

Wetland Conservation Act (WCA) Topic of the Week

Wetland Impact Avoidance and Minimization

August 26, 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 does WCA require for wetland impact avoidance and minimization?

Answer: A WCA Local Government Unit (LGU) cannot approve a wetland replacement plan unless the applicant has demonstrated that the purpose of their project can only be reasonably achieved by permanently impacting wetland(s) and replacing them. Given the project purpose, an applicant must show (in descending order of priority) that they have taken reasonable steps to avoid wetland impacts, minimize impacts, rectify impacts such that they are only temporary, and have designed the project in a way that minimizes or reduces impacts on remaining wetlands after project implementation

Question: How does an applicant demonstrate that they have taken reasonable steps to avoid wetland impacts?

Answer: An applicant must describe and/or show at least two project alternatives (only one required for projects that rehabilitate existing infrastructure) that do not impact wetlands (wetland impact avoidance alternatives). This is often referred to as an *alternatives analysis* and can include alternative sites or project configurations. The alternatives must be feasible and prudent, and the applicant must describe why each alternative does not reasonably accomplish the project's purpose and is thus not the preferred alternative.

Question: What is a feasible and prudent wetland impact avoidance alternative?

Answer: An alternative that is capable of being done from an engineering perspective, does not unreasonably compromise public health/safety/welfare, and does not not cause other significant environmental, social or economic impacts. In other words, the explanation of why the wetland impact avoidance alternative does not reasonably accomplish the project purpose cannot be because it is impossible to build or that it creates a public safety risk. For example, a development project on a specific parcel may require access to an existing road that causes a wetland impact. A wetland avoidance alternative that does not provide access is not feasible and prudent because access to the road is critical to any development. In contrast, an alternative that involves bridging the wetland to access the road may be feasible and prudent, but creates other issues related to the project purpose and is therefore not the preferred alternative.

Question: What should the LGU consider when evaluating an applicant's alternatives analysis?

Answer: The physical, demographic, and economic requirements of the project, but not economic factors alone. For example, a retail store has certain requirements for their business to be successful such as market

area, access for the public, parking requirements, etc. A dairy farmer has certain requirements for housing his/her cows, feed storage, milking facilities, etc. The LGU should also consider the amount, distribution, and public values of wetlands and associated natural resources on the project site. For example, a severely degraded wetland (partially drained, altered vegetation, etc.) could be considered differently than a high quality wetland (rare/unique plant community, buffering lake/stream, etc.) based on their relative public value. Other considerations include: 1) the overall suitability of the site for the project purpose; 2) efforts by the applicant to remove or alter certain local/state requirements associated with the project that would eliminate wetland impacts (such as variance applications for zoning, permits, etc.); and 3) reasonable modifications of the size, scope, configuration, or density of the project that would avoid wetland impacts.

Question: What should the LGU consider when evaluating an applicant's efforts to minimize impacts?

Answer: If the applicant has satisfactorily demonstrated that there is no alternative without wetland impacts that could reasonably accomplish the project's purpose, then they must show that the project has minimized wetland impacts. The same considerations as the alternatives analysis (project requirements and constraints, public value of onsite wetlands, alternative configurations, etc.) apply except they are confined to the project site and do not involve complete wetland impact avoidance.

Question: Is there any one aspect of the sequencing process that is most important?

Answer: Yes, defining the project purpose. All discussion and consideration of wetland impact avoidance and minimization is related to accomplishing a stated project purpose. The project purpose must be reasonable, clear, and not too specific or too broad. "Building a 50,000 square foot building with 150 parking spaces on this 5-acre lot" is an example of project purpose that is too specific. "Building a commercial development" is an example of a project purpose that is too broad. "Building a retail lumber center to service the southeast portion of such and such community" is perhaps an example of a more appropriate project purpose. For this example, the applicant can discuss the requirements for a business of this type to be viable including location factors (visibility, road access, zoning, etc.), storage needs, parking requirements, etc.

Question: Are there exceptions to the sequencing requirements?

Answer: Yes. Applicants do not need to comply with sequencing if all proposed wetland impacts are: 1) located in/on a cultivated field (part of or predominately surrounded by a field that was cultivated at least 6 of 10 years prior to 1991); 2) on agricultural land; 3) replacement is proposed via a wetland that is going to be or has been restored; and 4) the impacted wetland area is not converted to nonagricultural use for ten years after the impact. Also, applicants do not have to complete an alternatives analysis for wetland-dependent projects (i.e. projects that rely on wetland functions to fulfill the project purpose), although they are still required to demonstrate wetland impact minimization. Such projects include cranberry bogs and rice paddies.

Question: What is sequencing flexibility?

Answer: Sequencing flexibility is further clarification of when and how the public values of wetlands should be considered in the analysis of wetland impact avoidance alternatives and minimization. Sequencing flexibility allows the LGU to consider: 1) the public value of the proposed replacement compared to the impacted wetland; 2) the ability of the wetland to provide public value in the context of the proposed project even if it is avoided; 3) the value of any significant upland natural resources that could be preserved if the wetland impacts are allowed; and 4) any human health and safety factors associated with avoiding or minimizing impacts to a wetland. Exercising sequencing flexibility does not eliminate the need for alternatives analysis (avoidance) and minimization.

Appendix – WCA Sequencing Checklist for LGU and TEP

- Yes No Does the project involve permanent wetland impacts caused by draining, filling, or excavation that do not qualify for an exemption or no-loss? If no, sequencing not required. If yes, proceed.
- Yes No Regardless of location, is this type of project required to be constructed in or otherwise utilize a wetland (wetland-dependent project such as rice paddy or cranberry bog)? If yes, avoidance not required, skip to minimization after project purpose. If no, proceed.
- Yes No Are all of the following statements true about the project?
- 1) The project is located on agricultural land and within a cultivated field (see 8420.0111 Subp. 73).
 - 2) The area of wetland impact will not be converted to a non-agricultural use for 10 years and/or the landowner will record a notice with the county recorder specifying that the impacted wetland area must remain in agricultural use for ten years after the impact unless replaced.
 - 3) Applicant proposes to replace all wetland impacts by restoring a wetland or using credits derived from a site where wetlands were restored.
- If yes, avoidance not required, skip to minimization after project purpose. If no, proceed.

Project Purpose

- Yes No Project purpose _____
Is the project purpose clear and reasonable in scope? If no, sequencing not met. If yes, proceed.

Avoidance

- Yes No Has the applicant described/showed at least two feasible alternatives (only one required for rehabilitation of existing infrastructure) that avoid all wetland impacts and discussed why they are not preferred and do not reasonably accomplish the project purpose? If no, sequencing not met. If yes, proceed.

Minimization

- Yes No Has the applicant adequately described/showed onsite efforts to minimize wetland impacts? If no, sequencing not met. If yes, proceed.

Rectification

- Yes No Does the project plan include restoration of all temporary wetland impacts to pre-project conditions? If no, sequencing is not met. If yes or not applicable, proceed.

Reduction/Elimination of Impacts Over Time

- Yes No Has the applicant incorporated reasonable measures to reduce impacts on the functions of remaining wetlands after project construction/implementation? If no, sequencing is not met. If yes or not applicable, proceed.

Replacement

- Yes No Has the applicant proposed replacement for unavoidable wetland impacts? If no, sequencing is not met. If yes, sequencing is met. The adequacy of replacement is evaluated against WCA replacement standards and is generally separate from the sequencing evaluation.