

since they would need to fill more to achieve their project purpose. One commenter stated that there should be a distinction made between residential expansion and completely new construction. That commenter suggested that an individual developing a new lot should be afforded a greater authorization than one expanding a developed lot, but that both acreages should be less than 0.5 acre.

A few commenters questioned the logic used in the selection of the 0.5 acre threshold. Several commenters suggested that the NWP should apply only to lots of a certain size but greater than 0.5 acre (e.g., the NWP should apply only to parcels that are greater than 5 acres).

Review of statistical data from the U.S. Department of Commerce and the U.S. Department of Housing and Urban Development reveals that approximately 90% of residential landowners in the United States own parcels that are 0.5 acre in size or less. This includes all residential land; wetlands comprise a very small subset of these lands. From this data we conclude that construction on 0.5 acre of land is consistent with what the public believes to be adequate for single-family housing activities. Furthermore, this data demonstrates that this 0.5 acre threshold would satisfy the vast majority of the public's need for a homesite. Additionally, approximately 60% of landowners own parcels that are less than 0.25 acre in size. Adopting this lower acreage threshold may eliminate a large portion of the public who could benefit from this NWP. However, we anticipate that most landowners, regardless of the size of their property, will require impacts less than 0.25 acre for their single-family housing activities.

We believe that relating the size of the impact to the upland acreage would add unnecessary confusion to the applicability of the NWP without additional, commensurate aquatic resource protection. We are concerned with the impacts to the aquatic environment and are therefore measuring those impacts. When we review the Pre-Construction Notification (PCN), we will consider the availability of uplands at the site and cumulative impacts. Therefore, we are not establishing a limitation on the size of the parcel for which this NWP is applicable. With regard to State acreage thresholds, a Corps permit does not obviate the need for a State permit. Therefore, a permittee can only impact the lowest acreage threshold allowed by either the State or the Corps. Additionally, the Corps will encourage its district offices to adopt the State's

equivalent authorization, where appropriate, and regionally condition this NWP to adhere to that threshold. The Corps is issuing the NWP with the 0.5 acre threshold for the single-family housing NWP. In an effort to simplify this permitting process, the Corps will allow no more than 0.5 acre of impact for non-tidal wetlands. There will be no automatic exclusions based on wetland value. However, the Corps will determine on a case-by-case basis, if a specific area should be exempted from this NWP based on functions or values. Upon review of the comments, statistical data, a survey of Corps district offices to determine need for the permit, and our experience and judgement concerning the potential for adverse effects on the environment associated with the various acreage limits, we concluded that the 0.5 acre threshold was appropriate. The 0.5 acre limit strikes a balance that will reduce unnecessary regulatory burdens on most residential landowners while providing for individual permit review of those single-family housing activities with the potential for more than minimal impacts on the aquatic environment. While the NWP provides for up to 0.5 acre of impacts to wetlands, we believe that compliance with the permit requirement to avoid and minimize on-site impacts will result in most homesites affecting less than 0.25 acre. The PCN will provide for Corps district offices to ensure compliance with this requirement as well as to review cumulative impacts. Finally, we will monitor this NWP and will revoke or modify the NWP, if necessary, to further reduce unacceptable impacts to the aquatic environment.

One commenter questioned how the Corps could ever justify denying proposals for impacts due to larger developments when this NWP will authorize equivalent impacts for several individual homesites in a given area.

The Corps does issue and will continue to issue individual permits for large developments. These often involve mitigation for impacts. The Corps also denies and will continue to deny permits for large developments, when appropriate. This NWP will not affect those decisions. When reviewing the PCN for a single-family housing activity, the Corps will consider cumulative impacts of the proposed homesite with other potential homesites. In some cases, the Corps Division Engineers may exercise their discretionary authority which will result, in a given area, in the requirement for individual permits and/or for mitigation for the individual homesites to address cumulative impacts. Therefore, we expect that

similar considerations and requirements would be imposed for both large developments and for many individual homesites in a given area. Furthermore, this NWP does not apply to individual parcels subdivided on or after November 22, 1991, where the aggregate total of impacts exceeds 0.5 acre.

2. Pre-Construction Notification:

The comments on the Pre-Construction Notification (PCN) requirement for this NWP addressed a wide range of issues including, the need for the pre-construction notification, the criteria for when a PCN should be required, the 30-day timeframe, the need for agency coordination, and the wetland delineation requirements. The majority of the commenters supported the requirement for a PCN in some form, while a few commenters opposed a PCN entirely or in certain circumstances.

Several commenters recommended that PCNs should be required in all cases. Reasons given include: to maintain consistency, to avoid potential violations, to assist applicants in avoiding impacts on their property, to allow the Corps to ensure that the permittee has minimized to the greatest extent practicable, and to aid in evaluating cumulative impacts. Several commenters indicated the PCN should only be required in certain situations. One commenter suggested that any discharge occurring after March 6, 1995, should require a PCN but that activities occurring prior to this date should not. Some commenters suggested flexibility when the area of effect is a lesser acreage; specifically, sizes of 0.1 and 0.25 acre were referenced as dimensions warranting no notification. Another commenter suggested that the Corps require a PCN for all projects, regardless of size, for the first 3 years after implementation of this NWP; afterwards, adopt a size limit regarding PCNs, if practicable. Several commenters recommended that the notification process be eliminated completely. One commenter stated that the PCN procedure was cumbersome and undermines the intent of the general permit program. Some other reasons given include reducing the regulatory workload, reducing the required recordkeeping, reducing agency spending, avoiding delay and expense to the landowner, and serving as an incentive for landowners to reduce the area of impact. One commenter suggested that the PCN would result in subjective treatment of the regulated public. A few commenters stated that no notification would be consistent with the notification procedures governing the existing NWPs. One commenter