

ARTICLE 29

AIRPORT PROTECTION ZONE

SECTION 29.010, PURPOSE: In order to carry out the provisions of this protection zone, there is hereby created an overlay zone which includes all of the land lying beneath the airport imaginary surfaces. This protection zone is intended to encourage and support the continued operation and vitality of public use airports with non-precision instrument approaches by preventing the establishment of air space obstructions in airport approaches and surrounding areas through height restrictions and other land use controls deemed essential to reduce potential safety hazards in order to protect the health, safety, and welfare of the people of Wallowa County.

SECTION 29.015, COMPLIANCE: In addition to complying with the provisions of the underlying zones, uses and activities shall comply with the provisions of this protection zone. In the event of any conflict between any provisions of this protection zone and the underlying zones, the more restrictive provision shall apply. This Article shall apply to all County lands beneath the imaginary surfaces and impact areas generated by a public airport. Private airports shall conform to applicable State and federal regulations.

SECTION 29.020, SPECIAL DEFINITIONS:

01. **AIRPORT PROTECTION ZONE:** An overlay zone whose boundaries include all lands lying beneath a public airport's imaginary surfaces. See Table 1 for limitations and restrictions on allowed uses in the Airport Protection Zone.
02. **AIRPORT ELEVATION:** The highest point of an airport's useable runway, measured in feet above mean sea level.
03. **AIRPORT NOISE IMPACT BOUNDARY:** Areas located within 1,500 feet of an airport runway or within established noise contour boundaries exceeding 55 Dnl.
04. **AIRPORT OBSTRUCTION:** Any structure, tree, plant, or use of land which exceeds height limits established by the airport imaginary surfaces.
05. **AIRPORT SPONSOR:** The owner, manager, or other person or entity designated to represent the interests of an airport.
06. **AIRPORT IMAGINARY SURFACES:** Imaginary areas in space and on the

ground that are established in relation to the airport and its runways. Imaginary areas are defined by the primary surface, runway protection zone, approach surface, horizontal surface, conical surface and transitional surface. The dimensions of the imaginary surfaces are based on a non-precision instrument approach utility runway.

Approach Surface: A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface.

- A. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of 2000 ft.
- B. The approach surface extends for a horizontal distance of 5,000 feet at a slope of 20 feet outward for each foot upward.
- C. The outer width of an approach surface will be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.

Conical Surface: A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

Horizontal Surface: A horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is 5000 feet.

Primary Surface: A surface longitudinally centered on a runway. When a runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway. When a runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is 500 ft.

Runway Protection Zone (RPZ): An area off the runway end used to enhance the protection of people and property on the ground. The RPZ is trapezoidal in shape and centered about the extended runway centerline. The inner width of the RPZ is the same as the width of the primary surface. The outer width of the RPZ is a function of the type of aircraft and specified

approach visibility minimum associated with the runway end. The RPZ extends from each end of the primary surface for a horizontal distance of 1,000 feet. [NOTE: the outer width of the RPZ is specified by airport type in OAR 660, Division 13, Exhibit 4]

Transitional Surface: Those surfaces that extend upward and outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to the point of intersection with the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at a 90 degree angle to the extended runway centerline.

07. **PLACE OF PUBLIC ASSEMBLY:** A permanent or temporary structure or facility, place or activity where concentrations of people gather in reasonably close quarters for purposes such as deliberation, education, worship, shopping, employment, entertainment, recreation, sporting events, or similar activities. Public assembly facilities include, but are not limited to, schools, churches, conference or convention facilities, employment and shopping centers, arenas, athletic fields, stadiums, clubhouses, museums, and similar facilities and places, but do not include parks, golf courses or similar facilities unless used in a manner where people are concentrated in reasonably close quarters. Public assembly facilities also do not include air shows, structures or uses approved by the FAA in an adopted airport master plan, or places where people congregate for short periods of time such as parking lots or bus stops.
08. **UTILITY RUNWAY:** A runway that is constructed and intended to be used by aircraft of 12,500 pounds maximum gross weight or less.

29.022 NOTICE OF LAND USE AND PERMIT APPLICATIONS: Except as otherwise provided herein, written notice of applications for permitted land use or limited land use decisions, including comprehensive plan or zoning amendments, in an area within the imaginary surfaces of this protection zone, shall be provided to the airport sponsor and the Department of Aviation in the same manner as notice is provided to property owners entitled by law to written notice of permitted land use or limited land use applications.

01. Notice of land use shall be provided for by the relevant level of review as specified by Section 29.025.
02. In addition to the notice provided for above, notice shall be provided to the airport sponsor and the Department of Aviation when the property, or a portion thereof, that is subject to the land use or limited land use application is located within 5,000 feet of the sides or ends of a runway.

SECTION 29.024, AVIGATION EASEMENT

Within the imaginary surfaces of the protection zone, the owners of properties that are the subjects of applications for land use or limited land use decisions, for building permits for new residential, commercial, industrial, institutional or recreational buildings or structures intended for inhabitation or occupancy by humans or animals, or for expansions of such buildings or structures by the lesser of 50% or 1000 square feet, shall, as a condition of obtaining such approval or permits, dedicate an avigation easement to the airport sponsor. The avigation easement shall be in a form acceptable to the airport sponsor and shall be signed and recorded in the deed records of the County. The avigation easement shall allow unobstructed passage for aircraft and ensure safety and use of the airport for the public. Property owners or their representatives are responsible for providing the recorded instrument prior to issuance of building permits.

SECTION 29.025, USES NOT ALLOWED, PERMITTED USES, AND CONDITIONAL USES WITHIN THE AIRPORT APPROACH SAFETY ZONE:

Applications for land use or building permits for properties within the boundaries of this protection zone shall comply with the requirements of this chapter as provided herein.

01. To meet the standards and reporting requirements established in FAA regulations, Part 77, no structure shall penetrate into the airport imaginary surfaces as defined above under Section 29.025.
02. **Conflicts.** Whenever there is a conflict in height limitations prescribed by this protection zone and the underlying zone, the lowest height limitation fixed shall govern; however, the height limitations here imposed shall not apply to such structures customarily employed for aeronautical purposes.
03. **Noise.** Within airport noise impact boundaries, land uses shall be established

consistent with the levels identified in OAR 660, Division 13, Exhibit 5. A declaration of anticipated noise levels shall be attached to any subdivision or partition approval or other land use approval or building permit affecting land within airport noise impact boundaries. In areas where the noise level is anticipated to be at or above 55 Dnl, prior to issuance of a building permit for construction of a noise sensitive land use (real property normally used for sleeping or as a school, church, hospital, public library or similar use), the permit applicant shall be required to demonstrate that a noise abatement strategy will be incorporated into the building design that will achieve an indoor noise level equal to or less than 55 Dnl. [NOTE: FAA Order 5100.38A, Chapter 7 provides that interior noise levels should not exceed 45 decibels in all habitable zones.]

04. **Outdoor lighting.** No new or expanded industrial, commercial or recreational use shall project lighting directly onto an existing runway or taxiway or into existing airport approach surfaces except where necessary for safe and convenient air travel. Lighting for these uses shall incorporate shielding in their designs to reflect light away from airport approach surfaces. No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.
05. **Glare.** No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.
06. **Industrial emissions.** No new industrial, mining or similar use, or expansion of an existing industrial, mining or similar use, shall, as part of its regular operations, cause emissions of smoke, dust or steam that could obscure visibility within airport approach surfaces, except upon demonstration, supported by substantial evidence, that mitigation measures imposed as approval conditions will reduce the potential for safety risk or incompatibility with airport operations to an insignificant level. The review authority shall impose such conditions as necessary to ensure that the use does not obscure visibility.
07. **Communications Facilities and Electrical Interference.** No use shall cause or create electrical interference with navigational signals or radio communications between an airport and aircraft. Proposals for the location of new or expanded radio, radiotelephone, and television transmission facilities and electrical transmission lines within this protection zone shall be coordinated with the Department of Aviation and the FAA prior to approval.

Approval of cellular and other telephone or radiocommunication towers on leased property located within airport imaginary surfaces shall be conditioned to require their removal within 90 days following the expiration of the lease agreement. A bond or other security shall be required to ensure this result.

08. **Limitations and Restrictions on Allowed Uses in the Runway Protection Zone (RPZ), Approach Surface, and Airport Direct and Secondary Impact Areas:** The land uses identified in Table 1, and their accessory uses, are permitted, permitted under limited circumstances, or prohibited in the manner therein described. In the event of conflict with the underlying zone, the more restrictive provisions shall control. As used in this section, a limited use means a use that is allowed subject to special standards specific to that use.

