

SCOPE OF ANALYSIS

- PROPOSED PROJECT (NEPA)
- ENDANGERED SPECIES ACT
- NATIONAL HISTORIC PRESERVATION ACT

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OVERVIEW

NEPA Scope of Analysis

NHPA Permit Area

ESA Action Area



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NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

NEPA passed by Congress in 1969

- Requires Federal agencies to evaluate the effects of a proposed action and other alternatives on the human environment
- USACE permits are Federal Actions
 - Must comply with NEPA (as well as other statutes)
- Must consider direct, indirect, and cumulative effects in either EA or EIS
 - Direct and indirect effects are subject to the Corps' Scope of Analysis
- LOPs are categorically excluded from NEPA (although Public Interest Review still required, as well as compliance with 404(b)(1) Guidelines for Section 404 LOP)



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NEPA REGULATIONS

Council on Environmental Quality (40 CFR 1500)

U.S. Army Corps of Engineers (33 CFR 230)

**U.S. Army Corps of Engineers, Regulatory Program (33 CFR 325,
Appendix B)**



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NEPA SCOPE OF ANALYSIS – APPENDIX B

- Establish the scope of the NEPA document (e.g. EA or EIS) to address the impacts of the specific activity requiring the DA permit and those portions of the entire project over which the district engineer has sufficient control and responsibility.
- DE is considered to have sufficient control and responsibility for portions of the project beyond the limits of the Corps jurisdiction where the Federal involvement is sufficient to turn an essentially private action into a federal action.



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NEPA SCOPE OF ANALYSIS – APPENDIX B

Factors

- Whether or not the regulated activity comprises “merely a link” in a corridor type project
- 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
- Extent to which the entire project within Corps jurisdiction
- The extent of cumulative control and responsibility.
 - Cumulative Federal involvement of Corps and other Federal agencies sufficient for legal control over other portions of project
 - Consider whether other Federal agencies are required to take action (FWCA, NHPA, ESA)
 - Refer to Appendix B(8)(b) and (c) to determine whether Corps should be lead or cooperating agency



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NEPA SCOPE OF ANALYSIS – RGL 88-13

- Limit scope of analysis to specific activity requiring a permit and any additional portions over which there is sufficient Federal control and responsibility
 - Limiting of scope of analysis recognized that, notwithstanding the link between issuance of a permit and project construction, NEPA was not intended to apply to a purely non-Federal activity
- Once determine appropriate scope of analysis
 - For indirect effects, consider strength of relationship between impacts and regulated activity (i.e. whether impacts are likely to occur even if permit is not issued)



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NEPA SCOPE OF ANALYSIS

Always includes the Corps' geographic jurisdiction being evaluated (i.e. activity requiring a permit)

AND

Uplands that meet the "four factors" of appendix B



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NHPA SCOPE OF ANALYSIS

33 CFR 325, Appendix C, Permit Area: WOUS that will be directly affected by the proposed work or structures and uplands directly affected as a result of authorizing the work or structures

- 3 tests that all must be satisfied for areas outside WOUS to be included within permit area
 - Such activity would not occur but for the authorization of the work or structure within the WOUS, and
 - Such activity must be integrally related to the work or structures to be authorized within WOUS, or, conversely, the work or structures to be authorized must be essential to the completeness of the overall project or program, and
 - Such activity must be directly associated (first order impact) with the work or structures to be authorized



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ESA SCOPE OF ANALYSIS

Action Area: all areas affected directly or indirectly by Federal action, not merely immediate area (50 CFR 402)

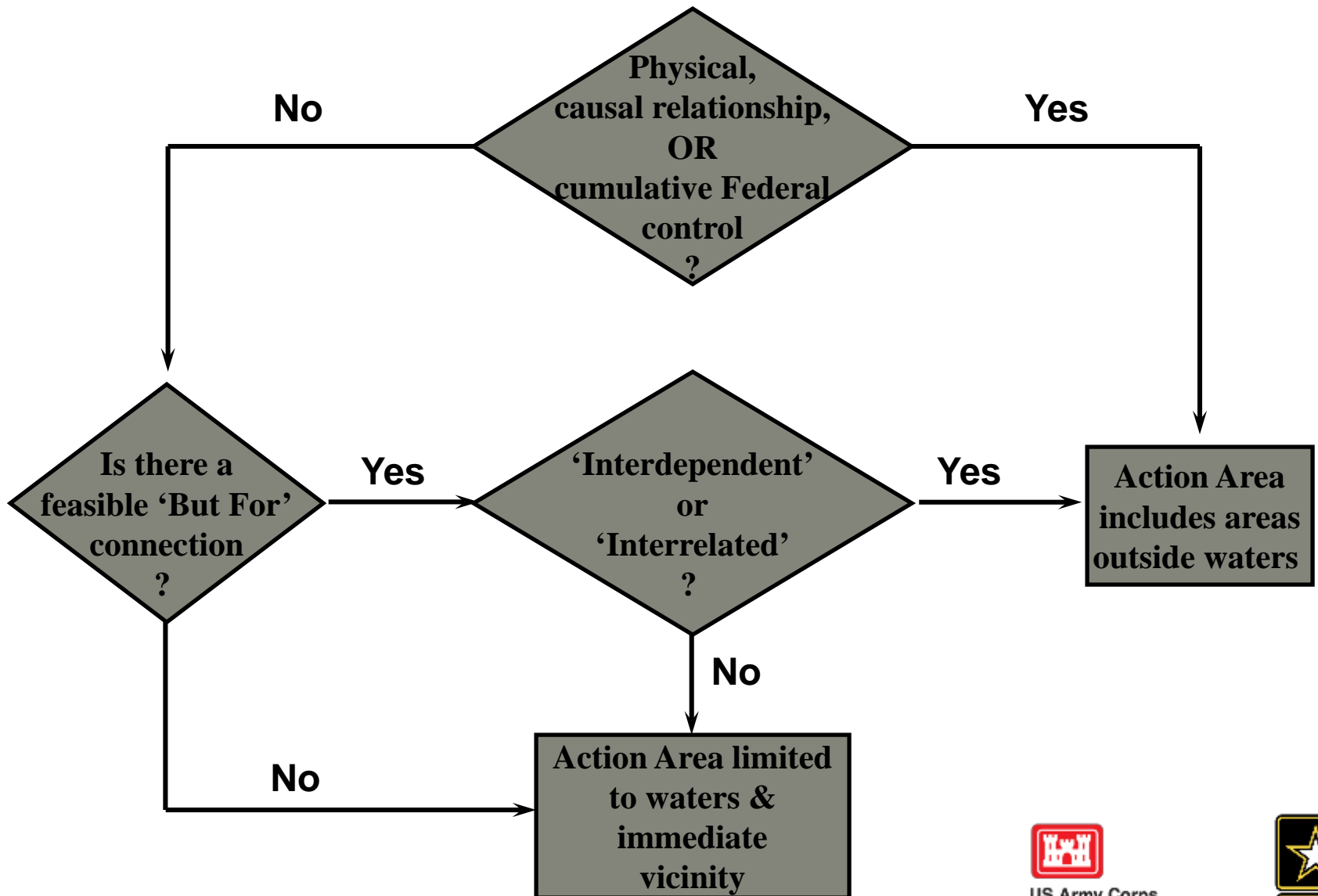
- Effects of the Action: direct and indirect effects of the action “together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline”
 - Environmental baseline: includes past, present and anticipated impacts of all Federal, State, or private actions in the action area
 - Indirect effects: caused by proposed action and are later in time, but still reasonably certain to occur
 - Interrelated actions: those that are part of a larger action and depend on the larger action for justification
 - Interdependent actions: those that have no independent utility apart from the action under consideration



