



# AGENDA

**Port of Bandon**  
 Regular Commission Meeting  
 July 28, 2022, 5:00pm  
 Bandon Public Library  
 Bandon, OR and via ZOOM  
[www.portofbandon.com/meetings](http://www.portofbandon.com/meetings) for  
 details

<b>A.</b>	<b>Consent Calendar</b>		
i.	June Minutes	Commissioners	A-C
<b>B.</b>	<b>Presiding Officer and Commissioners Comments</b>		
i.	Coquille Indian Tribe MOA	Rick/Commissioners	1-19
<b>C.</b>	<b>Ordinances and Resolutions</b>		
i.	Resolution 2022-05	Jeff/Commissioners	20-25
	Public Hearing / Adoption		
<b>D.</b>	<b>Public Contracts and Purchasing</b>		
i.	Boat Purchase	Jeff/Commissioners	Verbal
ii.	H.G.E. Contract	Jeff/Commissioners	Verbal
iii.	D.A.S. / P.O.B. High Dock Contract	Jeff/Commissioners	Verbal
iv.	Insurance Agent of Record Change	Jeff/Commissioners	Verbal
<b>E.</b>	<b>Public Hearings</b>		
<b>F.</b>	<b>Port Managers Report</b>		
i.	USACE Channel Survey	Jeff/Commissioners	Verbal/Handout
ii.	Coast Guard Signage	Jeff/Commissioners	Verbal
iii.	Marina/Sport Basin Bathymetric Surveys	Jeff/Commissioners	Verbal/Handout
<b>G.</b>	<b>Port Staff Reports</b>		
i.	Harbormaster	Shawn/Commissioners	Verbal
ii.	Project Manager	Josh/Commissioners	Verbal
<b>J</b>	<b>Public Comment</b>		
<b>K</b>	<b>Adjournment</b>		

NOTES:

Port of Bandon  
Regular Commission Meeting  
June 23, 2022 5:00pm  
Bandon Public Library & via ZOOM  
Bandon, OR

Commissioners Present: Wayne Butler, Reg Pullen, Rick Goche, Rod Taylor and Donny Goddard  
Staff: Jeff Griffin - Port Manager and Josh Adamson - Project Manager

Guests: John Towne, Lori Osborne, Jerry Ganta, Brenda Medeiros - CCD, Margaret Pounder – Bandon Chamber of Commerce, Brad Keith, Eileen Quinn, Nick Schoeppner – State Parks, Roger Straus

Commissioner Pullen opened the meeting at 5:00pm

Commissioner Pullen asked for a motion to approve the consent calendar. **A motion was made by Commissioner Butler. Motion was seconded by Commissioner Goddard. Motion passes unanimously.**

Jeff requested that a purchase for a new work boat be added to the agenda under Public Contracts and Purchasing. The Coquille Indian Tribe is interested in purchasing the current Port work boat, to re-outfit for possible electroshocking of small mouth bass on the river. The boat was acquired from state surplus over a year ago. Staff would like to replace the boat with a different vessel valued at \$14,500. Commission approval is needed for the purchase. **Commissioner Goddard made a motion for Jeff to purchase the new work boat. Commissioner Goche seconded. Motion passes unanimously.**

A grant was awarded from the Judith Ann Mogan Foundation to assist with funding for the OTM kelp mural project.

The U.S. Army Corps of Engineers (USACE) survey boat will be in the river tomorrow to do more soundings. Jeff explained the increased costs for dredging and how ports are charged when the dredge is mobilized.

There was an incident that happened June 18<sup>th</sup> on the Coquille River Bar involving 2 adults and 2 children. The boat was heading out on the north side outside of the nav channel and took on a swell that caused the boat to capsize. Prowler charters was heading in and was able to spot the incident and respond within minutes to assist in the rescue. The incident was captured on the bar camera and Josh is working on being able to make the video public.

Brenda Medeiros from CCD provided an overview and discussion of areas requested to be add to the Coquille Valley Enterprise Zone. CCD is contacting all sponsors of the zone to get approval of the amendment. **Commissioner Goche made a motion to allow and support the zone increase contingent on the Resolution provided from CCD. Commissioner Taylor seconded. Motion passes unanimously.**

The ADA fishing pier is now open and ready for public use. Temporary signage is up and will be replaced soon by permanent signage once designs are approved. Port staff are recommending naming the pier Pullen Pier after long term Commissioner Reg Pullen and the Pullen family. **Commissioner Goche made a motion to name the new ADA fishing pier Pullen Pier. Commissioner Goddard seconded. Commissioner Pullen abstained. Motion passes.** Commissioner Pullen thanked everyone and mentioned Prowler filleter Wes has already caught some trout and perch from the pier. Port staff will work on a grand opening for the pier possibly with Bandon Chamber assistance.

Nick Shoepner and Roger Straus were introduced to discuss the Coquille River Lighthouse. Roger gave a brief history of the lighthouse, it's decommissioning, and Oregon State Parks role in maintaining the property and facility. The USACE owns the property and facility with Oregon State Parks having a lease. The lighthouse needs repair and can be difficult to get funding from the agency that manages it. State Parks is recommending bringing the Port of Bandon in as a partner to assist in securing funding for restoration needs. The current lease between Oregon State Parks and USACE has expired and State Parks is looking for help before getting locked into another term. Studies have been done on cost estimates for repairs. Between donations to the Coquille River Lighthouse Keepers and gift shop revenue from Oregon State parks there is about \$500,000. Jeff has been talking about what the best ownership options are to acquire funding for restoration needs. The restoration is low on the statewide priority list for State Parks. The Port may be in a better position to apply for outside funding. Heating and electrical issues and needs were discussed to help keep the lighthouse climate controlled to last longer. **Commissioner Goche made a motion to authorize Jeff to investigate options for lighthouse ownership/management with Port involvement. Commissioner Butler seconded. Motion passes unanimously.**

Jeff shared resolutions from Port of Brookings Harbor, Port of Port Orford, Port of Newport, a letter from the Oregon Coastal Caucus and draft Resolution 2022-04 A Resolution Making Recommendations to the Bureau of Ocean Energy Management (BOEM) and the Oregon Department of Energy Regarding Offshore Wind Energy from the Port of Bandon. A resolution from the Port needs to be signed and sent no later than the 26<sup>th</sup> of June. Commissioner Goche would like to add into the draft resolution language stating potential impact to sea life and habitats in the electromagnetic field. Commissioner Butler asked to change the language in the draft resolution to mirror what the Port of Newport stated in the second paragraph. **Commissioner Taylor made a motion to accept and approve proposed Resolution 2022-04 with the added language from Commissioner Goche and using the second paragraph from Port of Newports Resolution. Commissioner Goche seconded. Motion passes unanimously.**

#### Staff Report

Shawn is out on vacation to a concert in Eugene.

