

12-20

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on [December 8, 2011] by the

Date prior to or same as filing date

Land Conservation and Development Department

660

Agency and Division

Administrative Rules Chapter Number

Casaria Tuttle

635 Capitol St., Ste. 150, Salem, OR 97301

505-373-0050 ext. 322

Rules Coordinator

Address

Telephone

to become effective [upon filing].

Date upon filing or later

Rulemaking Notice was published in the [September 2011] Oregon Bulletin.**

Month and Year

RULE CAPTION

Amend the administrative rule establishing a process for assessing agricultural land capability.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND: 660-033-0030

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 197.040; Or Laws 2010, ch 44 (Spec. Sess)

Other Auth.:

Stats. Implemented: ORS 215.203

RULE SUMMARY

Amendment implements legislative authorization for a person to obtain information for use in the determination of whether land qualifies as agricultural land by requiring professional certification of soil assessment consultants.

FILED

DEC 20 2011

ARCHIVES DIVISION
SECRETARY OF STATE

Jim Rue

12/20/2011

Authorized Signer

Printed name

Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

LDD 10-2011

660-033-0030

Identifying Agricultural Land

(1) All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as agricultural land.

(2) When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands." A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in OAR 660-033-0020(1).

(3) Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either "suitable for farm use" or "necessary to permit farm practices to be undertaken on adjacent or nearby lands" outside the lot or parcel.

(4) When inventoried land satisfies the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

(5)(a) More detailed data on soil capability than is contained in the USDA 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 USDA as of January 2, 2012, 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 chosen by the person, using the process described in section (9) of this rule.

(c) This section and section (9) of this rule apply to:

(A) A change to the designation of land planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land; and

(B) Excepting land use decisions under section (7) of this rule, any other proposed land use decision in which more detailed data is used to demonstrate that land planned and zoned for exclusive farm use does not meet the definition of agricultural land under OAR 660-033-0020(1)(a)(A).

(d) This section and section (9) of this rule implement Oregon Laws 2010, chapter 44, section 1, effective on October 1, 2011. After this date, only those soils assessments certified by the department under section (9) of this rule may be considered by local governments in land use proceedings described in subsection (c) of this section. However, a local government may consider soils assessments that have been completed and submitted prior to October 1, 2011.

(e) This section and section (9) of this rule authorize a person to obtain additional information for use in the determination of whether land qualifies as agricultural land, but do not otherwise affect the process by which a county determines whether land qualifies as agricultural land as defined by Goal 3 and OAR 660-033-0020.

(6) Any county that adopted marginal lands provisions before January 1, 1993, may continue to designate lands as "marginal lands" according to those provisions and criteria in *former* ORS 197.247 (1991), as long as the county has not applied the provisions of ORS 215.705 to 215.750 to lands zoned for exclusive farm use.

(7)(a) For the purposes of approving a land use application on high-value farmland under ORS 215.705, the county may change the soil class, soil rating or other soil designation of a specific lot or parcel if the property owner:

(A) Submits a statement of agreement from the NRCS that the soil class, soil rating or other soil designation should be adjusted based on new information; or

(B) Submits a report from a soils scientist whose credentials are acceptable to the Oregon Department of Agriculture that the soil class, soil rating or other soil designation should be changed; and

(C) Submits a statement from the Oregon Department of Agriculture that the Director of Agriculture or the director's designee has reviewed the report described in subsection (7)(B) of this section and finds the analysis in the report to be soundly and scientifically based.

(b) Soil classes, soil ratings or other soil designations used in or made pursuant to this section are those of the NRCS Internet soil survey for that class, rating or designation before November 4, 1993, except for changes made pursuant to subsection (a) of this section.

(9) For the purposes of approving a land use application on high-value farmland under OAR 660-033-0090, 660-033-0120, 660-033-0130 and 660-033-0135, soil classes, soil ratings or other soil designations used in or made pursuant to this definition are those of the NRCS Internet survey as of January 2, 2012 for that class, rating or designation.

(9) Soils Assessments by Professional Soil Classifiers.

(a) A “professional soil classifier” means any professional in good standing with the Soil Science Society of America (SSSA) who the SSSA certified to have met its requirements that existed 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 as defined in subsection (h) of this section to have:

(i) Completed five semester hours in soil genesis, morphology and classification;

(ii) At least five years of field experience in soils classification and mapping that meets National Cooperative Soil Survey standards, as maintained by the NRCS, or three years of field experience if the applicant holds an MS or PhD degree; and

(iii) Demonstrated competence in practicing soils classification and mapping without direct supervision, based on published SSSA standards.

