

SETTLEMENT AGREEMENT
Yachats County Road 804 Mediation

PARTIES

1. *PAIGs.* 1000 Friends of Oregon, an Oregon nonprofit Corporation, Oregon Shores Conservation Coalition, an Oregon nonprofit Corporation, and The Friends of the Historic 804 County Road and Hiking Trail, Inc., an Oregon nonprofit Corporation, all of their subsidiaries, and all direct or remote predecessor or successor entities of any of the foregoing will be collectively referred to as "Public Access Interest Groups" or "PAIGs."

2. *State.* The State of Oregon is acting exclusively by and through i) the Department of Parks and Recreation and ii) the Oregon Economic and Community Development Department. If a specific term or obligation applies to only one or the other of these Departments, such Department shall be separately referenced. If a specific term or obligation applies to both Departments, the word "State" shall be used.

3. *County.* Lincoln County, Oregon, will be referred to as "the County."

4. *City.* The City of Yachats, in Lincoln County, Oregon, will be referred to as "the City."

5. *Title Companies.* Chicago Title Insurance Company of Oregon is an Oregon Corporation. Security Union Title Insurance Company is a California Corporation. Ticor Title Insurance Company is a California Corporation. Stewart Title Insurance Guaranty Company is a Texas Corporation. First American Title Insurance Company of Oregon is an Oregon Corporation. TransNation Title Insurance Company is an Arizona Corporation. Each such company, any subsidiary or affiliated entity of any such company, and all direct or remote predecessor or successor entity of any of the foregoing will be collectively referred to as "Title Companies."

6. *Reference.* Each of the PAIGs, the State, the County, the City and each of the Title Companies will, collectively, be referred to as "the Parties."

PROPERTY

7. *Lot 1.* Lot 1, Block 4, of Ocean Crest Subdivision, Lincoln County, Oregon is presently owned by the City of Yachats, a municipal Corporation, and will be referred to as "Lot 1."

8. *Lot 26.* Lot 26, Block 4, of Ocean Crest Subdivision, Lincoln County, Oregon, is presently owned by the owners of the platted building lots

within the subdivision of Ocean Crest, their heirs and assigns, and will be referred to as "Lot 26."

9. *Lot 13.* Lot 13, Block 4, Ocean Crest, Lincoln County, Oregon, is presently owned by Jerry W. Daniels and Terri Lee Daniels, as tenants by the entirety, and will be referred to as "Lot 13."

10. *South Road 804.* Portions of County South Road 804 in Lincoln County, Oregon, extend or purportedly extend over or along certain real property situated within subdivisions known as Ocean Crest, 1st Addition to the City of Yachats, and the 3rd Addition to the City of Yachats. In this Agreement, any reference to "South Road 804" refers only to that portion of the actual or alleged road which is described in Exhibit A. No references to South Road 804 are intended to imply or admit that South Road 804 was or was not ever legally established, has or has not been properly vacated, does or does not exist and does or does not provide any rights of access, enjoyment, recreation, use or otherwise to any members of the public other than those individuals who own, as of the date of this Agreement, the parcels of property over which the Road is allegedly situated or whose property it allegedly touches (collectively, "Affected Property Owners"). The parcels of property that South Road 804 actually or allegedly touches or crosses will be referred to as "the Affected Properties."

11. *Waldport-Starr Creek Road 804.* This term refers to the road or alleged road traversing approximately nine miles along or near the Pacific Ocean, between Starr Creek and Waldport, Oregon, as described in Exhibit B. No references to that Road are intended to imply or admit that that Road was or was not ever legally established, has or has not been properly 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.

12. *Adobe.* A retail establishment known as "the Adobe," the real property on which it sits, and two adjoining lots to the north will be referred to as "the Adobe Property." This property is also referred to as tax lots 100, 200, and 300 of Map 14-12-22-DD.

LITIGATION AND DISPUTES

13. *Vacation Proceedings.* In 1997, the County commenced certain administrative proceedings (In the Matter of Vacation of a portion of Waldport-Yachats County South Road 804 (South), V-109) designed to vacate South Road 804 and vest any and all rights in and to the property traversed by South Road 804 in the Affected Property Owners. Thereafter, the County formally purported to vacate South Road 804 under Order 9-98-309. An appeal was taken from that decision to the Oregon Land Use Board of Appeals (36 Or. LUBA 288), and an appeal to the Oregon Court of Appeals (164 Or. App. 426) followed. Thereafter,

there were further proceedings in the Land Use Board of Appeals (38 Or. LUBA 699), culminating in a remand, to the County. All such Vacation proceedings, whether at or before the County, the City, any administrative agency, tribunal or panel (including the Land Use Board of Appeals), or any court, including the Oregon State Court of Appeals, whether concluded, pending or threatened, shall be referred to as the "Vacation Proceedings."

14. *Quiet Title Action.* In 2000, certain Affected Property Owners commenced an action in the Circuit Court for Lincoln County, Oregon, under Cause No. 001438, to, among other things, obtain a decree quieting their respective titles in and to the property on which South Road 804 allegedly traverses or touches and for any claims relating to South Road 804. The defendants include the City and the County. Intervenors include Oregon Shores Conservation and Coalition and the Friends of the Historic 804 County Road and Hiking Trail, Inc.

15. *Yachats Exception.* The Yachats City Council adopted an Exception to Statewide Planning Goal 17 and an amendment of the Yachats Comprehensive Plan and Development Code on December 27, 2000, by Yachats Ordinance No. 218, concerning portions of South Road 804. That action, referred to as the "Yachats Exception" was appealed to LUBA by the PAIGs on January 25, 2001. The appeal is pending.

16. *Controversies and Questions.* There is a present controversy between and among the PAIGs, the Affected Property Owners, the City, and the County, as to: (a) whether South Road 804 exists and (b) whether any members of the public, other than the Affected Property Owners, have rights to utilize South Road 804 and/or Affected Properties for walking, access to or along the beaches or the ocean, recreation, or any other ingress, egress, use or enjoyment of any type or nature; (c) whether there is a public interest in access over the use of South Road 804 and adjoining land, and (d) whether the Affected Property Owners have exclusive enjoyment of the Affected Properties ("the Controversy"). The Controversy forms the core of the matters at issue in the Vacation Proceedings, the Exception, and the Quiet Title Action. Additionally, there is a question about the exact location of County Road 804 between Waldport and Starr Creek, its relation to roads now in use by motorized vehicles, and its relation to the public beach.

