

Scope of Analysis

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July 24, 2014



Scope of Analysis

- Just because a proposed project triggers need for a Section 10/404 permit does not mean USACE is responsible for entire proposal
 - ▶ Private actions do not need to be subject to Federal government scrutiny
 - ▶ USACE needs to determine its Federal control and responsibility (“Federalization”) associated with each project
- Case by case determination due to project variations



Two Key Determinations

- Determinations needed for
 1. Scope of action (activity/project)
 - Focuses on defining Federal control and responsibility over the project
 - ▷ Just waters of the US
 - ▷ Entire project
 - ▷ Somewhere in between
 2. Scope of effects (direct/indirect/cumulative)
 - Focuses on breadth of resource effects/benefits
 - ▷ Will vary depending on resources affected
- ▶ To be able to assess the scope of effects, must know what is Federalized in #1



Scope of Action

- Four criteria/questions established in USACE 33 CFR 325 Appendix B regulations (Section 7.b)
 1. Whether or not the regulated activity comprises merely a link in a corridor type project
 2. Are there aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity
 3. Extent to which entire project is within USACE jurisdiction
 4. Extent of cumulative Federal control



Appendix B - Scope of Action

- 1. Is the regulated activity merely a link in corridor type project?
 - ▶ Limited number of crossings with corridor project in USACE purview limits ability to “Federalize”
 - USACE can focus on small areas
 - Consideration of how separate and distinct activities are
 - ▶ If larger percentage of project is waters of US then broader Federal control and responsibility occurs



Appendix B - Scope of Action

- 2. Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity
 - ▶ Are the adjacent upland features forcing the activities into waters of the US
 - ▶ Consideration of immediate area next to waters



Appendix B - Scope of Action

- 3. Extent to which entire project is within USACE jurisdiction
 - ▶ Smaller areas of waters of US to be impacted relative to overall proposal supports narrower USACE involvement
 - ▶ Broader dispersed waters of the US on the site can warrant broader control and responsibility
 - Case law indicates it's not just amount of waters on site but includes their configuration & dispersal
 - ▷ Concentrated aquatic resources easily avoided (limited Federalization)
 - ▷ Scattered aquatic resource throughout site are unavoidable and thus, development could not occur without a permit (broader Federalization)

