must issue a permit.  
5           ORS 433.750(1).
- 6           4.     In certain circumstances, the county governing body is authorized to  
7 require that the organizer secure an insurance policy of up to \$1  
8 million to insure against personal injury and property damage.   ORS  
9           433.755.
- 10          5.     County permits for outdoor mass gatherings may be challenged in  
11 circuit court through a writ of review proceeding, and the district  
12 attorney is specifically authorized to file an action in circuit court to  
13 restrain violations of the outdoor mass gathering statutes. Circuit  
14 courts are ordered to give docket preference to such actions.   ORS  
15           433.750(5); 433.770.

16           In *1000 Friends of Oregon v. Wasco County*, 6 Or LUBA 117, 122, *aff'd* 62 Or App  
17 663 (1983), LUBA found that under the above-described statutory scheme the DHS health  
18 and safety requirement are the exclusive criteria for approval of an outdoor mass gathering  
19 permit. LUBA concluded that county approval of outdoor mass gatherings under ORS  
20 433.735 to 433.770 was not subject to the statewide planning goals or local land use  
21 regulations and that such approvals are not land use decisions subject to review by LUBA.  
22 *Id.*; see also *Fence v. Jackson County*, 29 Or LUBA 147, *rev'd and remanded in part, aff'd*  
23 *in part* 135 Or App 574, 900 P2d 524 (1995).<sup>3</sup>

24           **B.     Extended Mass Gatherings**

25           In 1985, the legislature adopted the current statutory distinction between “outdoor  
26 mass gatherings” (which last between 24 hours and 120 hours) and mass gatherings that last  
27 more than 120 hours (hereafter extended mass gatherings). Or Laws 1985, ch 758. Unlike

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<sup>3</sup> The Court of Appeals held that LUBA’s opinion in *Fence* overstated the preemptive effect of the outdoor mass gathering statutes on counties’ authority to adopt supplemental health and safety regulations that are not inconsistent with the outdoor mass gathering statute and DHS rules. In *Fence*, the Court of Appeals concluded that some of the health and safety regulations that LUBA had found were inconsistent with the statute were not inconsistent with the statute.

1 approval of outdoor mass gatherings, approval of extended mass gatherings is subject to both  
2 statutory land use standards and local land use regulations, in addition to the DHS health and  
3 safety regulations.<sup>4</sup> Because approval of extended mass gatherings is subject to local land  
4 use regulations, decisions approving such extended mass gatherings are land use decisions  
5 subject to review by LUBA.

6 **C. 1999 Statutory Change**

7 Only those gatherings that meet the ORS 433.735(1) size, duration, frequency and  
8 locational criteria qualify as “outdoor mass gatherings” and are thereby excused from having  
9 to comply with local land use regulations by ORS 433.750(1). Apparently some counties  
10 were applying local land use regulations to smaller gatherings. In 1999, the statutory  
11 definition of “land use decision” at ORS 197.015(10) was amended. Petitioner contends the  
12 purpose of that amendment was to excuse certain gatherings of less than 3,000 persons  
13 (hereafter small gatherings) from local land use regulation. Or Laws 1999 ch 866, § 1. In

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<sup>4</sup> ORS 433.763(1) provides:

“Any gathering of more than 3,000 persons which continues or can reasonably be expected to continue for more than 120 hours within any three-month period and any part of which is held in open spaces shall be allowed by a county planning commission if all of the following occur:

“(a) The organizer makes application for a permit to the county planning commission.

“(b) The applicant demonstrates to the county planning commission that the applicant has complied or can comply with the requirements for an outdoor mass gathering permit set out in ORS 433.750.

“(c) The county planning commission shall make findings that:

“(A) Any permits required by the applicable land use regulations have been granted; and

“(B) The proposed gathering:

“(i) Is compatible with existing land uses; and

“(ii) Does not materially alter the stability of the overall land use pattern of the area.”

