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NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635

DEPARTMENT OF FISH AND WILDLIFE

FILED

06/24/2025 9:13 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amendment of Private Forest Accord Grant Program OARs

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/15/2025 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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503-947-6314

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4034 Fairview Industrial Drive SE

Salem, OR 97302

Filed By:

Roxann Borisch

Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 08/15/2025

TIME: 8:00 AM - 5:00 PM

OFFICER: ODFW Commission

IN-PERSON HEARING DETAILS

ADDRESS: Oregon Department of Fish and Wildlife, 4034 Fairview Industrial Drive SE, Salem, OR 97302

SPECIAL INSTRUCTIONS:

This hearing will be conducted as a hybrid meeting, providing an opportunity to give testimony either in person or virtually. Additional information regarding participation will be posted on our website at www.dfw.state.or.us/agency/commission/minutes/. The meeting can be viewed at www.youtube.com/user/IEODFW. Any changes to the meeting format (to virtual only if emergency arises) will be posted to our website as soon as possible.

NEED FOR THE RULE(S)

In 2022 the Oregon legislature established the Private Forest Accord Grant Program (Grant Program) through the passage of Senate Bills 1501 and 1502 and House Bill 4055 for funding projects with the purpose of mitigating the impacts to covered species from forest practices conducted on private lands in the State of Oregon as addressed in the Habitat Conservation Plan. This Grant Program is the outcome of the landmark agreement to recommend changes to the Forest Practices Act. The 2022 Private Forest Accord Authors Report to Legislature captured additional details of the agreement among the timber, conservation, and fishing groups. The Private Forest Accord resulted in the updated Forest Practices Act to better protect aquatic species. The updates support a programmatic habitat conservation plan (HCP) for aquatic species covering almost all regular forest practices.

The Private Forest Accord Grant Program consists of a twelve-member Advisory Committee that solicit and review grant applications and advises the State Fish and Wildlife Commission and ODFW. In addition, the Advisory Committee makes funding recommendations on how to award grants that will most effectively mitigate the impacts of forest practices, as defined in ORS 527.620, to species covered by the HCP.

The initial set of administrative rules that established the Grant Program were approved by the State Fish and Wildlife Commission on August 4, 2023. Since that adoption of administrative rules and the early implementation of the Grant Program amendments are needed to refine the terminology used in practice and clarify rules regarding the operations of the Grant Program and the conditions used in grant agreements between ODFW and Program Grantees.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

1. Staff report prepared for the Oregon Fish and Wildlife Commission hearing on 2/14/2025, including the presentation and all provided materials.

A copy of the rules and the other documents relied upon for this rulemaking [the above document(s)] are available from the Oregon Department of Fish and Wildlife, Fish Division, 4034 Fairview Industrial Drive SE, Salem, Oregon 97302-1142. Contact Steve Emerson at 503-947-6214 or Roxann.B.Borisch@odfw.oregon.gov to view by appointment between the hours of 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Department has solicited input from representatives of underrepresented communities likely to be affected on whether the proposed rule will have a fiscal impact on the community, the extent of the fiscal impact, and whether the rules will have significant impact on underrepresented communities. <https://www.dfw.state.or.us/OARs/index.asp>

FISCAL AND ECONOMIC IMPACT:

The Private Forest Accord Grant Program has an overall positive fiscal and economic impact as it allows for the disbursement of funding for eligible projects. These proposed amendments are not anticipated to result in any significant fiscal and or economic changes.

The further discussion of potential impacts below pertains to the proposed amendments at the time of the writing of this FIS.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

A. The proposed amendments are not expected to have major economic or fiscal effects on ODFW or other state agencies. The operating expenses to implement the grant program are not expected to change as a result of these amendments. The amendments are also not expected to impact the collection or distribution of funds any a major way. Program funding is administered through a subaccount of Oregon Conservation and Recreation Fund, monies used are collected through legislative appropriation as well as privilege and harvest taxes on forest products established under the passage of House Bill 4055 (2022).

Amendments change the name of Private Forest Accord Mitigation Advisory Committee to the PFA Advisory Committee, but there are no major changes to the Committee itself and their operating procedures at this time.

