

1 **BEFORE THE BOARD OF COMMISSIONERS**

2 **FOR LINCOLN COUNTY, OREGON**

3 In the Matter of:)
4) **ORDER # 1-02-11**
5 **VACATION OF A PORTION OF WALDPORT-**) **(Amending Order # 9-98-309)**
6 **YAHUTES COUNTY ROAD 804 (SOUTH)**) **V-109**
7

8 WHEREAS by Order No. 9-98-309 adopted on September 16, 1998, the Board of
9 Commissioners vacated a portion of County Road 804 (South), lying wholly within the city limits of
10 the City of Yachats. The area vacated was described in Order #9-98-309. By this reference, Order #
11 9-98-309 (including all attachments and exhibits) is incorporated into this order as if fully set forth;
12 and

13 WHEREAS several parties appealed the Board’s vacation decision, memorialized in Board
14 Order 9-98-309, to the Land Use Board of Appeals (LUBA). LUBA rendered a decision in 1999.
15 *Oregon Shores v. Lincoln County*, 36 Or LUBA 288 (1999). LUBA remanded the vacation decision
16 back to the County; and

17 WHEREAS the County, vacation petitioners and City of Yachats subsequently appealed
18 LUBA’s decision to the Oregon Court of Appeals. The Court of Appeals reversed and remanded
19 LUBA’s decision. *Oregon Shores v. Lincoln County*, 164 Or App 426, 992 P2d 936 (1999). The
20 Supreme Court denied a request to review the Court of Appeals decision. *Oregon Shores v. Lincoln*
21 *County, rev den*, 330 Or 412, 8 P3d 219 (2000). On remand from the Court of Appeals, LUBA
22 issued a revised decision consistent with the Court of Appeals decision. That decision on remand,
23 *Oregon Shores v. Lincoln County*, 38 Or LUBA 699 (2000), upheld one subassignment of error and
24 dismissed all other assignments of error; and

1 WHEREAS subsequent to LUBA’s second decision, several of the parties to the litigation
2 entered into mediation to resolve issues in the vacation proceeding as well as several other legal
3 claims involving the parties, road vacation and ancillary issues. The mediation culminated in a
4 Settlement Agreement to address the vacation and other legal claims. The Settlement Agreement
5 was adopted on October 24, 2001; and

6 WHEREAS in accordance with ORS 368.346, a public hearing was held at 9:30 a.m. on
7 December 12, 2001, in the Commissioners’ Conference Room, Lincoln County Courthouse on the
8 remand from LUBA of the Board’s decision. The hearing was limited to the subassignment of error
9 sustained by LUBA. Interested parties were allowed an opportunity to be heard. Several letters in
10 favor of the action were received into evidence prior to hearing. One letter opposed to a portion of the
11 Settlement Agreement was received. Oral testimony at the hearings was in favor of proceeding with
12 the vacation action; and

13 WHEREAS at the conclusion of the December 12, 2001 hearing, the Board reviewed
14 proposed supplemental findings supporting the decision to vacate a portion of County Road 804
15 (South) and by unanimous action moved to proceed with the vacation of a portion of County Road
16 804 (South) (File No. V-109) as supported by the supplemental findings and (2) directed staff to
17 present the supplemental findings to the Yachats City Council for its concurrence in accordance
18 with ORS 368.361; and

19 WHEREAS the Yachats City Council held a hearing on December 13, 2001, to consider
20 whether the Council should concur with the decision and supplemental findings of the county in
21 support of the vacation request. At that hearing, oral and written arguments were received. The
22 Council, after consideration of the record and arguments, unanimously voted to concur with the

1 county's findings. A copy of the resolution evidencing that concurrence is attached to this order as
2 Exhibit "D"; and

3 WHEREAS on January 9, 2002, at 7:30 p.m. in the Yachats City Council Chambers, Yachats
4 Commons, the Board held an additional hearing after published notice to insure all interested parties
5 had an opportunity to participate. At the conclusion of the hearing, and with the concurrence of the
6 Yachats City Council in the supplemental findings supporting the vacation, the Board unanimously
7 desired to proceed with conclusion of this matter.

8 **NOW, THEREFORE, THE BOARD HEREBY FINDS AND ORDERS AS**
9 **FOLLOWS:**

10 1. That this Order amends Order No. 9-98-309, which by this reference is incorporated
11 herein as if fully set forth.

12 2. That the vacation of a portion of County Road 804 (South), File No. V-109, is again
13 found to be in the interest of the public.

14 3. That, in support of its decision, the Board adopts the supplemental findings contained
15 in Exhibit "A" attached hereto and incorporated herein. These supplemental findings
16 incorporate the original findings in Order 9-98-309. Also attached hereto and incorporated
17 herein as Exhibit "B" is the Settlement Agreement dated October 25, 2001.

18 4. That the right-of-way described in Attachment 4 to Exhibit "A" of Order # 9-98-309, and
19 which is attached hereto as Exhibit "C," is hereby vacated.

20 5. That in accordance with ORS 368.361(3), the Yachats City Council concurred with the
21 supplemental findings of the county in support of the vacation and unanimously adopted Resolution
22 385, a copy of which is attached hereto as Exhibit "D" and incorporated herein.

Chair
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Commissioner

Commissioner