

**MINUTES OF THE
LINCOLN COUNTY PLANNING COMMISSION**

MEETING OF APRIL 9, 2018

Chair Johnson called the meeting to order at 7:40 pm and asked for roll call.

OTHER COMMISSIONERS PRESENT

ANDRA BOBBITT
MARK ESTES
TERRY BUGGENHAGEN
JUDITH PELLETIER
RICHARD CUTLER

COMMISSIONERS ABSENT

PHIL SPULNIK
BOB PORCH

STAFF PRESENT: Planning Director Onno Husing, Permit Specialist Josh Bacher, Senior Planner Hui Rodomsky, Associate Planner Warren Clauss

1. CALL TO ORDER

With Commissioners present, a Quorum has been reached for the April 9, 2018 Planning Commission Meeting.

2. APPROVAL OF MINUTES

2.1 Minutes February 26, 2018

Commissioner Buggenhagen motioned to approve the minutes from February 26, 2018.

Commissioner Pelletier seconded.

Chair Johnson asked for a vote on the motion; the **Planning Commission** voted to approve the minutes for February 26, 2018 with all in favor. **Commissioner Cutler** abstained.

2.2 Minutes March 9, 2018

Commissioner Bobbitt motioned to approve the minutes from March 9, 2018. **Commissioner Estes** seconded. The **Planning Commission** voted to approve the minutes for March 9, 2018 with all in favor. **Commissioners Cutler** and **Buggenhagen** abstained.

3. ITEMS FROM THE AUDIENCE

Robert Rubin came before the **Planning Commission** to request, again, that the **Planning Commission** direct the **Planning Department** to regulate the Eckman Creek Quarry. **Mr. Rubin** stated he has been reviewing minutes and audio and found flaws in the Findings. **Mr. Rubin** submitted a three page letter (entered into the record) and noted that during the last meeting, he asked for a hearing by the **Planning Commission** on this matter, and he stated the **Planning Commission** at the last meeting asked **Director Husing** for more information. **Mr. Rubin** stated **Director Husing** wrote a letter dated November 30th, 2017. In that letter, **Mr. Husing** referenced a conversation with **County Counsel Wayne Belmont**.

Director Husing received instructions from **Wayne Belmont** that holding a **Planning Commission** meeting, to review the staff's finding, would not be the appropriate process to take up that matter. **Mr. Rubin** said he was told, via **Wayne Belmont's** instructions, he could appeal to the **Land Use Board of Appeals**, or, put it in writing, for **Director Husing**, new information which he did in a 23 page email. **Mr. Rubin** discussed the 1989 quarry expansion. In addition, **Mr. Rubin** stated that, "For some reason, there is no file, and no one is paying attention to that quarry." He asked the **Lincoln County Planning** to "Do its job and bring that quarry into compliance" and for **Director Husing's** response to the email. **Mr. Rubin** closed by questioning **Mr. Husing's** competence to serve as the Director of the Planning Department.

Commissioner Cutler arrived at 7:45 pm.

Mr. Rubin, Director Husing, and Chair Johnson discussed briefly, **Mr. Husing's** consultations with **DOGAMI**, gathering more information, and making a decision.

Chair Johnson asked for further items from the audience, and there were none.

4. PAST ACTIONS REVIEW FOR PLANNING COMMISSION

NONE

5. UNFINISHED BUSINESS

NONE

6. ACTION ITEMS

6.1 Adoption of Findings, Conclusions, and Final Order – Case File #01-LUPC-ZC-17

Chair Johnson stated the **Planning Commission** needs to approve the final Findings and asked for comments on the file. **Commissioner Bobbitt** motioned to approve the Findings. **Commissioner Pelletier** seconded. **The Lincoln County Planning Commissioners** voted to approve the Findings with **Commissioner Cutler** abstaining. **Chair Johnson** signed the Findings and provided them to **Staff**.

7. PUBLIC HEARING

7.1 Case File #02-LUPC-ZC-16: The Oregon Parks and Recreation Department (**OPRD**) is requesting that Lincoln County issue a recommendation to the Oregon State Parks and Recreation Commission (**OPRC**) regarding the DRAFT June 2014 Brian Booth State Park Comprehensive Plan.

This is the second hearing the Lincoln County Planning Commission is holding on this matter. It is anticipated, at a later date, the Planning Commission will hold a separate hearing on a zone change request for the majority of land encompassed within the Brian Booth State Park. The zone change request would be to change the zone from Agricultural Conservation (A-C) and Timber Conservation (T-C) to the Parks Master Plan (PMP) zone.

Brian Booth State Park consists of 26 parcels located near the intersection of Highway 101 and North Beaver Creek Road approximately 7 miles south of Newport. The majority of the park is adjacent to Beaver Creek.

Chair Johnson asked for the Staff Report.

STAFF REPORT

Director Husing presented the Staff Report for **Case File #02-LUPC-ZC-16**. He was joined at the witness table by **Assistant County Counsel Jerry Herbage**.

Director Husing explained the process to establish this park began when **OPRD** undertook a public outreach effort to prepare the Draft Master Plan (the draft plan is dated June 2014). **Husing** noted that under the applicable administrative rules Lincoln County now must prepare a written recommendation about the draft master plan and submit that written recommendation to **OPRD**. **Husing** noted, "Tonight, therefore, we need to discuss the draft recommendations prepared by staff, take additional testimony, and, if the **Planning Commission** is ready to do so, deliberate on recommendations so we can get a set of recommendations submitted to **OPRD**."

Chair Johnson asked **Director Husing** about the term "amendments".

Director Husing stated he prepared a set of draft recommendations for the **Planning Commission**. The draft recommendations focused on issues/controversies raised at the first hearing. **Husing** reminded the Planning Commission that the Planning Commission, at the conclusion of the first hearing, instructed him to meet with **OPRD** and property owners to seek agreements on the matters creating controversy. **Director Husing** noted, "That's what we've done. And that's among the reasons why this process has taken quite some time. We had a number of meetings with a number of people on a number of issues. We have come a long way since that first meeting." **Director Husing** offered, "Thankfully, we reached agreement on a number of important issues with property owners and **OPRD** staff. Those agreements have been incorporated into the draft recommendations before you." **Director Husing** stated, "There are people in attendance tonight, though, that will provide additional testimony and raise additional issues." **Director Husing** underscored, "If the **Planning Commission** hears testimony and believes that there are issues raised tonight that should find their way into the County's recommendations, then, of course, the **Planning Commission** should instruct us, the staff, to add those items to the recommendations."

Looking ahead, **Director Husing** noted that after **Lincoln County** forwards a written recommendation to **OPRD**, under the administrative rules, **OPRD** will prepare a written response back to **Lincoln County** addressing each recommendation. A thirty day comment period will follow. **Lincoln County**, during that interim comment period, will review **OPRD's** responses to the County. Then, based on that review, **Lincoln County** has the option of concurring with or objecting to **OPRD's** pending adoption of the proposed master plan. **Director Husing** concluded, "If **Lincoln County** and **OPRD** still have disagreements, **Lincoln County** can choose to invoke a dispute resolution process with **OPRD**." **Director Husing** noted, "From my perspective, if we can, we want to avoid that from happening, going into dispute resolution."

Director Husing stated, "We had dialogues with property owners living in the subdivision on the southwest side of park, Seal Rock View subdivision. Agreement was reached with **OPRD** that **OPRD** would construct and maintain a fence around the perimeter of the park at this location. In addition, **OPRD** agreed to provide signage instructing park visitors alerting the visitors they cannot leave the park or enter the park at that location from that neighborhood." **Director Husing** added, "In addition, agreement was reached with **OPRD** to remove any references to entrances and exits from the park through the Seal Rock View neighborhood from the draft plan." **Director Husing** stated, "Here's why this issue of fencing matters. Ultimately, once the park is built-out, under the existing master plan, there could be, on any given night, a 1,000 people staying in the campgrounds. People living in the Seal Rock

View neighborhood are fearful that park visitors will be inclined to take shortcuts through their neighborhood to get to the beach because there's a beach access point at the western end of Curtis Street." **Husing** continued, "If people cut through the neighborhood to get to the beach they would have to cross US Highway 101 at a dangerous spot. Everyone agrees that's a bad idea." **Director Husing** continued, "So, **OPRD** agreed to direct people staying in the park through what will be a pedestrian underpass/tunnel that will be built at the Ona Beach curves."