The proposed revisions to grant agreement conditions will offer ODFW greater ability to: make administrative corrections, authorize minor changes within the scope of the original project plan, ensure mutually agreed upon access to project sites for evaluation, provide more clear information on submission of periodic reports, and allow for the consideration of the use of remaining grant monies (in cases where the purpose and intent of the project amendment remains the same, as the original project, when it occurs within the same watershed and remains compatible with acknowledged comprehensive plans).

B. It is not expected that units of local government will be directly affected by the proposed rule amendments. Where units of government are participating in the Grant Program, there are some proposed modifications to the Grant Agreement Conditions, but these amendments are not expected to result in additional downstream economic and or fiscal impacts.

C. It is not expected that the public will be directly affected by the proposed rule amendments. Where public parties and conservation groups are participating in the Grant Program, there are some proposed modifications to the Grant Agreement Conditions, but these amendments are not expected to result in additional downstream economic and or fiscal impacts.

The Grant Program in general provides increased indirect benefits to the public from the conservation benefits obtained through habitat restoration and protection project work. Environmental economists have measured these indirect benefits through increased property values, better public health outcomes, and positive impacts from healthy ecosystems and increased biodiversity (for example reduced damage from pests and diseases). While an accurate monetary estimate of these benefits across all PFA projects cannot be provided at this time, ODFW recognizes that these indirect benefits provide positive impacts to Oregonians, as a result of the PFA program.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s); Implementation of this program already impacts timber industry and conservation businesses. Funding is received through legislative appropriation as well as privilege and harvest taxes for forest products. Eligible applicants and communities where projects occur may benefit from awarded funds for projects that provide conservation benefits to Habitat Conservation Plan covered species.

In the first round of funding disbursement for the PFA Grant Program 25 projects across the state of Oregon were awarded more than \$10 Million in grants. Additional information on awards and the project locations can be found on the Story Map located on the PFA website (<https://www.dfw.state.or.us/habitat/PFA/projects/index.html>).

For these proposed amendments, it is not expected that there will be any major outcomes that would result in additional effects to the groups that participate in the Grant Program.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

The proposed amendments refine already established project grant application and reporting requirements. There are some modifications to the Grant Agreement Conditions, however, grantees were already required to prove completed work and to submit project reporting to ODFW. It is anticipated that the costs to applicants and grant award recipients, associated with reporting requirements, will not change significantly in comparison to the current program's requirements.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to

comply with the rule(s).

These types of compliance costs are not anticipated to result from the proposed amendments.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Private Forest Accord Mitigation Advisory Committee consists of twelve (12) members, seven (7) of which are non-governmental Governor appointees that represent various conservation and timber industry businesses of various sizes.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

An Administrative Rules Advisory Committee was not consulted. The Private Forest Accord Mitigation Advisory Committee has acted as the Administrative Rule Advisory Committee for drafting these administrative rule amendments. The Private Forest Accord Mitigation Advisory Committee was involved in public meetings to draft rule amendments and address public comments received during the development process.

Additionally, at the Commission hearing, public correspondence and testimony is accepted into the record as part of the rulemaking process.

RULES PROPOSED:

635-097-0000, 635-097-0010, 635-097-0020, 635-097-0030, 635-097-0040, 635-097-0050, 635-097-0060, 635-097-0070, 635-097-0080, 635-097-0090, 635-097-0100, 635-097-0110

AMEND: 635-097-0000

RULE SUMMARY: The Oregon Department of Fish and Wildlife (ODFW) is proposing the adoption of amendments to the current set of administrative rules regarding the Private Forest Accord Mitigation Grant Program. Amendments refine the implementation of the recently established Private Forest Accord Mitigation Grant Program by updating the definitions used, clarifying language, and modifying the conditions for grant project agreements between ODFW and project Grantees.