Kyle is back on light duty after clearance from medical. Commissioner Goche asked to convey appreciation for his return.

Two tanks have been installed for the SeaGrant Urchin Ranch.

The annual Port of Bandon Cardboard Regatta is back this year for the 4<sup>th</sup> of July. The last event was held in 2019 and cancelled during the pandemic. Staff is anticipating a great return as the last event had over 10 entrants in each category. Looking forward to the event.

Farmers Market is going steady. Sherri Merrit, a long-time vendor has recently retired and left the market. Parking hasn't been an issue since downsizing the space. New applications are coming in and tourist traffic is picking up. The market is slow but some vendors who are there say things are going well and picking up each weekend.

Public Comment: Brad had concerns about advertising budgets for the current market. Brad stated there was little to no advertising done in recent years. An inquiry about musicians at the market was also mentioned. Eileen was frustrated at current market operations and expressed she chose to not be a vendor this year. Both Brad and Eileen would like answers from the Commissioners on future of the market. Commissioner Pullen advised Brad and Eileen that Port staff would handle their concerns. Commissioner Goche asked about doing radio advertising. Commissioner Taylor asked about the marketing/advertising budget for the market.

Commissioner Goche asked about holding an executive session and notice time needed for an item he wishes to add to the agenda. Commissioner Goche was advised that sufficient notice was needed and that issue had to fall under certain criteria to be allowed for Executive Session. Commissioner Goche asked that Jeff contact him regarding the issue to see about adding item to next months agenda.

Commissioner Pullen adjourned the meeting at 6:27pm.

Respectfully submitted,

Joshua Adamson

Port of Bandon  
Regular Commission Meeting  
March 24, 2022, 5:00pm  
Coquille City Council Chambers  
Coquille, OR

Commissioners Present: Reg Pullen, Donny Goddard, and Wayne Butler

Commissioners Absent: Rod Taylor, Rick Goche

Staff: Jeff Griffin - Port Manager, Josh Adamson - Project Manager, Shawn Winchell – Harbormaster, Kathy Reed – Finance Director

Guests: Bob Shammot, Lori Osborne, Jerry Ganta, Eileen Quinn, Brenda Meade, and 1 unidentified guest.

Commissioner Pullen opened the meeting at 5:00pm.

**Commissioner Butler made a motion to approve the Consent Calendar. Motion seconded by Commissioner Goddard. Motion passes unanimously.**

Commissioners moved Chinook Salmon Discussion to first topic. Coquille Indian Tribe Chairman Brenda Meade stated there has been a 90% decrease in salmon since 2010. In 2019, 275 salmon returned as opposed to 3,000 in 2010. Coquille Tribe declared an emergency in August 2021 to deal with the matter. Working 500+ hours 5,000 small mouth bass were removed from the river. Ended up with 24 pairs of salmon and have 83,000 fry which is short of the 3,000 salmon goal, but happy with progress. Coquille Indian Tribe closed on purchasing 120+ acres on Lampa Creek for fish acclimation. Working with Coquille Watershed to improve fish passage. Will continue to work on river with electro fishing boats in 2022. The Port of Bandon (POB) has electro boat, will evaluate if it is operational for use. POB appreciates the work the tribe is doing. POB sent letter of support for tribe's earmark request.

**Commissioner Goddard made a motion in support of writing two letters to congressional delegation. Commissioner Butler seconded. Motion passes unanimously.**

Additional letter drafted by staff was discussed regarding smolt release strategy on the Coquille.

**Commissioner Butler made a motion to approve letter to send to Oregon Department of Fish and Wildlife Director Curt Melcher to request ODFW change Multi Year plan to release smolt on Coquille River. Commissioner Goddard seconded. Motion passes unanimously.**



# PORT OF BANDON

390 FIRST ST SW ♦ BANDON, OREGON 97411 ♦ PHONE (541) 347-3206

3/24/2022

The Honorable Jeff Merkley  
United States Senate  
531 Hart Senate Office Bldg.  
Washington, D.C. 20510

Dear Senator Merkley,

The Port of Bandon enthusiastically endorses the Coquille Indian Tribe's urgent efforts to save fall Chinook salmon in the Coquille River. We urge your support for specific, congressionally directed spending as part of the FY 2023 appropriation to support the work necessary to rescue and restore this ancient and cherished resource.

Chinook salmon have flourished for thousands of years as part of a vibrant, stable Coquille River subbasin. Indigenous people used and protected this resource for countless generations. Salmon are a precious element of tribal heritage and a priceless asset for our modern-day communities.

In the past few years, however, the fall run has fallen victim to a multipronged disaster. The number of wild fall Chinook returning to spawn decreased from 30,000 in 2010 to just 300 in 2020. Extinction is a very real threat.

Several factors are causing this emergency, including:

- Rising water temperatures, due in part to global warming, have disrupted spawning and smolt development.
- Warmer water has allowed invasive smallmouth and striped bass to thrive. These voracious intruders have devastated juvenile salmon.
- Smolt releases at hatcheries have been diminished by insufficient brood stock and aging facilities.

Several issues must be addressed:

- **Development of an updated Coquille River subbasin plan** – The last subbasin plan was completed in 2007. A full update to address new watershed conditions is a priority and a necessity.
- **Invasive species removal and analysis** – Removal and analysis of invasive bass species allows greater survival of fall chinook smolt and creates data to determine overall watershed impacts of the invasive species.
- **Brood stock collection, acclimation and spawning to conserve the species** – These near-term steps are critical to ensure the survival of the Coquille River fall chinook.