17. *Title Companies' Role.* Some of the Affected Property Owners have title insurance, which allegedly obligates the Title Companies to defend and/or indemnify their insureds in connection with all or some of the Controversy. The Title Companies join with the other Parties to this Agreement in seeking to resolve the Controversy and, to that end, are prepared to provide part of the consideration necessary to such resolution.

18. *State's Role.* The State is not a party to the Quiet Title Action or the Vacation Proceedings, but has an interest in (i) obtaining guaranteed public rights of access along portions of South Road 804 and (ii) the continued economic development of the tourist industry in the area.

19. *Purpose.* To resolve doubtful and disputed claims, and without any admission of liability, rights, or wrongdoing by any Party, but solely for purposes of finally resolving the Controversy and other issues, and to avoid the risk, uncertainty and expense of litigation, the Parties agree as follows:

AGREEMENT

Money

20. *Proceeds.* "Settlement Proceeds" shall consist of the sum total of, and no more than, the following contributions plus all interest earned in the Settlement Proceeds escrow account described in paragraph 21: (a) the State by and through the Parks and Recreation Department will contribute \$25,000; (b) the State by and through the Oregon Economic and Community Development Department will contribute \$25,000 from the Strategic Reserve Fund; (c) the County and City will contribute a total of \$50,000, to be apportioned among them pursuant to terms of a side agreement between them; and (d) the Title Companies will contribute \$190,000, which will be apportioned among them pursuant to terms of a side agreement between them. Collectively, the State, the County, the City, and the Title Companies may be referred to as the 'Payors.'

21. *Escrow.* The County shall open an interest bearing, insured escrow account with a national bank in the State of Oregon, and the County shall select the bank ("Escrow"). All Settlement Proceeds shall be deposited into Escrow by the County, to whom all Settlement Proceeds shall be paid for the sole purpose of complying with this Settlement Agreement. The Settlement Proceeds shall not be deemed property of the County for any purpose. All Settlement Proceeds shall be paid by check payable to "Lincoln County—South Road 804 Settlement Account." Lincoln County shall open the Escrow as trustee of the escrowed funds. From that time until the period ending eighteen (18) months after the County becomes eligible to disburse funds under paragraph 23, (i) Lincoln County shall be the sole signatory on the Escrow; but (ii) it may not direct disbursement on funds from that account, or draw checks on that account, except in full compliance with the express terms and conditions as set forth in paragraphs 50-56. After 18 months, the fund shall be managed as described in paragraph 57. All Parties (other than the County) who contribute Proceeds to the settlement of this matter and/or the Escrow pursuant to this Agreement are fully and forever released and relieved of any liability, present or future, known

or unknown, in connection with any error or defalcation in the disbursement, expenditure or direction of any of the Settlement Proceeds paid into the Escrow.

22. *Tender.* All Settlement Proceeds shall be tendered to the County in accordance with the above instructions within 30 days after the Agreement is fully executed.

23. *Disbursement.* Disbursement of funds from Escrow shall not occur until and unless the following conditions are fully and timely fulfilled:

(a) There shall be a "Final Vacation Order," which shall consist of County issuance of an order vacating South Road 804 pursuant to paragraphs 25-26 hereof, County transmittal of notice of that order to all persons or entities entitled by law to such notice, and either: (i) the passage of 60 days from completion of such notice with no service or filing of any appeal from or collateral attack on the order; or (ii) in the event of such an appeal or attack, a final and unconditional dismissal of same (or full affirmance of the Vacation Order with no further possibility of appeal), all to be fully completed within two years of County issuance of the Vacation Order;

(b) All conditions and requirements imposed on the PAIGs by paragraph 35 (Intervention), 45 (Assurances) and 46 (Covenant: Yachats) have been fully satisfied; and

(c) No PAIG is in material breach of this Agreement.

If each of the foregoing conditions is fully and timely fulfilled, the funds in Escrow shall be distributed in accordance with paragraphs 50-57, and thereafter shall not be returned to Payors.

24. *Return of Funds.* Funds shall be returned, if necessary, as described in paragraphs 28 (Termination for Failure to Defeat Attack or Appeal) and 42 (Termination).

The Vacation of South Road 804

25. *Vacating South Road 804.* The County shall act to reopen and/or continue with the Vacation Proceedings in respect to South Road 804 as soon as practicable upon full execution of this Agreement, and shall take all steps required by law and/or this Agreement, including publishing and mailing notice and making all appropriate findings, to fully and finally vacate South Road 804.

26. *County Deadline.* The County shall approve and issue an order vacating South Road 804 ("the Vacation Order") no later than 150 days from full execution of this agreement. The Vacation shall include, but is not limited to, findings attached as Exhibit C, provided, however, that any such

additional findings make no representations of the facts or circumstances of the case beyond those contained in this Agreement.

27. *Best Efforts.* If there is an appeal of or collateral attack on the Vacation Order from any source within 60 days of its becoming a "final decision" (i.e., once the County has transmitted notice of that Order to all persons or entities entitled by law to such notice) the Parties, except as provided in paragraph 62 (limiting State's obligations), will make best efforts to defeat it. As used in this paragraph, "best efforts" include (but are not necessarily limited to) defending the decision on appeal as a respondent or an intervenor on the side of the respondent(s) and actively participating in or contributing to appropriate pleadings, briefs and arguments to defend the decision subject to approval by the principal authors of the pleading, brief, or argument in question.

28. *Termination for Failure to Defeat Attack or Appeal.* This agreement shall be terminated (with the consequences specified in paragraph 42) unless the appeal and/or collateral attack, if any, is fully, finally, and unconditionally resolved (i.e., the Vacation Order is affirmed and there is no further possibility of appeal) within two years of County issuance of the Vacation Order.

