

**2018 Report to the Oregon Legislature –
House Bill 3382**

**Recommendations to Consider for
Coexistence between Canola and
Specialty Seed Production in the
Willamette Valley**

Oregon Department of Agriculture

November 15, 2018

EXECUTIVE SUMMARY

Oregon is a leader in the production of a variety of important crops. In particular, the Willamette Valley growing region is home to many of these crops and as such, is one of the most diverse in the state. The benefits of this agricultural diversity are not without their own challenges.

One of those challenges concerns the production of canola in the Willamette Valley and its ability to co-exist with Brassicaceae specialty seed production. To maintain genetic purity, production of certain species can require isolation distances of up to three miles. While isolation distances are a requirement of specialty seed crop production, canola production has no such restrictions. Those who have advocated for canola production speak to its potential use as a rotational crop for grass seed and wheat growers.

To address those challenges, research was conducted in 2006-2010 by Oregon State University (OSU), legislative hearings were held, and advisory committees formed to try and find a resolution that would allow co-existence between canola and other Brassicaceae specialty seed production. Despite these efforts, no compromises for co-existence were found that could be agreed upon by all parties.

This led to the passage of two House bills, HB 2427 (2013) and HB 3382 (2015). HB 2427 directed OSU to establish research in cooperation with growers and the Oregon Department of Agriculture (ODA). HB 3382 further directed OSU to include a review of available published material and historical data from areas around the world with canola and Brassica specialty seed production.

Included in these bills, 500 acres of canola were allowed to be grown each year in the Willamette Valley Protected District under ODA permits during the 2015-2019 growing seasons. In at least the last three years, requests for acreage has exceeded the allowed 500 acres.

HB 3382 directed ODA to “develop recommendations regarding means for ensuring the coexistence of the production of canola and the production of other agricultural crops...The department shall develop the recommendations based upon the information and recommendations reported by [OSU].”

ODA held inclusive meetings with a wide variety of stakeholders from April to October 2018. The purpose of these meetings was to review OSU’s research, identify common ground, address remaining points of concern and to develop options to assist growers of new crops (i.e., canola) while minimizing risks to existing crops and the important economics of the specialty seed industry in the Willamette Valley. The following recommendations are based on the OSU report, internal ODA staff discussions, and these meetings. The recommendations are discussed in further detail in the body of the report.

Options under existing ODA authority

- ◆ **Advisory board and possible exclusion zone** - ODA could adopt rules creating an advisory board to provide recommendations on what, if any, boundaries are needed for a Willamette Valley Control district/s. Direction from the advisory board could be used to determine control area geographic locations along with species of Brassica allowed in the control district/s.
- ◆ **No exclusion zone** - ODA could re-establish a Willamette Valley Protected District under current statutory authority with more stringent requirements beyond those already in place for general production of rapeseed.

Options which require additional Legislative action

- ◆ **Extend current system** - The Legislature could pass additional legislation that extends the current requirements of the Willamette Valley Protected District as laid out in HB 3382. This could include continuing with 500 acres of canola pinned by ODA or could include a phase-in of additional acres over a set time period.
- ◆ **Pinning for all Brassica** - The Legislature could pass additional legislation directing ODA or OSU to provide a mandatory system for pinning all Brassica crops in a Willamette Valley Protected District (with some direction on what constitutes the Willamette Valley Protected District).

BACKGROUND¹

Oregon agriculture represents more than 225 different crops. Oregon is a leader in the production of blackberries, boysenberries, hazelnuts, several grass seed varieties, potted azaleas, sugar beet seed, rhubarb, and Christmas trees. In particular, the Willamette Valley growing region is home to many of these crops and as such, is one of the most diverse in the state. The wide variety of crops that are produced in the Willamette Valley can be attributed to several key factors, including unique soil types, availability of water and irrigation, and a mild climate with a long growing season.

The benefits of this agricultural diversity are not without their own challenges. Not only is the Willamette Valley a productive agricultural region but it also is home to a majority of the state's population. These competing interests can put pressure on the availability of prime agriculture land. And, while the diversity of the Willamette Valley makes agriculture a vital economic sector, it has at times created co-existence challenges.

