Wednesday, January 15, 2020
9:30 a.m. Regular Meeting

Commissioner’s Meeting Room
Lincoln County Courthouse
225 W. Olive Street, Room 108
Newport, Oregon

I. CALL TO ORDER

II. ROLL CALL - ESTABLISHMENT OF A QUORUM

III. RECOGNITION/PROCLAMATION
1. Presentation of Lifesaving Awards – Presented by Sheriff Curtis Landers
   a. Deputy Smith
   b. Deputy DeHaan
   c. Deputy Beutler
   d. Deputy Read

IV. ADOPTION OF CONSENT CALENDAR
A. Minutes of Board of Commissioners Meeting
B. Commission Appointments and Resignations
C. License Applications or Renewals
D. Tax Foreclosure, Right-of-Way, Sales and Deeds
   1. Order #1-20- Quitclaim Deed on Tax Foreclosed Parcel 07-11-14-BC-01300 to Curtis and Deanna Hubele
E. General Budget Resolutions
F. Acting as Governing Body of County Wide Service Districts
G. Documents and Recording Matters in the Commissioners Journal
   1. Order #1-20- Cape Perpetua Tower Agreement between Lincoln and Lane County
   2. Order #1-20- Intergovernmental Agreement between Oregon Cascades West Council of Governments and Lincoln County for Census Complete Count Committee Facilitation
   3. Order #1-20- Statement of Work No. 6012 between OCHIN and Lincoln County for OnBase Scanning Licenses
4. Order #1-20- Amendment No. 4 to Intergovernmental Agreement between Oregon Health Authority and Lincoln County for the Financing of Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling (Terms: 1.1.20-6.30.20; not to exceed $4,371.91 & 7.1.20-12.31.20; not to exceed $8,743.82)

H. Execution of Documents
1. Resolution #20-15-1A Declaring Certain County Owned Vehicles to be Surplus and Authorizing their Disposal

2. Order #1-20- Agreement between Centro de Ayuda and Lincoln County for Interpretation Services to HHS (Terms: 12.1.19-6.30.20; not to exceed $40/hr)

3. Amendment No. 6 to Intergovernmental Agreement No. 159820 for the Financing of Public Health Services (Terms: 7.1.19-6.30.20; funding increase of $17,100 for PE 13 TPEP, 2.1.20-6.30.20; funding increase of $41,666.65)

4. Amendment No. 5 to Intergovernmental Agreement No. 159171 for the Financing of Mental Health, Addiction Treatment, Recovery & Prevention and Problem Gambling (Terms: shifts funding from OHA fund account 420 and 520 to STD)

5. Agreement between Lincoln County and Oregon State University Relating to the PacWave South Wave Energy Test Site

V. PUBLIC HEARING

VI. DECISION/ACTION
A. Order #1-20- The Denial of Application Case file No. 01-ZC-19 for a Zone Change from Applicant Oregon Parks and Recreation Department (OPRD)

VII. DISCUSSION/INFORMATION

VIII. BOARD OF COMMISSIONERS AS THE GOVERNING BODY OF COUNTY-WIDE SERVICE DISTRICTS (see above)

IX. REPORTS
A. Elected Officials/Department Directors/Program Coordinators and Consultants
   1. Animal Shelter Update – Presented by Wayne Belmont

B. Commissioners

X. CONSTITUENT INPUT (Limited to five minutes per constituent)

XI. EXECUTIVE SESSION
A. Under ORS 192.660(2)(h) to discuss litigation.

XII. ADJOURN

XIII. OTHER SCHEDULED MEETINGS AND APPOINTMENTS OF THE BOARD
Tuesday, January 21, 2020 – 9:00 a.m. – Office Meeting and Board Briefing in the Commissioner’s Small Meeting Room, Lincoln County Courthouse Room #110, 225 West Olive Street, Newport; meeting to cover office priorities, operations, procedures and workflow

Wednesday, January 22, 2020 – 9:30 a.m. – Board of Commissioners Meeting in the Commissioner’s Meeting Room, Lincoln County Courthouse Room #108, 225 West Olive Street, Newport