29. *Notices from County.* No later than 4:30 p.m. one business day after the date it issues the Vacation Order, the County shall deliver written notice of such action and a copy of the Order to counsel for the Parties to this Agreement and counsel for plaintiffs in the Quiet Title Action. If any appeal from or collateral attack on the Vacation Order is ever served, filed or threatened in writing, the County shall immediately provide written notice thereof, with copies of all related documents, to all such counsel.

30. *No Opposition.* No Party shall directly or indirectly oppose or delay the Vacation of South Road 804 or Waldport-Starr Creek Road, pursuant to this agreement, or directly or indirectly support or encourage any individual or entity seeking to delay, block or frustrate any such vacation. Each Party, except as provided by paragraph 62, shall make its best efforts to further the Vacation Order applicable to South 804, and to defend against any efforts by any individual or entity to delay, block, frustrate, appeal or attack any such order, as required by paragraph 27.

31. *Yachats Exception.* If and when the South Road 804 Vacation decision is final and the appeal period has expired without appeal (or the decision has been affirmed on appeal and not further appealed), the City shall withdraw and rescind the Yachats Exception decision (Ordinance No. 218), such process being initiated at the first possible meeting of the City Council subsequent to the finalization (as discussed above) of the Vacation decision.

Waldport-Starr Creek Road 804

32. *Vacation.* Within 60 days of the Vacation Order pursuant to paragraphs 24-26 hereof becoming a final decision, the County shall initiate vacation and/or legalization proceedings with respect to the Waldport-Starr Creek portion of County Road 804, as described in Exhibit B). Provided, however, that if, on the 60th day following the date the Vacation Order becomes a final decision, an appeal or collateral attack on that order is pending, the County's responsibilities under this paragraph are postponed until such appeal or collateral attack is fully, finally, and unconditionally resolved. The County shall diligently prosecute those proceedings to achieve the goal of vacating/legalizing (as the terms legalize or legalization are used in ORS 368.201-221) all portions of said Waldport-Starr Creek portion of County Road 804 that allegedly or actually touch, cross or affect any privately-owned parcels of property. Provided, however, that (a) such Road shall continue to exist on the public beach and (b) such Road shall continue to exist over those portions of such Road that, at the date of this Agreement, are actually utilized by the public for motor vehicles and utilities.

33. *Relation to other aspects of Agreement.* The County's obligation under paragraph 32 shall survive the full execution, closing and performance of and under this Agreement. Each of the signatories to this Agreement shall have the right to demand performance by the County under paragraph 32. However, failure of the County to honor its obligations under this paragraph, or non-vacation/legalization of any portion of the Waldport-Starr Creek Road 804 despite the County's diligent efforts to obtain that result, shall not affect the enforceability or validity of this Agreement or the rights and obligations it creates, shall not be a condition to performance under any other provision of this Agreement, and shall not be a basis for termination of this Agreement, notwithstanding any other provisions to the contrary.

34. *Consideration.* Nothing in this paragraph or in this Agreement is intended to be, or shall constitute, a waiver or relinquishment by the Title Companies or their insureds (past, present or future) of the right to contest the actual, alleged or proposed existence or location of the Waldport-Starr Creek portion of County Road 804 insofar as it allegedly or actually touches, crosses, or is situated on any portion of any property owned or allegedly owned by any such insured. The consideration paid by the Title Companies for the promises and undertakings contained in this paragraph is the bargained-for additional amount that the Title Companies will pay, which is part of the overall settlement amount set forth in paragraph 20 hereof; an amount that would have been lower but for the promises and undertakings contained in this paragraph.

The Quiet Title Action

35. *PAIGs' Intervention.* As a condition precedent to this Agreement, the PAIGs must obtain, within 60 days of full execution of this Agreement an order unconditionally permitting their intervention in the Quiet Title Action, as real parties in interest. All parties to the Quiet Title Action shall cooperate in obtaining that order.

36. *Joinder of Affected Property Owners.* Within ten days of full execution of this Agreement, the plaintiffs shall begin and continue in the exercise of their best efforts to persuade Affected Property Owners who are not plaintiffs in the Quiet Title Action to join in that Action as plaintiffs. The failure of any such Affected Property owner to agree to become a plaintiff shall not affect the validity or enforceability of this Agreement.

37. *Decree.* After this Agreement is fully executed, the intervention order required in paragraph 35 has been obtained, and 60 days have passed from *issuance* of the Vacation Order, the Plaintiffs in the Quiet Title Action shall present a Decree quieting title in the Affected Property Owners to the Circuit Court of Lincoln County and shall obtain a hearing date for ruling on the proposed Decree. The Decree shall be identical in form and substance to Exhibit D. Provided, however, that the Quiet Title Decree shall not be presented for entry (or shall be withdrawn, if already presented) if, on the 60th day from issuance of the Vacation Order, an appeal or collateral attack on that order is pending. However, if there is a Final Vacation Order within two years of county issuance of a Vacation Order pursuant to paragraphs 25-26, the Plaintiffs shall promptly present, for entry, a Decree in form and substance identical to Exhibit D, and the provisions of paragraph 38 and 39 shall fully apply.

38. *Condition for Setting Aside.* If an appeal or collateral attack on the Vacation Order is pending two years after the date of its issuance, and this Agreement Terminates as a result, any Quiet Title Decree previously entered will be set aside, as further provided in Exhibit D, and the parties to the Quiet Title Action will promptly cooperate to obtain that result.

39. *No Opposition.* Provided the Quiet Title proceeding is concluded after the final land use decision in the vacation proceeding and is based on the order of vacation, none of the Parties, except as provided in paragraph 62, shall directly or indirectly encourage, support or take action to oppose or delay the entry of the Quiet Title Decree pursuant to this Agreement. Once that Decree is entered in substantially unmodified form, no Party shall appeal or directly or collaterally attack the Decree, or directly or indirectly encourage or support delay of, appeal from or direct or collateral attack on the Decree or its entry pursuant to this Agreement.