One of those challenges concerns the production of canola² in the Willamette Valley and its ability to co-exist with Brassicaceae³ specialty seed production. Specialty seed crops have been produced in the Willamette Valley for nearly 100 years. To maintain genetic purity, production of certain species can require isolation distances of up to three miles. This is accomplished through a voluntary pinning system developed by the specialty seed industry. This can limit the types of crops that can be grown near each other, particularly those that can cross-pollinate. In the early 2000s, increased interest in biofuels and need for additional rotation crops brought production of canola in the Willamette Valley to the forefront, sparking a conflict between established specialty seed growers and those that wished to produce canola. While isolation distances are a requirement of specialty seed crop production, canola production has no such restrictions. A second challenge to co-existence is the similar disease pressures faced by both Brassica seed crops and canola. Increased acreage of either group would result in potential increased disease for producers of any member of the Brassicaceae. And finally, there were concerns about canola becoming widespread throughout the Willamette Valley production area and establishing itself as a weed in other crops or becoming a seed contaminant to specialty seeds and vegetables. The potential for becoming a seed contaminant is due the minute size of canola seeds and shape and density are similar to other specialty seeds.

Those who have advocated for canola production speak to its potential use as a rotational crop for grass seed and wheat growers. As a rotation, canola can help reduce disease and weed problems and boost yield potential in these other crops. Additionally, the canola meal leftover after crushing has the potential for further revenue as a high-protein livestock feed.

To address those challenges, research was conducted in 2006-2010 by Oregon State University (OSU), legislative hearings were held, and advisory committees formed to try and find a resolution that would allow co-existence between canola and other Brassicaceae specialty seed production. Despite these efforts, no compromises for co-existence were found that could be agreed upon by all parties.

The controversy surrounding the production of canola in the Willamette Valley led to the passage of two House bills, HB 2427 (2013) and HB 3382 (2015). In those bills, specific issues related to the production of canola were raised. In response to the concerns, HB 2427 directed OSU to establish research in cooperation with growers and the Oregon Department of Agriculture (ODA) to "use field monitoring and other research to develop information and recommendations regarding whether, and under what conditions, canola growing in the Willamette Valley Protected District is compatible with the growing of other crops." HB 3382 further directed OSU to "include a review of available published material and historical data on canola and Brassica specialty seed production from

¹ Some information used with gratitude from OSU *Final Report – House Bill 2427* submitted November 1, 2017 to the Oregon Legislature.

²For the purposes of this report, canola and rapeseed which can be either *Brassica napus* or *B. rapa* are used to denote the same crop. Canola grown in the Willamette Valley is *B. napus*. Officially, rapeseed is the correct common name; however, in the literature the crop is referred to by both names and the House Bills specify canola not rapeseed.

³ Brassicaceae is the plant family name that includes *Brassica*, *Raphanus*, and *Sinapis*, as well as other genera.

northern France and from England and New Zealand and a review of how western Washington, western Idaho and central and eastern Oregon manage canola for seed production.”

Following the passage of HB 2427, 500 acres of canola were allowed to be grown each year, during the 2015-2019 growing seasons, in the Willamette Valley Protected District under permits issued by ODA. This was done in cooperation with OSU, Willamette Valley Oilseed Producers Association (WVOPA), and the Willamette Valley Specialty Seed Association (WVSSA). The WVSSA’s voluntary pinning map/system (pins are placed on an electronic map to identify production fields) was used to pin the 500 acres each year using GPS coordinates, computer mapping, and WVSSA isolation distances.

In at least the last three years, requests for acreage has exceeded the allowed 500 acres. Fields that did not meet the isolation distances were immediately disqualified unless an exception agreement was provided. WVOPA representatives worked with applicants whose fields met the requirements to determine a minimum number of acres for each grower that ensure the 500-acre cap was not exceeded.

ODA authority (ORS 570.405) for control districts (**referred to as protected districts in HB 2427 and 3382**) is based on its mandate to protect the agriculture industry from pests and diseases⁴, including diseases, microscopic organisms, insects, animals, certain plants, or noxious weeds that may be a menace. In addition, this authority must be exercised reasonably and justly. Current ODA authority for control districts does not extend to protecting agriculture from market-based threats or concerns.

