

Engaging in District Activities Which Overlap with Private Sector Activities

Policy Guidance for Conservation Districts

Many conservation districts find themselves engaging in, or considering whether to engage in, activities or provide services that may also be provided by the private sector. These activities may cause concern in the private sector that the district is taking away business opportunities. Members of the private sector may also feel the district has an unfair advantage over businesses because the base operations of the district are funded through other revenue sources, largely taxpayer funds. At the same time, the district may find these activities provide valuable services to the public, may be unique in some aspect from the private sector activity, or may provide a source of revenue for the district.

These activities raise several questions and districts may find it helpful to have some guidance on how to sort through whether to engage in or continue the activity. These questions generally are in two forms – Can the district engage in the activity (a legal question); and should the district engage in the activity (a policy question).

Issues Raised:

Issue 1: May a conservation district engage in activities similar to those provided by the private sector?

Issue 2: Should a conservation district engage in activities similar to those provided by the private sector?

Issue 1:

Issue 1: May a conservation district engage in activities similar to those provided by the private sector?

RCW 89.08.220 sets forth the powers of a conservation district. These powers include various authorities to engage in a variety of activities, all of which may already be provided by the private sector. Specifically, districts have the statutory authority to:

Obtain options upon and to acquire in any manner, except by condemnation, by purchase, exchange, lease, gift, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein;

To maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of the statute;

To sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of the statute;

To make available, on such terms, as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, seedlings, and such other equipment and material as will assist them to carry on operations upon their lands for the conservation of renewable natural resources;

When considering whether to engage in a specific activity or service that may already be provided by the private sector, a district board should first ensure the activity or service is one of those specifically enumerated in statute. This will give statutory authority for the activity. In addition to those activities identified in the “powers of a district” statutory provision cited above, there might also be

other specific statutory authority or direction given to districts.

It should be noted there is a limitation to the above listed activities. The statutory language noted above includes the phrase “to make available...to land occupiers within the district”. This phrase limits the district to engaging in the activities within the district area. A district may provide services or materials under this statutory provision outside of the district only if the district enters into an interagency agreement with the district in which the services will be provided. This same statutory provision authorizes the Conservation Commission to facilitate such agreements between districts.

Once it's determined the activity is allowed by statute, the next question is:

Issue 2:

Issue 2: Should a conservation district engage in activities similar to those provided by the private sector?

This is a policy question for the district board to consider. The attached decision tree is intended to assist a district board in this decision. Each situation will be unique to the district, although experiences of other districts may be instructive. It should be noted, one district may conclude they should engage in the activity and another district may reach the opposite result for the same activity.

Questions:

Contact your WSCC Regional Manager

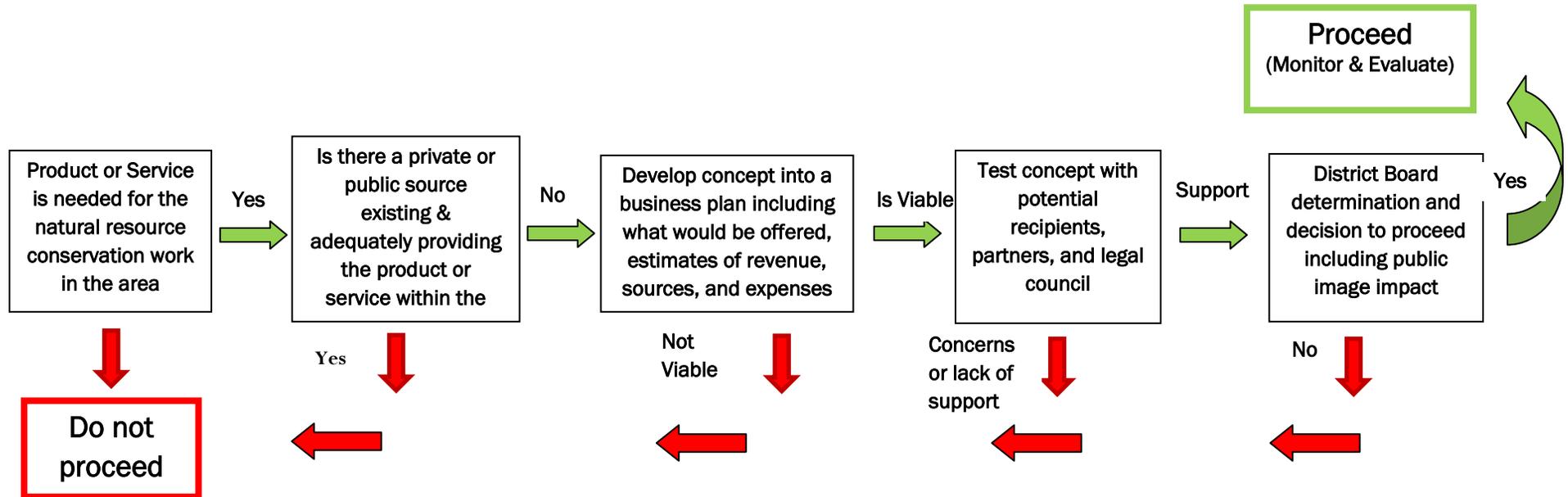
¹ RCW 89.08.220(5)

¹ RCW 89.08.220(6)

¹ RCW 89.08.220(12) Any two or more districts may engage in joint activities by agreement between or among them in planning, financing, constructing, operating, maintaining, and administering any program or project concerned with the conservation of renewable natural resources. The districts concerned may make available for purposes of the agreement any funds, property, personnel, equipment, or services available to them under this statute.

Conservation Product or Service Decision Tree

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