

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. The rules governing the Private Forest Accord Mitigation Grant  
9 Program are OAR 635-097-0010 through 635-097-0110, referred to herein as the “PFA Grant rules”.

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12 OAR 635-097-0010

13 Definitions

14 These definitions apply for 635-097-0010 through 635-097-0110 only:

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

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

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

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

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

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

28 (a) Reforestation of forestland;

29 (b) Road construction and maintenance;

30 (c) Harvesting of forest tree species;

31 (d) Application of chemicals;

32 (e) Disposal of slash; and

33 (f) Removal of woody biomass.

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

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

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

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

- 43 (11) "Mitigation Fund" means the Private Forest Accord Mitigation Fund established in Oregon Laws  
44 2022, Chapter 33, Section 28.
- 45 (12) "PFA" means the Private Forest Accord.
- 46 (13)"Quorum" means a majority of the MAC voting members.
- 47 (14)"Regular Grant" means a funding opportunity through competitive solicitation.
- 48 (15)"Solicitation" is a notice that invites entities to apply for funding to the Private Forest Accord  
49 Mitigation Grant program. The solicitation will outline the goals of the grant program, activities  
50 eligible (or ineligible) to be performed as part of the grant program, and application requirements,  
51 amongst other essential details.
- 52 (16)"Review Team" is a team of designated persons with interdisciplinary expertise drawn from  
53 entities deemed appropriate by the Department to evaluate grant applications based on  
54 evaluation criteria.
- 55 (17)"Urgent Grant" means a time-sensitive, high-priority project in need of funding more quickly than  
56 available via a Regular Grant.
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58 OAR 635-097-0020

59 Private Forest Accord Mitigation Fund

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

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75 OAR 635-097-0030

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

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

88 habitat conservation. The seventh voting member of the MAC is appointed by  
89 the Oregon Conservation and Recreation Advisory Committee from among  
90 themselves.

91 (B) The term of a voting member is four years. Voting members may be  
92 reappointed but may not serve more than two full terms.

93 (b) The Department shall appoint up to five nonvoting members representing and as  
94 recommended by each of the following agencies:

95 (A) The State Forestry Department,

96 (B) The Oregon Watershed Enhancement Board,

97 (C) The State Department of Fish and Wildlife,

98 (D) The United States Fish and Wildlife Service, and

99 (E) The National Marine Fisheries Service.

100 (c) The MAC shall select officers for such terms and with such duties and powers as  
101 considered necessary to carry out the responsibilities of the MAC. In addition, the  
102 members of the MAC shall choose a temporary officer in the absence of the officers.

103 (3) In undertaking the duties described in section (1) of this rule, the MAC may solicit and consider  
104 project recommendations from other grant programs such as the Oregon Conservation and  
105 Recreation Fund.

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107 OAR 635-097-0040

108 Private Forest Accord Grant Program

109 (1) The Commission may award grant funding to projects throughout the State of Oregon that  
110 mitigate impacts of covered activities on HCP covered species, with advice from the Department  
111 and the MAC.

112 (2) The Department, in collaboration with the MAC, may offer two pathways for funding projects:

113 (a) The Department shall offer a Regular Grant funding opportunity through competitive  
114 solicitation no less than once yearly. The Regular Grant funding opportunity shall be the  
115 primary pathway for applicants seeking funding from the PFA Mitigation Fund.

116 (b) The Department may offer Urgent Grant funding opportunities to time-sensitive, high-  
117 priority projects needing to occur outside of the Regular Grant funding opportunity.  
118 Projects seeking Urgent Grant funding shall demonstrate the time-sensitive need and a  
119 meaningful conservation benefit for HCP-covered species as recommended by the MAC  
120 and as determined by the Commission.

121 OAR 635-097-0050

122 Private Forest Accord Mitigation Fund Regular Grants

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

125 (1) Regular Grant funding proposals shall be solicited no less than once per year through a request  
126 for proposals.

127 (2) Interested applicants shall submit a project application to the Department by the deadline  
128 described in the solicitation.

129 (3) The Department, in collaboration with the MAC and review teams, shall review all Regular Grant  
130 funding applications against the Evaluation Criteria in OAR 635-097-0090, and any other

- 131 requirements deemed appropriate by the Department which will be made available in the current  
132 solicitation.
- 133 (4) Project match may not be required for Regular Grants but may be considered during the review  
134 process.
- 135 (5) Project monitoring may be required with conditions made available in the current solicitation,  
136 (6) The MAC may request that an applicant amend a project application's scope of work and budget  
137 to meet program priorities, and Department staff may assist with such amendments.

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141 OAR 635-097-0060

142 Private Forest Accord Mitigation Fund Urgent Grants

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

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

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166 OAR 635-097-0070

167 Private Forest Accord Mitigation Fund Project Eligibility

- 168 (1) Eligibility includes any local, state, or federal agency, Tribe, or organization.  
169 (2) An applicant may be deemed ineligible by the Department if they have had a previous project  
170 revoked for reasons outlined in OAR 635-097-0110.  
171 (3) A Grantee may only expend monies granted from the PFA Mitigation Fund as authorized by a  
172 signed agreement with the Department for a purpose(s) authorized by these rules.  
173 (4) Funding from the PFA Mitigation Fund shall not be used for any prior or current compensatory  
174 mitigation obligations. Habitat projects funded by the PFA Mitigation Fund cannot be used for the

175 purpose of generating compensatory mitigation credits to offset other compensatory mitigation  
176 obligations.

