

Division XX – Private Forest Accord Mitigation Fund

Rule XXX-XXX-XXXX

Purpose

These rules guide the implementation of the Private Forest Accord Mitigation Fund authorized under XXXXXXXX. The purpose of the Private Forest Accord Mitigation Fund is to mitigate the impacts of take of covered species from covered forest practices conducted on covered lands in the State of Oregon as addressed in a Habitat Conservation Plan submitted by the Board of Forestry to meet requirements of statute (Oregon Laws 2022, Chapter 33, Section 11).

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Definitions

These definitions apply for XXX-XXX-XXXX through XXX-XXX-XXXX only:

- (1) "Agreement" means a mutual assent between the Department and a project applicant describing the project and the financial support to be provided from the Private Forest Accord Mitigation Fund subaccount.
- (2) "Applicant" means an entity that provides a project application for the Private Forest Accord Mitigation Fund.
- (3) "Commission" means the Oregon Department of Fish and Wildlife Commission.
- (4) "Covered Activities" as defined by the PFA Authors Report (Chapter 1, Section 4, subsection 2).
- (5) "Department" means the Oregon Department of Fish and Wildlife.
- (6) "Grantee" means an applicant that enters into an executed agreement with the Department to accomplish a project.
- (7) "HCP" means the anticipated approved Habitat Conservation Plan submitted by the State Board of Forestry to the National Marine Fisheries Service and the United States Fish and Wildlife Service consistent with requirements of Oregon Laws, Chapter 33, Section 11(1)".
- (8) "Mitigation Fund" means the Private Forest Accord Mitigation Fund established in the 2022 Legislative Session by Senate Bills 1501 and 1502 and House Bill 4055.
- (9) "Project" means the actions to be taken to mitigate take as described in an application for funding to the MAC from the Private Forest Accord Mitigation Fund, consistent with the Department & State of Oregon requirements, laws, and regulations.
- (10)"Quorum" means a majority of the MAC voting members.
- (11)"Solicitation" is a notice that invites entities to apply for funding to the Private Forest Accord Mitigation Grant program. The solicitation will outline the goals of the grant program, activities eligible (or ineligible) to be performed as part of the grant program, and application requirements, amongst other essential details.
- (12)"Subaccount" means the separate subaccount for the PFA Mitigation Fund in the Oregon Conservation and Recreation Fund established under XXXXXXXX.
- (13)"Technical Review Team" is a team of designated persons with interdisciplinary expertise drawn from agencies, universities, and other entities deemed appropriate by the Department to evaluate grant applications based on evaluation criteria.
- (14)"MAC" means the Private Forest Accord Mitigation Advisory Committee.

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Private Forest Accord Mitigation Fund Subaccount

- (1) All moneys received pursuant to XXXXXXXX shall be deposited in a separate Private Forest Accord Mitigation Fund subaccount in the Oregon Conservation and Recreation Fund. Moneys in the subaccount shall be expended only for the programmatic needs and projects recommended by the MAC to the Commission and Department.
- (2) To the degree, if not otherwise funded, the Department shall assess its personnel administrative costs in administering this program against the subaccount so long as costs are related to the functioning of the Private Forest Accord Grant Fund.
- (3) The Department and MAC shall submit a joint biennial report to the Legislature on the expenditure of funds for the Private Forest Accord Mitigation Fund and the status of funded projects.
- (4) The Department shall fund projects approved by the Commission with funds from the Subaccount.

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Private Forest Accord Mitigation Fund Pathway for Funding

The Private Forest Accord Mitigation Fund will have two pathways for funding, Regular and Strategic Grants. Both grant funding pathways will support projects throughout the State of Oregon that mitigates the impacts of take of covered species as discussed in the HCP, pursuant to the rules in this document. It is expected that most applicants seeking funding from the Subaccount will apply for the Regular Grant Funding opportunity, a competitive solicitation offered no less than once per year. Therefore, regular Grant Funding will support the vast majority of funding requests. Strategic Grant Funding will be provided throughout the entire year and to fund high-priority projects that are in critical need of emergency funding. Funding requests for the Strategic Grant Fund should be shovel-ready and able to demonstrate the importance of the project to the Department and MAC for consideration of funding.

