

## Wetland Conservation Act (WCA) Topic of the Week

### Who is the Local Government Unit (LGU)? – Delegation and WCA

May 13, 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 LGU?

**Answer:** An LGU is a local unit of government responsible for making WCA decisions and other WCA implementation duties per WCA rules and statutes.

**Question:** How is the LGU determined?

**Answer:** There are specific provisions for determining which entity is an LGU. An LGU can be a County, City/Town, Township (in certain 7-county metro areas only), watershed district (WD), watershed management organization (WMO), watershed commission (WC) or in some cases a state agency (state owned or administered lands).

**Question:** Can an LGU delegate its responsibilities to other entities?

**Answer:** Yes. An LGU can delegate some or all WCA responsibilities to another government entity with their consent.

**Question:** Why would an LGU want to delegate its responsibilities to another government entity?

**Answer:** LGUs are required to process applications in accordance with specific WCA procedural requirements and to provide trained and knowledgeable staff on both the administrative and technical aspects of the regulatory program. Small LGUs, those with limited wetland resources and/or those with infrequent activities that affect wetlands can find it challenging and costly to maintain trained and knowledgeable staff. Delegation to a larger entity (city to the county for example) can increase efficiency for those LGUs.

**Question:** Is delegation all or nothing?

**Answer:** No. An LGU may designate some responsibilities and retain others. For example, an LGU may delegate certain technical decisions (wetland boundary/type and exemption determinations) to an entity with more staff technical expertise, but retain decision authority for replacement plans that often involve larger land use issues.

**Question:** How common is it for an LGU to delegate to another entity?

**Answer:** Quite common. Outside the 7-county metro, most cities delegate to the County. In the 7-county metro, many cities delegate all or portions of their city to a local WD, WMO or WC for WCA implementation.

**Question:** Can an LGU delegate to another LGU on a project by project basis?

**Answer:** Yes, but with caution. It is important that delegation for specific projects be consistent with an established policy or resolution that specifies what types of projects can be delegated under what types of circumstances. Landowners must be treated equally in the application of WCA.

**Question:** Can an LGU governing body (council, board, etc.) delegate WCA responsibilities to staff?

**Answer:** Yes and it is quite common - particularly for technical decisions such as wetland boundary/type, exemptions and no-loss provisions. Some LGUs will delegate decisions to staff and have also established a local appeals process where staff decisions can be appealed to the governing body or local appeals board.

**Question:** Can an LGU delegate to a consultant?

**Answer:** No. Delegation must be to another governmental entity. However, about 25% of WCA LGUs hire consultants to represent them for WCA implementation purposes. This is not delegating their responsibilities to the consultant, but the consultant is acting as their authorized agent. This means that if a decision is appealed, it is the LGU's decision that is appealed, not the consultant's decision.

**Question:** How can an LGU delegate if it chooses to?

**Answer:** Both the entity delegating WCA implementation and the entity accepting the delegation must pass resolutions officially memorializing the transfer of responsibilities. BWSR provides template resolutions on the BWSR Wetlands page under [WCA Forms and Templates](#) including designation of decision-making authority to staff.

**Question:** Who keeps track of this?

**Answer:** BWSR. We maintain a directory of LGUs on our website based on known delegations of authority. There is a master file where all resolutions are stored from all LGUs. LGUs should also keep these resolutions on file and update them as needed. It is important that all delegations be reported to BWSR via the regional BWSR wetland specialist. LGUs contemplating delegation should consult with their regional BWSR wetland specialist for assistance.