

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 OREGON SHORES CONSERVATION  
5 COALITION and THE FRIENDS OF THE  
6 HISTORIC 804 COUNTY ROAD AND  
7 HIKING TRAIL, INC.,  
8 *Petitioners,*

9  
10 and

11  
12 1000 FRIENDS OF OREGON,  
13 *Intervenor-Petitioner,*

14  
15 vs.

16  
17 LINCOLN COUNTY,  
18 *Respondent,*

19  
20 and

21  
22 CITY OF YACHATS, ELAINE ARMES,  
23 et al., and DAVID H. CHAMBERLIN,  
24 *Intervenors-Respondent.*

25  
26 LUBA No. 98-175

27  
28 FINAL OPINION  
29 AND ORDER

30  
31 On remand from the Court of Appeals.

32  
33 Steven R. Schell, Portland, represented petitioners.

34  
35 Christine M. Cook, Portland, represented intervenor-petitioner.

36  
37 Wayne Belmont, Lincoln County Counsel, Newport, represented respondent.

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39 Michael G. Dowsett, City Attorney, Yachats, represented intervenor-respondent City  
40 of Yachats.

41  
42 Michael E. Farthing, Eugene, represented intervenors-respondent Elaine Armes, et al.

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44 David H. Chamberlin, Yachats, appeared on his own behalf.

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1           BASSHAM, Board Chair; BRIGGS, Board Member; HOLSTUN, Board Member,  
2 participated in the decision.

3

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REMANDED

09/21/2000

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1           You are entitled to judicial review of this Order. Judicial review is governed by the  
2 provisions of ORS 197.850.  
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**NATURE OF THE DECISION**

Petitioners appeal the county’s decision vacating a portion of County Road 804.

**FACTS**

This case is on remand to us from the Court of Appeals. *Oregon Shores Conservation Coalition v. Lincoln Cty.*, 164 Or App 426, 992 P2d 936 (1999), *rev den* 330 Or 412 (2000) (*Oregon Shores II*). We repeat here the facts set forth in our earlier decision:

“In 1890, Benton County platted what became Lincoln County Road 804, a 60-foot wide unimproved right-of-way running south along the beach from the City of Waldport to the Yachats River. Just north of the Yachats River, within the present City of Yachats, the platted 804 right-of-way left the beach and traversed a low, rocky bluff running south to the Yachats River. We follow the parties in referring to the relevant portion of the 804 right-of-way within the City of Yachats as South 804. South 804 was never improved or used extensively for transportation, although it continued to be shown on county maps, and was used to some extent as a footpath along the bluff from the 1890s into the 1970s.

“In 1953, the Ocean Crest Subdivision was platted north of the unincorporated community of Yachats, placing 30 lots between the bluff and a roadway shown on the plat as Ocean View Drive. The subdivision plat did not depict the South 804 right-of-way and overplatted the westward portion of the 30 lots within that right-of-way. The City of Yachats was incorporated in 1967, including Ocean Crest Subdivision. By the 1970s, most of the 30 lots adjoining the bluff were developed with dwellings, with many structures built wholly or partially within the South 804 right-of-way. Ocean View Drive was developed as a public street parallel to and east of the bluff and the South 804 right-of-way.

“In 1997, the county resurveyed the South 804 right-of-way, and found that the majority of South 804 is on top of and parallel to the bluff, but that due to erosion of the bluff, portions of the platted right-of-way lie west of and below the current bluff-line. In September 1997, several owners within the Ocean Crest Subdivision filed a petition with the county to vacate South 804 from the northerly boundary of the Ocean Crest Subdivision to the 10-mile marker east of Highway 101. The county board of commissioners conducted proceedings, and determined to vacate the South 804 right-of-way from the northerly boundary of the subdivision to the First Street right-of-way. The county prepared findings to that effect. Pursuant to ORS 368.361(3), the county submitted its findings to the City of Yachats for its concurrence. On September 10, 1998, the city adopted a resolution concurring with the

1 county's determination to vacate the relevant portion of South 804 and  
2 incorporating the county's findings. On September 16, 1998, the county board  
3 of commissioners adopted its final decision vacating the South 804 right-of-  
4 way."