For special physical, language or other accommodations at Board’s meeting, please contact the Board at 265-4100 (voice) or dial 7-1-1 Relay Service and include e-mail as soon as possible, but at least 48 hours before the meeting.
BEFORE THE BOARD OF COMMISSIONERS
FOR LINCOLN COUNTY, OREGON

In the Matter of:
The Denial of Application Case File No. 01-ZC-19 ) FINDINGS, CONCLUSIONS
For a Zone Change from Applicant Oregon Parks ) AND FINAL ORDER #_________
And Recreation Department (OPRD) )

The applicant Oregon Parks and Recreation Department (OPRD) has submitted to Lincoln
County an application (Case File No. 01-ZC-19) requesting that its properties within Brian Booth
State Park which are currently zoned Agricultural Conservation (A-C) and Timber Conservation
(T-C), be rezoned to Public Parks Master Plan Zone (PMP) which is described in Lincoln County
Code (LCC) 1.1379.

To understand the application and proposal of OPRD, it is important to review the lengthy
process out of which it originated. In a nutshell, OPRD and Lincoln County engaged in the master
planning process as described in OAR 660-034-0000 through OAR 660-034-0040, and OAR 736-
018-0000 through 736-018-0140. This involved OPRD submitting to the County the 2014 Draft
Master Plan for Brian Booth State Park. Thereafter, OPRD and the County engaged in an
interactive process in which three hearings were held before the Lincoln County Planning
Commission, and a number of recommended changes were suggested by the Planning
Commission, some of which were implemented as changes by OPRD. Toward the end of 2018,
the Planning Commission forwarded its recommendations to the Lincoln County Board of
Commissioners. Thereafter, on January 16, 2019, the Lincoln County Board of Commissioners
approved the Master Plan, with some recommended changes. OPRD then incorporated the
recommended changes into the Master Plan, resulting in a Final Draft Master Plan. Following the
procedures outlined in OAR 660-034 and OAR 736-018, the Oregon Parks and Recreation
Commission (OPRC) adopted the Brian Booth State Park Master Plan into state rule at its April
2019 meeting. Subsequently, OPRC submitted the adopted plan to Lincoln County.

The remaining step for applicant OPRD was for Lincoln County to process the zone change
application described above. The Planning Commission heard the application (and proposed
Ordinance 511) on September 9, 2019. The Lincoln County Board of Commissioners, following

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published notice and owner of record notice, held a de novo hearing on the application and
proposed Ordinance 511 on November 13, 2019. The Board heard testimony from the applicant,
as well as testimony from those opposed to the application, and received into the record various
documents. (As part of the proceeding, the Chair announced that the record included the Planning
Commission proceedings, and that this also included, at Dennis Bartoldus’ request, the contents
of Case File No. 02-LUPC-ZC-16 and the hearings.) It then closed the hearing, but based upon a
request from a party, it left the record open until November 20, 2019, at 5:00 P.M. to receive new
written evidence, until November 27, 2019, at 5:00 P.M. to received written rebuttal, and until
December 4, 2019, for the applicant to submit its final written argument. The announced plan was
for the Board to deliberate to reach a decision on December 4, 2019, at its regular meeting. When
the Board reconvened on December 4, 2019, it began to deliberate to reach a decision. During the
deliberation, various Board members raised questions about the progress made, and status of, the
eight Lincoln County recommendations related to the Brian Booth Master Plan. Eventually the
Board made and passed a motion to continue the proceeding for two weeks and to direct staff to
work with OPRD, Seal Rock RFPD, ODOT and others as needed. The Board reconvened on
December 18, 2019, as scheduled. The Board then passed a motion to leave the record open to
receive an updated status report from OPRD, and a separate report from staff, and to leave the
record open until December 26, 2019, at 5:00 P.M. to allow for public comment on the new OPRD
and staff submittals into the record, and to reconvene to deliberate towards a final decision on the
application at its December 31, 2019, regular Board meeting. Again, the Board reconvened on
December 31, 2019, as scheduled, to deliberate to reach a decision. A motion was made and carried
to deny application Case File No. 01-ZC-19, and direct staff to provide the final order of denial,
with findings supporting this decision, for Board approval at its regular meeting on January 15,
2020.

