

31.3.1 Permits – Particular Uses – Airports. An ordinance requiring that developers of residential property near an airport grant the airport an uncompensated “avigation easement” that allows the airport to subject the property to noise, vibrations, fumes, dust and fuel particle emissions is facially inconsistent with the federal and state Takings Clauses, because the easement does not advance the governmental interest in reducing land use conflicts between the airport and surrounding residential uses. Under the easement, the conflicts will exist to the same degree; the only arguable effect is to make it more difficult for the property owner to advance a successful inverse condemnation or other legal action against the airport. *Barnes v. City of Hillsboro*, 61 Or LUBA 375 (2010).

31.3.1 Permits – Particular Uses – Airports. A city airport zone that authorizes air passenger and freight services at a regional airport consistent with the levels identified in the airport’s master plan, which does not currently authorize such services, violates the Oregon Constitution Article I, section 21 delegation clause, because it effectively delegates to the airport the authority to determine what uses are allowed in the airport zone. *Barnes v. City of Hillsboro*, 61 Or LUBA 375 (2010).

31.3.1 Permits – Particular Uses – Airports. ORS 836.608(3)(a) prohibits local governments from imposing additional limitations on, and implicitly requires local governments to recognize and allow, both (1) aviation uses that were authorized by permit prior to January 1, 1997, and (2) aviation uses that existed at a personal use airport in 1996, regardless of whether a prior permit authorized those uses. *NAAVE v. Washington County*, 59 Or LUBA 153 (2009).

31.3.1 Permits – Particular Uses – Airports. ORS 836.608(2) requires local governments to establish an airport “boundary” that has the effect of determining the geographic extent of the “airport,” based on areas that are developed or committed to airport uses. By implication, areas outside the boundary are not reasonably expected to be devoted to airport uses. The boundary of an “airport” is intended to include areas developed or reasonably expected to be developed with airport uses, including hangars, and airport uses including hangars are intended to be located within airport boundaries. *NAAVE v. Washington County*, 59 Or LUBA 153 (2009).

31.3.1 Permits – Particular Uses – Airports. ORS 836.630(3), which establishes a policy to encourage and support airports, applies a “thumb on the scale” that may be used to resolve a choice between two or more textually plausible interpretations in the manner of the policy. *NAAVE v. Washington County*, 59 Or LUBA 153 (2009).

31.3.1 Permits – Particular Uses – Airports. Where a city does not rely on the ORS 836.640 through 836.642 “through the fence” pilot program to adopt an Airport Related zoning district that authorizes airpark residential development with through the fence access to an airport, arguments that ORS 836.640 through 836.642 do not authorize the kind of through the fence access that is permitted in the city’s new Airport Related zoning district provide no basis for reversal or remand. *Port of St. Helens v. City of Scappoose*, 58 Or LUBA 122 (2008).

31.3.1 Permits – Particular Uses – Airports. A city’s legislative decision to adopt a new Airport Related zoning district without applying the new zoning district to any property is not reversible where petitioner fails to demonstrate that the zone could in no circumstances be applied to property in the future without violating applicable legal standards. *Port of St. Helens v. City of Scappoose*, 58 Or LUBA 122 (2008).

31.3.1 Permits – Particular Uses – Airports. Reports and approvals from the Federal Aviation Administration and Oregon Department of Aviation that a proposed personal use airport complies with federal and state safety requirements is substantial evidence that a county could rely upon, among other evidence, to conclude that the airport is consistent with a comprehensive plan policy requiring that airports be located in areas that are safe for air operations. *Johnson v. Marion County*, 58 Or LUBA 459 (2009).

31.3.1 Permits – Particular Uses – Airports. Because a personal use airport is not among the three types of airports that require overlay zones under OAR 660-013-0070(1), the rule does not require a county to impose an overlay zone on a personal use airport. *Johnson v. Marion County*, 58 Or LUBA 459 (2009).

31.3.1 Permits – Particular Uses – Airports. A county does not err in interpreting a comprehensive plan policy requiring that airports be compatible with surrounding uses to be satisfied by incorporated findings addressing conditional use permit standards that, the county found, ensure that the airport is compatible with surrounding uses. *Johnson v. Marion County*, 58 Or LUBA 459 (2009).

