

## *Appendix C: PFA Oregon Administrative Rules*



1 Division 97 – Private Forest Accord Mitigation Grant Program

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3 OAR 635-097-0000

4 Purpose

5 The purpose of the Private Forest Accord Mitigation Grant Program is to fund projects that mitigate the  
6 impacts of certain forest practices on certain aquatic species covered by the Private Forests Accord Habitat  
7 Conservation Plan (HCP), which is to be submitted by the Board of Forestry to meet requirements of  
8 Oregon Laws 2022, chapter 33, section 11.

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10 OAR 635-097-0010

11 Definitions

12 These definitions apply for 635-097-0010 through 635-097-0120 only:

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14 (1) "Agreement" means a documented mutual assent between the Department and a project  
15 applicant describing the project and the financial support to be provided from the Private Forest  
16 Accord Mitigation Fund.

17 (2) "Applicant" means an eligible entity that provides a project application for the Private Forest  
18 Accord Mitigation Fund. a

19 (3) "Commission" means the Oregon Fish and Wildlife Commission.

20 (4) "Covered Activities" are forest practices conducted on private forestland excluding the application  
21 of pesticides or fertilizers, as defined by the Private Forest Accord Report dated February 2, 2022,  
22 and published by the State Forestry Department on February 7, 2022 (Chapter 1.4.2).

23 (5) "Department" means the Oregon Department of Fish and Wildlife.

24 (6) "Forest practice", as defined in ORS 527.620, means any operation conducted on or pertaining to  
25 forestland, including but not limited to:

26 (a) Reforestation of forestland;

27 (b) Road construction and maintenance;

28 (c) Harvesting of forest tree species;

29 (d) Application of chemicals;

30 (e) Disposal of slash; and

31 (f) Removal of woody biomass.

32 (7) "Grantee" means an applicant that enters into an agreement with the Department to accomplish  
33 a project.

34 (8) "HCP" means the Oregon Private Forest Accord Aquatic Habitat Conservation Plans submitted by  
35 the State Board of Forestry to the National Marine Fisheries Service and the United States Fish  
36 and Wildlife Service consistent with requirements of Oregon Laws, Chapter 33, Section 11(1)".

37 (9) "MAC" means the Private Forest Accord Mitigation Advisory Committee.

38 (10) "Mitigation" for the purposes of the PFA Mitigation Grant Program is defined as implementing  
39 measures that offset and compensate for impacts of covered forest practices on HCP covered  
40 species, based on the biological needs of the covered species.

41 (11) "Mitigation Fund" means the Private Forest Accord Mitigation Fund established in Oregon Laws  
42 2022, Chapter 33, Section 28.

43 (12) "PFA" means the Private Forest Accord.

- 44 (13)"Quorum" means a majority of the MAC voting members.  
45 (14)"Regular Grant" means a funding opportunity through competitive solicitation.  
46 (15)"Solicitation" is a notice that invites entities to apply for funding to the Private Forest Accord  
47 Mitigation Grant program. The solicitation will outline the goals of the grant program, activities  
48 eligible (or ineligible) to be performed as part of the grant program, and application requirements,  
49 amongst other essential details.  
50 (16)"Technical Review Team" is a team of designated persons with interdisciplinary expertise drawn  
51 from entities deemed appropriate by the Department to evaluate grant applications based on  
52 evaluation criteria.  
53 (17)"Urgent Grant" means a time-sensitive, high-priority project in need of funding more quickly than  
54 available via a Regular Grant.  
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56 OAR 635-097-0020

57 Private Forest Accord Mitigation Fund

- 58 (1) The Private Forest Accord Mitigation Subaccount (hereafter referred to as "PFA Mitigation  
59 Fund" or "Fund")\_shall consist of all moneys appropriated to the Department for deposit in  
60 the Fund or otherwise transferred to the Fund and gifts, grants, contributions or other  
61 donations that are received by the Department from any public or private source and caused  
62 to be deposited and credited to the Fund.  
63 (2) The Department shall fund projects approved by the Commission with funds from the PFA  
64 Mitigation Fund.  
65 (3) The Department shall expend moneys in the PFA Mitigation Fund only for:  
66 a. Projects recommended by the Department, in collaboration with the MAC, and  
67 approved by the Commission that meet eligibility requirements in OAR 635-097-0070,  
68 b. Projects that conduct outreach to further the goal of PFA Mitigation Fund, and  
69 c. For any associated administrative costs.  
70 (4) The Department and MAC shall submit a joint biennial report to the Legislature on the  
71 expenditure of funds for the PFA Mitigation Fund and the status of funded projects.  
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73 OAR 635-097-0030