5 *Oregon Shores Cons. Coalition v. Lincoln County*, 36 Or LUBA 288, 291-92 (1999) (*Oregon*  
6 *Shores I*) (footnote omitted). The following additional facts are relevant to this opinion.

7 In 1974, the county vacated a portion of County Road 804 that includes the Aqua  
8 Vista subdivision immediately north of the Ocean Crest subdivision and a large adjoining  
9 motel, the Adobe. This portion of County Road 804 is referred to as Middle 804. The  
10 portion of County Road 804 within city limits north of the Adobe is hereafter referred to as  
11 North 804. In 1983, an action was brought in circuit court by certain landowners to declare  
12 that County Road 804 and any associated prescriptive easements did not burden the  
13 landowners' property. The circuit court ruled that County Road 804 and certain prescriptive  
14 easements existed and the portion running through the landowners' property had not been  
15 vacated. *Rendler v. Lincoln County*, Lincoln County Circuit Court No. 41260, July 19, 1983  
16 (the *Rendler* decision). After that decision was affirmed,<sup>1</sup> the court amended its decree to  
17 describe the location of the prescriptive easements.<sup>2</sup> That description begins at the south end  
18 of the tax lot adjoining Smelt Sands State Beach, north of the Adobe, and extended north.  
19 Record 2631-35. The county then conducted a survey, County Survey No. 11,905, to depict  
20 the exact location of the relevant portions of County Road 804 and the prescriptive  
21 easements. The court then entered a modified decree that determined that County Road 804  
22 and prescriptive easements existed at the locations identified in County Survey No. 11,905,  
23 and enjoined the landowners from blocking use of that portion of County Road 804. Record  
24 2629-30. In 1990, the county transferred jurisdiction over North 804 to the state for

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<sup>1</sup>*Rendler v. Lincoln Co.*, 76 Or App 339, 709 P2d 721 (1985), *aff'd* 302 Or 177, 728 P2d 21 (1986).

<sup>2</sup>Prescriptive easements were an issue in *Rendler* because public use over the years had established prescriptive rights on certain areas of private property adjoining the County Road 804 right-of-way.

1 development and preservation as part of the Oregon Coast Hiking Trail. One of the  
2 remaining issues in the present case is whether the *Rendler* decision, and subsequent city  
3 legislation in response to that decision, pertains only to North 804 or whether it also includes  
4 all or part of South 804.

5 In *Oregon Shores I*, we concluded, first, that Goal 17 (Coastal Shorelands) was  
6 directly applicable to the county's decision and, therefore, that that decision is a land use  
7 decision as defined at ORS 197.015(10)(a)(A)(i) subject to our jurisdiction. In reaching that  
8 conclusion, we also noted that elements of the City of Yachats Comprehensive Plan (YCP)  
9 and its Zoning Ordinance (YZO) that implement Goal 17 also applied to the county's  
10 decision and therefore also provide a basis for our jurisdiction. 36 Or LUBA at 300.

11 We then considered the merits of the assignments of error directed to us. We  
12 sustained the first assignment of error of petitioners and the assignment of error of  
13 intervenor-petitioner, both of which argued that the county's vacation of South 804 violated  
14 Implementation Requirement (IR) 6 of Goal 17.<sup>3</sup> We explained at some length our  
15 understanding of what IR 6 requires, and why the county's action is inconsistent with those  
16 requirements. 36 Or LUBA at 301-06.

17 We then addressed Oregon Shores' second assignment of error, which we understood  
18 to argue that YCP Policy C.6, YCP Policy A.2, YZO 3.090 and YZO 3.100, read together,  
19 require the preservation of County Road 804 and thus effectively prohibit vacating any  
20 portion of that right-of-way. YCP Policy C.6 and YZO 3.100 implement and substantially

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<sup>3</sup>IR 6 provides:

"Local government in coordination with the Parks and Recreation Division shall develop and implement a program to provide increased public access. Existing public ownerships, rights of way, and similar public easements in coastal shorelands which provide access to or along coastal waters shall 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."

