

individual homesites to address cumulative impacts. Additionally, we do not believe that such situations are prevalent and therefore will not present a problem.

With regard to dealing with property owners who subdivided their parcel prior to November 22, 1991, and either acquired a Department of the Army permit or did not, we understand that this NWP may not appear to address the 2 scenarios similarly. However, we will encourage Corps districts to use consistency when reviewing any project under this new NWP and to give consideration to existing authorizations a property owner may have. For example, if the district has previously required a permittee to provide the total plan of development including infrastructure and lot fill, then we would expect the district to require such information of all permittees under this NWP.

One commenter stated that there is no limit on how much area could be impacted within a subdivision. Another commenter questioned to what size subdivisions the NWP would apply, specifically, a few buildable lots subdivided from a small parcel or several lots complete with infrastructure. Another commenter questioned how the Corps would address a situation where landowners create parcels one at a time over a period of time. One commenter suggested that this NWP might lead to many smaller subdivisions, thus making cumulative impact tracking more difficult. One commenter stated that the NWP should not apply to residential or commercial developments but rather to single-family developments in private family ownership. Another commenter stated that the NWP would probably be used more for large landowners seeking to build a large subdivision rather than small landowners, for which the permit was intended.

Regarding use of this NWP, there is no threshold on parcel size. The 0.5 acre limit applies to all single-family housing activities complying with this NWP. The use of Corps district databases will be utilized to assist in one-time, per lot usage and cumulative impact tracking. The size or number of subdivisions within a watershed should not affect this mechanism. It is anticipated, based on the aggregate acreage threshold, that this NWP will not be utilized for many residential developments created on or after November 22, 1991, and commercial developments are not permitted under this NWP. Furthermore, it is anticipated that landowners will choose to receive verification under NWP 26, where

applicable, since the acreage threshold under the single-family housing NWP is more restrictive. The Corps believes that large landowners seeking to build a single-family residence will generally have more options with regard to where they place a homesite, thereby, negating the large landowners' need for this NWP. Nevertheless, the maximum acreage of impacts to non-tidal wetlands under this NWP is 0.5 acre regardless of whether the landowner owns a large parcel and intends to subdivide or owns a small parcel for a single residence. The term of this NWP which is applicable to subdivisions states that the discharge must be part of a single and complete project and that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the United States of 0.5 acre for the entire subdivision.

A few commenters questioned how the Corps will track each landowner in a development, determine if the NWP has been used, track the number of times a parcel has been subdivided and when a parcel was subdivided. Another commenter questioned what requirements will be placed on permittees to provide evidence that demonstrates that the project meets this provision of the NWP.

Each Corps district has a computer database to assist with the task of tracking pertinent information. The Corps districts will continually monitor their tracking mechanisms and make adjustments, as necessary, to ensure production of the most reliable data. Additionally, the Corps must depend on facts presented by the applicant during the notification process and will verify such information, as needed, using available data. Taking all of this information together, the Corps makes the final determination on whether an activity complies with the NWP.

5. One-Time Use

Many questions surrounded the issue of one-time use. One commenter stated that this condition was too ambiguous and asked for clarification. Many commenters suggested clarifying this term of the NWP by stating that it is to be used once per individual and once per lot. A few commenters questioned whether a successive parcel owner can fill an additional 0.5 acre. One commenter stressed the importance of explaining that, within a subdivision, the landowner cannot use his or her one-time allowance if the 0.5 acre loss for the subdivision has already occurred through another landowner's or the subdivision developer's action. A few

commenters raised the issue of whether a loophole exists when a developer subdivides a parcel after March 6, 1995, then sells lots to individuals who may then use this NWP. The commenter stated that the developer may legally defend that each project is single and complete. However, the cumulative impacts would be more than minimal. A few commenters inquired about how this NWP applies to property owners who own more than one lot or who move to a new lot. One commenter suggested that because farming operations may need more than one single-family housing NWP, the one-time allowance should be determined on a case-by-case basis. A few said the NWP should be allowed to be used an unlimited number of times. One commenter stated that the NWP should only be available to individuals who own a specific piece of property at the time the permit becomes effective.

Several commenters recommended eliminating this one-time use provision because of enforcement difficulties and the idea that permits should apply to projects, not individuals. Some questioned how tracking of this condition would be accomplished. One commenter raised the issue that since the permittee does not have to own the property, another individual could apply for the NWP on behalf of the property owner who has already used his one-time allowance. Several other commenters inquired about transferring one-time use to others and how this would be prevented.

This NWP was developed to address situations where land was subdivided into homesites or where individuals purchased homesites for the purpose of building a single-family home. We did not intend to limit its use to land that an individual owns on a given date. We also did not intend the NWP to be used for further subdivision of property for residential development in wetlands. By applying the NWP to aggregate impacts in subdivisions created on or after November 22, 1991, we encourage the use of individual permits for such development. Therefore, we do not believe that the NWP should be restricted by the date on which an applicant purchased a piece of property or be limited to only those individuals who own the land at the time this NWP becomes effective. In an effort to hold cumulative impacts to a minimum, we proposed the one-time usage clause. Upon further consideration and review of the comments, the Corps decided to restrict use to an individual who may use this NWP only for a single-family home for a personal residence. As an example, an individual could choose to