

35. Moratoria. In reviewing a challenge to a moratorium, LUBA's scope of review is limited to determining whether the moratorium was adopted in violation of ORS 197.505 to 197.530. *Thunderbird Hotels, LLC v. City of Portland*, 54 Or LUBA 487 (2007).

35. Moratoria. A local government adequately identifies the public facilities on which a moratorium is based by relying on an adopted transportation system plan that encompasses the moratorium area, even if some of those facilities are also within the jurisdiction of the Oregon Department of Transportation. *Thunderbird Hotels, LLC v. City of Portland*, 54 Or LUBA 487 (2007).

35. Moratoria. A moratorium that is limited to certain zoning districts that have significant development and redevelopment potential and that, if developed, would exacerbate a shortage in a transportation facility meets the requirements of ORS 197.520(2)(b). *Thunderbird Hotels, LLC v. City of Portland*, 54 Or LUBA 487 (2007).

35. Moratoria. Where a moratorium contains exemptions for several types of property and developments that the evidence shows will affect the transportation facility, that is a de facto "program for allocating * * * remaining public facility capacity" under ORS 197.520(2)(c). *Thunderbird Hotels, LLC v. City of Portland*, 54 Or LUBA 487 (2007).

35. Moratoria. Where a property owner proposes a modification to language contained in an exemption to a moratorium ordinance and that modification appears to accommodate economic development without exacerbating the existing shortage of the transportation facility as required by ORS 197.520(2)(c), the city is required to explain in its findings why that proposed modification was rejected. *Thunderbird Hotels, LLC v. City of Portland*, 54 Or LUBA 487 (2007).

35. Moratoria. A city decision to deny a request for annexation and subdivision approvals, based solely on a city's refusal to consider annexation requests until its buildable lands inventory can be updated, constitutes a moratorium, as that term is defined in ORS 197.505(1). *Benchmark Enterprises v. City of Stayton*, 36 Or LUBA 433 (1999).

35. Moratoria. ORS 197.540 grants LUBA review authority over any moratorium, including any extension of a moratorium under ORS 197.530(2), and LUBA may invalidate any improperly extended moratorium. *Manning v. City of St. Paul*, 33 Or LUBA 193 (1997).

35. Moratoria. LUBA's authority to review and invalidate an improperly extended moratorium does not include authority to invalidate the initial adoption of a moratorium, where initial adoption was not appealed to LUBA within 21 days after the initial adoption became final. *Manning v. City of St. Paul*, 33 Or LUBA 193 (1997).

35. Moratoria. Petitioner cannot challenge a moratorium extension by asserting that the city lacked substantial evidence to justify the initial moratorium; the relevant question is

whether the record includes substantial evidence to support the moratorium extension. *Manning v. City of St. Paul*, 33 Or LUBA 193 (1997).

35. Moratoria. A local agency's policy requiring evidence of a current building permit prior to water meter installation is not a moratorium on development because the policy does not delay or deny proposed development. *Marvin v. Eugene Water and Electric Board*, 32 Or LUBA 189 (1996).

35. Moratoria. The city's finding that its comprehensive plan contemplates a rationing of building permits through a traffic management ordinance does not satisfy inquiry into whether that rationing violates the state moratorium statute. *Home Builders Assoc. v. City of Wilsonville*, 30 Or LUBA 246 (1995).

35. Moratoria. A pattern of delay in the issuance of building permits is sufficient to constitute a pattern of delay under the statutory definition of moratorium. *Home Builders Assoc. v. City of Wilsonville*, 30 Or LUBA 246 (1995).

35. Moratoria. The fact that a city, in prior years, had an acknowledged ordinance rationing building permits does not excuse the city from seeking acknowledgement of a new rationing ordinance or from complying with the state moratorium statute. *Home Builders Assoc. v. City of Wilsonville*, 30 Or LUBA 246 (1995).

35. Moratoria. Although ordinances implementing acknowledged comprehensive plan provisions need not be separately acknowledged for goal compliance, such ordinances must comply with the state moratorium statute. *Home Builders Assoc. v. City of Wilsonville*, 30 Or LUBA 246 (1995).

35. Moratoria. "Deemed acknowledgment" under ORS 197.615 does not satisfy ORS 197.505 requirement that local ordinances establishing a moratorium be acknowledged under ORS 197.251. *Home Builders Assoc. v. City of Wilsonville*, 30 Or LUBA 246 (1995).

35. Moratoria. An action engaged in or practice in accordance with an acknowledged comprehensive plan provision or implementing ordinance must be justified by an acknowledged provision that fully sets forth the essential structure, form and requirements for such action or practice. *Home Builders Assoc. v. City of Wilsonville*, 30 Or LUBA 246 (1995).

35. Moratoria. Local government denial of proposed partitions because the ability of the school district to provide the level of school services required by certain plan policies has not been established does not constitute the imposition of a development moratorium prohibited by ORS 195.110(8). *Beck v. City of Happy Valley*, 27 Or LUBA 631 (1994).

