

New EPA Regulation to Define Waters of the United States

Déjà Vu All Over Again – One Year Later

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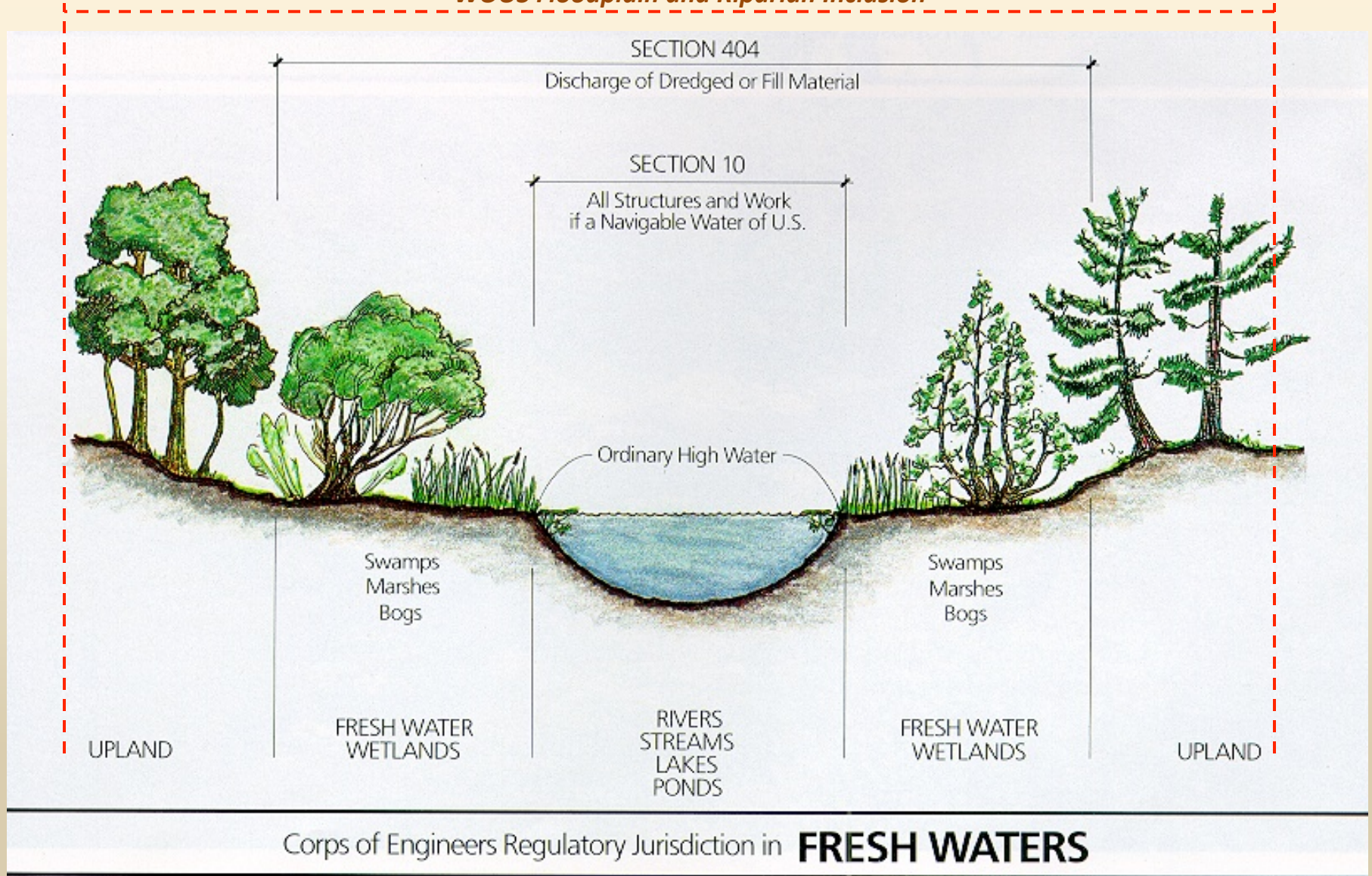
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Last Year at Marco...