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ESA Scope of Analysis



NHPA SCOPE OF ANALYSIS

- Identify area of direct and indirect project impacts within the permit area, including access, staging, and construction areas
- Must consider all impacts to known historic properties in the permit area (discovered through archival research, National Register of Historic Places, lists of eligible properties, archaeological surveys, etc.)
- If known historic properties are located outside the permit area, consider effects (such as visual and auditory impacts), but cannot require surveys to identify previously unknown historic properties



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ESA SCOPE OF ANALYSIS

November 18, 1999 Corps Memorandum regarding ESA compliance

- Corps will use ESA regulations at 50 CFR 402 when determining compliance with Section 7 of the ESA
- Handbook generally provides useful guidance and should be used to govern application of consultation regulations to specific permit actions
- In small percentage, may continue to be differences in agency interpretation
- Creates 3-level conflict resolution process where Corps would expand indirect effects associated with proposed action and where more limited scope would be appropriate under ESA
- The Corps' example for residential development limits scope for ESA, but a very similar example in Figure 4-6 of handbook would expand scope



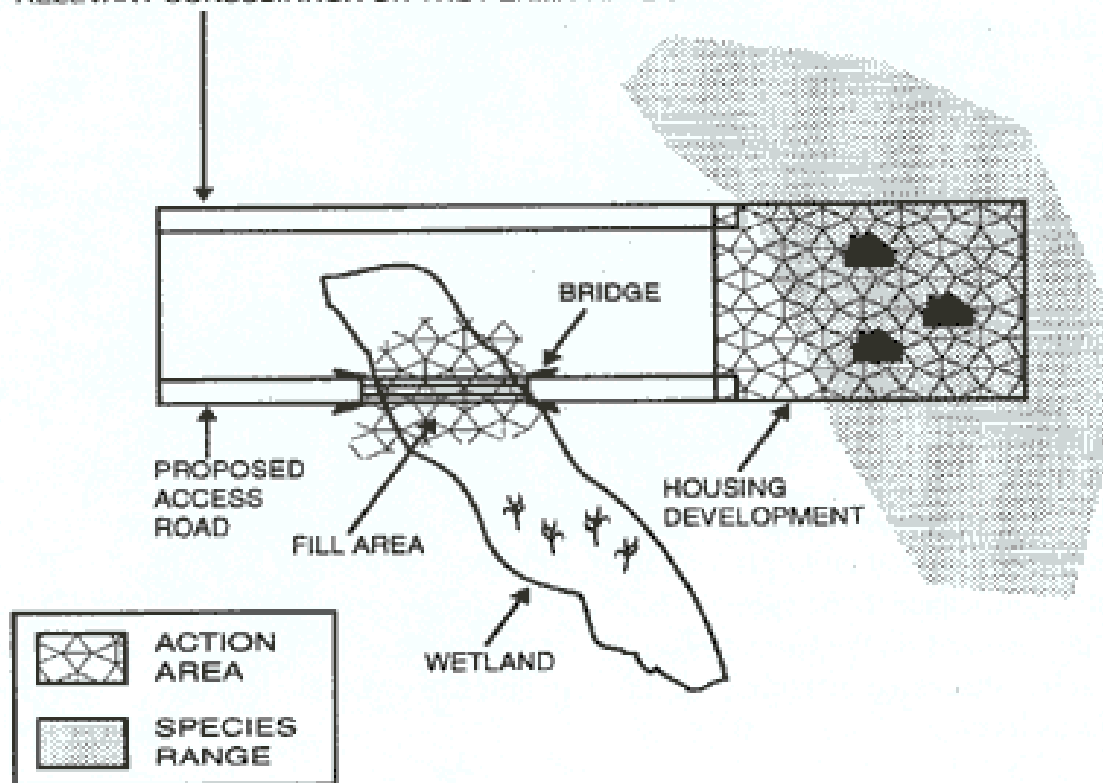
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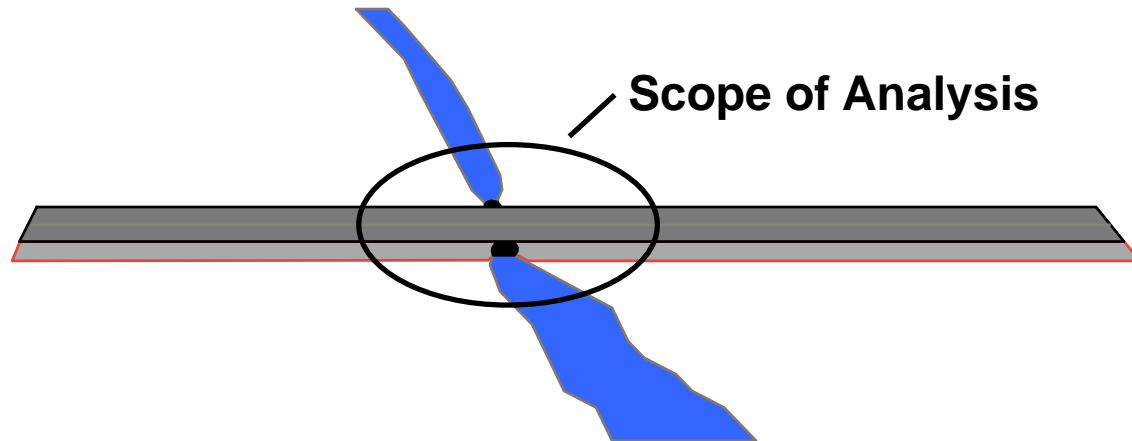
ESA SCOPE OF ANALYSIS

Figure 4-6. Determining the action area.

