

Wetland Conservation Act (WCA) Topic of the Week

Is the WCA Application Complete?

July 15, 2020

WCA topics of the week are a series of informal fact sheets that provide practical information on WCA program implementation in a question and answer format. They are intended to better clarify and summarize certain aspects of WCA implementation and should be considered as supplemental to WCA statutes, rules and any associated BWSR guidance and policy. Information in these fact sheets are subject to change over time.

Question: Are applications for WCA approval handled differently than applications for other types of local government approvals?

Answer: Yes. WCA has specific procedures for processing and reviewing applications which typically differ from other application types. These procedures were developed to: 1) provide consistency in WCA implementation; 2) ensure transparency in the application process; 3) provide a reasonable timeframe for review and appeal by the Technical Evaluation Panel (TEP) and others required to receive noticed; and 4) ensure applicants receive a timely decision.

Question: What constitutes an application for WCA approval?

Answer: Any formal request for a WCA decision is an application. What constitutes an application should be interpreted broadly. Essentially, any written request for a WCA approval or decision should be treated as an application regardless of whether or not it is accompanied by an application form or any other elements that are generally considered necessary for the WCA Local Government Unit (LGU) to act on an application. Just because an application is submitted, does not mean that it is complete.

Question: What should an LGU do with an application that does not include information that is necessary to evaluate the proposed project and make a decision?

Answer: The LGU must notify the applicant within 15 business days of receipt that the application is incomplete. The notification must identify what is needed to make the application complete for review.

Question: How do I know if an application is complete?

Answer: The determination varies according to the type of decision requested. A complete application is not necessarily an application that can be approved. The LGU should determine if the basic elements of the application are present and should not evaluate their adequacy. For example, a replacement plan application must include a discussion of sequencing (wetland impact avoidance and minimization). An application may have a short and entirely inadequate sequencing discussion, but it should not be called incomplete just because the sequencing is inadequate. Many LGUs require applicants to provide an application form and sometimes a fee depending on the application type. These requirements are straight forward and can be the basis for calling an application incomplete.

Question: What should be included in a complete WCA application?

Answer: The WCA rule includes lists of information needed for different application types. Some information may not apply to every application and some could be provided later or as a condition of an approval. A good way to evaluate application completeness is to first determine if the following questions are clearly answered by the submitted application materials: 1) Who is proposing the project?; 2) Where is the project located?; 3) What is the footprint or scope of the project?; 4) What is the purpose of the project?; and 5) How will the project be constructed/completed? If the answer to any of these questions is not clear, then the application is incomplete and requires more information to make a WCA decision. Beyond these basic questions, each decision type will require different critical elements. For example, a replacement plan application must include sequencing as well as wetland impact and replacement identification. A wetland boundary approval must include a wetland delineation report with certain required figures. Some exempt agricultural drainage activities may not require a wetland delineation, while others do. LGUs should look critically at the type of decision and what elements are applicable in relation to the proposed project.

Question: What should the LGU do if the application is complete?

Answer: For replacement plan and wetland boundary/type applications, the LGU is required to send a Notice of Application (NOA) within 15 business days to the applicant and all those required to receive notice (TEP members, etc.). The issuance of an NOA is optional for all other decision types (exemption, no-loss).

Question: What if the LGU forgets to notify the applicant of an incomplete application within 15 business days?

Answer: The LGU should process it as a complete application. Even if the LGU fails to identify an application as incomplete and notify the applicant, the LGU is not obligated to approve it. The LGU just has an obligation to move forward with the decision-making process within specified WCA timelines. In these instances, LGUs should still inform the applicant of the additional information that is needed for the evaluation, otherwise the application will be denied.

Question: Can the LGU ask for more information from the applicant after the application is determined to be complete?

Answer: Yes, and such requests are common and reasonable. The review for completeness is cursory and involves looking for critical application elements. The review of the adequacy of the application is substantive and more in-depth. The substantive review will often reveal more information or at least further clarification that is needed. It is fine to ask for more information from the applicant provided the decision-making timeline remains the same (unless properly extended). The completeness determination is in place to allow for quick feedback to the applicant when information is missing, and to make sure that the decision-making process is not endlessly delayed by requests for more or modified information. While the LGU and TEP should assist applicants through the process, the applicant is entitled to a timely decision regardless of the outcome (approval or denial). Some applicants will work cooperatively with the LGU and TEP to provide requested information and modify their project as necessary to obtain approval. They will likely agree to timeline extensions if that will increase their chances of approval. Other applicants will be less cooperative and want a timely decision without modifying their project or submitting more information. The process ensures that both types of applicants can be accommodated.