

Exhibit “A”

Findings County Road 804 (South) V-109

A. Introduction

This proceeding is a petition to vacate a portion of County Road 804 (804) situated between the northerly portion of the Ocean Crest subdivision southerly and easterly generally to the southerly right-of-way of First Street in Yachats. (Described in *Attachment 1*). Throughout these proceedings that portion of 804 has been called South 804, and we adopt that description for purposes of these findings. As described below, in separate proceedings in the 1970's and 1980's, two other portions of County Road 804 were considered by the County for vacation. For ease of reference, we refer to those portions of 804 as North 804 and Middle 804. They are entirely distinct from South 804. Attached to these findings are a map that shows the location of South 804 in relation to North 804 and Middle 804 (*Attachment 2*), and a map that shows South 804 overlaid onto the City of Yachats (*Attachment 3*). For the reasons detailed below, the Board vacates the portion of South 804 described on *Attachment 4*.

B. Historical Background

The Board makes the following historical findings based on documentary evidence in the record. Where appropriate, reference is made to exhibits in the record as catalogued by the County. That exhibit list is attached to these findings for reference (*Attachment 5*). In 1890, an order to establish County Road 804 was signed by the Benton County Court when Lincoln County was still a part of Benton County (Exhibit A8). The road was to run along the coast from Waldport to Yachats, and then along the north bank of the Yachats River. In 1890 the road was surveyed and the County Court issued an order that the survey be recorded and the road be opened. (*Id.*) In 1893 a resurvey of the road was completed (Exhibit A10). There is no further record that the road officially was declared opened, or that South 804 was ever constructed or maintained as a county road.

In 1913 the Lincoln County Court approved the Yahutes Subdivision plat that covered a portion of the surveyed County Road 804 (Exhibits A12 and A13). The plat did not identify County Road 804, but established an “Esplanade.” This plat was vacated in 1916 (Exhibit A16). In 1916, the County Court authorized the establishment of County Road 802, also running from Waldport to Yachats (Exhibit A15). County Road 802 was established to run parallel to and east of the 804 right of way at a distance varying from approximately 600 to 1100 feet. In 1932-33, County Road 802 was replaced by the Roosevelt Coast Highway (Highway 101). (*See* Exhibit A40). In 1934, 1950 and 1953, three more subdivisions were approved and recorded by Lincoln County. They were called Third Addition, Christensen's Addition, and Ocean Crest subdivisions respectively (Exhibits A41, A46 and A50). All three subdivisions covered portions of the

originally surveyed County Road 804. None of the approved plats show the existence of County Road 804. No recorded plat map shows 804 running through the middle of the lots within any of the subdivisions. When Ocean Crest Subdivision was platted and approved, a new road, Ocean View Drive, was dedicated and constructed (*See* Exhibit A51). Most of Ocean View Drive is situated within the originally surveyed right of way for 804. However, the portion of Ocean View Drive between Seventh Street and Marine Drive runs parallel to and east of the originally surveyed 804 varying in distance from a few feet to approximately 100 feet. It serves the properties built over the 804 right of way.

In 1974 two petitions to vacate portions of 804 were filed with the Lincoln County Board of Commissioners (Exhibits A54 and A61). The petitions covered areas north of the present petition in locations now referred to for convenience in the record of this proceeding as Middle 804 and North 804. Middle 804 covered only approximately 900 feet running southerly from the northernmost point of the Adobe Property through the Aqua Vista Subdivision, and affected only six property owners. North 804 ran northerly from the Adobe Property to Starr Creek. (*See attachment 2* for location). Middle 804 was vacated by the Board's order on July 16, 1974 (Exhibit A72). At that time, ORS 368.620 governed the vacation of county roads. Under that statute, a county road could be vacated either when (1) "not opened within two years from the date of the order establishing it" or when (2) "not * * * used for vehicular traffic by the public for a period of 16 years," provided that vacation would not "deprive the owner of any real property of access to such property by public road or other right of way." In applying that statute to the vacation of Middle 804, the Board approved vacation because that portion of 804 had not been used by vehicular traffic for a period of 16 years.

The Board denied vacation of the portion of North 804 by order dated November 26, 1974, because it found that that portion of 804 had been used by vehicular traffic within the prior 16 years (Exhibit A77). In 1979, landowners filed a lawsuit, *Rendler v. Lincoln County* (Lincoln County Circuit Court Case No. 41260), to have North 804 declared vacated. In June 1979, the Lincoln County Board of Commissioners entered into a stipulation that would have allowed a decree to be entered by the court declaring that North 804 had been vacated and abandoned by Lincoln County as a result of the establishment of County Road 802 and the failure to improve or develop North 804. However, that stipulation was withdrawn. An organization called the Committee to Save Yachats 804 Trail intervened in the lawsuit and opposed vacation. The Lincoln County Circuit Court, No. 41260, concluded in 1984 that 804 had never been vacated and that prescriptive easements existed alongside the portions of North 804 (Exhibits A85 and A86). That decision was upheld by the Court of Appeals in 1985, 76 Or App 339, 709 P2d 721 (1985) (Exhibit A87), and by the Oregon Supreme Court in 1986, 302 Or 177, 728 P2d 21 (1986) (Exhibit A88).

On remand to the Circuit Court, Lincoln County ordered the County surveyor to undertake a survey of North 804 and the public prescriptive easements as found in *Rendler* as amended. County Survey 11,905 resulted (Exhibit A90). The County and Intervenor moved the Court to modify the amended decree in *Rendler* to show that the Road and prescriptive easements exist, in the areas subject to the proceedings, as shown on County Survey 11,905. The Court

ordered the modification on October 18, 1988 (Exhibit A91). By Board resolution, the Commissioners conveyed whatever interest they had in North 804 and the prescriptive easements to Oregon State Parks Department (Exhibits A95 and A96).

1. History of this Vacation Proceeding.

In 1996, 43 years after the Ocean Crest subdivision was approved, a property owner in the South 804 area sought to partition a lot. A few individuals active in a local group, Friends of 804, became aware of the issue and made inquiries to the County's staff about the status of the right of way in this area. Several informational meetings were held by the County in 1996 and 1997 to discuss the status of 804 in the Ocean Crest area (Exhibits A97 and A98).

The County Counsel's office, after review of the legal status of the right-of-way in the area south of the Aqua Vista Addition, preliminarily concluded that even though the area had been "overplatted" numerous times since the early 1900's, the right-of-way for 804 (now denominated South 804) had not been legally vacated. The Board ordered a resurvey of the South 804 area. The survey titled: "May 1997 Resurvey of County Road 804 From: South Line of Aqua Vista Addition To: The 10 Mile Marker" was prepared by the Lincoln County Surveyor and unveiled at a public meeting on May 21, 1997 (Exhibit A1). The survey traces the South 804 right of way in conjunction with the present day bluff line. The majority of the right of way lies atop the bluff, but portions of it lie west of and below the bluff line. Some forty-three structures are situated, at least in part, within the right of way; it traverses over 60 lots in platted subdivisions.

On September 24, 1997, petitioners filed a Petition for Vacation (the Petition) of that portion of 804 beginning at the northerly line of the Ocean Crest Subdivision in Yachats, Oregon, thence southerly and easterly, ending at the intersection of the southerly boundary of Tax Lot 4900, Assessor's Map 14-12-26 CB, and the southerly right-of-way of First Street, Yachats, Oregon (South 804) (Exhibit A2). Petitioners do not seek to vacate the existing platted rights-of-way of Ocean View Drive, Sixth Street, Fifth Street, Fourth Street, Third Street, U.S. Highway 101 and First Street that intersect with the South 804 right of way and provide access to the beach. The Petition contained the statutorily required number of signatures for initiation of the vacation request. (Exhibit A3). The Oregon Shores Conservation Coalition (OSCC), Friends of 804, the Department of Land Conservation and Development (DLCD), Monte Marshall, and several other individuals responded in opposition to vacation.

The Lincoln County Board of Commissioners visited the area with all interested parties on February 9, 1998, after legal notice of the site visit, and held an initial hearing on the vacation petition on February 11, 1998. In addition to a staff report¹, the Board heard testimony from some 45 individuals and entered into the record 379 exhibits preceding and during the hearing. The hearing lasted approximately 7 1/2 hours. The hearing was continued until March 4 for the submission of additional evidentiary material and then continued until March 13 for responses

¹ The staff report, Exhibit A 112, is incorporated into these findings as if fully set forth.

and additional submission of evidentiary material. As of March 13, an additional 39 exhibits were added to the record. The record was closed at that time with a total of 418 exhibits (*Attachment 5*). A briefing schedule was established, and six post-hearing briefs were received, two supporting vacation, two opposed to vacation, and two reply briefs.(Exhibits D101, D102, D104, D105, D106 and D107). After the hearing record closed on May 4, 1998, the Board met on May 20, 1998 to deliberate. At that meeting, the Board issued its preliminary decision by a unanimous vote to vacate portions of South 804. The Commissioners will not vacate that portion of South 804 that lies west of Ocean View Drive and south and easterly of Tax Lot 13,700 Assessors Map 14-12-27-AD to Highway 101 and certain described areas east of Highway 101. The areas not vacated generally coincide with existing public rights of way or are oceanward or bayward of those existing rights-of-way. The area to be vacated is also described on *Attachment 4*. The area not vacated will be retained as public access; it does not conflict with other land uses. It is consistent with the Yachats Circulation plan which identifies Ocean View Drive developing as a hiking trail. Retention of Ocean View Drive and the remnants of South 804 can potentially increase public access in this area.

