BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DAVID L. DAVIS, Petitioner, vs. CITY OF BANDON, Respondent.	)	LUBA No. 90-030
	)	FINAL OPINION AND ORDER
INDUSTRIAL SUPPLIES CO. PROFIT SHARING TRUST, CHARLES F. LARSON, and REX ROBERTS, Petitioners, vs. CITY OF BANDON, Respondent.	)	LUBA No. 90-038

Appeal from City of Bandon.

Dan Neal, Eugene, filed a petition for review and argued on behalf of petitioner Davis. With him on the brief was Neal & Eng.

Bill Kloos, Eugene, filed a petition for review and argued on behalf of petitioners Industrial Supplies Co. Profit Sharing Trust, et al. With him on the brief was Johnson & Kloos.

Mark J. Greenfield, Daniel Kearns, and Edward J. Sullivan, Portland, filed a response brief and Mark J. Greenfield argued on behalf of respondent. With them on the brief was Preston, Thorgrimson, Schidler, Gates & Ellis.

HOLSTUN, Referee; SHERTON, Chief Referee; KELLINGTON, Referee, participated in the decision.

AFFIRMED 10/23/90

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners challenge City of Bandon Ordinance 1258, "AN ORDINANCE ESTABLISHING A MORATORIUM ON CONSTRUCTION AND LAND DEVELOPMENT IN CERTAIN AREAS WITHIN THE CITY OF BANDON * * *." Record (M-3) 4.[1]

FACTS

This appeal challenges the third of four moratoria adopted by the city affecting property within the City of Bandon owned by petitioners. The first moratorium was adopted December 5, 1989 and expired on January 9, 1990. The second moratorium was adopted January 9, 1990 and expired on February 16, 1990.[2] The moratorium challenged in this appeal was adopted February 13, 1990, and is effective through June 16, 1990. The fourth moratorium, adopted June 9, 1990, is effective through December 16, 1990. A separate appeal, challenging the fourth moratorium, is presently before this Board in Davis v. City of Bandon, LUBA Nos. 90-

[1]The record in this appeal includes the records submitted by the city in appeals challenging two earlier moratoria. In this opinion we cite the record in the first appeal as "Record (M-1)," the record in the second appeal as "Record (M-2)," and the record submitted in this appeal as "Record (M-3)."

[2]We invalidated the first two moratoria. Davis v. City of Bandon, ___ Or LUBA ___ (LUBA Nos. 89-153 and 89-159, July 13, 1990)(Davis I); Davis v. City of Bandon, ___ Or LUBA ___ (LUBA No. 90-009, July 13, 1990)(Davis II).

086 and 90-087.[3]

The property affected by the moratorium is a strip of land including approximately 18 acres. The subject property is known as Coquille Point and is separated from the Pacific Ocean by Tax Lot 800 which lies west of the vegetation line.[4] The moratorium affects Tax Lots 600 and 700, which are unplatted, as well as a number of platted lots located west of Portland Avenue. Tax Lots 600 and 700 were annexed by the city in 1989 and remain subject to the Coos County comprehensive plan and land use regulations. See ORS 215.130(2) (providing that county plan and land use regulations continue to apply after annexation until the annexing city provides otherwise). The platted lots located west of Portland Avenue are subject to the city's comprehensive plan and land use regulations. Existing city and county zoning districts applied to the property permit single family dwellings.[5]

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[3]The parties have not moved for consolidation of this appeal with the appeal challenging the fourth moratorium. See OAR 661-10-055. Therefore, although we take official notice of the existence of that moratorium, we do not assign any significance to the existence of that moratorium or consider in this decision additional issues that may be presented in the appeal challenging the fourth moratorium.

[4]The city excluded Tax Lot 800 from the third moratorium, apparently because its location west of the vegetation line makes it undevelopable. See State ex rel Thornton v. Hay, 254 Or 584, 462 P2d 671 (1969); ORS 390.605, et seq.

[5]As explained later in this opinion, although applicable city and county zoning districts permit single family dwellings as uses allowed outright, they both impose a number of additional approval criteria.