- **Hatchery facilities improvement** – Because of diminished breeding stock and degraded hatchery facilities, recent smolt releases have been grossly inadequate. Without improvements to this critical infrastructure, we cannot mitigate these multiple threats,
- **Water quality and temperature** – Well-documented increases in temperature and sediment have impeded spawning and smolt development. Habitat restoration to restore habitat and improve water temperature and quality is necessary for long-term watershed quality.

The Oregon Department of Fish and Wildlife has worked to address this crisis but restoring our river's fall Chinook will take a combined effort from many agencies. We believe that the Coquille Tribe's resources, experience and motivation can swing the balance in the salmon's favor.

We urge you to endorse the earmark, as it offers the best hope to forestall extinction of these precious, magnificent fish.

Sincerely,

Reg Pullen, Commission President

Port of Bandon

**MEMORANDUM OF AGREEMENT TO DEFINE EXERCISE OF  
HUNTING, FISHING, TRAPPING AND GATHERING BY THE  
COQUILLE INDIAN TRIBE AND ITS MEMBERS AND  
FOR COOPERATIVE MANAGEMENT OF NATURAL RESOURCES**

**Between**

**The Coquille Indian Tribe**

**And**

**The State of Oregon, through the Oregon Department of Fish and Wildlife**

**RECITALS**

Whereas, the State of Oregon and the Coquille Indian Tribe are sovereign entities that desire to continue and advance their Government-to-Government relationship;

Whereas, the wildlife resources of the state of Oregon are foundational to the culture and society of Oregon and Oregonians;

Whereas, the Oregon Department of Fish and Wildlife (ODFW), pursuant to ORS 496.012 and ORS 496.146, has the legal obligation and authority to manage wildlife for the benefit of its present and future citizens;

Whereas, the mission of the ODFW is to protect and enhance Oregon's fish and wildlife and their habitats for use and enjoyment by present and future generations;

Whereas the Constitution of the Coquille Indian Tribe dedicates the Tribe to the preservation of Coquille Indian Culture and Tribal Identity, to the promotion of social and economic welfare of Coquille Indians, and to the enhancement of our common resources;

Whereas the Constitution of the Coquille Indian Tribe guarantees to tribal members the right to exercise tribal fishing, hunting, and gathering rights to the fullest extent possible under the law;

Whereas, the tribes and bands comprising the Coquille Indian Tribe have resided in southern Oregon since time immemorial, and its aboriginal territory and area of modern interest is an extensive range of southern Oregon;



Whereas, the Coquille Indians have used the fish, wildlife, and plant resources throughout the full extent of their traditional territory since time immemorial, and those resources have been essential to and have provided the foundation for the Coquille Indian Tribe's sustenance, commercial livelihood, culture, and spiritual life;

Whereas, the Coquille Indian Tribe has traditionally and historically engaged in various forms of commerce with tribal and non-tribal people with fish and wildlife being an important subject of exchange;

Whereas, when Congress created the Oregon Territory in 1848 it provided that "nothing in this Act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty";

Whereas, the tribes and bands comprising the Coquille Indian Tribe executed a treaty with the United States in 1851 that ceded Coquille lands, guaranteed the United States' protection of the Coquille Indians, and reserved to the Indians the right to sustain themselves by fishing, hunting, and gathering throughout their territory as they always had;

Whereas, the tribes and bands comprising the Coquille Indian Tribe executed a treaty with the United States in 1855 that ceded additional Coquille lands and provided for a separate Indian reservation apart from the violence of settlers and miners, with federal negotiators again promising the Coquille Indians that they would be free to fish, hunt, and gather;

Whereas, President Pierce's Executive Order on November 9, 1855, established the Oregon Coast Reservation, and the United States thereafter sought to relocate and to forcibly remove the Coquille Indians to the reservation;

Whereas, many Coquille Indians resisted these injustices, and chose not to relocate, and avoided removal or subsequently returned from the reservation to their aboriginal homeland, where they continued to sustain themselves through fishing, hunting, and gathering, and to exercise the sovereign right of self-government as a cohesive Tribe;

Whereas, the Coquille Indian Tribe has refused to assimilate, to accept governmental efforts to terminate and erase its history, culture, and identity as a Tribe, or to surrender or compromise its right to fish, hunt, and gather through any agreement or proceeding;

Whereas, Congress confirmed the Coquille Indian Tribe's status as federally recognized tribe and the United States' trust responsibility in the Coquille Indian Tribe Restoration Act (Public Law 101-42), which the Coquille Indian Tribe asserts preserves the Tribe's right by providing that "Nothing in this Act shall expand, reduce, or affect in any manner any hunting, fishing, trapping, gathering, or water right of the Tribe and its Members";

Whereas, the Coquille Indian Tribe asserts it has an inherent sovereign interest in the harvest and regulation of harvest of natural resources within territory ceded by treaties it executed, or based upon aboriginal title, and also within traditional harvest areas used by the Tribes beyond said ceded areas. In addition, the Tribe asserts an interest in fish and wildlife management and under its treaties, statutes, Executive Orders, aboriginal rights, and other federal authority;

Whereas, ODFW and the Coquille Indian Tribe have a shared interest in how the lands and waters of Oregon are managed to support robust fish and wildlife populations;

Whereas, abundant and accessible habitat is the foundation for sustainable fish and wildlife populations;

Whereas, challenges for maintaining robust and sustainable native fish and wildlife populations are increasingly complex and interrelated. These challenges primarily influence fish and wildlife populations through the quality, quantity, and/or accessibility of available habitat; and

Whereas, fish and wildlife habitat will be increasingly impacted by changing land and water use, climate, water quality and quantity, and other anthropogenic issues as Oregon's human population and development needs grow.

NOW THEREFORE, the Parties agree that:

## AGREEMENT

### 1. Authority

This Agreement for hunting, fishing, trapping and gathering to be exercised by the Coquille Indian Tribe (the Tribe), a federally recognized Indian tribe, and its members, and for cooperative management of natural resources between the Tribe and the State of Oregon, is entered into between the Tribe and the State of Oregon by and through the Oregon Department of Fish and Wildlife (ODFW).

