

Best Management Practices with Waters of the U.S. Permitting of Oil and Gas Projects

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This Morning's Focus



- **Regulatory background**
- **Permitting**
- **Issues**
- **Questions**

Corps Regulatory Program

- Protect navigation: Sections 9 and 10 of the Rivers and Harbors Act of 1899
- Restore and maintain the physical, chemical and biological integrity of the nation's waters: Section 404 of the Clean Water Act
- Protect marine resources associated with ocean disposal of dredged material: Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972

Source: USACE Fort Worth District and Rapanos guidance

Legal Background

- › **USACE administers the regulatory aspects of dredge and fill activities.**
- › **EPA maintains ultimate responsibility for oversight of the USACE's program.**
- › **Section 401 requires water quality certification from states.**
- › **Section 404 addresses permitting discharge of dredge and fill material.**

WATERS OF THE UNITED STATES

TIDAL WATERS

SECTION 404

disposal of dredged or fill material

SECTION 10

all structures and work: levee, dock, etc.



mean high water line

high tide line

tidelands

coastal wetlands

uplands
(not regulated)



FRESH WATERS

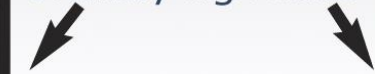
SECTION 404

disposal of dredged or fill material

SECTION 10

all structures and work

ordinary high water



wetlands





Types of Permits

› Individual Permits

- Standard
- Letters of Permission

› General Permits

- Regional
- Programmatic
- Nationwide

Nationwide Permits

- › **52 Nationwide Permits**
- › **Focus on environmental protection while providing timely and simplified authorizations for work in aquatic environments**
- › **Are valid for 5 years from date of issuance (effective 3/2017 to 3/2022)**
- › **Regional conditions**
 - Some statewide
 - Some district specific

Nationwide Permits (cont.)

- › **Pre-Construction Notification (PCN) required in many cases**
 - Potential to impact cultural resources
 - Potential to impact threatened or endangered species
 - Presence of wetlands/special aquatic sites
- › **Resource agency coordination required in some cases**
- › **If project meets scope & conditions of NWP & does not involve or exceed PCN triggers and/or thresholds, project may be completed w/o a written authorization**
- › **NOTE: If PCN required but not submitted & work initiated, activity is unauthorized**

NWP 12

Utility Line Activities

- › **Construction, maintenance, repair, and removal of utility lines and associated facilities**
- › **Impacts limited to ≤ 0.5 acres**
- › **Utility Lines**
 - No change in pre-construction contours
 - Sidecasting limited to ≤ 3 months
 - Top 6-12" of trench should be backfilled with topsoil from the trench
 - Cannot drain waters of the U.S.

NWP 12

(cont.)

› PCN

- Mechanized land clearing in a forested wetland for the utility line ROW
- Section 10 permit is required
- Utility line in WOUS, excluding overhead lines, exceeds 500 feet
- Utility line is placed within a jurisdictional area (i.e., WOUS), and it runs parallel to a stream bed that is within that jurisdictional area
- Losses of >0.10 acres of WOUS
- Permanent access roads are constructed above-grade in WOUS for a distance of >500 feet
- Permanent access roads are constructed with impervious materials

› **Note: Temporary losses of WOUS don't trigger a PCN requirement on their own**