The Board reached its decision only after carefully considering all of the exhibits and testimony presented by all participants during the course of these proceedings. All three Board members attended the site visit and the hearings. We will refer to specific testimony and documentary evidence that we found particularly persuasive in the discussion of applicable criteria below, and that evidence and reference is incorporated into these findings as if fully set forth. However, the failure to specify any specific testimony or documentary evidence should not be construed to mean that the Board did not consider it in reaching these conclusions.

2. Statutory Basis for this Proceeding.

ORS 368.326 establishes vacation procedures "by which a county governing body may vacate a * * * public road, a trail, a public easement, public square or any other public property or public interest in property under the jurisdiction of the county governing body." The parties agree that South 804, to the extent it exists at all, is a county road. As will be addressed below, one opponent to vacation has argued that the State of Oregon, and not Lincoln County, has jurisdiction over South 804. However, we conclude that Lincoln County has jurisdiction over the portion of South 804 subject to this proceeding.

ORS 368.326(1) also provides that the vacation procedures under ORS 368.326 to 368.366 shall not be used by the county to vacate property or interest in property that is within a city; provided, however, that notwithstanding ORS 368.326, a county governing body may vacate property within a city provided that the city concurs with the county decision before the vacation is formally ordered by the county. ORS 368.361(3) provides that mechanism for seeking city concurrence. It requires that the city concur with the findings of the county to vacate "by resolution or order." A copy of these proposed findings will be sent to the City with a request that the City concur with them. If the City passes a resolution or order of concurrence, the findings and decision to vacate will be formally ordered by this Board, and a copy of the City's resolution or order will be incorporated into the Board's final order of vacation.

C. County Jurisdiction

In a letter dated October 3, 1997, Monte Marshall raised several challenges to the Board's jurisdiction over this road vacation matter. The Board deferred deciding those jurisdictional challenges until the May 20, 1998 hearing. We now conclude that none of the jurisdictional challenges have merit and that we have jurisdiction to decide this matter.

1. State Jurisdiction Over Ocean Shore.

Monte Marshall argues that South 804 is under state jurisdiction because it qualifies as ocean shore under ORS Chapter 390. We find that claim to be meritless, at least with respect to the portions of South 804 that we have ordered to be vacated.

ORS 390.615 creates state ownership in an area that is defined as that area between ordinary high tide and extreme low tide. The area between ordinary high tide and the line of vegetation, the “dry sand area” as found in *Thorton v. Hay*, 254 Or. 584, 462 P.2d 671 (1969), is specifically demarcated in ORS 390.770 with the state vegetation line. Together, the area of ownership and the “dry sand area” comprise the “ocean shore” as defined in ORS 390.605, which through ORS 390.640 is under the jurisdiction of the state and subject to state regulation. The portion of South 804 that petitioners seek to vacate, and the portion of South 804 that we have ordered vacated, generally lies atop the bluff above the vegetation line. Consequently, it is not “ocean shore” under ORS 390.615. Nor is this an area of other interest granted, permitted or otherwise offered to the **state** by “dedication, prescription, grant, state-ownership, permission of a private owner or otherwise.” ORS 390.660. Oregon State Parks has not claimed jurisdiction over or ownership of South 804. The state does not hold any interest in this area.² The public interests involved were created by the county and are under its jurisdiction. Where South 804 does lie below the vegetation line, the County’s action of vacation of **its** rights will not effect the states’ ownership and jurisdictional control over the ocean shore. We conclude that the state does not have jurisdiction over this vacation decision.

2. Lincoln County Code (LCC) 1.0145(16).

Opponents to vacation have argued that Lincoln County Comprehensive Plan, found in the Lincoln County Code (LCC) 1.0145(16), prevents the County from vacating South 804. That question is discussed below. Monte Marshall has argued, further, that LCC 1.0145(16) divests the Board of jurisdiction over this vacation decision. We disagree with this claim. LCC 1.0145(16) provides that:

² See OAR 736-021-030(2). The Attorney General’s office has also advised the Oregon Parks and Recreation Department that it has no responsibilities for the area outside the “ocean shore” in examining Mr. Marshall’s claims. Exhibit C103, Letter from Ian K. Whitlock , Asst. AG to Bob Meinen, OPRD Director, dated October 17, 1997.

"Lincoln County shall initiate vacation or closure of county or public roads which are no longer necessary for access or which cannot be maintained as determined by the County Engineer except where such roads abut the ocean."

LCC 1.0145(16) is not a jurisdictional provision. It proactively directs the County (by use of the term "shall") to initiate vacations for a certain class of roads -- those that are no longer needed for access or difficult to maintain and except those which abut the ocean. The policy does not prohibit the county from considering a petition to vacate a road abutting the ocean. Nor does it prohibit deciding such a proposal initiated, as in this instance, by petition of landowners.³ We hold that the code does not preclude us from considering this petition.

3. Prescriptive Easements.

Monte Marshall argues that the County has no jurisdiction to abandon prescriptive easements. As is discussed below, there are no prescriptive easements relevant to this proceeding. The prescriptive easements established in the *Rendler* litigation are not relevant to this proceeding. The circuit court, in *Rendler*, recognized those prescriptive easements based upon clear and convincing evidence in the record of that proceeding of open and notorious use by the general public, not under a claim of right, which had been continuous and uninterrupted for at least ten years up to the time of the litigation of areas alongside North 804 (Exhibits A89, A90, and A91). They were site specific easements. The prescriptive easements recognized by the court were limited to those areas alongside North 804. They did not extend over the entire length of 804. Opponents to this vacation have introduced the same affidavits used in the *Rendler* litigation in an attempt to establish prescriptive easements alongside South 804. Virtually all of those affidavits only specify use of private land alongside North 804. This evidence is not current and the few references to use of the area now known as South 804 are extremely imprecise. They do not establish general public use of private land alongside South

³ Oregon Shores has argued that the term "initiate" must be construed in the same way as it is used in ORS 368.341 (governing initiation of road vacation proceedings). Under that statute, a county may initiate a vacation proceeding. Oregon Shores argues that landowners may not initiate vacation proceedings because that statute does not expressly state that they may. While we need not decide that issue, we note that we are not convinced by Oregon Shore's argument that only a county has the authority to initiate vacation proceedings under ORS 368.341. *See, e.g.,* Roads and the County, A Manual For Oregon County Officials (published in 1987, republished in 1997 in Assistance by Oregon Association of County Engineers and Surveyors) (summarizing ORS 368.326 to 368.426 to allow for either the County or landowners to initiate road vacations). The statute provides two distinct and different ways to initiate a vacation: on the Board's own motion by Resolution and by petition of the abutters or property owners. At most, the County code provision may impact the former method. It does not effect the latter. In any case, even assuming that Oregon Shores is correct, and only counties have authority under ORS 368.341 to initiate vacation proceedings, the Board is not bound by that interpretation with respect to interpreting our own county provision. The term "initiate" is not defined under the Lincoln County Comprehensive Plan. Pursuant to LCCP 1.1110, the undefined term is construed according to its "common, ordinary and accepted meaning." Black's *Law Dictionary* defines "initiate" to mean "[c]ommence; start; originate; introduce * * *. To propose for approval * * *." Black's *Law Dictionary* at 784 (6th ed 1990). Under any of those meanings, the landowners, and not the County, initiated this road vacation proceeding as that term is used in LCC 1.0145(16). We so interpret our local code provision. ORS 197.829.

804. In fact, the evidence in this proceeding was overwhelmingly the opposite: That the South 804 did not have the public use found in the north area (*See* footnotes 13, 14 and the discussion in b.vi below).

In addition, the Board has no jurisdiction to recognize prescriptive easements not established by a court of competent jurisdiction. They can only be recognized by a Circuit Court, as was the case in *Rendler*. Even if prescriptive easements did exist alongside South 804, they could not be within the 804 right-of-way because prescriptive easements cannot be established over public property. Consequently, their existence would not prevent the Board from having jurisdiction over the decision to vacate South 804.⁴

4. Notice/Petition Defects.

Monte Marshall has asserted that there were defects in the Petition itself and in the provision of notice by the County. Those claims are unfounded. The Petition met all the substantive requirements imposed by ORS 368.341(3). That statute requires that any person filing a petition to vacate a county road must include in the petition: (1) A description of the property to be vacated; (2) a statement of the reasons for requesting vacation; (3) the names and addresses of all persons holding any recorded interest in the property to be vacated; (4) the names and addresses of all persons owning any improvements constructed on public property proposed to be vacated; (5) the names and addresses of all persons owning any real property abutting public property proposed to be vacated; (6) acknowledged signatures of either owners of 60% of the land abutting the property proposed to be vacated or 60% of the owners of land abutting the property. (Exhibit A2). The Petition was reviewed by the County Public Works Director and the County Counsel to verify that all of the required information was in the Petition. (Exhibit A3, A107). Mr. Marshall failed to identify any particulars where the petition or notice failed to meet legal requirements.

The County has followed all of the procedural requirements for road vacation. First, as noted, it reviewed the Petition for completeness and, pursuant to ORS 368.346(1), initiated the county road official's (the Public Works Director) report. (Exhibit A3). Next, it accepted the Petition for further action and the Public Works Director's report at a regular meeting and set the matter for public hearing on a specified date. Third, it provided public notice of the hearing pursuant to ORS 368.346(3) by posting, publication and service upon owners of property proposed to be vacated, owners of improvements on that property and owners of property abutting the property. (Exhibits A4, A5, A6 and A7). The notice provided by the County also complied with the requirements of ORS 197.763 governing the conduct of local quasi-judicial land use hearings. Finally, as discussed below, all other procedural requirements of ORS 197.763 have been met.