- a. ODFW has authority to enter into this Agreement pursuant to ORS 190.110 and ORS 496.146(11).
- b. The Coquille Tribe has authority to enter into this Agreement pursuant to the Constitution of the Coquille Indian Tribe, CITC Chapter 190 (Tribal Government Relations Ordinance) and Coquille Indian Tribal Council Resolution CY\_\_\_\_\_.

### 2. Overview of Agreement

The intent of this Agreement between ODFW and the Tribe (which may be referred to in this agreement individually as a “Party” and collectively as the “Parties”) is to describe how the Tribe and its members will hunt, fish, trap, and gather species over which ODFW has management authority within defined geographic areas.

This Agreement between the Parties sets out the framework for cooperative management of fish and wildlife populations between the Parties within the geographic scope of this agreement. It also establishes a procedure for harvest of fish and wildlife within specified geographic area(s) by the Tribe’s members, established in a process agreed to with ODFW and based upon scientifically established and projected numbers for each resource.

This Agreement does not define the specific extent of such rights possessed by the Coquille Indian Tribe, nor the specific amount or number of fish and wildlife resources that may be harvested by the Tribe’s members at any particular time. Instead, this Agreement provides agreed-upon standards for

the Tribe to exercise such harvest rights and to determine tribal harvest levels in cooperation with ODFW.

This Agreement also sets out a framework for coordination of enhancement and management of the habitat, watershed, ecosystem and other resources that influence fish and wildlife populations over time.

### 3. **Tribal Harvest of Natural Resources**

- a. **Wildlife Covered by Agreement.** The Coquille Indian Tribe's hunting, fishing, trapping and gathering exercised under this Agreement covers all animal species managed and regulated by ODFW. "Hunting" and "Trapping" covers all mammalian and avian species managed by ODFW. "Fishing" includes all finfish, lamprey, shellfish, crustaceans, and other aquatic animals managed by ODFW. The Parties understand that harvest of animals, plants and other resources not managed by ODFW may be harvested or gathered for ceremonial or subsistence use by the Tribe pursuant to its own ordinances, regulations, and policies and under the authority of any relevant regulatory entity.
- b. **Developing Annual or Seasonal Harvest Areas and Limits.** The limits and areas of the Tribe's ceremonial and subsistence harvest will be set annually or seasonally by mutual agreement of the Parties based on the best available scientific data of estimated availability, escapement goals, tribal needs, and conservation necessity. The Tribe will initiate annual or seasonal harvest agreement negotiations by providing ODFW with a written proposal for species, areas, and numbers it desires to harvest for ceremonial and subsistence purposes. The Parties will voluntarily and fully share all biological or technical data, analyses, and information of any nature each possesses relevant to evaluate the Tribe's annual or seasonal harvest proposal. The Parties shall meet as often as necessary to discuss and negotiate such annual or seasonal tribal harvest numbers.

Any disagreement regarding tribal ceremonial or subsistence requests will be resolved pursuant to the dispute resolution provisions of this Agreement. Upon reaching agreement on the limits and areas of the Tribe's ceremonial and subsistence harvest pursuant to this section, ODFW will issue the Tribe

an annual implementing permit consistent with this Agreement, which is incorporated into the tribally-issued licenses and tags that authorize tribal harvest of fish and wildlife.

- c. **Tribal Regulation of Agreed Harvests.** After mutual agreement on harvest numbers and Wildlife Management Units of harvest, the method and time of such ceremonial or subsistence harvest shall be subject to the exclusive decision and regulation of the Tribe, subject to any documented conservation necessity concerns. Any such ceremonial and subsistence harvest shall be authorized by tribal permit or license. Method of harvest shall be subject exclusively to tribal decision.
- d. **Tribal Regulation of Harvest Consistent with Certain Oregon Revised Statutes.** The Tribe agrees to adopt harvest regulations consistent with the Oregon Revised Statutes identified in Attachment A.
- e. **Ceremonial and Subsistence Harvest Only**  
This Agreement is limited to ceremonial and subsistence harvest of fish and wildlife by enrolled members of the Coquille Indian Tribe within the geographic area included under this Agreement. Commercial harvest by the Tribe or tribal members is not permitted or authorized under this Agreement.

Enrolled tribal members may exchange (gift, trade, or barter) wildlife or wildlife parts lawfully harvested for ceremonial or subsistence purposes with enrolled members of the Coquille Indian Tribe or other federally recognized Indian Tribes. All other commercial activity must be consistent with Oregon Revised Statute and Oregon Administrative Rule.

- f. **Potential Future Commercial Harvest.** The Parties agree to limit this Agreement to ceremonial and subsistence harvest. If the Coquille Indian Tribe presents ODFW with a proposal for harvesting wildlife resources primarily for commercial use, ODFW will consider the proposal for consistency with applicable state and federal law, the ability of the fish or wildlife resource to sustain the proposed commercial harvest consistent with its biological requirements and conservation necessity, and the factors of the Wildlife Policy in ORS 496.012. This Agreement may be amended in the future to incorporate such a proposal if it is accepted by ODFW.

- g. **Tribal Licensing and Tagging.** Licensing and tagging for all harvest activities authorized and permitted under this Agreement shall be subject to tribal regulation and management. In order to aid the Parties' mutual goal of avoiding enforcement confusion, tribal members hunting pursuant to this Agreement will carry tribal identification and tribally-authorized hunting tags showing that the Tribe has authorized hunting of that species and will present the same to law enforcement officers, peace officers, and ODFW personnel upon request.

#### 4. **Cooperative Management of Natural Resources between ODFW and Coquille Indian Tribe**

- a. **Definition of Cooperative Management of Natural Resources.**

Cooperative Management of Natural Resources is defined as a collaborative effort established through a voluntary agreement in which two or more sovereigns mutually negotiate, define, and allocate amongst themselves management functions and responsibilities for a given territory, area, or set of natural resources. This cooperative management authority may be non-exclusive between the Parties and relative management responsibilities shall take into account the resources that will be committed by each Party.

The Parties will coordinate the use of their respective authorities, expertise, and influence as regulatory or voluntary opportunities are presented to protect, enhance, and restore fish and wildlife habitat in the geographic scope of this Agreement.