Director Husing stated, "In addition, in the draft master plan, there were references to a trail system, outside the park boundaries, that were proposed to provide a public trail from the park to other places in Seal Rock. Members of the community informed us that the people representing themselves as the Seal Rock Trail Committee did not engage people within the community about their plan. Moreover, that the Seal Rock Trails Committee people did not discuss this public trail concept with the affected property owners." **Director Husing** continued, "Therefore, **OPRD** agreed to remove all references to an off-park trails system from the draft master plan because these areas are outside the park."

Director Husing noted, "In addition, people in the Seal Rock View neighborhood, during this dialogue, drew attention to ROWs at the outer perimeter of the neighborhood. These ROWs that may not serve a public purpose. They advocated these ROWs be vacated. In addition, people in the neighborhood asked that the last/eastern segment of Bernard Street, 'the stub' as we call it, adjacent to the park, also be vacated. They want "the stub" vacated because that ROW has been used by people seeking to trespass into the park." **Director Husing** noted, "**Lincoln County**, the staff, in the near future, has pledged to work with the property owners in this neighborhood to prepare a petition to vacate some of those ROWs. A petition to vacate ROWs would be submitted to the Lincoln County Board of Commissioners (**BOC**). A future decision, to vacate ROWs, must be decided by the **BOC**. **OPRD** has agreed, as adjoining property owners, to support the vacation of these ROWs. "

Director Husing noted **OPRD** agreed that a service agreement will be established between **OPRD** and the **Seal Rock Rural Fire District (SRRFD)**. In addition, further collaboration between adjacent property owners and **OPRD** on addressing drainage practices and a nutria control program, will be undertaken by **OPRD**.

Chair Johnson asked about the five recommendations in the Staff Report.

Director Husing replied, "Recommendation 1 is to ensure there is no access to the Seal Rock View neighborhood to and from the park (with fencing and signs). Recommendation 2 is to remove all references to off-trail references from the draft master plan. Recommendation 3 is for **OPRD** and the **SRRFD** will enter into a service agreement with **OPRD**. I will return to Recommendation 4 in a moment. Recommendation 5 is the nutria control. I suspect other issues will be brought up during the course of this hearing tonight."

Director Husing discussed Recommendation 4, which relates to public access to Snaggy Point. **Director Husing** stated, "There is an important part of the park, located where the Beaver Creek marsh forks east and south, at and near where Beaver Creek Road forks to North Beaver Creek Road and South Beaver Creek Road. **OPRD** has already established an interpretive center off North Beaver Creek Road, on the hill, above the marsh." **Director Husing** continued, "Across the marsh, east of South Beaver Creek Road, there is high elevation nob, a large upland area, called Snaggy Point. This area has stunning views of the marsh and ocean." **Director Husing** continued, "However, here's where things get complicated. Snaggy Point is surrounded by wetlands. These wetlands are identified as a Goal 17 Major Marsh under Lincoln County's Comprehensive Plan. Therefore, it is a challenge to establish public access to Snaggy Point in a way that's respectful to the adjacent property owners. At present, there's one existing single lane road providing access into Snaggy Point. About a quarter mile of that road runs through **Barb Wichman's** property via an easement. The easement was created by previous property owners (the Kaedy's) to

facilitate agriculture activities at Snaggy Point. **OPRD**, we have learned, can use this easement for public access. When **OPRD** bought this property they purchased this easement.”

Director Husing stated, “From the staff’s perspective, at present, there isn’t enough information in the draft master plan with respect to what **OPRD** is going to address this issue. We must ask ourselves, is that access road going to be improved? If so, how? How and where will parking be established? How will **OPRD**, over time, manage public access to Snaggy Point? These are important matters.” **Husing** continued, “And, because South Beaver Creek Road is a Lincoln County Road, and, because the use of the road for public access constitutes a change in use of the road, **OPRD** will need to get a road access permit from **Roy Kinion** (Director, **Lincoln County Public Works**). There are significant safety issues and logistical concerns.”

Husing continued, “Again, the status of the road and public access to Snaggy Point is ill-defined. That’s because it’s a challenge. If this was easy we wouldn’t be talking about it tonight. However, **Lincoln County** is being pressed by **OPRD/OPRC** to issue a recommendation. To move forward, we, the **staff**, recommend that after **OPRD** figures out what they want to do about the parking and the access road and the improvement of the intersection for public access to Snaggy Point, **OPRD** should come back and undertake a plan amendment to the master plan to address these issues.” **Husing** noted, “We, the staff, we are not comfortable leaving these loose ends dangling by giving **OPRD** a general grant of authority to figure out something out later on. Our role, the **staff’s** role and the **Planning Commission’s** role in this unique process, is to ensure property owners’ interests and other community concerns are heard and, to the greatest extent possible, factored into the final master plan. This community is going to be living with this park for a long time. ”

Director Husing stated, “In the meantime, as an interim measure, perhaps **OPRD** should restrict public access to the road and keep the road usage confined to **OPRD** staff vehicles and for previously-arranged scheduled bus tours . That way, **OPRD** can control the usage of the access road.” **Husing** continued, “Many of you know there’s a barn, on the access road, and **OPRD** is converting that structure into a learning center. **OPRD** has plans, in the future, to enhance the opportunities for education and public access to Snaggy Point.” **Husing** continued, “And, we are hearing from **OPRD** that **OPRD** may, eventually, extend a pedestrian boardwalk across the marsh from their Interpretative Center. If and when that happens I suspect many people, wanting to access Snaggy Point, will choose to park their cars up at the Interpretative Center and use the boardwalk to gain access to Snaggy Point.”

Director Husing stated, “By having **OPRD** come back, later, for a plan amendment, after **OPRD** has addressed these challenging circumstance, that’s when we, **Lincoln County**, will have sufficient information about that part of the park. **OPRD**, clearly, is not giving up on providing access to Snaggy Point. Snaggy Point will be an important feature of the park. **OPRD**, I understand, will want, soon, to provide parking and potentially improve that access road -- that’s not off the table.”

Chair Johnson asked, “**Onno**, if I understand what you have written in here with Recommendation #4 (*the draft recommendation*) the recommendation is to limit the use of the access road to State Parks people and tours that State Parks has control over; and then develop a second access to Snaggy Point, by trail, across the marsh?”

Director Husing “The key point is, with respect to this part of the overall plan for the park, we don’t know what **OPRD** wants to do yet. And, **OPRD** doesn’t know what they want to do yet. For the one existing access road, the staff recommends the usage would be limited to **OPRD** staff and people scheduled, in a vehicle, to be there, accessing this learning center. It’s a pretty good road. But, it’s a single lane road. And the road curves. In addition, intersection to South Beaver Creek Road will need to be improved. The problem is, at present, people are just parking their cars on the ROW of South Beaver Creek Road across from where the access road intersects with South Beaver Creek Rd. And, it is just a

muddy wide spot in the road. All of us, including our colleagues at **OPRD**, recognize this is not a tenable arrangement. We are not saying close the road. We recommend restricting the usage of the road at this time and encouraging **OPRD** to get on with it and tackle this challenge about how to provide safe access/parking to Snaggy Point – a plan which respects the property owner’s interests. **OPRD** can come back to us later, soon I hope, with some proposed solutions how to handle this with a future plan amendment.”

