

Wetland Conservation Act (WCA) Topic of the Week

WCA Implementation through Local Government Units and How Projects in Multiple Jurisdictions are Reviewed

August 5, 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: What is a WCA Local Government Unit (LGU)?

Answer: A WCA LGU is a governmental subdivision such as a City, County, Town, Township, Soil & Water Conservation District, or Watershed District responsible for the administration of the Wetland Conservation Act within their jurisdiction. By default, the WCA LGU is the County or City, except in the 7-county metro area (Hennepin, Ramsey, Scott, Dakota, Anoka, Washington, & Carver counties) where a watershed management organization can be the LGU or can otherwise indicate the LGU in their watershed management plan. A state agency is the LGU on state-owned or administered lands. For projects that require a State Permit to Mine, DNR's Division of Lands and Minerals administers the provisions of the WCA under their Permit to Mine authority regardless of the project's location. The primary responsibility of WCA LGUs is to make decisions on WCA compliance for proposed projects that affect wetlands.

Question: Why is WCA primarily administered by LGUs instead of a State Agency?

Answer: Local implementation of a state wetland regulatory program is uncommon. Most states with wetland regulatory programs administer them through a state agency. However, this type of shared, local-state implementation model is more common in Minnesota. The involvement of LGUs in WCA implementation with state agency oversight (BWSR) was a key provision of the law when it was passed in 1991. The law allows LGUs to work closely with landowners/applicants, make their own decisions within the parameters set by state rules, and integrate wetland regulation with other local land use decisions.

Question: Can a private entity such as a consultant be an LGU?

Answer: No, however, many LGUs hire consultants to represent them for WCA implementation. Some LGUs empower consultants to make decisions on their behalf, particularly on technical matters such as wetland delineations.

Question: Can LGUs charge fees to applicants for WCA implementation?

Answer: Yes. LGU fees vary widely and include flat fees, fees for only certain types of projects, variable fees based on project size/complexity, or no fees at all.

Question: What if a project occurs in more than one WCA LGU?

Answer: If the project occurs in two LGUs, the LGU with zoning authority over the project is the LGU. If there are no zoning requirements or both LGUs have zoning authority, then the LGU where the most wetland impact occurs is the default WCA LGU for the project. However, LGUs can agree to delegate WCA LGU authority for the project based on their shared preference.

BWSR coordinates the review when a project occurs in more than two LGUs. This may result in several LGUs delegating their authority to a single LGU or each LGU making their own decision in cooperation with each other. The goal is a unified WCA compliance decision.

Question: When there are multiple LGUs how is the Technical Evaluation Panel (TEP) established and how does it operate?

Answer: There is one TEP for every WCA LGU project decision. However, the TEP can consult and coordinate with other experts when making recommendations on a project. When there are multiple LGUs deciding on or otherwise delegating authority to another LGU for a specific project, it is a good idea to arrange a coordinated TEP review where representatives from each LGU provide input to the official TEP or TEPs associated with the LGU decision(s). This coordinated TEP review can be part of a simple delegation or coordination agreement among the LGUs with jurisdiction on the project. The BWSR Wetland Specialist is there to help with this type of coordination.

Question: Can an LGU refuse to implement WCA?

Answer: Yes, but BWSR can issue a moratorium on all wetland impacts in the LGU's jurisdiction if they fail to implement the law. This could result in enforcement actions against landowners that may have otherwise received approval for their projects if the LGU was implementing WCA.

Question: Do LGUs receive funding for WCA implementation?

Answer: The legislature provides WCA implementation funding for LGUs through the appropriation of money in the Natural Resources Block Grant (NRBG). The NRBG requires recipients to provide an in-kind match of funds. The NRBG is distributed by BWSR to each County based on a specific funding formula, and each county is required to annually report their WCA activity to receive the money. Each County decides how to use and/or distribute these funds. Some counties use all of the funds themselves while others distribute all or some to SWCDs and/or other LGUs in their county. NRBG funding for WCA has remained flat for many years, and LGUs have been forced to supplement WCA implementation with other funding sources.