

Division 97 – Private Forest Accord Mitigation Grant Program

ORAR 635-097-0000

Purpose

The purpose of the Private Forest Accord Mitigation Grant Program is to mitigate the impacts to covered species from forest practices conducted on private lands in the State of Oregon as addressed in the Habitat Conservation Plan submitted by the Board of Forestry to meet requirements of Oregon Revised Statute (Oregon Laws 2022, Chapter 33, Section 11).

ORAR 635-097-0010

Definitions

These definitions apply for 635-097-0010 through 635-097-0100 only:

- (1) " Grant Agreement" means a written contract between the Department and Grantee describing the project, financial support to be provided from the Private Forest Accord Mitigation Fund, and the terms and conditions of that support.
- (2) "Applicant" means an eligible entity that provides a project application for the Private Forest Accord Mitigation Fund. Eligibility is broadly inclusive of any agency, Tribe, organization, or individual. An applicant may be deemed ineligible by the Department if they have had a previous project revoked for reasons outlined in Section –0110 herein.
- (3) "Commission" means the Oregon Fish and Wildlife Commission.
- (4) "Covered Activities" as defined by the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022 (Chapter 1.4.2) shall include ongoing and planned forest management practices as defined within the Oregon Forest Practices Act excluding the application of pesticides or fertilizers.
- (5) "Department" means the Oregon Department of Fish and Wildlife.
- (6) "Grantee" means an applicant that enters into a Grant Agreement with the Department to accomplish a project.
- (7) "HCP" means the 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) "MAC" means the Private Forest Accord Mitigation Advisory Committee.
- (9) "PFA Mitigation Fund" means the Private Forest Accord Mitigation Fund established in Oregon Laws 2022, Chapter 33, Section 28.
- (10) "PFA" means the Private Forest Accord.
- (11) "Quorum" means a majority of the MAC voting members.
- (12) "Regular Grant" means a funding opportunity through competitive solicitation.
- (13) "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.

(14) "Technical Review Team" is a team of designated persons with interdisciplinary expertise drawn from entities deemed appropriate by the Department to evaluate grant applications based on evaluation criteria.

(15) "Urgent Grant" means a time-sensitive, high-priority project in need of funding more quickly than available via a Regular Grant. .

OAR 635-097-0020

Private Forest Accord Mitigation Fund

- (1) All moneys received pursuant to Division 97 – Private Forest Accord Mitigation Fund shall be deposited in a separate subaccount of the Oregon Conservation and Recreation Fund, hereafter referred to as the PFA Mitigation Fund, or "Fund".
- (2) The Department shall fund projects approved by the Commission with funds from the PFA Mitigation Fund.
- (3) Moneys in the PFA Mitigation Fund shall be expended only for the programmatic needs and projects recommended by the MAC to the Commission and Department.
- (4) If not otherwise funded, the Department shall assess its personnel administrative costs in administering this program against the fund so long as costs are related to the functioning of the PFA Mitigation Fund.
- (5) The Department and MAC shall submit a joint biennial report to the Legislature on the expenditure of funds for the PFA Mitigation Fund and the status of funded projects.

OAR 635-097-0030

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

- (1) The purpose and duties of the MAC are to:
 - (a) Review Department policies regarding the use of moneys deposited in the PFA Mitigation Fund and to make recommendations to the Commission and the Department regarding the use of the moneys in the fund, and
 - (b) Solicit and review grant applications under the PFA Grant Program as described in Section –0040 herein.
- (2) The MAC shall consist of seven voting members and up to five nonvoting members. Composition of the MAC is as follows:
 - (a) Six of voting members appointed by the Governor to include:
 - (A) Three members who represent the timber industry, and three members who represent nongovernmental organizations that promote conservation of freshwater aquatic habitat. The seventh voting member of the MAC is appointed by the Oregon Conservation and Recreation Advisory Committee from among themselves.
 - (B) The term of a voting member is four years and may be reappointed but may not serve more than two full terms.
 - (b) The Department shall appoint up to five nonvoting members recommended by:
 - (A) The State Forestry Department.
 - (B) The Oregon Watershed Enhancement Board.
 - (C) The State Department of Fish and Wildlife.
 - (D) The United States Fish and Wildlife Service.
 - (E) The National Marine Fisheries Service.

- (c) 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.
- (3) In undertaking the duties described in subsection (2) of this section, the committee may solicit and consider recommendations from the Oregon Conservation and Recreation Advisory Committee.

