

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 CAROL N. DOTY,
5 *Petitioner,*

6
7 vs.

8
9 COOS COUNTY,
10 *Respondent,*

11
12 and

13
14 HANK WESTBROOK,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2001-202

18
19 FINAL OPINION
20 AND ORDER

21
22 On remand from the Court of Appeals.

23
24 Douglas M. Dupriest, Eugene, represented petitioner.

25
26 Steven R. Lounsbury, Coquille, represented respondent.

27
28 Daniel A. Terrell, Eugene, represented intervenor-respondent.

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30 BRIGGS, Board Member; BASSHAM, Board Chair; HOLSTUN, Board Member,
31 participated in the decision.

32
33 REMANDED

05/01/2003

34
35 You are entitled to judicial review of this Order. Judicial review is governed by the
36 provisions of ORS 197.850.

1 Briggs, Board Member.

2 This appeal is before us on remand from the Court of Appeals. In *Doty v. Coos*
3 *County*, 42 Or LUBA 103 (2002), we set out the relevant facts and legal background as
4 follows:

5 “The subject property includes two parcels totaling 21.18 acres, located
6 approximately one mile north of the City of Bandon. The property is bordered
7 by Highway 101 to the west, the Coquille River on the north, rural residential
8 property to the east, and EFU-zoned property to the south. Across Highway
9 101 to the west lies the Bandon Marsh, an estuary managed by the U.S. Fish
10 and Wildlife Service. Farm and water-dependent uses lie across the Coquille
11 River to the north. At least a portion of the subject property is within the
12 Coastal Shorelands boundary, and is subject to the regulations implementing
13 Statewide Planning Goal 17 (Coastal Shorelands). 42 Or LUBA at 105.

14 “In Coos County, lands subject to Goal 17 are located within a ‘Coastal
15 Shorelands Boundary’ (CSB) and are divided into management segments.
16 Each shoreland management segment is subject to the provisions of the
17 Coquille River Estuary Management Plan (CREMP). A CREMP designation
18 limits the types of uses that may be conducted within each segment to those
19 that are consistent with CREMP policies. Each shoreland management
20 segment receives a primary zoning designation and a CREMP overlay
21 designation. The subject property is located within Shorelands Segment 16.
22 According to petitioner, the entire property is located within Shorelands
23 Segment 16 and is designated CREMP-Industrial. According to intervenor,
24 only a 2.5-acre portion of Parcel 1 is designated CREMP-Industrial.

25 “Coos County Zoning and Land Development Ordinance (CCZLDO) 4.1.450,
26 ‘Interpretation of Coastal Shorelands Boundary’ provides, in relevant part:

27 ““When development action is proposed in the immediate vicinity of
28 the [CSB] and when such proposed development action relies on a
29 precise interpretation of the CSB, the Planning Director shall establish
30 the precise location of the CSB using the seven criteria specified in the
31 Coastal Shorelands goal. Establishment of the exact location may
32 require an on-site inspection. If the location of the CSB as shown on
33 the Plan maps or Coastal Shorelands Inventory map is subsequently
34 found to be inaccurate or misleading, the Planning Director shall make
35 the appropriate minor adjustments to the maps and provide a copy of
36 any map revision to the County Clerk.’ ([Underline] in original.) 42 Or
37 LUBA 107-108.

38 “* * * The county zoning map depicts two coastal shoreland boundaries in the
39 vicinity of the subject property. One follows the boundary of the original

1 25.6-acre parent parcel. The other cuts across Parcel 1 at its northwest corner.
2 The zoning map includes a numeric designation on the property, which
3 corresponds to the following handwritten notation, which is shown at the
4 bottom of the map:

5 “Coastal Shorelands Boundary Interpretation by Planning Director
6 P.E. 2-1-96. Basis: FIRM 100 yr. Flood Plain Map[;] Sterio of 1992
7 Air Photos[;] 15’ Quad Map[.] Located in Section 17[,] 12-18-
8 96/LNW.’

9 “The interpretation occurred at the same time as the partition [that divided the
10 subject property from the 25.6-acre parent parcel], which is a development
11 action that may need to rely on a precise interpretation of the CSB within the
12 meaning of CCZLDO 4.1.450.” 42 Or LUBA at 108.

13 In our opinion, we concluded that the portion of the subject property within the
14 CREMP corresponded with intervenor’s depiction of the area, which showed that
15 approximately 2.5 acres of the subject property was northwest of the CSB and therefore
16 subject to the CREMP designation. Our conclusion reflected our understanding that
17 petitioner was arguing that the CREMP designation included the *entire* subject property, not
18 just the 2.5 acres indicated on intervenor’s map. We did not understand petitioner to argue
19 that, even if we did not agree with her contention that the entire property was subject to the
20 CREMP designation, intervenor’s depiction of the location of the CSB did not correspond to
21 the location of the CSB on the zoning map. Nor did we understand petitioner to argue that
22 the county’s decision regarding the location of the CSB was not supported by substantial
23 evidence.

24 Petitioner appealed our decision to the Court of Appeals, arguing in part that we erred
25 in our determination that the CREMP included only 2.5 acres, when it appeared that the
26 county’s zoning map included more of the subject property. The Court agreed with petitioner
27 that our conclusion that intervenor’s depiction of the CSB was correct did not account for an
28 apparent discrepancy between the line on the zoning map established by the planning
29 director that appears to include approximately ten acres of intervenor’s property in the
30 CREMP, not 2.5 acres. *Doty v. Coos County*, 185 Or App 233, 240, 59 P3d 50 (2002),

1 *adhered to as clarified on reconsideration*, 186 Or App 580, __ P3d __ (2003). The court
2 then remanded the decision to us, “for reconsideration [of that determination] or for an
3 explanation reconciling the apparent difference between the placement of the line as reflected
4 in the county’s approval and the line shown on the official zoning map.” *Id.*

5 The county’s decision relies upon the map provided by intervenor to accurately depict
6 the CSB and, consequently, the area of the subject property subject to the CREMP
7 designation. However, as the Court of Appeals pointed out, that line does not appear to
8 correspond with the CSB that is located on the copy of the zoning map provided to us. We
9 are inclined to agree with petitioner that intervenor did not accurately depict the CSB on the
10 map the county relied upon to reach its decision. However, there may be other reasons why
11 the county chose to rely on intervenor’s map. Accordingly, we believe that it is appropriate
12 to give the county an opportunity to explain what those reasons may be, if any. Accordingly,
13 the challenged decision is remanded for the county to consider that matter. On remand, the
14 county must also address the other assignments of error that we sustained in our prior
15 decision and that were affirmed by the Court of Appeals.