

on a case-by-case basis. However, in any case, such tide gates would not remove Section 10 jurisdiction.

8. Relationship of this NWP to other NWPs

Several commenters questioned the applicability of existing NWPs as they relate to the single-family housing permit. One commenter questioned the 0.1 acre threshold of the NWP 18 and how it compares to this new NWP. One commenter observed that this NWP might amend or supersede NWP 18 since NWP 18 only authorizes 0.1 acre of fill for minor discharges. Many commenters stated that NWP 26 completely covers the activity to be included in this NWP. A few commenters suggested expanding the application of either the existing NWP 26 or NWP 18 in lieu of issuing a new NWP. Many other questions were raised about the combined use of NWPs. A few commenters expressed that it is redundant to have two NWPs that authorize the same type of activity. Several commenters recommended not allowing combination of authorizations in an effort to avoid more than minimal impacts, and suggested that if there is a need for more than one NWP per project, then the project should be evaluated under an individual permit process. Several commenters recommended that projects authorized with this NWP should not be provided additional coverage under any other individual permit or NWP.

Each NWP is issued to authorize certain types of activities. However, in some cases a particular activity may qualify for more than one NWP or a combination of NWPs.

Consequently, some single-family housing activities could qualify for either NWP 18 or NWP 26. For example, NWP 18 could authorize 0.1 acre of fill in any wetland; NWP 26 could authorize up to 10 acres of fill in a wetland above the headwaters or an isolated wetland, while this NWP could authorize up to 0.5 acre of fill in a non-tidal wetland. Therefore, it is possible that a single-family home involving 0.1 acre of fill in a wetland above the headwaters could qualify for either NWP 18, NWP 26, or this NWP. Our regulations provide for multiple use of NWPs (but each one only once for a single and complete project) provided that the combined impacts are minimal. Furthermore, if an NWP authorized activity is an integral part of a larger project which requires an individual permit, then that NWP will not be valid for that portion of the larger project and an individual permit is required for the entire project, including the NWP

portion. This NWP is intended to authorize single-family housing, including attendant features where the maximum impact on waters of the United States does not exceed 0.5 acre. We did not intend this NWP to authorize a portion of a single-family housing activity that was in excess of 0.5 acre. Therefore, if such a single-family housing activity, including attendant features, is being proposed that exceeds 0.5 acre, this NWP cannot be used in conjunction with other NWPs, regional general permits, or individual permits to authorize the project. We further believe this restriction may be confusing and could cause some inadvertent violations of the NWP. Therefore, to clarify this point we have added a condition to the NWP to indicate that it cannot be used with NWPs 26, 18, and 14. Furthermore, Division Engineers will add regional conditions to ensure that it is not used with any similar regional general permits.

9. Cumulative Impacts

Many commenters stated, in general terms, that the proposed NWP would result in detrimental cumulative impacts on the aquatic environment. Many other commenters were specifically concerned with the cumulative loss of wetland functions, specifically, fish and wildlife resources, endangered species, filtration, groundwater recharge and stormwater retention. Concerns over increased flooding potential were the most often stated.

A few commenters stated that limiting the aggregate loss of wetlands to 0.5 acre for the entire subdivision only in real estate subdivided after March 6, 1995, does nothing to protect wetlands in already existing subdivisions. They gave examples of existing, platted subdivisions, comprised of dozens, hundreds, and thousands of lots which could amount to substantial cumulative impacts within a given watershed.

One commenter questioned how cumulative impacts would be addressed without the full review of the individual permit process. One commenter stated that such a permit would allow for an entire, large wetland system to be destroyed since there is no limit on the number of 0.5 acre sites that may be located on it.

Because the activity associated with the use of the NWP could be located within the floodplain of a waterbody, there is potential for increased flooding and reduced flow. The modified notification process will allow the District Engineer to evaluate the proposed impacts, including potential

flooding impacts, compare them to existing impacts within the wetland system or watershed, and determine if the project has more than minimal individual or cumulative effects. The District Engineer has the discretionary authority to place conditions upon a proposed activity to avoid or minimize these potential impacts. If the activity is determined to be more than minimal, the District Engineer can require mitigation or an individual permit. With regard to this and other potential cumulative wetland functions impacts, this NWP will be subject to the conditions that apply to all NWPs. The district and division offices may identify specific geographic areas, such as a subdivision, where there may be concerns over cumulative impacts to a watershed, and revoke this NWP in specific geographic areas or develop regional conditions that apply to that specific area. Many districts and divisions have already revoked NWPs or imposed such regional conditions in many geographic areas or wetland or water types.

10. Regulatory Burden

Several commenters supported this NWP because it would reduce the regulatory burden on the public by simplifying the process to obtain approval of single-family housing activities and would reduce the Corps regulatory workload. An equal number of commenters were opposed to the NWP. The principal reason for such opposition was a perception that the NWP would result in less environmental protection. Also, a few commenters believed the NWP is not necessary either because the current individual permit process is not a burden on the public, existing NWPs are adequate to cover single-family housing activities, or because the NWP is motivated only by politics. One commenter felt the NWP would encourage poor construction practices (e.g. the construction of structures on wetland fills). A few commenters indicated that, rather than this NWP, state programs would be a better mechanism to reduce burden on the public and the Corps. Programs such as State assumption, State Programmatic General Permits (SPGP), and State stewardship workshops assist landowners in utilizing their lands in an environmentally sensitive manner and reduce inconsistencies among federal, state and local regulations. Many commenters believed that we were increasing the regulatory burden on the public based on their understanding that we were proposing, for the first