1 relevant part, Oregon Laws 1999, chapter 866, section 1 adopts two amendments to ORS  
2 197.015(10). First, it amends ORS 197.015(10) to provide that the statutory definition of  
3 land use decision includes:

4 “[a] decision of a county planning commission made under ORS 433.763[.]”  
5 ORS 197.015(10)(a)(C).<sup>5</sup>

6 Second, it amends the statute to provide that the statutory definition of land use decision:

7 “[d]oes not include authorization of an outdoor mass gathering as defined in  
8 ORS 433.735, or other gathering of fewer than 3,000 persons that is not  
9 anticipated to continue for more than 120 hours *in any three-month period*[.]”  
10 ORS 197.015(10)(d) (emphasis added).

11 Petitioner understands the second of the above-noted amendments to have been adopted to  
12 clarify that county land use laws are not to be applied to either “outdoor mass gatherings” or  
13 the small gatherings described in ORS 197.015(10)(d).

14 Oregon Laws 1999, chapter 866, section 1 is ambiguous in at least two relevant  
15 respects. The first has to do with whether the amendments to ORS 197.015(10) have *any*  
16 preemptive effect on county land use regulations; the second has to do with the meaning of  
17 the emphasized three-month frequency limitation.

18 Turning to the first ambiguity, it is not entirely clear why the ORS 197.015(10)  
19 definition of land use decision was amended to exclude outdoor mass gatherings and small  
20 gatherings if, as petitioner argues, the legislative intent of that amendment was to preempt or  
21 prohibit application of county land use regulations to outdoor mass gatherings and to small  
22 gatherings. As we have already explained, LUBA had already determined in *1000 Friends of*  
23 *Oregon v. Wasco County Court* that ORS 433.750(1) precluded counties from applying their  
24 land use regulations to applicants for outdoor mass gathering permits. Assuming that  
25 decision was correctly decided, Oregon Laws 1999, chapter 866, section 1 was unnecessary

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<sup>5</sup> This amendment expressly provides that decisions concerning extended mass gatherings are land use decisions.

1 to exempt outdoor mass gatherings from county land use regulations. With regard to small  
2 gatherings, a far more straightforward approach would have been to adopt a statute that  
3 directly states that counties shall not apply their comprehensive plans and land use  
4 regulations to such small gatherings.<sup>6</sup> The only clear legal consequences of amending ORS  
5 197.015(10) to expressly exclude small gatherings from the statutory definition of “land use  
6 decision” is to (1) effectively eliminate any possible argument under ORS 197.175(2)(d) that  
7 such decisions are land use decisions, which *must* comply with county land use regulations,  
8 and (2) exempt decisions concerning such small gatherings from LUBA’s review jurisdiction  
9 under ORS 197.825(1).<sup>7</sup> Neither of those legal consequences necessarily supports a  
10 conclusion that counties are also *prohibited* from adopting adopt land use regulations that  
11 regulate such small gatherings if they wish to do so. Nevertheless, we assume without  
12 deciding, for purposes of this opinion, that one of the legal effects of Oregon Laws 1999,  
13 chapter 866, section 1 is to prohibit counties from applying their land use regulations to the  
14 small gatherings described in Oregon Laws 1999, chapter 866, section 1.<sup>8</sup>

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<sup>6</sup> Such a direct prohibition would likely also have the legal effect of making decisions concerning such small gatherings something other than a land use decision, since the only likely way such decisions would qualify as land use decision is under the part of ORS 197.015(10)(a) that defines land use decision to include final decisions that apply “land use regulations.” ORS 197.015(10)(a)(A)(iii).

<sup>7</sup> ORS 197.175(2)(d) provides that counties with acknowledged comprehensive plans and land use regulations must make land use decisions in compliance with those plans and land use regulations. 197.825(1) provides that LUBA has “exclusive jurisdiction to review any land use decision.”

<sup>8</sup> We note that it seems unlikely that the legislature would have adopted Oregon Laws 1999, chapter 866, section 1 for the limited purposes of making county regulation of small gatherings optional and removing any county decisions under such optional regulations from LUBA’s jurisdiction. Petitioner attaches to its petition for review legislative history of Oregon Laws 1999, chapter 866, section 1 that suggests that the intent of that 1999 legislation was to prohibit county regulation of small gatherings altogether, and no party cites any legislative history that suggests a different legislative intent. Additional legislative history that supports petitioner’s contention that Oregon Laws 1999, chapter 866, section 1 was adopted to prohibit county regulation of small gatherings was submitted by petitioners in *Cookman v. Marion County*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 2003-008, June 5, 2003), which we decide this date. Nevertheless, in view of our disposition of the parties’ arguments regarding a second ambiguity in the 1999 legislation, we need not and do not decide that question here.