(b) The department will develop, update quarterly and post a list of professional soil classifiers (henceforth ‘soils professionals’) who are qualified to perform soils assessments under this rule.

(A) Qualified soils professionals shall include those individuals who have either met the requirements of paragraph (a)(A) of this section or the requirements of paragraph (a)(B) of this section as determined by a majority vote of an independent panel of soils professionals.

(i) A person must apply to the department for initial inclusion on the list described in subsection (b) of this section.

(ii) Qualified soils professionals must reapply to the department for listing on a biennial basis.

(B) A soils assessment auditing committee as defined in subsection (i) of this section will periodically reevaluate qualifications of soils professionals by auditing soils assessments, considering sample department reviews and field checks as described in subsection (f) of this section and verifying continued good standing of soils professionals with the SSSA.

(i) When reviewing applications for relisting, the department will consider the recommendations of the auditing committee and make final determinations as to the continued qualifications of soils professionals to perform soils assessments under this rule.

(ii) The department will re-approve soils professionals for listing when both audits, sample reviews and field checks reveal a pattern of demonstrated competence in practicing soils classification and mapping consistent with subparagraph (a)(B)(iii) of this section, and the SSSA verifies that the soils professional is in good standing with the SSSA.

(c) A person requesting a soils assessment shall:

(A) Choose a soils professional from the posted list described in subsection (b) of this section:

(B) Privately contract for a soils assessment to be prepared; and

(C) On completion of the soils assessment, submit to the department payment of the non-refundable administrative fee established by the department as provided in statute to meet department costs to administer this section.

(d) On completion of the soils assessment, the selected soils professional shall submit to the department:

(A) A Soils Assessment Submittal Form that includes the property owner's and soils professional's authorized signatures and a liability waiver for the department; and

(B) A soils assessment that is soundly and scientifically based and that meets reporting requirements as established by the department.

(e) The department shall deposit fees collected under this rule in the Soils Assessment Fund established under Oregon Laws 2010, chapter 44, section 2.

(f) The department shall review the soils assessment by:

(A) Performing completeness checks for consistency with reporting requirements for all submitted soils assessments; and

(B) Performing sample reviews and field checks for some submitted soils assessments, as follows:

(i) The department shall arrange for a person who meets the qualifications of "professional soil classifier" in subsection (a) of this section to conduct systematic sample reviews and field checks of soils assessments and make recommendations to the department as to whether they are soundly and scientifically based.

(ii) Within 30 days of the receipt of a soils assessment subject to review under this paragraph, the department shall determine whether the soils assessment is soundly and scientifically based. Where soils assessments are determined not to be soundly and scientifically based, the department will provide an opportunity to the soils professional to correct any noted deficiencies. Where noted deficiencies are not corrected to the satisfaction of the department, the department will provide written notification of the noted deficiencies to the soils professional, property owner and person who requested the soils assessment.

(g) 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 and the property owner.

(A) On receipt of written consent, the department shall release to the local government all soils assessments produced under this rule as well as any department notifications provided under subsection (f) of this section regarding land to which the land use proceeding applies.

(h) As used in this rule, "Independent panel of soils professionals" means a committee of three professionals appointed by the department that, quarterly or as needed, reviews and makes determinations regarding the qualifications of individuals seeking to be listed as soils professionals to perform soils analyses.

(A) Such panel shall consist of:

(i) A member of the SSSA;

(ii) The Oregon State Soil Scientist; and

(iii) An Oregon college or university soils professional.

(B) Panel members shall meet the qualifications of professional soil classifiers as defined in this rule or shall have experience mapping and teaching soil genesis, morphology and classification in a college or university setting.

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

(D) In reviewing qualifications of applicants with respect to required semester hours of academic study under subparagraph (a)(B)(i) of this section, panel members may adjust for differences in academic calendars.

(i) As used in this rule, "Soils assessment auditing committee" means a group of three professionals that, annually or as needed, reviews and makes recommendations to the department regarding the continuing qualifications of soils professionals to perform soils analyses under this rule.

(A) Committee members shall be appointed by the independent panel of soils professionals and shall meet the qualifications of professional soil classifier as defined in subsection (a) of this section.

(B) The department's farm and forest lands specialist shall serve as staff to the committee.

(j) As used in this rule, "person" shall have the meaning set forth in ORS 197.015(18).

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700 - 215.710

Hist.: