

MEMO

TO: Members of the Soils Assessment Rules Advisory Committee
FROM: Katherine Daniels, DLCD
SUBJECT: Proposed soils rule language draft #1
DATE: August 30, 2011

660-033-0020

Definitions

(9) “Independent panel of soils professionals” means a committee of three professionals who annually review and make determinations regarding the current and continuing qualifications of applicants and contractors to contract with the department to perform professional soils analyses.

(a) Such panel shall consist of:

(A) A member of the Soil Certifying Board of the Soil Science Society of America;

(B) The Oregon State Soil Scientist; and

(C) An Oregon university soils professional.

(b) The department farm and forest lands specialist shall serve as staff to the panel.

(c) Panel members shall have equivalent qualifications to professional soil classifiers as defined in this rule or shall have experience teaching soil genesis, morphology and classification in a university setting.

(14) ‘Professional soil classifier’ means any professional in good standing with the Soil Science Society of America (SSSA) who has been certified by the SSSA to have met the requirements as of October 1, 2011 for:

(a) Certified Professional Soil Classifier; or

(b) Certified Professional Soil Scientist, and who has been determined by an independent panel of soils professionals to:

(A) Have completed five semester hours in soil genesis, morphology and classification;

(B) Have not less than five years of field experience in soils classification and mapping meeting National Cooperative Soil Survey standards; and

(C) Have demonstrated competence in practicing soils classification and mapping without direct supervision.

660-033-0030

Identifying Agricultural Land

(5)(a) More detailed data on soil capability than is contained in the U.S. Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the NRCS land capability classification system.

(b) 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 NRCS 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 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.

(c) The department will develop and annually update a list of qualified professional soil classifiers as defined in OAR 660-033-0020 with whom it will enter into contracts (henceforth ‘contractors’) to perform soils assessments under this rule.

(A) The list of qualified professional soil classifiers shall consist of those individuals who, after review of submitted qualifications, are determined to be qualified for listing by a majority vote of an independent panel of soils professionals as defined in OAR 660-033-0020.

(B) The independent panel of soils professionals may periodically reevaluate qualifications of contractors by auditing soils assessments and ensuring continued good standing with the Soil Science Society of America.

(d) Before arranging for a soils assessment under this rule, 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 rule.

(A) The person requesting the assessment shall choose a contractor from the list of qualified professional soil classifiers and submit to the department:

(i) An application requesting a soils assessment;

(ii) A copy of the selected contractor bid to assess the soils; and

(iii) A payment for the amount of the full bid to assess the soils and an application fee to be established by the department as provided in statute to meet department costs to administer this rule.

(e) The department shall deposit fees collected under this rule in the Soils Assessment Fund established under section 2 of the 2010 Act (HB 3647).

(f) On completion of the soils assessment, the contractor shall submit to the department:

(A) The soils assessment in a standardized reporting format provided by the department; and

(B) An invoice for the bid amount for the soils assessment.

(g) Within 30 days of receipt of the soils assessment, the department shall review the soils assessment for consistency with the required reporting format and, in accordance with the terms of the contract, issue a check to the contractor for the full bid amount.

(h) A soils assessment produced under this rule 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 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 may not disclose a soils assessment prior to its utilization in a land use proceeding as described in this rule without written consent of the person paying the fee for the assessment.

(A) On receipt of written consent for the release of a soils assessment as described in subsection (g) of this rule, the department shall release to the local government all soils assessments produced under this rule regarding land to which the land use proceeding applies.

(i) In considering an application for a land use action in which more detailed soils data than NRCS data is presented to demonstrate whether land qualifies as agricultural land, local governments may consider only those assessments certified by the department in conformance with this rule. No other source of soils data pertaining to the subject property may be considered by local governments in such land use proceedings.

(A) The types of land use actions that require conformance with this rule include proposals for which more detailed soils data is submitted for:

(i) Non-resource land rezonings;

(ii) Non-resource dwellings;

(iii) Non-resource land divisions;

(iv) Irrevocably committed exceptions if the soils data is used to demonstrate that the application of Goal 3 is impracticable; and

(v) Urban growth boundary expansions (?)

*(j) This **rule** authorizes a person to obtain additional information for use in the determination of whether land qualifies as agricultural land, but this **rule** does not otherwise affect the process by which a county determines whether land qualifies as agricultural land **defined by Goal 3.***