NOW THEREFORE, THE BOARD finds that application Case File No. 01-ZC-19
should be denied, based upon the following findings of fact, decision criteria, and analysis,
findings and conclusions of law:

I. GENERAL FACTS

1. Property Location: The property is located approximately seven miles south of the City
of Newport on both sides of Beaver Creek (north and south) encompassing the area where Beaver
Creek enters the Pacific Ocean at Ona Beach and areas immediately upstream.

2. Lot Size: Brian Booth State Park encompasses several disconnected properties totaling
1,261 acres which include the former Ona Beach State Park (303 acres), former Beaver Creek
Natural Area (374 acres), and recently acquired commercial timberland property (583 acres).


5. **Surrounding Land Use:** The Makai Subdivision and additional rural residences and timberlands are located to the north. To the south there are residential properties in the unincorporated community (Rural Community) of Seal Rock and also T-C lands. To the east, upstream of Brian Booth State Park, there are several parcels zoned A-C with several residences with property owners engaged in agriculture.

6. **Topography and Vegetation:** The lower Beaver Creek estuary is the dominant feature of Brian Booth State Park. On each side of the estuary there are forested uplands dominated by brush and tree species common to the Oregon Coast.

7. **Existing Structures:** On North Beaver Creek Road OPRD purchased and re-purposed a residential dwelling into a Welcome Center. On the south side of Brian Booth State Park there are combined ODOT-OPRD Offices a short distance from U.S. Highway 101. There are several agricultural buildings located in the Brian Booth State Park in the lower elevation areas below "Snaggy Point".

8. **Utilities:** Central Lincoln People’s Utility District (CLPUD) provides power to the subject property. Structures within the Brian Booth State Park utilize onsite septic systems. Seal Rock Water District provides water to the subject properties.

9. **Development Constraints:** Large portions of Brian Booth State Park are located in special flood hazard areas identified by Federal Emergency Management Administration (FEMA), and there are large wetland complexes at the park.

10. **Soils:** According to the Soil Conservation Service, the subject property contains the following soil units: 8A, 12A, 42C, and 55E.

11. **Overnight Visitor Capacities (Ona Hills only):** Page 96 of the Brian Booth State Park Comprehensive Plan tells us that there are ten proposed campgrounds with a total number of 164 proposed campsites, and a maximum peak overnight occupancy (maximum number of people at any one time) of 485 people.

12. **Camping Opportunities (utilities):** Page 97 of the Brian Booth State Park Comprehensive Plan explains: "Because of highway safety concerns, campsites will not be designed for large RVs in order to minimize the number of large vehicles turning on and off the highway. RV utility hookups will not be provided to campsites, except at campground host sites and possibly at a few sites designed for disabled campers."

13. **Additional Services:** Brian Booth State Park lies within the Seal Rock Rural Fire Protection District. A service agreement with this District will need to be executed.

II. DECISION CRITERIA

LCC 1.1235 Quasi-Judicial Amendments

A quasi-judicial amendment to the Comprehensive Plan and Zoning Maps may be authorized provided that the proposal satisfies all applicable requirements of this Chapter and also provided that the applicant, in a quasi-judicial hearing, demonstrates that the change is in accord with the Comprehensive Plan goals and policies or the Statewide Planning Goals and that:

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(1) There has been a substantial change in the character of the area since zoning was
adopted and which warrants changing the zone;
(2) Zoning previously adopted for the area was in error; or
(3) There is a public need for the change being sought.

LCC 1.1379 Public Park Master Plan Zone PM

(1) Purpose:
The purpose of the PMP Zone is to facilitate the development, maintenance and
enhancement of state and local public parks. The PMP zone is intended to provide for the
implementation of state park master plans adopted by the Oregon Parks and Recreation
Department pursuant to OAR chapter 36, division 18, and ORS 390.180, and local park master
plans adopted by the Lincoln County Board of Commissioners pursuant to OAR chapter 660,
division 34.
(2) The following uses and their accessory uses are permitted subject to the applicable
provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599 and 1.1901 to 1.1999:
(a) All land uses, facilities and improvements set forth in the applicable state park master
plan adopted by the Oregon Parks and Recreation Department pursuant to OAR chapter 736,
division 18, and ORS 390.180, including “minor variations” of such uses as defined in OAR 736-
018-0040.
(b) All land uses, facilities and improvements set forth in the applicable local park master
plan adopted by the Lincoln County Board of Commissioners pursuant to OAR chapter 660,
division 34.