The results of OSU’s research as stated in the *Final Report – House Bill 2427* submitted November 1, 2017 to the Oregon Legislature “provide no reasons, agronomic or biological, that canola production should be prohibited in the Willamette Valley when there are no restrictions on the production of other Brassicaceae crops. Although there were some differences among crops monitored, there were no pest issues unique to canola compared to the other Brassicaceae crops.”

Additionally, the report stated, “However, it is important not to extrapolate these data to predict there would never be an issue or to state positively that unlimited Brassicaceae crop production within the Willamette Valley would not result in production problems.”

Based on the sunset dates in HB 2427 and HB 3382, the current administrative rules will also sunset and ODA would need to begin a new rulemaking process to continue the existence of any version of a Willamette Valley Protected District.⁵

ODA was directed by HB 3382 to “develop recommendations regarding means for ensuring the coexistence of the production of canola and the production of other agricultural crops. The recommendations shall include, but need not be limited to, means for providing protections adequate to maintain the unique attributes of the specialty seed industry in this state. The department shall develop the recommendations based upon the information and recommendations reported by [OSU].”

ODA held inclusive meetings with a wide variety of stakeholders from April to October 2018. The purpose of these meetings was to review OSU’s research, identify common ground, address remaining points of concern and to develop options to assist growers of new crops (i.e., canola) while minimizing risks to existing crops and the important economics of the specialty seed industry in the Willamette Valley. The following recommendations are based on the OSU report, internal ODA staff discussions, and these meetings.

⁴ The predominant diseases of concern currently for Brassica crops are fungal diseases including black leg, light leaf spot, and white leaf spot.

⁵ Section 1 of HB 2427 (2013) created the Willamette Valley Protected District. Section 3 provided that Section 1 would be repealed on January 2, 2019. Section 1 of HB 3382 (2015) included the same definition of “Willamette Valley Protected District” as existed in Section 1 of HB 2427 (2013). Section 3 of HB 3382 provided that Section 1 of HB 3382 would be repealed on January 2, 2020. Section 4 of HB 3382 amended Section 3 of HB 3382 such that it would repeal Section 1 of HB 2427 on July 1, 2019.

RECOMMENDATIONS TO CONSIDER

Options under existing ODA authority

Advisory board and possible exclusion zone - As stated in the Background, ODA authority for establishing control districts is based on protecting the agriculture industry from pests and diseases, including diseases, microscopic organisms, insects, animals, certain plants, or noxious weeds. ODA also has authority specifically for rapeseed to “appoint advisory boards to advise and counsel the department on the boundaries of the control areas, the type of rapeseed species and varieties which may be produced in the various control areas and the enforcement of control area orders (ORS 570.405).”

With this authority in mind, ODA could adopt rules creating an advisory board to provide recommendations on what, if any, boundaries are needed for a Willamette Valley Control district/s. Direction from the advisory board could be used to determine control area geographic locations along with species of Brassica allowed in the control district/s. Following the 2018 stakeholder meetings, ODA produced a map⁶ using information from OSU’s report, as well as additional layers including soil type, irrigation/water availability, and ODA field crop inspection data (see attachments). The current Protected Area boundary as well as a potential exclusion control district, “to maintain the unique attributes of the specialty seed industry in the state (HB 3382),” is included. ODA has also received additional information on organic seed production fields after this map was produced that could be added as an additional layer. This map could be used as a starting point for discussions with the advisory board. It could continue to be refined based on these discussions and any additional data that becomes available.

Factors to consider:

- Uses current statutory authority.
- May require additional ODA resources for enforcement.
- Previous stakeholder meetings did not solve this co-existence issue and did not achieve consensus.
- Questions about isolation distances required to maintain seed purity and how to resolve conflicts between growers near the borders.

No exclusion zone - ODA could re-establish a Willamette Valley Protected District under current statutory authority with more stringent requirements beyond those already in place for general production of rapeseed. These requirements could include:

- ◆ Canola growers only planting varieties listed as black leg resistant and requiring rotation of resistance genes to reduce evolution of resistant populations.
- ◆ All Brassicaceae producers controlling diseases and insect pests during the production season.
- ◆ All Brassicaceae seed treated with fungicides or hot water prior to planting.
- ◆ All producers maintaining rotation cycles between the planting of Brassicaceae crops that reduce the buildup of diseases or insect pests; rotations of 3 to 4 years between crops and never planting Brassicaceae crops back to back.
- ◆ Producers controlling volunteers within production fields and field margins as soon as feasible as well as not allowing any volunteer Brassicaceae plants to flower.

