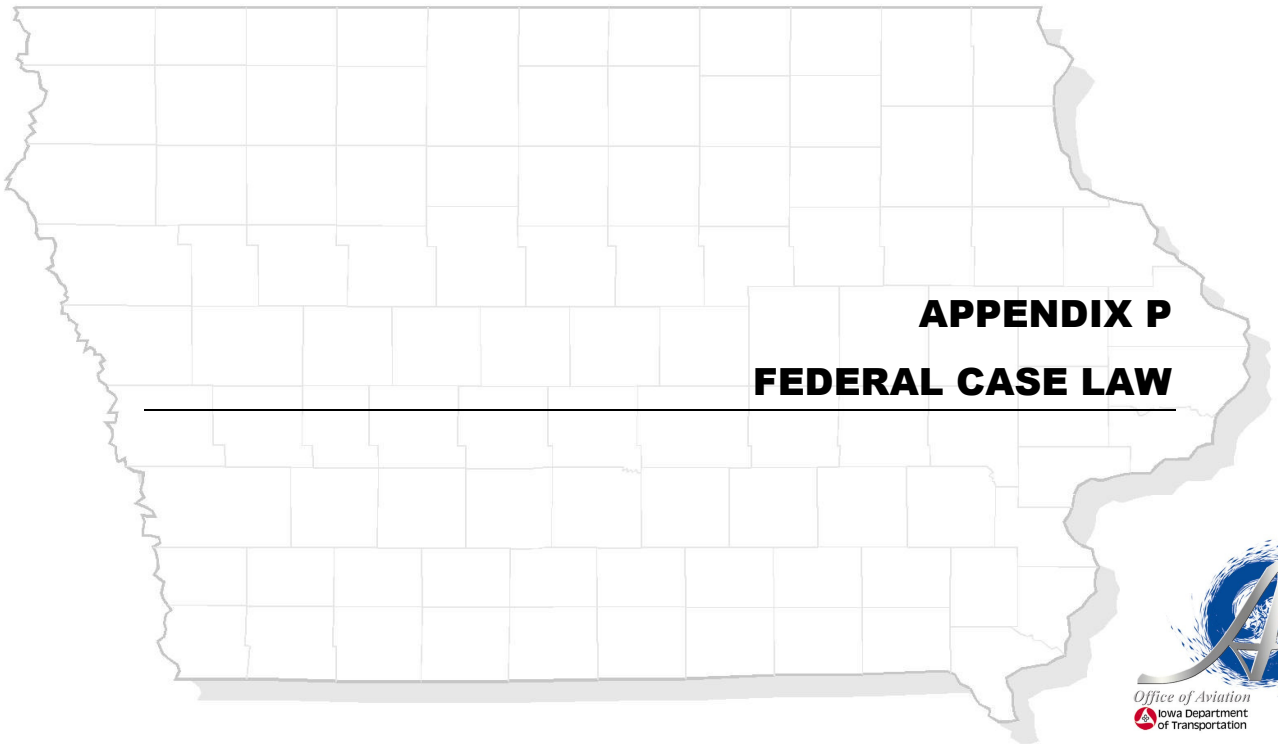
Iowa Airport Land Use Guidebook



APPENDIX P

FEDERAL CASE LAW

Office of Aviation
Iowa Department of Transportation

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Federal Case Law

This appendix contains a sample of federal cases that address the use of land use controls for the preservation of the public good. For additional information or interpretation of any of these cases, contact legal counsel.

Planning and Design

***Patzau v. New Jersey Department of Transportation*,** 271 N. J. Super. 294 (App. Div. 1994), which addressed the constitutionality of an air safety and zoning act that, among other things, required the adoption of building height restrictions within airport safety zones. The court found that "the state may impose very substantial zoning and other restrictions on the use of property in order to advance legitimate public interests without being obligated to provide compensation."

