

Division 97 – Private Forest Accord Mitigation Grant Program

OAR 635-097-0000

Purpose

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

OAR 635-097-0010

Definitions

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

- (1) "Agreement" means a documented 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.
- (2) "Applicant" means an eligible entity that provides a project application for the Private Forest Accord Mitigation Fund. a
- (3) "Commission" means the Oregon Fish and Wildlife Commission.
- (4) "Covered Activities" are forest practices conducted on private forestland excluding the application of pesticides or fertilizers, 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).
- (5) "Department" means the Oregon Department of Fish and Wildlife.
- (6) "Forest practice", as defined in ORS 527.620, means any operation conducted on or pertaining to forestland, including but not limited to:
 - (a) Reforestation of forestland;
 - (b) Road construction and maintenance;
 - (c) Harvesting of forest tree species;
 - (d) Application of chemicals;
 - (e) Disposal of slash; and
 - (f) Removal of woody biomass.
- (7) "Grantee" means an applicant that enters into an agreement with the Department to accomplish a project.
- (8) "HCP" means the Oregon Private Forest Accord Aquatic Habitat Conservation Plans 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)".
- (9) "MAC" means the Private Forest Accord Mitigation Advisory Committee.
- (10) "Mitigation" for the purposes of the PFA Mitigation Grant Program is defined as implementing measures that offset and compensate for impacts of covered forest practices on HCP covered species, based on the biological needs of the covered species.
- (11) "Mitigation Fund" means the Private Forest Accord Mitigation Fund established in Oregon Laws 2022, Chapter 33, Section 28.
- (12) "PFA" means the Private Forest Accord.

- (13)"Quorum" means a majority of the MAC voting members.
- (14)"Regular Grant" means a funding opportunity through competitive solicitation.
- (15)"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.
- (16)"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.
- (17)"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) The Private Forest Accord Mitigation Subaccount (hereafter referred to as "PFA Mitigation Fund" or "Fund")_shall consist of all moneys appropriated to the Department for deposit in the Fund or otherwise transferred to the Fund and gifts, grants, contributions or other donations that are received by the Department from any public or private source and caused to be deposited and credited to the Fund.
- (2) The Department shall fund projects approved by the Commission with funds from the PFA Mitigation Fund.
- (3) The Department shall expend moneys in the PFA Mitigation Fund only for:
 - a. Projects recommended by the Department, in collaboration with the MAC, and approved by the Commission that meet eligibility requirements in OAR 635-097-0070,
 - b. Projects that conduct outreach to further the goal of PFA Mitigation Fund, and
 - c. For any associated administrative costs.
- (4) 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 make recommendations to the Department, and Commission, regarding the use of the moneys in the Fund, and
 - (b) Solicit and review grant applications under the PFA Grant Program as described in OAR 635-097-0040.
- (2) The MAC shall consist of seven voting members and up to five nonvoting members. The composition of the MAC is as follows:
 - (a) Six of the voting members appointed by the Governor shall include:
 - (A) Three members who represent the timber industry, and three members who represent nongovernmental organizations promoting freshwater aquatic habitat conservation. 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. Voting members may be reappointed but may not serve more than two full terms.
- (b) The Department shall appoint up to five nonvoting members representing and as recommended by each of the following agencies:
 - (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, and
 - (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. In addition, the members of the MAC shall choose a temporary officer in the absence of the officers.
- (3) In undertaking the duties described in section (1) of this rule, the MAC may solicit and consider project recommendations from other grant programs such as the Oregon Conservation and Recreation Fund.

OAR 635-097-0040

Private Forest Accord Grant Program

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

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.
- (3) The Department, in collaboration with the MAC and technical review teams, shall review all Regular Grant funding applications against the Evaluation Criteria in OAR 635-097-0090, and any other requirements deemed appropriate by the Department which will be made available in the current solicitation.
- (4) Project Match is not required for Regular Grants but may be considered during the review process.

- (5) The MAC may request that 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

The Department, in collaboration with the MAC, may 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 OAR 635-097-0070 through OAR 635-097-0090, 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, and
 - (e) Be ready to implement upon award.
- (2) Urgent Grants may be required to provide up to a 25% project match.
- (3) Urgent Grants may be considered on a rolling basis, year-round, to eligible applicants,
- (4) The MAC may solicit projects for Urgent Grant funding.
- (5) The timing of consideration of Urgent Grant funding requests shall be at the discretion of the MAC, considering available funds and other business.
- (6) The MAC shall review all Urgent Grant funding applications against the Evaluation Criteria pursuant to OAR 635-097-0070 through OAR 635-097-0090, and any other requirements deemed appropriate by the Department in collaboration with the MAC.
- (7) The MAC may request that 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 Project Eligibility

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

(5) Eligible projects may include:

- (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, and their habitats, to restore aquatic habitats for HCP-covered species,
- (d) Developing or sustaining healthy watersheds including riparian corridors, wet meadow complexes and forested uplands thereby reducing burn intensity during fires and protecting streams from excess sediment discharge after a wildfire,
- (e) Applying restoration treatments to stands of trees to enhance historic species diversity that benefits riparian function,
- (f) Supporting acquisition of land and interests in land including conservation easements, to protect, enhance, and restore riparian areas or other critical habitat functions for HCP-covered species,
- (g) Supporting acquisition from willing sellers interests in water that result in legally protected Instream flow to maintain or restore streamflows for the benefit of watersheds and habitats for native fish or wildlife Installing fencing or otherwise excluding grazing in riparian areas or around seeps or springs for HCP-covered species,
- (h) Installing off-stream stockwater systems or hardened watering gaps to reduce the effects of grazing on aquatic organisms, or
- (i) Undertaking other measures that effectively conserve or restore habitat for aquatic organisms addressed by the HCP 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

Private Forest Accord Mitigation Fund Application

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

OAR 635-097-0090

Evaluation Criteria for Proposed Private Forest Accord Mitigation Fund Projects

All project requests shall be reviewed by the MAC, the Department, and additional technical 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 following conditions:

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

- (2) 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 and 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,
 - (f) A description of other conservation or natural resource benefits, if any, that may be supported by the proposed project, and
 - (g) A monitoring plan to measure the success of the implemented project, and
 - (h) List of necessary project permits and copies of collected permits, or the anticipated actions to collect the required permits.
- (3) The Department, in collaboration with the MAC, shall not recommend a project for funding to the Commission if the Department determines the project 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) Proposing 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, or
 - (e) Violating Department or State of Oregon goals, policies, administrative rules, or management plans approved or adopted by the Commission.
- (4) Projects recommended for funding shall use the best available science and management practices, as determined by the Department, 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.
- (5) The Department may reject incomplete project applications.
- (6) All projects must provide a benefit to one or more HCP covered species.
- (7) The Department, the MAC, or the Commission may require additional information to evaluate the project.

OAR 635-097-0110

Revocation of Private Forest Accord Mitigation Fund Project Approvals

- (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 or approvals 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 635-097-0120

Agreements

- (1) The Grantee shall enter into an agreement with the Department before initiating the project.
- (2) The Department shall distribute no funds under a reimbursement agreement until the agreement is fully executed. All requests for reimbursement of funds must be accompanied by a progress report.
- (3) 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.
- (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 agreement.
- (5) If all the parties have not fully executed the agreement according to the timeline in an approved proposal, the Department may terminate funding, unless the applicant requests, and the Department approves, an extension.
- (6) 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.
- (7) The Commission may award grantees post-project maintenance funding to meet long-term maintenance monitoring requirements.