Factors to consider:

- Minimal cost.
- Does not require Legislative action.
- May not specifically protect the unique attributes of the specialty seed industry, because of the lack of an exclusion zone, as directed by HB 3328.
- Follows the results of OSU report which provided “no reasons, agronomic or biological, that canola production should be prohibited in the Willamette Valley when there are no restrictions on the production of other Brassicaceae crops.”

⁶ Updated from a previous map used for discussions in 2012.

Options which require additional Legislative action

Extend current system - The Legislature could pass additional legislation that extends the current requirements of the Willamette Valley Protected District as laid out in HB 3382. This could include continuing with 500 acres of canola pinned by ODA or could include a phase-in of additional acres over a set time period.

Factors to consider:

- The industry has been able to successfully pin 500 acres each of the last five years. Does not require any additional funding or enforcement authority.
- A phase-in of additional acres would recognize and support the demand for more acres than previously allowed by statute.
- Nothing in the OSU report indicates that there is a scientific reason for limiting the number of canola acres in the Willamette Valley Protected District.

Pinning for all Brassica - The Legislature could pass additional legislation directing ODA or OSU to provide a mandatory system for pinning all Brassica crops⁷ in a Willamette Valley Protected District (with some direction on what constitutes the Willamette Valley Protected District).

Factors to consider:

- Equitable for both specialty seed and canola growers.
- Requires additional resources to establish a pinning system.
- Requires additional resources for ODA to enforce the program.
- Does not allow for quick resolution of conflicts between growers due to the requirements under the Oregon Administrative Procedures Act (APA).

CONCLUSION

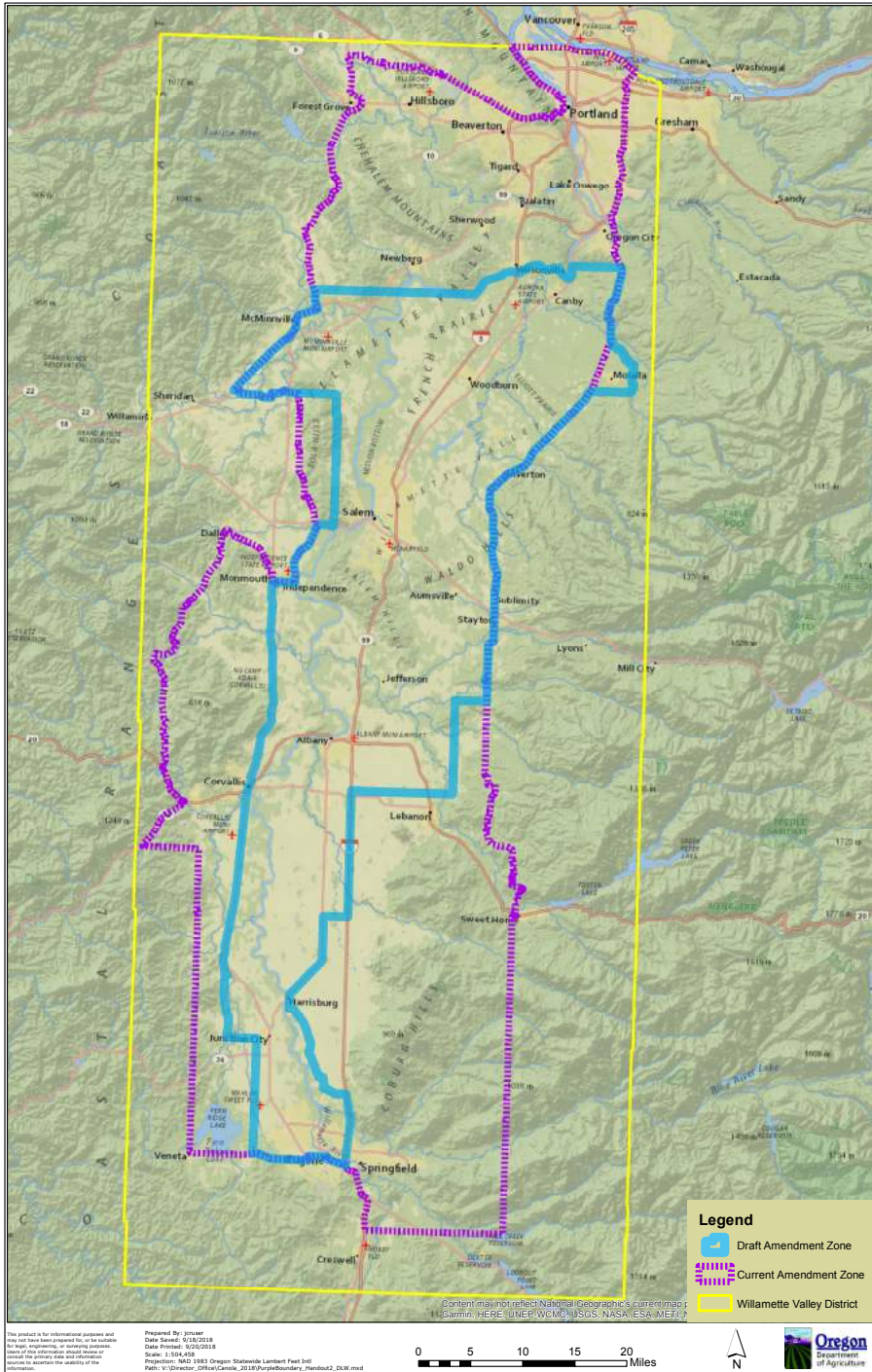
Navigating any coexistence challenge is never easy; especially one with passionate and engaged advocates that have worked long and hard over the years. The time and thoughtful engagement of stakeholders throughout the most recent process has been greatly appreciated.