***Aeronautics Commission v. State Executive Rel. Emmis Broad Corp.*,** 440 N.E. 2d 700, (Ind. App. 1982), the court found that a state "high structures act,' which regulates structural height near airports for the purpose of protecting the safety and welfare of persons and property in the air and on the ground by ensuring the navigable air space overlying the state is maintained in an unobstructed condition," is valid "because Congress has evidenced a purpose to leave legal enforcement of regulations pertaining to high structures and air safety to state and local governments."

***La Salle National Bank v. County of Cook*,** 34 Ill. App.3d 264 (1st Dist. 1975), in which the court determined that the enactment of an airport zoning ordinance that imposed height restrictions on buildings near certain airports, including a naval air station, for the purpose of preventing aviation hazards did not unconstitutionally deprive a landowner of its property without just compensation.

***Kimberlin v. City of Topeka*,** 710 P.2d 682 (Kan. 1985), the court held that a zoning ordinance that establishes height and use restrictions to promote airport safety is a proper exercise of police power and does not result in an unconstitutional taking without just compensation.

***Schmidt v. City of Kenosha*,** 214 Wis. 2d 527 (Wis. App. 1997), the court concluded that an airport zoning ordinance that prohibits construction along aerial approaches to an airport "is not arbitrary capricious, but is reasonably related to a legitimate public purpose."

***Northwest Props. V. Outagamie County*,** 223 Wis. 2d 483 (Wis. App. 1998), the court determined that a municipality had authority to enact a zoning ordinance that protects the aerial approaches to an airport by resulting, restricting and determining the use, location, height, number of stories and size of buildings and structures and objects of natural growth in the [airport's] vicinity."

In re Letourneau, 168 Vt. 539 (1998), where the court found it okay that building setback requirements from a highway protect sight lines for automobiles and ensure emergency access to the buildings for fire protection purposes without blocking the highway.

Gorieb v. Fox, 274 U.S. 603 (1927), where the government imposition of setback requirements for aesthetic and other purposes is an appropriate, noncompensable exercise of the police power.

***Harrell's Candy Kitchen v. Sarasota-Manatee Air Authority*,** 111 So.2d 439 (Fla. 1959), where the court upheld the validity of airport height restrictions without payment of just compensation. The court determined that the police power authority was necessary where the restrictions promoted the welfare of the state.

***County of Clark v. Hsu*,** Docket No. 38853 (Nev. 2004), where the Supreme Court of Nevada reversed an inverse condemnation claim against Clark County. The claim was based on a county ordinance which limited the height of buildings surrounding the airport.

Harris v. City of Witchita, 862 F. Supp. 287 (D. Kan. 1994), where the court found that restrictions imposed on private land situated around a nearby air force base did not constitute a physical invasion of the land. The purpose of the airport overlay district was to restrict the use of the land in the event of a crash, so as to affect as few people as possible.

Environmental

Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470 (1987), where the United States Supreme Court rejected the notion that a public nuisance must be an inherently noxious or unreasonable land use and found that what would otherwise have been a lawful coal mine posed a threat to the common welfare akin to a public nuisance because of the subsidence risks it created.

United States v. Cress, 243 U.S. 316 (1917), where just compensation was necessary for a per se physical invasion or occupation when the government dams a river and Floods upland parcels.

United States v. PeWee Coal Co., 341 U.S. 114 (1951), taking effected by the governments seizure and operation of the PeWee Coal mine during wartime, to avert strike.

Land Acquisition

Cheyenne Airport Board v. Rogers**,** 707 P.2d 717 (Wy. 1985), appeal dismissed, 476 U.S. 1110, 106 S. Ct. 1961, 90 L.Ed.2d 647 (1986), where the Wyoming Supreme Court applied federal and state law definitions of air space property right to reject a takings claim.

Fitzgerald v. City of Iowa City**,** 492 N.W.2d 659 (Iowa 1992), where the court found no compensable physical invasion was present where the evidence presented by plaintiffs was devoid of any evidence showing either the frequency or approximate altitudes of planes flying over the plaintiffs' lands.

