

are undertaken on-site. One commenter stated that compensatory mitigation should not be used in lieu of avoidance and minimization. One commenter offered that NWP's are supposed to apply only to actions having minimal individual and cumulative effects and the Corps' consideration of mitigation suggests that the Corps does not believe the activity covered by this NWP is minor.

If cumulative impacts become more than minimal or a wetland system proposed to be impacted through the use of this NWP is of such high quality or importance, in terms of functions, that compensation is warranted, the District Engineer will so notify the applicant, who may offer compensatory mitigation to offset the adverse environmental effects. However, a standard ratio to establish the amount of compensation required per amount of impact will not be established in this NWP. The decision regarding the quantity of mitigation that is required will be made by the District Engineer on a case-by-case basis, if mitigation is determined to be necessary. The District Engineer also has the authority to require an individual permit in which the need for mitigation would be more closely examined. The Corps Division Engineers have the authority to regionally condition the single-family housing NWP to exclude certain geographical areas, where applicable. The Corps does not believe that placing a deed restriction provision on all small landowners is necessary, warranted or follows the intent of this NWP. A permit would be necessary for activities in the remaining wetlands, and we would address any adverse effects for such a permit. Furthermore, we do not believe it is appropriate to require mitigation beyond the adverse impacts that are being caused by the permittee.

The Corps agrees that mitigation banks, wetland trusts, and other conservation projects offer a solid means for compensating for lost wetland functions and values. However, we do not believe that such compensation is warranted for every impact covered by this NWP, nor is it a practicable option for every district, since many areas do not have mitigation banks or other conservation projects established. These options will be considered and encouraged where cumulative impacts are a concern.

The Administration's policy of no net loss of wetlands is a national goal that calls for no net loss overall, not on a case-by-case basis. This policy also recognizes that the Corps Regulatory Program will support but not meet this goal in every permit case and provides

for other programs to help meet the goal. Thus, compensation associated with standard and general permits is not the only means by which the nation attains the goal of no net loss of wetlands. Some other examples of means by which a no net loss of wetlands goal is achieved include State comprehensive watershed management plans, State and local programs that require compensation for residential development, and the Wetland Reserves Program.

This NWP is not a guarantee that every landowner who owns 0.5 acre of wetlands will be authorized to impact the entire parcel. One of the specific conditions of this NWP is that the permittee takes necessary actions to minimize on-site and off-site impacts of the discharge. Such evidence will be provided and evaluated in the notification procedure. Compensatory mitigation will generally not be accepted in lieu of on-site avoidance and minimization. Although the Corps agrees that compensatory mitigation is not warranted for every single-family housing activity authorized by this NWP, we do regard on-site avoidance and minimization as necessary steps in all cases to ensure that there are only minimal environmental effects.

Several commenters questioned how the Corps intends to ensure that permittees will minimize impacts. One commenter stated that the existing NWP's have proven that general permits do not include even a minimum level of review. A few commenters stated that this NWP would eliminate the requirement for landowners to avoid and minimize impacts. One commenter recommended that the District Engineer should be able to condition the NWP to require further minimization of impacts.

Many stated that the NWP should not be utilized where alternatives exist. One commenter questioned whether the Corps would require an alternatives review to determine if the permittee owns a non-wetland parcel. Another stated that it appears that the Corps considers single-family housing activities to have no alternative. One commenter stated that individual permits are now more flexible than this NWP, given the recent flexibility guidance. A few commenters suggested that the failure to require compensatory mitigation for this NWP would be contrary to the sequencing requirements outlined in the 404 (b)(1) Guidelines and the MOA between the EPA and the Corps. Another disagreed and stated that sequencing requirements do not apply to any other general permit and questioned why it should apply to this NWP.

The issue of water dependency was raised by a few commenters. These commenters specifically stated that existing regulations require a project to be water dependent to qualify for a Section 404 permit and that this NWP could remove the water dependency standard for all 404 permitting.

One commenter stated that, with regard to on-site adjustment of the home to avoid flooding of adjacent property owners, the Corps implied that a wetland can be altered as long as no harm is caused to another man-made structure. Another commenter asked if this NWP allowed the partial filling of a lake to construct a home, if one owned property adjacent to a lake.

The modified notification condition will require that the permittee notify the Corps prior to discharging fill. The District Engineer will then be responsible for determining whether the proposed activity would result in more than minimal individual or cumulative adverse environmental effects. If the District Engineer determines that the adverse effects of the proposed work are more than minimal, he will so notify the applicant and present his options (e.g., offer mitigation to reduce impacts or apply for an individual permit). While this review is not as extensive as that for an individual permit, we have determined that it is sufficient to make the "minimal effect" determination.

In March 1995, the Corps issued a Regulatory Guidance Letter regarding individual permit flexibility for small landowners. This guidance indicated that the Corps will presume that small landowners have no practicable alternatives on property not owned by the landowner. This guidance is to be used for activities affecting up to 2 acres of non-tidal wetlands for the construction or expansion of a single-family home and attendant features, or a farm building, or for the expansion of a small business facility. In accordance with 40 CFR 230.7, consideration of alternatives is not directly applicable to general permits. Other existing NWP's require compensatory mitigation where the individual or cumulative impacts from a discharge are more than minimal. We believe that the activities covered by this NWP will have minimal impacts. However, there may be cases where the cumulative impacts within a particular watershed become more than minimal. In these instances, the District Engineers have the authority to require compensatory mitigation. Additionally, on-site avoidance and minimization will be required in all cases for the entire parcel.

Water dependency criteria under the section 404(b)(1) Guidelines establishes