1           The second ambiguity in Oregon Laws 1999, chapter 866, section 1, concerns the “in  
2 any three-month period” requirement. Petitioner appears to read that requirement as a further  
3 modification or qualification of the “not anticipated to continue for more than 120 hours”  
4 requirement. However, we can think of no way that the words “in any three-month period”  
5 can be read to modify or qualify the 120-hour durational requirement. A gathering either  
6 continues for fewer than 120 hours or it does not; the words “in any three-month period”  
7 neither adds nor subtracts anything from the “not anticipated to continue for more than 120  
8 hours” requirement. The only way that we can see to give any meaning to the “in any three  
9 month period” requirement is to read it to qualify or limit the number of “gatherings” on the  
10 property where gatherings will occur. In other words, a county may not apply its land use  
11 regulations to gatherings of “fewer than 3,000 persons” if the gatherings are shorter than 120  
12 hours in duration and the gatherings do not occur on the relevant property more frequently  
13 than once each three-month period.<sup>9</sup> That interpretation admittedly is neither compelled by  
14 the words of ORS 197.015(10)(d) nor clearly stated, but it gives some meaning to the words  
15 “in any three month period.” We adopt that construction of Oregon Laws 1999, chapter 866,  
16 section 1.<sup>10</sup>

17           To summarize, if we assume the 1999 legislative amendments to ORS 197.015(10)(d)  
18 have the preemptive effect that we describe above and those amendments are read together  
19 with ORS 433.735 to 433.770, outdoor mass gatherings, extended mass gatherings and small  
20 gatherings may be regulated by the county as follows:

- 21           1. Outdoor mass gatherings ((1) 3,000 or more people, (2) lasting between 24  
22           and 120 hours, (3) occurring no more frequently than once every three  
23           months, (4) held in open spaces) are not subject to county land use  
24           regulations. Moreover, county decisions on applications for permits for

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<sup>9</sup> Unlike the provision for extended mass gatherings and the provisions for outdoor mass gatherings, ORS 197.015(10)(d) does not require that the gathering be held in “open spaces” or “primarily in open spaces.” ORS 433.763(1); ORS 433.735(1).

<sup>10</sup> We adopted the same construction of the similar wording in ORS 433.735(1) earlier in this opinion.

1 outdoor mass gatherings are not land use decisions subject to LUBA  
2 review.

3 2. Extended mass gatherings ((1) 3,000 or more people, (2) lasting more than  
4 120 hours, (3) occurring no more frequently than once every three months,  
5 (4) held in open spaces) are subject to county land use regulations.  
6 County decisions on permit applications for extended mass gatherings are  
7 land use decisions subject to LUBA review.

8 3. Small gatherings ((1) attracting fewer than 3,000 persons, (2) lasting fewer  
9 than 120 hours, (3) occurring no more frequently than once every three  
10 months) are not subject to county land use regulations. Any county  
11 decisions regarding such small gatherings are not land use decisions  
12 subject to LUBA review.

13 **FIRST ASSIGNMENT OF ERROR**

14 **A. ORS 197.015(10)(d)**

15 The 15 annual social gatherings for which petitioner requested conditional use  
16 approval are small (fewer than 250 people), and for that reason alone, they would not qualify  
17 as outdoor mass gatherings or extended mass gatherings. We discussed those larger  
18 gatherings in the introduction above solely as statutory context for the smaller gatherings  
19 referenced in ORS 197.015(10)(d).

20 Petitioner’s first assignment of error is directed at what it describes as “non-aviation  
21 related activities \* \* \* such as weddings.” Petition for Review 7.<sup>11</sup> Petitioner argued below  
22 that these social events are exempted from county land use regulation by the 1999 legislative  
23 amendments codified at ORS 197.015(10)(d), which were discussed in the introduction  
24 above. As we have already explained, we assume without deciding that petitioner is correct  
25 in its contention that ORS 197.015(10)(d) exempts the small gatherings described in that

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<sup>11</sup> Petitioner distinguishes these “non-airport related activities’ from “aviation related activities, including fly-ins, bag drops and other gatherings involving pilots.” Petition for Review 7. Although it is not entirely clear, we understand petitioner to distinguish between those social events that are simply part of airport-related uses that the county must allow under ORS 836.600 to 836.630, from those social events that are not airport-related.