⁴ Although the County does not have jurisdiction to recognize prescriptive easements in the first instance, it does have jurisdiction to vacate prescriptive easements that have been recognized by a Circuit Court. *See* ORS 368.326.

D. Applicable Standards

1. ORS Chapter 368.

a. Public Transportation/Utilities.

ORS 368.356(1) provides that "a county governing body shall determine whether vacation of the property is in the public interest * * *." ORS 368.331 also requires us to find that vacation would not deprive an owner of a recorded property right of access needed to exercise that right. In this proceeding, Petitioners have asserted that vacation of South 804 would not deprive any owner of a recorded property right or the access needed to exercise that right. No one has asserted otherwise. Consequently, we conclude that vacation of South 804 would not deprive any owner of a recorded property right of the access needed to exercise that right. That leaves the public interest determination as the only remaining applicable criteria for making this decision.

The term "public interest" is not defined in ORS Chapter 368. However, the reference to the "public interest" should be read in the context of that chapter. *See PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993) (stating that term should be interpreted in its statutory context); *Springfield Education Assn. v. School Dist.*, 290 Or 217, 621 P2d 547 (1980) (same). ORS chapter 368 governs county roads. It regulates the acquisition, maintenance and disposal of such roads as defined by ORS Chapter 368. In essence, then, ORS Chapter 368 regulates public transportation and utilities that need the roads as rights-of-way. Consequently, we conclude that consideration of whether a county road vacation is in the public interest should be made first in the context of how it would affect public transportation and utilities.⁵ Support for the vacation as being in the public interest is not limited to this standard, however.

Findings:

Once an application for a county road vacation has been initiated, ORS 368.346 requires that the county's road official file a written report with the county governing body indicating, among other things, whether the road vacation would be in the public interest. James Buisman, Lincoln County's Public Works Director, filed the required written report with the Board on December 5, 1997. He stated in that report that he understood the term "public interest" to refer to whether the road sought to be vacated is now needed or will be needed in the future for street

⁵ The predecessor to ORS 368.356(1) provides additional contextual support for this interpretation. Until its repeal in 1981, ORS 368.620 governed the vacation of county roads. Under that statute, a road could be vacated either when (1) "not opened within two years from the date of the order establishing it" or when (2) "not * * * used for vehicular traffic by the public for a period of 16 years," provided that vacation would not "deprive the owner of any real property of access to such property by public road or other right of way." While the legislature arguably expanded the criteria for a county road vacation to require there be a finding that vacation would be in the public interest, it appears from the context of the predecessor statute that public interest was meant to be placed in the context of the public interest in vehicular traffic and public transportation.

and utility purposes. He concluded that South 804 was not needed nor would it ever be needed for those purposes and, consequently, that vacation would be in the public interest. We adopt that report and its conclusion for purposes of this decision.

It is questionable whether South 804 was ever used for general public transportation purposes.⁶ The record establishes that South 804 was not used for vehicular transportation after 1924 and it probably was never used for vehicular travel. South was never constructed, paved, or improved by the County. The record does not indicate that utilities have ever been located in the South 804 right of way and there is no such use of the South 804 right of way at present. As is discussed below, there is scant evidence of any use of the vicinity of South 804 as a hiking trail, and the Board finds that the most reliable accounts of actual use of the area support a finding that there was no significant use of South 804 as a trail or road at any time over the course of this century.

Nor are there any plans by either the State, Lincoln County, or the City of Yachats to develop a public transportation route along South 804 in the future. To the contrary, unlike the situation with North 804, the State Parks Department has disavowed any interest in taking over ownership or possession of South 804 for the purpose of developing a hiking trail. (Exhibit D2). The City of Yachats has developed a Transportation Plan that does not involve use of South 804. Instead, the Transportation Plan provides for the creation of a hiking trail along Ocean View Drive. Consequently, we conclude that South 804 does not presently, nor will it in the foreseeable future, play any public transportation or utilities role in the area.

We conclude that vacation of South 804 is consistent with the public interest in meeting public transportation and utility needs.

b. Other Applicable Criteria Under Public Interest Standard.

In addition to the paramount concern of public transportation, several other criteria are relevant to the ORS 368 public interest consideration under the unique factual background of this case. Those other criteria can be summarized as: shoreland protection; beach access; integrity of the planning and development process; local control; certainty of title to property; and the preservation of scenic/historic transportation routes. All of those criteria also support the conclusion that vacation of South 804 is in the public interest.

i. Shoreland Protection.

Findings:

⁶ For purposes of this discussion, we do not include the portion of South 804 that became part of Ocean View Drive. For that reason we are not vacating that portion of South 804 is that it already is being used for transportation and utility purposes as Ocean View Drive.

Opponents to vacation have argued that because South 804 happens to be located close to the ocean shore, we should consider shoreland protection in making this public interest decision. We agree. However, in our opinion, the great weight of the evidence supports a conclusion that vacation of South 804 would best protect the fragile bluff area from further erosion and degradation.

The primary goal of opponents to this vacation has been to retain the South 804 right-of-way in order to develop a hiking trail. However, they have introduced no evidence into the record to support the feasibility of a hiking trail along South 804. In contrast, there is substantial evidence in the record which establishes that a hiking trail would not be geologically or economically feasible along the bluff.⁷

The Oregon Parks and Recreation Department Trails Coordinator, Pete Bond, visited the site and a report of his observations is in the record. (Exhibit A2, C107).⁸ He found that "[a] trail is not physically feasible to construct, maintain and manage within the 804 south [right-of-way]." He also found that "[t]here is no continuous strip of public bluff edge property available to construct, maintain and manage a trail." Next, he found "[t]he rocky shoreline is subject to frequent wave action and not stable or safe enough to allow a developed trail." Finally, he concluded that "[t]he alternative route proposed in the Yachats Circulation Plan is a more feasible and a better public access route."⁹

David Clark, a registered professional engineer with Kittelson & Associates, visited the site on behalf of Petitioners and his report is in the record. (Exhibit D70). His report noted the following impediments to a hiking trail: (1) Many portions of the right-of-way have been lost to erosion atop the bluff, oftentimes leaving only 10 feet of right-of-way atop the bluff; (2) the City requires 25-foot buffer strips along the top of the bluff, which would require substantial acquisition of additional right-of-way from property owners to develop a bluff-top trail;¹⁰ (3) due

⁷ LCC 1.0055(2) provides that "Lincoln County shall require site investigation reports from a registered professional geologist or certified engineering geologist prior to consideration of development requests in areas of known or suspected geologic hazards." "Erosion" is defined to be one of the indicators of a hazard area. LCC 1.0055(5). Consequently, in order for the County to consider the development of a hiking trail in the bluff area, there would need to be investigation reports from an expert.

⁸ Monte Marshall has argued that the state's report provides no meaningful conclusions because it does not consider the prescriptive easements in the area. We find this claim meritless for the reasons discussed above and below concerning prescriptive easements.

⁹ As discussed below, the Yachats Circulation Plan envisions a hiking trail along Ocean View Drive and connecting to the hiking trail along North 804 that is under the jurisdiction of the State Parks Department.

¹⁰ The City of Yachats Comprehensive Plan Protection of Shoreland Resources section #3 provides:

"On shorelands along the ocean, a 25-foot buffer strip from the top of the bank shall exist wherein existing stabilizing vegetation shall not be removed."

to ongoing erosion along parts of the bluff, construction of a hiking trail would require continued monitoring to prevent further erosion and the accompanying creation of a safety hazard; and (4) a hiking trail along South 804 would need to cross over at least three creeks along the right-of-way, which would require bridging that would be expensive and potentially impossible to build under current federal, state and local regulations.¹¹

The written findings of Steven Recca and the testimony of Ralph Christensen, registered professional geologists with EGR & Associates also are in the record. (Exhibit A2.) Their findings largely mirrored those of Kittelson & Associates. In addition, they concluded that "armoring of the bluff" likely would be required to prevent further erosion should a hiking trail be erected. Both reports concluded that creation of a hiking trail would be prohibitively expensive and would increase the instability of the bluffs.¹²

A letter in the record, dated February 18, 1998, from John Marra, a registered professional geologist with Shoreland Solutions, to Steve Schell, attorney for Oregon Shores, asserted that South 804 lies in an area that is subject to coastal hazards such as tsunamis (Exhibit D85). Marra proposed that no development occur along the South 804 right-of-way and its immediate vicinity. An earlier report cited by John Marra to the City, cited as a basis for his testimony at the hearing,¹³ concluded that "human activities associated with recreational use, such as pedestrian traffic and graffiti carving, may be a primary factor affecting slope stability" along bluff-backed shorelines.

The record contains a report from Gerald Kraft, a professor of 36 years at Western Washington University in Bellingham Washington, who has completed graduate studies in entomology and zoology at Oregon State University and has taught those subjects as well as marine biology. Kraft's report, after describing in detail the intertidal zone areas from the Adobe to Yachats Marine Park recommends "...that the more permanent 'old growth' marine

Based on that requirement, David Clark estimated that "950 linear feet and 14,000 square feet of additional right-of-way would need to be acquired by the County in order to construct a trail." Letter to Lincoln County Board of Commissioners dated February 27, 1998. (Exhibit D 70).

¹¹ In his March 3 letter to the Board of Commissioners, David Clark also noted that to be consistent with the design and function of the North 804 trail, a south trail would need to be designed and maintained to be wheelchair accessible and in accordance with the Americans with Disabilities Act (ADA). To do so, the trail would need to be barrier-free and paved, with resting stops every 100 to 150 feet alongside the trail.