NWP 14

Linear Transportation Projects

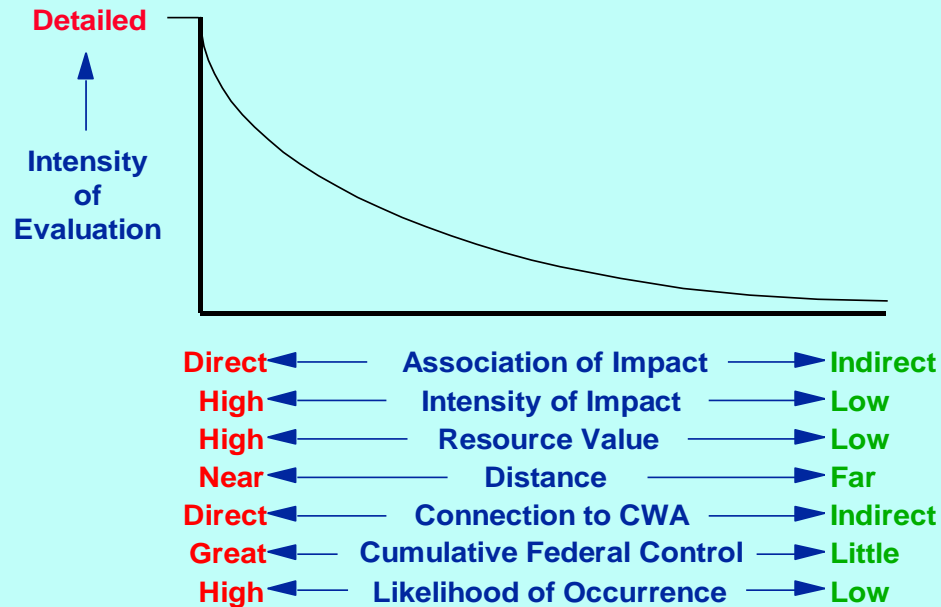
- **Construction, expansion, modification, or improvement of linear transportation projects**
- **Non-tidal waters – limited to ≤ 0.50 acres**
- **Tidal waters – limited to ≤ 0.33 acres**
- **Authorizes temporary structures, including coffer dams**

NWP 14

(cont.)

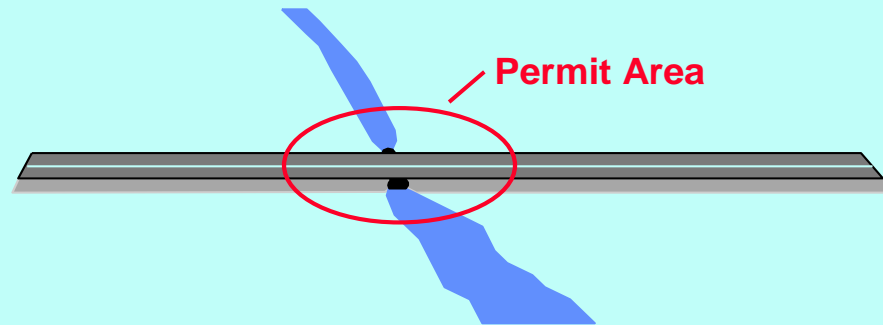
- **PCN**
 - Loss of WOUS >0.10 acre
 - Discharge is in special aquatic site, including wetlands