1 statute from county land use regulations. The question then becomes whether petitioner's  
2 gatherings fall with the terms of ORS 197.015(10)(d).

3 The hearings officer described petitioner's arguments concerning its view of the "in  
4 any three-month period" language in ORS 197.015(10)(d) and rejected petitioner's  
5 interpretation of the statute:

6 "Under ORS 197.015(10)(d), a land use decision does not include  
7 authorization of an outdoor mass gathering as defined in ORS 433.375, or  
8 other gathering of fewer than 3,000 persons that is not anticipated to continue  
9 for more than 120 hours in any three month period.

10 "[Petitioner claims] the gatherings are under 3,000 people and do not last for  
11 more than 120 hours, and that each new event is a new gathering, so they are  
12 not regulated as land use decisions. \* \* \*

13 "[Petitioner's] interpretation ignores the three month period part of the  
14 regulation. Only one unregulated gathering is allowed within a three month  
15 period. More frequent gatherings, like those proposed by [petitioner], are  
16 subject to land use regulations, unless exempted by the airport planning  
17 rules." Record 12.

18 For the reasons explained in the introduction, we agree with the hearings officer's  
19 interpretation of ORS 197.015(10)(d) and reject petitioner's interpretation. In its brief,  
20 petitioner argues the county's interpretation is inconsistent with legislative history of the  
21 1999 legislation, but the legislative history that petitioner cites does not address the intended  
22 meaning of "in any three-month period." Petitioner also argues the county interpretation is  
23 inconsistent with the language of ORS 197.015(10)(d):

24 "The County's focus on the frequency of the event flies in the face of  
25 statutory language as well. Nothing in the statute limits [petitioner] to a single  
26 gathering within a three month period. The statute uses the word 'gathering'  
27 in its singular form. Because each individual gathering held by [petitioner]  
28 falls outside the statutory definition, each individual gathering is exempt from  
29 regulation as a land use matter.

30 "Furthermore, if the legislature had intended to limit the mass gathering to  
31 one gathering not to exceed 120 hours, there would be no need for a reference  
32 to a three-month period. It would have been sufficient to state that the  
33 gathering could not exceed 120 hours since there is no way that 120 hours can  
34 ever exceed a three-month period." Petition for Review 10-11.

1 We disagree with the first of the above-quoted paragraphs, and we do not understand  
2 petitioner’s intended point in the second paragraph. It is simply implausible that the  
3 legislature intended to exempt gatherings of up to 3,000 people lasting up to 120 hours  
4 without regard to how many of those gathering might occur each year on a particular  
5 property. There is simply no way to square such a legislative intent with the words “in any  
6 three-month period.” As we have already explained, interpreting the “in any three-month  
7 period” to limit the statutory exemption to one gathering on a property each three-month  
8 period is the only way to give any reasonable effect to those words. We are not persuaded by  
9 petitioner’s arguments to the contrary.

10 In summary, the county’s decision finds in part that the portion of petitioner’s  
11 business that schedules non-airport related social functions on the subject property is not  
12 allowed in the EFU zone. That part of the county’s decision is not inconsistent with or  
13 precluded by ORS 197.015(10)(d).

14 **B. ORS 836.616(3) and ORS 836.625(1)**

15 As we explain in our discussion of the second assignment of error, ORS 836.600 to  
16 836.630 require that the county allow certain “commercial and recreational uses and  
17 activities” related to airports. In this subassignment of error, petitioner relies on ORS  
18 836.616(3) and 836.625(1) to argue that the county erred by not considering whether those  
19 statutes might “authorize [petitioner’s] proposed use of the airfield for weddings.”<sup>12</sup>  
20 Petitioner contends that this issue was raised below. Petition for Review 14.