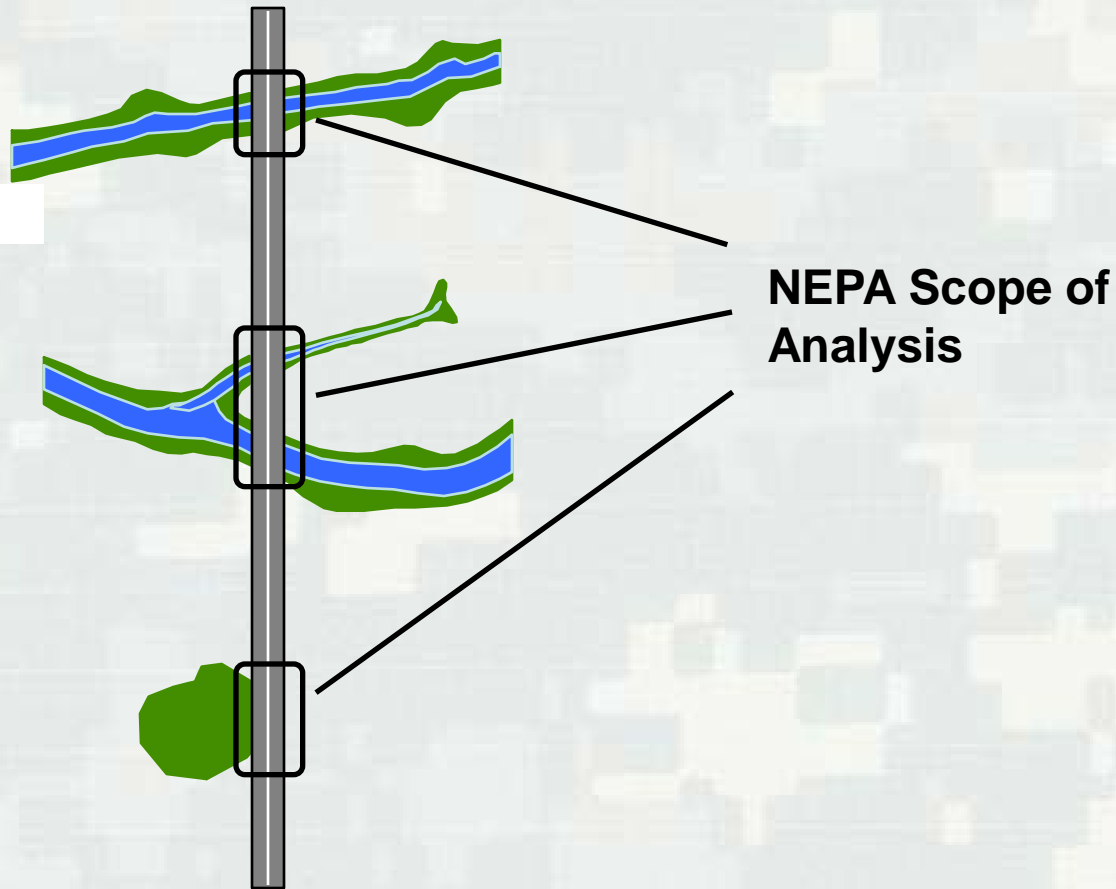


Appendix B - Scope of Action

- 4. Extent of cumulative Federal control
 - ▶ As a general rule, USACE permit action in conjunction with other Federal involvement **extends** USACE scope
 - ▶ Are other Federal actions (financing, permitting, directing, assisting) from other Federal agencies involved in project?
 - FEMA – floodplains
 - USFS – Federal lands
 - NRCS – funding (does not include general revenue sharing funds)
 - OSM – coal mining



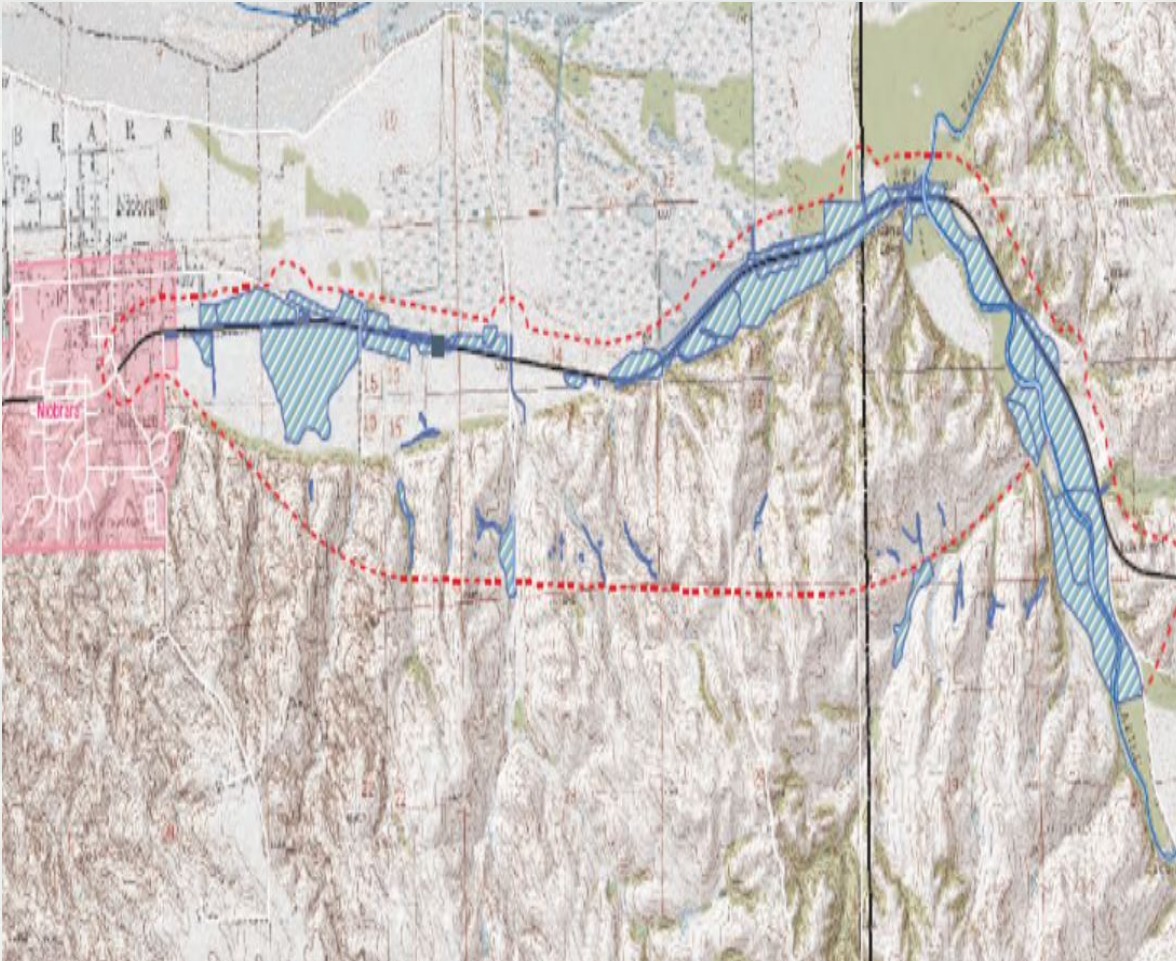
Corridor Project – Limited Federal (Corps) Control