40. *Appeal or Collateral Attack.* If there is an appeal of or collateral attack on the Quiet Title Decree as specified in paragraph 37, from any source at any time, the PAIGs shall promptly and unequivocally file with the court a statement that they support the enforcement and validity of the Quiet Title Decree previously entered, provided the Quiet Title proceeding is concluded after the final land use decision in the vacation proceeding and is based on the order of vacation. The PAIGs need not articulate any particular legal theory in support of that joinder other than the validity of the underlying Agreement and Quiet Title Decree. The PAIGs shall take no steps or positions that undermine the enforcement and validity of the Quiet Title Decree previously entered.

Remedies and Termination

41. *Conditions to Finalized Agreement.* The Agreement, and all obligations under it, are conditioned on timely and strict compliance with the provisions and conditions in paragraphs 23 and 25-28, 35 and 45-46 and failure of such compliance will cause Termination of the Agreement, with the consequences set forth in paragraph 42.

42. *Termination.* Upon failure of any condition or material breach of any provision in this Agreement, except those in paragraphs 32-34 (the Waldport-Starr Creek provisions), or failure to tender Settlement Proceeds in the time and manner specified in paragraph 22, (i) all Settlement Proceeds, including accrued interest, shall be returned to the Payors in proportion to their payments; and (ii) all other rights or obligations under this Agreement shall immediately terminate without further action or agreement ("Termination" or "is Terminated"). Provided, however, that once disbursement occurs pursuant to paragraph 23, funds may not be returned, as stated in that paragraph. Upon Termination, all other legal and/or governmental action initiated in furtherance of this Agreement (i.e., the Vacation and Decree contemplated by this Agreement) that are in process or would otherwise commence shall cease pursuant to this agreement and if previously finalized, shall be nullified, if possible. Upon Termination, each party to the Vacation Proceeding and each party to the Quiet Title Action shall return to the status quo ante (immediately preceding full execution of this Agreement) as far as possible, with all rights that they possessed immediately before full execution of this Agreement, and may proceed as if this Agreement had never been made.

43. *Mediation.* The Parties shall participate in mediation if this agreement is Terminated. In such case, the Title Companies jointly, and the PAIGs jointly, shall each appoint one representative to choose a mediator, and

the City and the County shall each appoint one representative to choose the mediator. The costs of the mediator shall be shared equally among those four groups. Any Party may terminate the mediation process after sixty days for any or no reason. If any individual or entity not party to this agreement challenges or appeals the County Road Vacation Order for South Road 804 on the grounds that the findings are insufficient to support the County's decision, then the Parties shall participate in mediation.

Further Assurances, and Implementation

44. *Notice.* The Title Companies shall, within ten (10) business days after full execution of this Agreement, and again approximately 45 days thereafter, cause to be published, in the newspaper with the largest daily or weekly circulation in Lincoln County, and if different, the newspaper with the largest daily or weekly circulation in Yachats, as well as in the Portland Oregonian and the general circulation newspapers in Salem and Eugene, a notice of the Quiet Title Action and Vacation Proceeding. The notice shall occupy no less than one-sixteenth (1/16th) of a newspaper page. The Title Companies may waive this provision, or reduce the scope of notice, in their sole discretion.

45. *Assurances.* All Parties shall take all steps necessary or reasonable to effectuate the intent and terms of this Agreement. No Party shall take any steps to directly or indirectly obstruct, delay, or make more difficult full implementation of and compliance with this Agreement or any its terms.

46. *Covenant: Yachats.* The PAIGs represent, covenant and agree, now and forever, that they will neither directly nor indirectly undertake, support, or encourage any claims or attempts to claim rights of access, ingress or egress, use, ownership, or any right, title or interest, or use rights of any type (including, without limitation, rights of access, rights of recreational use, rights of enjoyment, or otherwise) in or to any of the Affected Properties, insofar as any such claims or assertions touch on, stem from, or bear in any way on the existence or alleged existence of South Road 804 or rights or interests relating thereto. Without limiting the generality of the foregoing, the PAIGs represent and agree that they will never assert any prescriptive rights or rights under the public trust or any doctrine related to (a) South Road 804; or (b) any of the Affected Properties. However, nothing in the foregoing prohibits consensual efforts to purchase any interest in the referenced properties. Neither the City nor the County will ever take any action to privatize or diminish the public access to and along the shore and open space that will be acquired pursuant to this Agreement. These agreements, covenants and representations are necessary and critical inducements to the decision by all other Parties to enter into this

Agreement, and shall forever survive full execution, closing and performance of and under this Agreement.

47. *Covenant: Waldport-Starr Creek.* The PAIGs represent, covenant and agree, now and forever, that they will neither directly nor indirectly undertake, support, or encourage any claims or attempts to claim rights of access, ingress or egress, use, ownership, or any right, title or interest, or use rights of any type (including, without limitation, rights of access, rights of recreational use, rights of enjoyment, or otherwise) in or to those portions of Waldport-Starr Creek Road 804 which are to be vacated or from which a legalized portion of the Road has been moved. Without limiting the generality of the foregoing, the PAIGs represent and agree that they will never assert any prescriptive rights or rights under the public trust or any doctrine related to any parcels or land touched or allegedly touched by those portions of Waldport-Starr Creek Road 804 which are to be vacated, or from which a legalized portion of the Road has been moved. However, nothing in the foregoing prohibits consensual efforts to purchase any interest in the referenced properties. These agreements, covenants and representations are necessary and critical inducements to the decision by all other Parties to enter into this Agreement, and shall forever survive full execution, closing and performance of and under this Agreement.

Stay of Yachats Exception Decision Appeal (LUBA No. 2001-026)

48. *Stay.* The City and the PAIGs, which are parties to LUBA Appeal No. 2001-026, will not oppose an indefinite stay or extension of time to file the record in the LUBA proceedings in that case. The extension granted by LUBA shall remain in effect until either the City withdraws and rescinds the Yachats Exception Decision (Ordinance No. 218) or the PAIGS, petitioners in the LUBA appeal, give written notice to the parties to the appeal that they desire to proceed with the appeal, whichever comes first. Upon receipt of the written notice, City shall have ten (10) days within which to transmit the record of the City's proceeding to LUBA.