- b. **Annual State and Tribal Cooperative Management Meetings.**

ODFW and Tribal natural resource managers shall meet on an annual basis to discuss management activities within the geographic area established under this Agreement for the upcoming calendar year or years.

“Management activities” includes harvest management as well as watershed and habitat protection, restoration, enhancement actions, non-lethal and lethal removal of species preying upon species of management concern, and other management activities that the Parties will seek across the geographic area.

Nothing in this Agreement shall alter or modify ODFW's responsibility and authority to manage the State's resources pursuant to Oregon law. The sole effect of this Section 4 is that ODFW agrees to coordinate with the Tribe and accept cooperative tribal management of defined activities and resources within the defined area that will enhance and add to ODFW's management activities involving fish and wildlife resources.

The Parties agree to coordinate their management activities within the defined area to achieve the best results for fish and wildlife resources in that area.

If the annual cooperative management meeting is not held, for any reason, the rights, and obligations of the Parties under this Agreement are unaffected.

**c. Coordination of Funding.**

The Parties will coordinate applying for, seeking, and obtaining third party funding through grants, appropriations, or other means to enhance financial resources available to carry out resource management activities, including but not limited to applying for funding as an intergovernmental partnership. This provision does not prohibit each Party from also applying for such funding on its own.

**d. Mutual Commitment to Affirmative Support and Implementation.**

The Parties intend to implement this Agreement in a cooperative and positive manner. The Parties intend to assist each other affirmatively and proactively in the implementation of this Agreement and to exchange all necessary and relevant information and documentation need to fully carry out and implement this Agreement at any and all times that this Agreement remains in force. The Parties will annually share data and information related to the harvest of natural resources under this agreement, as well as data and information regarding management, population health, and habitat conditions.

## 5. Geographic Scope of Agreement

### a. General Principles.

This Agreement is limited to the geographic area described in 5(b), including but not limited to discrete watersheds, habitats or ecosystems, or ODFW Wildlife Management Units within the boundaries of Oregon where the Coquille Indian Tribe has a modern, historic or ancestral interest.

### b. Geographic Area.

The geographic area covered by this Agreement shall be the lands and waters in ODFW Wildlife Management Units 15 (Willamette, that portion within Lane County), 18 (Alesia, that portion within Lane County), 19 (McKenzie, that portion within Lane County), 20, (Siuslaw, that portion in Lane and Douglas Counties), 21 (Indigo), 22, (Dixon), 23, (Melrose), 24 (Tioga), 25 (Sixes), 26 (Powers, excluding that portion in Josephine County), 27 (Chetco, excluding that portion in Josephine County), 28 (Applegate, excluding that portion in Josephine County), 29, (Evans Creek, excluding that portion in Josephine County), and 30 (Rogue, that portion within Jackson County).

This geographic area roughly corresponds with the existing Coquille Indian Tribe Five County area, wherein the United States Congress recognized a need for the Tribe to establish a reservation and provide for the holistic needs of its members.

The geographic area is depicted on the map attached to this Agreement as Attachment B. The geographic area includes, where applicable, the adjacent territorial sea claimed by Oregon.

### c. Private Lands.

The Tribe agrees that harvest activities on privately owned lands within the geographic scope described in 5(b) above is permitted only with permission of the owner of those private lands.

### d. Publicly Owned and Managed Lands or Waters

The Parties understand that there are lands and waters within the geographic scope of 5(b) that are owned or managed by ODFW, or by other state or



federal agencies or local governments, and that are closed to harvest or subject to other regulatory constraints on harvest related activities. The Coquille Indian Tribe agrees that it will adopt tribal regulations consistent with these harvest closures and other regulatory constraints on harvest related activities, unless the land owning or managing entity specifically agrees to the inconsistency.

The ODFW owned or managed lands and waters that are closed to harvest or subject to other regulatory constraints on harvest related activities, and references to statutory or administrative regulations for each, are identified in Attachment C. The Parties agree that the Tribe may request access and opportunity for their members, or changes to other aspects of the regulations, for hunting, fishing, or trapping activities on any of these lands and waters that deviate from currently applicable regulation through the Tribe's annual harvest proposal. ODFW commits to consider such proposals with the goal of providing the requested access and opportunity while preserving the conservation, management and safety objectives of the regulations applicable to the area(s).

## **6. Dispute Resolution**

### **a. Dispute Resolution Principles.**

The Parties enter into this Agreement to enhance government-to-government relations, to increase and coordinate resources for the benefit of all citizens of the State of Oregon and Coquille Indian Tribal members, and to avoid litigation about the nature and extent of the Tribe's treaty rights or other inherent or sovereign legal rights to hunt, fish, trap or gather specified natural resources within the geographic areas covered under this Agreement. Any disputes that arise under this Agreement regarding: (i) cooperative management, (ii) the Tribe's exercise of agreed-to hunting, fishing, trapping or gathering rights within any specific geographic area, (iii) the agreed-to extent of the Tribe's subsistence or ceremonial harvest in general or in any particular year or area, shall be resolved pursuant to this section.

**b. Mediation.**

Where possible, disputes under this Agreement shall be resolved pursuant to mediation, with the mediator or mediators selected jointly by the Parties. If possible, the Parties will agree to a mediator or mediation firm in advance, so any mediation under this Agreement can be initiated in timely fashion. Any such agreement can be revisited by the Parties at any appropriate time, and a replacement mediator appointed. Any such mediation shall be governed by mediation standards followed by or acceptable to the State of Oregon. Any such mediation shall seek to reach conclusion within 90 days.

**c. Governing Law.**

The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

**d. Designation of Forum and Consent to Jurisdiction.**

Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. Notwithstanding the foregoing, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity. This section is not consent by the State of Oregon to be sued in federal court. This Section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

**e. Limited Waiver of Sovereign Immunity.**

The Parties agree to a limited waiver of sovereign immunity only for purposes of this Agreement, and only for the benefit of the other Party. This limited waiver of sovereign immunity confers no rights or benefits on any third party. This waiver is limited to nonmonetary declaratory and

nonmonetary injunctive relief and does not authorize any award for punitive or indirect or any other form of damages.