Table 1: Limitations and Restrictions on Allowed Uses

	RPZ¹	Approach Surface	Direct Impact Area	Secondary Impact Area
Public Airport	L ²	L ⁹	P	P
Residential	N	L ¹⁰	L ¹⁴	P
Commercial	N	L ⁹	L ¹⁵	P
Industrial	N	L ⁹	P	P
Institutional	N	L ⁹	L ¹⁵	P
Farm Use	P ³	P ³	P ³	P ³
Roads/Parking	L ⁴	P	P	P
Utilities	L ⁵	L ⁵	L ⁵	L ⁵
Parks/Open Space	L ⁶	P	P	P
Golf Courses	L ⁷	L ^{7 9}	L ⁷	L ⁷
Athletic Fields	N	L ⁹	L ¹⁴	P
Sanitary Landfills	N	N	N	N
Water Treatment Plants	N	N ¹²	N ¹⁶	N ¹⁶
Mining	N	L ¹¹	L ¹¹	L ¹¹
Water Impoundments	N	N ¹²	N ¹⁶	N ¹⁶

	RPZ¹	Approach Surface	Direct Impact Area	Secondary Impact Area
Wetland Mitigation	N	L ¹³	L ¹³	L ¹³

P = Use is Permitted

L = Use is Allowed Under Limited Circumstances (See Footnotes)

N = Use is Not Allowed

Table 1 Footnotes:

1. No structures shall be allowed within the Runway Protection Zone. Exceptions shall be made only for structures accessory to airport operations whose location within the RPZ has been approved by the Federal Aviation Administration.
2. In the RPZ, public airport uses are restricted to those uses and facilities that require location in the RPZ.
3. Farming practices that minimize wildlife attractants are encouraged.
4. Roads and parking areas are permitted in the RPZ only upon demonstration that there are no practicable alternatives. Lights, guardrails and related accessory structures are prohibited. Cost may be considered in determining whether practicable alternatives exist.
5. In the RPZ, utilities, powerlines and pipelines must be underground. In approach surfaces and in airport direct and secondary impact areas, the proposed height of utilities shall be coordinated with the airport sponsor and the Department of Aviation.
6. Public assembly facilities are prohibited within the RPZ.
7. Golf courses may be permitted only upon demonstration, supported by substantial evidence, that management techniques will be utilized to reduce existing wildlife attractants and avoid the creation of new wildlife attractants. Such techniques shall be required as conditions of approval. Structures are not permitted within the RPZ. For purposes of this Chapter, tee markers, tee signs, pin cups and pins are not considered to be structures.
8. Within 10,000 feet from the end of the primary surface of a nonprecision instrument runway, and within 50,000 feet from the end of the primary surface of a precision instrument runway.
9. Public assembly may be allowed in an approach surface only if the potential danger to public safety is minimal. In determining whether a proposed use is appropriate, consideration shall be given to: proximity to the RPZ; density of people per acre; frequency of use; level of activity at the airport; and other factors relevant to public safety. In general, high density uses should not be permitted within airport approach surfaces, and nonresidential structures

should be located outside approach surfaces unless no practicable alternatives exist.

10. Residential densities within approach surfaces should not exceed the following densities: (1) within 500 feet of the outer edge of the RPZ, 1 unit/acre; (2) within 500 to 1,500 feet of the outer edge of the RPZ, 2 units/acre; (3) within 1,500 to 3,000 feet of the outer edge of the RPZ, 4 units/acre.
11. Mining operations involving the creation or expansion of water impoundments shall comply with the requirements of this Chapter regulating water impoundments.
12. Water impoundments are prohibited within 5,000 feet from the edge or end of a runway.
13. Wetland mitigation required for projects located within an approach surface or airport direct or secondary impact area shall be authorized only upon demonstration, supported by substantial evidence, that it is impracticable to provide mitigation outside of these areas. Proposals for wetland mitigation shall be coordinated with the airport sponsor, the Department of Aviation, the FAA, and wetland permitting agencies prior to the issuance of required permits. Wetland mitigation shall be designed and located to avoid creating a wildlife hazard or increasing hazardous movements of birds across runways and approach surfaces. Conditions shall be imposed as are appropriate and necessary to prevent in perpetuity an increase in hazardous bird movements across runways and approach surfaces. See Section .090 for best management practices for airports located near significant wetlands or wildlife habitat areas.
- ~~14. Within the transition surface, residential uses and athletic fields are not permitted. (Removed via AMD#08-02 on 09/17/2008)~~
15. Within the transition surface, overnight accommodations, such as hotels, motels, hospitals, and dormitories, are not permitted.
16. See Section .035 prohibiting or regulating water impoundments within 5,000 and 10,000 feet of the end or edge of a runway.