1 repeat the terms of IR 6.<sup>4</sup> YZO 3.090 implements language at YCP Policy A.2 prohibiting  
2 improvements in the “County Road #804 right-of-way and the prescriptive easements”  
3 except for a public recreation hiking trail.<sup>5</sup> We rejected that argument, agreeing with  
4 intervenors-respondent that YCP Policy A.2 and YZO 3.090 refer to the portion of County  
5 Road 804 known as North 804, rather than South 804. 35 Or LUBA at 309. We held in the  
6 alternative that even if YCP Policy A.2 and YZO 3.090 referred to South 804, they must be  
7 construed with YCP Policy C.6 and YZO 3.100, which expressly provide that rights-of-way  
8 providing access to or along the ocean can be vacated, provided public access is retained  
9 across the affected site. Accordingly, we denied the second assignment of error. We then  
10 considered and rejected a number of other arguments and assignments of error that are no  
11 longer at issue in this appeal.

12 On appeal, the court overturned our finding that IR 6 applied directly to the county’s  
13 decision, for the reasons stated in the concurrence to LUBA’s decision. However, the court  
14 agreed with LUBA’s alternative holding that the city plan and code implementation of IR 6,  
15 YCP Policy C.6 and YZO 3.100, applied to the county’s decision and therefore that decision

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<sup>4</sup>YCP Policy C.6 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 or 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.”

YZO 3.100 provides in relevant part:

“The City shall review under ORS 271.080 [to] 271.230 proposals for the vacation of public easements or rights-of-way which provide access to or along the estuary or ocean. \* \* \* Existing public ownerships, rights-of-way and similar public easements which provide access to or along the estuary or ocean shall be retained or replaced if they are sold, exchanged, or transferred. Right-of-way may be vacated to permit redevelopment of existing developed shore land areas provided public access across the affected area is retained.”

<sup>5</sup>The full text of YCP Policy A.2 and YZO 3.090 are quoted later in this opinion.

1 was a land use decision subject to our jurisdiction. *Oregon Shores II*, 164 Or App at 435 n 4.  
2 The court reversed on intervenors’ petition. The court then addressed petitioners’ arguments  
3 on cross-petition directed at our denial of the second assignment of error. The court stated:

4 “[Petitioners’] principal arguments in their cross-petition are directed against  
5 LUBA’s adverse rulings on the issues concerning the consistency of the  
6 vacation decision with the city planning and zoning ordinance provisions.  
7 LUBA’s principal basis for rejecting [petitioners’] contentions to it on those  
8 issues--at least as to [YCP Policy C.6] and YZO 3.090--was that the south part  
9 of County Road 804 did not appear to be contemplated by the separate plan  
10 inventory provision that [petitioners] cited to LUBA. However, [petitioners]  
11 argue to us that [YCP Policy C.6] ‘itself contains no reference to County Road  
12 804, whether north or south, or the inventory \* \* \* and should not be limited  
13 to one or the other.’ We agree with [petitioners]. Furthermore, at least in the  
14 absence of greater explanation, we are unable to agree with the LUBA  
15 majority’s cryptic indication that [YCP Policy C.6] can be understood as  
16 placing any lesser or different restriction on the decision to vacate the road  
17 than would IR 6, the state provision that the local policy materially duplicates.

18 “[Petitioners] make a number of other arguments concerning LUBA’s  
19 disposition of the issues that turn on the city plan and ordinance provisions.  
20 Given our conclusion that LUBA has misconstrued the focal city provision in  
21 ways that may affect its interpretation and application of the others, and given  
22 the fact-bound nature of some of [petitioners’] arguments that implicate the  
23 city provisions, we consider the appropriate disposition of the cross-petition to  
24 be a remand to LUBA to reconsider its interpretations and applications of  
25 [YCP Policy C.6], YZO 3.090 and YZO 3.100 generally. \* \* \*” *Id.* at 436.