The city found:

> "Tax Lots 600 and 700 rise steeply from their base to the top of the bluff, with slopes over 50%. The lower portion of Tax Lot 600 falls within the velocity zone of the ocean, is subject to ocean flooding, and contains wetlands. These tax lots are undeveloped * * *.
>
> "The clifftop property within the affected area is also undeveloped, with large areas of eroded soil * * *. The soils are highly erodible and have been heavily impacted by construction demolition, four-wheel drive use and wind erosion. Adjoining uses [outside the moratorium area] include residences and overnight accommodations." Record (M-3) 8.

Immediately adjacent to Coquille Point are offshore islands and rocks which are part of the Oregon Islands National Wildlife Refuge. These islands and rocks are valuable as habitat for nesting seabirds and for seals. The area affected by the moratorium is an excellent site for viewing nesting seabirds, seals and other marine life.

The city imposed the challenged moratorium to (1) explore acquisition of the property for park purposes, and (2) adopt additional planning and zoning measures it believes are necessary to protect natural resource values present on the property. There is no real dispute among the parties that the offshore islands and rocks are a valuable natural resource warranting protection from land uses on Coquille Point which might interfere with their wildlife habitat values. Neither do petitioners appear to dispute that the area subject to the moratorium offers outstanding

possibilities for development as a public marine wildlife viewing area. Rather, the issue presented in this appeal is whether the city complied with the statutory standards governing the declaration of moratoria.

SECOND THROUGH SIXTH ASSIGNMENTS OF ERROR

There is no dispute that the decision challenged in this appeal falls within the statutory definition of "moratorium."[6] The manner in which moratoria may be declared, extended and reviewed by this Board is governed by statute. ORS 197.505 to 197.540. Under their second through sixth assignments of error, petitioners Industrial Supplies Co. Profit Sharing Trust (Industrial Supplies Co.), et al contend the city failed to demonstrate a "compelling need" for the challenged moratorium, as required by ORS 197.520(3).[7]

The statutory standards governing declarations of moratoria distinguish between moratoria based on "a shortage of key facilities" and moratoria adopted for other purposes. ORS 197.520. The statutory standards which must be met to

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[6]ORS 197.505 defines a "moratorium" as:

> "* * * engaging in a pattern or practice of delaying or stopping issuance of permits, authorizations or approvals necessary for the subdivision and partitioning of, or residential construction on, urban or urbanizable land. * * *"

[7]We also address petitioner Davis's assignment of error in our discussion of these assignments of error. In this opinion we refer to petitioner in LUBA No. 90-030 and petitioners in LUBA No. 90-038 collectively as petitioners.

declare a moratorium such as the one challenged in this appeal are set forth in ORS 197.520(3) as follows:

> "A moratorium not based on a shortage of key facilities under subsection (2) of this section may be justified only by a demonstration of compelling need. Such a demonstration shall be based upon reasonably available information, and shall include, but need not be limited to, findings:
>
> "(a) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from residential development in affected geographical areas;
>
> "(b) That the moratorium is sufficiently limited to insure that a needed supply of affected housing types within or in proximity to the city, county or special district is not unreasonably restricted by the adoption of the moratorium;
>
> "(c) Stating the reasons alternative methods of achieving the objectives of the moratorium are unsatisfactory;
>
> "(d) That the city, county or special district has determined that the public harm which would be caused by failure to impose a moratorium outweighs the adverse effects on other affected local governments, including shifts in demand for housing, public facilities and services and buildable lands, and the overall impacts of the moratorium on population distribution; and
>
> "(e) That the city, county or special district proposing the moratorium has determined that sufficient resources are available to complete the development of needed interim or permanent changes in plans, regulations or procedures within the period of effectiveness

of the moratorium."[8]

The city adopted findings addressing ORS 197.520(3). In addressing ORS 197.520(3)(b) and (d), the city found that the challenged moratorium will neither unreasonably restrict the needed supply of housing in the city nor adversely affect other local governments by shifting demand for housing, public facilities and services and buildable lands. Petitioners do not challenge the city's findings addressing ORS 197.520(3)(b) or (d) and do not contend the moratorium will adversely impact the city's or adjoining local government's ability to provide needed housing, public facilities or services.

Petitioners contend the city failed to consider reasonably available information during its deliberations.