Commissioner Bobbitt “I want to clarify, as a person who has been using that road, walking, and enjoying that wonderful view from Snaggy Point, are you saying we should restrict pedestrians from walking on the access road? And, should we put up signs and restrict access to Snaggy Point until all of these issues can be figured out?”

Director Husing “**Commissioner Bobbitt**, right now, do you park on the side of the road?”

Commissioner Bobbitt “Yes. I park on the side of the road in the mud. When we learned when the park was built and there are trail markers all up in there. But, I had no idea I was crossing private property. I thought the whole thing, the whole road, was trail access.”

Director Husing “This is difficult because people in our community have already been enjoying those trails, using that access road and just parking on the wide spot in the road. I would leave it to you, the **Planning Commission**, to make a recommendation tonight. Having said that, I cannot, in good conscience, as staff, advocate to you, the **Planning Commission**, that just parking in a wide spot in the road is a safe and appropriate way to provide public to access that part of the park. Really bad things can happen. We are also saying there ought to be additional fencing and signage, so when people use that road they will know when they are entering or exiting the park. They can know when they are no longer on **Barb Wichman’s** property because they have crossed into park property.”

Commissioner Bobbitt “But it is your contention that it is legal for anyone to enter and walk on that right of way at this point?”

Director Husing “Do I think it is legal?”

County Counsel Jerry Herbage “There are two issues here. One issue is, what is the scope of the easement? The Attorney General’s Office has given an opinion that the easement is available for the public. But there is a separate issue. And that issue is the land use process. We agree that, OK, the easement is probably lawful for public use. But, using that road, and that parking, in its present form, is not OK from a land use and a public safety perspective. We are primarily concerned about safety issues. I am sure **OPRD** will want to address this issue with you later this evening when they testify.”

Director Husing “**Commissioner Bobbitt**, you put your finger on an important issue. People will feel strongly about it. It is tough, reconciling these interests, the property owner, the public, **OPRD**. I believe Snaggy Point is a real asset for the park and for the community. And there are a lot of great features to Brian Booth State Park. But, from our planning perspective, and maybe that’s a narrow perspective in the minds of our colleagues from **OPRD**, **OPRD** needs to figure this out. That’s why we believe you should require **OPRD** come back to us with a plan amendment -- not years from now -- but soon. In the staff recommendation, right now, that access road would not be a public pedestrian access and it would only be an access for **OPRD** vehicles and vehicles scheduled to be there. Of course, this issue is for you, the **Planning Commission**, to hear additional testimony and then to wrestle with this issue and tell us how you want us, **the staff**, to proceed.”

Commissioner Peletier asked, “So, **Parks** is going to explain how they are going to barricade or deny access?”

Director Husing “We have had conversations with **OPRD** staff about this. Yes, we agree this is a difficult issue. But, when **OPRD** comes before you in a few minutes they will advocate that you take a different approach.”

Chairman Johnson “So, what you are saying, in the draft recommendation, is a trail system and parking to facilitate that trail system will come from the other side of the park?”

Director Husing “What we are saying, right now, is that **OPRD** does not have a parking solution. What we have now is an unimproved wide spot in the road, some of it on private property, and it is serving as a public parking lot. It is unsafe. It creates liability. It’s not a viable solution.”

Commissioner Estes “That intersection, the access road and South Beaver Creek Road, that’s where the wide spot is?”

Director Husing, “Yes, under the Lincoln County Code, because there is a change in use of the road, from agricultural use to a public access for a major state park, **OPRD** needs to secure a road access permit from **Lincoln County Public Works**.”

Commissioner Estes asked, “Why can’t **OPRD** just build out a temporary parking area there, at South Beaver Creek Road? Is the main problem now, a safety issue?”

Jerry Herbage “Again, there are also some private property issues there at that ROW. “

Lincoln County Public Works Director Roy Kinion “The issue with the wide spot, the area currently being used for parking, other than it is a little bit muddy, is that a portion of the wide spot is not even within the ROW. Some of the wide spot is on private property. The boundary lines of the ROW have not been surveyed. We don’t know, with precision, where the ROW is. But, the general rule of thumb is, middle of the road, center line, each way, 30 feet. So, you take in 12-13 feet of pavement, 5 or 6 feet of actual shoulder for a safety zone, it doesn’t leave a lot of room so someone could actually use that wide spot to back out onto the road, and let’s note that the speed limit there is 55 mph. “

Chair Johnson “You mention in the staff report the pedestrian underpass under US Highway 101. Do you consider that part of one of these draft recommendations? “

Onno Husing **OPRD** has already baked that into the cake in their master plan. They have talked with **ODOT**. And yes, an underpass is the preferred alternative and it will be an important feature of the park. Doing an underpass, at the Ona Beach curves, that’s **OPRD’s** idea. We are not asking them to do it. Having said that, from a **staff** perspective, building an underpass to get people safely to the beach seems like an optimal approach.”

Commissioner Bobbitt “I’m remembering the previous meeting, was the Seal Rock Trail, was that trail separate from the horse trail? With horses coming through?”

Director Husing “There are people living in the Seal Rock View neighborhood, near US Highway 101, and they board their horses at their property. I understand, speaking with them, they are accustomed to riding their horses through the Seal Rock View neighborhood and then entering, and riding their horses, on what is now **OPRD’s** property. A realtor told them that they have a right to continue to ride their horses there. That is incorrect. They don’t have permission from **OPRD** to do that. That’s become an issue in the neighborhood. Ultimately though, the folks with the horses cannot access Brian Booth State Park through their neighborhood. So, that was an issue.”

Commissioner Bobbitt “That’s separate from the Seal Rock Trail issue?”

Director Husing “Correct.”

Commissioner Estes “Is it also baked into the plan that **OPRD** will run horses under the highway underground to the beach? “

Director Husing stated, “Let’s ask **OPRD** about that.”

APPLICANT TESTIMONY: Preson Phillips (Central Coast District Manager), David Stipe (Planning and Design Manager), Ian Matthews (Planner), all with **Oregon Parks and Recreation Department**, signed in and introduced themselves.

Ian Matthews stated, “We are excited to hopefully be close to the finish line in terms of getting a recommendation from Lincoln County on the park. **Onno** did a great job summarizing the process so far, and **OPRD** appreciates the effort put in by the **County** trying to resolve some of the issues we are discussing tonight. We, **OPRD**, are prepared to accept the draft recommendations (prepared by **staff**), with a few tweaks. However, Recommendation 4 is a little bit trickier.”

Ian Mathews continued, “Since the last meeting, **OPRD** believes we have made good progress resolving issues raised; we constructed a fence next to the Seal Rock View neighborhood, posted some signs, had several meetings with **Seal Rock Rural Fire Protection District** and talked about a future service agreement. **Mathews** noted, “We renewed our nutria control efforts. That’s mentioned in the master plan. We recognize we have a duty to control nutria. And we have committed to neighbors to remove any language about trail connections outside of the park. So, I think we are most of the way there in terms of agreeing with the County’s draft recommendations.” **Mathews** continued, “Just to step back, this has been a long process, starting the Park Master Plan back in 2011 with quite a lot of public input. We went through a two year planning process and held multiple meetings with the public and with community partners from 2012 to 2014. We think we’ve gone through a good process. And, we think the master plan is the best way to meet **OPRD’s** mission. **OPRD’s** dual focus is on conservation and public enjoyment. That’s what these properties were acquired – to protect the outstanding natural resources, the marsh, the mature forest, the beach.”

Ian Mathews said he would defer to **David Stipe** to provide **OPRD’s** commentary on Recommendation 4. **Mathews** stated, “**OPRD** recognizes, though, the neighboring property owner needs to feel safe and to deal with trespass issues that she experienced. We are fully on board with that.” “The piece, that **Onno** said, that is tricky, is public access; those trails already exist and people have been using them.” **Ian Mathews** said, “For that reason we are hesitant to simply say, ok, no more public access until a later Park Master Plan amendment process. In particular, when we hear Master Plan Amendment, we think, is this going to be another seven year process? We don’t want to go through everything all over again.”