LCC 1.1373 Agricultural Conservation Zone A-C

(3) Additional Conditional Uses Permitted that are subject to OAR 660-33-0130
The following uses and their accessory uses may be permitted subject to applicable
provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, 1.1601 to 1.1699, and 1.1901 to 1.1999:
j) Public parks and playgrounds, subject to LCC 1.163(0)(23) limited to those uses
specified under OAR 660-034-0035 or OAR 660-034-0040, whichever is applicable.

LCC 1.1375 Timber Conservation Zone T-C

(2) Conditional Uses Permitted
The following uses may be permitted subject to provisions of subsection (3) of this section
and applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, 1.1601 to 1.1699, and
1.1901 to 1.1999:
f) Public Parks, limited to those uses specified under OAR 660-034-0035, or 660-034-
0040, whichever is applicable.
Conditional Uses

(23) Standards for parks and campgrounds in the A-C and T-C zones
(c) Individual camp sites may not include utility connections for recreational vehicles or travel trailers. Central comfort stations and similar central facilities may be permitted.
(d) Area devoted to park or campground development shall not exceed 10 acres per development.
(e) Developed camp sites shall not exceed 40 sites per development.

ANALYSIS, FINDINGS AND CONCLUSIONS OF LAW

Overview

1. This decision of the Lincoln County Board of Commissioners involves the application of Section 1.1235 (Quasi-Judicial Amendments) of the Lincoln County Code (LCC). The text of that section is listed above under decision criteria. Because of the presence of the word “or” between subsections 2 and 3, the Board interprets LCC 1.1235 to mean that the applicant must demonstrate compliance with subsections 1, 2, or 3. In other words, compliance with one of these standards is sufficient under the LCC.

Standard that there has been a substantial change in the character of the area since zoning was adopted and which warrants changing the zone.

2. The Board has taken the time to interpret this section. It construes the word “substantial” to mean “considerable” and “ample.” It interprets the word “character” to mean the use of the land, such as growing crops, harvesting timber, reforestation, uses to conserve soil, air and water quality and to provide for wildlife and fishery resources, recreation, etc., not just a change in ownership. Finally, with respect to the word “area” it interprets that word to mean the territory beyond the area requested to be rezoned (If the word “area” was meant to include only the area to be rezoned, it could have said so, but it did not); it includes the surrounding properties within a reasonable and logical distance (taking into consideration common geographic, natural and historical characteristics) from the subject property.

3. OPRD submitted draft findings in support of this Zone Map Amendment process. In support of the application and the “substantial change” criterion, OPRD wrote: “The currently zoned A-C and T-C portions of Brian Booth State Park were managed for farm and forest uses until approximately 2007, when OPRD began acquiring properties for recreation and conservation of important upland meadow, marshland, and mature forest habitats. Beaver Creek State Natural Area opened in 2010 and is now a popular recreation destination, drawing over 200,000 visitors per year to the Visitor Center and trail system. Beaver Creek Natural Area, Ona Beach State Park, and newly acquired upland areas were incorporated into a single park in 2013 and renamed Brian Booth State Park. Since acquiring them, OPRD has managed these lands for Order #__________________________
recreation and natural resource conservation, including restoration of marshlands and native upland habitats. Lands within the park will no longer be used for farming or commercial timber harvests, as these uses are not compatible with existing and proposed recreation and conservation uses.”