Evaluation of Impacts Outside the Permit Area



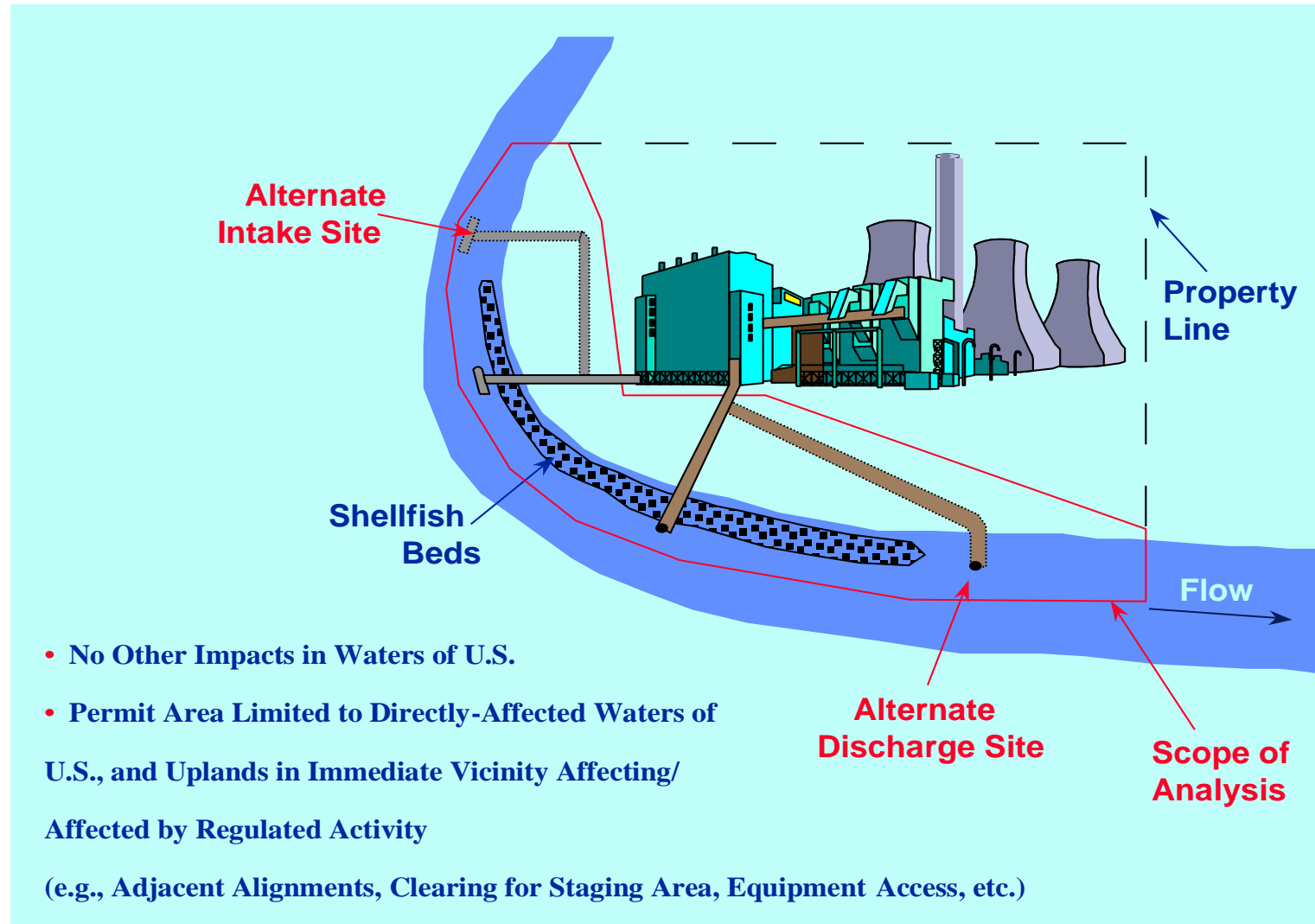
- A concept; not a formula
- Relative importance/ranking of factors varies case by case
- One factor located far to the left may dominate the analysis
- One factor located far to the right may dominate the analysis

