



Oregon Department  
of Land Conservation  
and Development

## Department of Land Conservation and Development Soils Assessment Rules Advisory Committee

### **MINUTES**

Meeting 2

September 1, 2011

1:00 pm – 4:00 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 (by phone)

Steve McCoy, 1000 Friends of Oregon (by phone)

Chad McGrath, State Soil Scientist, NRCS

Dawn Ferris, Soil Science Society of America

#### **DLCD Staff Present**

Katherine Daniels, Farm & Forest Lands Specialist

Casaria Tuttle, Rules Coordinator

Julie Hall, Procurement Specialist

#### **Interested Persons Present**

None

#### **Meeting Materials**

Agenda

Draft Soil Scientist Application

Draft Soil Scientist Reference Form

OAR 603-080-0040 Acceptable Soils Reports

Draft #1 Rule Amendments

Emails from Wert and Borine

## **Agenda Item 1 – Update on issues covered at last meeting**

- **Qualifications of soils professionals**

House Bill 3647 and the rule amendments require that all participants in the new process be in good standing with the SSSA, meaning that they keep up to date with continuing education requirements and there have been no SSSA-documented ethics breaches.

The group agreed that there was no need for mapping experience to be Oregon-specific and no need to submit sample work. Andy Gallagher recommended that the definition of “professional soil classifier” be amended to note that individuals with MS or PhD degrees need only three years of field experience, not the five required for those with BS degrees. The group concurred.

The group reviewed the draft Soil Scientist Application and made a few minor changes. Katherine suggested that applicants complete a “Professional Experience Form” derived from the SSSA form that is submitted for certification, and the group concurred. However, the group thought that the draft References Form was unnecessary and potentially not relevant. More important is that the independent panel reviewing applicants be able to contact specific references who can vouch for the professional experiences noted by applicants on the Professional Experience Form. The group concurred.

- **Independent soils panel**

The group discussed the make-up of the independent soils panel and the fact that many university/college professionals are neither CPSC nor CPSS, though they may have other valuable experience. Dawn Ferris stated that it is unrealistic to expect professors to be CPSC or CPSS as they don’t necessarily need the certification. The group discussed possible choices, including Ron Reuter at OSU Cascades and Scott Burns at PSU. Chad McGrath said that another option to qualify for the panel besides being CPSC or CPSS with equivalent qualifications could be that the individual have experience teaching soil genesis, morphology and classification in a university or college setting. While most of the group agreed, Andy Gallagher disagreed that teaching experience is an adequate substitute for being CPSC or CPSS with equivalent qualifications. The group decided that the panel should meet quarterly (through a conference call) or as needed rather than just twice a year. The independent soils panel will review the qualifications of CPSS applicants only, and not CPSC applicants.

- **Contracting process and forms**

These forms have not yet been prepared. The department will use a pre-qualification form for soils professionals to sign as part of the application process, and purchase orders that apply to each property that is assessed. The terms of the bids that are submitted to us by landowners and others will be reflected in the purchase orders issued to contractors. The issue of insurance was raised as a requirement of the pre-qualification process and that this could be an impediment for some potential applicants.

- **Invite for soils professionals to participate**

On August 29, the SSSA emailed out to all CPSC and CPSS members background information on the new soils assessment process and the opportunity to participate by applying through the Oregon Procurement Information Network (ORPIN). A webinar is planned for September 7 to guide interested persons through the application process. The application period will be September 20 – 28. After this, ORPIN will remain open and applications will be accepted and reviewed on a quarterly or as needed basis.

### **Agenda Item 2 – Soils reporting form content**

The group reviewed the existing OAR 603-080-0040 Acceptable Soils Reports requirements of the Department of Agriculture that apply to certain lots of record in EFU zones and agreed this should be the model for report requirements for the new soils assessment process. Neither Jim Johnson nor Andy Gallagher had any recommendations for improvement, based on their experience with the form. The group went through the form line-by-line and Katherine noted places where minor edits would need to be made. These reporting requirements do not mandate any particular format, so soils professionals are free to use their own format. The reporting requirements will not be part of rule but will be part of the terms of the purchase orders issued for each property that is assessed.

