

# **Exhibit C**

**Supplemental Public Correspondence  
Received as of December 6, 2022**

**BORISCH Roxann B \* ODFW**

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**From:** Vanessa Pence - GO \ Tribal Board Assistant <Vanessa.Pence@cowcreek-nsn.gov> on behalf of Carla Keene - GO \ Tribal Board Chairman <CKeene@cowcreek-nsn.gov>  
**Sent:** Friday, December 2, 2022 10:20 AM  
**To:** COMMISSION ODFW \* ODFW  
**Cc:** MELCHER Curt \* ODFW; BUEHLER Dustin E \* GOV; Anthony Broadman  
**Subject:** Siletz Hunting and Fishing Agreement  
**Attachments:** 4688\_001.pdf

Please find attached the support letter from the Cow Creek Band of Umpqua Tribe of Indians.

Thank you,

**Vanessa Pence** | Executive Assistant to the Tribal Board of Directors  
Cow Creek Band of Umpqua Tribe of Indians  
[vpence@cowcreek-nsn.gov](mailto:vpence@cowcreek-nsn.gov)  
2371 NE Stephens St., Roseburg, OR. 97470  
[www.cowcreek-nsn.gov](http://www.cowcreek-nsn.gov)  
Office: (541) 677-5528 | Cell: (541) 673-7726

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**COW CREEK BAND OF UMPQUA TRIBE OF INDIANS**  
**GOVERNMENT OFFICES**  
**2371 NE STEPHENS STREET, SUITE 100**  
**ROSEBURG, OR 97470-1399**  
**Phone: 541-672-9405**  
**Fax: 541-673-0432**

December 2, 2022

*Sent Via Electronic Mail to [odfw.commission@odfw.oregon.gov](mailto:odfw.commission@odfw.oregon.gov)*

ODFW Commission  
Attn: Mary Wahl, Chair  
Oregon Department of Fish and Wildlife  
4034 Fairview Industrial Drive SE  
Salem, OR 97302

Re: OAR 635-800-0120 and Confederated Tribes of Siletz Indians Hunting and Fishing Agreement

Dear Commission Members:

I write on behalf of the Cow Creek Band of Umpqua Tribe of Indians ("Tribe"). The Tribe supports the proposed agreement for hunting, fishing, and trapping between ODFW and the Confederated Tribes of Siletz Indians ("Siletz Agreement") and associated OAR.

The Siletz and Cow Creek tribes have engaged in fruitful government-to-government consultation on each other's proposed agreements and we look forward to a cooperative and coordinated relationship with Siletz and ODFW in wildlife harvest and natural resources management.

Sincerely,

Chair Carla Keene  
Cow Creek Band of Umpqua Tribe of Indians

Cc:

[curt.melcher@odfw.oregon](mailto:curt.melcher@odfw.oregon)  
[dustin.e.buehler@oregon.gov](mailto:dustin.e.buehler@oregon.gov)

**From:** Brian McLachlan <[bamclachlan@hotmail.com](mailto:bamclachlan@hotmail.com)>  
**Sent:** Thursday, December 1, 2022 9:32 AM  
**To:** PALMERI Davia M \* ODFW <[Davia.M.PALMERI@odfw.oregon.gov](mailto:Davia.M.PALMERI@odfw.oregon.gov)>  
**Subject:** RE: Siletz Tribe and Cow Creek Bank MOAs

Hi Davia – sorry to bother you again so soon. I was thinking last night about the Siletz MOA’s “whereas” clause re adjudication and drafted a suggestion that ODFW and the Siletz Tribe may want to consider. I hope it captures the intent of the clause in a more factually accurate manner.

**Whereas**, the Siletz Tribe’s hunting, fishing, trapping and gathering rights were not resolved through a trial on the merits but instead defined through a settlement agreement and Consent Decree entered as a final judgment of the United States Court for the District of Oregon in 1980.

If desired, the Tribe may want to include an additional sentence to address its view of the settlement and consent decree (e.g., “and the Siletz Tribe now views the settlement agreement and Consent Decree as unfair and the result of undue political pressure;”). I would strongly oppose the State joining in any statement that may potentially prejudice its legal position re the settlement and consent decree.

I would have copied Erin Donald on this and my prior email, but don’t have her email address.

Thanks again for considering my concerns,

Regards,  
Brian

**From:** Brian McLachlan  
**Sent:** Wednesday, November 30, 2022 11:02 PM  
**To:** PALMERI Davia M \* ODFW <[Davia.M.PALMERI@odfw.oregon.gov](mailto:Davia.M.PALMERI@odfw.oregon.gov)>  
**Subject:** RE: Siletz Tribe and Cow Creek Bank MOAs

Hi Davia,

Thanks for taking time today to speak with me about my concerns and questions regarding the proposed MOAs with the Siletz Tribe and Cow Creek Band.