SECTION 29.026, LEVEL OF REVIEW: As determined in Table 1 of Section 29.025, Permitted Uses will be subject to Administrative Review and Limited Uses will be considered as Conditional Uses and will be subject to Public Hearing Review.

SECTION 29.028, HEIGHT LIMITATIONS ON ALLOWED USES: All uses permitted by the underlying zone shall comply with the height limitations in this Section. When height limitations of the underlying zone are more restrictive than those of this protection zone, the underlying zone height limitations shall control.

01. Except as provided in subsections 02 and 03 of this Section, no structure or tree, plant or other object of natural growth shall penetrate an airport imaginary surface.
02. For areas within airport imaginary surfaces but outside the approach and transition surfaces, where the terrain is at higher elevations than the airport runway surfaces such that existing structures and permitted development penetrate or would penetrate the airport imaginary surfaces, the review authority may authorize structures up to 35 feet in height.
03. Other height exceptions or variances may be permitted when supported in writing by the airport sponsor, the Department of Aviation and the FAA. Applications for height variances shall follow the procedures for other variances and shall be subject to such conditions and terms as recommended by the Department of Aviation and the FAA.

SECTION 29.030, PROCEDURES: An applicant seeking a land use or limited land use approval in an area within this protection zone shall provide the following information in addition to any other information required in the permit application:

01. A map or drawing showing the location of the property in relation to the airport imaginary surfaces. The Planning Department shall provide the applicant with appropriate base maps upon which to locate the property.
02. Elevation profiles and a site plan, both drawn to scale, including the location and height of all existing and proposed structures, measured in feet above mean sea level.
03. If a height variance is requested, letters of support from the airport sponsor, the Department of Aviation and the FAA.

SECTION 29.035, WATER IMPOUNDMENTS

01. No new or expanded water impoundments of one-quarter acre in size or larger are permitted within 5,000 feet from the end or edge of a runway.
02. The establishment of a new water impoundment one-quarter acre in size or larger within 5,000 to 10,000 feet from the edge or end of a runway may be permitted only upon determination that such water impoundment, with reasonable and practicable mitigation measures, is not likely to result in a

significant increase in hazardous movements of birds feeding, watering or roosting in areas across runways or approach surfaces. [NOTE: FAA Part 77 discourages water impoundments within 50,000 feet of a runway within an approach surface.]

A. **Process.** An application for approval of a new water impoundment shall be considered utilizing the review process applied to applications for conditional use permits. In addition to the parties required by law to be mailed written notice of the public hearing on the application, written notice of the hearing shall be mailed to the airport sponsor, the Department of Aviation, the FAA, and the FAA's technical representative.

1. Prior to filing its application, the applicant shall coordinate with the airport sponsor, the Department of Aviation, the FAA, and FAA's technical representative regarding the proposed water impoundment, its short and long term potential to significantly increase hazardous movements of birds feeding, watering or roosting in areas across runways or approach surfaces, and proposed mitigation.

a) For water impoundments individually or cumulatively exceeding five (5) acres in size on the subject property, the applicant shall prepare a draft bird strike study as provided in subsection .2 of this section. The airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative shall have 45 days to review the study draft. Their comments shall be included and addressed in a final bird strike study.

b) For water impoundments that do not individually or cumulatively exceed five (5) acres in size on the subject property, the bird strike study requirements in subsection 2 of this section may be reduced or waived upon agreement by the airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative if the applicant can demonstrate, to the satisfaction of the airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative that the proposed water impoundment, with appropriate short and long term mitigation, will not result in a significant increase in hazardous movements of birds feeding, watering or roosting in areas across runways or approach surfaces. As used herein, "appropriate mitigation" means small scale measures of proven reliability that can be

applied in perpetuity and that the applicant has the financial resources to support.