Permit Area for Simple Road Crossing

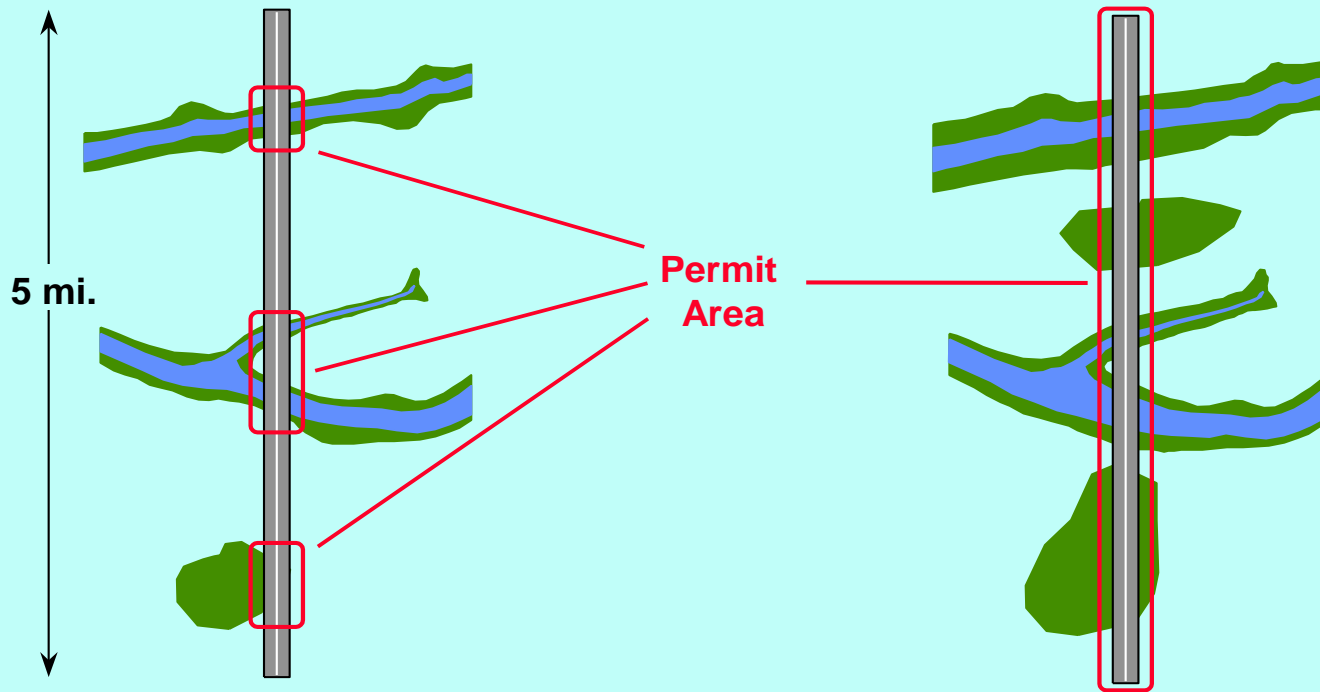


- **No Federal Involvement Other Than Corps Permit**
 - **No Other Impacts in Waters of U.S.**
- **Permit Area Limited to Directly-Affected Waters of U.S., and Uplands in Immediate Vicinity Affecting/Affected by Regulated Activity**
(e.g., Adjacent Road Alignments, Clearing for Staging Area, Equipment Access, etc.)