David Stipe stated, “Earlier last year, **OPRD** closed to the general public access to the access road to Snaggy Point while we were seeking a legal opinion about the status of the easement we hold with current property owner. After we got the **AG** opinion stated the easement does allow us, **OPRD**, to provide public access to Snaggy Point, we re-opened the road for public walk-in access. **OPRD** does not have the ability to enforce no parking on South Beaver Creek Road. We would be interested in working with **Lincoln County** to manage the parking while we come up with a better solution. I don’t know how many calls we got about closing the road to walk in access but we did receive a number of calls about that.”

Chairman Johnson In the draft recommendation it talks about **OPRD** is planning to acquire additional property? For more parking?

Ian Mathews stated, “That’s actually, a little outdated. The thought was, back in 2014, that **OPRD** could potentially acquire additional property for parking. Since that time we talked more about the potential to simply allow people to be on the road and if there were vehicle access along that road then that

would have to be accomplished most likely through widening portions of the road to create turnouts. But that's potential."

Chair Johnson "Would the widening require the purchase of additional property?"

Ian Mathews "The widening would not potentially require additional property purchases. One option, if we could do that, there are engineering challenges, if we could do that, then we could potentially create a parking lot on our property. That would allow people to drive in and park on the property. That's the current option for getting vehicles onto the property. The topography and the wetlands make it difficult to bring that road up to a County road standard. Nothing, though, is impossible."

Commissioner Buggenhagen So, is that in the plan or not in the plan?

Ian Mathews "The plan would have to be updated to include that, we would need to add a sentence to the plan, saying something like, develop a small parking lot on our property and making the road safe for vehicles, meeting the standards the county would require. Our preference, as opposed to the master plan amendment requirement, would be to put this on hold, because, determining how this will be done is not something that will happen overnight. We would prefer that public access, pedestrian access, be maintained with the acknowledgement that we would fence the road and put up signage. We think that would be sufficient, along with continued enforcement, to protect the property owner's interest. If there was a long term solution to create vehicular access along that easement into the park, a sentence saying that would need to be added to the master plan."

Commissioner Buggenhagen asked, "So, at this point, Recommendation #4 is off the table? Is that what you are saying?"

Ian Mathews responded, "What do you mean by off the table? "

Commissioner Buggenhagen stated, "Well, I don't see anything from **OPRD** that we could approve. You don't have a plan."

David Stipe "We had a conversation with **Onno**, and your **Counsel**, earlier today, and we are at a difference of opinion on that issue. We need to make sure we maintain appropriate access to a piece of property we acquired with public funds. We have a fiduciary responsibility to the citizens of Oregon to maintain the property values of properties we purchase. And access, or lack of access, has a drastic impact on the value of property. We are committed to continue to work with **Barb Wichman** and to try to alleviate most of her concerns, all of her concerns if we can, but we would still like to provide walk-in pedestrian access for enjoyment of the trail system up on Snaggy Point."

Chair Johnson "Let me clarify, we are not approving things, we are looking to make recommendations on what we think **OPRD** ought to do."

David Stipe stated, "And, please recall, **Onno** made the point that if you did want to revise that recommendation, or provide staff direction to revise that draft recommendation following all of the testimony, you have that ability to do that."

Director Husing "Yes, I agree. With the draft recommendations we tried to put something out there to start the conversation, and yes, of course, you, the **Planning Commission**, can and should amend and add to those draft recommendations based on what you learn and decide tonight."

David Stipe stated, "I'd like to respond to the grade-separation study, it would provide access to the beach, based on several design alternatives. If you do an overpass at the curves it takes a really long time to catch up with the grade because the terrain is dropping so fast, so the underpass is the preferred solution. We are working with an engineering firm to develop preliminary engineering drawings for that grade separation crossing. We are not likely to do any design drawings for the park or underpass until

we get through this planning process. Because we have other needs in this park district, if we are not going to be able to build this park in this biennium, we will move the money around and try to address other issues. But, we want to get started on the preliminary engineering for that crossing. It will take over a million dollars to build that grade-separated crossing. We will look to use federal funds for that. At that time, we would be working with the **SRRFD** to provide the best possible access for them, potentially under the highway. If the preliminary engineering study would allow for equestrians to utilize the underpass that's what we will be developing it to. The trail standards for equestrians require a lot more clearance than for bicycles and pedestrians. Eight feet of clearance for pedestrians and bikes and a twelve feet clearance for equestrians."

Commissioner Estes "All that aside, can you get a horse to go through the tunnel? How long is the tunnel?"

David Stipe "I don't have that study in front of me but I think it is 80 feet long."

Commissioner Buggenhagen asked, "Is the tunnel a sure thing? Is it in the plan or is it pie in the sky?"

David Stipe stated, "No, we have engineering studies, it is in the plan, an engineering analysis of three different alternatives. And we will be moving forward with that and we will be moving forward with that for the facilities at Brian Booth State Park because we are very concerned, as well as **ODOT**, about the safety of people crossing US Highway 101. If we provide a safe grade-separated crossing we believe that will compel people to follow the rules and cross under the highway through the tunnel to get to the beach, because the beach is where they want to go."

Commissioner Bobbitt asked, "Something **Onno** mentioned, that I must have missed in the plan, about that actual number of visitors to the park, in the campground, on a peak summer day? I thought that was estimated to be around 250. Is it 1,000 people a night?"

David Stipe "We wrote that down when he said a 1,000 people a night. We were both flipping through the math."

Director Husing "I don't recall where I heard that number."

Preson Philips "When you rent a campsite, the maximum number of people **OPRD** allows in a campsite is eight people. The total number of people per night in the park could be the number of campsites times eight. "

Ian Mathews "So, when you do the arithmetic, I don't think the number of 1,000 people a night is far off. We did calculate average capacity based on our extensive surveys. The table says 485. Recall, the campground would be phased, so, the central campground would likely be built first so, the upper campground and an equine campground would likely be built many years out. For the next 5 years we are talking about the central campground and that is likely to be 100 sites."

Chair Johnson asked for testimony in favor of the recommendations.

PUBLIC TESTIMONY

Brian Dixon stated, "I am in favor of the grade-separated crossing as I am the landowner most impacted by the crossing. Because this is such a treacherous curve, I think there is an opportunity to take out some of that curve. Since they have not done the engineering first, they should get together with **ODOT**."

Jeannie and Marty Bray They live in Makai. They want to provide input on Recommendation 4 (the status of the access road to Snaggy Point). They submitted a letter on record stating they want **OPRD** to keep the access road to Snaggy Point open for public usage. The Bray's testified they are responsible users of the park and they appreciate the opportunity to access the park on the service road, and they

support safety. They claimed they are careful when they use the wide spot in the road to park, they make sure we look both ways and back in. There are people driving 55 mph on that road. They support safety improvements. Without that parking there would be no access, they requested that the **Planning Commission** leave the public access to Snaggy Point open until the issues can be resolved.

Chair Johnson asked for more input.

Paul Engelmeyer, Central Coast Preserve Manager of The Wetlands Conservancy supported the direction by **Brian Booth State Park Natural Area**. He said, "I acknowledge the challenges, safety is important as well as respecting the private property of adjacent land owners. The fencing is good solution, that can work; I suggest you move forward with those caveats, before any of those things get opened, deal with the safety things first, including hiking access to Snaggy Point, that's a priority, we don't want to read anything in the paper about having a problem. I do field trips there. It is an amazing laboratory to bring policy people to see salmon and watershed restoration strategies. **OPRD** is an excellent partner for us, the Watershed Council, we got a gold mine there but there are a lot of little bumps along the way. We can solve those things. A compensation strategy, to develop a safe pull out, there's gotta be a plan, we just gotta make a good plan."

Director Husing "Paul, I am having trouble understanding what you are saying. On the one hand you say keep the access going..."