ALTERNATIVE ACCESS NOT AFFECTING THE WETLAND, BUT NOT CONSIDERED IN THE PERMIT APPLICATION, IS NOT RELEVANT CONSULTATION ON THE PERMIT APPLICATION



Scope of Analysis for a Simple Road Crossing



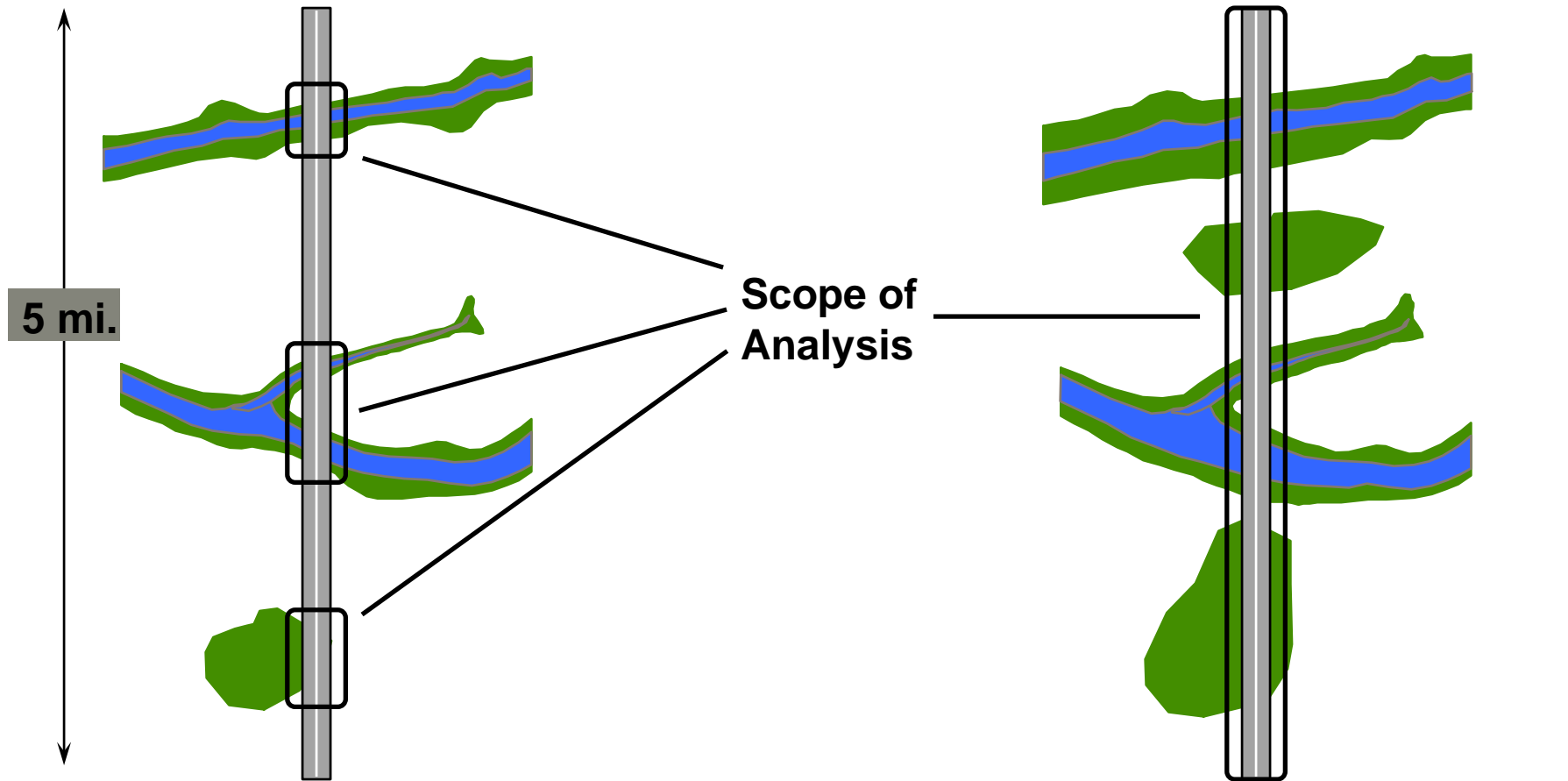
- **No Federal Involvement Other than Corps Permit**
- **No other Impacts in Waters of U.S.**
- **Scope of Analysis limited to directly-affected waters of U.S., and uplands in the immediate vicinity affecting/affected by regulated activity (e.g. Adjacent road alignments, clearing for staging area, equipment access, etc.)**



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Scope of Analysis for Multiple Road Crossings



5 mi.