Use of Funds

49. *Use and Disbursement of Funds.* The County shall distribute no Proceeds or other funds from Escrow except as permitted under paragraph 23.

50. *Initial Permitted Expenditures.* The Settlement Proceeds shall be used, subject to the conditions and terms of this Agreement, to

(a) to acquire Lot 13, if and only if the then-owner(s) of any such lot, fully agree to the fact, consideration for, and terms of any such proposed acquisition, or

(b) to acquire any other ocean front lot or lots in the Ocean Crest subdivision, but if and only if the then-owner(s) of any such lot, fully agree to the fact, consideration for, and terms of any such proposed acquisition.

Negotiations for the possible acquisition of Lot 13 shall be undertaken by a neutral third party, who shall be Carie Fox unless otherwise agreed by the County, City and the PAIGs.

51. Second Tier Class of Permitted Expenditures. The Settlement Proceeds shall be used, after six weeks from the date settlement proceeds first become available, subject to the conditions and terms of this Agreement, to :

(a) acquire Lot 26;

(b) acquire any other ocean front lot or lots in the Aqua Vista or Ocean Crest subdivisions, including Lot 13 if possible and if not completed above, but if and only if the then-owner(s) of any such lot, fully agree to the fact, consideration for, and terms of any such proposed acquisition and terms of any such acquisition and acquisition of lots other than 13 is unanimously agreed to by the County, the City and the PAIGs.

(c) acquire a public access easement over the Adobe Property, at the actual and necessary cost of (1) relocating the sewer and water lines, subject to approval by appropriate regulatory agencies including the Oregon Department of Environmental Quality and the Oregon Health Division of the Department of Human Services, or (2) \$50,000, whichever is less. "Actual and necessary cost" should be determined by multiple competitive bids or proposals, and should not exceed the amount of the lowest responsive and responsible bid or proposal. This easement shall be granted to the State of Oregon Parks and Recreation Department. The easement would be at least 8 feet wide and within 20' from the westward side of the Adobe Motel, or at the sewer line if that is preferable to the Grantor, the PAIGs, the County, and the City. None of the landowner's rights to apply for rip-rap protection shall be affected by this agreement;

(d) acquire and improve a pedestrian connection of no more than eight (8) feet in width between Marine Drive and Aqua Vista Drive within 250' of the intersection of Ocean View Drive and Marine Drive, as envisioned in the Yachats Circulation Plan;

(e) construct improvements on the easements or lots purchased pursuant to paragraphs 50 and 51 to develop access, buffer/screen adjoining properties, and protect vegetation, as well as to place signage on any lot acquired pursuant to this agreement, which would give notice that the lots are

public and that they provide shoreline access. All signage erected within the Ocean Crest Subdivision shall be approved by the City.

52. Final Permitted Expenditures. After either completion of paragraph 51 (a)-(e), or after twelve months and upon unanimous agreement of the City, the County, and the PAIGs, Settlement Funds may be expended on the following projects:

(a) acquire and improve a pedestrian connection of no more than eight (8) feet in width between the Adobe Property and Aqua Vista Drive, but only if the fact, consideration for, and terms of any such acquisition and improvements are unanimously agreed to by the County, the City and the PAIGs;

(b) construct a stairway access to the beach within and on property acquired pursuant to paragraphs 50(a) or (b) or 51 or on Lot 1.

(c) acquire up to two unpaved parking spaces on Lot 1, Lot 26, or other lot acquired pursuant to the terms of this paragraph (parking spaces are optional).

(d) construct improvements on the easements or lots purchased to develop access, buffer/screen adjoining properties, protect vegetation and place signage on any lot acquired pursuant to this agreement, which would give notice that the lots are public and that they provide shoreline access.

53. Prohibition. No Settlement Proceeds may be used for condemnation or other involuntary transfers, except to acquire Lot 26.

54. Covenant of Good Faith. No Party shall directly or indirectly oppose or delay the acquisitions referenced above, nor otherwise, or directly or indirectly support or encourage any individual or entity seeking to delay, block or frustrate the acquisitions. The City, the County, and the PAIGS represent that they shall make their best efforts to further the acquisitions.

55. County Ownership. All of the real property interests to be acquired with Settlement Proceeds shall be owned by and title shall be vested in the County, except for the Adobe easement, which shall be granted directly to the State of Oregon Parks and Recreation Department, and except as required by paragraph 63. However, the County shall, as soon as practicable after acquisition of title by deed, dedicate the property thus acquired to the public by execution of a Conservation Easement, pursuant to Oregon Revised Statute 271.715 et seq., solely as open space and to provide public access to the shore. Language shall reflect that this is a permanent easement made pursuant to this negotiated settlement. The County shall then transfer its remaining right, title and interest in and to the property, subject to the Conservation Easement, to the City.

56. Management. The order in which the funds are spent and the projects (selected from those listed in paragraphs 50 through 52) on which the Settlement Proceeds are spent, shall, subject to the conditions and terms in this

Agreement, be determined by the County during the eighteen (18) months it is manager, and thereafter, by the manager appointed in accordance with paragraph 57. Failure of the relevant manager to make a decision(s) respecting use of the Settlement Proceeds shall not affect the binding nature of this Agreement or deprive any Party contributing Settlement Proceeds of all rights and benefits under this Agreement.

57. *New Manager.* If any Settlement Proceeds are not expended eighteen (18) months after the County is eligible to disburse funds, the County shall relinquish control of the Escrow and all Proceeds remaining in it to a New Manager to be appointed by unanimous agreement of the PAIGs, City and County, who shall have the obligation to diligently pursue acquisitions in paragraphs 50-52 until all funds are expended. If these parties are not able to reach unanimous agreement within thirty (30) days after the eighteen (18) months have run, the City and County shall jointly appoint one representative to choose a manager, and the PAIGs shall jointly appoint one representative to choose a manager. If either the City and County or the PAIGs have not appointed their representative within sixty (60) days after eighteen (18) months, the other representative shall choose the fund manager. If the two representative cannot agree on a fund manager within thirty (30) days, the manager shall be chosen by majority decision of the two representatives and Carie Fox. The new manager may spend any residual funds to purchase additional trail easements/property along the existing County Road 804 (north or south) Trail/Ocean View Drive Trail from Starr Creek on the north, south to US Highway101.