31.3.1 Permits – Particular Uses – Airports. A county does not err in concluding that, as conditioned, a personal use airport will not “significantly” impact a neighboring equine facility, where the only adverse impact identified by the facility owner is that guests are advised to delay mounting or dismounting horses until after planes land or take-off, and conditions of approval limit operations to 20 flights per month. *Johnson v. Marion County*, 58 Or LUBA 459 (2009).

31.3.1 Permits – Particular Uses – Airports. LUBA will affirm a governing body’s interpretation of a comprehensive plan policy that requires that development shall comply with “applicable” Department of Environmental Quality (DEQ) standards to not require that the applicant demonstrate that a proposed personal use airport will comply with a DEQ noise program that DEQ has suspended. *Johnson v. Marion County*, 58 Or LUBA 459 (2009).

31.3.1 Permits – Particular Uses – Airports. A county does not err in concluding that the county’s noise ordinance is not a conditional use approval standard for a personal use airport, where the noise ordinance is not part of the county’s zoning regulations, the noise ordinance functions as a performance standard rather than an approval standard, and the noise ordinance includes an exclusion for noises generated by approved conditional uses. *Johnson v. Marion County*, 58 Or LUBA 459 (2009).

31.3.1 Permits – Particular Uses – Airports. Remand is necessary where a county’s findings approving a personal use airport rely heavily on a proposed condition limiting operations at a personal use airport to 20 flights per month, but the county failed to impose such a condition. *Johnson v. Marion County*, 58 Or LUBA 459 (2009).

31.3.1 Permits – Particular Uses – Airports. While the Aviation Protection Act, ORS 836.608(3)(a), permits “increases in flight activity” at existing airports without local government approval, the statute does not allow one type of listed aviation use to be metamorphosed into a different type of listed aviation use as an “increase” in flight activity. *Applebee v. Washington County*, 54 Or LUBA 364 (2007).

31.3.1 Permits – Particular Uses – Airports. In determining what airport uses “existed at any time” in 1996 for purposes of the Aviation Protection Act, ORS 836.608, a hearings officer errs in interpreting that phrase to include only frequent or regularly occurring airport uses, or uses that result in physical commitment of the land. *Applebee v. Washington County*, 54 Or LUBA 364 (2007).

31.3.1 Permits – Particular Uses – Airports. The act of giving airplane rides to friends or neighbors as an incidental part of a personal use flight is not the same use or activity as offering commercial scenic flights or tours, for purposes of determining what airport uses existed at a personal use airport in 1996 under the Aviation Protection Act, ORS 836.608. *Applebee v. Washington County*, 54 Or LUBA 364 (2007).

31.3.1 Permits – Particular Uses – Airports. A hearings officer errs in declining to review proposed flight instruction, scenic tours and forest patrol uses as “new uses” rather than “existing uses” under the Aviation Protection Act, ORS 836.608, and in requiring the applicant to submit a new application requesting approval for those “new uses,” where the initial application sought approval of those uses under criteria that apply to new uses, county staff understood that the applicant sought approval as new uses and not existing uses, and the applicant requested that the hearings officer evaluate those uses as new uses if they did not qualify as existing uses. *Applebee v. Washington County*, 54 Or LUBA 364 (2007).

31.3.1 Permits – Particular Uses – Airports. The apparent corollary of ORS 836.608(3)(a), which provides that a local government shall not impose additional limitations on a previously approved airport use, is that any existing limitations or conditions imposed in earlier approval decisions can continue, as long as such limitations or conditions are consistent with other requirements of the Airport Protection Act. *Applebee v. Washington County*, 54 Or LUBA 364 (2007).

31.3.1 Permits – Particular Uses – Airports. The Aviation Protection Act, ORS 838.608, does not prohibit application of local land use standards to aviation activities that implement or are required by federal law, such as floodplain protection regulations. *Applebee v. Washington County*, 54 Or LUBA 364 (2007).

31.3.1 Permits – Particular Uses – Airports. ORS 836.623(1) requires explanatory findings addressing evidence that public safety requires a higher level of protection than the minimum set forth under the Airport Transportation Planning rule, even if the local government rejects that evidence and concludes that existing standards are sufficient to protect public safety. *Graham Oil Co. v. City of North Bend*, 44 Or LUBA 18 (2003).