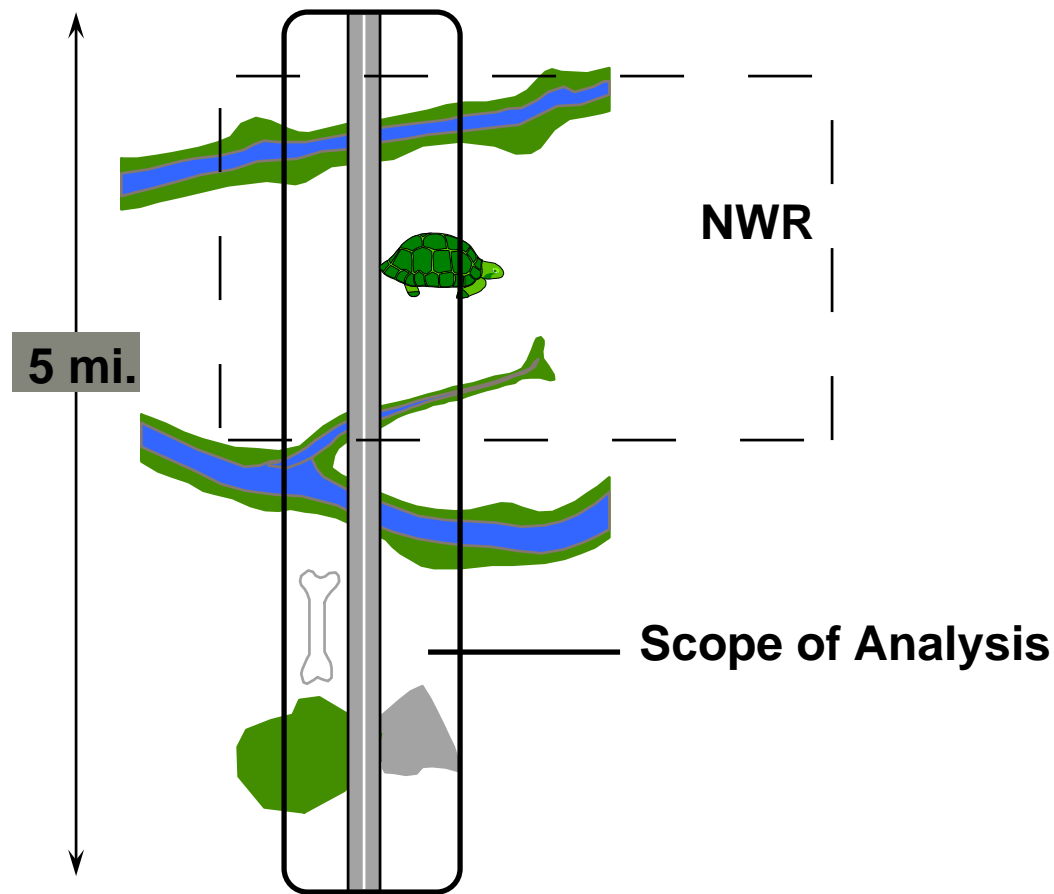
Scope of Analysis

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

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



Scope of Analysis for Multiple Road Crossings



- **Substantial Federal Control (Corps permit + NWR Land)**
- **Substantial Impacts (Waters of U.S., ESA, and cultural)**
- **One Permit Area**

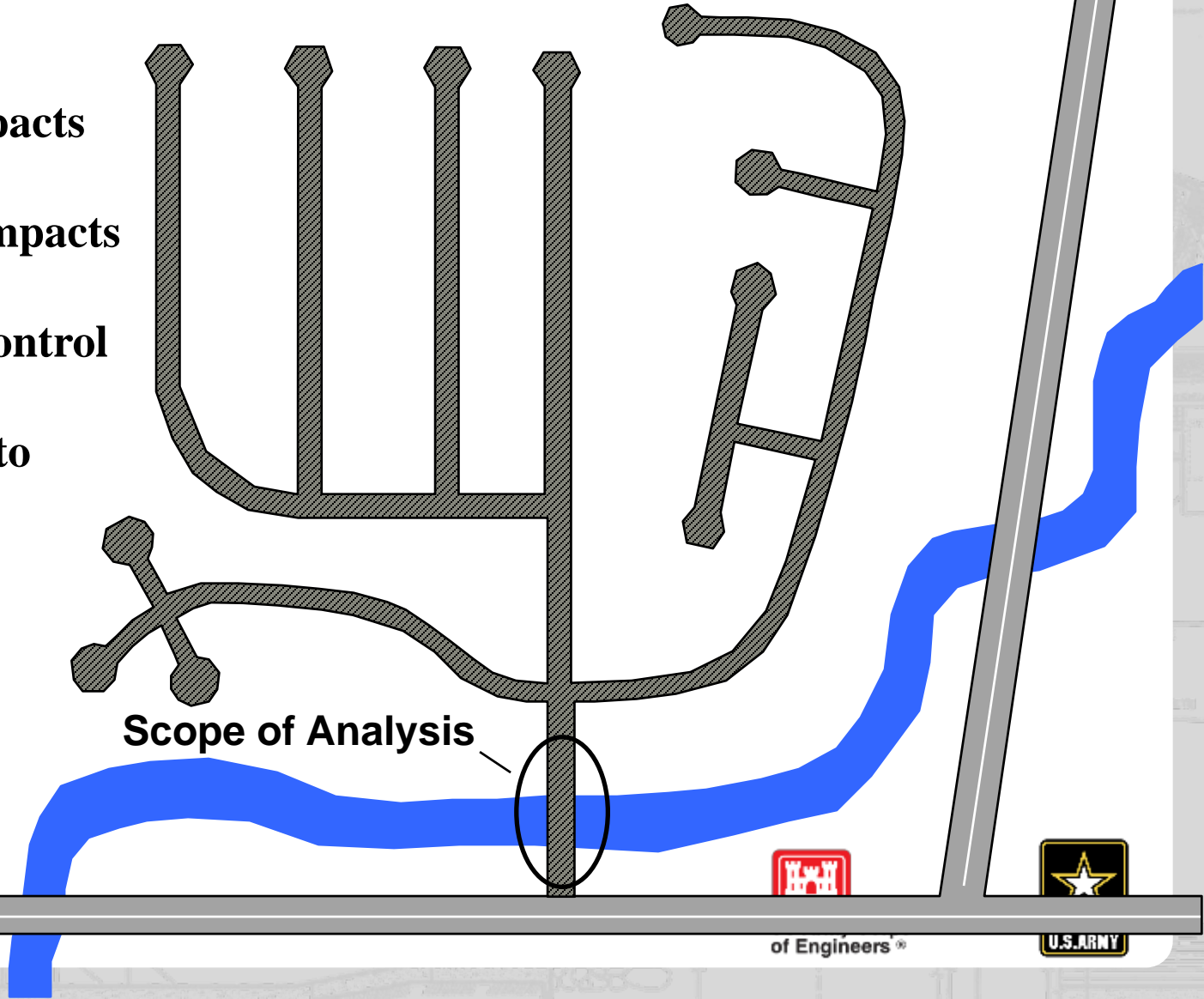


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Scope of Analysis for Subdivisions Case A