26 The court then reversed and remanded on the cross-petition for further consideration not  
27 inconsistent with its opinion. We now resolve the issues remaining on remand in this case.

28 **FIRST ASSIGNMENT OF ERROR (OREGON SHORES)**

29 **ASSIGNMENT OF ERROR (1000 FRIENDS)**

30 Under these assignments of error, petitioners and intervenor-petitioner argue that the  
31 county’s decision violated IR 6. For the reasons expressed in the Court of Appeals’ opinion,  
32 IR 6 is not directly applicable to the county’s decision. Accordingly, these assignments of  
33 error are denied.

1 **SECOND ASSIGNMENT OF ERROR**

2 We are directed to reconsider our interpretations and applications of YCP Policy C.6,  
3 YZO 3.090 and YZO 3.100.

4 **A. The City’s Implementation of IR 6**

5 As a starting point, the Court of Appeals’ decision does not disturb the substance of  
6 our interpretation of IR 6, which YCP Policy C.6 and YZO 3.100 implement. We now  
7 reaffirm that interpretation, and clarify, to the extent it was not clear in our earlier decision,  
8 that we understand YCP Policy C.6 and YZO 3.100 to impose at least the same requirements  
9 as IR 6.<sup>6</sup> Consequently, our discussion of the requirements of IR 6 in our earlier opinion is  
10 applicable to YCP Policy C.6 and YZO 3.100. It follows that the county’s decision violates  
11 YCP Policy C.6 and YZO 3.100, for the reasons discussed in *Oregon Shores I*, 36 Or LUBA  
12 at 301-06.

13 This subassignment of error is sustained.

14 **B. YCP Policy A.2 and YZO 3.090**

15 **1. Background**

16 Among the remaining issues are petitioners’ arguments that YCP Policy A.2 and  
17 YZO 3.090 require something more than what is required by IR 6, specifically that, when

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<sup>6</sup>It is not entirely clear to us why the court felt that our earlier decision indicates a belief that YCP Policy C.6 places “any lesser or different restriction on the decision to vacate the road than would IR 6[.]” *Oregon Shores II*, 164 Or App at 436. Any such indication was unintentional. The court may have understood our denial of the second assignment of error to reflect the view that YCP Policy C.6 does not restrict the vacation of rights-of-way in the same manner or to the same degree as does IR 6. However, denial of the second assignment of error was based on our understanding of petitioners’ arguments under that assignment. We understood petitioners to contend that, read in conjunction with YCP Policy A.2 and YZO 3.090, YCP Policy C.6 goes *further* than IR 6 and requires preservation of South 804 as a hiking trail and thus effectively prohibits any vacation of South 804, even if public access is otherwise retained. That is still our understanding of petitioners’ primary argument under the second assignment. However, portions of the second assignment of error can also be read to argue that the county’s decision violates YCP Policy C.6 for the same reasons it violates IR 6. Our position with respect to YCP Policy C.6 would have been clearer if we had sustained that portion of the second assignment of error that argued that the county’s decision violated YCP Policy C.6 for the same reasons it violated IR 6, before we went on to address the principal arguments under that assignment of error.