Other City Obligations

58. *Adobe.* The City, to the full extent permitted by law, shall make its best efforts to assure that the water and sewer lines presently serving the Adobe Property are relocated in accordance with law as needed to allow for conveyance of the Adobe Property easement. Without limiting the generality of the foregoing, the City shall not delay or obstruct such movement, and shall issue all permits, orders, or instruments necessary or reasonable to facilitate such movement.

59. *Maintenance.* The City shall develop and maintain Lot 1 and all lots transferred to it pursuant to this Agreement for public access to and along the shore and for open space, and shall maintain existing native vegetation on such lots consistent with good conservation practices and reasonable public access (at a minimum, a safe, unimpeded trail) to and along the ocean shore. The City shall be responsible for removal of any invasive species, such as

blackberries or scotchbroom, but removal shall be by means other than herbicides.

60. *Lot 1.* Lot 1 shall be dedicated by a conservation easement pursuant to ORS 271.715, et seq. solely as open space and to provide public access to the shore. Language shall reflect that this is a permanent easement made pursuant to this negotiated settlement.

61. *New Manager.* The City shall pay one third of the cost for the New Manager under paragraph 57.

State of Oregon Obligations

62. *Costs and Cost Share.* The State will contribute to the Settlement Fund as described in paragraph 20 above. The State shall not be required to make any payment, nor pledge any public resources except as expressly set forth in this paragraph 62. In particular and without limitation, the State shall have no obligation to support or participate in the activities described in paragraphs 23-47.

63. *State Real Property Interest.* Upon or after the acquisition of property from the Settlement Proceeds as described in paragraphs 50-52, the State, by and through the Parks and Recreation Department, shall be granted a co-ownership interest, a public access right of way, or a conservation easement. Upon request from the County or City, the Parks and Recreation Department may waive the right to receive such real property, so long as the aggregate value of the other real property interests transferred or to be transferred to the Department equals or exceeds its contribution to the Settlement Proceeds.

Other County Obligations

64. *Costs.* The County shall pay, in addition to the \$50,000 County/City Settlement Proceeds it is contributing pursuant to paragraph 20 above, the actual and reasonable costs, charges and attorneys' fees for any transfer of any property, including easements, that is transferred pursuant to this Agreement, and shall pay the reasonable and necessary costs and fees of any appraiser who is retained, including in connection with an acquisition of property, including easements, contemplated hereunder.

65. *Improvements.* The County shall appropriate \$150,000 for fiscal year 2001-2002, and beyond that time period, as necessary, to improve Marine Drive and Ocean View Drive, to construct a trail or path from the intersection of Marine Drive and Ocean View Drive (or the interconnection of the Aqua Vista and Marine Drive under paragraphs 51-52, if acquired) south to Yachats State

Park, which shall be adjacent to and along the west side of the road or set off from the paved surface of the road, as rights-of-way allow, and which shall provide direct access to all lots within Ocean Crest acquired pursuant to the terms of this Agreement. The County shall notify the public through clear signage that all lots within Ocean Crest acquired pursuant to this agreement are public lots that provide shoreline access. The \$150,000 appropriated pursuant to this paragraph shall be appropriated subject to Oregon Local Budget Law, ORS Chapter 294. The County shall make its best effort to construct and provide storm water drainage facilities, from the \$150,000 to be appropriated hereunder, on and in connection with the project, to the extent practicable within the budget.

66. *City Ownership.* By separate agreement, the County shall transfer Marine Drive and Ocean View Drive, and the trail referred to in the preceding subparagraph, to the City for transportation and pedestrian usage, and to implement the Village Circulation Plan adopted by the City.

67. The County shall pay one third of the cost for the New Manager under paragraph 57.

68. The County shall pay Carie Fox for negotiating for Lot 13.

PAIG Obligations

69. *New Manager.* The PAIGs shall pay one third of the costs of the New Manager.

Further Representations

70. *Representations.* Each signatory and each Party represents and warrants that he/she/it: (a) has not assigned, hypothecated or transferred any claim, or any rights to any such claim, in whole or in part, and whether by conveyance, contract, operation of law or otherwise that has been or could be asserted in the Vacation Proceedings or the Quiet Title Action; (b) has authority to fully bind the entity, estate, individuals or community for whom that signatory purports to sign; (c) has discussed this Agreement and its implications with counsel, who has explained same; and (d) has independently investigated the claims and defenses pertinent to the Quiet Title Action and the South Road 804 Vacation Proceedings, and the merits of this Agreement, has not relied on any information provided or statements made by any other Party or its attorneys in deciding to enter into this Agreement, and that no such representations were made. These representations and warranties are unconditional, and are material and necessary inducements to all other Parties

to enter into this Agreement, and shall survive the closing and performance of this Agreement.

71. *Integration.* With the exception of the side agreement referenced in paragraph 20, this is a fully integrated Agreement. It contains the full and final expression of the Parties relative to its subject matter.

72. *Construction.* Each Party had substantial input into this Agreement, which was negotiated among the Parties. Each Party was or had the opportunity to be represented by counsel in connection with negotiating and drafting this Agreement, and no ambiguity in it shall be construed against any Party by virtue of draftsmanship. The conjunctive includes the disjunctive, and vice versa. Titles are solely for convenience and are not aids in construction.

73. *Counterparts.* This Agreement may be executed in counterparts, and by facsimile. Each counterpart, even if signed but transmitted by facsimile, shall be deemed an original.

74. *Binding.* This Agreement is binding on, and benefits, all entities, groups, organizations and governmental units (of any type) which are referred to in paragraphs 1 through 5, and each of their subsidiaries, and each direct or remote predecessor or successor of any of the foregoing.

