

Final Proposed Soils Assessment Rule Amendments

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 U.S.D.A. 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 chosen by the person, using the process described in section (10) of this rule.

(c) This section and section (10) of this rule apply to:

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

(B) 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 (10) of this rule implement chapter 44 Oregon Laws 2010, section 1, effective on October 1, 2011. After this date, only those soils assessments certified by the department under section (10) of this rule may be considered by local governments in land use proceedings described in subsection (c) of this section. Soils assessments that have been completed and submitted to local governments prior to October 1, 2011 are exempt from the requirements of this rule.

(e) This section and section (10) of this rule authorize a person to obtain additional information for use in the determination of whether land qualifies as agricultural land, but does 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) For the purposes of approving a land use application under ORS 215.705, the soil class, soil rating or other soil designation of a specific lot or parcel may be changed if **the property owner:**

(a) ~~[The property owner-s]~~ **S**ubmits 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 rule and finds the analysis in the report to be soundly and scientifically based.

(8) For the purposes of approving a land use application under ORS 215.705, soil classes, soil ratings or other soil designations used in or made pursuant to this definition are those of the NRCS in its most recent publication for that class, rating or designation before November 4, 1993, except for changes made pursuant to section (7) of this rule. By December 1, 1998, the department shall provide to all counties and other interested persons a list of soils that qualify land as high-value farmland under 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 in its most recent publication for that class, rating or designation.

(10) 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 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 as defined in subsection (g) of this rule 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 (three years 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 qualified professional soil classifiers who have signed a pre-qualification agreement (henceforth ‘contractors’) to perform soils assessments under this rule.

(A) Qualified professional soil classifiers shall include those applicants who are determined to have met the requirements of section (10)(a) of this rule by a majority vote of an independent panel of soils professionals.

(B) A soils assessment auditing committee as defined in subsection (h) of this rule may be used to periodically reevaluate qualifications of contractors by auditing soils assessments and ensuring continued good standing of contractors with the Soil Science Society of America.

(c) 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 department's posted list of qualified professional soil classifiers and submit to the department:

(i) An application requesting a soils assessment;

(ii) The name of the selected contractor;

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

(iv) 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.

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

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

(A) A soils assessment that meets reporting requirements as established by the department and described in the terms of contract; and

(B) An invoice for the bid amount for the soils assessment established in subsection (c)(A)(iii) of this rule.

(e) The department shall review the soils assessment for consistency with reporting requirements and, in accordance with the terms of the contract, issue payment to the contractor for the full bid amount.

(f) 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, the department shall release to the local government all soils assessments produced under this rule regarding land to which the land use proceeding applies; such assessments shall be marked “certified” by the department.

(g) As used in this rule, “Independent panel of soils professionals” means a committee of three professionals that quarterly reviews and makes determinations regarding the qualifications of applicants seeking to contract with the department to perform professional soils analyses.

(A) Such panel shall consist of:

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

(ii) The Oregon State Soil Scientist; and

(iii) An Oregon college or university soils professional.

(A) 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.

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

(C) In reviewing qualifications of applicants with respect to required semester hours of academic study under section (10)(a)(A)(i) of this rule, panel members may adjust for differences in academic calendars.

(h) As used in this rule, “Soils assessment auditing committee” means a group of three professionals that reviews and makes determinations regarding the continuing qualifications of contractors to re-contract with the department to perform professional soils analyses.

(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 section (10)(a) of this rule.

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

(C) Such committee shall convene annually or as needed.

(i) As used in this rule, “person” shall have the meaning set forth in ORS 197.015(18).