¹² The Lincoln County Comprehensive Plan itself recognizes that the county does not have the financial resources to protect against the type of erosion hazard that would be exacerbated by the creation of a hiking trail along the bluff. LCC 1.0005(3) provides that "[m]ost natural hazards [including erosion] common to Lincoln County are of such a nature and scale that large scale engineering or structural solutions are not practical. Zoning and performance standard requirements are the primary techniques available for hazard mitigation."

¹³ The "20/20 Report" dated February 1996, found in Exhibit D1.

communities established on less frequented basaltic rocks be protected from any increases in human foot traffic.” He adds that his report is in support of the request to vacate (Exhibit D31).

Finally, private landowners provided written and oral testimony that they have protected the bluff area and taken measures to prevent further erosion of the bluff.¹⁴

In the aggregate, the evidence provides overwhelming evidence that a hiking trail along South 804 is neither feasible nor prudent. It also supports the view that the best way to protect the bluff and the shoreland area, in these circumstances, is to vacate South 804 and leave the area in private ownership.

ii. Beach Access.

Findings:

Opponents to vacation also have argued that because South 804 happens to be located close to the ocean shore, we should consider beach access in making this public interest decision. We agree. Again, in our opinion, the great weight of the evidence supports a conclusion that vacation of South 804 would not diminish what already is unusually good access to the beach in the City of Yachats.¹⁵ Consequently, vacation of the portions of South 804 does not conflict with the public interest in beach access.

There are numerous good beach access routes in the vicinity of South 804 in Yachats. The testimony of City Planner Ron Thompson (Exhibits D15 and D90) and the Kittelson Report (contained in Exhibit A2) indicate that there would continue to be an abundance of shoreland access if South 804 is vacated. Ocean View Drive, for example, will continue to provide direct access to almost 3000 feet of ocean and riparian tidelands. It is wide enough to accommodate the trail identified in the City's Village Circulation Plan. In addition, to the north, between Sixth Street and Marine Drive, there are three deeded access locations along Ocean View Drive to the beach (Lots 1 and 26 of Ocean Crest Subdivision, and a tax lot at the end of Sixth Street). Finally, there are several existing access points to the beach through Yachats State Park as well as access to the confluence of the Yachats River and the Pacific Ocean at Yachats Bay. Mr. Thompson noted that 63% of the land south of the Highway 101 bridge south to the city limits provides public access to shorelands. North of the Highway 101 bridge to the northern city limits there is only slightly less access: 53% of the property. The inventory prepared for Beach Access, Comprehensive Land Use Plan (Exhibit “I” contained in Exhibit D15), identifies 12 distinct public access points within the Yachats City Limits. According to Mr. Thompson’s report, 8 of those points have been added to the City’s inventory since Yachats was incorporated.

¹⁴ See e.g. Exhibit D31 the extensive testimonial and photographic evidence of David Chamberlin, an area property owner.

¹⁵ Opponents to vacation have relied on state and local land use provisions that support the retention of public access to the shore. We discuss those specific land use provisions separately below.

Additionally, the existing access will be improved, pursuant to this vacation order, by improving the signage for the access points and improving, where feasible, the physical nature of the access points themselves. Finally, pursuant to this order, the County will attempt to work with the City of Yachats to identify possible further access points outlined in the Yachats Village Circulation Plan in an effort to join the entire Yachats shoreline with a continuous footpath.

Consequently, vacation of portions of South 804 is consistent with the public interest in ensuring adequate beach access.

iii. Integrity of Planning and Development Process.

Findings:

The record establishes that the Ocean Crest subdivision and two earlier subdivisions were approved, as platted, by Lincoln County. The plats for those subdivisions did not show South 804. The record also establishes that the County approved numerous building permits within the South 804 right of way. Those governmental actions indicate that the County, as well as the local citizens, assumed that South 804 had been vacated by “overplating” and that access to property in this area had been transferred either to County Road 802 in the 1910's or to Ocean View Drive in the 1950's. On our site visit, we could not help but note how closely South 804 paralleled Ocean View Drive on the backside of the properties. That proximity made it easy for both citizens and County officials to assume that South 804 had been relocated to Ocean View Drive.

For example, the driveway permit that was issued to Mr. Chamberlin allowed him to create a driveway to his home and have it access onto what the permit called Road 804 when, in fact, the reference was to Ocean View Drive. (Exhibit D31). A second example was the letter from Thelma Green which stated that her husband's sand and gravel company built Ocean View Drive and Marine Drive. (Exhibit D83). She stated that at the time those roads were built, the gravel company and the County assumed that Ocean View Drive replaced the South 804 right-of-way. Finally, at the very least, since the Ocean Crest subdivision was platted in 1953, private parties have been buying and selling lots, building improvements on them, and also paying real property taxes. The County, and later, the City, were significant parties to these activities. Citizens need to be able to rely upon governmental decisions that are made in a consistent way over a period of many decades.

We conclude that vacation of 804 would further the public interest in the integrity of the planning and development process.

iv. Local Control.

Findings:

Since the portion of South 804 to be vacated lies within the City of Yachats, the Board believes that local control is another element of the public interest criteria in this proceeding. As discussed above, the City has ultimate control over this vacation decision in that, pursuant to ORS 368.361, the City must concur with the Board's decision to vacate any portion of South 804 before the vacation can take legal effect. Support for vacation has been supplied in the testimony and evidence presented by City Planner and City Attorney, (Exhibits D15 and D90), which was consistent with long range planning already carried out by the City. The City's Village Circulation Plan envisions a hiking trail alongside Ocean View Drive. After considering and rejecting the feasibility of a trail along the bluff, that location was selected by the citizens of Yachats. Perhaps most importantly, the vast majority of local citizens who have participated in this vacation proceeding have testified in favor of vacation of South 804. In addition to the property owners of land subject to the South 804 right-of-way who support the road vacation, over 200 citizens with no property subject to the right-of-way have declared that they believe vacation of South 804 would be in the public interest.

We conclude that vacation of South 804 will further the public interest in local control.

v. Certainty of Title to Property.

Findings:

The record establishes that the Ocean Crest subdivision and two earlier subdivisions were approved, as platted, by Lincoln County. The plats for those subdivisions did not show South 804. The record also establishes that at least the majority of the current property owners whose property is subject to the South 804 right of way purchased the property without knowledge of the existence of South 804. There was no indication of the existence of South 804 in the deed records concerning their property. The majority of testimony in the record also indicates that most individuals in the area believed that South 804 had been vacated or realigned with either Ocean View Drive or County Road 802, which became Highway 101.¹⁶ The testimony of Louis Amort indicates that by 1924 at the latest, there was no evidence of South 804 on the ground. (Exhibit D78). Property owners need to have some assurances with regard to their title to real property.

Opponents to vacation have argued that the developers of the Ocean Crest subdivision may have known of the existence of South 804 and hid it from the County and the public. They argue further that vacation here will encourage such manipulations by developers in the future. We are unpersuaded by that argument. They provide no evidence to support those assertions. The great weight of the record supports the position that people were simply unaware that South 804 continued to exist at the time the three subdivisions were platted. (*See* footnote 15). Even

¹⁶ *See e.g.*, the testimony of Arthur Roberts (Exhibits D25 and D90), David Chamberlin (Exhibits D31 and D90), Cindy Tobiasson (Exhibit D90), Elaine Cox Harley (Exhibit D90) and Craig Gilbert (Exhibit D90).

those affidavits and testimony of individual use of the area of South 804 did not indicate that the individuals knew any specific locations of use relative to South 804.

We conclude that vacation of South 804 will further the public interest in certainty to title under the unique historical circumstances of this case.

vi. Preservation of Scenic/Historical Transportation Routes.

Findings:

It is questionable whether South 804 was ever used for general public transportation purposes. The record establishes that South 804 was not used for vehicular transportation after 1924 and it probably never was used for vehicular travel, except perhaps for isolated adventurers. County Road 804 was never constructed, paved, or improved by the County. Aerial photos were admitted into evidence (Exhibits A43, A48 and A82). They showed most properties developed prior to 1982 (many years before that time). That activity predates the first judicial determination of the existence of 804 in the *Rendler* decision, which was issued in 1983. There also were numerous anecdotal testimonies concerning non-use of South 804 as a walking or hiking trail.¹⁷

Of this testimony, we found particularly persuasive the unsolicited letter submitted by Louis Amort, who read about this issue in the newspaper (Exhibit D78). He is now in his nineties. In 1924, Amort was sent by the State Highway Department to survey the route that became Highway 101. He later worked as an engineer on the construction of Highway 101. Amort's letter states that during his several years of working on the survey and construction of Highway 101, he never walked along the bluff in the area of South 804. His letter also states that during his work in Yachats, he was not aware of any road or trail along South 804. Other testimony we found convincing in this context was the letter from Thelma Green discussed above. Her husband's gravel company built Ocean View Drive and Marine Drive in the 1950's and they assumed that Ocean View Drive replaced the unused South 804 right-of-way. The affidavits of Jean L Hagg (Exhibit 20 in Exhibit A2, Petitioner's Memorandum), HF "Bud" Baldwin, (Exhibit 22 in Exhibit A2, Petitioner's Memorandum), Anne Belle Jackson (Exhibit 14 in Exhibit A2, Petitioners' Memorandum) and others date back as far as 1926 indicating no public use of this area. Although a few affidavits assert that individuals walked along the bluff in the area of South 804, the record does not establish any general public use of the area along the bluff in the area of South 804 of the nature found in North 804, nor does it establish **any** use of South 804 as a hiking trail since the 1970's.¹⁸ In sum, the record does not establish any significant

¹⁷ See e.g., Exhibits D90 containing testimony at February 11, 1998 hearing; and A2, Petitioners Memorandum, that contains affidavits from several long-time property owners in the area.