31.3.1 Permits – Particular Uses – Airports. The proponent of “more stringent requirements” under ORS 836.623(1) has some burden to identify what additional requirements may be necessary to ensure public safety. Where the proponent merely argues that proposed development near an airport runway should be denied because existing standards cannot ensure ground safety against airplane crashes, local government findings rejecting the need for more stringent requirements may be equally conclusory. *Graham Oil Co. v. City of North Bend*, 44 Or LUBA 18 (2003).

31.3.1 Permits – Particular Uses – Airports. A reasonable decision maker may rely upon existing state and federal safety standards, and evidence of safety features designed to prevent fire or explosion in the event an airplane crashes into a proposed fuel station located near a runway, to conclude that no additional safety standards are necessary, notwithstanding testimony from the airport manager and aviation officials that the location of the proposed station is unsafe. *Graham Oil Co. v. City of North Bend*, 44 Or LUBA 18 (2003).

31.3.1 Permits - Particular Uses - Airports. ORS 836.616 does not authorize or require a local government to consider approval of commercial uses at an airport on a case-by-case basis where the applicable county land use regulations do not authorize such commercial uses. *Landsem Farms v. Marion County*, 44 Or LUBA 611 (2003).

31.3.1 Permits - Particular Uses - Airports. LUBA will not attempt to resolve a largely hypothetical dispute between a petitioner and a county over the degree of incidental social activity that might be permissible at an existing airport in conjunction with any particular activity that the county must allow under ORS 836.616(2). *Landsem Farms v. Marion County*, 44 Or LUBA 611 (2003).

31.3.1 Permits – Particular Uses – Airports. Where it is unclear who would own a proposed “personal use airport” in an EFU zone, and whether the uses that the owner plans to make of the airport would be consistent with the uses allowed under ORS 215.283(2)(h), the owner must be identified and the county’s findings must explain why it concludes that the proposed uses fall within the uses allowed with a personal use airport. *Oregon Natural Desert Assoc. v. Grant County*, 42 Or LUBA 9.

31.3.1 Permits – Particular Uses – Airports. Where a statute and local land use ordinance restricts personal use airports to “use by the owner,” the applicant may utilize the airport for uses *incidental* to conducting private business, but not for the applicant’s commercial aviation enterprise. *Berto v. Jackson County*, 33 Or LUBA 658 (1997).

31.3.1 Permits – Particular Uses – Airports. Where applicable rules regulating personal use airports would have allowed far more flights than the evidentiary record shows historically occurred at an airstrip when it became nonconforming, the county cannot use the administrative rule definitions as a surrogate descriptor of the nature and scope of the use at the time it became nonconforming. *Spurgin v. Josephine County*, 28 Or LUBA 383 (1994).

31.3.1 Permits – Particular Uses – Airports. A local government's approval of a conditional use permit for a "public air park" does not grant approval for a recreational parachuting center, where the site plan for the public air park does not show a recreational parachuting center was either contemplated or approved. *Skydive Oregon v. Clackamas County*, 25 Or LUBA 294 (1993).

31.3.1 Permits – Particular Uses – Airports. An airport that serves several counties, is "part of a regional system of airports for the greater Portland metropolitan area" and has 60,000 annual aircraft operations is an urban public facility use. Amending county plan and zoning maps to designate and zone additional land for such an urban airport use requires exceptions to Statewide Planning Goals 11 and 14. *Murray v. Marion County*, 23 Or LUBA 269 (1992).

31.3.1 Permits – Particular Uses – Airports. Where, at the time of the imposition of restrictive zoning, there was a lawful intermittent airport use of property, it is incorrect for a local government to conclude such use cannot constitute a nonconforming use because it was recreational, intermittent and did not involve the investment of substantial sums of money. *Warner v. Clackamas County*, 22 Or LUBA 220 (1991).

31.3.1 Permits – Particular Uses – Airports. Local code provisions which regulate "public" airports, and state that "private landing strips * * * may still be subject to applicable regulations," are inapplicable to private airports, but recognize that there may be *other* requirements which apply to private airports. *Wissusik v. Yamhill County*, 20 Or LUBA 246 (1990).