M E M O R A N D U M

(Presented at the 1998 WACD Annual Meeting)

TO: Conservation Commission

FROM: Mark Jobson, AAG

SUBJECT: **Disclosure of Public Records by Conservation Districts**

This memo responds to your request dated November 10, 1998 asking for advice on the disclosure of records by conservation districts.

A "public record" must be promptly made available upon request for inspection and copying. RCW 42.17.270. "Public record" is defined broadly in the Public Records Act and includes virtually every writing "relating to the performance of a governmental function" and "prepared, owned, used or retained by any state or local agency." RCW 42.17.020(36). The statute applies to all state and local agencies. "Local agency" includes "every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district" or any part thereof. RCW 42.17.020(1). A conservation district is a "governmental subdivision of the state, and a public body corporate and politic exercising public powers." RCW 89.08.220. Conservation districts are, therefore, subject to the Public Records Act, RCW 42.17.250 et seq. There are severe consequences for failing to provide records which must be disclosed under the statute or for failing to promptly respond to a request. RCW 42.17.340(4).

It is the clear policy of the state that government business be open to the public. RCW 42.17.251. While there are numerous records exempt from disclosure, these exemptions are tightly drawn and tightly interpreted by the courts. It is difficult to imagine that any conservation district records are not subject to disclosure. The only significant exception is for the personnel files of district employees. RCW 42.17.310(1)(b). Applications for grants, farm plans, permits, land use maps, livestock numbers, etc., are all disclosable and must be disclosed upon request. There is a narrow exception for "trade secrets" which probably does not apply to farm-type businesses. Some "agricultural business records" are exempt. RCW 42.17.31907. None of these exemptions apply to conservation district records.

If a record is "prepared, owned, used, or retained" by a conservation district, it is a public record and must be disclosed upon request unless the district can point to the specific exemption that makes it confidential. It has been brought to my attention that the districts share office space and files with the local NRCS offices. The shared records are public records of the district and must be disclosed. NRCS recently published a fact sheet which states that many NRCS records are not subject to disclosure under the federal Freedom of Information Act (FOIA). When a citizen requests a record from a district, the

district must make the record available under state law whether it must be released under federal law or not. By sharing the record with the district, NRCS has made the record a public record. If NRCS wants to prevent the release of the record, then NRCS must obtain a protective order from a court as provided for under state law. RCW 42.17.330. I notice that the NRCS Fact Sheet states that "requests received by a conservation district … must be forwarded to the State FOIA/PA Officer prior to any action by the conservation district to release information." NRCS cannot require that a district comply with this. A district which does so would be unable to reply to the request for records within the five days allowed under the law. Finally, even if the FOIA/PA Officer stated that the records should not be released, the district would have to release them if state law so requires. I do not recommend that districts abide by this NRCS request.

In short, conservation districts must comply with the state Public Records Act by providing public access to its records without regard to the NRCS Fact Sheet which urges otherwise.

This opinion is provided for the use of the Conservation Commission and may be distributed to conservation districts. The opinion is not an official opinion of the Attorney General of Washington as defined in RCW 43.10.030(5), (10).

MCJ:cc
cc: Vicki Flynn
Steve Meyer