1. All fills merely links
2. Extremely limited influence between upland facility & facility in waters
3. Limited portion of project in Corps jurisdiction
4. No cumulative Federal control



Corridor Project – Extensive Federal (Corps) Control



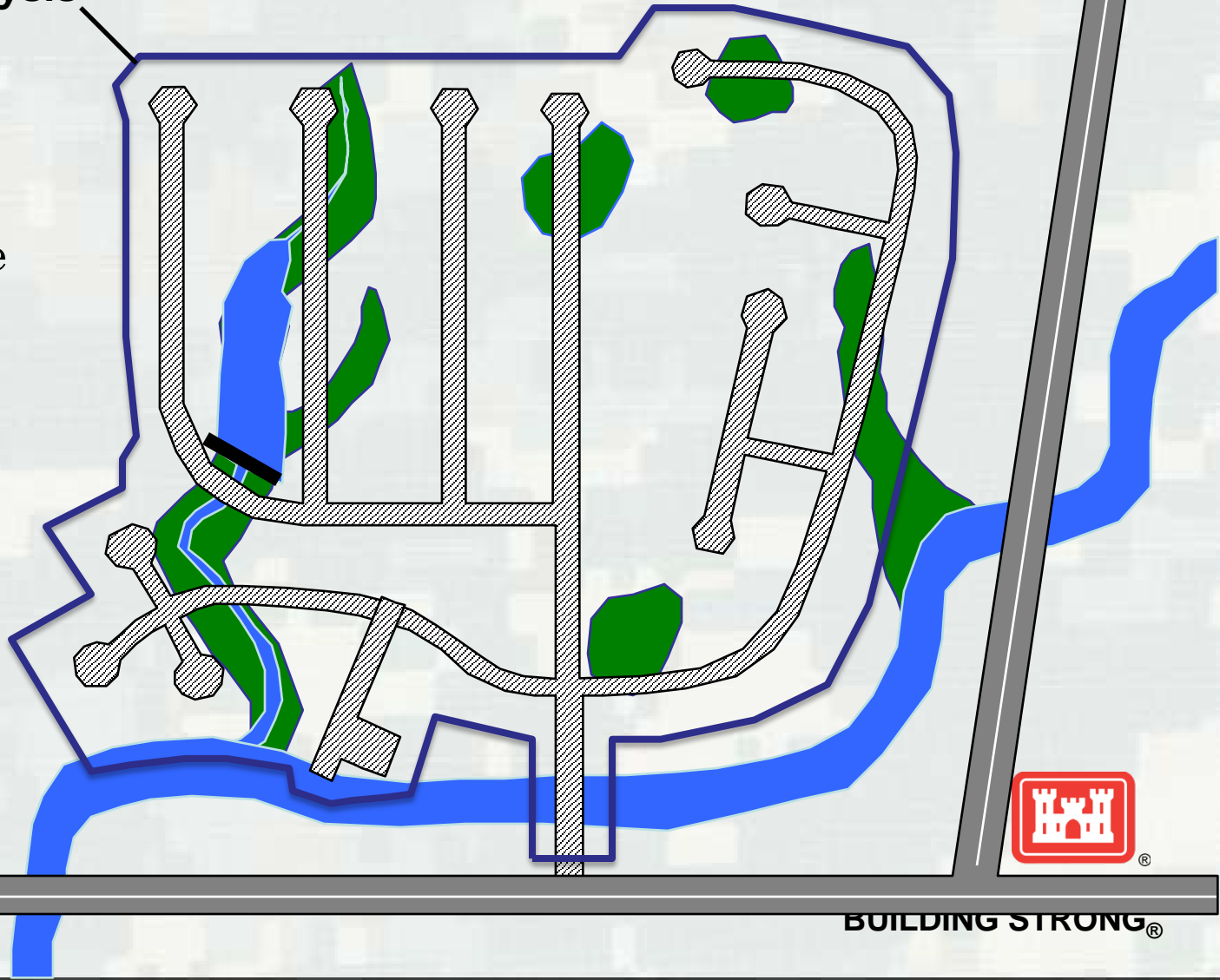
1. Corridor project w/ link and non-link aspects
2. Limited influence between upland facility and waters facility
3. Extensive portion of project in Corps' jurisdiction
4. Limited cumulative Federal control (NPS)