¹⁸ Opponents to vacation have entered into the record affidavits and letters of numerous individuals who claim to have used some portion of County Road 804 since its creation. However, as mentioned above, most of those affidavits and letters were prepared for the North 804 litigation and date back to the 1970's. Only two or three allege any specific use of South 804 since 1953. The few affidavits that do refer to any use of what could be construed to

public use of South 804 or its vicinity, and it certainly does not establish such use during the past two decades.

We conclude that vacation of South 804 is consistent with the public interest in preserving scenic and historical transportation routes.

Ultimate Findings and Conclusion:

Based on the criteria discussed above, and after careful consideration of all the testimony and evidence in the record pro and con, the Board concludes that vacation of those portions of South 804 described in *Attachment 4* is in the public interest. The Board appreciates and supports the efforts of citizens groups to preserve and protect valuable resources and areas of our coast. We also support the creation and/or retention of valuable scenic property through such means as development rights or conservation easements. However, the Board believes that the efforts to create a public pathway from this particular historic error are misguided. The time, energy, and resources spent pursuing that aim could have been better focused on more deserving situations that would truly further the public interest for local citizens without creating the adverse impacts and hostile community situation that opposition to vacation created in this instance.

E. Land Use Criteria

Opponents to vacation have argued that this vacation proceeding constitutes a land use decision and that applicable state, county, and city land use criteria must be considered in evaluating whether vacation would be in the public interest. We conclude that the decision is not a land use decision and explain that conclusion below. However, in case a reviewing body should conclude otherwise, we have considered all of the land use criteria cited by the parties as relevant to this vacation proceeding. We also have considered all of the arguments made by the parties to support the relevance of those land use criteria. As explained below, we conclude that vacation of South 804 is consistent with all arguably applicable land use criteria.

1. The Decision To Vacate South 804 Is Not a Land Use Decision.

The Oregon Supreme Court has made it clear that a county's decision to vacate a county road is a land use decision only if it meets one of two tests. The first, called the "statutory test," is where a decision requires the application of a Statewide Planning Goal, a comprehensive plan provision or a land use regulation. ORS 197.015(10)(a)(A). The Oregon Supreme Court has interpreted that statute to require that a Goal, plan provision or land use regulation provide express standards that govern approval or denial of the decision at issue. *Billington v. Polk*

be the area of South 804 after 1953 only refer to such use up until the 1970's. Even if there was an isolated use of South 804 more recently, that use would not amount to general public use.

County, 299 Or 471, 703 P2d 232 (1985).¹⁹ The second test is whether the decision would have a "significant impact" on present and future uses of land in the area. *Id.* at 475.²⁰ The burden is on the party asserting the jurisdiction of the Land Use Board of Appeals ("LUBA") to establish that a county decision constitutes a land use decision. *Id.* We conclude that the parties asserting LUBA jurisdiction in this case have failed to establish that the board's final decision qualifies as a land use decision under either test.

a. Statutory Test.

Only the Department of Land Conservation and Development ("DLCD") has argued that this decision falls under the "statutory test." According to DLCD, Statewide Planning Goal 17, Lincoln County Comprehensive Plan (LCC) Policy 1.0145(16) and several City land use regulations apply to the County's decision regarding this road vacation. Assuming that is true, however, none of those provisions create standards that govern the County's decision in this matter. At best, they merely touch upon this road vacation decision. That is not enough. *See Billington*, 299 Or at 475 (county decision that "merely touches some aspects of [a] comprehensive plan" is not a land use decision).

DLCD first argues that because the LCC has not been acknowledged by the Land Conservation Development Commission ("LCDC") with respect to Goal 17, the Goal must be applied directly to this road vacation proceeding.²¹ In our view, DLCD overstates the situation. Goal 17, and more specifically its Implementation Requirement #6, must only be applied to this road vacation decision if its terms provide express standards to govern approval or denial of the decision. *Billington*, 299 Or at 475. With respect to South 804, Implementation Requirement #6 does not do so.

Implementation Requirement #6 provides in part that:

" existing public ownerships, rights of way, and similar public easements
in coastal shorelands which provide access to or along coastal waters shall

¹⁹ The *Billington* court noted that the inverse also is true. If a statute at issue expressly requires consideration of local plan or ordinance criteria, then the decision is a land use decision. However, the *Billington* court concluded that the county road vacation statutes (ORS Chapter 368) do not expressly require that local comprehensive plan requirements be applied as standards in road vacation proceedings.

²⁰ We note that the Land Use Board of Appeals recently has questioned the continuing validity of the significant impacts test. *See e.g., Carlson v. City of Dunes City*, 28 Or LUBA 411 (1994) ("[W]e question the continued viability of the significant impact test in view of the fact that all cities and counties within the state now have acknowledged comprehensive plans and land use regulations" but stating that it must apply the test until the Supreme Court eliminates the judicially created test).

²¹ The Lincoln County Comprehensive Plan originally was acknowledged by LCDC to be consistent with Goal 17. However, the amendments to Goal 17 in 1984, including Implementation Requirement #6, have not yet been acknowledged to have been incorporated into the Plan.

be retained or replaced if sold, exchanged or transferred. Rights of way may be vacated to permit redevelopment of shoreland areas provided public access across the affected site is retained."

Initially, it must be noted that the area in question is wholly within the city limits of Yachats and therefore, is by definition urban land. As noted from the testimony and evidence, the area was platted (Ocean Crest in 1953) and has already been built upon for urban residential use. It is also clear from the evidence, that significant development occurred prior to the enactment of the Goal 17 amendments which the opponents claim are applicable.²² Because of that development pattern, at the time the amendments became applicable in 1984, there was no public access from South 804 to or along coastal waters²³. The testimony overwhelmingly indicated this area has not provided access during the time in which the amendments have been in effect. Therefore, vacation will not affect access as it has existed in this area. It is important to note that Implementation Requirement number 6 of Goal 17 only requires retention of those rights-of-way or public easements which provide access to the coastal waters. Therefore, the standard is inapplicable to this request.

Furthermore, Implementation Requirement number 6 envelopes the requirement to retain public ownerships, rights-of-ways, and public easements within the context of local government coordination with the Parks and Recreation Division (sic) to develop and implement a program of increased public access. This right-of-way has never been considered in any plan of the state, county or city for public access.²⁴ As indicated in the record, State Parks is not interested in developing any access with the South 804 right-of-way proposed to be vacated (part of Exhibit A2 and C107). On the other hand, Lincoln County and the City of Yachats are proposing to increase public awareness of the access opportunities in this area and to work together to implement further access options in coordination with the City's adopted Village Circulation Plan. That does not include the area of South 804 affected by the proposed vacation. Because State Parks, the City of Yachats, and Lincoln County have no interest in this right-of-way for public access, the standard does not apply.

Additionally, and as a separate basis for this action, the part of the provision that allows a right-of-way to be vacated so long as any existing public access across the affected site is retained does not create a standard that governs when a county can vacate a county road. At

²² The aerial photo in 1982 shows that most of the lots between the northern end of Ocean Crest and its intersection with Ocean View Drive to the south were built upon prior to that time. (See also Exhibit A1 Petitioners Memorandum, which contains oblique 1982 photos which show most lots built upon). This is the only area westward of Ocean View Drive affected by the proposed vacation.

²³ The exceptions are those existing public access points noted in the testimony of the city planner among others. Those existing access points will be retained.

²⁴ Neither the County or City inventories of recreational resources and coastal shorelands, nor any plan provisions, identify South 804 for trail, public access or other purposes. See Exhibits A83 and A84, County Inventories, Exhibit D1 (B and C) Yachats Plan and Inventories, Exhibit D15 City of Yachats Ordinance 125 LCDC Acknowledgement of Oregon Coast Hiking Trail, Planning Inventories and Yachats Village Circulation Plan.

most, it encourages local bodies not to vacate rights-of-way that are not intended to permit redevelopment. It does not prohibit counties from vacating county roads.

Finally and as an alternative basis for this action, even if Implementation Requirement Number 6 were interpreted to generally prohibit any road vacation in shoreland areas, an exception is allowed for the purpose of redevelopment. The record establishes that, as a practical matter, the vacation of South 804 would permit redevelopment. Therefore, the standard is inapplicable to this request. (Redevelopment is discussed in more detail below.)

The only other provision cited by DLCD that even refers to road vacations is LCC 1.0145(16), which requires the County to initiate county road vacations under certain circumstances "except where such roads abut the ocean."²⁵ As discussed above, that provision does not create standards that govern the County's decision here. The provision only creates an affirmative duty for the County to initiate vacation proceedings with respect to certain roads. It does not prohibit vacation of other roads including those that abut the ocean; it merely removes those roads from the class of roads for which the county is required to initiate vacation proceedings. Lincoln County Comprehensive Plan Policy 1.0145(16) has no relevance to, nor does it govern, this road vacation decision.

Furthermore, and as a separate basis for inapplicability of LCC 1.0145(16), the subject code provision would not apply to this situation because South 804 does not abut the ocean. The term "abut" is not defined in the LCC. However, according to Black's *Law Dictionary*, the term "abut" means "[t]o reach; to touch. To *** join at a border or boundary ****. No intervening land." Black's *Law Dictionary* at 11 (6th ed 1990). For most of the length of the road petitioned for vacation, South 804 **does not** abut the ocean. Where it does, south of the Ocean Crest Subdivision, the Board is **not** vacating that portion lying west of Ocean Crest Drive (and hence possibly "abutting" the ocean).

b. Significant Impact Test.