Specific proposed amendments include: Shift in language from mitigation to providing conservation benefits to aquatic species covered by the Private Forest Accord Habitat Conservation Plan (HCP); Change the name of the Private Forest Accord Mitigation Fund to the Private Forest Grant Program; Change the name of the "MAC" Private Forest Accord Mitigation Advisory Committee to the PFA Advisory Committee; Clarify the definition of mitigation for the purposes of the PFA Subaccount; Add definition for Tribe as a federally recognized Indian tribe Removal of the separate category of projects considered "urgent" grants along with the corresponding definitions, procedures, and requirements for implementing these types grants as previously described in 635-097-0060; Revisions to grant program project eligibility that simplify language on supporting conservation easements and also add specific ORS 537.348 reference for supporting acquisition of existing water rights for in-stream water right conversions; Add requirement for Best Practices for Community Engagement around Water Projects for funded development or implementation of community engagement plans; Modifications to the grant project agreements between ODFW and the project Grantees that clarify grant agreement conditions, these amendments allow ODFW: to further specify submission of project status update reports, authorize minor changes within the scope of the original project, make administrative corrections to budget when corrections do not exceed 10% of the approved budget (after Commission approval), work with grantees on timeframe adjustments in cases of proposed modifications or amendments, consider use of remaining grant monies in cases where the purpose and intent of the project amendment remains the same as the original project, occurring within the same watershed and is compatible with acknowledged comprehensive plans, and ensure mutually agreed upon access to project areas for monitoring and evaluation purposes.

The Commission may decide to adopt staff recommended proposed rule and rule amendments as proposed in attachment 3, or the Commission may decide to modify the proposed rules or not adopt some or any of the proposed rule amendments.

CHANGES TO RULE:

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. The rules governing the Private Forest Accord Mitigation Grant Program are OAR 635-097-0000 through 635-097-0110~~090~~, referred to herein as the "PFA Grant rules".

Statutory/Other Authority: ORS 496.012, 496.138, 496.146, Oregon Laws 2022, Chapter 33, Sections 30-32

Statutes/Other Implemented: ORS 496.012, Oregon Laws 2022, Chapter 33, Sections 30-32

RULE SUMMARY: The Oregon Department of Fish and Wildlife (ODFW) is proposing the adoption of amendments to the current set of administrative rules regarding the Private Forest Accord Mitigation Grant Program. Amendments refine the implementation of the recently established Private Forest Accord Mitigation Grant Program by updating the definitions used, clarifying language, and modifying the conditions for grant project agreements between ODFW and project Grantees.

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CHANGES TO RULE:

635-097-0010

Definitions

These definitions apply for 635-097-0000 through 635-097-0110 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~~Grant Program.¶¶

(2) "Applicant" means an eligible entity that provides a project application for the Private Forest Accord ~~Mitigation Fund~~Grant Program. ¶¶

(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.¶¶

(5) "Covered Species" means the specific fish and amphibian species identified in the PFA Authors Report (dated February 2, 2022, and published by the State Forestry Department on February 7, 2022).¶¶

(6) "Department" means the Oregon Department of Fish and Wildlife. ¶¶

(~~6~~7) "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.¶
 - ~~(78) "Grant" means a funding opportunity through competitive solicitation.¶~~
 - ~~(9) "Grantee" means an applicant that enters into an agreement with the Department to accomplish a project. ¶~~
 - ~~(810) "HCP" means the anticipated Oregon Private Forest Accord Aquatic Habitat Conservation Plan to be 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) "MAC11) "PFA Advisory Committee" 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, which is an advisory committee to the State Fish and Wildlife Commission and the State Department of Fish and Wildlife for the Private Forest Accord Grant Program. ¶~~
 - ~~(12) "Mitigation" for the purposes of the PFA Grant Program is defined as implementing measures that provide conservation benefits to covered species.¶~~
 - ~~(123) "PFA" means the Private Forest Accord.¶~~
 - ~~(134) "PFA Grant Program" is the program authorized by Oregon Laws 2022, chapter 33, section 32 for the purpose of funding projects that mitigate impacts of forest practiceprovide conservation benefits to covered species.¶~~
 - ~~(145) "Quorum" means a majority of the MAC voting members.¶~~
 - ~~(15) "Regular Grant" means a funding opportunity through competitive solicitation.PFA Advisory Committee voting members. ¶~~
 - ~~(16) "Solicitation" is a notice that invites entities to apply for funding to the Private Forest Accord Mitigation Grant pProgram. 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. ¶~~
 - ~~(17) "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.¶~~
 - ~~(18) "Urgent Grant" means a time-sensitive, high-priority project in need of funding more quickly than available via a Regular GrantTribe(s)" means a federally recognized Indian tribe in Oregon.~~
- Statutory/Other Authority: ORS 496.012, 496.138, 496.146, Oregon Laws 2022, Chapter 33, Sections 30-32
- Statutes/Other Implemented: ORS 496.012, Oregon Laws 2022, Chapter 33, Sections 30-32