75. *Arbitration.* An arbitrator shall be the sole determiner of whether a material breach of the Agreement has occurred and of any other dispute relating to or arising from or under this Agreement, including, without limitation, whether any condition to this Agreement has or has not been timely and fully satisfied. Any Party may request arbitration. The Title Companies, jointly; the PAIGs, jointly and the City and County shall each appoint one representative to choose an arbitrator. The prevailing party as determined by the arbitrator shall be entitled to attorneys' fees, and the losing party as determined by the arbitrator shall be responsible for the arbitrator's fees and expenses. There shall be no appeal from the arbitrator's rulings. Unless it otherwise elects to participate, the State shall not be required to participate in, nor share the costs/expenses/fees of, the above described arbitration.

76. *Effective Date.* This agreement is dated as of the date that it is signed and dated by the last party to sign and date it.

Miscellaneous

77. *Signage.* All signage erected within the Ocean Crest Subdivision shall be approved by the City and if credited, credited to the Village Circulation Plan.

78. *Stairway.* The east-west stairway or path providing beach access on lot 13 (if acquired) shall, to the extent practicable, be located with a 20'

setback from the boundary lines of the adjacent northern and southern lots, provided however, that this provision does not limit the public's right to full use of the whole of Lot 13 for open space, recreation and public access to and along the ocean shore.

SIGNATURES:

1000 FRIENDS OF OREGON

DATED: _____ By _____

Its _____

and authorized agent

OREGON SHORES CONSERVATION COALITION

DATED: _____ By _____

Its _____

and authorized agent

The Friends of the Historic 804 County Road and Hiking Trail, Inc.

DATED: _____ By _____

Its _____

and authorized agent

STATE OF OREGON

BY THE DEPARTMENT OF PARKS AND RECREATION

DATED: _____ By _____

Its _____

and authorized agent

STATE OF OREGON

BY THE ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT

DATED: _____ By _____

Its _____

and authorized agent

LINCOLN COUNTY, OREGON

DATED: _____ By _____

Its _____

and authorized agent

CITY OF YACHATS

DATED: 9/24/01 By 

Its MAYOR

and authorized agent

CHICAGO TITLE INSURANCE COMPANY OF OREGON

DATED: _____ By _____

Its _____

and authorized agent

TICOR TITLE INSURANCE COMPANY

DATED: _____ By _____

Its _____

and authorized agent

STEWART TITLE INSURANCE GUARANTY COMPANY

DATED: _____ By _____

Its _____

and authorized agent

FIRST AMERICAN TITLE INSURANCE COMPANY

DATED: _____ By _____

Its _____

and authorized agent

TRANSNATION TITLE INSURANCE COMPANY

DATED: _____ By _____

Its _____

And authorized agent

Exhibit A Description of Area to be Vacated 804 South:

A portion of County Road 804 as described in Lincoln County Book of Road Plats, BOOK 1, PAGE 206, and located in Sections 26 and 27, Township 14 South, Range 12 West, Willamette Meridian, and being more particularly described as follows:

Beginning at the southerly terminus of that portion of County Road 804 vacated by Commissioners Order dated July 16, 1974, and recorded in Lincoln County Book of Deeds and Mortgages, BOOK 50, PAGE 1231, said terminus being on the subdivision boundary line between "Aqua Vista," as recorded in Lincoln County Book of Plats, BOOK 9, PAGE 21, and "Ocean Crest," as recorded in Lincoln County Book of Plats, BOOK 8, PAGE 66, thence southerly and easterly to the intersection of County Road 804 and the easternmost corner of that property described in the Warranty Deed recorded February 2, 1994, in Lincoln County Book of Deeds and Mortgages, BOOK 276, PAGE 0076, excepting the following:

(1) That portion of County Road 804 right-of-way which crosses Lot 26, Block 4, "Ocean Crest," as recorded in Lincoln County Book of Plats, BOOK 8 PAGE 66;

(2) That portion of County Road 804 right-of-way which lies northerly of the South right-of-way line of "1st Street County Road" as depicted on the "Plat of Yachats," as recorded in the Lincoln County Book of Plats, BOOK 6, PAGE 25.

Exhibit B Waldport-Starr Creek Portion of County Road 804

Beginning at the head of Broadway on the south side of Alsea Bay in Section 18, Township 13 South, Range 11 West, Willamette Meridian, as described in the establishment of the Waldport and Yahutes Road in 1890.

Thence continuing in a southwesterly and southerly direction to the northerly end of the county road as shown on County Survey # 11,905 in Section 23, Township 14 South, Range 12 West, Willamette Meridian.

Exhibit C Findings and Conclusions To Be Included In Vacation Order

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 _____, which by this reference is incorporated herein as if fully set forth and which is attached to this Order as Exhibit _____. 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 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.

Exhibit D Quiet Title Decree

Jonathan M. Radmacher
McEWEN, GISVOLD, RANKIN,
CARTER & STREINZ, LLP
1600 Standard Plaza
1100 S.W. Sixth Avenue
Portland, OR 97204
(503) 226-7321
Attorneys for Plaintiffs

IN THE CIRCUIT COURT
FOR LINCOLN COUNTY, OREGON

_____, et al.,

Plaintiffs,

v.

LINCOLN COUNTY, et al.,

Defendants.

NO. 001438

JUDGMENT AND DECREE
QUIETING TITLE

All Parties have agreed to the entry of the judgment set forth below. Given the unique circumstances of this case, the settlement that the Parties have reached, and the final Vacation Order that has resulted from that Settlement, defendants and intervenors have not objected to the entry of this Order. That settlement requires, among other things, that the City, County and intervenors be provided with valuable and unique access that would otherwise not be available, in order to replace and maintain public access to the coastal shoreline at Yachats. This Court has reviewed the settlement agreement, and finds it reasonable and appropriate in all respects. Therefore, and based on the foregoing, it is, hereby,

ORDERED, ADJUDGED AND DECREED, that:

1. Title is hereby fully, finally and unconditionally quieted in each plaintiff and its direct and remote successors in interest, to the entirety of that parcel of real estate which *Exhibit A* shows is owned by that plaintiff, as against each and every defendant, all affiliates or members of any defendant, and any and all direct and remote successors or assigns of any such defendant,

affiliate or member, and against all other individuals or entities, whether or not parties to this case.

2. Without limiting the generality of the foregoing, all rights or claims to Lincoln County Road 804 (South) are fully, finally and forever extinguished as to the record owners and record mortgages or trust deed beneficiaries of or to the properties described on *Exhibit A* insofar as that Road actually or purportedly touches or crosses any of those properties. The actual or putative rights and interests relating to South Road 804 that are extinguished by this judgment include, without limitation, rights of access, rights to traverse, prescriptive rights of any type or nature, and/or rights based on or relating to the "public trust" or any related doctrine.

3. This is a final judgment; there is no just reason for delay. However, pursuant to ORCP 71 B(1)(e), this final judgment will be set aside upon the motion of any party to this action if the settlement agreement pursuant to which it is entered is terminated pursuant to ¶ 42 of that Agreement.

Dated: _____, 2001.

Judge

Presented by:

McEWEN, GISVOLD, RANKIN,
CARTER & STREINZ, LLP

By _____
Jonathan M. Radmacher
Attorneys for Plaintiffs

STATE OF OREGON

BY THE DEPARTMENT OF PARKS AND RECREATION

DATED: _____ By _____

Its _____

and authorized agent

STATE OF OREGON

BY THE ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT

DATED: _____ By _____

Its _____

and authorized agent

LINCOLN COUNTY, OREGON

DATED: 9.20.01 By _____

Its Chair of the Lincoln County Board of Commissioners

and authorized agent

CITY OF YACHATS

DATED: _____ By _____

Its _____

and authorized agent

STATE OF OREGON

BY THE DEPARTMENT OF PARKS AND RECREATION

DATED: _____ By _____

Its _____

and authorized agent

STATE OF OREGON

BY THE ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT

DATED: _____ By _____

Its _____

and authorized agent

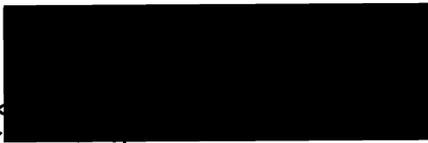
LINCOLN COUNTY, OREGON

DATED: _____ By _____

Its _____

and authorized agent

CITY OF YACHATS

DATED: 9/24/01 By 

Its MAYOR

and authorized agent

setback from the boundary lines of the adjacent northern and southern lots, provided however, that this provision does not limit the public's right to full use of the whole of Lot 13 for open space, recreation and public access to and along the ocean shore.

SIGNATURES:

1000 FRIENDS OF OREGON

DATED: _____ By _____

Its _____

and authorized agent

OREGON SHORES CONSERVATION COALITION

DATED: 10/19/01 By 

Its president

and authorized agent

The Friends of the Historic 804 County Road and Hiking Trail, Inc.

DATED: 10/19/2001 By 

Its President

and authorized agent

setback from the boundary lines of the adjacent northern and southern lots, provided however, that this provision does not limit the public's right to full use of the whole of Lot 13 for open space, recreation and public access to and along the ocean shore.

SIGNATURES:

1000 FRIENDS OF OREGON

DATED: 9/12/01 By _____

Its Executive Director
and authorized agent

OREGON SHORES CONSERVATION COALITION

DATED: _____ By _____

Its _____
and authorized agent

The Friends of the Historic 804 County Road and Hiking Trail, Inc.

DATED: _____ By _____

Its _____
and authorized agent

STATE OF OREGON
BY THE DEPARTMENT OF PARKS AND RECREATION

DATED: _____ By _____
Its _____
and authorized agent

STATE OF OREGON
BY THE ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT

DATED: 9/20 By _____
Its Director
and authorized agent

LINCOLN COUNTY, OREGON

DATED: _____ By _____
Its _____
and authorized agent

CITY OF YACHATS

DATED: _____ By _____
Its _____
and authorized agent

STATE OF OREGON

BY THE DEPARTMENT OF PARKS AND RECREATION

DATED: 9/11/01 By 

Its Director

and authorized agent

STATE OF OREGON

BY THE ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT

DATED: _____ By _____

Its _____

and authorized agent

LINCOLN COUNTY, OREGON

DATED: _____ By _____

Its _____

and authorized agent

CITY OF YACHATS

DATED: _____ By _____

Its _____

and authorized agent

CHICAGO TITLE INSURANCE COMPANY OF OREGON

DATED: ____ By _____
Its _____
and authorized agent

TICOR TITLE INSURANCE COMPANY

DATED: ____ By _____
Its _____
and authorized agent



STEWART TITLE INSURANCE GUARANTY COMPANY

DATED: 10/25/01 By Karen L. Storlie as
Its Vice President and National Claims Counsel
and authorized agent

FIRST AMERICAN TITLE INSURANCE COMPANY

DATED: ____ By _____
Its _____
and authorized agent

RECEIVED

OCT 26 2001

OFFICE OF
CHRISTIAN VOUTZ

CHICAGO TITLE INSURANCE COMPANY OF OREGON

DATED: 10/23/01 By 

Its V-P & Senior Counsel

and authorized agent

TICOR TITLE INSURANCE COMPANY

DATED: 10/22/01 By 

Its Vice President and Senior Claims Counsel

and authorized agent

STEWART TITLE INSURANCE GUARANTY COMPANY

DATED: _____ By _____

Its _____

and authorized agent

FIRST AMERICAN TITLE INSURANCE COMPANY

DATED: _____ By _____

Its _____

and authorized agent

TRANSNATION TITLE INSURANCE COMPANY

DATED

[REDACTED]

Its VICE PRESIDENT + CLAIM CENTER MANAGER
SEATTLE, WA.

And authorized agent

CHICAGO TITLE INSURANCE COMPANY OF OREGON

DATED: _____ By _____

Its _____

and authorized agent

TICOR TITLE INSURANCE COMPANY

DATED: _____ By _____

Its _____

and authorized agent

STEWART TITLE INSURANCE GUARANTY COMPANY

DATED: _____ By _____

Its _____

and authorized agent

FIRST AMERICAN TITLE INSURANCE COMPANY

DATED: 9/19/01 By 

Its Vice President

and authorized agent