74 Private Forest Accord (PFA) Mitigation Advisory Committee (MAC) Purpose and Duties

- 75 (1) The purpose and duties of the MAC are to:  
76 (a) Review Department policies regarding the use of moneys deposited in the PFA Mitigation  
77 Fund and make recommendations to the Department, and Commission, regarding the use  
78 of the moneys in the Fund, and  
79 (b) Solicit and review grant applications under the PFA Grant Program as described in OAR  
80 635-097-0040.  
81 (2) The MAC shall consist of seven voting members and up to five nonvoting members. The  
82 composition of the MAC is as follows:  
83 (a) Six of the voting members appointed by the Governor shall include:  
84 (A) Three members who represent the timber industry, and three members who  
85 represent nongovernmental organizations promoting freshwater aquatic  
86 habitat conservation. The seventh voting member of the MAC is appointed by  
87 the Oregon Conservation and Recreation Advisory Committee from among  
88 themselves.

- 89 (B) The term of a voting member is four years. Voting members may be  
90 reappointed but may not serve more than two full terms.
- 91 (b) The Department shall appoint up to five nonvoting members representing and as  
92 recommended by each of the following agencies:
- 93 (A) The State Forestry Department,  
94 (B) The Oregon Watershed Enhancement Board,  
95 (C) The State Department of Fish and Wildlife,  
96 (D) The United States Fish and Wildlife Service, and  
97 (E) The National Marine Fisheries Service.
- 98 (c) The MAC shall select officers for such terms and with such duties and powers as  
99 considered necessary to carry out the responsibilities of the MAC. In addition, the  
100 members of the MAC shall choose a temporary officer in the absence of the officers.
- 101 (3) In undertaking the duties described in section (1) of this rule, the MAC may solicit and consider  
102 project recommendations from other grant programs such as the Oregon Conservation and  
103 Recreation Fund.  
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105 OAR 635-097-0040

106 Private Forest Accord Grant Program

- 107 (1) The Commission may award grant funding to projects throughout the State of Oregon that  
108 mitigate impacts of covered activities on HCP covered species, with advice from the Department  
109 and the MAC.
- 110 (2) The Department, in collaboration with the MAC, may offer two pathways for funding projects:
- 111 (a) The Department shall offer a Regular Grant funding opportunity through competitive  
112 solicitation no less than once yearly. The Regular Grant funding opportunity shall be the  
113 primary pathway for applicants seeking funding from the PFA Mitigation Fund.
- 114 (b) The Department may offer Urgent Grant funding opportunities to time-sensitive, high-  
115 priority projects outside of the Regular Grant funding opportunity. Projects seeking  
116 Urgent Grant funding shall demonstrate the time-sensitive need to occur outside of the  
117 Regular Grant solicitation. In addition, they must demonstrate a meaningful conservation  
118 benefit for HCP-covered species as recommended by the MAC and as determined by the  
119 Commission.

120 OAR 635-097-0050

121 Private Forest Accord Mitigation Fund Regular Grants

122 The Department, in collaboration with the MAC, shall offer Regular Grant funding solicitations for  
123 proposals pursuant to the following:

- 124 (1) Regular Grant funding proposals shall be solicited no less than once per year through a request  
125 for proposals.
- 126 (2) Interested applicants shall submit a project application to the Department by the deadline  
127 described in the solicitation.
- 128 (3) The Department, in collaboration with the MAC and technical review teams, shall review all  
129 Regular Grant funding applications against the Evaluation Criteria in OAR 635-097-0090, and any  
130 other requirements deemed appropriate by the Department which will be made available in the  
131 current solicitation.
- 132 (4) Project Match is not required for Regular Grants but may be considered during the review process.

133 (5) The MAC may request that an applicant amend a project application's scope of work and budget  
134 to meet program priorities, and Department staff may assist with such amendments.