OAR 635-097-0040

Private Forest Accord Grant Program

- (1) The MAC may award grant funding to projects throughout the State of Oregon that are consistent with the conservation strategy of the PFA HCP and shall mitigate impacts to one or more covered species from the covered activities discussed in the PFA HCP.
 - (a) The MAC will offer a Regular Grant funding opportunity through competitive solicitation no less than once per year. The Regular Grant funding opportunity shall be the primary pathway for applicants seeking funding from the PFA Mitigation Fund.
 - (b) The MAC may offer Urgent Grant funding opportunities to time-sensitive, high-priority projects outside of the Regular Grant funding opportunity. Projects seeking Urgent Grant funding shall demonstrate a time-sensitive need to obtain funds outside of the Regular Grant solicitation and must demonstrate a meaningful conservation benefit for species covered by the PFA HCP.

OAR 635-097-0050

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) Interested applicants shall submit a project application to the Department by the deadline described in the solicitation. No pre-application shall be required for Regular Grants.
- (3) All Regular Grant funding applications shall be reviewed, scored, and ranked against the Evaluation Criteria in Rule 635-097-0090, the program priorities in Rule 635-097-0070, and any other requirements deemed appropriate by the Department in collaboration with the MAC.
- (4) Project match is not required for Regular Grants but may be considered during the scoring and ranking process.
- (5) The MAC may request an applicant amend a project application's scope of work and budget to meet program priorities, and Department staff may assist with such amendments.

OAR 635-097-0060

Private Forest Accord Mitigation Fund Urgent Grants

In collaboration with the MAC, the Department shall offer an Urgent Grant funding opportunity for critical need projects that are time-sensitive and high-priority. All Urgent Grant funding project requests shall submit applications pursuant to Rule 635-097-0080 in addition to the criteria below:

- (1) All proposed projects for Urgent Grant funding shall:
 - (a) Provide a 1-page pre-application to ODFW staff and a full application upon request,

- (b) Attend a pre-application conference with ODFW staff,
 - (c) Have secured all project permitting or provide proof of submission,
 - (d) Have secured all landowner access agreements,
 - (e) Provide match (in-kind or dollar) as defined by the MAC, and
 - (f) Be ready to implement immediately upon award.
- (2) Urgent Grants shall be offered on a rolling basis, year-round, to eligible applicants
 - (3) The MAC may solicit projects for Urgent Grant funding.
 - (4) The timing of consideration of Urgent funding requests shall be at the discretion of the MAC, considering available funds and other business.
 - (5) All Urgent Grant funding applications shall be reviewed, scored, and ranked against the Evaluation Criteria in Rule 635-097-0090, the program priorities in Rule 635-097-0070, 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, and Department staff may assist with such amendments.

OAR 635-097-0070

Private Forest Accord Mitigation Fund Priorities and Project Eligibility

The moneys from the PFA Mitigation Fund shall be expended on projects that create, protect, enhance, or restore habitat or address limiting factors for species covered by the PFA HCP. Projects must address one or more of the following priorities:

- (a) The following are considered high priorities:
 - (A) Restoration, enhancement, and/or creation of habitat for HCP covered species to natural condition/function or to a condition likely to be resilient to future change,
 - (B) Land, water, and habitat preservation for HCP covered species,
 - (C) Threat reduction or elimination of impacts to HCP covered species.
 - (b) The following are of priority but lesser so than the above:
 - (A) Translocation of HCP covered species to establish new or augment existing populations, and
 - (B) Translocation of species to formerly occupied and still suitable or enhanced habitats (i.e., reintroduction)..
- (1) Eligible projects that mitigate forest practices can include but are not limited to:
 - (a) Removing structures that block the passage of aquatic organisms or repairing the structures to promote the passage of aquatic organisms.
 - (b) Placing logs or other wood-based material in streams to promote natural stream functions.
 - (c) Conserving, recruiting or reintroducing beavers to restore aquatic landscapes.
 - (d) Developing or sustaining healthy riparian corridors or wet meadow complexes to reduce burn intensity during fires and protect streams from excess sediment after a fire.
 - (e) Applying restoration treatments to densely stocked, single species stands of trees to hasten the return of riparian function after tree harvesting.
 - (f) Applying restoration treatments to stands of trees to enhance historic species diversity that benefits riparian function.