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Private Forest Accord Mitigation Fund Regular Grants

The Department, in collaboration with the MAC, shall offer regular grant funding solicitations for proposals pursuant to the following:

- (1) Regular grant funding proposals shall be solicited no less than once per year through a request for proposals,
- (2) Regular grant funding shall be offered to eligible applicants,
- (3) All regular grant funding applications shall be reviewed, scored, and ranked against the Evaluation Criteria in Rule XXX-XXX-XXXX, the program priorities in Rule XXX-XXX-XXXX, and any other requirements deemed appropriate by the Department in collaboration with the MAC.
- (4) The MAC may request an applicant amend a project application's scope of work and budget to meet program priorities better, and Department staff may assist with such amendments.

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Private Forest Accord Mitigation Fund Strategic Grants

In collaboration with the MAC, the Department shall offer a Strategic grant funding pathway for critical need projects. Strategic funding shall adhere to the criteria below:

- (1) All proposed projects for Strategic Grant funding shall:
 - a. Have secured all project permitting,
 - b. Have secured all landowner access agreements,
 - c. Provide at least twenty-five percent match,
 - d. Request at a minimum of \$500,000, and
 - e. Be ready to implement immediately upon award.
- (2) Strategic Grants shall be offered on a rolling basis, year-round, to eligible applicants,
- (3) Strategic Grants for projects may be solicited by the MAC to eligible applicants or requested by eligible applicants for eligible projects that demonstrate a high-priority need
- (4) The timing of consideration of Strategic funding requests shall be at the discretion of the MAC, considering available funds and other business.
- (5) All Strategic funding applications shall be reviewed, scored, and ranked against the Evaluation Criteria in **Rule XXX-XXX-XXXX**, the program priorities in **Rule XXX-XXX-XXXX**, and any other requirements deemed appropriate by the Department in collaboration with the MAC.
- (6) The MAC may request an applicant amend a project application's scope of work and budget to meet program priorities better, and Department staff may assist with such amendments.

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Private Forest Accord Mitigation Fund Priorities

The moneys from the Private Forest Accord Mitigation Fund shall be expended on projects that protect, enhance, or restore habitat or address limiting factors for species covered by the HCP. Projects must address one or more of the following, with priority given to subsections 1,2,3 and 5 below:

- (1) Restoration and/or enhancement of degraded habitat to natural condition/function or to a condition likely to be resilient to projected changes,
- (2) Land, water, and habitat preservation,
- (3) Enhancement of Habitat,
- (4) Creation of new habitats or new populations,
- (5) Threat reduction or elimination of take for HCP-listed species,
- (6) Translocation of covered species to establish new or augment existing populations,
- (7) Repatriation of species to formerly occupied and still suitable or enhanced habitats, or

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Private Forest Accord Mitigation Advisory Committee Purpose and Duties

- (1) The purpose of the MAC is to review Department policies regarding the use of moneys deposited in the Private Forest Accord Mitigation Subaccount of the Oregon Conservation and Recreation Fund and to make recommendations to the Commission and the Department regarding the use of the moneys in the subaccount.
- (2) The MAC shall consist of seven voting members and five nonvoting members.

- (3) The MAC shall select officers for such terms and with such duties and powers as considered necessary to carry out the responsibilities of the MAC. The members of the MAC shall choose a temporary officer in the absence of the officers.
- (4) Compensation. Members of the MAC shall not receive compensation for service as members. However, subject to any applicable law regulating travel and other expenses of state officers, a member shall be reimbursed for actual and necessary travel and additional costs incurred in performing official duties from moneys available to the Department for reimbursement of advisory committee members.