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138 OAR 635-097-0060

139 Private Forest Accord Mitigation Fund Urgent Grants

140 The Department, in collaboration with the MAC, may offer an Urgent Grant funding opportunity for critical  
141 need projects that are time-sensitive and high-priority. All Urgent Grant funding project requests shall  
142 submit applications pursuant to OAR 635-097-0070 through OAR 635-097-0090, in addition to the criteria  
143 below:

- 144 (1) All proposed projects for Urgent Grant funding shall:
- 145 (a) Provide a 1-page pre-application to ODFW staff and a full application upon request,
  - 146 (b) Attend a pre-application conference with ODFW staff,
  - 147 (c) Have secured all project permitting or provide proof of submission,
  - 148 (d) Have secured all landowner access agreements, and
  - 149 (e) Be ready to implement upon award.
- 150 (2) Urgent Grants may be required to provide up to a 25% project match.
- 151 (3) Urgent Grants may be considered on a rolling basis, year-round, to eligible applicants,
- 152 (4) The MAC may solicit projects for Urgent Grant funding.
- 153 (5) The timing of consideration of Urgent Grant funding requests shall be at the discretion of the  
154 MAC, considering available funds and other business.
- 155 (6) The MAC shall review all Urgent Grant funding applications against the Evaluation Criteria  
156 pursuant to OAR 635-097-0070 through OAR 635-097-0090, and any other requirements deemed  
157 appropriate by the Department in collaboration with the MAC.
- 158 (7) The MAC may request that an applicant amend a project application's scope of work and budget  
159 to meet program priorities, and Department staff may assist with such amendments.

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162 OAR 635-097-0070

163 Private Forest Accord Mitigation Fund Project Eligibility

- 164 (1) Eligibility includes any local or state agency, Tribe, organization, or individual.
- 165 (2) An applicant may be deemed ineligible by the Department if they have had a previous project  
166 revoked for reasons outlined in OAR 635-097-0110.
- 167 (3) The moneys from the PFA Mitigation Fund shall be expended on projects that mitigate the impacts  
168 of certain forest practices on HCP-covered species based on the biological needs of those species.
- 169 (4) Funding from the PFA Mitigation Fund shall not be used for any prior or current compensatory  
170 mitigation obligations. Habitat projects funded by the PFA Mitigation Fund cannot be used for the  
171 purpose of generating compensatory mitigation credits to offset other compensatory mitigation  
172 obligations.

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176 (5) Eligible projects may include:  
177 (a) Removing structures that block the passage of aquatic organisms or repairing the  
178 structures to promote the passage of aquatic organisms,  
179 (b) Placing logs or other wood-based material in streams to promote natural stream  
180 functions,  
181 (c) Conserving, recruiting or reintroducing beavers, and their habitats, to restore aquatic  
182 habitats for HCP-covered species,  
183 (d) Developing or sustaining healthy watersheds including riparian corridors, wet meadow  
184 complexes and forested uplands thereby reducing burn intensity during fires and  
185 protecting streams from excess sediment discharge after a wildfire,  
186 (e) Applying restoration treatments to stands of trees to enhance historic species diversity  
187 that benefits riparian function,  
188 (f) Supporting acquisition of land and interests in land including conservation easements, to  
189 protect, enhance, and restore riparian areas or other critical habitat functions for HCP-  
190 covered species,  
191 (g) Supporting acquisition from willing sellers interests in water that result in legally  
192 protected Instream flow to maintain or restore streamflows for the benefit of watersheds  
193 and habitats for native fish or wildlife Installing fencing or otherwise excluding grazing in  
194 riparian areas or around seeps or springs for HCP-covered species,  
195 (h) Installing off-stream stockwater systems or hardened watering gaps to reduce the effects  
196 of grazing on aquatic organisms, or  
197 (i) Undertaking other measures that effectively conserve or restore habitat for aquatic  
198 organisms addressed by the HCP that is consistent with the Private Forest Accord Report  
199 dated February 2, 2022, and published by the State Forestry Department on February 7,  
200 2022.

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203 OAR 635-097-0080

204 Private Forest Accord Mitigation Fund Application

205 Project applications for both Regular and Urgent Grants must be submitted on the most current form  
206 prescribed by the MAC. In addition, applicants must provide a written explanation if they cannot provide  
207 any of the information required in the application.

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209 OAR 635-097-0090

210 Evaluation Criteria for Proposed Private Forest Accord Mitigation Fund Projects

211 All project requests shall be reviewed by the MAC, the Department, and additional technical review  
212 team(s) as deemed appropriate by the Department and MAC. Any project recommended for funding to  
213 the Commission shall, at the minimum, meet the following conditions:

- 214 (1) All project applications will be evaluated based on the following evaluation criteria:  
215 (a) Clarity, technical soundness, cost-effectiveness, addressing the biological needs of HCP  
216 covered species, addressing conservation strategies identified by the PFA HCP, watershed  
217 context, readiness, measurability, available funding, capacity of the applicant, and any  
218 other metric deemed appropriate by the MAC or the Department.