As you requested, I have provided below a brief list of the issues we spoke about. I obviously just tried to list the issues and outline my main concerns to pique your memory. My two comment letters address some but not all of these concerns in more detail. If you need more detail or would like to discuss these further, please don’t hesitate to contact me.

If I have the time, I may draft up some supplemental comments to the Commission concerning these issues.

Regards – Brian McLachlan

1. **State’s right to terminate/possible preemption** should pending legislation be enacted. I requested in my comment letter that WDFW/Commission obtain assurance from OR DOJ. Also, I suggest the MOA include additional clarifying language – something like the following to sec. 15: *“In particular, the Parties intend and acknowledge that this Memorandum of Agreement is not intended to, and does not in any way, replace, amend or otherwise modify the Agreement Among the State of Oregon, the United States of America and the Confederated Tribes of the Siletz Indians of Oregon to Permanently Define Tribal Hunting, Fishing, Trapping, and Gathering Rights of the Siletz Tribe and its Members’ and entered into by the United States on April 22, 1980.”*
2. **Basis for representations in notice of proposed rulemaking** regarding minimal or small impacts to general public’s hunting and fishing opportunities and no expected increase in Tribal harvest; request that these expectations and understandings be confirmed with Tribes and memorialized in MOAs; concern that harvest allocation standards presently in proposed MOAs do not reflect these WDFW representations in notice of proposed rulemaking.
3. One issue I forgot to bring up on our call is the potential **cumulative impacts** on the public’s opportunity to hunt and fish from multiple Tribal MOAs and associated harvest allocations. How will this be addressed?

4. **Concern over standards** being one sentence of **ambiguous and ill-defined terms** (e.g., availability, escapement goals, tribal need); concern re onerous “**conservation necessity**” **standard** which you said was intended have same meaning as term is used in federal law re treaty fishing and hunting rights; concern this may impair and/or burden State’s sovereign management authority over fish and wildlife and that Commission does not have statutory authority to do so; concern that **standards do not include** reference to agency legislative **mandate, including to optimize recreational fishing**.
5. Legal and practical concern re MOAs providing that **method of harvest shall be subject exclusively to tribal decision**. Method of harvest (e.g., non-mark-selective vs. mark-selective) can have significant differential impact on wild fish populations per same harvest amount; harvest method should be included in annual negotiations re hunting and fishing activities along with amount, area, season, etc.; I also have concern re whether it would be consistent with ORS 496.162 for WDFW to agree to Tribe having exclusive decision-making authority re harvest method.
6. Concern re accuracy of language in Siletz agreement indicating Siletz Tribe’s hunting and fishing **rights have not been adjudicated or determined by any court**. If Tribe asserts this, State should include response that is factually accurate referencing Consent Decree.
7. Concern re **language suggesting only certain statutes apply** to Tribes’ hunting and fishing activities.
8. Concern re **barter** being within statutory definition of commercial activity, and statutes prohibiting commercial fishing in some areas.
9. Need clarification re **which administrative rules the MOA and associated rulemaking will supersede** (e.g., seasons and bag limits for general public), and which rules will need to be followed (e.g., Coastal Multi-species management plan).
10. **Concern re a number of the recitals, i.e., “whereas” clauses**, in Cow Creek Band MOA. Suggest adding qualifier “The Cow Creek Band asserts” so that recitals are not attributable to State.
11. **Need clarification and precision in using term “rights.”** In Cow Creek Band MOA, does reference to “rights” refer to Tribe’s asserted rights under federal law (treaties, aboriginal title, inherent sovereignty) or contractual rights created under terms of MOA? In my view, the MOA’s should not be construed as providing for exercise of hunting and fishing rights under federal law (i.e., rights asserted pursuant to treaties, aboriginal title, inherent sovereignty, etc.) where such rights have not been adjudicated to final judgment.
12. We also touched on why dispute resolution exclusion section is in Cow Creek Band MOA but not Siletz Tribe MOA; and similarly why there are differences in two MOAs with regard to termination provisions and “perpetual” clause.