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CHANGES TO RULE:

635-097-0020

Private Forest Accord Mitigation Fund Grant Program

(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 consistent with advice from the PFA ~~MAC~~ Advisory Committee and these PFA Grant rules. ¶

(3) The Department shall expend moneys in the PFA Mitigation Fund only for: ¶

(a) Projects recommended by the ~~MAC~~ PFA Advisory Committee to the Department, and approved by the Commission that meet eligibility requirements in OAR 635-097-00750, ¶

(b) Projects that conduct outreach to further the purpose of PFA Grant Program, and ¶

(c) Administrative costs associated with the PFA Grant Program. ¶

(4) The Department and ~~MAC~~ PFA Advisory Committee shall submit a joint biennial report to the Legislature on the expenditure of funds for the PFA ~~Mitigation Fund~~ Grant Program and the status of funded projects.

Statutory/Other Authority: ORS 496.012, 496.138, 496.146, Oregon Laws 2022, Chapter 33, Sections 30-32

Statutes/Other Implemented: ORS 496.012, Oregon Laws 2022, Chapter 33, Sections 30-32

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CHANGES TO RULE:

635-097-0030

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

(1) The purpose and duties of the ~~MAC~~ PFA Advisory Committee are to:¶

(a) Review Department policies regarding the use of moneys deposited in the ~~PFA Mitigation Fund~~ Grant Program 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~~ PFA Advisory Committee shall consist of seven voting members and up to five nonvoting members. The composition of the ~~MAC~~ PFA Advisory Committee is as follows:¶

(a) Voting Members:¶

(A) Six voting members are appointed by the Governor, which shall include three members who represent the timber industry, and three members who represent nongovernmental organizations promoting freshwater aquatic habitat conservation.¶

(B) One voting member is appointed by the Oregon Conservation and Recreation Advisory Committee from among themselves. ¶

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

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

- (A) The State Department of Forestry,¶
- (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.¶

(~~ε~~3) The MACPFA Advisory Committee shall select officers for such terms and with such duties and powers it considers necessary to carry out the responsibilities of the MACPFA Advisory Committee. In addition, the members of the MACPFA Advisory Committee shall choose a temporary officer in the absence of the officers.¶

(34) In undertaking the duties described in section (1) of this rule, the MACPFA Advisory Committee may solicit and consider project recommendations from other grant programs such as the Oregon Conservation and Recreation Fund.

Statutory/Other Authority: ORS 496.012, 496.138, 496.146, Oregon Laws 2022, Chapter 33, Sections 30-32
Statutes/Other Implemented: ORS 496.012, Oregon Laws 2022, Chapter 33, Sections 30-32

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CHANGES TO RULE:

~~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 that need funding outside of the Regular Grant funding opportunity. Projects seeking Urgent Grant funding shall demonstrate the time-sensitive need and a meaningful conservation benefit for HCP-covered species as recommended by the MAC and as determined by the Commission.~~

~~Statutory/Other Authority: ORS 496.012, 496.138, 496.146, Oregon Laws 2022, Chapter 33, Sections 30-32~~

~~Statutes/Other Implemented: ORS 496.012, Oregon Laws 2022, Chapter 33, Sections 30-32~~

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CHANGES TO RULE:

635-097-0050

~~Private Forest Accord Mitigation Fund Regular Grants Grant Program Solicitation~~

The Department, ~~at the discretion of~~ in collaboration with the MACPFA Advisory Committee, 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 MACPFA Advisory Committee and 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 may not be required for ~~Regular Grants~~ but may be considered during the review process.¶

(5) Project monitoring may be required with conditions made available in the current solicitation.¶

(6) The MACPFA Advisory Committee 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.¶

(7) The Commission may award grant funding to projects throughout the State of Oregon that provide conservation benefits to covered species, with advice from the Department and the PFA Advisory Committee.