- (g) Supporting establishment of conservation easements on land other than forestland to protect, enhance, and restore riparian areas.
- (h) Supporting acquisition of an existing water right for conversion to an in-stream water right, as described in ORS 537.348, to improve in-stream flow conditions.
- (i) Installing fencing or otherwise excluding grazing in riparian areas or around seeps or springs.
- (j) Installing off-stream stockwater systems or hardened watering gaps to reduce the effects of grazing on aquatic organisms.
- (k) Undertaking other measures that effectively conserve or restore habitat for aquatic organisms addressed by a habitat conservation plan that is consistent with the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022.

OAR 635-097-0080

Evaluation Criteria for Proposed Private Forest Accord Mitigation Fund Projects

All project requests 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) Private Forest Accord Mitigation Fund Application
 - (a) Applications for both Regular and Urgent Grants must be submitted on the most current form prescribed by the MAC. A written explanation must be provided if any of the information required in the application cannot be provided.
- (2) All project applications will be evaluated based on evaluation criteria such as, but not limited to:
 - (a) Clarity, technical soundness, cost-effectiveness, addressing species and conservation strategies covered by the PPFA HCP, watershed context, readiness, measurability, available funding, capacity of the applicant, and any other metric deemed appropriate by the MAC or the Department.
- (3) Project applications shall provide the following:
 - (a) Well-defined and measurable goals;
 - (b) Measures to achieve project goals;
 - (c) A list of project proponents and collaborating/participating partners
 - (d) The location and duration of the project, including the beginning and the ending date;
 - (e) Estimated project costs, including the amount to be funded by the fund and sources of other funding; and
 - (f) A monitoring plan to measure the success of the implemented project.
- (4) 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 Report dated February 2, 2022 and published by the State of Oregon Forestry Department on February 7, 2022;
 - (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 management plans approved or adopted by the Commission.
- (5) Projects recommended for funding shall use the best available science and management practices, including but not limited to the following:
 - (a) Demonstrating sound principles of watershed and/or species management;
 - (b) Using methods adapted to the project locale;
 - (c) Complying with state land use planning goals and is compatible with acknowledged comprehensive plans as required under ORS 197.180; and
 - (d) Following professionally accepted practices resulting in ecological or watershed benefits.
- (6) The Department shall reject incomplete funding applications.
- (7) All projects must provide a benefit to one or more covered species in the HCP.
- (8) The Department, the MAC, or the Commission may require additional information to evaluate the project.

OAR 635-097-0090

Revocation of Private Forest Accord Mitigation Fund Grant Awards

- (1) The Department may revoke an approved project 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) The revocation of a project approval shall automatically invalidate any Department permits issued for such project as of the date of revocation.
- (3) Revocation of approval for a PFA Mitigation Fund project is in addition to and not in lieu of other penalties provided by law.

OAR 635-097-0100

Agreements

- (1) Grantee shall enter into a Grant Agreement with the Department before initiating the project.
- (2) The Department shall distribute no funds under a Grant Agreement until a Grant Agreement is fully executed and the Department has determined the conditions of the Grant Agreement for payment have been met.
- (3) The Department may award advanced payments at its discretion as specified in a fully executed Grant Agreement. The Department shall not make advanced payments unless the Grant Agreement explicitly provides for it.
- (4) 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 Grant Agreement.
- (5) If all the parties have not fully executed the Grant Agreement according to the timeline in an approved proposal, funding may be terminated by the Department, unless an extension is requested and approved by the Department.

- (6) Following project completion, equipment purchased with project funds may remain with the Grantee or another approved entity, as conditioned by the Department. Equipment with a value above five-thousand dollars shall adhere to additional post-project requirements stipulated by the Department.
- (7) The Commission may award grantees post-project maintenance funding to meet long-term maintenance and monitoring requirements.
- (8) As the Department recommends, the Commission may award retroactive grantee reimbursement for project-specific expenses directly relating to the approved project. Such expenses will be clearly outlined in the Grant Agreement.

Commented [BD1]: I think this is okay but it is worth having the MAC discuss and Dept providing examples.

Commented [AS2R1]: Agreed. An example being upfront permit costs associated with a project being proposed for funding, i.e the project is already going through permitting as the application is considered for full funding.

Allowing applicant the chance to recoup lost costs - targeted for smaller groups with a slim operation budget such as watershed councils and conservation districts

FINAL