Permit Area – Adjacent Areas



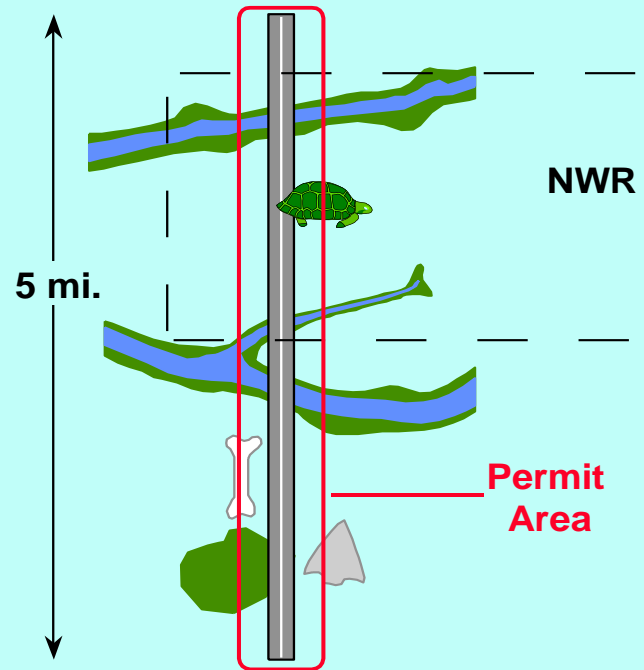
Permit Area for Multiple Road Crossings



- Waters of U.S. < 1mi.,
Road Segment = 5mi.
- 3 Permit Areas

- Waters of U.S. 3mi.,
Road Segment = 5mi.
- 1 Permit Area

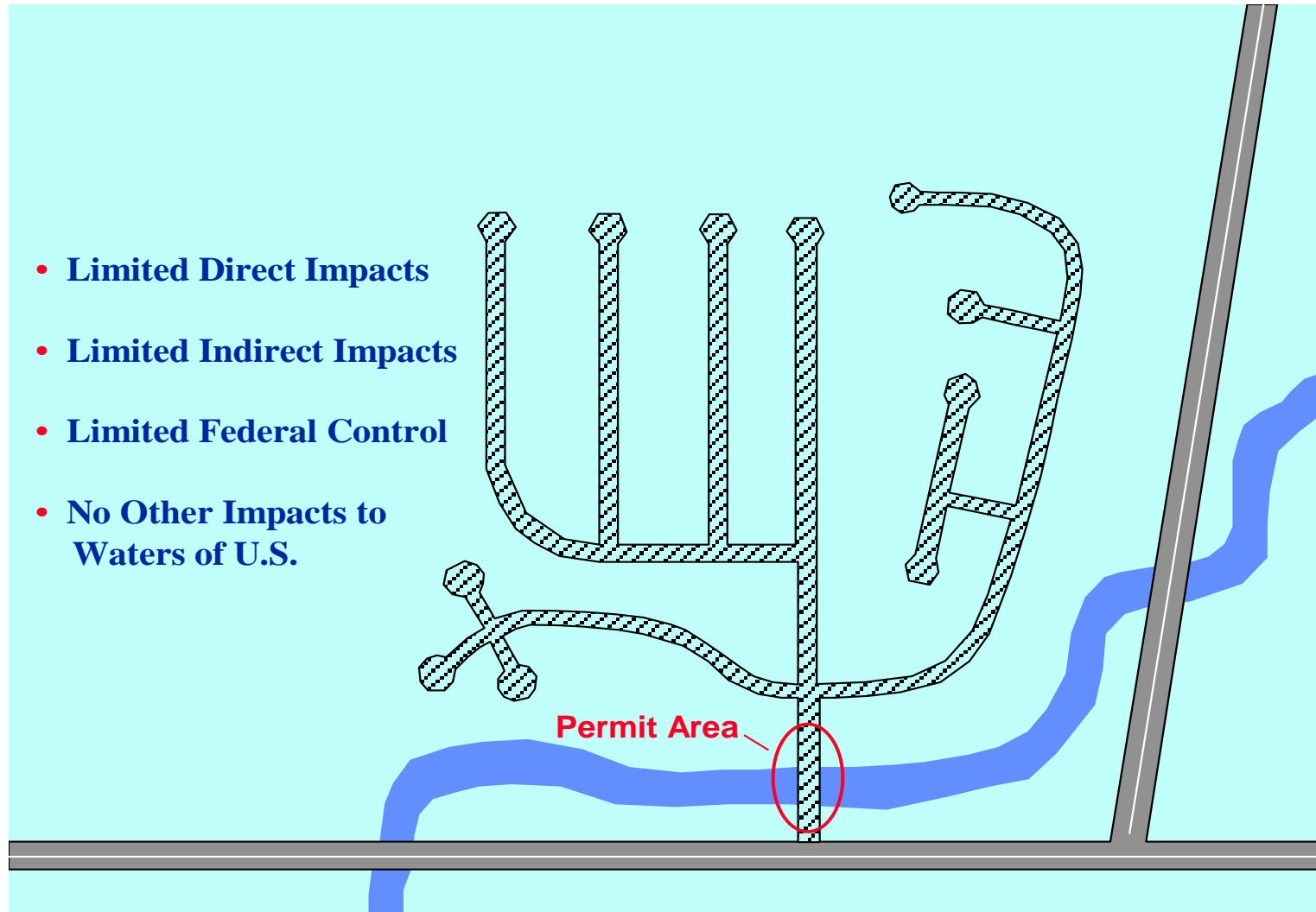
Permit Area for Multiple Road Crossings



- **Substantial Federal Control (Corps permit + NWR Land)**
- **Substantial Impacts (Waters of U.S., Endangered Species, Cultural Resources)**
 - **1 Permit Area**

