



Oregon

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Department of Land Conservation and Development

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June 8, 2011

TO: Land Conservation and Development Commission

FROM: Katherine Daniels, Farm and Forest Lands Specialist
Rob Hallyburton, Planning Services Director

SUBJECT: **Agenda Item 10, June 22, 2011, LCDC Meeting**

INITIATION OF RULEMAKING FOR DEPARTMENT FACILITATION OF SOILS ASSESSMENTS ON FARMLAND RULEMAKING ADVISORY COMMITTEE

I. AGENDA ITEM SUMMARY

This item is a follow-up to LCDC's 2010 legislative agenda, which resulted in passage of House Bill 3647. This bill addresses challenges to published agricultural soils productivity data where landowners wish to obtain approval for a change in land use or zoning. A person wishing to contract for alternative soils information must arrange, through the department, for a soils assessment performed by a certified soil classifier in good standing with the Soil Science Society of America. The bill authorizes the department to charge a fee to meet the costs of assessing the soils and administrative costs, to be deposited in a Soils Assessment Fund, from which payment will be made to contracted soil classifiers.

The department recommends that the commission appoint a rules advisory committee to develop and recommend amendments to OAR 660, division 33, to fully implement the provisions of HB 3647.

For additional information, please contact Katherine Daniels, Farm and Forest Lands Specialist at 503-373-0050 ext. 329 or katherine.daniels@state.or.us.

II. BACKGROUND

House Bill 3647 was intended to ensure that consultants who assess soils have the necessary field experience to do this work. The bill was also intended to reduce potential conflicts of

interest that can occur when contractors are secured directly through landowners. While landowners will still choose the classifier, the department's function as an intermediary should help ensure the objectivity of the reports.

The issues that should be addressed in rulemaking include: 1) establishing and maintaining a list of qualifying certified soil classifiers, 2) establishing appropriate fees for soils assessments, 3) developing a process for contracting with soil classifiers, 4) identifying an appropriate format for reports submitted to the department, 5) specifying the process for sharing reports with county planning departments, and 6) describing the role of the department in reviewing submitted soils assessments. Other technical issues needing attention may also be identified.

While most of these issues are technical and procedural, enough are substantive to warrant the appointment of a small advisory committee consisting of one or two certified soil classifiers, a representative of the Soil Science Society of America, a county planning director, a representative of the Department of Agriculture and a representative of the U.S. Natural Resources Conservation Service.

III. DEPARTMENT RECOMMENDATION AND DRAFT MOTION

The department recommends that the commission appoint a rules advisory committee to consist of one or two certified soil classifiers, a representative of the Soil Science Society of America, a county planning director, a representative of the Oregon Department of Agriculture and a representative of the U.S. Natural Resources Conservation Service. The rulemaking work is expected to begin in early July and to conclude with a recommendation and hearing before the commission at the October meeting.

Proposed Motion: I move that the commission appoint a rules advisory committee to consider and propose amendments, as appropriate, to OAR 660, division 33 (Agricultural lands) to fully implement the provisions of HB 3647.

IV. ATTACHMENTS

A. House Bill 3647 (2010)

75th OREGON LEGISLATIVE ASSEMBLY--2010 Special Session

Enrolled House Bill 3647

Sponsored by COMMITTEE ON AGRICULTURE, NATURAL RESOURCES AND RURAL COMMUNITIES

CHAPTER

AN ACT

Relating to soil information; appropriating money; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) If a person concludes that more detailed soils information than that contained in the Internet soil survey of soil data and information produced by the National Cooperative Soil Survey operated by the Natural Resources Conservation Service of the United States Department of Agriculture would assist a county to make a better determination of whether land qualifies as agricultural land, the person must request that the Department of Land Conservation and Development arrange for an assessment of the capability of the land by a professional soil classifier who is:

- (a) Certified by and in good standing with the Soil Science Society of America; and
- (b) Chosen by the person.

(2) A soils assessment produced under this section is not a public record, as defined in ORS 192.410, unless the person requesting the assessment utilizes the assessment in a land use proceeding. If the person decides to utilize a soils assessment produced under this section in a land use proceeding, the person shall inform the Department of Land Conservation and Development and consent to the release by the department of certified copies of all assessments produced under this section regarding the land to the local government conducting the land use proceeding. The department:

- (a) Shall review soils assessments prepared under this section.
- (b) May not disclose a soils assessment prior to its utilization in a land use proceeding as described in this subsection without written consent of the person paying the fee for the assessment.
- (c) Shall release to the local government conducting a land use proceeding all soils assessments produced under this section regarding land to which the land use proceeding applies.

(3) Before arranging for a soils assessment under this section, the department shall charge and collect from the person requesting the assessment a fee in an amount intended to meet the costs of the department to assess the soils and administer this section.

(4) The department shall deposit fees collected under this section in the Soils Assessment Fund established under section 2 of this 2010 Act.

(5) This section authorizes a person to obtain additional information for use in the determination of whether land qualifies as agricultural land, but this section does not other-

wise affect the process by which a county determines whether land qualifies as agricultural land.

SECTION 2. The Soils Assessment Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Soils Assessment Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Department of Land Conservation and Development to meet the costs of the department to assess soils under and to administer section 1 of this 2010 Act.

SECTION 3. (1) Section 1 of this 2010 Act becomes operative October 1, 2011.

(2) The Department of Land Conservation and Development may adopt rules and take any other actions before the operative date specified in subsection (1) of this section that are necessary to enable the department to exercise, on and after the operative date specified in subsection (1) of this section, the duties, functions and powers of the department pursuant to section 1 of this 2010 Act.

SECTION 4. This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage.

Passed by House February 12, 2010

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Chief Clerk of House

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Speaker of House

Passed by Senate February 20, 2010

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President of Senate

Received by Governor:

.....M.,....., 2010

Approved:

.....M.,....., 2010

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2010

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