Oregon Shores, Monte Marshall and DLCD argue that a decision to vacate South 804 would constitute a land use decision under the "significant impact" test set out in *City of Pendleton v. Kerns*, 294 Or 126, 653 P2d 992 (1982), and in *Billington*, 299 Or 471. We do not agree. A decision will not be deemed to meet the significant impact test unless it would "effect[] a significant change in the land use status quo of the area." *Billington*, 299 Or at 478 (quoting *Kerns*, 294 Or at 135).

²⁵ LCC 1.0 1 45(16) provides:

"Lincoln County shall initiate vacation or closure of county or public roads which are no longer necessary for access or which cannot be maintained as determined by the County Engineer except where such roads abut the ocean."

On remand from the Oregon Supreme Court decision in *Billington*, LUBA further clarified the meaning of "significant impact." Similar to the proposed result in this proceeding, in *Billington*, Polk County vacated a portion of a county road that "ha[d] never been used for 'vehicular travel'." *Billington v. Polk Co.*, 14 Or LUBA 173, 174 (1985). Based on those facts, LUBA concluded that the partial vacation would "maintain the status quo" and, therefore, did not constitute a land use decision. *See also Kegg v. Clackamas County*, 15 Or LUBA 239, 243 (1987) (county's refusal to accept petitioners' dedication of public right-of-way was not land use decision because it "d[id] nothing to upset the current state of affairs in the area").

The same is true in this proceeding. Our decision to vacate South 804 simply preserves the land use status quo that has existed in the area for at least 50 years and probably much longer. The record is bereft of any evidence that South 804 has been utilized by the public for vehicular or pedestrian traffic since the area was platted as residential subdivisions decades ago. Thus, a decision to vacate South 804 cannot be considered one that would have a significant impact on present and future land uses in the area.

2. Assuming This is a Land Use Decision, the Procedural Requirements for Land Use Decisions Are Met.

All of the procedural requirements for making a land use decision have been met in this proceeding. Notices of meetings and the conduct of the public meetings and hearing for this matter have satisfied State and county requirements for quasi-judicial review of land use applications. All interested parties have had ample opportunity to submit written and oral testimony. We are not aware of anyone who has asserted that they were prejudiced because of the procedures that have been followed.

3. Assuming This is a Land Use Decision, the Evidence Addressing the Relevant Land Use Criteria Support Vacation of South 804.

a. State Land Use Criteria.

Opponents to vacation have argued that Implementation Requirement #6 to Statewide Planning Goal 17 prohibits vacation of South 804.²⁶ We disagree.²⁷

The first portion of Implementation Requirement #6²⁸ requires coordination between local government and the Parks and Recreation Department to improve public access. The record establishes that (1) the Parks and Recreation Department has no interest in acquiring or

²⁶ Opponents to vacation have pointed to no other state land use criteria as being relevant to this decision and we are aware of none.

²⁷ We alternatively believe that this implementation requirement can only be applied as part of the periodic review process, ORS 197.628 to 197.646, and therefore is not directly applicable to this process.

²⁸ Quoted in its entirety on page 17.

maintaining a trail within South 804, nor does it consider such a trail to be feasible and (2) a preferred alternative not requiring retention of the South 804 right-of-way has been identified by the City and accepted by DLCD. Vacation of South 804 by the County will be consistent with the positions of both of those units of government and the citizens they represent.

The second portion of Implementation Requirement #6 sets out a policy regarding how to deal with public rights-of-way in coastal shoreland areas. Contrary to the opponents' position, it does not create a blanket prohibition to the vacation of such rights-of-way. Instead, it limits the appropriate circumstances for a right-of-way vacation to situations where the vacation permits redevelopment and where existing public access across the site is retained. Vacation of South 804 would permit redevelopment, and public access to the shorelands across the right-of-way would be retained.

As previously noted, the unusual circumstances in this proceeding are essential in considering these criteria. Most of the development occurred here prior to the enactment of Goal 17. Access decisions, for better or worse, were made from the early 1900's through the 1950's, and the development pattern was established primarily in the 1950's, 60's and 70's. The end result is that no access, except as noted in this proceeding, has existed in numerous portions of the South 804 right-of-way. In our opinion, Implementation Requirement #6 is not applicable to "redetermine" development decisions occurring over this public right-of-way. From that point of view, and given that most of the development had already occurred prior to enactment of the Goal 17 guideline, the requirement is met in this situation.

Alternatively, this road vacation also would permit further redevelopment. The Statewide Planning Goals define "develop" to mean "[t]o bring about growth or availability; to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights to access." Use of the prefix "re" simply means to develop, redesign or rebuild an area of existing development. Redevelopment can occur in many contexts. Here it means that the owners of property improvements within the South 804 right-of-way would be allowed to repair, maintain and alter their structures, or build new structures, provided all of the other development standards for setbacks, parking, archaeological review, flood protection, etc., are met. This would apply to commercial as well as residential redevelopment. An example would be the McHenry dwelling that burned down recently. Without this vacation, the ability to redevelop the McHenry property is in doubt. Opponents to vacation, themselves, have characterized the prospect of future home-building along South 804 to be redevelopment. *See, e.g.*, Memorandum of John Marra of Shoreland Solutions (stating that "retaining 804S is in the public interest because it will discourage redevelopment in areas subject to catastrophic and chronic coastal natural hazards").

As was discussed above, there already is extensive existing beach access in the vicinity of South 804. The testimony of Yachats City Planner Ron Thompson and the Kittelson report indicate that there would continue to be an abundance of shoreland access if South 804 is vacated. Ocean View Drive, for example, will continue to provide direct access to almost 3000 feet of ocean, river and tidelands. It is wide enough to accommodate the trail identified in the

Village Circulation Plan. In addition, there are three deeded access locations along Ocean View Drive to the beach. (Lots 1 and 26 of Ocean Crest Subdivision and a tax lot at the end of Sixth Street.) Finally, there are several existing access points to the beach through Yachats State Park as well as access to the confluence of the Yachats River and the Pacific Ocean at Yachats Bay.

Consequently, Goal 17 and its Implementation Requirement #6 would be met by this vacation decision. Additionally, the existing access will be improved, pursuant to this vacation order, by improving the signage for the access points and improving, where feasible, the physical nature of the access points themselves. Finally, pursuant to this order, the County will work with the City of Yachats to identify possible further access points outlined in the Yachats Village Circulation Plan in an effort to join the entire Yachats shoreline with a continuous footpath. The purpose of Implementation Requirement #6 is being met; the vacation of South 804 is not contrary to the Goal requirement.

Finally, as testified to by City Planner Ron Thompson, there are 18 statewide planning goals to address in the local comprehensive planning process. Some conflicting goals will be given priority and more emphasis than others. The subject right-of-way is located wholly within the city limits of Yachats, in an area defined by law as urban lands. If the right-of-way is not vacated some 43 homes (and more properties) would be affected, some 8-12 % of the entire City housing stock. The City has not increased its urban growth boundary since it was chartered in 1967, except to add 5 lots in south Yachats, in order to concentrate urban development with the urban growth boundary. If the 43 homes are removed from the housing stock, expansion of the urban growth boundary likely will be necessary for converting existing non-urban areas into urban areas and require extension of public facilities and services into new areas. The acknowledged Yachats plan addresses Goals 1 Citizen Involvement, 2 Land-Use Planning, 10 Housing, 11 Public Facilities and Services, 12 Transportation, 13 Energy Conservation, and 14 Urbanization, in the development plan adopted by the City, and acknowledged by LCDC, which recognizes and authorizes the development pattern which exists today. Those acknowledged provisions all conflict with Goal 17 Implementation Requirement 6 if it is found to preclude this action by the county. Greater weight must be given to those goals as applied through the acknowledged plan.

b. County Land Use Criteria.

Opponents argue that several Lincoln County Comprehensive Plan policies favor retention of South 804. We conclude that vacation of South 804 will not conflict with any of the LCC provisions.

i. LCC 1.0140 Transportation Goals.

LCC 1.0140 sets out the following transportation goals:

- (1) To plan for a safe, convenient and economic transportation system.
- (2) To provide an efficient and aesthetically pleasing system of public roads.

- (3) To develop a transportation system that enhances the County's economy.
- (4) To encourage energy conserving transportation modes.
- (5) To conserve energy in transportation.

In our opinion, the most relevant of those goals in the context of this vacation proceeding are (1) and (3). As discussed above, development of a trail along South 804 would not be safe or environmentally sensitive because of its location on the unstable bluff. Nor would development of the trail be convenient or economical. To the contrary, it would be extremely costly and would require the condemnation or purchase of additional private property. Further, retaining South 804 would not be economical because it would remove property from the assessment rolls and expose the County to potential litigation and liability over its approval of the platting over the right-of-way and the issuance of building permits for the construction of several homes within the right-of-way. Retention of the right-of-way also would be uneconomical in light of the continued cloud over the title to the affected homeowners and the diminished value of their property.

ii. LCC 1.0145 Transportation Policies.

Opponents to vacation rely on LCC 1.0145(16) to argue against vacation. It provides that:

Lincoln County shall initiate vacation or closure of county or public roads which are no longer necessary for access or which cannot be maintained as determined by the County Engineer except where such roads abut the ocean.