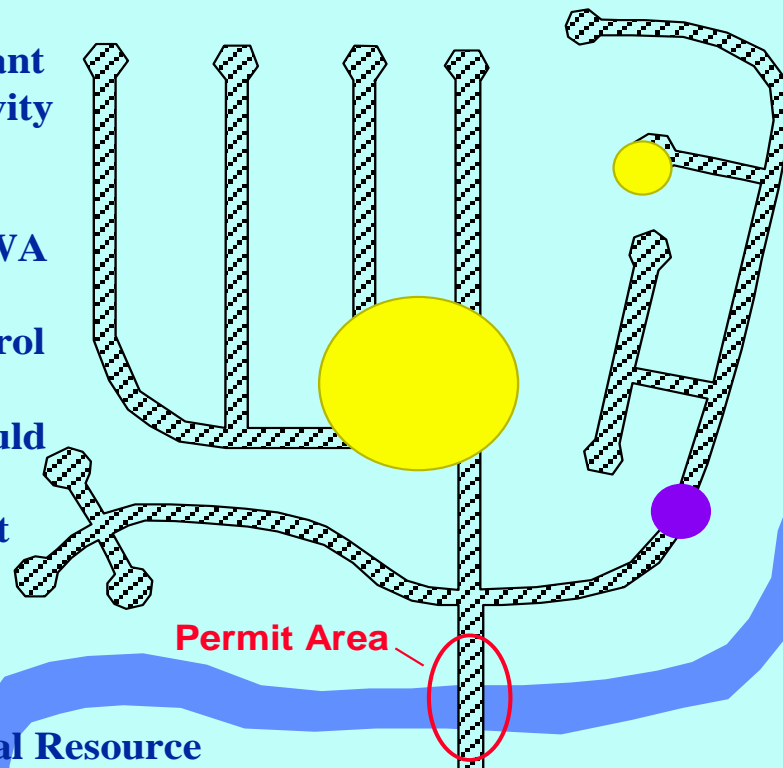
Permit Area in Subdivisions – Case A

- Limited Direct Impacts
- Limited Indirect Impacts
- Limited Federal Control
- No Other Impacts to Waters of U.S.