2. An application shall not be deemed complete for land use review purposes until the applicant has filed with the Director the final bird strike study addressing comments from the airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative. When no bird strike study is required, the application shall not be deemed complete until the applicant has filed with the Director correspondence or other proof demonstrating agreement among the airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative that no bird strike study is required.

B. Bird Strike Study. A bird strike study required under this section shall contain at least the following information:

1. A description of the proposed project, its location in relation to the airport, and the bird strike study area, which shall include at least the project site, the airport property, all lands within 10,000 feet from the end or edge of the airport runway, and other surrounding habitat areas which form the local bird ecosystem.
2. A description of bird feeding, watering and roosting habitats in the bird strike study area, including discussion of feeding behavior and food sources and identification of loafing, watering, roosting and nesting area locations.
3. A description of existing and planned airport operations and air traffic patterns and any available history of bird strike incidents.
4. Wildlife surveys and documentation of existing bird species, populations, activities and flight patterns in the bird strike study area. The surveys shall address bird species and their composition; bird population estimates and densities per unit area; feeding behavior; food sources; seasonal use patterns; frequency of occurrence; location of loafing, roosting and nesting areas; and analysis of the relation of bird flight movements to airport traffic patterns and navigational safety. The airport sponsor shall provide approach and departure air space information up to five statutory miles from the airport.
5. An evaluation of the anticipated effects of the proposal on the

population density, behavior patterns, movements and species composition of birds within the bird strike study area and of the impact of these effects on air navigation and safety considering possible mitigation.

6. Identification and evaluation of proposed and alternative short and long term mitigation measures that would prevent a significant increase in hazardous movements of birds feeding, watering or roosting in areas across runways and approach surfaces that otherwise might result from the proposed use. The evaluation shall discuss the proven reliability of proposed measures, their effectiveness over both the short and long term, their costs, and the applicant's financial ability to assure their perpetual implementation, i.e. ongoing implementation for as long as a potential bird strike hazard persists.
7. Such other information as is recommended by the FAA's technical representative or is required to demonstrate compliance with the requirements of subsection .3 of this section.

C. **Required Findings.** The determination whether a proposed new water impoundment, with reasonable and practicable mitigation measures, is likely to significantly increase hazardous movements of birds feeding, watering or roosting in areas across runways or approach surfaces shall be based upon the proposal's potential, both in the short term and in the long term, to significantly increase bird strike hazards to air navigation, and the appropriateness, effectiveness and affordability of proposed mitigation measures or other conditions needed to reduce bird strike hazards. In determining compliance with this standard, the findings shall address each of the following factors:

1. The demonstrated overall effectiveness and reliability of proposed measures and conditions, in both the short and long term and under similar circumstances and conditions, to avoid a significant increase in bird strike hazards to air navigation. Experimental measures or measures not based on accepted technology and industry practices shall be considered ineffective, inappropriate and of unproven reliability.
2. The economic, social and environmental impacts of proposed measures to the neighboring community and the affected natural environment.

3. The applicant's ability to pay for necessary short and long-term mitigation measures, including fallback measures that may be required if initially proposed mitigation measures prove ineffective, and to assure the perpetual implementation of those measures for as long as a potential bird strike hazard persists. An applicant's failure to demonstrate its financial ability to assure the perpetual implementation of necessary and appropriate measures shall render those measures unreasonable and impracticable for purposes of the application.
4. The applicant's ability to accurately monitor the effectiveness of mitigation over time.
5. The potential impacts to navigational safety and air travel if the applicant cannot perform necessary mitigation measures or maintain those measures in perpetuity, or if those measures prove to be ineffective at avoiding a significant increase in bird strike hazards to air navigation.
6. The applicant's reclamation plan.

D. Mitigation Measures and Approval Conditions. A decision approving an application shall require, as conditions of approval, all measures and conditions deemed appropriate and necessary to prevent in perpetuity a significant increase in hazardous movements of birds feeding, watering or roosting in areas across runways and approach surfaces.