Residential, Commercial or Industrial Project

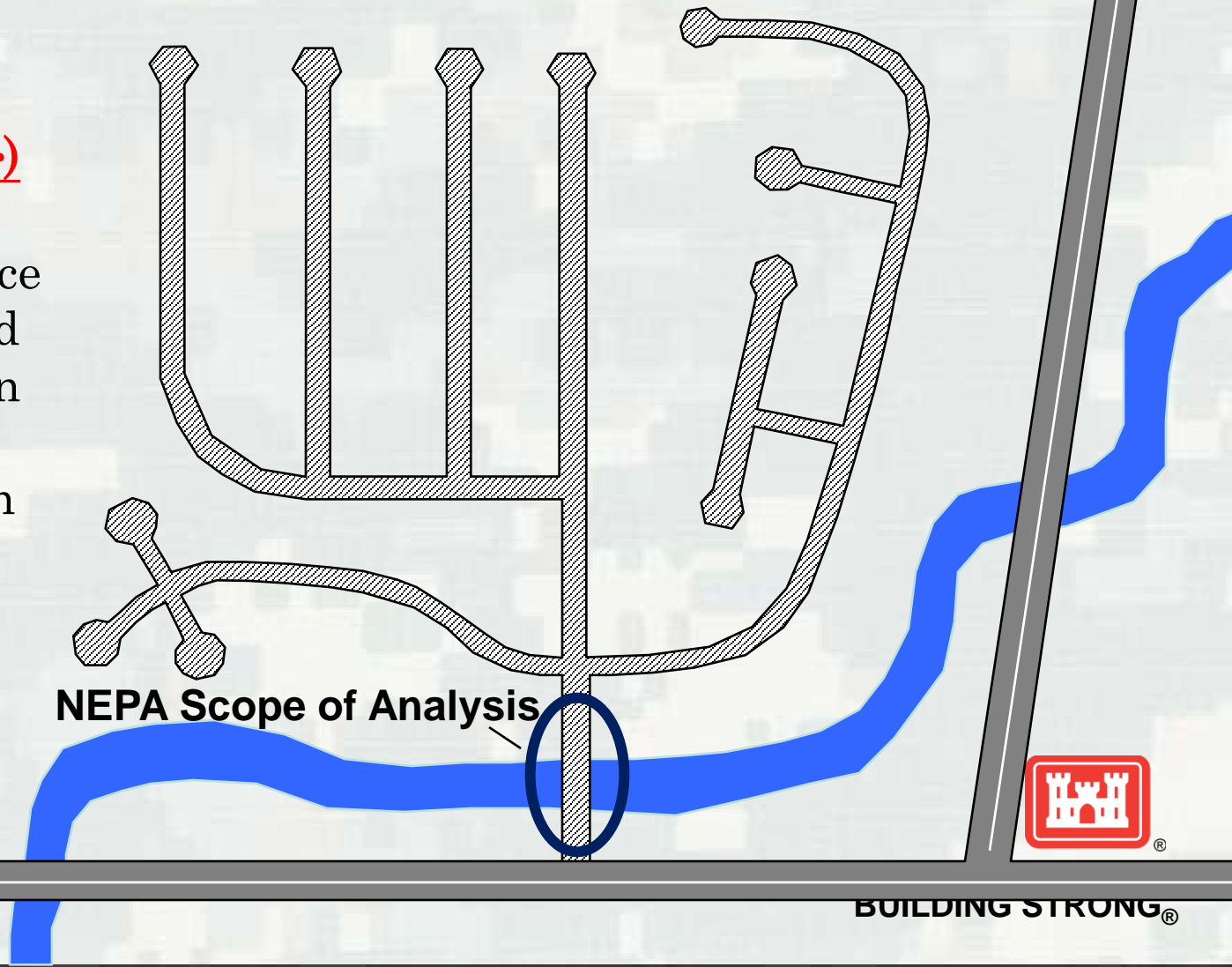
Scope of Analysis

1. Linear & non-linear features
2. Some influence between upland facility & facility in waters
3. Portions of project in Corp jurisdiction
4. Other Federal control?