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[8]In our opinion in Davis I, supra, slip op at 13-14, we described the statutory scheme and summarized the above quoted statutory criteria for moratoria as follows:

> "The statutory scheme demonstrates a clear legislative preference for proceeding by way of normal planning processes, not by way of moratoria. Before existing development ordinances and regulations are suspended by way of a moratorium, they must be shown to be inadequate. ORS 197.520(3)(a). Even if the ordinances and regulations are inadequate, alternative methods of achieving the objectives of the moratorium must be unsatisfactory. ORS 197.520(3)(c). The moratorium must be limited to avoid unreasonable restriction of needed housing. ORS 197.520(3)(b). The nature and scope of the irrevocable public harm must be such that it outweighs the adverse effects on other affected local governments that may result from the moratorium. ORS 197.520(3)(d). Finally, the city must determine that it has the resources to develop needed plans or regulations within the term of the moratorium. ORS 197.520(3)(e). ORS 197.520(3) states that all of these determinations must be part of the determination of compelling need."

Petitioners also challenge the city's findings concerning ORS 197.520(3)(a), (c) and (e) as well as the city's ultimate finding that its findings adopted in compliance with ORS 197.520(3)(a) through (e) demonstrate a compelling need for the challenged moratorium.

A. Reasonably Available Information

ORS 197.520(3), quoted supra, requires that the city base its demonstration of "compelling need" "upon reasonably available information." Petitioners interpret this statutory language to impose an affirmative obligation upon the city to include in its deliberations and to consider all reasonably available information. Petitioners cite two types of information, not included in the record of this appeal, that they contend were reasonably available to the city and relevant to the city's decision to impose the moratorium.[9]

In declaring a moratorium, the city must ensure that its decision is supported by substantial evidence. ORS 197.540(3); 197.835(7)(a)(C). Although a city may be

[9]The city excluded from the moratorium area four lots on which it had previously approved a conditional use permit for the Gorman Motel. Petitioners cite testimony in the record in which a number of persons argued the motel site should be included in the moratorium. Petitioners contend the record of the proceedings that led to approval of the conditional use permit for the Gorman Motel should have been part of the basis for the decision to impose the moratorium. Petitioners also contend there was testimony presented to the city in August and September of 1989 which concerned alternatives that would have allowed development of all of petitioner Industrial Supplies Co.'s platted lots as well as some of petitioner Davis's property.

obliged to consider all relevant reasonably available information which is submitted to it by participants in the local government proceedings leading up to its decision to impose the moratorium, petitioners do not contend the information they cite was submitted during local proceedings for inclusion in the record. Petitioners argue the city had an affirmative statutory duty to include the cited information in the record of its deliberations in this matter.

We do not construe ORS 197.520(3) to impose upon the city an affirmative obligation to collect, include in its record and consider all reasonably available information. The statutory language appears instead to limit the city'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.

This assignment of error is denied.

B. Adequacy of Existing Development Ordinances to Prevent Irrevocable Public Harm

The platted lots located in the southern portion of the moratorium area are zoned Controlled Development (CD-1). The purpose section of this zone states as follows:

> "The purpose of the CD-1 zone is to recognize the scenic and unique qualities of Bandon's ocean front and nearby areas and to maintain these qualities as much [as] possible by carefully

> controlling the nature and scale of future development in this zone. It is intended that a mix of uses would be permitted, including residential, tourist commercial and recreational. Future development is to be controlled in order to enhance and protect the area's unique qualities." Bandon Code (BC) § 3.700.

Single family dwellings and state parks are listed as uses "permitted outright provided the use promotes the purpose of the zone and all other ordinance requirements are met." BC § 3.710.

BC § 3.730 imposes a number of requirements on all new uses in the CD-1 zone. Planning commission approval of design and siting is required. BC § 3.730(1). BC § 3.730(2) requires that negative impacts on ocean views should be taken into consideration. BC § 3.730(3) imposes a burden on an applicant to show any geologic hazards are adequately addressed and requires an applicant to submit soils, geology and hydrology reports. BC § 3.730(4) prohibits structures on foredunes.

The remaining property subject to the moratorium, including Tax Lots 600 and 700, is subject to Coos County's Controlled Development (CD-10) zone. The purpose of the CD-10 zone is as follows:

> "The purpose of the CD-10 district is to recognize the scenic and unique quality of selected areas within the Urban Growth Boundaries, to enhance and protect the unique 'village atmosphere,' to permit a mix of residential, commercial and recreational uses and to exclude those uses which would be inconsistent with the purpose of this district, recognizing tourism as a major component of the

County's economy." Record (M-1) 34.