- i. State Waiver of Sovereign Immunity. The Oregon legislature has waived the State's sovereign immunity to suit in State court as provided in ORS 30.320. The Parties agree that this Agreement is a contract within the scope of ORS 30.320.
- ii. Limited Tribal Waiver of Sovereign Immunity. THIS WAIVER OF THE SOVEREIGN IMMUNITY OF THE TRIBE FROM SUIT OR ACTION IS ADOPTED PURSUANT TO THE COQUILLE INDIAN TRIBAL CODE 190.170 (WAIVER OF SOVEREIGN IMMUNITY) AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. The Tribe hereby waives its immunity to suit in State court for the limited purpose of enforcing this Agreement according to the terms of Section 6 of this Agreement. A copy of the resolution approving the waiver of sovereign immunity in this Agreement by the Coquille Indian Tribe Tribal Council shall be provided to ODFW within 30 days of execution of this Agreement by the Tribe.

f. **Exclusion.**

Nothing in this Agreement shall be construed to diminish, waive, limit or otherwise affect ancestral, aboriginal, treaty, statutory, equitable or other rights of the Tribe. Nothing in this Agreement shall prohibit the Coquille Indian Tribe from litigating or determining its legal rights under any treaty, Executive Order, federal statute or any other source of legal authority in any appropriate independent legal action, in an appropriate forum, at any time. If such litigation or determination takes place, the final results of any such litigation or determination shall be incorporated into this Agreement.

7. **Notices**

Notices shall be sent to the following contact offices and persons under this Agreement:

**For the State:**  
Curt Melcher  
Director, Oregon Department  
of Fish and Wildlife  
4034 Fairview Industrial Dr.  
SE  
Salem, OR 97302

**For the Tribe:**  
Brenda Meade  
Chairman, The Coquille Indian  
Tribe  
3050 Tremont St.  
North Bend, OR 97459

**8. Miscellaneous**

The United States of America is not a party to this Agreement, and its interests or rights are not involved or affected by this Agreement.

**9. Tribal Member Harvest Rights Under State Law Not Affected**

Nothing herein shall waive or otherwise limit the rights of any tribal member to engage in wildlife harvest activities pursuant to state or other applicable law.

**10. Prosecution Referral Agreement**

The Parties understand that tribal members engaged in harvest related activities under this Agreement may be cited by either state or Tribal enforcement authorities for alleged violations of state or tribal law. The goal of the Parties is that members of the Tribe be subject primarily to Tribal prosecution authority. Therefore, ODFW commits to working with the Tribe to seek to secure: (1) referral agreements with the District Attorneys in the counties within the geographic scope of the Agreement whereby alleged violations in their jurisdiction are referred to the Tribe for review and potential prosecution, and: (2) to work with state and tribal enforcement authorities, including the Oregon State Police, to attempt to establish an enforcement coordination mechanism whereby tribal members allegedly violating state or tribal wildlife laws of the state or Coquille Indian Tribe are summoned initially to Coquille Tribal Court.

**11. Equity In Cooperative Management Agreements**

The Parties understand that ODFW may enter into cooperative management agreements with other federally recognized tribes that address issues or matters similar to those addressed herein. In the event that any other such ODFW/Tribal cooperative management agreement includes terms that the

Coquille Indian Tribe believes are more favorable than those initially agreed to herein, the Parties agree that this Agreement may be renegotiated at the request of the Coquille Indian Tribe to include any such terms.

**12. Term**

The Parties intention upon entering this Agreement is that it is perpetual. So long as this Agreement remains effective, the Parties agree to review and confirm its terms on every fifth anniversary after its execution.

**13. Effective Date**

This Agreement shall become effective when both the Oregon Fish and Wildlife Commission and the Coquille Indian Tribe have adopted the necessary implementing rules and resolutions, and all Parties have executed the Agreement, and shall remain so as long as both the implementing rules and resolutions remain effective. At least 90 days prior to any party repealing their respective implementing rules or resolutions, that party shall serve written notice to the other party's contact listed in paragraph 7 above.

**14. Amendments/Termination.**

This Agreement can be amended or terminated in writing by mutual consent of the Parties.

**15. Available Funding and Continued Authority**

ODFW's obligation to perform its duties under this Agreement is conditioned upon the continuation of ODFW's authority to enter and maintain this Agreement, and upon ODFW receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODFW, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any law limiting the activities, liabilities, or monetary obligations of ODFW. The scope permissible of cooperative management activities under this Agreement shall conform to any expansion of ODFW authority.

**Signatures:**

**Coquille Tribe:**

**Oregon Department of Fish and Wildlife:**

## **Attachment A - Statutory Hunting and Trapping Restrictions**

**498.056 Aiming rifle from moving motor vehicle prohibited.** No person who is the occupant of a motor vehicle that is moving on a road open to the public shall aim a rifle or other firearm from the motor vehicle at a time when the hunting of wildlife is lawful.

**498.102 Use of dogs to hunt or track game mammals or birds.** (1) Any dog that is not wearing a collar with a license number thereon in compliance with ORS 609.100 that is found unlawfully hunting, running or tracking any game mammal or game bird may be killed at such time by any person authorized to enforce the wildlife laws.

(2) If a dog that is found unlawfully hunting, running or tracking any game mammal or game bird is wearing a collar with a license number thereon in compliance with ORS 609.100, the owner of the dog shall be notified by any person authorized to enforce the wildlife laws. If the owner or reputed owner of the dog disclaims ownership of the dog, the dog may be killed at such time by a person authorized to enforce the wildlife laws.

(3) If the owner of a dog has been notified that the dog has been found unlawfully hunting, running or tracking game mammals or game birds and thereafter fails to prevent the dog from unlawfully hunting, running or tracking game mammals or game birds, such dog may be killed by any person authorized to enforce the wildlife laws.

(4) No person shall permit any dog the person owns to unlawfully hunt, run or track any game mammal or game bird.

**498.126 Hunting or assisting others to hunt or locate game animals or birds by aircraft prohibited; exemption; rules.** (1) A person may not:

(a) Hunt game mammals or game birds from or with the aid of an aircraft.

(b) Transmit from an aircraft to a person not in the aircraft information regarding the location of any game mammals or game birds.

(c) Otherwise use an aircraft to assist another person in hunting or locating game mammals or game birds for the purpose of hunting.