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



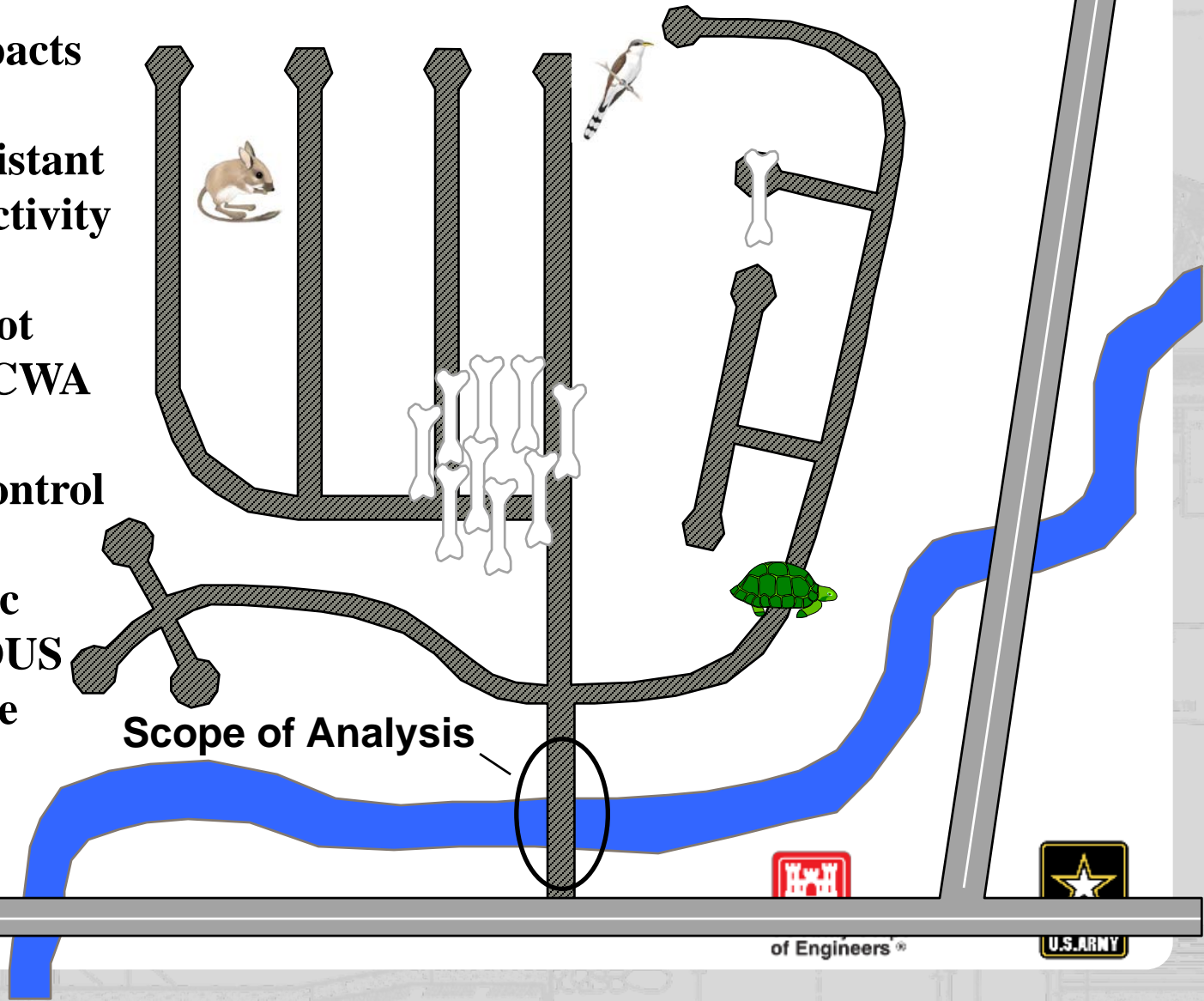
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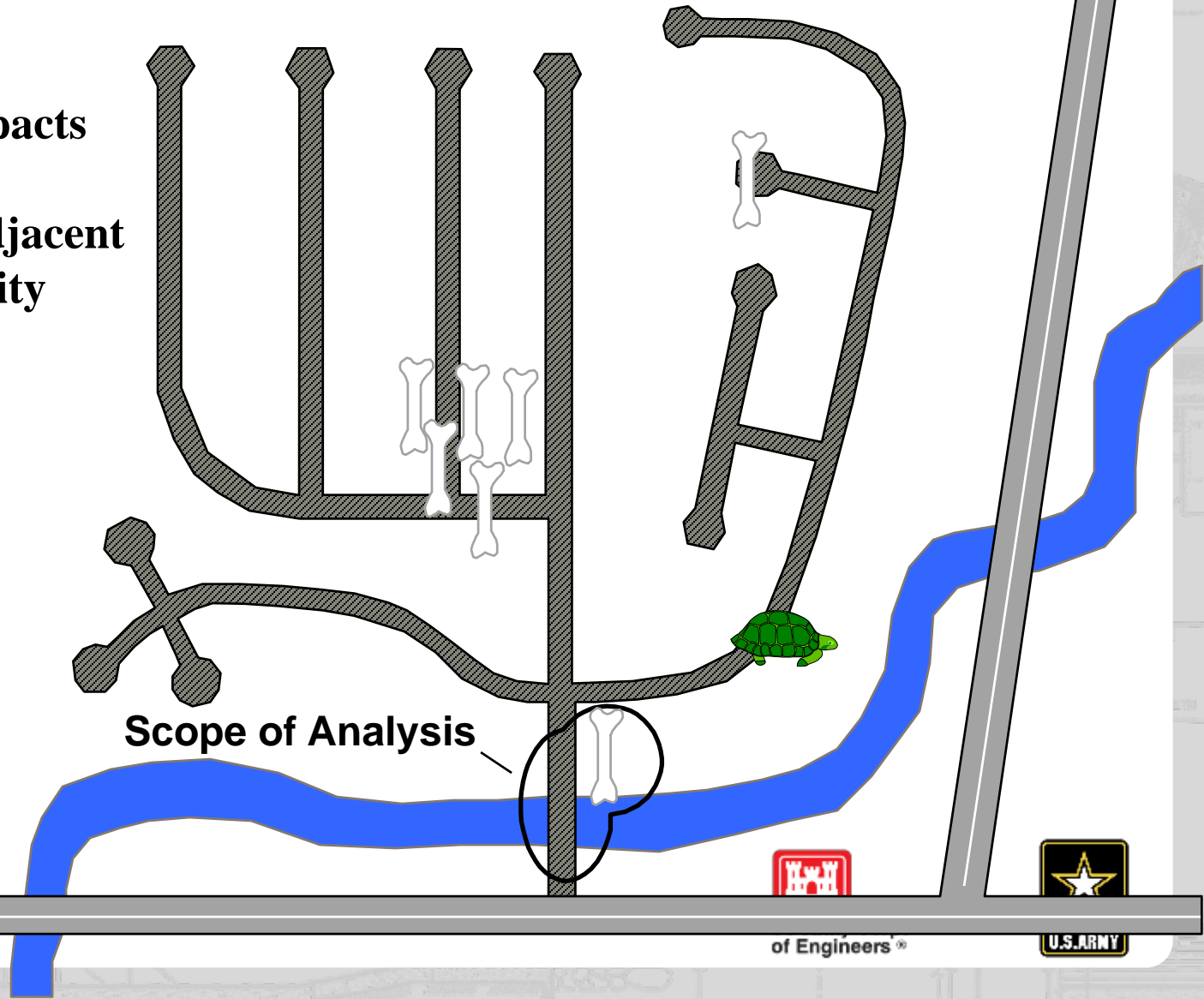
Scope of Analysis for Subdivisions Case B

- Limited Direct Impacts
- Indirect Impacts Distant From Permitted Activity
- Indirect Impacts Not Closely Related to CWA
- Limited Federal Control
- Limited geographic distribution of WOUS (small federal scope of analysis)