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<sup>12</sup> As relevant, ORS 836.616(3) provides:

“\* \* \* A local government may authorize commercial, industrial and other uses in addition to those listed in [ORS 836.616(2)] 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.”

ORS 836.625(1) provides:

1 It does not appear that the county responds directly to this argument in its brief.  
2 However, the question that petitioner raises is essentially a question of statutory  
3 interpretation, and we believe petitioner misreads the statutes. ORS 836.616 could be clearer  
4 on the point, but we do not believe it either authorizes or requires that the county consider  
5 requests to approve commercial uses at airports on a case-by-case basis when the applicable  
6 land use regulations do not allow approval of such commercial uses. To the extent petitioner  
7 argues otherwise, we reject the argument.

8 It is quite clear from the county’s decision that it interprets its EFU zone to prohibit  
9 an airport in the county EFU zone from including a wedding and special events business in  
10 its airfield business operation. Since nothing in ORS 836.600 to 836.630 requires that the  
11 county allow a wedding and special events business as part of an airport, ORS 836.625(1)  
12 similarly is of no assistance to petitioner.

13 This subassignment of error is denied.

14 The first assignment of error is denied.

## 15 **SECOND ASSIGNMENT OF ERROR**

### 16 **A. Fly-ins and Bag Drops**

17 The hearings officer rejected petitioner’s contention that denial of petitioner’s request  
18 to engage in certain aviation-related activities is prohibited by ORS 836.600 to 836.630.

19 “[F]ly-ins, and other gatherings, as well as bag drop competitions were  
20 conduc[t]ed on the subject property in 1996. These activities do not fit into  
21 any of the ORS 836.616 uses allowed outright. Applicant apparently argues  
22 that these activities fit under ORS 836.616(2)(a), but, these activities are  
23 *social* events, not activities incidental to the normal *operation* of an airport.  
24 The uses are not allowed outright under ORS 836.616.<sup>[13]</sup>

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“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.”

<sup>13</sup> We set out the relevant statutory language later in this opinion.

1 “CONCLUSION

2 “\* \* \* The hearings officer has no authority to approve uses that are not  
3 allowed or conditionally permitted in the EFU zone. The social gatherings, as  
4 described by [petitioner], are not allowed, conditionally permitted or exempt  
5 uses under land use, mass gathering or airport planning laws.

6 “\* \* \* \* \*

7 “VI. Order

8 “It is hereby found that holding social gatherings, as proposed by applicant, is  
9 not allowed or conditionally permitted in the EFU zone. It is further found  
10 that the hearings officer has no authority to approve uses not listed in the  
11 zone. The hearings officer therefore lacks jurisdiction to grant the use, and the  
12 application to conduct social gatherings in the EFU zone is **DISMISSED.**”  
13 Record 15-16 (emphasis, capitalization and bold lettering in original).”

14 Petitioner argues the county erred “in holding that airport related activities such as  
15 bag drops, fly-ins and other gatherings are not allowed uses under ORS 836.600 to 836.630  
16 \* \* \*.” Petition for Review 14.

17 ORS 836.600 to 836.630 protect certain “commercial and recreational uses and  
18 activities” related to airports.<sup>14</sup> Under ORS 836.616(2), local governments are directed to  
19 authorize certain uses and activities. As relevant in this appeal, ORS 836.616(2) provides:

20 “Within airport boundaries established pursuant to commission rules, local  
21 government land use regulations shall authorize the following uses and  
22 activities:

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

27 “\* \* \* \* \*

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<sup>14</sup> ORS 836.600 sets out the following legislative 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).”

1           “(j) Aviation recreational and sporting activities.”