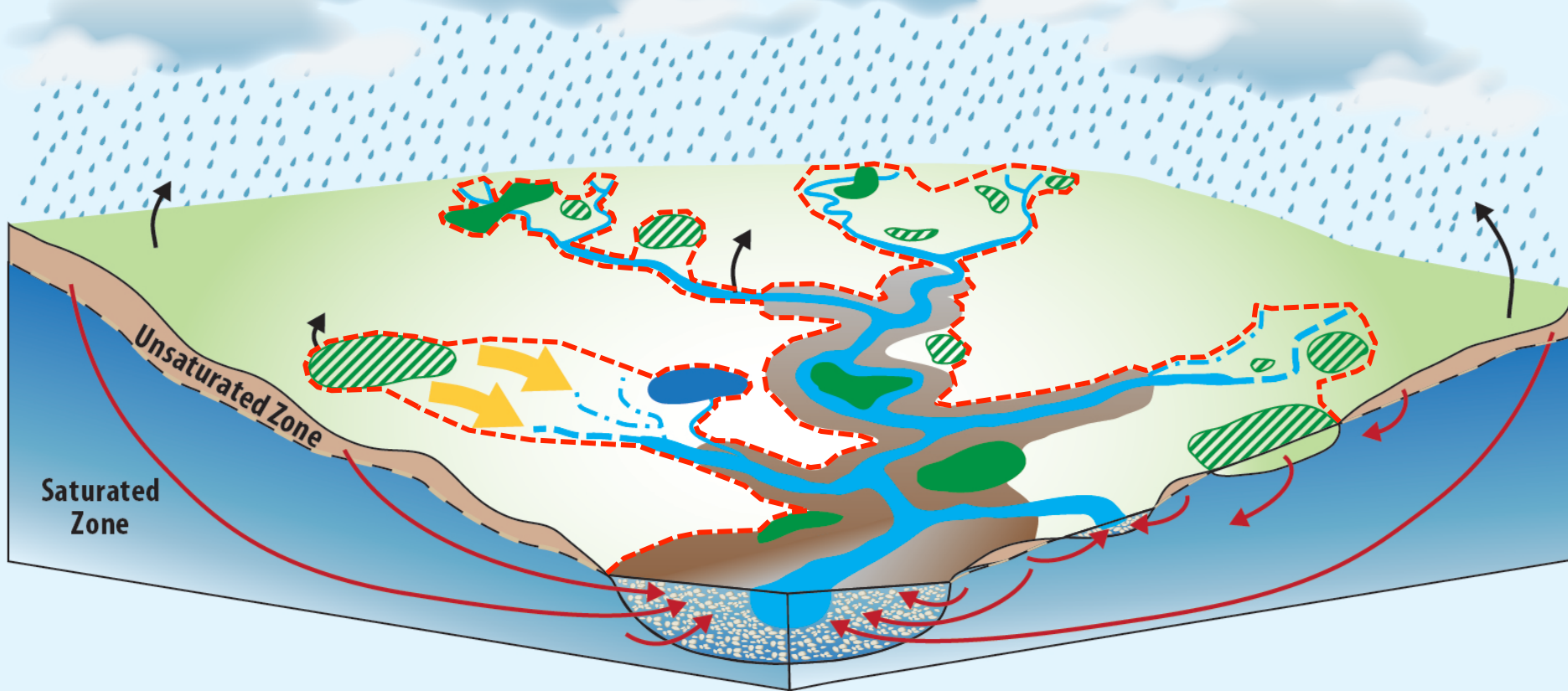
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ACOE Potential Jurisdiction Expansion


WOUS Floodplain and Riparian Inclusion




Potential WOUS Expansion




 Perennial stream


 Wetland with surface outlet


 Geographically isolated wetland


 Evapo-transpiration

 Intermittent stream


 Floodplain

 Overland flow (fill-and-spill)

 Subsurface flows

 Ephemeral stream

 Riparian/floodplain wetland

 Hyporheic zone

How New Definition of WOUS will Affect Permitting Process

- How to delineate**
 - Ditches
 - Ephemeral tributaries
 - Floodplains
 - Riparian areas
 - Adjacent wetlands