Scope of Analysis for Subdivisions Case C

- Limited Direct Impacts
- Indirect Impact Adjacent to Permitted Activity

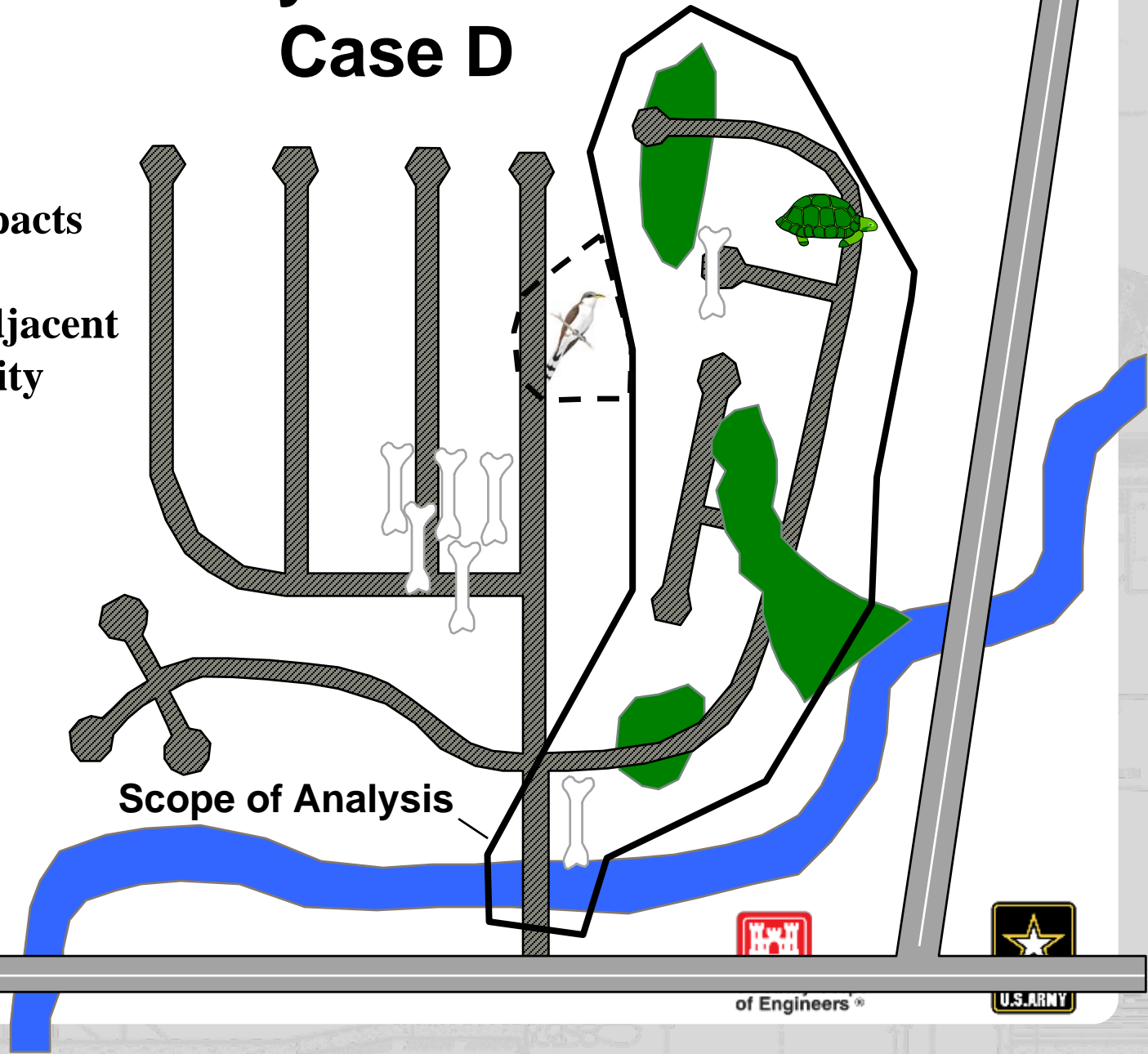


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Scope of Analysis for Subdivisions Case D