According to opponents to vacation, this provision prohibits the County from vacating South 804 or, in the alternative, at least requires a conclusion that such a vacation would not be in the public interest.

The opponents' reading of this policy is inconsistent with its plain language. In the Board's view, LCC 1.0145(16) does not prohibit the County from vacating South 804, and consequently, whatever relevance LCC 1.0145(16) has to this road vacation proceeding, if any, must be balanced with the other policies and goals of the Lincoln County Comprehensive Plan to determine the public interest.

As we discussed above, LCC 1.0145(16) simply mandates the County to initiate vacations for a certain class of roads (those that are no longer needed for access or difficult to maintain and do not abut the ocean). Those are the roads it must vacate. The policy does not prohibit the county from initiating vacation of a road abutting the ocean. Nor does it prohibit adjudicating such a proposal initiated by a private petition. Also, as discussed above, the provision only requires the County to initiate vacation proceedings under certain conditions. In this case, landowners initiated the vacation proceeding.

Several other transportation policies set out in LCC 1.0145 as well as recreation policies in LCC 1.0175 are relevant to this road vacation application. All of those provisions support vacation of South 804.

LCC 1.0145(1) provides that "Lincoln County shall coordinate its transportation plans with state transportation plans and the city comprehensive plans." That coordination of transportation plans has occurred. The County deeded to the state its interests in North 804 for the purpose of constructing a hiking trail. However, the state disavows any interest in acquiring South 804 or in developing a trail there that would connect the North 804 trail. Furthermore, the City's comprehensive plan (discussed in more detail below) supports the development of a trail along North 804 but proposes a route for the trail's continuation to the south through the City that does not utilize South 804. The City's proposed route is supported by the State Parks and Recreation Department. Consequently, vacation of South 804 would further the coordination of the County, State and City transportation plans. Importantly, neither the City nor the County inventories of Goal 5 resources, trails, recreation sites or facilities (both acknowledged by LCDC) identify or include the areas of South 804 (except as they may otherwise overlap existing developed rights-of way such as Ocean Crest Drive).

LCC 1.0145(2) provides that "[t]he Lincoln County Road Committee shall recommend capital improvement plans for road construction, major road improvements and maintenance. Priorities shall be established on the basis of road condition, road capacity, traffic volume and effectiveness toward reducing accidents." LCC 1.0145(4) provides that "Lincoln County shall classify roads as major and minor arterials, collectors and residential streets and designate county and public roads." South 804 is not on the current capital improvements plan nor has it been classified as either a major or minor arterial road or as a county or public road. In fact, the County's Public Works Director filed a report with this Board in which he concluded that vacation of South 804 would be in the public interest. Consequently, South 804 has no transportation importance to the County under these provisions, and vacation would be consistent with the County classifications for road improvement projects.

LCC 1.0145(9) provides that "[e]xisting rights-of-way shall be used where appropriate and future needed rights-of-way shall be designated to improve the safety of vehicular circulation within the county." As noted above, according to the Public Works Director's report to the County Commission, the South 804 right-of-way is not needed nor will it be needed in the future as a road. Further, there is no prospect that the right-of-way would ever be needed to improve the safety of vehicular circulation. Consequently, vacation of South 804 is consistent with LCC 1.0145(9).

LCC 1.0145(10) provides that "Lincoln County shall work to preserve existing rights-of-way that have been identified as having future potential as transportation corridors." As discussed above, according to the County Public Works Director's report to the County Commission, the South 804 right-of-way has no future potential as a transportation corridor, either for pedestrians or vehicles. As a result, vacation is consistent with LCC 1.0145(10).

LCC 1.0145(24) provides that the County shall encourage "[d]esignation and improvement of pedestrian and bicycle routes." South 804 has never been designated by either the City or County as a bicycle or pedestrian route and, in fact, as discussed below, the City has adopted an alternative bicycle and pedestrian route as part of its Village Circulation Plan. Vacation of a road not designated or suitable for a bicycle and pedestrian use is consistent with LCC 1.0145(24).

iii. LCC 1.0175 Recreation Policies.

LCC 1.0175(8) provides that the County shall "consider the relationship of transportation to recreation in planning." We believe that our focus on the feasibility of any hiking trail along South 804 meets that requirement. As was detailed above, the record indicates that a hiking trail along South 804 is not feasible and that the City has decided to route a recreational trail along Ocean View Drive instead. Nor is South 804 designated for bicycle and pedestrian use by the County or the City. Consequently, vacation of South 804 is consistent with LCC 1.0175(8).

LCC 1.0175(10) provides that the County shall "work with citizens, and local and state agencies to develop a system of trails using public lands and rights-of-way." As discussed above, the City has planned a hiking trail along Ocean View Drive and that trail will link to the North 804 Trail. State Parks has expressed no interest in developing a trail along South 804. Pursuant to this vacation, the County will work with the City to identify possible additional access points to the shoreline to create a continuous footpath. Vacation of South 804 is consistent with LCC 1.0175(10).

LCC Coastal Shoreland Policies also have been cited by opponents to vacation as relevant. Those policies require the County to identify coastal shorelands and the appropriate uses for them, to protect the water quality and fish and wildlife habitat in coastal shorelands, and to protect shoreland in urban areas which is well-suited for water-dependent uses. Monte Marshall argues that those policies support the creation of a hiking trail along South 804. For the reasons described above, a hiking trail is not feasible or planned along South 804 and could, if established, have a significant adverse impact on the fragile bluff. After walking along the bluff and considering the testimony of State Parks, petitioners' transportation and geologic experts, and hearing from the current owners about their continuing efforts to maintain the bluff area, we conclude that protection of the area is best done by vacating the South 804 right of way and not by increasing pedestrian use of the bluff area. Vacation of South 804 is consistent with the LCC Coastal Shoreland Policies.

c. City Land Use Criteria.

Assuming that land use criteria are relevant, and if so, that the County is obligated to consider City land use criteria in this situation because South 804 is within the City, we conclude that nothing in the City's land use regulations prevents our vacating South 804. Further, the City will have its own opportunity to review our proposed decision and decide whether to concur with it. At that time, the City will also have the opportunity to consider its own land use criteria.

i. Comprehensive Plan Shoreland Policies.

The City Comprehensive Land Use Plan section on the Protection of Shoreland Resources includes a section (#6) analogous to Goal 17's Implementation Requirement #6. It provides:

"The City will review proposals for vacation or sale, exchange or transfer of public ownerships, easements, or rights-of-way which provide access to or along the Yachats River or ocean. Existing public ownerships, rights-of-way, and similar public easements in estuary and ocean shorelands which provide access to or along the estuary or ocean shall be retained or replaced if sold, exchanged or transferred. Rights-of-way may be vacated to permit redevelopment of existing developed shoreland areas, provided public access across the affected site is retained."

The discussion above pertaining to Goal 17 equally applies here and supports our conclusion that vacation would not conflict with this City provision. Vacation here would retain access across the affected site and, therefore, is expressly permitted under the provision.

ii. Comprehensive Plan Village Circulation Plan.

The City of Yachats Village Circulation Plan & Implementing Strategy provides:

Consistent with the Recreation & Natural Resources map of the current Comprehensive Plan, and its predecessors, this Circulation Plan locates a trail on Marine and Ocean View Drive. During the planning process, an alignment of a trail along the edge of the bluff was suggested. For reasons of practicality and feasibility, the City has chosen to locate a hiking/biking trail along Marine and Ocean View Drive.

The most recent version of the circulation plan, adopted March 12, 1998, contains the following language:

To provide a viable pedestrian route from north to south Yachats will require negotiations for easements in the area of the Adobe Resort/Motel through to Marine Drive and from the Landmark restaurant south to Bayview Terrace as shown on the plan map and described in individual project format on the Circulation Plan matrix.

Consistent with the Recreation and Natural Resources map of the current Comprehensive Plan, and its predecessors, this Circulation Plan locates a trail on Marine and Ocean View Drive. During the planning process, an alignment of a trail along the edge of the bluff was suggested. For reasons of practicality and

feasibility, the City has chosen to locate a hiking/biking trail along Marine and Ocean View Drive.

The north/south loop placement is available to provide immediate public access from the State Smelt Sands Park 804 Trail through to Ocean View Drive.

Those descriptions clearly show that the City's circulation plan, originally acknowledged in 1989 as part of Ordinance 125, contained the concept of a trail in North 804 that is to be connected by links across intervening property in the vicinity of the Adobe Motel through to an alignment along Ocean View Drive.²⁹ The City has never identified South 804 as viable for a hiking trail or any other public use. Consequently, vacation of South 804 would be consistent with the City's long range plans.

iii. City Zoning Regulations.

Section 3.080(1) of the Yachats Zoning and Land Use Ordinance ("YZLUO") provides:

"The City of Yachats shall assist the State and County in protecting the County Road 804 right-of-way and the prescriptive easements accepted by the Oregon Supreme Court as established by the Lincoln County Surveyor (Survey 11,905, 12/18/87) from alterations which would prevent the establishment and maintenance of a segment of the Oregon Coast Hiking Trail within the right-of-way.