35. Moratoria. The moratoria subject to ORS 197.505 to 197.540 are, by definition, limited geographically to "urban or urbanizable land." *Price v. Arch Cape Service District*, 22 Or LUBA 592 (1992).

35. Moratoria. Land use decisions which allow urban intensity use of rural land convert such land to "urban uses" but do not convert such land to "urban or urbanizable land," subject to the limitations imposed on moratoria in ORS 197.505 to 197.540. *Price v. Arch Cape Service District*, 22 Or LUBA 592 (1992).

35. Moratoria. The moratorium findings requirement of ORS 197.520(2)(c) that "housing needs [be] accommodated as much as possible in any program for allocating any remaining key facility capacity" is not met by findings which simply establish that there are more residential lots available for development than can be served by the sewerage system. *Western Pacific Development v. City of Brookings*, 21 Or LUBA 445 (1991).

35. Moratoria. Where a moratorium is adopted and most of the remaining sewerage system capacity is allocated either (1) without any limitation on use by nonresidential users, or (2) according to the proportion of land zoned residential, commercial and industrial, the requirement of ORS 197.520(2)(c) that "housing needs [be] accommodated as much as possible in any program for allocating any remaining key facility capacity" is not met. *Western Pacific Development v. City of Brookings*, 21 Or LUBA 445 (1991).

35. Moratoria. Under ORS 197.520(2)(a), findings which conclude that a certain portion of remaining sewerage system capacity is "already committed to development" based on an intergovernmental agreement to allocate connections to a sanitary district and to a tract subject to a local improvement district, but which fail to explain why such capacity is committed due to development, are inadequate. *Western Pacific Development v. City of Brookings*, 21 Or LUBA 445 (1991).

35. Moratoria. In reviewing a moratorium decision, LUBA's scope of review is limited to determining whether the moratorium complies with the requirements of ORS 197.505 to 197.530. *Western Pacific Development v. City of Brookings*, 21 Or LUBA 445 (1991).

35. Moratoria. Statements that petitioners' interests in developing their property are substantially impaired by local government adoption of a corrective program which will not correct the problem justifying a previously adopted moratorium, and will create a situation in which there is no foreseeable end to that moratorium, are adequate to allege petitioners have interests which are substantially affected by the adopted corrective program. *Schatz v. City of Jacksonville*, 21 Or LUBA 214 (1991).

35. Moratoria. The adoption of a "corrective program," subsequent to adoption of a key facilities moratorium pursuant to ORS 197.520(1) and (2), is governed solely by ORS 197.530. The only substantive standard imposed by ORS 197.530 is that the corrective program "seek to correct the problem creating the moratorium." *Schatz v. City of Jacksonville*, 21 Or LUBA 214 (1991).

35. Moratoria. A local government corrective program "seeks to correct the problem creating the moratorium," as required by ORS 197.530, if it demonstrates "a good faith

initial attempt to begin to solve the problem" justifying a previously adopted key facilities moratorium. *Schatz v. City of Jacksonville*, 21 Or LUBA 214 (1991).

35. Moratoria. A corrective program adopted after adoption of a key facilities moratorium may include, as a first step, development and adoption of a key facilities master plan to guide subsequent corrective measures. *Schatz v. City of Jacksonville*, 21 Or LUBA 214 (1991).

35. Moratoria. Allegations that (1) petitioners have ownership interests in land which is subject to an adopted moratorium on new construction, and (2) the moratorium prevents petitioners from developing such land for purposes for which it is zoned, are sufficient to demonstrate that petitioners' interests are substantially affected by the moratorium and, therefore, petitioners have standing to appeal the adoption of the moratorium to LUBA. *Schatz v. City of Jacksonville*, 21 Or LUBA 149 (1991).

35. Moratoria. In reviewing a local government decision adopting a moratorium, LUBA's scope of review is limited to determining whether the moratorium was adopted in violation of ORS 197.505 to 197.530. *Schatz v. City of Jacksonville*, 21 Or LUBA 149 (1991).

35. Moratoria. A moratorium adopted pursuant to ORS 197.520(2) to prevent a shortage of water supply "key facilities" does not have to be based on an inadequate *source* of water. Water treatment, storage and distribution facilities are essential to a water supply system and, therefore, are also "key facilities" as that term is used in ORS 197.520(2). *Schatz v. City of Jacksonville*, 21 Or LUBA 149 (1991).

35. Moratoria. Neither a local government's adoption of prior moratoria nor the intent of individual residents testifying in support of the challenged moratorium provides a basis for finding the challenged moratorium was adopted in violation of ORS 197.505 to 197.530. *Schatz v. City of Jacksonville*, 21 Or LUBA 149 (1991).