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Private Forest Accord Mitigation Fund Application

Applications for both Strategic and Regular Grants must be submitted on the most current form prescribed by the MAC. An explanation must accompany the application if any of the following information required under this section cannot be provided:

- (1) Evidence that the project complies with all applicable land use laws and regulations;
- (2) A statement that required permits or licenses from federal, state, or local government are approved or will be applied for promptly;
- (3) A plan to monitor and evaluate project results, including identification of responsible parties;
- (4) A plan for operation and maintenance for the life of the project, including identification of the responsible parties,
- (5) A statement of the HCP Covered Species the project will be mitigating for;
- (6) For land acquisition projects, a public access plan must be submitted; and
- (7) Additional information requested by the MAC that will aid in project evaluation

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Evaluation Criteria for Proposed Private Forest Accord Mitigation Fund Projects

All projects requesting funding from the Subaccount shall be reviewed, scored, and ranked by the MAC, the Department, and additional Review Team(s) as deemed appropriate by the Department and MAC. Any project recommended for funding to the Commission shall, at the minimum, meet the conditions as described:

- (1) All project applications will be evaluated for funding based on evaluation criteria such as, but not limited to:
 - a. Clarity, technical soundness, cost-effectiveness, relationship to the Private Forest Accord & the HCP, watershed context, readiness, measurability, available funding, capacity of the applicant, and any other metric deemed appropriate by the MAC or the Department.
- (2) At the minimum, project applications shall provide the following:
 - a. Well-defined and measurable goals and objectives.
 - b. Measures to achieve project goals;
 - c. The location and duration of the project, including the beginning and the ending date;
 - d. Estimated project costs, including the amount to be funded by the subaccount and sources of other funding; and
 - e. A monitoring plan to measure the success of the implemented project.

- (3) The Department, in collaboration with the MAC, shall not recommend a project for funding to the Commission if the project is determined to be:
 - a. Inconsistent with the intent of Oregon Laws 2022, Chapter 33, Section 11, and the Private Forest Accord Authors Report to Legislature in 2022 (PFA Report);
 - b. Contrary to sound biological, scientific, and engineering principles;
 - c. Proposes inappropriate measures or methods to accomplish the project objectives;
 - d. Inconsistent with local, regional, and statewide laws, land use planning goals, and locally acknowledged land use plans; and
 - e. Violating Department or State of Oregon goals, policies, administrative rules, or other management plans approved or adopted by the Commission.
- (4) Projects recommended for funding shall use the best available science and management practices, including but not limited to the following:
 - a. Demonstrated sound principles of watershed and/or species management;
 - b. Uses methods adapted to the project locale;
 - c. Complies with state land use planning goals and is compatible with acknowledged comprehensive plans as required under ORS 197.180; and
 - d. Follows professionally accepted practices resulting in ecological or watershed benefits.
- (5) The Department shall reject incomplete funding applications.
- (6) All projects requesting funding must occur in a timber-impacted watershed with private forestlands.
- (7) The Department, the MAC, or the ODFW Commission may require additional information to evaluate the project.

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Oregon Department of Fish and Wildlife Commission Approval of Proposed Private Forest Accord Mitigation Fund Projects

- (1) In collaboration with the MAC, the Department shall recommend Project applications to the ODFW Commission for funding approval.
- (2) The Commission shall review the Department's recommendations and approve or disapprove any or all projects recommended for funding. Funds shall be expended from the subaccount referenced in Rule XXX-XXX-XXXX for projects approved by the Commission.
- (3) The Department shall attach terms and conditions to the project necessary to protect public investment and enhance the state's wildlife and habitat conservation goals.

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Revocation of Private Forest Accord Mitigation Funded Approvals

- (1) The Department, in consultation with the MAC, shall have the authority to revoke an approved project upon recommendation from ODFW Staff or the MAC if it determines that:
 - (a) Implementation of the project is inconsistent with the approved project scope of work;
 - (b) The project grantee has violated any term or condition imposed on the project agreement;
 - (c) The project does not meet its proposed objectives and/or methodology; or
 - (d) The project is inconsistent with current State of Oregon and Department goals, policies, management plans, laws, guidelines, and regulations.