Statutory/Other Authority: ORS 496.012, 496.138, 496.146, Oregon Laws 2022, Chapter 33, Sections 30-32

Statutes/Other Implemented: ORS 496.012, Oregon Laws 2022, Chapter 33, Sections 30-32

RULE SUMMARY: The Oregon Department of Fish and Wildlife (ODFW) is proposing the adoption of amendments to the current set of administrative rules regarding the Private Forest Accord Mitigation Grant Program. Amendments refine the implementation of the recently established Private Forest Accord Mitigation Grant Program by updating the definitions used, clarifying language, and modifying the conditions for grant project agreements between ODFW and project Grantees.

Specific proposed amendments include: Shift in language from mitigation to providing conservation benefits to aquatic species covered by the Private Forest Accord Habitat Conservation Plan (HCP); Change the name of the Private Forest Accord Mitigation Fund to the Private Forest Grant Program; Change the name of the “MAC” Private Forest Accord Mitigation Advisory Committee to the PFA Advisory Committee; Clarify the definition of mitigation for the purposes of the PFA Subaccount; Add definition for Tribe as a federally recognized Indian tribe Removal of the separate category of projects considered “urgent” grants along with the corresponding definitions, procedures, and requirements for implementing these types grants as previously described in 635-097-0060; Revisions to grant program project eligibility that simplify language on supporting conservation easements and also add specific ORS 537.348 reference for supporting acquisition of existing water rights for in-stream water right conversions; Add requirement for Best Practices for Community Engagement around Water Projects for funded development or implementation of community engagement plans; Modifications to the grant project agreements between ODFW and the project Grantees that clarify grant agreement conditions, these amendments allow ODFW: to further specify submission of project status update reports, authorize minor changes within the scope of the original project, make administrative corrections to budget when corrections do not exceed 10% of the approved budget (after Commission approval), work with grantees on timeframe adjustments in cases of proposed modifications or amendments, consider use of remaining grant monies in cases where the purpose and intent of the project amendment remains the same as the original project, occurring within the same watershed and is compatible with acknowledged comprehensive plans, and ensure mutually agreed upon access to project areas for monitoring and evaluation purposes.

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CHANGES TO RULE:

~~635-097-0060~~

~~Private Forest Accord Mitigation Fund Urgent Grants~~

~~The Department, at the discretion of the MAC, may offer an Urgent Grant funding opportunity for critical need projects that are time-sensitive and high-priority projects that need funding outside of the Regular Grant funding opportunity. 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 may be required to:¶¶~~

~~(a) Provide a one-page pre-application to ODFW staff and a full application upon request,¶¶~~

~~(b) Attend a pre-application conference with ODFW staff,¶¶~~

~~(c) Present to the MAC on the proposed project prior to an award,¶¶~~

~~(d) Perform project monitoring,¶¶~~

~~(e) Have secured all project permitting or provide proof of submission,¶¶~~

~~(f) Have secured all landowner access agreements, and¶¶~~

~~(g) 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 timing of consideration of Urgent Grant funding requests shall be at the discretion of the MAC, considering available funds and other business.¶¶~~

~~(5) The MAC shall review all Urgent Grant funding applications against the eligibility requirements, application requirements and 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.¶¶~~

~~(6) 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.~~

~~Statutory/Other Authority: ORS 496.012, 496.138, 496.146, Oregon Laws 2022, Chapter 33, Sections 30-32~~

~~Statutes/Other Implemented: ORS 496.012, Oregon Laws 2022, Chapter 33, Sections 30-32~~

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CHANGES TO RULE:

635-097-0070

~~Private Forest Accord Mitigation Fund Grant Program~~ Private Forest Grant Program Project Eligibility and Authorized Use of Grant Funds

(1) Eligible Applicants are any local, State of Oregon, or federal agency, Tribe(s), political subdivision of this state, college or university, non-profit or private corporation, or limited liability corporation. Individuals may partner with an eligible entity. ¶

(2) An applicant may be deemed ineligible by the Department if they have had a previous project revoked for reasons listed in OAR 635-097-0100. ¶

(3) A Grantee may only expend monies granted from the PFA ~~Mitigation Fund Grant Program~~ Grant Program as authorized by a signed agreement with the Department for a purpose(s) authorized by these rules. ¶