(2) A person may not hunt any game mammal within eight hours after having been transported by aircraft to or from any place other than a recognized airport that the Oregon Department of Aviation has licensed as a public use airport, registered as a personal use airport or specifically exempted from licensing or registration.

(3) Every pilot shall maintain a log book that shows the names and addresses of record of the persons transported, point of departure, point of destination, time and date of each flight that the pilot makes in an aircraft within this state to transport a person to or from any place to hunt. The log book is subject to inspection by any person authorized to enforce the wildlife laws.

(4)(a) Notwithstanding subsections (1) to (3) of this section, and except as provided in subsection (5) of this section, the State Department of Fish and Wildlife, or its agents, may conduct wildlife management activities necessary for scientific research or, in emergency situations, to protect human safety, wildlife species or property by:

(A) Hunting game mammals or game birds from or with the aid of an aircraft; or

(B) Transmitting from an aircraft information regarding the location of any game mammal or game bird.

(b) The State Fish and Wildlife Commission shall define by rule the terms “emergency situations” and “necessary” for purposes of implementation of this section.



# PORT OF BANDON

390 FIRST ST SW ♦ BANDON, OREGON 97411 ♦ PHONE (541) 347-3206

## RESOLUTION NO. 2022-05

### **A RESOLUTION ADOPTING FINDINGS OF FACT, DECLARING AN EXEMPTION FROM COMPETITIVE BIDDING, AND AUTHORIZING THE DESIGN-BUILD FORM OF CONTRACTING FOR THE MARINA REDEVELOPMENT PROJECT**

**WHEREAS**, the Port of Bandon (“Port”), an Oregon port district formed and authorized pursuant to Oregon Revised Statutes (“ORS”) chapter 777, is subject to Oregon’s public contracting laws, including ORS chapter 279C relating to construction of public improvements; and

**WHEREAS**, ORS 279C.335 permits the Port’s Board of Commissioners, acting as the Local Public Contract Review Board, to exempt specific projects from the standard competitive bidding requirements of ORS 279C after specifically adopting written findings of fact justifying an exemption from traditional competitive bidding and use of an alternative contracting method; holding a public hearing on the adoption of the findings; and declaring an exemption from competitive bidding; and

**WHEREAS**, when approving the exemption in ORS 279C.335, the Local Contract Review Board “shall, where appropriate, direct the use of alternative contracting and purchasing practices that take account of market realities and modern or innovative contracting and purchasing methods, which are also consistent with the public policy of encouraging competition”; and

**WHEREAS**, the Port has determined that, due to the size and complexity of the proposed Marina Redevelopment Project (“the Project”) and the need to protect the public safety from failing infrastructure, the Design-Build form of contracting is preferred to traditional design-bid-build construction; and

**WHEREAS**, the Port has prepared written Findings of Fact (“Findings”) to support the exemption from competitive bidding and the use of the Design-Build form of contracting, which are attached hereto as Exhibit A and incorporated herein by this reference; and

**WHEREAS**, a public hearing on the Findings was duly noticed and held on July 28, 2022.



**NOW, THEREFORE**, the Port's Board of Commissioners, acting as the Local Contract Review Board, hereby resolves as follows:

1. The written Findings attached hereto as Exhibit A are hereby adopted.
2. An exemption from traditional construction bidding processes is hereby declared.
3. Use of the Design-Build alternative to traditional public contracting is hereby authorized for completion of the Project.
4. Staff are directed to prepare materials for and to conduct a competitive process for a Design-Build contract for the Project.

**APPROVED AND ADOPTED** on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Board President

**ATTEST:**

\_\_\_\_\_  
Recording Secretary

## EXHIBIT A

### PORT OF BANDON

#### FINDINGS IN SUPPORT OF DECLARING AN EXEMPTION FROM COMPETITIVE BIDDING AND DIRECTING THE USE OF THE DESIGN- BUILD ALTERNATIVE METHOD OF CONTRACTING FOR THE MARINA REDEVELOPMENT PROJECT

**Introduction.** After a thorough evaluation of the work required to complete the marina redevelopment project (“the Project”) for the Port of Bandon (“Port”), the Port’s management team has determined that the Design-Build approach is the preferred method to construct the Project.

ORS 279C.335 permits the Port Commission, acting as the Port’s Local Contract Review Board, to, where appropriate, direct the use of alternative contracting and purchasing practices (including the Design-Build contracting method) that consider market realities and that are consistent with the public policy of encouraging competition. On behalf of the Port, the Port’s Local Contract Review Board must adopt written findings in support of the alternative method; hold a public hearing to take comments on the findings; and approve a resolution adopting the findings and directing use of the alternative method.

As required by ORS 279C.335, notice of the public hearing was advertised in the *Daily Journal of Commerce* on July 13, 2022 for a proposed hearing on July 28, 2022

**Project Description.** The marina at the Port of Bandon currently provides dock moorage, utilities, fuel, a pump out station, and a floating restroom for all boaters traversing the Coquille River bar to and from the ocean in Bandon. It is the only moorage facility on the Coquille and along this stretch of coastline, with the entrance to Coos Bay about 18 miles to the north. To the south the closest floating dock moorage facility is Gold Beach (Rogue River), approximately 55 miles away. The existing infrastructure supports both commercial and recreational fishing boats, a river and ocean sport charter fishery, tour boat operations, the US Coast Guard Search and Rescue Detachment Team, and serves as a stopover for coastal seafarers traveling up and down the coast. The facility also serves as a harbor of refuge.

The entire existing dock and pile infrastructure is well past its design life and has become an unstable and at times unsafe facility. This Project is to replace the Bandon marina with a new facility with a design that responds to the needs of boaters, as well as to meet modern safety and environmental parameters.

The project will also seek to dredge up to 39,500 cubic yards of sediment from both the marina basin and the sport basin.

The total project cost of the Project is estimated at \$5.5 million, without the dredging component. The dredging component is expected to cost \$600,000, for a combined estimated cost of \$6.1 million.

The Port has completed the design and construction method alternatives to the extent required for state and federal permitting. The Project is now fully permitted and fully conditioned by permits. Remaining design elements include dock fabrication and framing specifications, utility details, evaluation of alternative pile driving methods, and selection of allowable dredging methods and approaches through the final engineering process, which are best done with close coordination with the construction contractor.