Significant portions of Tax Lots 600 and 700 are designated in the county plan as "Beach and Dune Areas with Limited Development Suitability." Development in such areas requires findings considering the following:

> "i. the type of use proposed and the adverse effects it might have on the site and adjacent areas,
>
> "ii. the need for temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation,
>
> "iii. the need for methods for protecting the surrounding area from any adverse effects of the development, and
>
> "iv. hazards to life, public and private property, and the natural environment which may be caused by the proposed use." Record (M-1) 37.

Following petitioner Industrial Supplies Co.'s submission of an application for approval of single family dwelling on Tax Lot 700, the city identified a number of additional plan and zoning ordinance provisions that would have to be satisfied to grant the requested approval. Record (M-3) 373-374.

The city finds that approximately 15 single family dwellings potentially could be approved on the 18 acres subject to the moratorium. The city suggests in its decision and takes the position in its brief that under either the city's CD-1 zone or the county's CD-10 zone it is at least unclear whether the city can deny a request for approval of a single family dwelling in the CD-1 and CD-10

zones or may only impose siting limitations to reduce impacts on natural resource values of the property and offshore islands.

The city's findings explain the significant natural resource value of the offshore islands and that "Coquille Point may be the best seabird viewing site on the west coast * * *."[10] Record (M-3) 8. The city found that the moratorium is necessary and that current planning and zoning limitations are inadequate to avoid irrevocable public harm should applications for development be submitted.

The city found that the owner of Tax Lot 700 already submitted one application for approval of a single family dwelling on Tax Lot 700, and that communications from the owner of Tax Lot 600 suggested applications for single family dwellings on Tax Lot 600 might be submitted at any time.[11] The city's findings point out that without a moratorium, applications for approval of single family dwellings could be submitted at any time; and, if such applications were submitted, they would have to be reviewed against the existing plan and land use regulations. See ORS 227.178(3); Kirpal Light Satsang v. Douglas County, 96 Or

[10]Respondent cites testimony in the record supporting this assessment of Coquille Point as a marine wildlife viewing area of national significance. See Record (M-3) 445.

[11]In its brief, respondent notes the owner of Tax Lot 600 submitted a study in January 1990 in support of its position that residential development on Tax Lot 600 would not have unavoidable adverse impacts on Coquille Point or on the offshore islands and rocks. Record (M-3) 299-351.

App 207, 772 P2d 944, modified 97 Or App 614, rev den 308 Or 382 (1989).

The city acknowledges that although any residential development on Coquille Point theoretically could be removed if the property is purchased for a public viewing area, it nevertheless found Coquille Point could be permanently damaged by such development and existing efforts to secure federal and state funding to purchase and establish a park on the site could be severely compromised or destroyed. The city found the moratorium is necessary both to allow time to prepare and adopt more stringent plan and land use regulations to protect the property and to assure that existing efforts to secure federal and state funds to purchase the property will go forward.

In our view, the city's findings express separate bases for the ultimate finding that the moratorium is necessary to prevent irrevocable public harm from residential development in the area. First, the city found that development would result in actual and irrevocable damage through destruction of vegetative cover and erosion on Coquille Point and through impacts on the offshore islands and rocks. Second, the city found that irrevocable public harm would result from residential development on the property by virtue of the strong likelihood that current efforts to secure federal and state funding to purchase and develop the property for a public viewing area would be abandoned or unsuccessful if

the city permitted additional residential development on the property under existing land use regulations.

Petitioners contend that nowhere do the findings specifically discuss the various limitations imposed on potential single family residential development by the present plan and zoning designations for the property. Petitioners contend this failure makes it impossible for the findings to explain why those regulations are inadequate to avoid irrevocable public harm from residential development that may be allowed under existing planning and zoning. Petitioners complain the decision simply concludes that such damage to natural resources on Coquille Point and the offshore islands and rocks would result without explaining why such is the case.