(4) Funding from the PFA ~~Mitigation Fund Grant Program~~ Grant Program shall not be used for any prior or current compensatory mitigation obligations. Habitat projects funded by the PFA ~~Mitigation Fund Grant Program~~ Grant Program cannot be used for the purpose of generating compensatory mitigation credits to offset or account for other compensatory mitigation obligations. ¶

(5) Eligible projects 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, restoring, or reintroducing beavers and their habitats for the benefit of ~~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 or restore historic species diversity that benefits riparian function,¶

(f) Supporting acquisition of land, and interests in land including establishment of conservation easements, to protect, enhance, or restore riparian areas or other critical habitat functions on land other than forestland to protect riparian areas. ¶

(g) Supporting acquisition of an existing water right for HCP-covered species. ¶

~~(g) Acquisitions which result in legally protected instream flow to maintain or restore sion to an in-stream water right, as described in ORS 537.348, to improve in-stream flows for the benefit of habitat for HCP-covered species, conditions.~~ ¶

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

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

(j) ~~Undertaking other measures that effectively conserve or restore habitat for species covered 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, and covered species.~~ ¶

(k) Projects may include funding requests for monitoring, maintenance, and permit administrative costs.

Applicants may request reimbursement of pre-project costs if directly associated with the proposed activities in the grant. ¶

(6) Funds from the PFA Grant Program may be allocated to projects outside the standard grant solicitation process, based on criteria established by OAR 635-097-0070, 635-097-0080, 635-097-0090 and 635-097-0110. ¶

(7) When development or implementation of community engagement plans are funded as part of a project, Best Practices for Community Engagement around Water Projects must be used to invite and support meaningful involvement by representatives of disproportionately impacted communities in water projects funded through the PFA Grant Program.

Statutory/Other Authority: ORS 496.012, 496.138, 496.146, Oregon Laws 2022, Chapter 33, Sections 30-32

Statutes/Other Implemented: ORS 496.012, Oregon Laws 2022, Chapter 33, Sections 30-32

AMEND: 635-097-0080

RULE SUMMARY: The Oregon Department of Fish and Wildlife (ODFW) is proposing the adoption of amendments to the current set of administrative rules regarding the Private Forest Accord Mitigation Grant Program. Amendments refine the implementation of the recently established Private Forest Accord Mitigation Grant Program by updating the definitions used, clarifying language, and modifying the conditions for grant project agreements between ODFW and project Grantees.

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CHANGES TO RULE:

635-097-0080

~~Private Forest Accord Mitigation Fund Grant Program~~ Application

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

Statutory/Other Authority: ORS 496.012, 496.138, 496.146, Oregon Laws 2022, Chapter 33, Sections 30-32

Statutes/Other Implemented: ORS 496.012, Oregon Laws 2022, Chapter 33, Sections 30-32

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CHANGES TO RULE:

635-097-0090

Evaluation Criteria for Proposed Private Forest Accord Mitigation Fund Grant Program Projects

All project requests shall be reviewed by the ~~MACPFA Advisory Committee~~, the Department, and additional review team(s) as deemed appropriate by the Department and ~~MACPFA Advisory Committee~~. 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: Clarity, technical soundness, cost-effectiveness, addressing the biological needs of HCP-covered species, addressing conservation strategies identified by the PFA HCP, in a watershed context, readiness, measurability, available funding, capacity of the applicant, and any other metric deemed appropriate by the ~~MACPFA Advisory Committee~~ or the Department. ¶

(2) Project applications shall provide, at a minimum, 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 PFA ~~Mitigation Fund~~ Grant Program 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, ¶

- (g) A monitoring plan to measure performance of the implemented project, and¶
- (h) A list of necessary project permits and copies of collected permits, or the anticipated actions to collect the required permits. All Grantees bear sole responsibility to seek and obtain all necessary permits or authorizations that may be required to carry out such projects.¶
- (3) The Department, at direction of the MACPFA Advisory Committee, 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, including land use planning goals, and governments' 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 MACPFA Advisory Committee, or the Commission may require additional information to evaluate the project.