Paul Englemeyer "I think you could put up some signs, do things right away, until we figure out the long range, we should not cut off access."

Commissioner Peletier "You mean the pedestrian access?"

Paul Englemeyer "Pedestrian access. Correct."

Fire Chief of Seal Rock Rural Fire Protection District (SRRFD) Thomas Sakaris, joined by **Independent Counsel Dennis Bartoldus**. **Chief Sakaris** "I am here to make recommendations on public safety." He continued, "With the number of additional people, the transient population, the park, that will be impacting our district, it will double the number of people served by the district, and we are a very small district." **Chief Sakaris** stated, "I don't know if the **Planning Commission** has any idea how **SRRFD** is going to face this challenge. We have two paid staff and volunteer personnel. The doubling of the population caused by this park, it's going to impact **SRRFD** tremendously. Also, with the trails put in, navigating trails, we will need access to those trails. How do we get on those trails? I don't know how. That is something we need to work with **ORPD** on. The access underneath U.S. Highway 101, it will be difficult for a fire truck to get through, however big the truck is. We have a water rescue unit that may have to go through it but we can make beach access on the north. If an underpass is not sized properly, if there is a horse accident in the tunnel, we gotta be able to get in there somehow. Right now, we don't have the equipment to do that." **Chief Sakaris** continued, "We had one meeting with **OPRD** last March. I met with **Dennis Comfort** at the **OPRD** offices and spoke to him about these various issues. My understanding is **OPRD** has service contracts with other Districts, for compensation. But, I don't know if that's going to be enough for our District because, like I said, the transient population, based on my calculations, for an evening, is going to be 1,440 people. That doubles the size of Seal Rock. We need to figure out how we can fix this problem."

Commissioner Buggenhagen "Do you have access to the beach now?"

Chief Sakaris "We have access to the beach now, at the north side of the beach. But, a lot of times, at Ona Beach State Park, there is an access but a lot of times that's blocked by cars. And, US Highway 101, at the Ona Curve, as everyone knows, we have had some major accidents. Just a couple of weeks ago, we had a major accident, there were six people hurt. We had to close the road for six hours. There will a lot more demand for our services. If we have one call, and then another call, we will need more

personnel and equipment, so, our call volume is around 465 runs per year, if that double it will be 900, and every year our call volume goes up 10%, just like every other district.”

Chair Johnson “But you are not recommending that the size of the park, the campgrounds, be cut in two?”

Chief Sakaris “I am not making any kind of recommendations regarding the scale of the park, I am just here to state the challenges of what a park at the scale **OPRD** wants to build in Seal Rock presents to **SRRFD**. And there is also a problem with Beaver Creek, with the cars on the side of the road, people walking on the road, vehicle accidents, pedestrian accidents, that’s going to be very difficult and comprehensive for **SRRFD** to respond. The population of Seal Rock is 1500. With all the campers it could add another 1440 people a night.”

Commissioner Bobbitt “So you would be in support of **OPRD** pursuing a special compensation contract, to provide more funds for **SRRFD** to address some of these issues?”

Independent Counsel Dennis Bartoldus “I am Dennis Bartoldus, the Attorney for **SRRFD**. I spoke a little bit about this, things they raised as an initial concern. **SRRFD** had to approach **OPRD** and say, hey, we want to be a player in the game here because we are a small district and this is going to be a huge impact on our operations. So, the **District** was quite surprised **OPRD** never reached out to the **SRRFD** to talk about these very important public safety issues. That’s a huge concern the **SRRFD** has and I would think, sooner rather than later, if **OPRD** is on board with providing some kind of agreement over compensation, let’s take a look at that and see if that’s adequate. **SRRFD** really has not had the kinds of communications with **OPRD** that they had expected or hoped, and now we are getting down to the end of a process and we still don’t have any agreement and, interestingly I guess, we are still debating the actual number of people that may be staying at this park at any given time. First, it was 250, now we are at 1,000, and that only accounts for the campground. One of the ideas about expanding Brian Booth and we heard about hiking there, there will probably be a lot more than 1,500 people there on any given summer weekend or summer holiday. So, that poses a very legitimate safety concern the **SRRFD** wants to address. We need information from **OPRD** that will show us what they want to do.”

Chair Johnson “Recommendation #3, that we have in front of us, has the **SRRFD** getting a service agreement with **OPRD** to compensate **SRRFD** for rendering assistance, that **OPRD**, before construction, should enter into such a service agreement, similar to to other fire district, that’s what you are talking about?”

Dennis Bartoldus “Yes, and speaking as a cynic here, when it says, at a later date, you shall enter into a service agreement, once the park is under construction, I think we need it before then. This is something we should be seeing now and seeing what their proposal is. This not just for fire protection services, this is providing rescue services and other types of services as well. I would recommend, let’s get this done in the next couple of weeks. I say that because we don’t know what those agreements look like and what their proposal is.”

The **Planning Commission**, **Chief Sakaris**, **Counsel Bartoldus**, and **Director Husing** discussed recommendation 3, the size of the underpass tunnel, access, service agreements between **OPRD** and **SRRFD**, and a future date for the zone change **Planning Commission** meeting.

Chair Johnson asked, “Are you talking about the tunnel being large enough to get your equipment through? “

Chief Sakaris “It would have to be big enough to accommodate if we do have an emergency in that tunnel. Like it was asked, will a horse go through a tunnel? What if a rider gets thrown from a horse in that tunnel, what about patient care? We may have to work with **OPRD** to buy special equipment for

that but my main concern is public safety, how do we get through these trails? What kind of equipment will we need? “

Chair Johnson “I don’t think we will define what is on our own, but, I think our recommendation will be that OPRD must enter into a pretty good agreement with **SRRFD** to address these concerns.”

Chief Sakaris “Absolutely.”

Director Husing “But, your recommendation may include a mandate about the timing of reaching such an agreement.”

Chair Johnson “That’s what I wrote down.”

Director Husing “So, perhaps a date certain to the draft recommendation.”

Dennis Bartoldus “**Mr. Husing**, correct me if I am wrong, but, this is a meeting to have the **Planning Commission** come up with certain recommendations. The next part of the process, when this is back before the **Planning Commission**, is when **OPRD** is back here, basically, for the zone change. They also have to include a plan change depending on how you interpret the ordinance. When you do a plan and a zone change, you cannot do it conditionally. In other words, you can’t say, we will give you a zone change and a plan change conditioned on you doing X, Y, and Z.” **Bartoldus** continued, “So, unless these agreements are in place before that zone and plan change takes effect, once it takes effect, you lose your leverage to see that those agreements are implemented. We need these agreements in place or have some other kind of mechanism where they would take effect, so, when the plan and zone change is granted, those agreements are already in effect. I don’t think we want to grant the plan and zone change, and then **OPRD**, says, “We, **OPRD**, are under no legal obligation to give those things to you.” **Bartoldus** continued, “Why would we do that? And, I think we need to keep in mind, they, **OPRD**, they are coming to Lincoln County. So, from my way of thinking, you, the **Planning Commission**, you are the decision makers, then ultimately the **County Commissioners**. You are the ones that would say, this is what we would like, this is what we need, in varying degrees, so **OPRD** says, we agree to these or not, knowing **OPRD** still need to come back to you, **Lincoln County**, for a plan and zone change in the future to make the park a reality.”

Director Husing “I would add or clarify that this is a unique process. **OPRD** doesn’t build big new state parks very often. So once this process – the recommendation part of the process -- has concluded, we can expect **OPRD** to apply the Parks Master Plan (PMP) zone to the agriculture and timber zoned parcels. Once this master plan process is concluded and adopted by their **OPRC**, that master plan will, in effect, slide-into that new zone. (*Husing points to a copy of the Draft Master Plan in front of him*). That plan, once finalized, that plan will act like a PD document (*a Planned Development document*). The master plan will be the operative plan. Dennis, what I am saying reinforces your point. What **OPRD** will submit to you, the **Planning Commission**, at a future hearing, when we are taking up the zone change request, that will serve as the master plan for the PMP zone. So yes, I believe you are correct. During the zone change process there won’t be a bunch of conditions or other negotiations with **OPRD** about the park. The opportunity to influence the outcome of the master plan is now.”