### **Agenda Item 3 – Release of soils reports to counties**

Mike McAllister suggested that the requirement for and applicability of the new process be retained under OAR 660-033-0030 – Identifying Agricultural Land – as proposed, while most of the process detail be separated out and comprise a new OAR 660-033-0040, titled Soil Assessments by Professional Soil Classifiers. The group concurred that this would improve readability of both rules. Mike also suggested that draft rule wording requiring local government compliance with rule amendments be streamlined, and the group agreed. Katherine said that the definitions proposed for OAR 660-033-0020 should then be moved to the new 660-033-0040.

The group spent some time discussing the types of land use actions to which HB 3647 and the rulemaking apply. Katherine noted that these would include rezonings of land to nonresource use, nonfarm dwellings and land divisions and potentially UGB expansions. Jim Johnson felt that the rule amendments would not apply to nonfarm dwellings and land divisions because the standard for these uses is whether land is “generally unsuitable for farm use,” not whether land is agricultural land. Katherine disagreed, stating that a demonstration that land is not agricultural land could be part of a “generally unsuitable” argument. She feels that some nonfarm dwellings and nonfarm land divisions would require compliance with the new rule amendments. Mike suggested that the rule not specify the types of land use actions to which it applies, out of concern that some actions that require compliance with the rule amendments might be inadvertently omitted. The group agreed to remove the specific language identifying applicable land use actions.

The group discussed the wording of HB 3647 and the phrase “whether land qualifies as agricultural land.” There was general agreement that this is an either/or determination and does not apply to a determination of whether land is high value farmland or whether land

has a higher or lower soils capability rating, so long as it is agricultural land. Jim Johnson also noted that administrative rules do not allow high-value farmland soils to be challenged. Mike McAllister said that this doesn't make much sense.

The group also discussed a safe harbor provision that would allow completed soils assessments that are submitted to local governments prior to October 1, 2011 to be considered by local governments, even if there is not yet a land use application. While Katherine favored this, Jim Johnson was unsure if this interpretation would be consistent with the "Goal Post" requirements of ORS 215.427. This issue may need to be addressed by legal counsel.

#### **Agenda Item 4 – DLCD review of reports & periodic audits**

Katherine clarified that the department "review" of submitted soils assessments will basically consist of a completeness check against the reporting requirements. Because department staff has no soils professional on staff to review the assessments for substance, soils assessments may be submitted to a panel for review on an annual or periodic basis. This panel would make determinations on the continuing qualifications of participating soils professionals to re-contract with the department based on an objective evaluation of a sampling of the work of all participants, indicating demonstrated competence to do soils classification and mapping under the rule. Participating soils professionals will also be required to maintain good standing with the SSSA. The group discussed a potential appeals process and generally agreed that this should be internal and basically consist of providing an opportunity for the soils professional to make his/her case.

Andy Gallagher felt strongly that this panel should be a panel of peers, all of whom should be CPSC or CPSS and equivalent qualifications, with no exception for a university/college professional lacking these certifications. The group concurred.

#### **Agenda Item 5 - Public comment**

No members of the public were present. However, emails with comments and questions were received by Steve Wert and Roger Borine. Copies of the emails were provided to RAC members and the issues raised in them were discussed among the group. Many of the issues raised were addressed either in proposed rule language to date or in changes agreed to at this meeting.

#### **Agenda Item 6 - Next steps and adjourn**

This was the last meeting of the rules advisory committee. Katherine will prepare a final draft of rule amendments and minutes and circulate to the committee for a last set of comments. A webpage will be developed and posted that describes the new process and identifies the names of the soils professionals who will contract with the department. Katherine will also notify the counties of the new process.