Statutory/Other Authority: ORS 496.012, 496.138, 496.146, Oregon Laws 2022, Chapter 33, Sections 30-32
 Statutes/Other Implemented: ORS 496.012, Oregon Laws 2022, Chapter 33, Sections 30-32

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CHANGES TO RULE:

635-097-0100

~~Revocation of Private Forest Accord Mitigation Fund Grant Program Application~~ Project Approvals

The Department may revoke an approved project if it determines that:¶

- (1) Implementation of the project is inconsistent with the approved project scope of work,¶
- (2) The Department does not receive funding at the levels necessary to completely fund the Project,¶
- (3) Any of the design, permitting, or construction of the Project is not pursued with due diligence as determined by the Department,¶
- (4) The construction of the Project is not permissible under state, federal, or local law, or the Project is inconsistent with current State of Oregon and Department goals, policies, management plans, laws, guidelines, and regulations, as determined by the Department,¶
- (5) The Grantee does not abide by the nondiscrimination and affirmative action provisions of this Agreement,¶
- (6) The Grantee otherwise commits any material breach or default of any covenant, warranty, obligation, certification or agreement under the project agreement,¶
- (7) The Grantee has violated any term or condition imposed on the project agreement,¶
- (8) The project does not meet its proposed objectives, or¶
- (9) The project is inconsistent with current State of Oregon and Department goals, policies, management plans, laws, guidelines, and regulations.

Statutory/Other Authority: ORS 496.012, 496.138, 496.146, Oregon Laws 2022, Chapter 33, Sections 30-32

Statutes/Other Implemented: ORS 496.012, Oregon Laws 2022, Chapter 33, Sections 30-32

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CHANGES TO RULE:

635-097-0110

Agreements

~~(1) The Grantee shall enter into an~~ Upon Commission approval, the Department may issue a work authorization letter to a Grantee authorizing the Grantee to commence project work and begin incurring expenses on a specified date that is before a fully executed agreement with the Department before initiating the project. ¶

~~(2) T. To be eligible for reimbursement of expenses incurred before entering into an agreement with the Department shall distribute no funds under a reimbursement, a Grantee shall meet the following conditions:¶~~
~~(a) Enter into an agreement until the agreement is fully executed. All requests for reimburs~~ (a) Enter into an agreement until the agreement is fully executed. All requests for reimburs ~~with the Department for a project funded by the PFA Fund; ;¶~~

~~(b) Complete any reporting requirements of funds must be accompanied by a progress report unless the agreement authorizes advance payments as described below, utlined in these rules.¶~~

~~(c) Acknowledge and agree that any expenses incurred, or actions taken, prior to the execution of an agreement between the Department and the Grantee, are at the Grantee's own risk and expense.¶~~

~~(32) 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. ¶~~

~~(43) The Department may 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.¶~~

~~(54) If the Granteeall the parties has not fully executed the agreement with the Department according to the timeline in an approved proposal, the Department may rescind the award~~ terminate funding, unless the applicant

requests, and the Department approves, an extension. ¶

~~(65) 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 any additional post-project requirements stipulated by the Department, and equipment with a value of five-thousand or less shall remain with the Grantee or another approved entity. ¶~~

~~(76) The Commission may award Grantee post-project monitoring and maintenance funding. ¶~~

~~(87) All agreements between the Grantee and the Department shall have a project expiration date. ¶~~

~~(8) The Department shall have the authority to distribute to Grantee additional funds not to exceed 10 percent of the approved budget to provide for administrative corrections that the Department determines necessary. ¶~~

~~(9) The Department may consider approval of project amendments, including expansion of funded projects, with moneys remaining from the original project allocation if the purpose and intent of the amendment remains the same as the original project and the proposed activity is within the same watershed. ¶~~

~~(10) The Grantee must complete all required report elements described in the grant agreement. ¶~~

~~(11) The Grantee will allow the PFA Advisory Committee, Department members, or designated representatives access to the project area at a mutually agreeable time to monitor and evaluate the project.~~

Statutory/Other Authority: ORS 496.012, 496.138, 496.146, Oregon Laws 2022, Chapter 33, Sections 30-32

Statutes/Other Implemented: ORS 496.012, Oregon Laws 2022, Chapter 33, Sections 30-32