Commissioner Buggenhagen “What I hear you suggesting, is **Fire Chief** needs to be talking to **OPRD**, and get something in place now.”

Barb Wichman read her letter submitted for the record. She owns the property to the south of the state park that has the access-easement described in the parks plan as “the service road.” **Barb Wichman** stated, “I have had the pleasure of living in such a peaceful place for 28 years. I had a good relationship with my neighbor to the north, who farmed and ranched his property for all those years. He used what is now known as the service road to access his property. He also maintained it from time to time. I had no idea, that what is now referred to as a service road, would allow for this complete departure from

this past activity. As you might imagine, this has been really stressful for me. I am just trying to deal with it the best I can. Over the last few years I've been in contact with several parks staff, most recently, **Priessen Philips**, Central Coast District Manager, and **Alison Beals**, **OPRD** ROW agent, and others, and feel we developed a good working relationship. I even met with **Priessen** and **Alison** at my kitchen table. I have felt more or less comfortable with their addressing my concerns regarding trespassing, and general safety issue, and expected to come here tonight to express my support for their past efforts. However, the latest correspondence makes me wonder if **OPRD** will live up to what they agree to do such as fencing on both sides of the service road, where it crosses my property, and east-west property boundary, to alleviate trespassing, controlling use of the service road, posting signs, among an number of things."

Barb Wichman continued, "There is an email from **Ian Mathews**, from **OPRD**, to **Onno Husing**, dated 4/5/18. I see proposed modifications that are new to me. I do not know and I have not met **Ian Mathews**. **Onno Husing** recently did a site visit to my property. The following are my comments to these latest modifications/recommendations. Under the draft master plan, to change the term "service road" to something else partly because the Dept of Justice (**DOJ**) opinion about the easement, as such, the expanded use of the road, providing public access, **OPRD** staff told me they would limit or control public access to address my concerns. **OPRD** has also explored another option that would include widening all or portions of the road within the easement to provide vehicular access to **OPRD** property. This is a total departure from anything **OPRD** staff discussed with me and it is very concerning. This is on my property. Whether there is an easement or not, I don't have my own resources to hire legal counsel for interpretation of easements. This is very concerning. That's because nobody has ever talked with me about widening the quiet single lane to something else or opening it up to general vehicular traffic access. From our perspective the only issue remains is how **OPRD** will provide safe public access from South Beaver Creek Rd through the easement into the park while mitigating impacts to the property owner. Well, I am the property owner. And while there is a **DOJ** opinion about the service road, **OPRD** staff should have, could have, talked to me about their proposed changes. They state, "In the near term, constructing fencing and signage in combination with continued enforcement are reasonable measures to resolve issues related to trespassing." **Wichman** continued, "The extent of fencing and signage they are now proposing is less than I thought they originally agreed to. I am not convinced the measures proposed now will adequately mitigate trespass issues. I live here every day and I deal with trespass issues. Also, it is troubling to me to suggest they may make amendments to the plan such as widening the service road, etc, as they are now proposing at the last minute, without the benefit of any information, proper notice, or review, or, at the very least, talking to me. While they prefer that any future public access improvement be reviewed through development permitting as opposed to getting a master plan amendment, I prefer a master plan amendment process be undertaken. After all, this is on my property. I do not believe having to do a plan amendment would be such a major undertaking. And, it is an appropriate procedure anyway. Is it appropriate that future road construction be allowed to take place on my property without any details, specifications, or information?"

Barb Wichman continued, "Again, I expected my comments tonight to be very short and supportive of **OPRD** and I have previously agreed to. But, I now feel I have been put into an uncomfortable position of having to defend myself. These latest proposals made by **OPRD**, at this late date, April 4th, are different than my understanding. Only because I happened to check on the status of the file at the **Planning Department** last Friday morning I am now hearing about the road construction changes to accessibility along with modifications to the fencing and signage. This is disturbing as this information was not available in the Notice of Public Hearing that was mailed. Would it really be such a burden for **OPRD** to table the public access issue along with the road construction as outlined in the **County** staff report for now? For us to be good neighbors I am only asking for realistic, tangible, measures to be taken to control to avoid traffic and trespassing. To that end, the fencing and the signage originally proposed

should be included. Obviously, I am worried what happens on my property as well as the surrounding area. I think most people would be worried. As I previously said, this is a big change for those of us that live here. But I am doing the best that I can. Now I would like to add, if I may, everyone is talking about walking in on the property. I have been working on that with the state and I am fine, with the public, walking in on property, as long as they stay on that road for that quarter mile and don't trespass on my property. There are two signs at the entrance to the service road that ask people to stay on that service road until they get to the park. But there is no signage saying where the state park begins. So, right now, people don't really know when they are walking on that road whether they are walking on my property. They have no idea that it is not all state property. For me, vehicles are the issue on that small road. I expressed my concern to the state -- I really don't want cars driving on that small one lane road. The road is very small, there are wetlands all over, and I walk that road. I don't want to have traffic on that road. My other concern is, liability issues because the easement is still on my property. What is my liability if somebody gets hurt? If cars are eventually allowed on that road, what if there is an accident? I would like the state to address that issue."

Chair Johnson "OPRD is talking about vehicular traffic for their own staff and busses, or whatever, scheduled to be there for an event."

Barb Wichman "That's acceptable to me. Just for OPRD staff and the occasional bus to take people to activities for the outdoor school to the Learning Center."

Commissioner Estes "What about the liability issues for that?"

Barb Wichman "Well, I don't know. I told them, yeah, you can do it because the DOJ opinion, I don't have legal counsel, all I can do is go by what the DOJ says."

Chair Johnson "You want fencing on both sides of the road?"

Barb Wichman "Well, the road goes through my property, my property lies on both sides of the road. It is not fenced at this time. They talked to me about that and they agreed to do that."

Commissioner Estes "Do you have your property lines staked off?"

Barb Wichman "No, I have an idea where they are. Pretty close. I knew there was an easement. I rented the property for a lot of years before I bought the property."

Commissioner Bobbitt "You don't want a parking lot up there at the end of the road?"

Barb Wichman "No, It's peaceful, its quiet, that's why I live out there."

Director Husing "So, everything in the draft recommendation, what's different, maybe I did not get this from my previous conversation with **Barb Wichman**, is that Barb is Ok with pedestrian access on that road. Having said that, I think we are right back to this dilemma, if you are a pedestrian, how do you get there and where do you park in the first place? Again, here we are, with a wide spot on the side of the road serving as a public parking lot."

Barb Wichman "That parking out there, on the road, well, it is kinda a mess."

Director Husing "Mr. Chairman, when we examined the easement we didn't think that easement, as worded, would work for public access. We let OPRD know our concerns. Traditionally, easements are meant to be conservatively construed. That means, if the easement is specified for a particular purpose then it is for that purpose only. That, after all, makes sense. And that's why we asked OPRD for clarification about their belief that that easement could be used to provide public access to the park."

Husing continued, "OPRD got an AG's opinion, about the status of this easement, because Lincoln County was raising questions. We asked OPRD to share the AG's opinion with us. **Wayne Belmont**, the Lincoln County Counsel, did a review of the AG opinion. We were, frankly, surprised at what we

learned. Recent case law in Oregon suggests that easements can be liberally construed. I have deep misgivings. I think that invites anarchy. **Wayne Belmont** read the case law, referenced in the **AG** opinion, and found himself agreeing with the **AG** opinion. It was good for us, at **Lincoln County**, to learn about that. And that's why **Lincoln County** is not contesting **OPRD's** stance that the easement on **Barb Wichman's** property allows for public access. **Barb Wichman** benefitted because the **County Counsel**, in effect, provided an independent review of the **AG** opinion, for her and everyone else in Lincoln County."