4. The draft findings fall far short of the requirement that there be substantial evidence in support of the first LCC 1.1235 criterion. At the outset, there is no defining of the parameters of the surrounding area, and there is no analysis of the changes in uses on lands in the surrounding area from a historical perspective. Without that data, there can be no reasonable findings that there has been a substantial change in the character of the area since zoning was adopted and which warrants changing the zone. Even within the Brian Booth Park area, which is only a small subset of the area to be analyzed, there is no comprehensive analysis of the change in uses since zoning was adopted. The draft findings state in part: “The currently zoned A-C and T-C portions of Brian Booth State Park were managed for farm and forest uses until approximately 2007, when OPRD began acquiring properties for recreation and conservation of important upland meadow, marshland, and mature forest habitats.” Farm and forest uses include not only growing crops and harvesting timber, but other uses such as recreation and conservation. Have those last two uses been continued over time? What about other uses? The general description within the draft findings does not tell us much, if anything, about how the uses of the land may have been substantially changed since zoning was adopted and which warrants changing the zone. Also, a change in ownership does not in of itself mean a change in use or character of the area.

5. The issue of compliance with the first LCC 1.1235 criterion (regarding substantial change in the character of the area) was vetted before the Planning Commission on September 9, 2019. The minutes reflect that a Planning Commissioner asked an OPRD representative the following question: What is the change in character, of this land, that justifies changing the zone? The OPRD representative responded: So the desire to create a park, a managed park experience on a broader landscape, is the significant change that we are pursuing. There are several day use parks that are compatible in that zone, and the desire to develop that into a full-service park, from our perspective, is that change. OPRD’s desire to create a park is non-responsive to the criterion of whether there has been a substantial change in the character of the area since zoning was adopted and which warrants changing the zone. Indeed, the minutes of the September 9, 2019, Planning Commission meeting reflect that a Planning Commissioner responded: Well, I have a comment. In my 45 years on this Planning Commission, I don’t think that we’ve ever made a zone change because somebody desired it. And they usually have findings of fact...

6. For rebuttal and argument, a representative of OPRD wrote on November 27, 2019, that “When the A-C and T-C zones were applied, the property was used for farming and logging. That is no longer the case. Now the property is a state park with an adopted master plan, dedicated to conserving natural resources and providing recreation access to the public.” The statement is not
sufficient under the LCC zoning criteria. It fails to address the uses of property within the
surrounding lands, it does not address where the farming and logging actually occurred and when
it occurred and to what extent it occurred. It does not address other uses in the area. In short, the
record does not contain substantial evidence that there has been a substantial change in the
character of the area since zoning was adopted and which warrants changing the zone.

**Standard that the zoning previously adopted for the area was in error**

7. The second criterion in LCC 1.1235 states that “Zoning previously adopted for the area
was in error.” No party has maintained that the zoning previously adopted for the area was in error,
and indeed there is no evidence in the record that this is the case.

**Standard that there is a public need for the change being sought**

8. The final criterion in LCC 1.1235 is that “There is a public need for the change being
sought.” The Board notes that this is a local standard; and it interprets “public need” to mean: 1) There is a public need for the zone change; and 2) The public need is best met by the proposed
zone change.

9. In analyzing the public need for the zone change, it is essential to understand the nature
and scope of development allowed if the zone change is approved, and reciprocally, the scope and
nature of development allowed if the zone change is denied. With regard to the former, LCC
1.1379(2) states that with limited exceptions as enumerated, uses permitted outright include “(a)
All land uses, facilities, and improvements set forth in the applicable state park master plan adopted
by the Oregon Parks and Recreation Department…” If we turn to page 96 of the Brian Booth State
Park Comprehensive Plan 2014 (Master Plan) we see that the Plan allows for 164 campsites on ten
different campgrounds, for a maximum peak overnight occupancy of 485 persons. Also, we can
see that the zone change, if approved, would allow for RV hookups at a few sites for disabled
campers. On the other hand, if the zone change is not allowed, on A-C and T-C lands, the area
devoted to park or campground development could not exceed 10 acres per development,
developed camp sites would be limited to 40 sites per development, and no utility connects would
be allowed. (LCC 1.1630(23)). The Board interprets the public need requirement to mean that
OPRD must show that there is a public need for the development that would be allowed if the zone
change were to be approved.