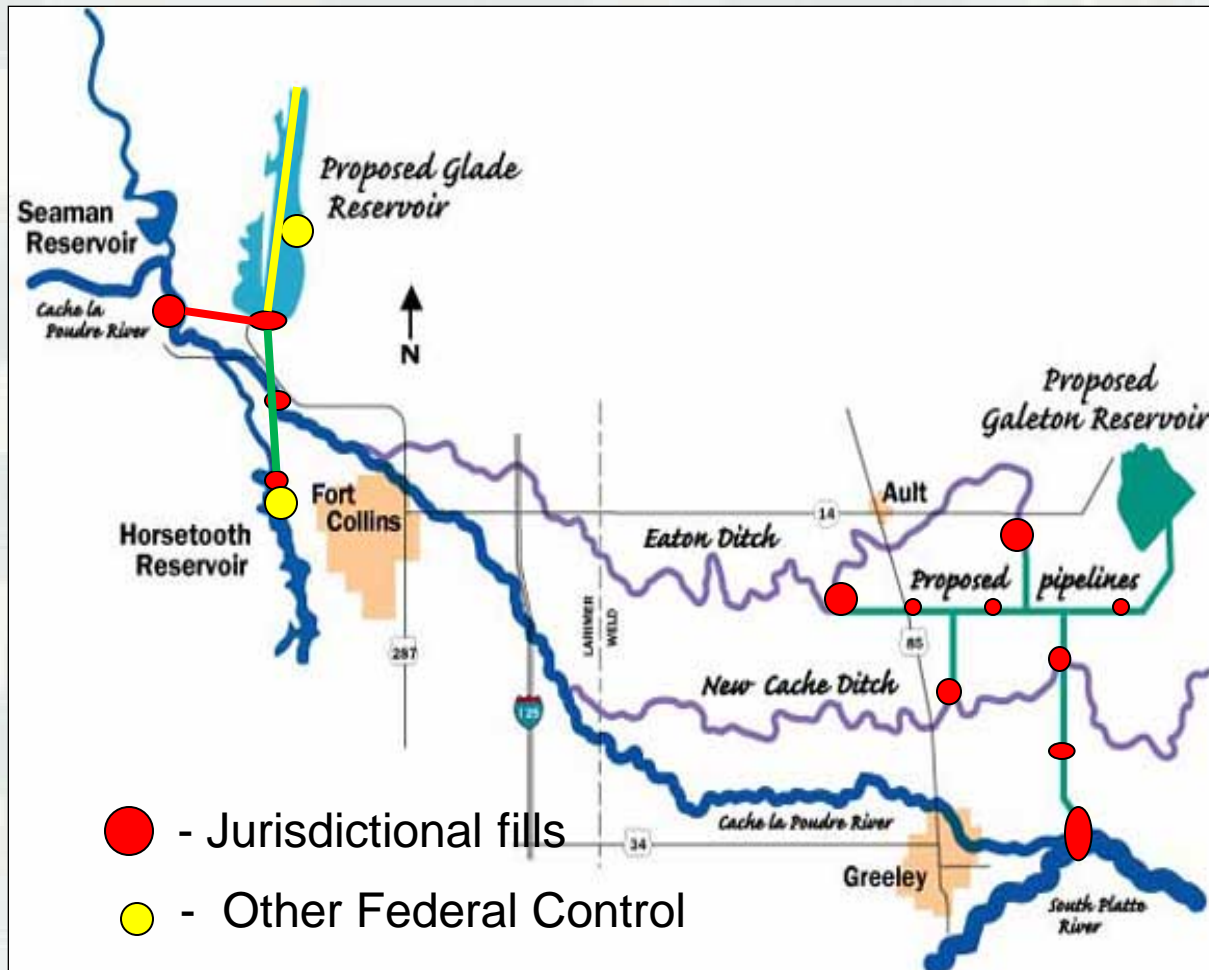


Residential, Commercial or Industrial Project?