1 read together, those provisions require preservation of South 804 and thus prohibit vacation  
2 of South 804. We concluded in our earlier decision that YCP Policy A.2 and YZO 3.090  
3 refer to a different segment of County Road 804, North 804, that had been preserved from  
4 development pursuant to the *Rendler* decision, and do not refer to South 804. *Oregon Shores*  
5 *I*, 36 Or LUBA at 309. We then concluded that, even if those provisions do refer to South  
6 804, they must be read in conjunction with YCP Policy C.6, which allows the vacation of  
7 rights-of-way, provided public access is retained. *Id.* The Court of Appeals questioned our  
8 conclusions, agreeing with petitioners that YCP Policy C.6 does not refer to either North or  
9 South 804, and should not be limited to one or the other. *Oregon Shores II*, 164 Or App at  
10 436. If we understand the court’s opinion correctly, the court rejected our alternative  
11 conclusion and instructed us to reconsider our primary conclusion. In other words, we  
12 understand the court to suggest that if, in fact, YCP Policy A.2 and YZO 3.090 refer to and  
13 thus require the preservation of South 804 as a hiking trail, then nothing in YCP Policy C.6  
14 prevents application of that protection, or authorizes the vacation of South 804, even if the  
15 road vacation otherwise complies with the public access requirements of YCP Policy C.6.

16 Accordingly, we reconsider petitioners’ arguments that YCP Policy A.2 and  
17 YZO 3.090 refer to and require the preservation of South 804 and thus have the effect of  
18 prohibiting vacation of South 804.

19 YCP Policy A.2 and YZO 3.090 were adopted in 1989, as part of Ordinance 125.  
20 Record 1289-92. Ordinance 125 has three parts. The first part adopts YCP Policy A.2,  
21 which provides:

22 “The City of Yachats shall assist the State and County in protecting the  
23 County Road 804 right-of-way and the prescriptive easements accepted by the  
24 Oregon Supreme Court as established by the Lincoln County Surveyor  
25 (Survey 11,905, 12/18/87) from alterations which would prevent the  
26 establishment and maintenance of this segment of the Oregon Coast Hiking  
27 Trail within the right-of-way.” Record 1289.

1           The second part amends the YCP inventory to insert a new section entitled “Potential  
2 and Approved Oregon Recreation Trails.” The new section recites plans by the Oregon State  
3 Parks and Recreation Department to develop a border-to-border hiking trail, and states that  
4 “[t]he proposed trail route through Yachats is shown on the Recreation Trails Inventory  
5 Map.” Record 1290; YCP Inventory 10.<sup>7</sup> The text of the YCP inventory describes the trail  
6 north of Smelt Sands Beach State Park, which is just north of the Adobe Motel:

7           “The proposed trail route north of Smelt Sands Beach State Park is to be  
8 located in the right-of-way of County Road #804. The existence of this public  
9 right-of-way has been established after extensive litigation and a final ruling  
10 by the Oregon Supreme Court. This right-of-way is currently unimproved,  
11 but informal trails have been established over most portions of it by many  
12 years of local pedestrian use.

13           “The location of the County Road #804 right-of-way and prescriptive  
14 easements has been established by the Lincoln County Surveyor (filed Survey  
15 11,905, 12/18/87). This survey, a copy of which is on file at Yachats City  
16 Hall, is considered by the city to be the best available information regarding  
17 the location of the proposed Oregon Coast Hiking trail north of Smelt Sands  
18 Beach State Park, and is hereby incorporated into this inventory by  
19 reference.” Record 1290.

20 However, the text of the YCP inventory does not describe the proposed trail south of Smelt  
21 Sands Beach State Park, other than to state that “[a]ll portions of this trail route as proposed

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<sup>7</sup>If a copy of the “Recreation Trails Inventory Map” exists in the record or briefs submitted in this case, we cannot locate it. That map would seem to have considerable bearing on the issue of what portions of County Road 804 the city wished to preserve as a trail under Ordinance 125. It is possible that that map was superseded by later maps or ordinances. There are indications in the record to that effect. Record 1282 (testimony of the city planner stating that the Oregon Coast Hiking Trail as addressed in the YCP Policy A.2 inventory is displayed in Exhibit E, a “Recreation and Resource” map). Exhibit E attached to that testimony is a page containing only the words “Recreation & Natural Resources Comprehensive Plan Map (Wall Display).” Record 1306. The record contains an oversize map entitled “Recreation and Natural Resources Comprehensive Plan Map,” identified as Exhibit H in the Record Table of Contents. That map depicts hiking and biking trails within the city. The map shows a dotted line, representing a trail, running south from the northern city limits along what appears to be the North and Middle 804 sections of County Road 804. At the approximate point where the dotted line reaches the northern edge of the Ocean Crest subdivision, it veers inland and then proceeds down Ocean View Drive. An asterisk attached to the word “trails” states that “Trail location is approximate; for more specific information, see Lincoln Co. Survey 11,905 12/18/87.” Exhibit H.