1. Only customary measures based on accepted technology and industry practice may be considered and imposed as approval conditions.
2. Serious consideration shall be given to all measures and conditions recommended by the Department of Aviation and the FAA and FAA's technical representative. Generally, such measures and conditions shall be attached to a decision approving an application unless findings are adopted, supported by substantial evidence, demonstrating why such measures and conditions are not necessary to reduce bird hazard impacts resulting from the water impoundment to an insignificant level.
3. A decision to approve shall require from the applicant a performance bond or other form of secure financial support. Such bond or security shall be in an amount sufficient to assure perpetual implementation of

appropriate and necessary mitigation measures for as long as a potential bird strike hazard persists.

4. A decision to approve shall require appropriate monitoring of the effectiveness of mitigation over time. Upon request, monitoring data and reports shall be made available to the airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative. The decision shall allow for modifications to approval conditions should existing mitigation measures prove ineffective at preventing a significant increase in hazardous movements of birds feeding, watering or roosting in areas across runways and approach surfaces. Modifications to approval conditions shall be considered utilizing the review process applied to applications for conditional use permits.

E. **Exemptions.** The requirements of this section shall not apply to:

1. Storm water management basins established by an airport identified under ORS 836.610.
2. Seaplane landing areas within airports identified under ORS 836.610

SECTION 29.040, WETLANDS MITIGATION

01. Notwithstanding the requirements of Section 29.040, wetland mitigation, creation, enhancement or restoration projects located within areas regulated under Section 29.040 shall be allowed upon demonstration of compliance with this requirements of this Section.
02. Wetland mitigation, creation, enhancement or restoration projects existing or approved on the effective date of this ordinance and located within areas regulated under Section 29.040 are recognized as lawfully existing uses.
03. To help avoid increasing safety hazards to air navigation near public use airports, the establishment of wetland mitigation banks in the vicinity of such airports but outside approach surfaces and areas regulated under Section 29.040 is encouraged.
04. Applications to expand wetland mitigation projects in existence as of the effective date of this ordinance, and new wetland mitigation projects, that are proposed within areas regulated under Section 29.040 shall be considered

utilizing the review process applied to applications for conditional use permits and shall be permitted upon demonstration that:

- A. It is not practicable to provide off-site mitigation; or
 - B. The affected wetlands provide unique ecological functions, such as critical habitat for threatened or endangered species or ground water discharge, and the area proposed for mitigation is located outside an approach surface.
05. Wetland mitigation permitted under subsection 04 of this Section shall be designed and located to avoid creating a wildlife hazard or increasing hazardous movements of birds across runways or approach surfaces.
06. Applications to create, enhance or restore wetlands that are proposed to be located within approach surfaces or within areas regulated under Section 29.040, and that would result in the creation of a new water impoundment or the expansion of an existing water impoundment, shall be considered utilizing the review process applied to applications for conditional use permits and shall be permitted upon demonstration that:
- A. The affected wetlands provide unique ecological functions, for threatened or endangered species or ground water discharge; and
 - B. The wetland creation, enhancement or restoration is designed and will be maintained in perpetuity in a manner that will not increase hazardous movements of birds feeding, watering or roosting in areas across runways or approach surfaces.
07. Proposals for new or expanded wetland mitigation, creation, enhancement or restoration projects regulated under this Section shall be coordinated with the airport sponsor, the Department of Aviation, the FAA and FAA's technical representative, the Oregon Department of Fish & Wildlife (ODFW), the Oregon Division of State Lands (DSL), the US Fish & Wildlife Service (USFWS), and the US Army Corps of Engineers (Corps) as part of the permit application.
08. A decision approving an application under this Section shall require, as conditions of approval, measures and conditions deemed appropriate and necessary to prevent in perpetuity an increase in hazardous bird movements across runways and approach surfaces.

SECTION 29.045, NONCONFORMING USES

01. These regulations shall not be construed to require the removal, lowering or alteration of any structure not conforming to these regulations. These regulations shall not require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this protection zone.
02. Notwithstanding subsection 1. of this section, the owner of any existing structure that has an adverse effect on air navigational safety as determined by the Department of Aviation shall install or allow the installation of obstruction markers as deemed necessary by the Department of Aviation, so that the structures become more visible to pilots.
03. No land use or limited land use approval or other permit shall be granted that would allow a nonconforming use or structure to become a greater hazard to air navigation than it was on the effective date of this protection zone.