We agree with petitioners that the city's findings are inadequate to explain why existing plan and zoning regulations are inadequate to avoid irrevocable public harm through damage to protective vegetative cover or erodible soils, as the findings suggest. Indeed, the findings make no reference to the limitations that may be imposed on applications for residential development under the city's and county's land use regulations. Neither do the findings explain why any residential development in accordance with existing land use regulations necessarily will result in irrevocable damage to the natural resource value of the

offshore islands and rocks.[12]

Although we conclude the city's findings are inadequate to demonstrate that any residential development on Coquille Point necessarily would result in irrevocable harm to the natural resource values present on Coquille Point or on the offshore islands and rocks, we conclude the city's findings are adequate to establish that any additional residential development in the area, even if limited under existing regulations, would likely result in abandonment or rejection of current efforts to secure federal and state funding for a public park and viewing area.[13] We also agree with the

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[12]Because the findings are inadequate in this respect, we do not address the adequacy of the evidence to support such findings. We note, however, the city ultimately relied on expert testimony which suggests that any residential development may have adverse impacts on Coquille Point and the offshore islands and rocks. However, it is not clear whether that testimony is directed at all of the area included in the moratorium. In addition, the city candidly concedes that there are discrepancies between some of the expert testimony the city ultimately relied upon and testimony earlier offered by the same expert. The city also concedes there is expert testimony in the record that while all of the area included in the moratorium might be desirable for inclusion in a public park, not all parts of the 18 acres included in the moratorium are equally fragile or as likely to have the same impacts on the offshore islands if developed residentially. Some of that testimony suggests development in certain areas, properly limited, would not result in irrevocable public harm to Coquille Point or the offshore islands and rocks.

[13]Respondent cites to several places in the record where it is suggested that additional residential development of any kind would likely make the site unusable as a public park or make federal funding for purchase of the area for a park and wildlife viewing area unlikely. Respondent's Brief 14. Viewing this testimony as a whole, we believe a reasonable person would conclude that additional residential development on Coquille Point would make it highly unlikely that federal or state funds could be secured to purchase and develop the property for a public park and marine wildlife viewing area.

city's finding that abandonment of such efforts to purchase the property for a public park and marine wildlife viewing area or loss of such funding due to residential development under existing regulations would constitute irrevocable public harm.

Petitioners correctly note that failure of current efforts to secure federal funding to purchase the 18 acres does not mean efforts in the future to secure funding from local, state or federal sources necessarily would be unsuccessful. Petitioners are also correct that it is possible that any houses that might be constructed in the interim could be removed. However, in the unique circumstances presented in this case, we do not believe the possibility that other efforts to acquire the property for a park and viewing area could be successful is fatal to the city's finding of irrevocable public harm.[14]

In our view, the irrevocable public harm is the result of (1) the adverse effect such residential development would likely have on the city's ultimate goal of public purchase of the property for development of a park and interpretive center, and (2) the unusual suitability of the property for

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[14]Petitioner Davis points out that not all of Tax Lot 600 is proposed for acquisition for park purposes. There are maps included in the record which label the northern portion of Tax Lot 600 as "Not to Be Acquired." Record (M-1) 171-172. Although the city's decision is not entirely clear on the point, it appears to endorse the December 1989 proposal of the United States Department of Fish and Wildlife. That proposal recommended purchase of the entire 18 acres included in the moratorium, including all of Tax Lot 600. Record (M-2) 221.

such purposes. While the caution exercised by the city in this case might not be warranted or supportable in all circumstances, we believe the city's approach is justified in this case. As the city points out, this is not just another possible area for a park. Rather, it is perhaps the best seabird nesting viewing area on the west coast, an area of national significance offering a wealth of wildlife viewing possibilities. The cost of purchasing the property will be high, making the city's reliance on state and federal funding contributions reasonable. This is particularly the case in view of the national, as opposed to purely local, significance of the site for marine wildlife viewing purposes.[15]

This assignment of error is denied.

C. Alternatives to a Moratorium

Petitioners contend the city's findings are not adequate to demonstrate that "alternative means of achieving the objectives of the moratorium are unsatisfactory," as required by ORS 197.520(3)(c). Specifically, petitioners contend the city failed to explain why it could not simply purchase the property or mediate a solution with petitioners that would have made the moratorium unnecessary.