The Port expects that engaging a single firm to complete both the design and construction will enable the Project to be completed more efficiently and in less time than the traditional design-bid-build form of construction.

## **FINDINGS.**

In support of the Local Contract Review Board's decision to declare an exemption to traditional competitive bidding for the Project, Port staff provide the following findings:

- a) Reduced Design Effort and Cost for the Port. The Port has already completed the initial design necessary to obtain required permits for the Project. Engaging a single firm to complete the design while coordinating the construction of the Project is expected to shorten the time required to bring the Project to completion.

Because the Design-Build firm is responsible for the final design, the Design-Build firm will identify and implement design solutions and possible cost savings. This process allows the project team to evaluate quality materials, equipment and life cycle costs, thereby helping to reduce operating costs.

- b) Flexibility with Construction Processes. Using the Design-Build process will enable the Port to coordinate with the selected firm to ensure the completed design and final construction documents address the Project's unique conditions and circumstances, while allowing for maximum flexibility to adjust the construction process if these conditions or circumstances change

The Port anticipates that the in-water construction element will be completed within a single phase (October 1, 2023 – February 15, 2024). Fabrication work may occur before that date and final dock equipment installation may occur following the allowable in-water work window. Using this phased approach to complete the Project will enable the selected firm to take advantage of early bid or procurement packages, resulting in cost savings for the Port.

- c) Improved Project Delivery Schedule. Because construction processes are actively considered and incorporated into the design, the Design-Build firm may be able to schedule material procurement before final plans for the entire Project are complete or provide for certain construction components to be fabricated off-site before construction begins. Ensuring, to the

degree possible, that construction materials are available when needed will avoid delays and work stoppages while the construction team waits for needed items. The resulting time savings and the ability to take advantage of cost savings by procuring materials early are expected to benefit the Port.

In addition, the Design-Build method will allow the early procurement of long lead material/equipment. Examples include dock and pile components, mechanical equipment, electrical equipment. Early procurement may result in cost savings.

- d) More Cost Certainty. When the traditional design-bid-build process is used, the price of a fully designed project is not known until the owner solicits and opens construction bids. In this case, if the bids exceed the Port's projected budget for the Project, the Project may need to be redesigned and perhaps abandoned. By using the Design-Build process, the Port and the selected firm agree to a guaranteed maximum price ("GMP") for construction as part of the solicitation process, giving the Port more certainty for purposes of budgeting and protecting the Port from significant fluctuations in costs once work begins.

Furthermore, by using a Design-Build firm to provide cost analysis, construction feasibility reviews and long lead procurement, the final number of change orders should be reduced, resulting in cost savings.

- e) Consideration of Criteria Other than Price. Oregon law allows agencies to award Design-Build contracts based upon "best value and other criteria" such as technical design, construction expertise and life cycle costs. Because the Project is substantial in terms of both cost and importance to the infrastructure of the Port, the Design-Build alternative approach would give the Port maximum flexibility to choose a design-build team that is best-suited to the Port's needs, not necessarily the firm that gives the lowest bid.

- f) Promote Competition. Granting an exemption to allow use of the Design-Build method of construction is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts because the successful proposer will be selected through an open, competitive process among qualified contractors. The Port will advertise and solicit competitive written proposals from Design-Build firms with the experience and staff required to complete the Project.

In addition, the selected Design-Build firm will prepare bid packages and review/analyze bids received from subcontractors, awarding work to the lowest responsive, responsible bidder. This approach will ensure competition and avoid favoritism in the awarding of construction contracts.

- g) Market Conditions. Supply chain issues and the rapid escalation in costs of some construction materials makes cost forecasting difficult. Many general contractors and subcontractors are currently being impacted by the quantity of bids for funded projects. Ordering materials and equipment may take longer now as the manufacturers and distributors are not keeping large amounts of inventory in stock. Anticipating and coordinating

3 - WRITTEN FINDINGS IN SUPPORT OF DESIGN-BUILD ALTERNATIVE TO CONSTRUCTION CONTRACTING

construction orders with the design process is expected to allow the Design-Build firm to order materials and equipment from manufactures and distributors in a manner that avoids delays caused by late shipments.

- h) Public Benefits. The Design-Build process promotes collaboration and efficiency to ensure the Project will be completed on time, on budget and at, or above, the quality described in the construction documents. Timely completion of the Project will make the marina available to the public as soon as possible, while responsibly managing the expenditure of public funds.
- i) Specialized Expertise Required. The competitive solicitation process will be designed to ensure that Port engages a Design-Build firm with a dedicated, qualified team with the experience and expertise to work with the Port and the project manager.

The Port's project management team is well equipped to manage the complexities of a Design-Build construction process, with experienced and qualified district staff and external project advisors with successful Design-Build experience. The Port Manager will be the project manager. The PM has years of project management experience and recently oversaw the design, engineering, permitting and construction of a new fishing pier at the Port. He also oversaw the design, permitting and construction of a new embankment project, among many other projects. The Port also has PND engineers on retainer to review any questions regarding final designs from the selected design/build engineer/contractor.

The Port's legal counsel for the Project is familiar and experienced with Oregon law as it applies to using the Design-Build method for construction of a public improvement and will be available to advise the Port on this process.

- j) Public Safety. The existing marina structure has reached the end of its design life and poses an increased risk to public safety as it continues to deteriorate. In completing the Project, the selected firm will be required to prioritize public safety in the design, engineering, and construction of the replacement infrastructure. The Design-Build firm also will prepare a construction safety plan for the Project to help to ensure it is built safely and with minimal safety risks during construction.
- k) Funding Sources. The Port expects to have funds available to complete the Project, using a combination of existing capital reserves and grant funds from the Coronavirus State Fiscal Recovery Funding (CSFRF) program and USFWS Boating Infrastructure Grant Program, and other sources.

## **RECOMMENDATION.**

Staff recommends the Board of Directors, acting in its capacity as the Local Contract Review Board approve these Findings of Fact supporting an exemption from the traditional method of awarding public construction contracts, and authorize the use the Design-Build method of contracting to complete the Project.