Chair Johnson "And I am seeing in the draft recommendation from staff, that you are saying **OPRD** shall arrange to provide a legal shield for **Barb Wichman**, to protect her from liability problems."

Director Husing "Yes, the only thing that is different here, from what is presently in the staff recommendation, is Barb, seems to be OK with allowing pedestrian access. But, it still begs the question, if the **Planning Commission** agrees pedestrian access should be continued, at least until a plan amendment can be completed at a later date that proposes solutions, what is the safe way to handle pedestrians on that road? I am not sure we, as staff, have received any additional clarity on that important issue this evening."

Chair Johnson thanked **Ms. Wichman** for her testimony.

Larry Silverthorn stated, "I have lived in this community for 40 years, my wife worked for the **Sheriff's Department**, and has several issues, primarily which the State Park is going over his property." **Silverthorn** continued, "I developed 40 acres and jumped through all the hoops legally, through **Mr. Bartoldus** and paid a ton of money. I had to jump through all the hoops before I got anything out of the County. So this is how I was informed, that **OPRD** was crossing my private road, through a Trail Committee, which I tried contacting, after this was brought to my attention. And, by golly, that Committee just kinda evaporated. There were also two other people, who live on my private road, that knew nothing about a proposal to establish a public trail on our private road. Now I met with **Dennis Comfort** and I met with **Preson Philips**. They came to my house and they have been very cordial. But, they have made promises I don't think they could keep. I agree with **Mr. Bartoldus**. Salem (*the state government*) is trying to come over here and trying to sell Lincoln County a bill of goods. My number one thing, to say to you, the **Planning Commission**, is this is a money hole. The first thing I would say to **OPRD**, they say they are going to put in this underpass, has there been an environmental study done. I work at Sea Gulch. **State Lands** came in and shut us down because they said it was a wetland. Believe me, if it is a wetland up on 101 at Sea Gulch it's a wetland down at the state park. And that curve at Ona Beach got improved when **ODOT** built their facility at Ona Beach. **ODOT** was going to be there forever. Here we go, now **OPRD** moves in. We tried to get that curve straightened out more because of the problems. I have been a volunteer fireman for 40 years, I go on those calls. We tell **ODOT** and they ignore us. Hard to see how you build a tunnel there and I was told by **OPRD** that an overpass was ruled out. I would think, by now, you would have had a better plan."

Silverthorn said, "Onno Husing, by the way, has been very helpful. I came to him, I am wondering if you have my testimony, when I learned about the trail, and I testified before the **County Commissioners**. I was irate. That was a year ago and none of the **County Commissioners** had looked at that plan. I don't like the way the state has been doing business. The local guys have been fine. But, I think they are trying to come over here and sell something. They are not dotting their I's and crossing their t's. Recommendation 4? I knew nothing about that before. But, I do know, because I am on the **SRRFD**, on North Beaver Creek Rd and on Bayview Rd, there are roads that have failed. And I don't think they have the funds to fix those roads. Who is going to come up with the money to fix those roads, so we can go up on the hill and look at the ocean from some lookout? And who is that serving? Is that serving the people of Lincoln County? Or is it serving the people who want to go camping? I have nothing against **OPRD** but I think they have more than enough parks in the state."

Silverthorn closed his testimony, “By the way, there were many people in Seal Rock deeply offended that **OPRD** is changing the name of the park to **Brian Booth State Park** without input from the community.”

Chair Johnson asked for anybody else to testify.

Rich Hale “I live in the Seal Rock View neighborhood that we’ve been talking about with the fencing. What we have talked about in previous meetings, that was because, In October 2016, my house was broken into, and the suspects came in via the park property through the ROWs we are talking about vacating. The fence has built, the signs have been put up, but the ROWs have still not been vacated. **Onno Husing** and I have talked about it but the ROWs have not been vacated.”

Chair Johnson asked for more questions.

Commissioner Cutler asked **Director Husing** to explain the process for vacating a ROW.

Director Husing explained, “Under Oregon law, property owners submit petition to vacate a ROW to the **Board of Commissioners** because the **Board of Commissioners** have the authority, if they determine the vacation of a ROW would be in the public interest, to vacate a ROW. That is why a recommendation that commits to a vacation of a ROW should not be made. We should commit to working with the neighbors to develop an application to petition the BOC to vacate the ROWs. That would make a lot of sense.”

Independent Counsel Dennis Bartoldus submitted written testimony for the record, and stated he is appearing on behalf of **Pat Wilson** who owns property farther up the drainage from the State Park. **Bartoldus** talked about the fact that over the years, the flow of water out of Beaver Creek has been artificially constrained and that had caused water levels in Beaver Creek, to rise, artificially. He noted **Mr. Wilson** and other property owners are continuing to lose the use of their property for agriculture because of the constraints at the mouth of Beaver Creek and more recent efforts to restore the marsh at Beaver Creek. (photographs were entered into the record). **Mr. Bartoldus** underscored how human-caused changes in the mouth of Beaver Creek, the fixing of the location of the channel to its present configuration with rip rap, has prevented the channel, at the mouth of the river, from maintaining itself. In addition, in recent years sand has accumulated at Ona Beach at the mouth of Beaver Creek and that’s causing water back up into the lower reaches of the Beaver Creek Estuary. **Dennis Bartoldus** observed an irony, “A key goal of Oregon’s Land Use Plan is to preserve Farm and Forest Land and these human-caused changes to the mouth of the estuary, undertaken by the State of Oregon, are having a negative impact on the viability of agriculture in that valley.”

Chair Johnson asked for any comments from **OPRD**.

David Stipe returned to address the various comments, and elaborated on the study for the highway crossing and re-alignment of Highway 101. He stated **OPRD** will work with **SRRFD** to provide the most feasible access and they are committed to safety, and will be back with full construction documents for approval by **Lincoln County Public Works**. **Mr. Stipe** noted **OPRD** is trying to find solutions and would like to purchase the easement from **Ms. Wichman**. He also noted **OPRD** is working with the **Oregon State Police** to close the Firing Range, and **Stipe** concluded his remarks by stating he wasn’t prepared to speak to the upstream flooding issues this evening because it is a larger basin issue, and these issues are not related to Brian Booth State Park, but **OPRD** wants to be good partners.”

Chair Johnson stated that the purpose of tonight’s meeting is to come up with recommendations, and there are at least 6 recommendations to finalize tonight.

John Grimm signed in and stated he is the owner of lots on Seal Rock View and he has seen the ramifications of **State Parks** wanting to build, and he would like to see the word “requirement” that the ROW be vacated prior to the Park Master Plan.

Mr. Grimm, Mr. Stipe, Director Husing, Counsel Herbage, and the **Planning Commission** discussed issues relating to vacating certain ROWs.

Chair Johnson asked for additional testimony.

Paul Highfill stated he has lived in the area since 1964, and when **Ona Beach State Park** turned into **Brian Booth State Park**, they cut out the second growth and those trees are dying now because water is backing up and drowning them. He anticipates, with the sand build up on the beach, that Ona Beach State Park will disappear within another 50 years without proper drainage. Regarding recommendation 2, they want to take a trail down through **Mr. Silverthorn's** property, and **Mr. Highfill** does not want to see an amendment to make such an off-park trail a possibility at a later time, he wants the prospect of a trail "taken off the books" for good.