In addition, the testimony at Record 1282 refers to a Village Circulation Plan, adopted in 1997, that, consistent with the Recreation and Natural Resources map, depicts a trail along Ocean View Drive rather than along South 804.

1 by ODOT [Oregon Department of Transportation] would be on public lands or right-of-  
2 way.” Record 1290.

3 The third part of Ordinance 125 adopted YZO 3.090, which provides in relevant part:

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

10 “2. The City of Yachats shall review all building permits, conditional use  
11 permits, zone changes and other land use decisions for properties  
12 within the County Road #804 right-of-way and prescriptive easements  
13 to assure that they are consistent with the following requirements:

14 “a. No structure, alteration or other development shall be  
15 permitted within the County Road #804 right-of-way and  
16 prescriptive easements except for a public recreation trail and  
17 improvements which are necessary or accessory to the  
18 construction or maintenance of a public recreation trail.”  
19 Record 1291.

## 20 2. Petitioners’ arguments

21 Petitioners argue that YCP Policy A.2 and YZO 3.090 should be read to refer to and  
22 include South 804. After discussing the text of YCO Policy A.2 and YZO 3.090, the petition  
23 for review argues:

24 “\* \* \* A careful examination of the survey shows that it covers not just North  
25 804, but also South 804. Sheet 4 of 4 shows the northerly three houses in the  
26 Ocean Crest subdivision. It also shows the location of the 804 right-of-way to  
27 Mile Post 9, which is adjacent to Lot 10 in Block 4 of Ocean Crest. Thus, the  
28 survey itself covers Ocean Crest. Even if the 804 right-of-way is defined for  
29 some purpose as somehow being limited by the December 18, 1987 survey,  
30 for other purposes there is no such limitation in the plan. Rather, there are  
31 general statements about 804 (see [Record] 898-899). 804, as specified, is not  
32 limited to North 804 in the comprehensive plan.” Petition for Review 25-26.

33 The county and intervenors respond that:

34 “\* \* \* [T]he Yachats City and County Plans only recognized County Road  
35 804 North as the ‘county road 804.’ The City Plan, which [petitioners cite] in  
36 [their] arguments, ties its reference to the County Survey 11,905 and the

1 circuit court case [the *Rendler* decision] which were limited to that area now  
2 known as 804 North. Although [petitioners attempt] to assert that the survey  
3 encompasses areas in 804 South, the survey clearly demarcates the boundaries  
4 of the project area as north of [Middle 804,] the area vacated by the County.  
5 The [*Rendler*] litigation dealt with a clearly and legally defined portion of the  
6 road that did not include 804 South. There were no prescriptive easements  
7 established anywhere along 804 South. \* \* \*

8 “\* \* \* The zoning ordinance [YZO 3.090] further reflects the City’s  
9 understanding that the portion of 804 to be protected is that now referred to as  
10 804 North. In 1990, the County transferred jurisdiction of County Road 804  
11 North to the State Parks Department \* \* \* for development and preservation,  
12 including establishment of the Oregon Coast Hiking Trail. \* \* \* Consistent  
13 with that action, the elements of the [YCP and] YZO 3.090 \* \* \* require  
14 cooperation with the state and County to preserve 804 identified in the survey  
15 and court case. \* \* \*” Brief Opposing Petition for Review 27 (record  
16 citations omitted).