**From:** PALMERI Davia M \* ODFW <[Davia.M.PALMERI@odfw.oregon.gov](mailto:Davia.M.PALMERI@odfw.oregon.gov)>

**Sent:** Wednesday, November 30, 2022 10:43 AM

**To:** Brian McLachlan <[bamclachlan@hotmail.com](mailto:bamclachlan@hotmail.com)>

**Subject:** RE: Siletz Tribe and Cow Creek Bank MOAs

Hi Brian, Yes. I’d be happy to discuss with you today. I’m available 2-4pm today and you can call me at 971-719-1192.  
Davia

NEW EMAIL ADDRESS: [Davia.M.Palmeri@odfw.oregon.gov](mailto:Davia.M.Palmeri@odfw.oregon.gov)

**From:** Brian McLachlan <[bamclachlan@hotmail.com](mailto:bamclachlan@hotmail.com)>

**Sent:** Wednesday, November 30, 2022 8:48 AM

**To:** PALMERI Davia M \* ODFW <[Davia.M.PALMERI@odfw.oregon.gov](mailto:Davia.M.PALMERI@odfw.oregon.gov)>

**Subject:** Siletz Tribe and Cow Creek Bank MOAs

Hi Davia –

Commissioner Labhart suggested I could give you a call to discuss some issues I’m concerned about regarding the proposed Siletz Tribe and Cow Creek Band MOAs. Is there a convenient time today or tomorrow that I could give you a call?

Regards,  
Brian McLachlan

**From:** Mark Labhart <[marklabhart@gmail.com](mailto:marklabhart@gmail.com)>  
**Sent:** Monday, November 28, 2022 11:31 AM  
**To:** Brian McLachlan <[bamclachlan@hotmail.com](mailto:bamclachlan@hotmail.com)>  
**Subject:** Fwd: Letter

Hi Brian

As you will see below, Davia is doing some checking into your thoughts with our AG. As I'm not an expert on some of these issues, we need to wait until we hear back from the AG. You are welcome to call Davia as she is well up to speed on the matters you raise. Her phone number is

971-719-1192

Mark

Sent from my Verizon, Samsung Galaxy smartphone

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**From:** PALMERI Davia M \* ODFW <[Davia.M.PALMERI@odfw.oregon.gov](mailto:Davia.M.PALMERI@odfw.oregon.gov)>  
**Sent:** Monday, November 28, 2022, 11:14 AM  
**To:** LABHART Mark <[marklabhart@gmail.com](mailto:marklabhart@gmail.com)>  
**Subject:** RE: Letter

Hi Mark—

For your reference, the existing Siletz Consent Decree is in [OAR 635-041-0500](#). The federal legislation that Brian is referencing is [S. 3123](#) and [H.R. 6345](#) (the text is identical in both chambers). I will talk with Erin before weighing in on whether Brian's concern is something I think the Commission should be considering.

Davia

NEW EMAIL ADDRESS: [Davia.M.Palmeri@odfw.oregon.gov](mailto:Davia.M.Palmeri@odfw.oregon.gov)

**From:** Mark Labhart <[marklabhart@gmail.com](mailto:marklabhart@gmail.com)>  
**Sent:** Sunday, November 27, 2022 7:29 AM  
**To:** WOLFER Brian H \* ODFW <[Brian.H.WOLFER@odfw.oregon.gov](mailto:Brian.H.WOLFER@odfw.oregon.gov)>; PALMERI Davia M \* ODFW <[Davia.M.PALMERI@odfw.oregon.gov](mailto:Davia.M.PALMERI@odfw.oregon.gov)>  
**Cc:** MELCHER Curt \* ODFW <[Curt.MELCHER@odfw.oregon.gov](mailto:Curt.MELCHER@odfw.oregon.gov)>  
**Subject:** Fwd: Letter

Hi Brian and Davia.

Wondering if you are right person(s) to help me here. Are Brian's points raised already addressed or is he raising issues the Commission needs to consider.

Sent from my Verizon, Samsung Galaxy smartphone  
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**From:** Brian McLachlan <[bamclachlan@hotmail.com](mailto:bamclachlan@hotmail.com)>  
**Sent:** Saturday, November 26, 2022, 7:14 PM  
**To:** [marklabhart@gmail.com](mailto:marklabhart@gmail.com) <[marklabhart@gmail.com](mailto:marklabhart@gmail.com)>  
**Subject:** RE: Letter

Commissioner Labhart – I have submitted comments to the ODFW Commission regarding the proposed MOAs between the State and the Siletz Tribe, and the State and the Cow Creek Band of the Umpqua Tribe regarding cooperate fish and wildlife management and tribal fishing and hunting activities. I am sending my comments to you directly in the hope that you will consider them as you did my prior comments concerning the Coquille MOA. If you have any questions or would like to discuss my concerns, please don't hesitate to contact me. Thanks,

Brian McLachlan