- Limited Direct Impacts
- Indirect Impact Adjacent to Permitted Activity



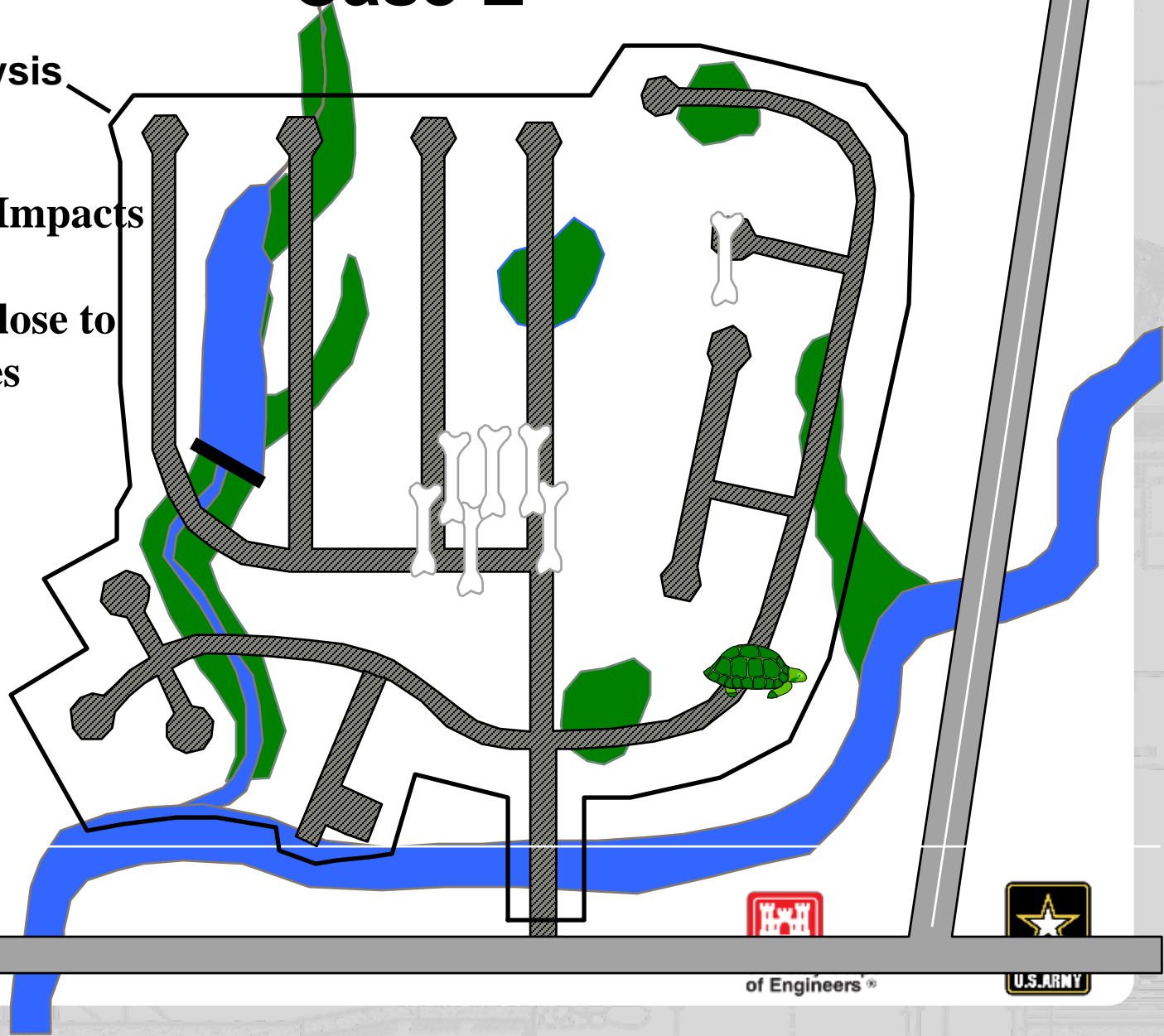
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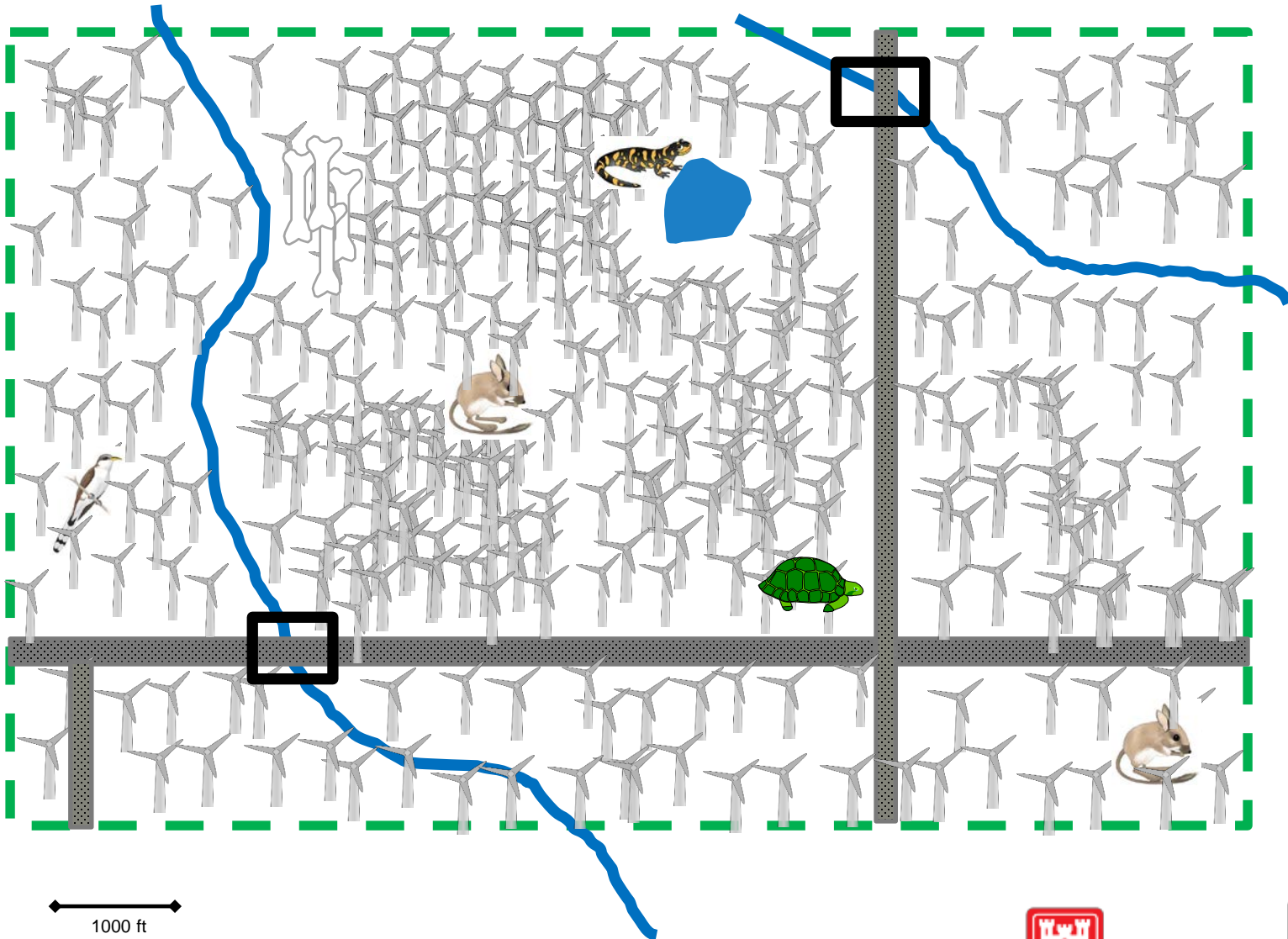
Scope of Analysis for Subdivisions Case E

Scope of Analysis

- **Substantial Direct Impacts**
- **Indirect Impacts Close to Permitted Activities**
- **Several Activities Require Permits**
- **Federal Control Over Much of Project**