35. Moratoria. Uncontradicted engineering reports showing a water system's existing storage capacity is less than the required minimum water storage capacity for such a system constitute substantial evidence supporting the local government's determination that there is a current need beyond existing water storage capacity. *Schatz v. City of Jacksonville*, 21 Or LUBA 149 (1991).

35. Moratoria. The requirement of ORS 197.520(2)(c) that housing needs be accommodated as much as possible in any program for allocating any remaining key facility capacity is inapplicable where a moratorium is based on a finding that existing key facilities are inadequate to meet current needs, as there is no remaining key facility capacity. *Schatz v. City of Jacksonville*, 21 Or LUBA 149 (1991).

35. Moratoria. Where a *current* shortage of key facilities is demonstrated, there is no requirement in ORS 197.505 to 197.530 that a local government must demonstrate it has

exhausted all possible alternatives before adopting a moratorium pursuant to ORS 197.520(2). *Schatz v. City of Jacksonville*, 21 Or LUBA 149 (1991).

35. Moratoria. A local government may demonstrate the "need to prevent a shortage of key facilities" required by ORS 197.520(2) by relying on accepted *minimum* water system capacity standards to demonstrate that (1) its water system currently does not have adequate capacity to serve existing needs, and (2) any additional construction would result in further exceeding the water system's capacity, posing a greater danger to the health, safety and welfare of local residents. *Schatz v. City of Jacksonville*, 21 Or LUBA 149 (1991).

35. Moratoria. Where a local government conducts the proceeding culminating in the adoption of a corrective program under ORS 197.530 as a separate proceeding, not as a continuation of a proceeding leading to the adoption of a moratorium under ORS 197.520, the record of the decision to adopt a corrective program does not include the record of the decision to adopt a moratorium, unless the moratorium record was placed before the decision maker during the corrective program proceeding. *Schatz v. City of Jacksonville*, 20 Or LUBA 565 (1991).

35. Moratoria. "Appearance" is not a requirement for standing to appeal the adoption of a moratorium or corrective program to LUBA. *Schatz v. City of Jacksonville*, 20 Or LUBA 565 (1991).

35. Moratoria. ORS 197.520(3) *limits* a local government's obligation to collect evidence in support of its decision to declare a moratorium to information that is "reasonably available," as opposed to more detailed evidence that may be unreasonably difficult, expensive or time consuming to generate or collect. *Davis v. City of Bandon*, 20 Or LUBA 159 (1990).

35. Moratoria. Local government findings in support of a moratorium which neither refer to limitations imposed on residential development under the applicable land use regulations, nor explain why any residential development in accordance with existing land use regulations necessarily will result in irrevocable public harm, are insufficient to explain why existing land use regulations are inadequate to "prevent irrevocable public harm from residential development," as required by ORS 197.520(3)(a). *Davis v. City of Bandon*, 20 Or LUBA 159 (1990).

35. Moratoria. The "irrevocable public harm" referred to in ORS 197.520(3)(a) can be demonstrated by showing (1) the adverse effect residential development would likely have on the local government's ultimate goal of public purchase of the subject property for development of a park and interpretive center, and (2) the unusual suitability of the property for such purposes. *Davis v. City of Bandon*, 20 Or LUBA 159 (1990).

35. Moratoria. Findings that suggest the kinds of planning measures being considered, state additional staff has been hired to prepare needed regulatory changes and conclude the needed changes can be prepared and adopted while the challenged moratorium is in

effect, are adequate to demonstrate that "sufficient resources are available to complete the development of needed [regulatory] changes" while the moratorium is in effect, as required by ORS 197.520(3)(e). *Davis v. City of Bandon*, 20 Or LUBA 159 (1990).

35. Moratoria. A local government decision that continues the development limitations imposed by a previous moratorium with almost no changes has "extended" the moratorium, within the meaning of ORS 197.520(4). *Davis v. City of Bandon*, 20 Or LUBA 159 (1990).

35. Moratoria. Under ORS 197.540, which limits LUBA's scope of review in appeals of moratoria, LUBA reviews a moratorium based on the record made during the local proceedings, and invalidates the moratorium if the local government failed to adopt findings, supported by substantial evidence, demonstrating that the relevant standards in ORS 197.520(2) and (3) are satisfied. *Davis v. City of Bandon*, 19 Or LUBA 327 (1990).

35. Moratoria. While the ORS 197.520(3) "compelling need" standard for adoption of a moratorium "not based on a shortage of key facilities" is stringent, the proper focus of LUBA's review is on the requirements of the statute, particularly the findings required by ORS 197.520(3)(a) through (e). *Davis v. City of Bandon*, 19 Or LUBA 327 (1990).

35. Moratoria. Unless the nature and magnitude of the threatened public harm is sufficient to allow the determinations required by ORS 197.520(3) to be made, damage to or even loss of a resource subject to the protection of one or more statewide planning goals does not justify a moratorium under ORS 197.520(3). *Davis v. City of Bandon*, 19 Or LUBA 327 (1990).