Permit Area in Subdivisions – Case B

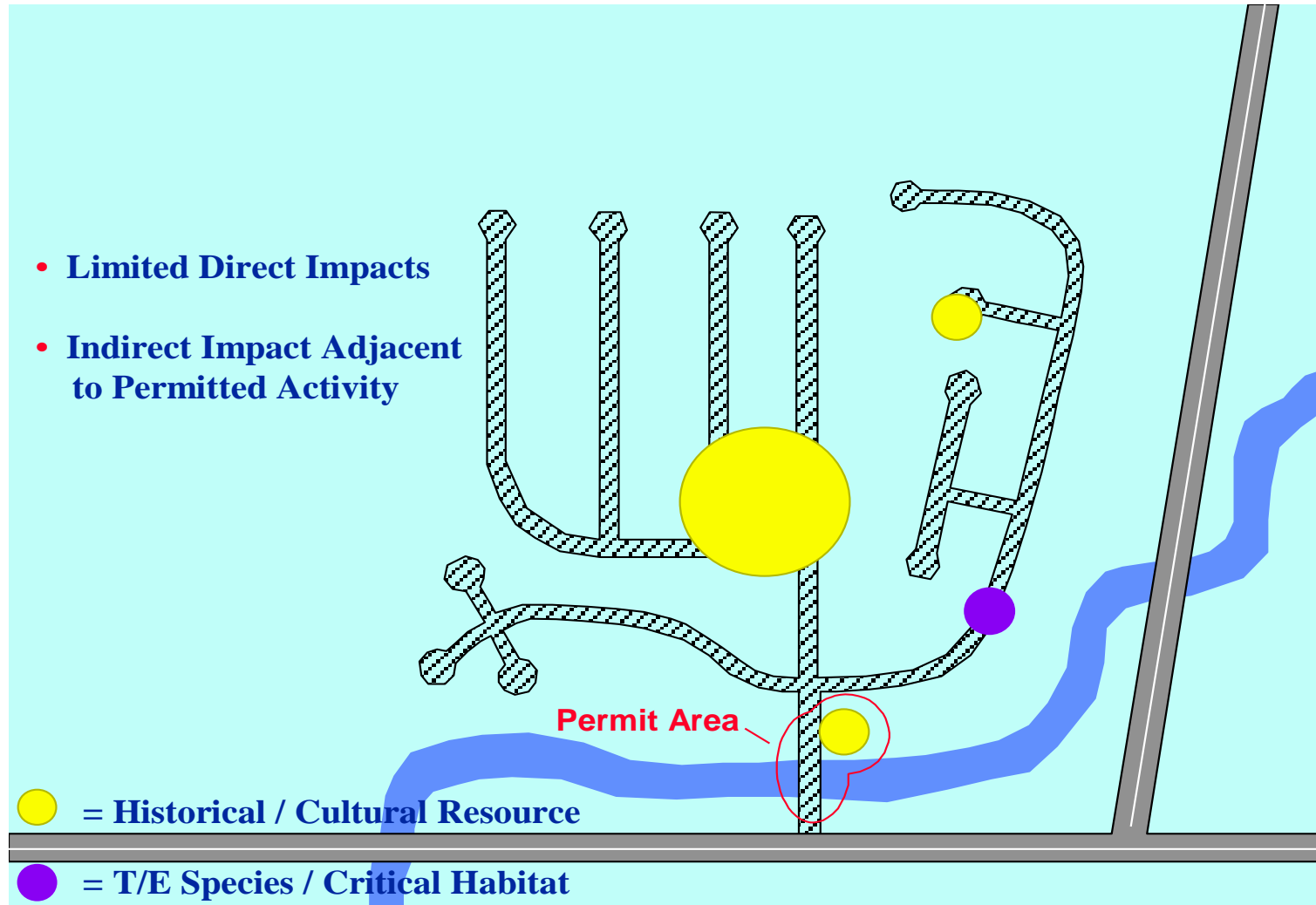
- Limited Direct Impacts
- Indirect Impacts Distant From Permitted Activity
- Indirect Impacts Not Closely Related to CWA
- Limited Federal Control
- Indirect Impacts Would Be Considered (May Cause Denial, But Not Permit Conditions)