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179 (5) Eligible projects may include, but are not limited to:

180 (a) Removing structures that block the passage of aquatic organisms or repairing the  
181 structures to promote the passage of aquatic organisms,

182 (b) Placing logs or other wood-based material in streams to promote natural stream  
183 functions,

184 (c) Conserving, recruiting, restoring, or reintroducing beavers and their habitats for the  
185 benefit of HCP-covered species,

186 (d) Developing or sustaining healthy watersheds including riparian corridors, wet meadow  
187 complexes and forested uplands thereby reducing burn intensity during fires and  
188 protecting streams from excess sediment discharge after a wildfire,

189 (e) Applying restoration treatments to stands of trees to enhance historic species diversity  
190 that benefits riparian function,

191 (f) Supporting acquisition of land, or reimbursement of previous land acquisitions, and  
192 interests in land including conservation easements, to protect, enhance, and restore  
193 riparian areas or other critical habitat functions for HCP-covered species,

194 (g) Acquisitions which result in legally protected instream flow to maintain or restore  
195 streamflows for the benefit of habitat for HCP-covered species,

196 (h) Installing fencing or otherwise excluding grazing in riparian areas or around seeps or  
197 springs for HCP-covered species,

198 (i) Installing off-stream stockwater systems or hardened watering gaps to reduce the effects  
199 of grazing on aquatic organisms, or

200 (j) Undertaking other measures that effectively conserve or restore habitat for species  
201 covered by the HCP that is consistent with the Private Forest Accord Report dated  
202 February 2, 2022, and published by the State Forestry Department on February 7, 2022.

203 (k) Projects may include funding requests for monitoring, maintenance, permit- and permit  
204 administrative costs, and applicants may request reimbursement of pre-project costs if  
205 directly associated with the proposed activities in the grant.

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208 OAR 635-097-0080

209 Private Forest Accord Mitigation Fund Application

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

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214 OAR 635-097-0090

215 Evaluation Criteria for Proposed Private Forest Accord Mitigation Fund Projects

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

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

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261 OAR 635-097-0100

262 Revocation of Private Forest Accord Mitigation Fund Project Approvals

- 263 (1) The Department may revoke an approved project if it determines that:
- 264 (a) Implementation of the project is inconsistent with the approved project scope of work,
  - 265 (b) The Department does not receive funding at the levels necessary to completely fund the
  - 266 Project,
  - 267 (c) Any of the design, permitting, or construction of the Project is not pursued with due
  - 268 diligence,
  - 269 (d) The construction of the Project is not permissible under state, federal, or local law, or the
  - 270 Project is inconsistent with current State of Oregon and Department goals, policies,
  - 271 management plans, laws, guidelines, and regulations, as determined by the Department,
  - 272 (e) The Grantee does not abide by the nondiscrimination and affirmative action provisions of
  - 273 this Agreement,
  - 274 (f) The Grantee otherwise commits any material breach or default of any covenant,
  - 275 warranty, obligation, certification or agreement under the a project agreement,
  - 276 (g) The Grantee has violated any term or condition imposed on the project agreement,
  - 277 (h) The project does not meet its proposed objectives, or
  - 278 (i) The project is inconsistent with current State of Oregon and Department goals, policies,
  - 279 management plans, laws, guidelines, and regulations.

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281 OAR 635-097-0110

282 Agreements

- 283 (1) The Grantee shall enter into an agreement with the Department before initiating the project.
- 284 (2) The Department shall distribute no funds under a reimbursement agreement until the agreement
- 285 is fully executed. All requests for reimbursement of funds must be accompanied by a progress
- 286 report unless the agreement authorizes advance payments as described below.
- 287 (3) The Department may award advanced payments at its discretion as specified in a fully executed
- 288 agreement. The Department shall not make advanced payments unless the agreement explicitly
- 289 provides for it.
- 290 (4) The Department may retain a minimum of 10 percent of project funds until it receives the
- 291 required close of project report and evaluates the project for completion and compliance with
- 292 the agreement.
- 293 (5) If the Grantee has not fully executed the agreement with the Department according to the
- 294 timeline in an approved proposal, the Department may rescind the award, unless the applicant
- 295 requests, and the Department approves, an extension.
- 296 (6) Following project completion, equipment purchased with project funds shall remain with the
- 297 Grantee or another approved entity. Equipment with a value above five-thousand dollars shall
- 298 adhere to any additional post-project requirements stipulated by the Department.
- 299 (7) The Commission may award grantees post-project maintenance funding.
- 300 (8) The Commission may award Grantee post-project monitoring funding.
- 301 (9) All agreements between the Grantee and the Department shall have a project expiration date,
- 302 when proposed activities are to conclude, that is determined by the Department to be
- 303 representative of the work performed.

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