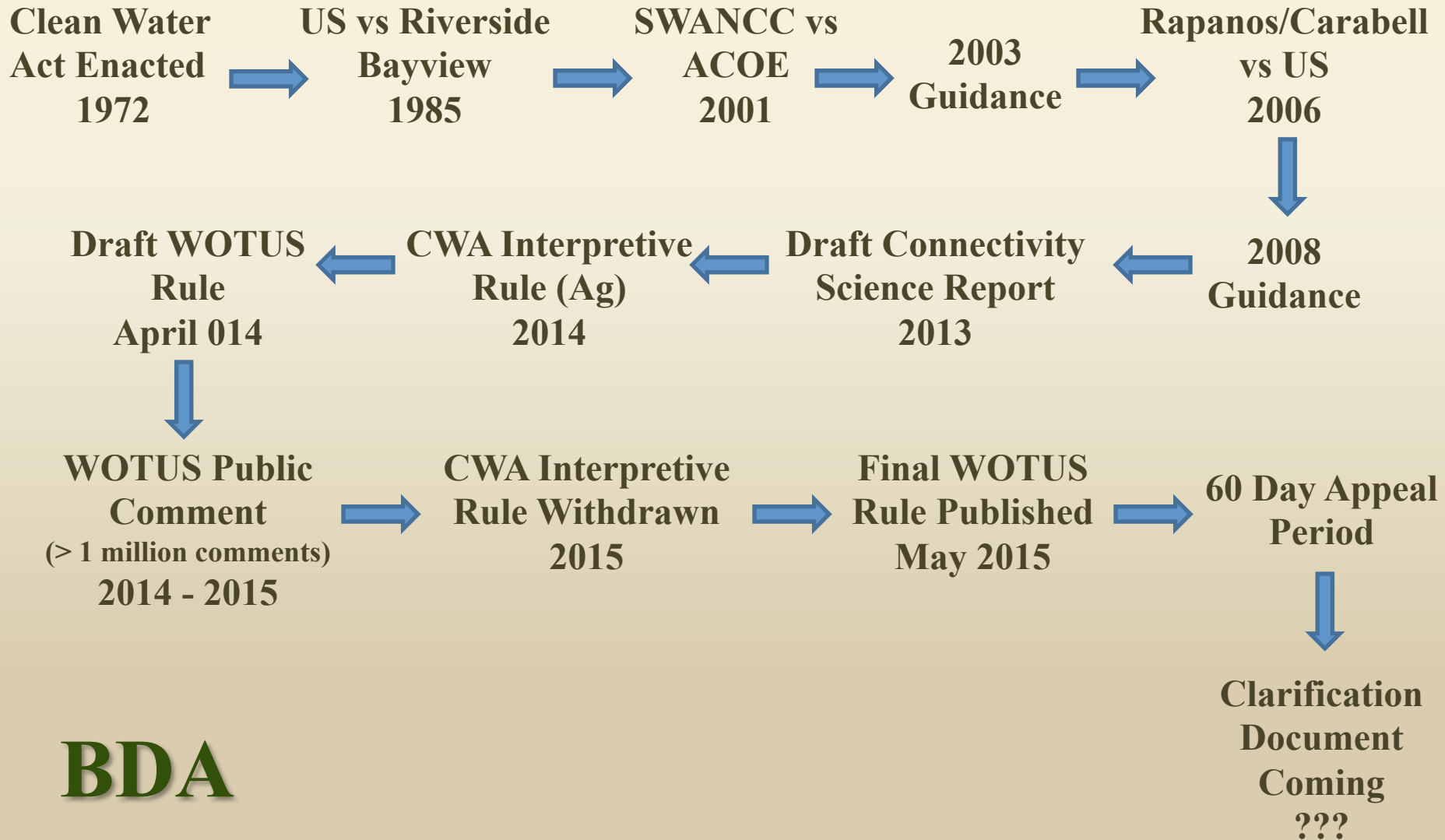
- Expanded considerations for alternative analysis**

- Expanded considerations for avoidance and minimization**

- Increased compensatory mitigation**

- Upland land use regulation**
 - How to evaluate
 - Mitigation

How Did We Get Here?