Opponents to vacation have argued that that provision pertains not only to North 804 as litigated in *Rendler*, but also to South 804. As discussed above, that is incorrect. In his testimony before this Board on February 11, 1998, and in his letter of February 6, 1998, City Planner Ron Thompson explained: " The survey called #11,905, Dec. 18, 1987, locates the trail solely north of the Adobe and the Circuit Court's decree was limited to the location as identified in County Survey #11,905. Exhibit B clearly shows the survey ending on the south side of the 804 road's 60-foot right-of-way on TL #200. This survey is the 804 trail and applies only to the part located north of the Adobe." Consequently, the above-cited provision has no application to this proceeding.³⁰

²⁹ In assessing where to locate the hiking trail within the City, the City concluded that several factors mitigated against locating the trail along South 804. The factors included: (1) the fragility of the bluff; (2) the bluff's susceptibility to erosion along the edge from increased foot traffic; (3) the need to protect sensitive wildlife habitat areas from a surfeit of public use; and (4) the difficulty of providing "defensible space" for the owners of private property adjacent to the South 804 right-of-way. Possible means for providing defensible space such as lighting, removal of tall shrubs, installation of stickier shrubs and the erection of low walls, berms or fences were all seen as incompatible with the natural, open character of the shoreline.

³⁰ Oregon Shores also cited to the Yachats Comprehensive Plan Shorelands Protection policy #7. It provides that the City "will develop and implement programs for increasing public access to * * * the ocean by supporting development of the County Road 804 right-of-way." Again, that reference to County Road 804 is only to North 804.

Several other persons referred to various City zoning regulations (e.g., YZLUO 3.100) and plan policies (e.g., Policies A(2), F(1,3) and I). From our review of these arguments in opposition to the vacation petition, these City planning and policy documents do not have any direct relevance to the petition before us.

F. Other Asserted Criteria

In addition to the criteria discussed above, opponents to vacation advanced several other criteria that they argue prevent the Board from finding that vacation of 804 would be in the public interest. For the same reasons as discussed above, we are unpersuaded that any of those criteria apply to this decision. Assuming that any of them are relevant to the vacation decision, however, we conclude that none of the criteria prevent vacating South 804 for the reasons discussed below.

1. Common Law Theories.

Oregon Shores argues that customary use of South 804 supports a conclusion that vacation of South 804 would not be in the public interest. Assuming that this common law doctrine could be a relevant criteria for deciding whether a road vacation is in the public interest, we are unpersuaded that the doctrine of custom applies to this factual situation. Oregon courts have applied the common law doctrine of "customary use" rarely, and when they have, it has been applied only to the dry-sand beach area along the Pacific Shore. *State ex rel Thornton v. Hay*, 254 Or 584, 462 P2d 671 (1969); *see also State Highway Comm. v. Bauman*, 16 Or App 275, 517 P2d 1202 (1974) (refusing to apply doctrine of custom to area above vegetation line). The portion of South 804 at issue in this vacation proceeding does not lie along or within the dry sand area of the shore.³¹ Where it may lie below the bluff, vacation will not effect underlying state rights and jurisdiction.

Oregon Shores also argues that the common law public trust doctrine supports a conclusion that vacation of South 804 would not be in the public interest. Again, assuming this common law doctrine could be relevant, we are unpersuaded that it applies to this factual situation. Oregon courts have only applied the public trust doctrine to submerged and submersible lands. *Bowlby v. Shively*, 22 Or 410, 30 P 154 (1892); *Brusco Towboat Co. v. State*, 284 Or 627, 589 P2d 712 (1978). The portion of South 804 at issue in this vacation proceeding is not submerged or submersible land.

³¹ In any case, one of the elements required to establish customary usage is uninterrupted use of the land. 254 Or at 596. The *Thornton* court concluded that the element had been met because "the public's use and enjoyment of the dry-sand area had never been interrupted by private landowners." *Id.* In this case, the public usage at best has been minimal in the past and non-existent since at least the 1970's and was interrupted by private landowners decades ago.

Oregon Shores and Monte Marshall have argued that there are prescriptive easements that lie over or adjoin portions of South 804 and that these prescriptive easements support a conclusion that vacation of South 804 would not be in the public interest. We are unpersuaded that any prescriptive easements have been established in the vicinity of South 804. A prescriptive easement can only be recognized by a Circuit Court. Opponents concede that no Circuit Court has recognized a prescriptive easement along South 804. Nonetheless, they argue that if a Circuit Court were to decide the question, it would conclude that there are prescriptive easements along South 804, just as the Circuit Court concluded that there were prescriptive easements along North 804 in the *Rendler* litigation. Even if that hypothesis were true, it could not be weighed by this Board as relevant criteria until the prescriptive easements were established by a court.

In any case, as discussed above, we are unpersuaded that prescriptive easements could be established along South 804. A prescriptive easement must be recognized during the time in which there has been an uninterrupted use of the property in question. The record fails to establish that there has been an uninterrupted use of the private lands adjoining South 804. The best evidence in the record is the photographs introduced by David Chamberlin and other supporters of the vacation petition showing no trace of a public path across the affected property since at least the 1950's. The record contains only a few anecdotal stories of any use of what could have been private land adjoining South 804 during this century, and nothing in the record supports a conclusion that there has been any public use of these lands since the 1970's.

2. Cultural Resources.

Oregon Shores has argued that there are Native American middens lying either within or near to the South 804 right-of-way and that their existence supports a conclusion that vacation of South 804 would not be in the public interest.

Oregon Shores relied primarily on a letter from Jon Erlandson, Associate Professor at the University of Oregon to support this claim. In a one-page letter, Erlandson concluded that "a minimum of five archaeological sites are present within or immediately adjacent to the proposed right-of-way vacation." (Exhibit D2). The Erlandson letter did not describe which sites he was referring to, nor did he explain how many, if any, of the five sites were within the South 804 right-of-way.

Petitioners relied on an archeological study, conducted at their request by Heritage Research Associates, Inc. ("Heritage") and dated February 27, 1998. The study set forth detailed findings and recommendations. First, it elaborated on the location of seven middens in the Yachats area established by archaeological researchers. The study located one, site 35LNC20, on the Adobe Motel property (north of South 804). It located two others, sites 35LNC29 and 35LNC30, as being east of Highway 101 (east of South 804). It located a fourth site, 35LNC24, within Yachats State Park (south of the portion of South 804 that we vacate). A fifth site, 35LNC32, was located at the intersection of Ocean View Drive and Beach Street. None of those

five sites are within the South 804 right-of-way or even adjacent to or nearby the portion of South 804 subject to vacation in this proceeding.³²

The Heritage study also noted that one site, 35LNC69, is located between the north end of South 804 and the 9-Mile Marker. This location would not preclude the site from being in the 804 right-of-way. According to the study, the site consists of a deteriorated midden remnant and a small number of fire cracked rocks. The study noted that these remnants might indicate the possible presence of similar buried features within the South 804 right-of-way, but it also concludes that it is likely that these locations are the last remnants of sites that have been destroyed by erosion, wind and waves. Finally, the study noted that site 35LNC31 is located on the south side of First Street across from Cedar Street. It is not clear whether that site lies within the First Street right-of-way or on private property possibly within South 804.

We find the Heritage Study convincing with respect to the location of middens. The majority of the middens cited in that study are not within or adjacent to the South 804 right-of-way. In any case, assuming that at least one midden lies in the South 804 right-of-way, we conclude that the best way to preserve those sites is to have them remain on private property.

The largest midden site, the one located in Yachats State Park (mentioned in both the Yachats plan inventory and the Heritage study), has been almost entirely destroyed by park construction. This and other professional knowledge prompted Heritage to recommend strongly against activities such as trail building, which would disturb the ground. It also noted the potential damaging effect of increased visitors who would be attracted by a trail within South 804. Consequently, to whatever extent cultural artifacts may be buried in the South 804 right-of-way, the best means of protecting them would be to keep the property undeveloped and closed to the public. The property owners along the right-of-way have effectively preserved the land for decades. Any attempt to develop the private property would be subject to Oregon laws that provide equal protection to archeological resources whether they are on public or private property. *See, e.g.*, ORS 358.920(1)(a) (prohibiting excavation, destruction or alteration of archaeological sites or objects located on either state or private land without permit).³³

3. Rendler Decision.

³² The Yachats Comprehensive Plan partially corroborates those Heritage study findings. The Yachats Comprehensive Plan provides protection to archaeological resources through the requirement of archaeological review of development proposals, informational signs and setback requirements from the bluff. Regarding those archeological resources, the Comprehensive Plan Inventory mentions three middens. Two are noted to be situated within areas owned by the State Parks and Recreation Department; the third is noted to lie east of Highway 101.

³³ ORS 358.910 places "archaeological sites and their contents located on public lands under the stewardship of the people of Oregon to be protected and managed in perpetuity by the state as a public trust." That statute does not apply to the South 804 right-of-way for several reasons. First, the unopened right of way is not "public lands" for purposes of the statute. *See* ORS 358.905(1)(0) (defining public lands as "lands owned," not as "lands or interests therein"). Second, as mentioned above, opponents have failed to establish that any archaeological sites are within the right-of-way. Consequently, ORS 358.910 does not apply to the circumstances of this proceeding.

As was discussed above, the *Rendler* decision has no relevance to this proceeding, and it certainly does not prevent the Board from vacating South 804.

G. Conclusion

Based on the reasons stated above, the Board concludes that, pursuant to ORS 368.356(1), vacation of South 804 is in the public interest.

The vacation shall apply to the area described in *Attachment 4*.

The County, through adoption of this vacation order, shall improve the signage of the existing access points along the shoreline and improve the physical access areas, where feasible. In addition, should the City consent, the County shall work with the City to identify possible additional access points in an effort to join the entire Yachats shoreline to a continuous footpath.

Attachment List

1. Description of area proposed to be vacated by petitioners
2. Map of South 804 and Middle 804 and North 804
3. Map of South 804 and City
4. Description of area to be vacated
5. Index of Exhibits

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