ODA's goal has been to come up with recommendations which would allow additional crop options and in turn new economic options for some growers; while minimizing and helping manage the potential risk to an important part of the agriculture sector in the Willamette Valley today. Based upon existing authorities, ODA anticipates beginning the rulemaking process by the end of the year to ensure certainty to all growers in the Willamette Valley after July 2019.

⁷ Examples of common Brassica crops include cabbage, cauliflower, kale, broccoli, rutabaga, turnip, various mustards, forage rape, and canola.

ATTACHMENTS

- ◆ **OSU Final Report – House Bill 2427** submitted November 1, 2017 to the Oregon Legislature – Visit <https://oda.direct/canola>
- ◆ **Draft Map for Discussion**



◆ Position letter from Willamette Valley Specialty Seed Association

Greg Loberg

WVSSA canola position

October 10, 2018 at 10:06 AM

Details

GL

To: Sunny Jones, Alexis Taylor, Lauren Henderson, Lisa Hanson, Cc: Anne A. Johnson, Angie M. Smith (smith@pacwestcom.com) <smith@pacwestcom.com> & 7 more

Siri found new contact info in this email: Greg Loberg greg.loberg@wcbeet.com

add to Contacts...

In anticipation of our meeting on Friday, I am providing an advance look at the revised position of the WVSSA.

As seed and canola interests strive to find a method of coexistence, the WVSSA Board met recently to review the progress of our conversations. The WVSSA proposes the four recommendations outlined below. We think these are consistent with the language from the 2015 legislation (attached), which reads in part, "SECTION 2. (1) The State Department of Agriculture shall develop recommendations regarding means for ensuring the coexistence of the production of canola and the production of other agricultural crops. The recommendations shall include, but need not be limited to, means for providing protections adequate to maintain the unique attributes of the specialty seed industry in this state. The department shall develop the recommendations based upon the information and recommendations reported by the College of Agricultural Sciences of Oregon State University under section 4, chapter 724, Oregon Laws 2013."