Wind Farm Case Study



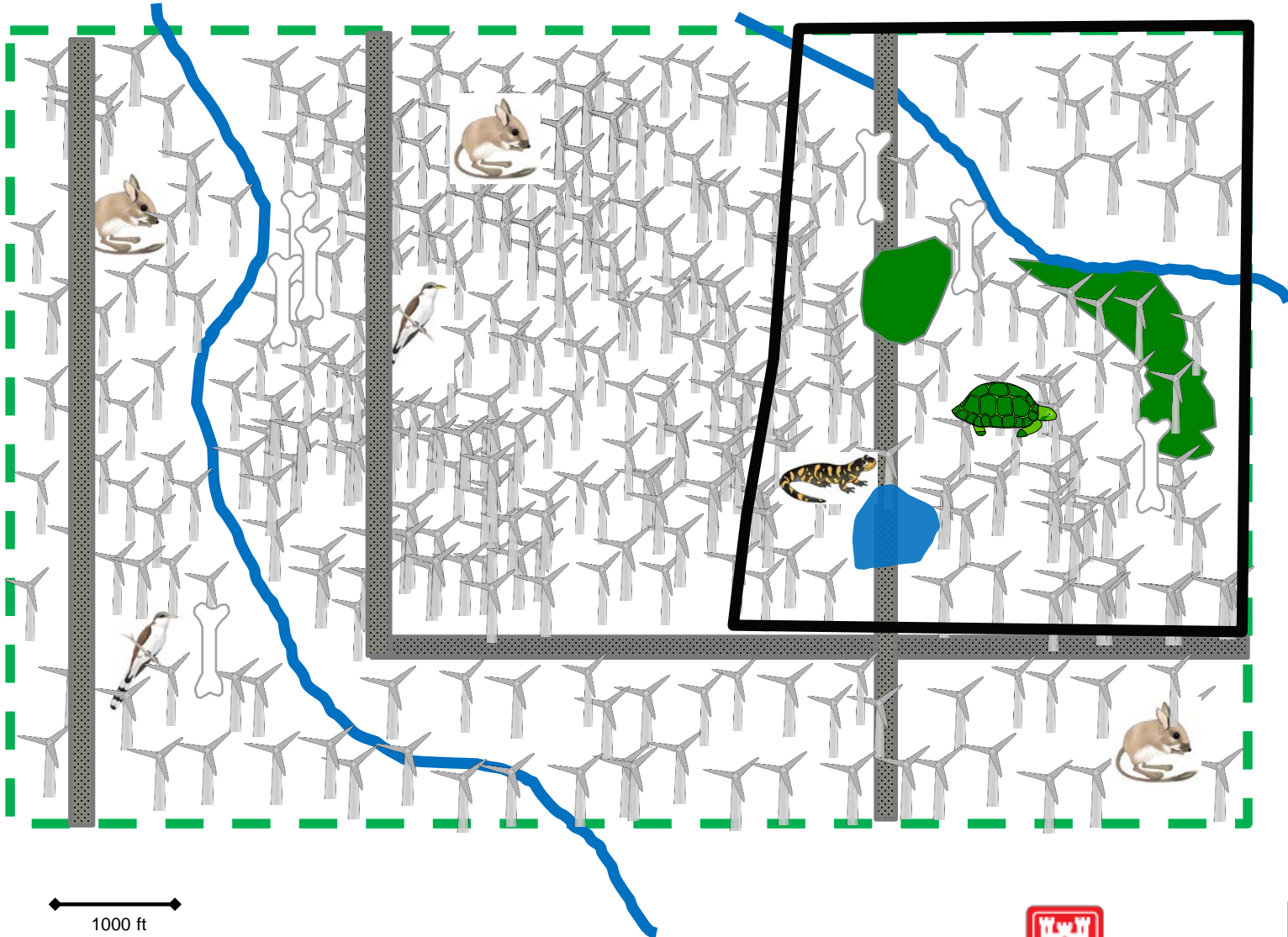
1000 ft



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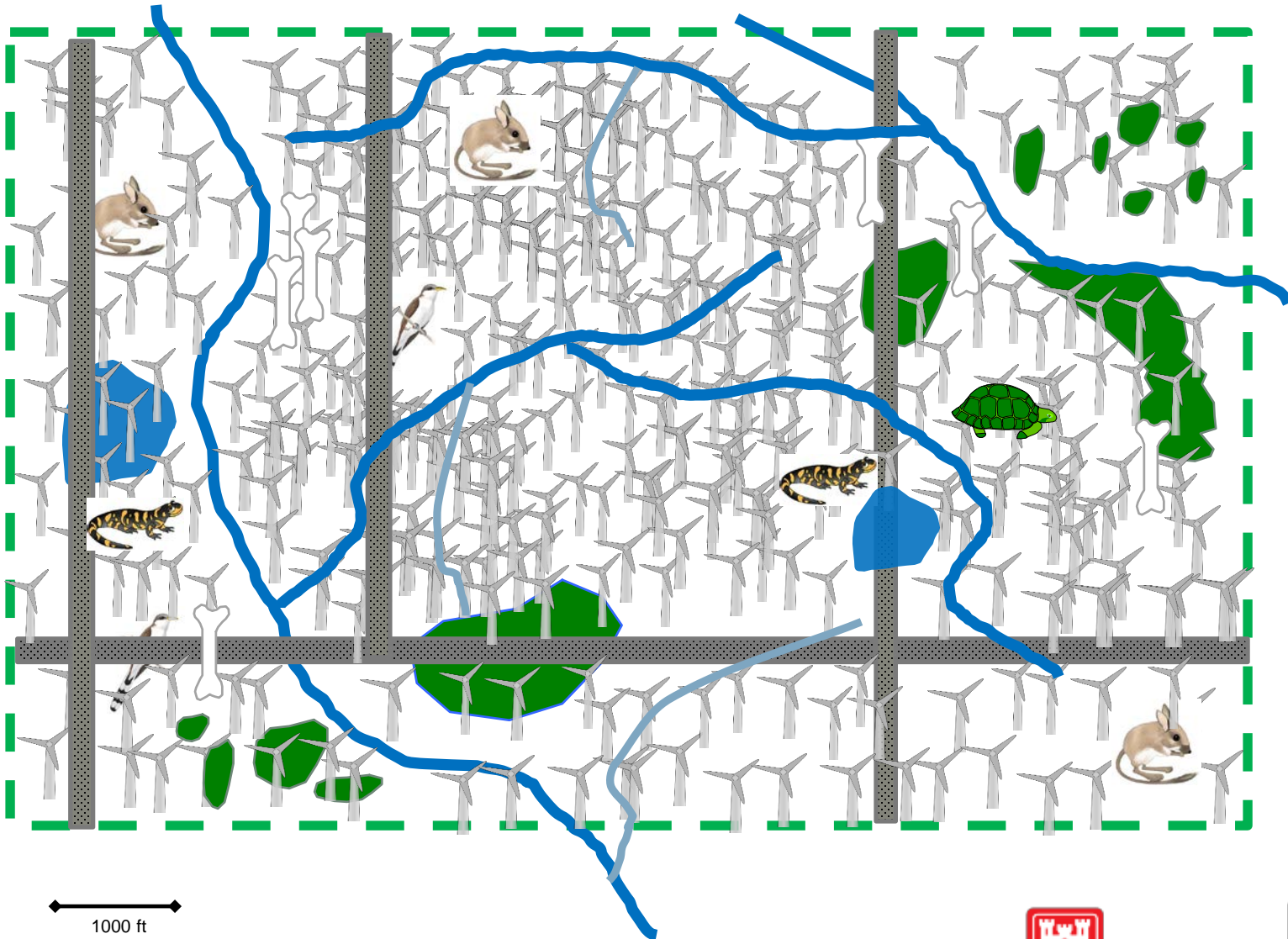


Wind Farm Case Study



1000 ft

Wind Farm Case Study



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QUESTIONS?



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