10. In its draft findings to attempt to justify the public need criterion, OPRD wrote:
“The purpose of the Master Plan is to plan for protection and public enjoyment of the significant
resources that occur in the park. The Master Plan identifies and provides for the protection of the
park’s natural, scenic, and recreational resources, and provides for the most appropriate recreation-
related uses for the park based on resource constraints, public recreation needs, and OPRD’s role

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as a public recreation provider. The Brian Booth Master Plan helps to address identified statewide, regional, and certain local public recreation needs such as opportunities to hike, camp, and interact with nature. These needs have been identified in Oregon’s Statewide Outdoor Recreation Plan, which has informed the proposed recreation uses within the park. A more complete description of recreation needs, and the methodology to identify needs, is provided in Chapter 4 of the Brian Booth Master Plan. A zone change will allow OPRD to implement the Master Plan and serve these needs.”

11. By itself, the above draft findings are very general, and do not specifically address the public need for the additional development and campsites at Brian Booth State Park. Similarly, the Oregon Statewide Outdoor Recreation Plan (SCORP) is very general, and it addresses the State’s 5-year plan for outdoor recreation, and it speaks to a number of surveys without getting into the specifics of this application before the Board. The draft findings also address Chapter 4 (Visitor Experience Assessment) of the Brian Booth State Park Comprehensive Plan 2014. This small chapter is outdated, and in various places references the 2011 Oregon Outdoor Recreation Survey. It does not tell us important information that the Board should have in making its decision on this application such as what has been the occupancy or vacancy rate of the current facilities at Brian Booth State Park and at the adjacent parks such as Beverly Beach State Park and South Beach State Park? How many months of the year are the current facilities in Brian Booth State Park and adjacent parks largely vacant? To what extent could any need for additional facilities be served by adjacent parks where there are fewer traffic safety issues? Is there really a need for 164 campsites at Brian Booth State Park? If much of the area is to be retained as an open area or the restoration of marshes, how does this satisfy the public need or meets the perceived demand?

12. The issue of compliance with the third LCC 1.1235 criterion (regarding the public need for the change being sought) was also vetted before the Planning Commission on September 9, 2019. The minutes reflect that a Planning Commissioner asked an OPRD representative the following question: What study did you do to determine that there was a public need? The representative responded: The need for state park capacity is both local and statewide. And we conducted surveys every five years, on a state-basis, and at a rotating basis, looking at visitor demand on the facilities. I don’t think there is anybody that would think we are over-capacity on the Oregon Coast for State Park services…There is nothing we can do about the level of demand. It’s high, it’s increasing…Each of the last six years we’ve broken attendance records at the state parks facilities…All of the surveys show the demand is increasing and we need more capacity.

13. The comments made above as they relate to LCC 1.1235(3) comprise the same defects referenced above regarding OPRD’s draft findings. They are general, do not contain specific data or analysis, are based on surveys rather than actual park user data, generally apply to the State Park system as a whole, and do not address the dramatic proposal to significantly increase the number
of campsites and facilities at Brian Booth State Park, and do not address whether that additional development is needed.

14. For rebuttal and argument, an OPRD representative wrote on November 27, 2019, regarding public need: "The public need is the ability to fully implement the Brian Booth Comprehensive Plan, an adopted state park master plan that addresses a broad range of identified public recreation needs, including trails, camping, and access to nature." The Board respectfully disagrees with this statement. Under the LCC decision criteria and the Board's interpretation of that criteria, the public need is not simply a desire to fully implement the Brian Booth Comprehensive Plan. The public need is a finding, based on actual and specific data, that there is a public need for the zone change (and the Master Plan development that would be allowed by it), and that the public need is best met by the proposed zone change. The Board finds that there is not substantial evidence in the record to support this finding. In addition to the lack of specific data analyzing the use/vacancy rates of parks in the area, and other concrete evidence a prudent and informed decision maker would need in making this decision, there isn't substantial evidence that shows that the public need is best met by the proposed zone change.

15. In summary, the Board finds that there is not substantial evidence that there has been a substantial change in the character of the area since zoning was adopted and which warrants the change, and that there is not substantial evidence that there is a public need for the change being sought. Therefore, it is appropriate that Application File No. 01-ZC-19 be denied.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:
Application File No. 01-ZC-19 is hereby denied.

DATED this 15th day of January, 2020.

LINCOLN COUNTY BOARD OF COMMISSIONERS

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Kaety Jacobson, Chair

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Doug Hunt, Commissioner

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Claire Hall, Commissioner