

construct a single-family homesite for a seasonal (e.g., summer) residence, or for both an East Coast and West Coast residence. Such an individual may use this NWP in each situation with the stipulations that the home is for a personal residence and all other terms and conditions are met. However, we believe that the vast majority of individuals would only need this NWP once in their lifetime. Additionally, we determined that the one-time usage provision of this NWP should apply to the lot for a single-family housing activity. Thus, successive property owners cannot fill additional 0.5 acre fragments of a lot using the NWP. The total impacts for a specific lot cannot exceed the 0.5 acre threshold whether filled by a previous owner, developer, or an individual within a subdivision created on or after November 22, 1991. Consequently, when determining if a single-family housing activity is authorized by this NWP, any fill material currently permitted for the lot must be added to any proposed fill such that the total impacts do not exceed 0.5 acre. We believe that applying this usage restriction to both individuals and the lot is necessary to ensure that the impacts will be minimal and that the NWP will be used for the type of housing for which it was developed.

We have addressed many of the enforcement issues raised by adding several requirements to the PCN. Enforcement will be accomplished by requiring that the applicant submit a statement declaring that the single-family housing activity is for a personal residence of the permittee, stating how many times this NWP has been used, and listing other property owned by the applicant in the vicinity of the proposed single-family homesite. The Corps will use district databases to monitor use of this NWP, and if this provision is abused, we will consider appropriate action to address the abuse.

6. Attendant Features

A few commenters requested a more encompassing definition of "attendant features" beyond those examples that were listed in the proposed **Federal Register** notice. One commenter stated that such an ambiguous term may prompt a prospective permittee to assert that anything is an attendant feature. Several commenters recommended including amenities such as yards, pools, tennis courts, barns, stables, in addition to housepads, driveways, and septic systems. However, the majority of the commenters disagreed with the idea of authorizing fill for non-essential amenities such as tennis courts, swimming pools, ponds, and gazebos,

some stating that such accommodations were non-water dependent. Some of these commenters recommended limiting fill to foundations only, while others approved of the need for additional fill for driveways and garages. While some commenters included septic fields as an essential feature for the construction of a single-family residence, many specifically disagreed with allowing fill for septic fields. Some of the reasons given were water quality impacts, discrepancies with existing state and local regulations, and the existence of other available options for wastewater treatment.

A few commenters also singled out disallowing fill for a yard because of the adverse impacts associated with fertilizers and pesticides. One commenter suggested such attendant features be authorized on a regional basis if they are standard for a particular area. One commenter stated that if attendant features were not included in this NWP authorization, then the permittee would have to endure individual permit processing for minor, additional work.

The purpose of this NWP is to reduce the regulatory burden associated with the construction of single-family homes while maintaining environmental protection. When building single-family homes we recognize that, besides the foundation of the house itself, there are activities associated with a house that are considered necessary, customary, or normal to homesites. We believe these "attendant features" should normally be authorized with the house. We would not accomplish the purpose of this NWP if we were to authorize the house only and process an individual permit for the attendant features. Attendant features for the purpose of this NWP, include features that are reasonable, necessary appurtenances constructed in conjunction with single-family housing activities. Examples include a garage, driveway, storage shed, septic field, and yard. Examples of inappropriate attendant features not covered by this NWP include a barn, which may be covered by NWP 40, or a small business. Such features would not be directly related to a single-family home. While we believe that a yard is an appropriate attendant feature of a single-family home, we have not identified a size that would be acceptable. Corps districts will work with the applicant to ensure that acceptable, but not excessive, yards are authorized. This NWP only authorizes activities from the perspective of the Corps regulatory authorities; other Federal, state, and local permits, approvals, or authorizations may also be required.

The permittee would be responsible for obtaining all necessary authorizations, including building permits, prior to placing a septic system, yard, or any other fill in wetlands. Additionally, water quality is a concern addressed by applicable state agencies as well as the Corps. It is the permittee's responsibility to obtain any necessary water quality approvals or authorizations prior to the discharge of fill. Furthermore, while properly designed, constructed, and operated septic systems can be placed on fill in many wetlands, the septic system must be approved by the appropriate state or local agency. The Corps has determined the extent of the attendant features to be applied on a nationwide basis. If an individual district concludes that a particular feature should not be authorized under this NWP, then the Division Engineer must regionally condition the NWP to exclude the feature. Furthermore, additional restrictions may be placed by states in 401 water quality certification or CZM consistency determination. On a case-by-case basis, where a particular feature is not appropriate at a specific site, the District Engineer may condition the NWP or require an individual permit.

Other concerns were raised during the comment period on the following specific issues:

7. Permit Applicability

We received a wide range of recommendations to both increase and decrease the applicability of the single-family housing NWP. Many commenters raised the issues regarding the geographic scope of waters of the United States. Several others offered suggestions to expand the category of activities to which this NWP would be applicable. Several commenters raised the issue of the definition of non-tidal waters and how it applies to this NWP. One commenter stated that with this NWP, the Corps is broadening their authority beyond that allowed under Section 404 of the Clean Water Act, specifically by regulating excavation, flooding, and draining.

With regard to decreasing the applicability of this NWP, several commenters replied by listing a variety of geographic areas from which this NWP should not apply. Different commenters suggested limiting the scope of the NWP to isolated systems only, wetlands only, and wetlands above the headwaters. Other areas suggested to be disallowed by this NWP include threatened and endangered species habitats, sensitive or important wildlife and fisheries habitats, highly developed areas, non-riverine wetlands,