

Supplemental Findings County Road 804 (South) V-109

These findings (hereafter “supplemental findings”) are adopted as a supplement to the findings adopted in 1998 through Board Order 9-98-309 (the findings were attached as Exhibit “A” to that Order and are hereafter referenced as the “original findings”) in the Vacation of County Road 804 (South) (Lincoln County Case File V-109). By this reference, the original findings are incorporated into these supplemental findings as if fully set forth. If there is a conflict between the supplemental findings and the original findings, the supplemental findings shall prevail in supporting the Board’s action in the vacation proceeding. To the extent LUBA or the Court of Appeals rejected any basis in the original findings for support of this vacation decision, those findings or conclusions are invalid.

A. Introduction

These findings are adopted pursuant to a remand of the Board’s decision to vacate a portion of County Road 804 (South) lying wholly within the City limits of Yachats Oregon. Several parties appealed the Board’s vacation decision, memorialized in Board Order 9-98-309. LUBA rendered a decision in 1999. *Oregon Shores v. Lincoln County*, 36 Or LUBA 288 (1999). LUBA remanded the vacation decision back to the County. The County, vacation petitioners and City of Yachats subsequently appealed LUBA’s decision to the Oregon Court of Appeals. The Court of Appeals reversed and remanded LUBA’s decision. *Oregon Shores v. Lincoln County*, 164 Or App 426, 992 P2d 936 (1999). The Supreme Court denied a request to review the Court of Appeals decision. *Oregon Shores v. Lincoln County, rev den*, 330 Or 412, 8 P3d 219 (2000). On remand from the Court of Appeals, LUBA issued a revised decision consistent with the Court of Appeals decision. That decision on remand, *Oregon Shores v. Lincoln County*, 38 Or LUBA 699 (2000), upheld one subassignment of error and dismissed all other assignments of error.

Subsequent to LUBA’s second decision, several of the parties entered into mediation to resolve issues in the vacation proceeding as well as several other legal claims involving the parties, road vacation and ancillary issues. The mediation culminated in a Settlement Agreement to address the vacation and other legal claims. The Settlement Agreement was adopted on October 24, 2001. The parties to the Agreement are Oregon Shores Conservation Coalition, 1000 Friends of Oregon, The Friends of Historic 804 County Road and Hiking Trail, Inc., four title companies, the State of Oregon, the City of Yachats and Lincoln County. The mediation process included input from representatives of the vacation petitioners (property owners) although they are not signatories to the agreement.

The Board of Commissioners then set a hearing on the remand from LUBA (remand from *Oregon Shores v. Lincoln County*, 38 Or LUBA 699 (2000)). Notice of the hearing was provided in accordance with law, both under ORS Chapter 368 for a road vacation decision and under

Lincoln County Code Chapter 1 and ORS Chapter 197 for a land use decision. The hearing was held on December 12, 2001 at 9:30 am. The only issue on remand was that subassignment of error that LUBA sustained: the application of Yachats Comprehensive Plan Policy 6 and Yachats Zoning Ordinance Section 3.100 (implementing Statewide Planning Goal 17, Implementation Requirement (6) to the requested vacation. Evidence and arguments were limited to that issue. The County introduced into evidence the October 24, 2001 Settlement Agreement. All evidence introduced into the record of the original proceeding continued to be part of the record in the remand proceeding. Persons were given an opportunity to present evidence and arguments on the issue on remand.

B. Supplemental Findings and Conclusions

Findings:

Lincoln County, the City of Yachats, the State of Oregon, Friends of Historic 804 County Road and Hiking Trail, Inc. Oregon Shores Conservation Coalition, and 1000 Friends of Oregon entered into a Settlement Agreement dated October 24, 2001, which by this reference is incorporated herein as if fully set forth and which is attached to the Board's Amended Order as Exhibit "B". The Agreement contains the sole description of the unique facts and circumstances related to this vacation request and upon which this vacation is based. It also sets forth replacement access options.

Conclusions:

This amended vacation order is made based on the unique facts and circumstances particular to South Road 804, and the availability of replacement access pursuant to the Settlement Agreement. The Settlement Agreement supports the decision. This vacation is not legal or factual precedent for other decisions by Lincoln County concerning public roads or access. The vacation is not intended to imply or admit that South 804 was or was not ever legally established, has or has not been previously vacated, does or does not exist and does or does not provide any rights of access, enjoyment, use, recreation, or otherwise to any members of the public. It is intended to bring certainty and finality to the status of the Road through the affected properties.

All public rights—if any—in South Road 804 as legally described herein are fully, forever, and unconditionally vacated, including, without limitation, any and all rights based on prescription, dedication, conveyance, implication, necessity, or the "public trust" or related doctrines.

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.