

Wetland Conservation Act (WCA) Topic of the Week

The Local Government Road Wetland Replacement Program (LGRWRP)

May 27, 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 the LGRWRP?

Answer: It is a BWSR-administered program to provide wetland replacement for certain qualifying wetland impacts associated with the repair, rehabilitation and reconstruction of public roads sponsored by local road authorities (county, city, township) excluding projects where the Minnesota Department of Transportation (MnDOT) is the applicant.

Question: Why does the program exist?

Answer: State statute and WCA rules require BWSR to replace for wetland impacts associated with these public road projects. The LGRWRP was developed to satisfy this requirement. Prior to the LGRWRP, public road authorities were required to provide their own replacement for wetland impacts at a time when wetland bank credits were few. This often resulted in project delays and poor quality replacement. The LGRWRP was intended to increase efficiency in WCA compliance for public road projects and improve the quality of wetland replacement.

Question: Why are MnDOT projects excluded from the program and what if a project involves both MnDOT and a local road authority?

Answer: The statute specifically excludes MnDOT from the program. However, the LGRWRP and MnDOT have partnered since program inception in 1996 to share resources and improve the quality of wetland replacement. When MnDOT partners with a local road authority on a project, the responsibility for wetland replacement is specified in the project agreement. If the responsibility is with the local road authority, the LGRWRP provides wetland replacement for qualifying impacts, otherwise MnDOT provides replacement with their funds.

Question: How is the program funded?

Answer: The legislature provides funds for the LGRWRP. Most program funding is through the appropriation of bonding money to BWSR for the purpose of running the program. Some funding is provided by the appropriation of general fund money to BWSR. The program also benefits from its partnership with MnDOT where cooperative projects between MnDOT and the LGRWRP increase the efficiency and effectiveness of providing needed wetland replacement credits.

Question: Do all projects and all wetland impacts resulting from public road projects qualify to use the program?

Answer: No. Only wetland impacts resulting from the repair, rehabilitation or reconstruction of an existing servicable road to meet safety and design standards qualify for the program. Additionally, local road authorities are required to provide the Technical Evaluation Pane (TEP) with accurate information on wetland boundaries, wetland types, wetland impact areas, impact minimization measures and applicable safety/design standards. The TEP is responsible for reviewing application materials and making determinations of program eligibility.

Question: Is the WCA Local Government Unit (LGU) responsible for issuing a Notice of Decision (NOD) for a project that qualifies for the LGRWRP just like they do for other projects?

Answer: No. Projects that qualify to use the LGRWRP do not require a decision from the LGU. The TEP provides confirmation of program eligibility by issuing TEP findings and/or signing an appropriate form (currently Attachment E of Joint Application Form). The LGU may use the WCA Determination Notice Form to confirm eligibility status of a project. This noticing is not required, but it is useful and consistent with other WCA noticing procedures.

Question: Who is responsible for sending project information and associated TEP eligibility confirmation to BWSR for processing?

Answer: The local road authority. However, the LGU or other TEP member can provide the information to BWSR if desired. The local road authority should clarify who will provide the required information and eligibility determination to BWSR.

Question: Can the road authority start project construction after obtaining TEP approval?

Answer: No, except for emergency maintenance work. The road authority should wait until receiving confirmation from BWSR that the project has been received and processed. If the project requires an Army Corps of Engineers (Corps) 404 permit, BWSR will work with the Corps to satisfy their permit mitigation requirements for the project. The road authority will receive permit authorization separately from the Corps.

Question: Is the LGU or TEP involved in determining the appropriate wetland replacement for LGRWRP-qualifying impacts?

Answer: No. The matching of credits with impacts is completed solely by BWSR as the administrator of the LGRWRP. The program utilizes available credits to satisfy both WCA and Corps requirements. Credit availability for the LGRWRP varies considerably and it is challenging for BWSR to match credits with impacts for the large number of public road projects around the state.

Question: What's the best way to determine if a project might qualify before final plans and other documents are prepared and submitted?

Answer: Consult with the TEP. Road authorities should have at least an annual meeting with the TEP to discuss upcoming projects prior to application submission. This can be an efficient method of determining potential eligibility, securing wetland delineation approvals and identifying important application information that the TEP is looking for in their evaluation for LGRWRP eligibility.