17 As framed by the parties, the proper interpretation of YCP Policy A.2 and YZO 3.090  
18 turns primarily on the intended scope of County Survey No. 11,905 (the survey), as adopted  
19 by the *Rendler* decision. We agree. Both provisions refer to “County Road 804” “as  
20 established” by the survey and the *Rendler* decision. There is no suggestion in either  
21 provision that “County Road 804” is intended to refer to any other portion of road than that  
22 established by the survey and the *Rendler* decision.<sup>8</sup> Accordingly, we address the parties’  
23 arguments regarding the survey and the *Rendler* decision.

24 As petitioners note, the survey consists of four sheets. Sheet 1 begins tracing County  
25 Road 804 where it leaves the beach south of Starr Creek and goes up on the bluff. Sheet 1  
26 depicts County Road 804 as running south across a number of tax lots on the bluff, with  
27 adjoining prescriptive easements shown as shaded areas. Sheets 2 and 3 continue south in  
28 the same manner. At the southern end of Sheet 3, County Road 804 is depicted crossing the  
29 Smelt Sands State Wayside and two adjoining tax lots, and then reaching the northern border

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<sup>8</sup>As noted in our discussion of the facts, County Road 804 as a whole stretches north of the City of Yachats for a number of miles to the City of Waldport, and stretches south of the City of Yachats until it reaches the Yachats River.

1 of the Adobe property. At that point the following notation is written across County Road  
2 804: “End of Project.” Sheet 4 continues south from that point. The northern end of Sheet 4  
3 also states “End of Project.” Sheet 4 depicts the County Road 804 right-of-way going south  
4 across the Adobe property and the Aqua Vista subdivision. However, this portion of the  
5 right-of-way is marked with hatchings, and states “vacated portion of C.R. 804 mf 50-1321.”  
6 The southern end of Sheet 4 shows a small portion of the Ocean Crest subdivision, with the  
7 right-of-way continuing south. However, only houses and roads within the Ocean Crest  
8 subdivision are depicted; tax lot boundaries within the subdivision are not shown. An inset  
9 in the left upper corner of Sheet 4 shows an outline of the County Road 804 right-of-way  
10 continuing south to the “Nine-mile post” within the subdivision, but that outline is not  
11 superimposed over any topography or tax lot information.

12 In our view, the county survey establishes the location of County Road 804 for  
13 purposes of the *Rendler* decision, and hence YCP Policy A.2 and YZO 3.090, only to the  
14 point where “End of Project” is marked on Sheets 3 and 4. That view is supported by the  
15 fact that the survey does not show any tax lot boundaries or similar information within the  
16 Ocean Crest subdivision. As we understand it, the principal purpose of the *Rendler* decision  
17 was to establish the location of County Road 804 and prescriptive easements vis-à-vis private  
18 property. That no private property boundaries within the Ocean Crest subdivision are shown  
19 is a strong indication that the survey and the *Rendler* decision did not intend to establish  
20 anything with respect to that subdivision. That Sheet 4 contains an inset depicting the course  
21 of South 804 to the nine-mile post within the Ocean Crest subdivision does not establish  
22 anything, because that course is not related to any topography or property boundaries.  
23 Finally, petitioners do not identify anything in the *Rendler* decision itself that purports to  
24 affect any portion of South 804.

25 Nonetheless, petitioners argue that there are general references to “County Road 804”  
26 in the YCP that are not limited in any way to the survey or the *Rendler* decision. Petitioners

1 point to a portion of the YCP at Record 898 discussing public access to the ocean that states:  
2 “County Road #804—This is a county road which provides pedestrian access to and along  
3 the ocean shore.” We understand petitioners to argue that this general reference to “County  
4 Road 804” is not limited to any portion of the road and thus includes South 804. We  
5 disagree. The cited portion of the YCP lists access points going from north to south. County  
6 Road 804 is the first such access point, following by Smelt Sands State Wayside, access  
7 points within the Aqua Vista subdivision, and so on, continuing south into the city. The  
8 adjoining section of text refers to “County Road #804” and states that the state parks  
9 department intends to develop a portion of the Oregon Coast Hiking Trail on the “County  
10 Road #804 right-of-way.” Record 899. The text then states that the city “encourages the  
11 State Parks and Recreation Department to obtain easements necessary to extend the Oregon  
12 Coast Hiking Trail south of Smelt Sands State Park to permit continuous foot traffic through  
13 Yachats.” *Id.* Read together, these YCP text provisions make it reasonably clear that general  
14 references to “County Road #804” are intended to refer to North 804.