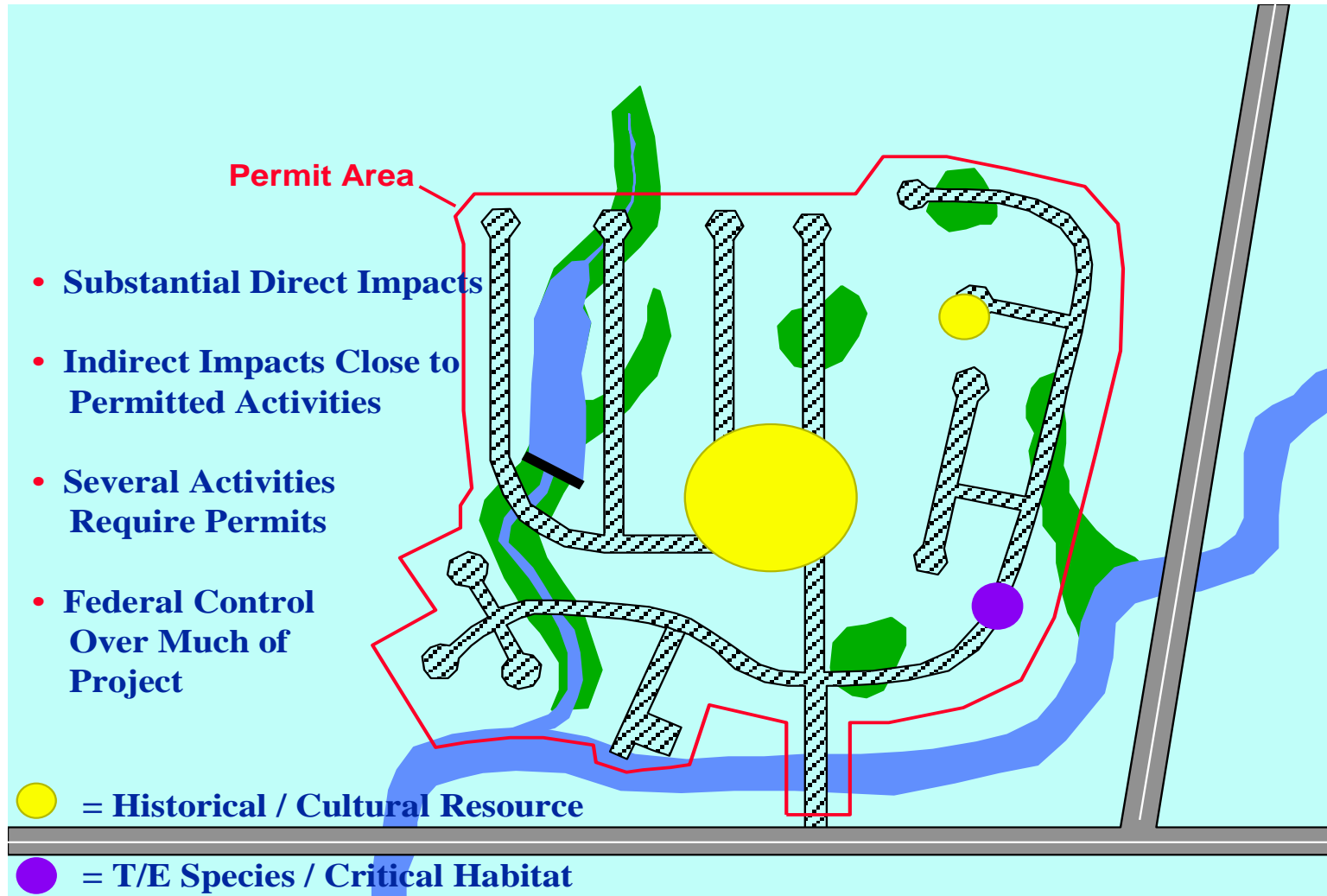
● = Historical / Cultural Resource

● = T/E Species / Critical Habitat

Permit Area in Subdivisions – Case C



Permit Area in Subdivisions – Case D



Common JD Problems

- › **Inconsistent data**
- › **Wetland delineation only (no streams)**
- › **Stream delineation only (no wetlands)**
- › **Unclear maps and exhibits**
- › **Incorrect coordinates**
- › **Wrong form; missing data; incomplete form**
- › **Wrong or no stream classification**
- › **No photographs; incorrectly labeled photographs**

Problems (cont.)

- No delineation of waters of the U.S. conducted
- Incorrect delineations
- Incorrect determination on permitting options
 - Pipelines
 - Roads
 - Small projects
- Didn't take into account threatened and endangered species or migratory birds
- Didn't take into account cultural resources
- Poor construction practices





Careful Project Planning

- **By avoiding impacts to waters such as boring or clean excavation, no Section 404 permit is required (may need a Section 10)**
- **By minimizing the impacts to waters, the work may be authorized by a nationwide permit and may not require a pre-construction notification (PCN)**
- **Pre-application consultations urged**

Questions