The city contends its findings indicate it made efforts

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[15]The record includes purchase price estimates of $1.4 million. Petitioner Davis contended during local proceedings that the cost may be much higher.

to reach a settlement with petitioners during the first moratorium, and petitioner Industrial Supplies Co. refused to sign the settlement agreement. The city further contends that its findings demonstrate that it is actively pursuing plans to purchase the property with federal and state assistance. However, the city argues it was never the city's plan to purchase and develop the property solely with city funds, and the city lacks funds to purchase the property.[16]

We agree with the city that its findings are adequate to demonstrate compliance with ORS 197.520(3)(c), and we reject this assignment of error.

D. Sufficient Resources to Complete Needed Changes in Plans, Regulations or Procedures

ORS 197.520(3)(e) requires the city to find that it has "sufficient resources * * * to complete the development of needed interim or permanent changes in plans, regulations or procedures within the period of * * * the moratorium."

The city found that efforts to purchase the property were already underway, although the city did not find purchase could be completed within the 120 day moratorium period. The city also adopted the following findings:

"* * * [I]n the event public acquisition does not

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[16]Although the city did not explicitly find that it lacked funds of its own to purchase the property, its findings read as a whole make it clear that it does not have such funds and for that reason is attempting to secure funds from state and federal sources.

> occur, a 120-day moratorium [permits] the City to adopt overlay zones and utilize other planning techniques, such as the transferring of development rights, to protect the significant resource values of the affected area." Record (M-3) 9.
>
> "* * * [T]he Council finds that its staff, working with the special counsel it has hired, enable[s] the City to adopt and enact necessary interim or permanent changes in plans, regulations or procedures within the period of effectiveness of the moratorium. * * * The Council finds that the City planner has begun working with special counsel to consider necessary plan and zoning text and map amendments intended to protect development rights of affected property owners while also protecting the resource values of the area. The Council finds that a planning program is underway, and it believes 120 days is a sufficient amount of time to prepare, hold hearings on, and adopt measures necessary to meet City needs consistent with LCDC's goals." Record (M-3) 13.

Petitioners contend the city's findings concerning ORS 197.520(3)(e) are long on optimism and generalities and short on details. Petitioners contend the city's findings must outline a planning program, identify resources needed to accomplish the expected work and demonstrate that the city has or can secure such resources.

The city's findings suggest the kinds of planning measures that are being considered, point out that additional staff has been hired to prepare needed regulatory changes and conclude that needed changes can be prepared and adopted during the 120-day period. We conclude the city's findings are adequate to demonstrate compliance with ORS 197.520(3)(e).

This assignment of error is denied.

E. Compelling Need

Petitioners contend that viewed as a whole, the city's findings fail to demonstrate compliance with the ultimate legal standard in ORS 197.520(3), i.e. justification of the moratorium by demonstrating "compelling need."

As explained above, the city's findings are either unchallenged or adequate to address each of the considerations expressed in paragraphs (a) through (e) of ORS 197.520(3). Petitioners point out the statutory command that the required demonstration of compelling need must include "but need not be limited to" the findings required by paragraphs (a) through (e) of ORS 197.520(3). Petitioners suggest that adequate findings addressing paragraphs (a) through (e) may not be enough to demonstrate "compelling need."

In this case we conclude the city's findings addressing paragraphs (a) through (e) of ORS 197.520(3) are adequate to demonstrate the moratorium is justified by a compelling need. Our conclusion is based primarily on the city findings which demonstrate that Coquille Point is extremely valuable as a public marine wildlife viewing area, and its availability for such use is threatened by residential development allowable under existing land use regulations. However, it is also important that the moratorium will have no adverse impact on the city's or adjoining local

government's ability to provide needed housing, or public facilities or services. Although the legislature's concern in adopting limitations on enactment of moratoria is not explicitly limited to concern with impacts on the ability of local governments to carry out their obligations to supply needed housing, concerns with impacts on housing were clearly the legislature's primary concern.[17]

This assignment of error is denied.

Petitioners Industrial Supplies Co., et al's second, third, fourth, fifth and sixth assignments of error are denied. Petitioner Davis's assignment of error is denied.