Tom Wiley stated he lives up North Beaver Creek, has a farm there, and has had issues with **OPRD** since the Park's purchase. The first issue was recommendation 1 for fencing to control cattle. **OPRD** built a fence in summer 2017 then removed it after complaints for fish and elk. He stated that another issue is the diversion dam from Simpson Creek (which runs under North Beaver Creek Rd). There have been numerous meetings, and water is being pushed through a man-made ditch along a County road. Property owners asked for permanent removal of the culvert and they do not want any more delays. Regarding recommendation 3, he noted kayaks travel up the creek and scare the cattle and people get out of their watercraft and trespass on private property. There is a natural area that has been damned by rock placement (at the mouth of Beaver Creek). So, portions of the marsh have been created by artificial means. A comprehensive hydrological study and history of the changes to the drainage should be included in the Park Master Plan. He commented on the renaming the **park** to Brian Booth from the original name of Ona Beach. **Tom Wiley** said, "That name change is disrespectful to the history and culture of the native population of this area." He inquired on the status of recommendation 6, the nutria annual patrol program, and argued we need specific actions.

Director Husing, the Planning Commission, and Mr. Wiley briefly discussed the geographical location of Mr. Wiley's property along Beaver Creek, trespassing, and the need to post signs for people in kayaks to help them understand the rules. **Director Husing** shared that people have a right to make their way up Beaver Creek using the waterway, which is a navigable waterway, beyond the boundaries of the park. But, people do not have a right to go on dry land because that's private property. That activity is a trespass.

Chair Johnson stated, "The appropriate thing now is to close the hearing, work on recommendations for the **Board of Commissioners**, and his recommendation is to go through the 6 recommendations. My recommendation is we go through the six draft recommendations and how we might recommend them."

Commissioner Bobbitt asked, "May I ask a question first, before we do that?" She continued, "So, by going through these recommendations, are we, in effect, saying we approve of this plan, with all its campsites and everything? Is this getting a ball moving that we will have no control over stopping? Are we, in effect, endorsing this entire master plan?"

Onno Husing said, "Yes."

Chair Johnson said, "Tonight we are supposed to provide recommendations to change the plan."

Director Husing said, "Yes, **Mr. Chairman**, but, only if you and the members of the **Planning Commission** are comfortable doing so. There's no gun to anybody's head tonight, saying you must do it tonight. But, as **OPRD** staff has underscored that there's been a lot of vetting of the plan in the past. And, after our first hearing, I was tasked by the **Planning Commission** to look at the issues that came up at that hearing." **Husing** continued, "The issue of the overall scale of the park, the number of campsites and the

number of people that would lodge each evening at the park, and the impacts on **SRRFD**, those were not issues that came up during the first hearing. And, nobody raised the issue whether there should be an underpass or not. So, what you are seeing in front of you, the draft recommendations, these are, again, matters that arose during the first hearing. Yes, of course, if you look at the draft master plan, there's much more in the draft master plan that was not the subject of conversation during that first hearing and not covered in the draft recommendations."

Commissioner Estes said, "So, is there an opportunity to address those issues, later? "

Director Husing said, "No, again, not really. After this recommendation process is completed, later, in front of the **Planning Commission** you will be asked to adopt the zone change. By then, the master plan will have been finalized by the **OPRC**. At that time, when they come in for the zone change to PMP, that will be a final plan for the park."

Commissioner Bobbitt said, "That's my point. We have not deliberated, at the previous hearing, about the overall plan. We never deliberated this entire plan. And I think, right now, we are just moving forward, without really looking at the overall plan. I am sorry state parks, I love state parks, but, I am sorry that your time-line is such-and-such that this process with us is an inconvenience. But, this is our county, and this is a huge plan, and I live in Seal Rock and I'm concerned."

Commissioner Estes said, "I live right there and I am concerned."

Commissioner Bobbitt said, "So I am not ready to make recommendations on this plan, tonight."

Director Husing said, "I am sensing you are not ready to take action tonight."

Commissioner Bobbitt said, "I am not ready to move forward tonight but I'm just speaking for myself. "

Chair Johnson said, "I may be misunderstanding what tonight's hearing is supposed to be about, to not approve the plan, but, hey, here are some things, some recommendations, are we thinking the recommendations we discussed tonight are good things to put forward towards the plan? Onno?"

Director Husing responded, "Mr. Chairman, with respect to the draft recommendations, the discussions about them that took place tonight, I took some notes, to address those issues. And, as a practical matter, it is now 10:30 pm. We need to gauge where we are at. Yes, **OPRD** needs us to move on and make a recommendation. This process has taken a lot of time. I recognize that we, the staff at Lincoln County, had something to do with that. But, **OPRD** doesn't need a recommendation tonight." **Director Husing** continued, "You, the members of the **Planning Commission**, you are in charge, this is your call to make. At the outset, of this hearing, I said we need to see how this evening went. There was a part of me that hoped, of course, that the issues we identified and that were addressed in the draft recommendations could constitute at least part of a recommendation."

Chair Johnson, "What we heard tonight, mostly, was related to the draft recommendations. Plus, the new recommendation from **Dennis Bartoldus**, about looking into the drainage issues. Those are important. But, it is not anywhere near having the **County** approve the whole master plan."

Commissioner Bobbitt stated, "If we go ahead and approve these draft recommendations we are in fact approving of the scope of the entire plan. We have not reviewed, as a **Planning Commission**, the entire master plan. We have not asked the important question is the draft master plan, the entire master plan, really what we think is in the best interests of the public, economically/scope wise, for our county? If we have not done that then we should not take action tonight. We should review the entire plan before issuing a recommendation." **Commissioner Bobbitt** continued, "Sure it's a feather in the cap to say there's a new state park, we didn't get to name the name and a lot of us were and are offended at the name – to us, it is Ona Beach State Park, and, who is this other person, Brian Booth?"

Commissioner Bobbitt continued, “And, having all the trail markers at Snaggy Point, going across private property, all these things I think should be discussed before we approve this even with these recommendations. I don’t think at 10:30 at night, we are ready to do that. We need to ask, do we really approve of the plan? Or, we can say, no. We never had that discussion.”

Commissioner Estes, “I’ve been asking myself, for quite some time, what’s going on with Brian Booth? But, after tonight, I can see lots of things have been done.”

Director Husing said, “It is late. Important questions have been raised. Moving forward, tonight, is not something, I am guessing, you are comfortable doing. I asked Jerry to join me, at the witness table, to help with process issues. I think you will want us to continue the hearing, Jerry, from a procedural perspective, please share your thoughts.”

Jerry Herbage stated, “I think you need to close the record, at least for now. So the issues is, if you re-convene, would it be for the purposes of you, the **Planning Commission**, to further review the issues” And then come back and deliberate? Or, did you intend there would be additional testimony or evidence?”

Commissioner Buggenhagen stated, “I think we need another meeting to settle out, how we feel about all of this.”

Commissioner Bobbitt “Right.”

Commissioner Buggenhagen continued, “And that would include a comprehensive review of the plan including the recommendations already made by staff.” **Commissioner Buggenhagen** continued, “ I would move we accept the testimony that has been given, take that into consideration for a future meeting to be scheduled to incorporate what we learned tonight, and deliberate what is in the plan, the entire plan, and come up with the final recommendations.”

Director Husing, “Would that motion include future testimony? Or, close the record to additional testimony?”

Commissioner Buggenhagen, “No, I think you need to close the gate.”

Director Husing, “We will get you a date, working with you, the **Planning Commission**. But, we need to get on with this. We need to get **OPRD** a recommendation.”

Chair Johnson, “It is moved and seconded to have another meeting to review our recommendations on the whole plan with the input we’ve receive tonight. “

Chair Johnson asked for a motion to accept all of the testimony, close the record, and set a future meeting to deliberate.

Commissioner Buggenhagen moved to accept all of the testimony, close the record, and set a future meeting to deliberate.

Commissioner Cutler seconded the motion.

Chair Johnson said it was moved and seconded. All voted in favor unanimously. The motion carried.

Chair Johnson adjourned the meeting at 10:41 pm.

Minutes prepared by:

Onno Husing

DIRECTOR, LINCOLN COUNTY PLANNING AND DEVELOPMENT DEPARTMENT