15 In sum, we affirm the conclusion in our earlier opinion that YCP Policy A.2 and YZO  
16 3.090 do not refer to or require the preservation of South 804 and thus do not function to add  
17 any greater protection to South 804 than already provided by YCP Policy C.6.

18 This subassignment of error is denied.

19 **C. YZO 3.100**

20 The only remaining argument we can discern in the second assignment of error is an  
21 argument that the county erred in failing to follow the procedures for vacating city rights-of-  
22 way in ORS 271.080 *et seq.*, as YZO 3.100 requires the city to do. As discussed in *Oregon*  
23 *Shores I*, petitioners contended that the county should have obtained the consent of all  
24 abutting property owners in order to vacate South 804, as required by ORS 271.080. We  
25 rejected that argument, relying on ORS 368.361(4) to conclude that county proceedings to  
26 vacate a county road under ORS 368.361(3) are subject to vacation procedures at

1 ORS 368.326 applicable to counties and are not subject to vacation procedures at  
2 ORS 271.080, which are applicable only to cities. 36 Or LUBA at 310.<sup>9</sup>

3 Although the Court of Appeals did not address or expressly reject our conclusion on  
4 this point, the court broadly directed us to reconsider our interpretation of applicable city  
5 provisions, including YZO 3.100. Further, in discussing its understanding of our holding  
6 with respect to YZO 3.100, the court stated:

7 “\* \* \* LUBA held that \* \* \* YZO 3.100 also did not [benefit petitioners]  
8 because that provision applies only to vacations, unlike this one, allowed  
9 pursuant to ORS 271.[080] *et seq.* *But see* ORS 368.361(4).” 164 Or App at  
10 433.

11 The court’s signal to ORS 368.361(4) seems related to its perception that our earlier  
12 opinion failed to appreciate the role YCP Policy C.6 and YZO 3.100 play in implementing IR  
13 6. As discussed above, we did not intend to suggest that YCP Policy C.6 and YZO 3.100  
14 provide less protection than IR 6 for rights-of-way providing access to the ocean. We  
15 certainly did not intend to suggest that YZO 3.100 as a whole does not apply to the county’s  
16 decision. However, we rejected petitioners’ argument that the county was required to apply  
17 procedures applicable to cities in vacating County Road 804, as contrary to ORS 368.361(4).  
18 The county is the only public entity vacating property under ORS 368.361(3), and thus the  
19 county is required by ORS 368.361(4) to apply procedures applicable to counties. We do not  
20 understand the above-quoted comment to reject our conclusion on that point. Accordingly,  
21 we affirm that conclusion.

22 This subassignment of error is denied.

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<sup>9</sup>ORS 368.361 sets forth special procedures to allow counties to vacate property that is under multiple public jurisdictions or that crosses and recrosses from one jurisdiction to another. ORS 368.361(2) describes the process when property falls within separate jurisdictions and thus requires separate vacation proceedings. ORS 368.361(3) describes the process when property under county jurisdiction is entirely within the limits of a city, as in the present case, *viz.*, the county conducts a vacation proceeding and the city’s role is limited to concurrence in the county’s findings by resolution or order. ORS 368.361(4) then provides:

“Public bodies vacating property under this section shall each use procedures for vacation that each uses for other vacation proceedings.”

1           The second assignment of error is sustained, in part.

2   **REMAINING ASSIGNMENTS OF ERROR**

3           As far as we can tell, the Court of Appeals' decision does not require that we  
4 reconsider petitioners' third, fourth, fifth or sixth assignments of error, which were each  
5 denied.

6           The county's decision is remanded.