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[17]In addition to the requirement for findings addressing impacts on housing in ORS 197.520(3), the following legislative statement of purpose makes the legislature's primary concern with the possible impact of moratoria on housing apparent:

> "The Legislative Assembly finds and declares that:
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> "(1) The declaration of moratoria on construction and land development by cities, counties and special districts may have a negative effect on the housing policies and goals of other local governments within the state, and therefore, is a matter of state-wide concern.
>
> "(2) Such moratoria, particularly when limited in duration and scope, and adopted pursuant to growth management systems that further the state-wide planning goals and local comprehensive plans may be both necessary and desirable.
>
> "(3) Clear state standards should be established to assure that the need for moratoria is considered and documented, the impact on housing is minimized, and necessary and properly enacted moratoria are not subjected to undue litigation." ORS 197.510.

FIRST ASSIGNMENT OF ERROR

In their first assignment of error, petitioners Industrial Supply Co. et al contend the city failed to adopt findings adequate to satisfy the statutory requirement for extending a moratorium beyond 120 days.

ORS 197.520(4) provides as follows:

> "No moratorium adopted under [ORS 197.520(3)] shall be effective for a period longer than 120 days, but such a moratorium may be extended provided the city * * * adopting the moratorium:
>
> "(a) Finds that the problem giving rise to the need for a moratorium still exists;
>
> "(b) Demonstrates that reasonable progress is being made to alleviate the problem giving rise to the moratorium; and
>
> "(c) Sets a specific duration for the renewal of the moratorium. A moratorium may be extended more than once but no single extension may be for a longer period than six months."

Respondent first contends that the above statutory requirement is inapplicable because the city acknowledged the first two moratoria were defective, and this Board invalidated those moratoria in Davis I and Davis II. Respondent contends there was no moratorium to extend.

We do not agree. On the date this moratorium was adopted the first two moratoria had not been invalidated by this Board. The city's decision continued the regulatory limits imposed by the first two moratoria with almost no changes. The city therefore "extended" the moratorium, within the meaning of ORS 197.520(4).

Alternatively, the city argues that it specifically found that the "problem giving rise to the need for a moratorium still exists," as ORS 197.520(4)(a) requires. In addition, the city argues the findings discussed above under our consideration of ORS 197.520(3)(e) are adequate to demonstrate "reasonable progress is being made to alleviate the problem giving rise to the moratorium," as ORS 197.520(4)(b) requires. Respondent contends:

> "[The city] found that staff working with special counsel, provided the City with sufficient expertise to enact interim or permanent changes in plans, regulations or procedures during the moratorium period. It found that staff and special counsel already had begun such work, and that talks were progressing with state and federal representatives and property owners to gain clarity with respect to choices and timelines for decisionmaking.
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> "* * * * *
>
> "The relevant legal standard is 'reasonable progress.' That is all that the statute requires. A reasonable person would conclude that these issues are complex, take time to resolve, and require a full understanding of the factual and legal background before appropriate solutions can be devised. A reasonable person would find that the above steps, taken over a very short period of time * * * constitute reasonable progress." (Citations to the record omitted; emphasis in original.) Respondent's Brief 20-21.

We agree with the city that its findings are adequate to demonstrate compliance with ORS 197.520(4). We reject petitioners' arguments that the city failed to provide sufficient detail concerning its progress. However, the

city's explanation of its progress is admittedly not very specific. Our refusal to fault the level of detail provided by the city is based primarily on the relatively short period of time the city had during the first two moratoria to develop specific measures to amend its plan, regulations and procedures.

Finally, we emphasize that the city may not enact one or more moratoria solely to allow it to seek uncertain federal or state funding for a wildlife viewing area. The statutes discussed above limit moratoria to 120 days and require that the city find it will be able to make any needed changes in its plans, regulations and procedures during the term of the moratorium.

However, as we explained earlier in this opinion, the city has not simply adopted a moratorium to allow itself an indefinite period of time to seek federal and state funds to purchase the property. The city found that existing regulations are inadequate to avoid residential development that would likely preclude the longer term purchase option, and that the moratorium is necessary to allow time to adopt plan and land use regulation provisions to avoid residential development that would preclude the preferred long term purchase option. As long as the city adopts such plans, regulations or procedures within the term of the moratorium or any extensions that it can justify under ORS 197.520(4), there is nothing impermissible in the city's approach.

The first assignment of error is denied.

The city's decision is affirmed.