- 219 (2) Project applications may provide the following:
- 220 (a) Well-defined and measurable goals,
- 221 (b) Measures to achieve project goals,
- 222 (c) A list of project proponents and collaborating and participating partners,
- 223 (d) The location and duration of the project, including the beginning and the ending date,
- 224 (e) Estimated project costs, including the amount to be funded by the Fund and sources of
- 225 other funding,
- 226 (f) A description of other conservation or natural resource benefits, if any, that may be
- 227 supported by the proposed project, and
- 228 (g) A monitoring plan to measure the success of the implemented project, and
- 229 (h) List of necessary project permits and copies of collected permits, or the anticipated
- 230 actions to collect the required permits.
- 231 (3) The Department, in collaboration with the MAC, shall not recommend a project for funding to the
- 232 Commission if the Department determines the project to be:
- 233 (a) Inconsistent with the intent of Oregon Laws 2022, Chapter 33, Section 11, and the Private
- 234 Forest Accord Report dated February 2, 2022, and published by the State of Oregon
- 235 Forestry Department on February 7, 2022,
- 236 (b) Contrary to sound biological, scientific, and engineering principles,
- 237 (c) Proposing inappropriate measures or methods to accomplish the project objectives,
- 238 (d) Inconsistent with local, regional, and statewide laws, land use planning goals, and locally
- 239 acknowledged land use plans, or
- 240 (e) Violating Department or State of Oregon goals, policies, administrative rules, or
- 241 management plans approved or adopted by the Commission.
- 242 (4) Projects recommended for funding shall use the best available science and management
- 243 practices, as determined by the Department, including but not limited to the following:
- 244 (a) Demonstrating sound principles of watershed and/or species management,
- 245 (b) Using methods adapted to the project locale,
- 246 (c) Complying with state land use planning goals and is compatible with acknowledged
- 247 comprehensive plans as required under ORS 197.180, and
- 248 (d) Following professionally accepted practices resulting in ecological or watershed benefits.
- 249 (5) The Department may reject incomplete project applications.
- 250 (6) All projects must provide a benefit to one or more HCP covered species.
- 251 (7) The Department, the MAC, or the Commission may require additional information to evaluate the
- 252 project.

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254 OAR 635-097-0100

255 Revocation of Private Forest Accord Mitigation Fund Project Approvals

- 256 (1) The Department may revoke an approved project if it determines that:
- 257 (a) Implementation of the project is inconsistent with the approved project scope of work,
- 258 (b) The project grantee has violated any term or condition imposed on the project
- 259 agreement,
- 260 (c) The project does not meet its proposed objectives and/or methodology, or
- 261 (d) The project is inconsistent with current State of Oregon and Department goals, policies,
- 262 management plans, laws, guidelines, and regulations.
- 263 (2) The revocation of a project approval shall automatically invalidate any Department permits or
- 264 approvals issued for such project as of the date of revocation.

265 (3) Revocation of approval for a PFA Mitigation Fund project is in addition to and not in lieu of other  
266 penalties provided by law.

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268 OAR 635-097-0110

269 Agreements

270 (1) The Grantee shall enter into an agreement with the Department before initiating the project.

271 (2) The Department shall distribute no funds under a reimbursement agreement until the agreement  
272 is fully executed. All requests for reimbursement of funds must be accompanied by a progress  
273 report.

274 (3) The Department may award advanced payments at its discretion as specified in a fully executed  
275 agreement. The Department shall not make advanced payments unless the agreement explicitly  
276 provides for it.

277 (4) The Department shall retain a minimum of 10 percent of project funds until it receives the  
278 required close of project report and evaluates the project for completion and compliance with  
279 the agreement.

280 (5) If all the parties have not fully executed the agreement according to the timeline in an approved  
281 proposal, the Department may terminate funding, unless the applicant requests, and the  
282 Department approves, an extension.

283 (6) Following project completion, equipment purchased with project funds shall remain with the  
284 Grantee or another approved entity. Equipment with a value above five-thousand dollars shall  
285 adhere to additional post-project requirements stipulated by the Department.

286 (7) The Commission may award grantees post-project maintenance funding to meet long-term  
287 maintenance monitoring requirements.

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