

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).