1. Linear feature
(even though project broader)
2. Extremely limited influence between upland facility & action in waters
3. Limited portion in Corps jurisdiction
4. No Federal funding or control



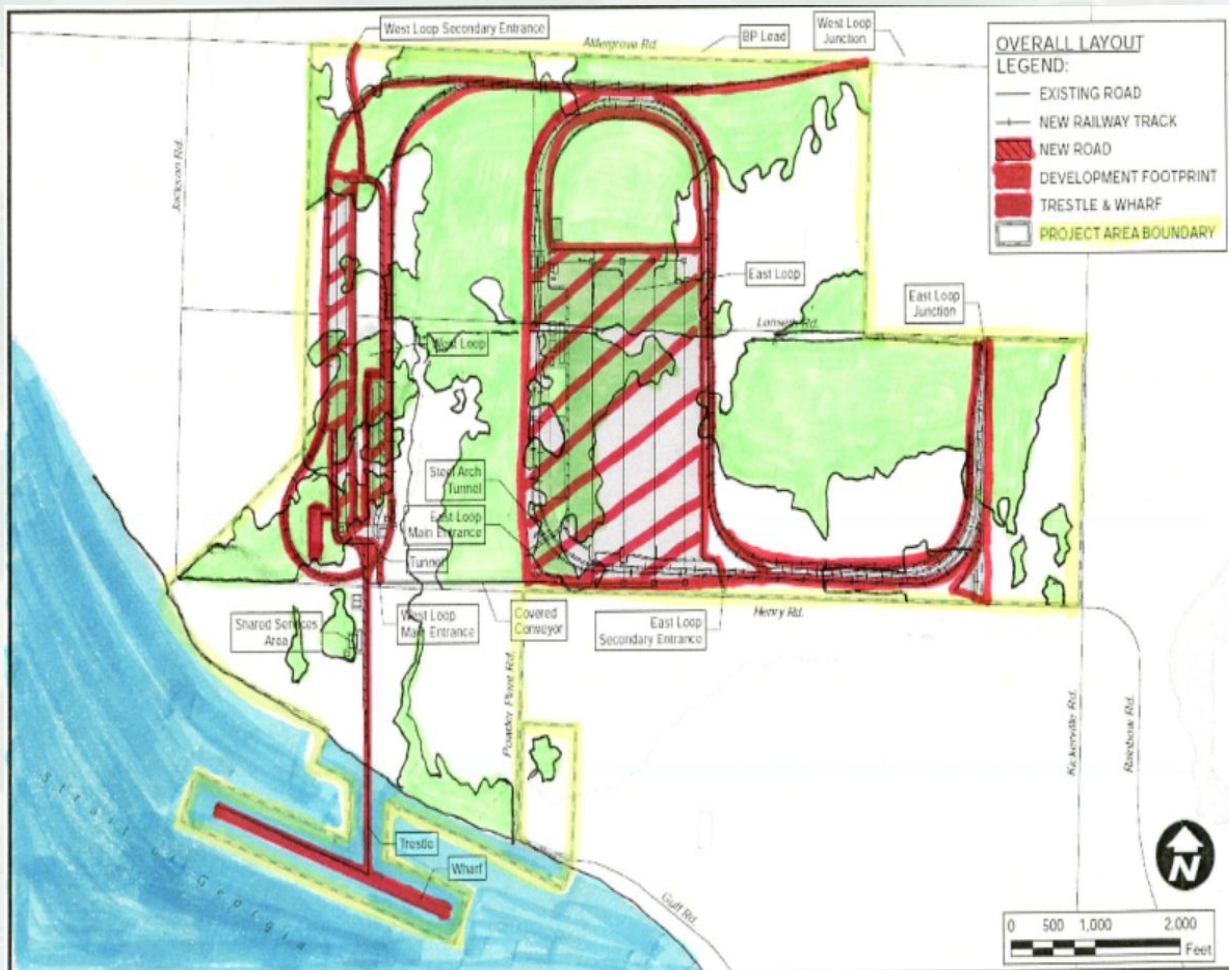
Municipal Project – Intermediate Federal (Corps) Control



1. Mix corridor/non-corridor project
2. Limited influence between upland & wetland facilities
3. Intermediate portion of action in Corps jurisdiction
4. Some cumulative Federal control



Industrial Project – Extensive Federal (Corps) Control



1. Mix corridor/non-corridor project
2. Intermediate influence between upland & wetland facilities
3. Large portion of proposal in Corps jurisdiction
4. No cumulative Federal control



Summary

- Great diversity in types of permit actions and activities
 - ▶ No formula, bright lines, or templates
- Two key determinations
 - ▶ Scope of action – Federalization
 - All 4 criteria/questions need to be addressed
 - To be done for each alternative for detail analysis in NEPA document
 - ▶ Scope of effects – resulting from Federal decision

