



Oregon Department
of Land Conservation
and Development

Department of Land Conservation and Development Soils Assessment Rules Advisory Committee

MINUTES

Meeting 1

August 10, 2011

9:00 am – 12:00 pm

635 Capitol St. NE, Salem 97301

Basement hearing room D

Advisory Committee Members Present

Andy Gallagher, Red Hill Soils

Jim Johnson, Oregon Department of Agriculture

Mike McAllister, Clackamas County Planning

Steve McCoy, 1000 Friends of Oregon

Chad McGrath, State Soil Scientist

Dawn Ferris, Soil Science Society of America (by phone)

DLCD Staff Present

Katherine Daniels, Farm & Forest Lands Specialist

Michasel Morrissey, Rural Policy Analyst

Casaria Tuttle, Rules Coordinator

Julie Hall, Procurement Specialist

Interested Persons Present

None

Meeting Materials

Agenda

DLCD Staff Report on Initiation of Rulemaking

House Bill 3647

SSSA Letter to Members

Qualifications for Participation

Timeline and Tasks

Overview of Public Meetings Law

Draft Notices to Secretary of State (3)

Agenda Item 1 - Introductions and Committee Business

Katherine Daniels convened the meeting at 9:00 a.m. and welcomed the committee. Introductions were made around the table. Katherine described the general purpose and role of rules advisory committees in providing guidance to department staff in making recommendations to LCDC. Casaria Tuttle provided an overview of public meetings law.

Agenda Item 2 - Overview of HB 3647 and purpose of rulemaking

Katherine provided an overview of HB 3647 and the purpose of this rulemaking. HB 3647 creates a third-party role for the department as a pass-through entity between soils professionals and landowners when landowners challenge published soils data as part of land use proceedings. HB 3647 allows landowners to choose their own contractor, but requires that they be certified by the Soil Science Society of America as soils classifiers. The department may review the resulting soils assessments but may not release them unless authorized by the landowner or unless used in a land use proceeding, at which time all soil assessments on that property will be released.

Andy Gallagher asked why it is necessary for DLCD to get between the landowner and soils professional. Katherine and Jim Johnson responded that there were several reasons why HB 3647 became law. First, landowners have not been required to use certified professionals to assess soils, yet it is critical that the reports they produce be accurate. Planning departments lack the expertise to evaluate soils assessments and potential appellants lack access to properties to challenge soils assessments. A requirement for professional certification will help ensure greater accuracy in reporting. Second, third party oversight may reduce pressure on contractors to provide reports that meet landowner expectations for a specified result. This is an identified problem that has been observed in a few soils professionals. Finally, there is growing interest in rezoning land to nonresource uses and such rezonings can involve hundreds, and, occasionally, thousands of acres. In particular, the passage of HB 2229 last year and the near passage of HB 3615 this year create a path for potential large-scale resource land rezones. It is essential that any soils assessments supporting such rezonings be accurate.

Agenda Item 3 - Qualifications of participating soils professionals

The department will need to create and post a list of qualified soils professionals with whom we will enter into contracts. The group discussed the draft handout of potential qualifications for participating soils professionals. Dawn Ferris provided background information by explaining that the Soil Science Society of America is combining its two current soil certification programs into one. Individuals who currently are certified as soil classifiers may maintain that certification but all new certifications as of January 1, 2012 will be for soil scientists. Because HB 3647 specifically requires that contracted professionals be certified "soil classifiers," this means that rulemaking must define this term to be broader than originally intended. Katherine stated that legal counsel has indicated we may do this.

The draft qualifications would require both certified soil classifiers and soil scientists to meet additional education and experience requirements. Andy Gallagher stated that soil classifiers must already meet these requirements, so only soil scientists need to show that they meet them. The group discussed this and concurred. Andy and Jim Johnson felt that the required experience should be specified to be in mapping and classification to national cooperative soil survey standards, and the group agreed to this change. The group also agreed that five years of experience should be specified for consistency with soil classifier requirements, but that only some of this experience need demonstrate the ability to do unsupervised work. The group agreed that there is no need to require that experience be Oregon-based.

Finally, the group recommended that an independent panel of soils professionals be used to evaluate the credentials of certified soil scientists who apply to participate in the program. The group recommended that the panel include the state soil scientist, one or more members of the SSSA board and an Oregon university soils professional. After an initial meeting in September (probably by conference call), the panel could meet twice a year in January and June, following each of the two SSSA creditation exams given in November and April each year. Certified soil scientists whom the panel either recommends or determines to be qualified may then, together with certified soil scientists, enter into contracts with the department and be listed as qualified contractors. The panel could also be used to do periodic audits on contractual work for quality control.

Agenda Item 4 - Structuring workable contracts with soils professionals

The group next discussed the contracting process, including the proposed Tier 1 and Tier 2 process. Tier 1 would involve the field work and determination of soil productivity and Tier 2 would involve the detailed report. Andy Gallagher said that he makes bids for both Tiers upfront after a site visit and that Tier 1 work is paid for before work begins while Tier 2 work is paid after work is completed. Julie Hall stated that the department would have to be paid in advance by the landowner for all work. The group then discussed the likelihood that landowners will contract for Tier 1 work without going through the process we are setting up because they will know that we won't be aware of a soils assessment unless a land use request is made. If this is true, then the department won't be able to track (and later report to counties) multiple soils assessments on a given property.

Julie Hall explained that landowners would first consult the qualified list of contractors, entertain bids, then contact the department with a selected contractor and a check for the amount of the bid plus an administrative fee (likely \$627.11). The department would contact the contractor to verify the bid, then issue a work agreement or purchase order to the contractor. After the work is completed, the contractor will send the report and an invoice to the department, which will review the report for compliance with the reporting requirements (still to be worked out) and pay the contractor. Also still to be worked out is how the department notifies counties and how contractual work will be periodically audited. Katherine noted that the memo on tasks and timelines describes the tasks the rules advisory committee will address together with other tasks to be undertaken by

others to create this new process. Dawn Ferris suggested that the department develop and post a fact sheet to guide people through the new process.

Katherine distributed updated copies of the draft notices for the Secretary of State's office, which reflect some changes by legal counsel. The group concurred with the proposed new language.

Agenda Item 5 - Public comment

No members of the public were present.

Agenda Item 6 - Next meeting and adjourn

The next meeting of the rules advisory committee will be Thursday, September 1 from 1 to 4 p.m. here in Salem. Before then, Katherine will update and circulate among group members the draft qualifications memo, a draft contract and work order, a draft reporting form and minutes of this meeting. Also to be discussed at the next meeting are a process for county notification and a process for periodic audits of contractual work.