- (2) Proceedings to revoke a project's approval shall be conducted per ORS 183.413 through 183.550.
- (3) The revocation of the approval of a project shall automatically invalidate any Department permits issued for such project as of the date of revocation.
- (4) Revocation of approval for a Private Forest Accord Mitigation Fund project is in addition to and not in lieu of other penalties provided by law.
- (5) The money allocated to the project but not yet transferred to the Grantee will be available for reallocation by the Department, with recommendations from the MAC.

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Agreements

- (1) Grantee shall enter into an agreement with the Department before initiating the project.
- (2) The Department shall distribute no funds under an agreement until an agreement is fully executed and it receives satisfactory evidence that all critical project documents have been submitted with the first reimbursement request. Such documents may include the following:
 - (a) Baseline Data,
 - (b) Project Agreement(s),
 - (c) A statement of expected Project Permit(s) or applications,
 - (d) ArcGIS files,
 - (e) Photo Points, and
 - (f) Survey Data.
 - (g) Other materials specific to the project noted in the Agreement.
- (3) The Department may release funds as a reimbursement upon presentation by the Grantee of a quarterly report that recounts incurred expenses and any other required reporting documents as discussed in the executed Agreement for the time period specified in the fully executed Agreement.
- (4) The Department may award advanced payments at its discretion as specified in a fully executed agreement. The Department shall not make advanced payments unless the Agreement explicitly provides for it. Agreements with advanced funding shall result in additional terms and conditions between the Department and the Grantee. At least seventy-five percent of the advanced payment must be expended before requesting additional advanced funds. Any request for advanced payment requires enhanced reporting and funding outlooks to be submitted to the Department for approval.
- (5) The Department shall release funds as a reimbursement on presentation of a completed Fund Release Request form accompanied by proof of the completion of specific work elements of the project as identified in the Agreement. Proof of completion shall include but is not limited to paid receipts of invoices for materials or contracted labor, inspection reports, photos, and quarterly reports.
- (6) The Department shall retain a minimum of 10 percent of project funds until it receives the required close of project report and evaluates the project for completion and compliance with the Agreement.
- (7) If all the parties have not fully executed the Agreement within one year of Commission approval, funding may be terminated by the Department, unless a project extension was requested and approved by the Department. The money allocated to the Grantee shall be available for reallocation by the MAC.
- (8) The project grantee shall comply with all federal, state, local, and tribal laws and ordinances applicable to the work under the Agreement.

- (9) Following project completion, equipment purchased with project funds shall remain with the Grantee or another approved entity. Equipment with a value above five-thousand dollars shall adhere to additional post-project requirements stipulated by the Department.
- (10) As the Department recommends, the Commission may award grantees post-project maintenance funding to meet long-term maintenance monitoring requirements for implementation projects. Post-project maintenance funding is awarded based on the discretion of the Department in coordination with the MAC. Therefore, the applicant shall request post-project maintenance funding in the project application.
- (11) As the Department recommends, the Commission may award retroactive grantee reimbursement for project-specific funding directly relating to the approved project. As such, in the application, an applicant may request reimbursement for administrative and other costs pertaining to permitting, design plans, or other project-specific expenditures requested in the original project application.
- (12) All applications that involve physical changes or monitoring on private land must include certification from the applicant that the applicant has informed all landowners involved of the application's existence and has also advised all landowners that all monitoring information obtained on their property and submitted to the Department is a public record. If contact with all landowners was not possible at the time of application, explain why.
- (13) The Department may place additional conditions in the Agreement as necessary to carry out the purpose of the Private Forest Accord Mitigation Fund Grant program. Such conditions include, but are not limited to:
- a. A commitment by the landowner for continued access for monitoring the project after completion, not to exceed five years following Department approval of a final project completion report;
 - b. A commitment by the Grantee to maintain the project for a period of time as deemed for the project elements or goals, to be effective;
 - c. A commitment to supply future reports on the project as required; and
 - d. Such other conditions as the Department deems appropriate to the project's particular circumstances.