1. The WVSSA recommends that ODA reintroduce a revised version of the temporary rule draft that was circulated in 2012 and which is attached. Among other possible changes, an updated version would eliminate Subdistricts in Protected District 1 while maintaining the Protected District and retain the pinning requirements for Brassica and Raphanus spp. using the WVSSA electronic map. In particular, pinning by canola interests would be accomplished through non-voting Affiliate Membership in the WVSSA.
2. Currently, the WVSSA has six Affiliate Members. This has allowed individual growers to become participants in the association's pinning system and benefit from proven and successful rules for isolation, including a priority right. These members are pleased with the process and the membership category is successful. The voting limits are intentional in order to prevent what has been an association of now over 50 seed companies from potentially being outnumbered by growers who may not fully share the interests of the seed company members.
3. Though Affiliate Members lack voting rights, they are fully included in membership meetings and all discussions of association policy. The WVSSA would welcome a representative of ODA to monitor WVSSA membership meetings as a guest. This could provide reassurance that a rule derived out of the draft from 2012 and that Affiliate Membership continue to be supported by the WVSSA in the future.
4. A revised rule for a Willamette Valley control area should include limits on the number of canola isolations that are permitted. We recommend ten such isolations without a limit on the acreage of each isolation. Without limits to the number of isolations it would be possible for canola growers to pin and produce numerous canola fields, small by design or large, and gain priority rights according to the rules of the WVSSA. Ultimately, much like the voting restriction of the Affiliate Membership, without limits canola producers could dominate the isolation and pinning map of the WVSSA over a period of a few years if that became the strategy of these growers.

For reference I have attached the response of the WVSSA to the OSU canola report that was provided to ODA on March 7, 2018.

Greg Loberg

Manager

West Coast Beet Seed Company

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canola_temp_rule.pdf



WVSSA response...18.pdf



HB 3382 A-Engros...15.pdf

◆ Position letter from Willamette Valley Oil Producers Association



TO: Director Taylor
Lisa Hanson, Lauren Henderson

From: Willamette Valley Oilseed Producers Association (WVOPA)

RE: Response to ODA options presented at 9/20/18 meeting

October 1, 2018

The WVOPA board would like to first of all thank the ODA staff for all of the work that they have put into looking at possible path forward scenarios for coexistence of seed crops in the Willamette Valley.

Our board met and looked at the suggestions presented by ODA and WVSSA at the 9/20 meeting. We also considered our original position statement submitted to ODA on 06/28/18 which was based on the OSU report submitted by Dr. Carol Mallory Smith, as well as a review of the WVSSA By-laws as they stand today.

First of all, we still firmly believe that coexistence and “enforcement” of coexistence rules cannot be managed by a private voluntary organization. Therefore, we do not consider the option presented by WVSSA of the TBD affiliate membership program a viable option for successful coexistence.

We then looked at the ODA suggestions and what those could mean to coexistence in this situation as well as the possibility of it setting a precedence for other crop conflicts.

ORS570.405 grants ODA the authority to establish Control areas if “.....after careful investigation the department determines that the areas are necessary for the general protection of the horticultural, agricultural or forestry industries in this state from insects or other plant pests.....” Per the Executive Summary from the OSU Report (pg1) “The results of this research provide no reason, agronomic or biological, that canola production should be prohibited in the Willamette Valley when there are no restrictions on the production of other Brassicaceae crops.” In addition, the OSU report demonstrated that there is no difference between brassica species when it comes to pest disease and weed pressures. “Co-existence allows for different kinds of production or crops at the same time in the same area, it is not about exclusion.” (pg12 of OSU report).

However, the WVOPA board recognizes that all seed crops need isolation in order to meet purity standards desired by industry and the market. We also recognize and respect the need to protect the specialty seed industry while allowing other industries to grow in the Willamette Valley. Therefore, we would suggest the following:

1. Inside the proposed blue box, WVSSA continue to manage seed production using their existing membership structure and pinning map system. If a grower wished to plant canola within those boundaries, they would need to join WVSSA, pin on the WVSSA map, and abide by WVSSA by-laws.
2. Outside the proposed blue box, seed production would be publicly managed. Processes, rules and a pinning map would be developed using the administrative rules making process. The management of the system would be determined by ODA and/or OSU.
3. Seed production on or near the boundary areas would be managed through additional rules / guidelines determined through the administrative rules making process.

Regards,

Anna Scharf, WVOPA Board President

Matt Crawford, WVOPA Board Vice President

Kathy Hadley, WVOPA Board Secretary/Treasurer

Matt Parker, Wade Glaser, Chuck Sherman and Louie Kazemier, WVOPA Board Members