Vacation Village, Inc. v. Clark County Nevada, Adversary No. 98-2313-RCJ (December 30, 2004), where no takings was present as to 1.25 acres of plaintiffs land where the "parcel as a whole" was not diminished in value.

The 9th Circuit Court has issued an opinion regarding this case. This case is an inverse condemnation case brought by a landowner who claimed that a County Ordinance constituted a taking under state and federal law. The court ruled that is disagreed with the Nevada Supreme Court's ruling in McCarran International Airport v. Sisolak that a taking occurred under the Penn State analysis. However, the court concluded that under state law (based upon the Nevada Supreme Court's application of state law in Sisolak) a regulatory per se taking had occurred. A separate zoning ordinance, which affected 1.25 acres in the Runway Protection Zone, was found to not constitute a regulatory or physical taking, because the landowner still had economically viable use as part of the larger tract.

Welch v. Swasey**,** 214 U.S. 91 (1909), where the court has long recognized that police power enactments limiting vertical, lateral, and subjacent property development do not effect compensable takings.

Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978), where the situation in which a landowner is restrained in his or her use of one spatial area of the property-his air space, side yards, or subsoil-as merely one species of regulation and no actual property in these cases have been appropriated by the government.

Richmond, Fredericksburg & Potomac Railroad Co. v Metropolitan Washington Airports Authority, 251 Va. 201 (1996), where 23,000 annual over flights were insufficient to establish a taking because there was no evidence of the types of airplanes using the runway, the height at which they passed over the property, or the frequency of landings.

Yara Engineering Corp. v. City of Newark**,** 40 A.2d 559 (N.J. 1945), finding a taking where zoning which the state legislature had not authorized, restricted development of salt marsh and meadow land and left it with only minimal value.

Ackerman v. Port of Seattle, 55 Wash. 2d 400 (1960), finding a taking based on continuing and frequent low over flights.

Village of Willoughby Hills v. Corrigan, 278 N.E.2d 658 (Ohio 1972), where the court found that unlike a surface invasion of land, an invasion of airspace above the land does not constitute a per se taking.

City of Austin v. Travis County Landfill Co.**,** 73 S.W. 3d 234 (Tex. 2002), the Texas Supreme Court found evidence insufficient to support a compensable taking where flights over landfill did not reduce market value were insufficient where the Texas Supreme court found that plaintiff failed to establish a claim of compensable taking by aircraft. The plaintiff did not provide evidence sufficient to support the claim that flight from the city airport over the landfill directly impacted the property's surface and caused the value to decline. Even though the landfill owner was exposed to an influx of risks and costs, the evidence was not sufficient to show that civilian over-flight effects caused or contributed to the land's decline in market value.

United States v. Brondum**,** 272 F.2d 642 (5th Cir. 1959), the court found that an avigation easement provides not just for flights in the air as a public highway, but it also provides for flights that may be so low and so frequent as to amount to a taking property.

Nollan v California Coastal Commission**,** 483 U.S. 825 (1987), the Supreme Court held that the Commission had to pay landowners just compensation for the grant of a public access easement across beachfront property. According to the Court the police power regulation was not valid because it did not further public purposes related to permit requirement.

Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978), where the landowners argued that regulations prohibiting construction of a high-rise office building deprived them of "air rights." The court concluded that the plaintiffs could not establish a taking simply by showing they were denied the ability to use a property interest they previously believed was available for development.

Village of Willoughby Hills v. Corrigan, 278 N.E.2d 658 (Ohio 1972), where the court found that unlike a surface invasion of land, an invasion of airspace above the land does not constitute a per se taking.

Hadacheck v. Los Angeles, 239 U.S. 394 (1915), where an ordinance was valid even though it prohibited the highest and best use of the property.

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922), where the court determined that state regulation of property may also require just compensation, recognizing regulations that go too far will be recognized as a taking.