2           The Land Conservation and Development Commission’s Airport Planning rule  
3 further defines the scope of the uses and activities that are authorized by ORS 836.616(2)(j),  
4 and provides in relevant part:

5           “Local government[s] shall adopt land use regulations for areas within the  
6 airport boundary of non-towered airports identified in ORS 836.610(1) that  
7 authorize the following uses and activities:

8           “\* \* \* \* \*

9           “(8) Aeronautic Recreational and Sporting Activities, including activities,  
10 facilities and accessory structures at airports that support recreational  
11 use of aircraft and sporting activities that require the use of aircraft or  
12 other devices used and intended for use in flight. Aeronautic  
13 Recreation and Sporting Activities on airport property shall be subject  
14 to approval of the airport sponsor. Aeronautic recreation and sporting  
15 activities include but are not limited to: *fly-ins*; glider flights; hot air  
16 ballooning; ultralight aircraft flights; displays of aircraft; *aeronautic*  
17 *flight skills contests*; gyrocopter flights; flights carrying parachutists;  
18 and parachute drops onto an airport. As used in this rule, parachuting  
19 and parachute drops includes all forms of skydiving.” OAR 660-013-  
20 0100 (emphases added).

21 The county concedes that ORS 836.616(2)(j) specifically authorizes “aviation recreational  
22 and sporting activities.” When that statute is read with OAR 660-013-0100(8), it is clear that  
23 that petitioner may use its airport for those purposes.<sup>15</sup> The hearings officer erred in  
24 concluding to the contrary.

25           **B. Other Airport Related Social Activity**

26           Despite the county’s above-noted concession that the hearings officer erred in finding  
27 that fly-ins and bag drops are not allowed activities at petitioner’s airfield, the county goes  
28 on in its brief to argue as follows:

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<sup>15</sup> We need not and do not consider petitioner’s additional arguments that the county must also allow fly-ins and bag drops under ORS 836.616(2)(a) as “customary and usual aviation-related activities” or under ORS 836.608(3), which requires that the county allow certain uses that existed in 1996 to continue and grow.

1           “Petitioner is incorrect, however, in its argument that social events involving  
2 pilots and their families must be allowed under ORS 836.616(2)(a). \* \* \* The  
3 text of [ORS 836.616(2)(a) describes uses that] are truly aviation related: the  
4 landing and taking off of aircraft, storage of aircraft, fixed-based operator  
5 facilities, airport facility maintenance and construction. This does not support  
6 construction of the phrase ‘normal airport operations’ to include activities that  
7 do not relate to aviation.

8           “‘Hangar parties, weddings and other family parties,’ even if they were  
9 ‘customary’ events held at small airports as petitioner suggests, are neither  
10 aviation related nor do they have anything to do with airport operations.

11           “The fact that some social events that included pilots or their families have  
12 been held at the airport does not make these events ‘aviation-related  
13 activities.’ Just as a reception involving lawyers is not an activity related to  
14 court operations, a social gathering of pilots is not an activity related to airport  
15 operations.” Respondent’s Brief 6-7.

16           It is far from clear whether some of the social gatherings that petitioner envisions in  
17 its request for advance conditional use approval might be accurately described as  
18 “incidental” to the other activities specified at ORS 836.616(2)(a). If they are, it is at least  
19 possible that such incidental social gatherings might be allowed under that statute. The  
20 county’s apparent argument to the contrary does not appear to recognize that in addition to  
21 the specified airport functions, ORS 836.616(2)(a) protects “other activities incidental to the  
22 normal operations of an airport.”<sup>16</sup> On the other hand, the above county argument might  
23 have simply been intended to clarify that the county does not agree it must allow activities on  
24 the subject property that are primarily social functions and are only tangentially or  
25 peripherally related to the airport activities described in ORS 836.616(2).<sup>17</sup>

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<sup>16</sup> For example, the county’s position that a reception involving lawyers does not fall within “court operations” does not answer the relevant question. The relevant question in that context would be whether a court-sponsored reception is something other than an activity that is “incidental to the normal operation” of a court. While we do not attempt to answer that question here, we do not believe the answer is obvious.

<sup>17</sup> For example a wedding where the bride and groom arrive and depart by airplane, but all the other guests arrive by automobile.

1           We recognize that either the county or the petitioner might have a valid argument in a  
2 more precisely defined circumstance. However, petitioner made no effort in its application  
3 to describe the nature of the anticipated social gatherings in any real detail. Accordingly, we  
4 are in no position to resolve the parties' largely hypothetical dispute over the degree of  
5 incidental social activity that might be permissible on the subject property in conjunction  
6 with any particular activity that the county must authorize under ORS 836.616(2).

7           The second assignment of error is sustained in part.

8           The county's decision is remanded.