William C. Haas and Co. v. City & County of San Francisco, 605 F.2d 1117 (9th Cir. 1979), where zoning regulations were not a taking although they reduced the value of the property from $2 million to $100 thousand.

Kaiser Aetna v. United States**,** 444 U.S. 164 (1979), compensation was necessary if the government attempts to require public access to private property.

Loretto v. Teleprompter Manhattan CATV Corp**.,** 458 U.S. 419 (1982), a taking was present where the government authorizes a cable company to install cable boxes on apartment building.

Yee v. City of Escondido Cal., 503 U.S. 519 (1992), no taking was present where a mobile home rent control ordinance was effected to restrict evictions.

Pruneyard Shopping Center v. Robins**,** 447 U.S. 74 (1980), an ordinance requiring a shopping center to permit distribution of literature on it property during business hours was not a taking.

YMCA v. United States**,** 328 U.S. 256 (1946), when a building is damaged during riots while under the protection of federal officers, a taking is not present.

United States v. Causby**,** 328 U.S. 256 (1946), where a chicken farming business was destroyed from airplanes making frequent and low over-flights of property, a taking is present.

Griggs v. Allegheny County**,** 369 U.S. 84 (1962), here the court determined whether a county-operated airport took an easement over a house through noise and air pollution from frequent and low over-flights. Based on evidence that the homeowners abandoned their home because they became nervous and distraught from extreme noise and pollution, the Court held that a compensable taking was present.

***Highline School District No. 401, King City v. Port of Seattle*,** 548 P.2d 1085 (Wash. 1976), where frequent and low over-flights over property amounted to taking.

***Lucas v. South Caroline Coastal Council*,** 505 U.S. 1003 (1992), where the court found that even if a regulation removes all economic value from property, a compensable taking may not occur if the "logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use of interests were not part of his title to begin with."

***Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*,** 535 U.S. 302 (2002), where the Court determined that the parcel as a whole test must be used in determining whether a taking is present.

***Village of Euclid, Ohio v. Ambler Realty Co*.,** 272 U.S. 365 (1926), where zoning regulations were valid although they effected a 75 percent (75%) diminution in value of property.

***Kinzli v. City of Santa Cruz*,** 818 F.2d 1449 (9th Cir. 1987), even if a landowner has submitted development plans and been rejected, an applied regulatory taking case might still not be ripe; a landowner must submit a meaningful application for development.

Gilbert v. City of Cambridge, 932 F.2d 51 (1st Cir. 1991), where a landowner must establish that the potential denial of a development permit is more than a mere possibility, rather the prospective of refusal must be certain.

***Palazzolo v. Rhode Island*,** 121 S. Ct. 2448 (2001), The United State Supreme Court found that all economically beneficial use was not deprived because a portion of the plaintiff's property could still be developed.

McCarran International Airport v. Sisolak, 137 P.3d 1110 (Nev., July 13, 2006), The United State Supreme Court denied the writ of certiorari making the Nevada State Supreme Court ruling final. Based on Nevada State Constitution awarding $6.5 million to a landowner in an inverse condemnation action, found that the avigation easements obtained by Clark County to be invalid. Also, found that the use by aircraft of the airspace below 500 feet a per se taking of the landowner's property and required just compensation.

What is new and significant about this decision is the court's reference to the Federal Aviation Regulations for guidance. FARs establish the minimum safe flight altitude as 500 feet over other than congested areas. The court declared that airspace above 500 feet was in the public domain, but ownership of airspace below that altitude is vested in the owner of adjacent land. An owner is entitled to compensation for flights invading that airspace when "taken" by the government, meaning a devaluation of the property.

Operational and Management

***Dolan v. City of Tigard*,** 512 U.S. 374 (1994), where the court found that the government must demonstrate that the condition sought for granting a development permit meets the essential nexus test and is roughly proportional to the problem created by the development.