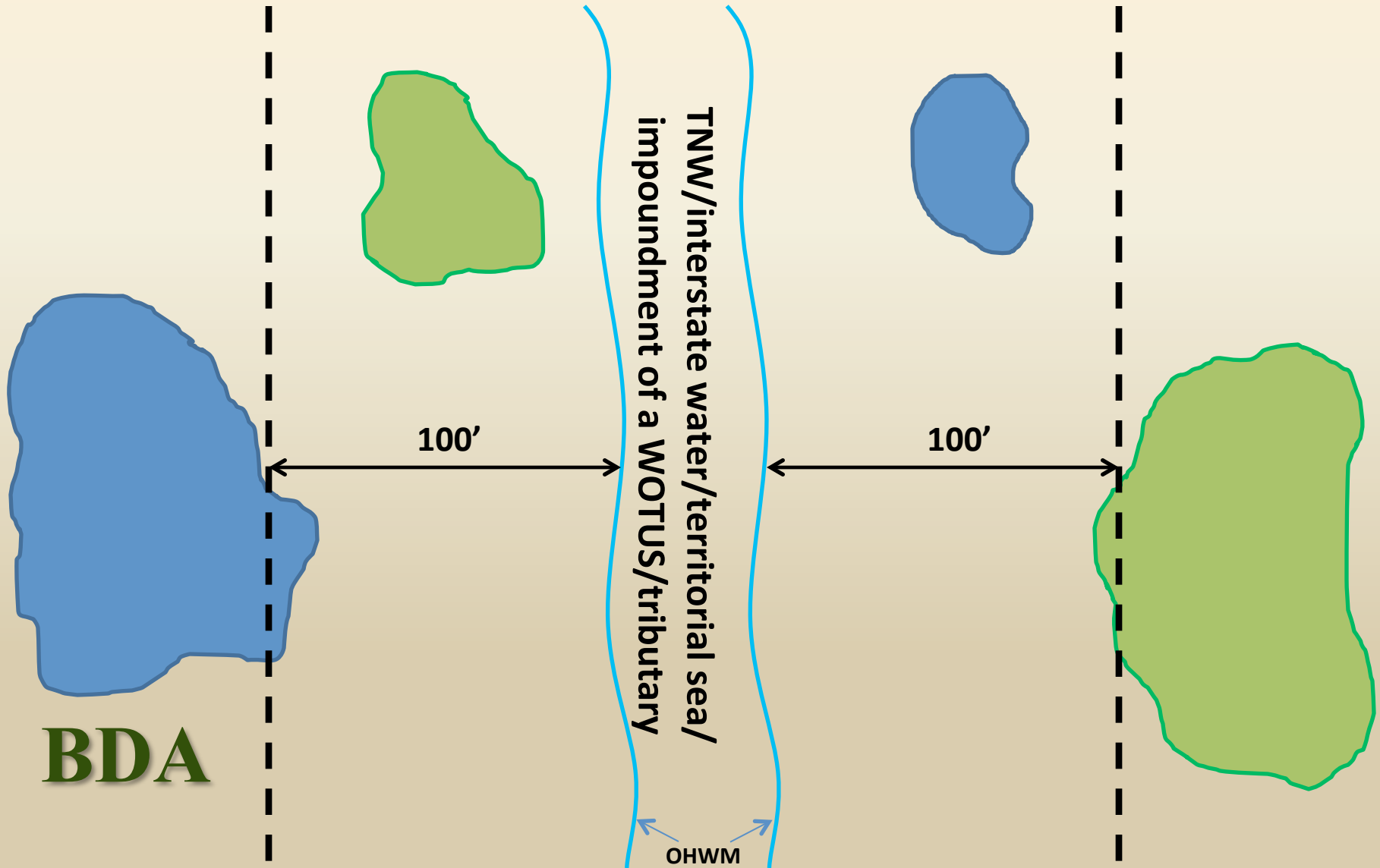


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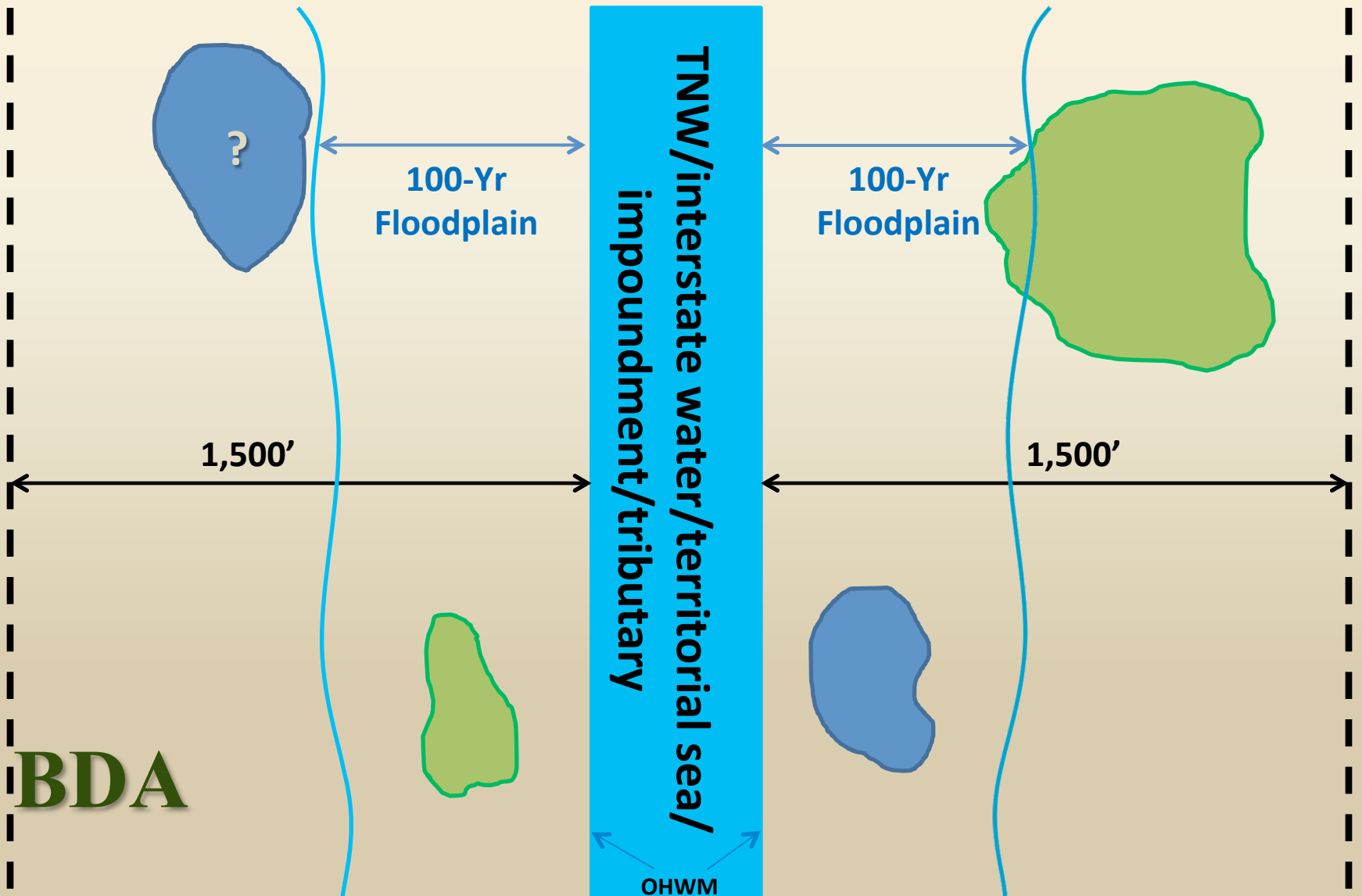
Bright Line Clarifications

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Adjacent Waters (Neighboring)



Adjacent Waters (100-Year Floodplain)



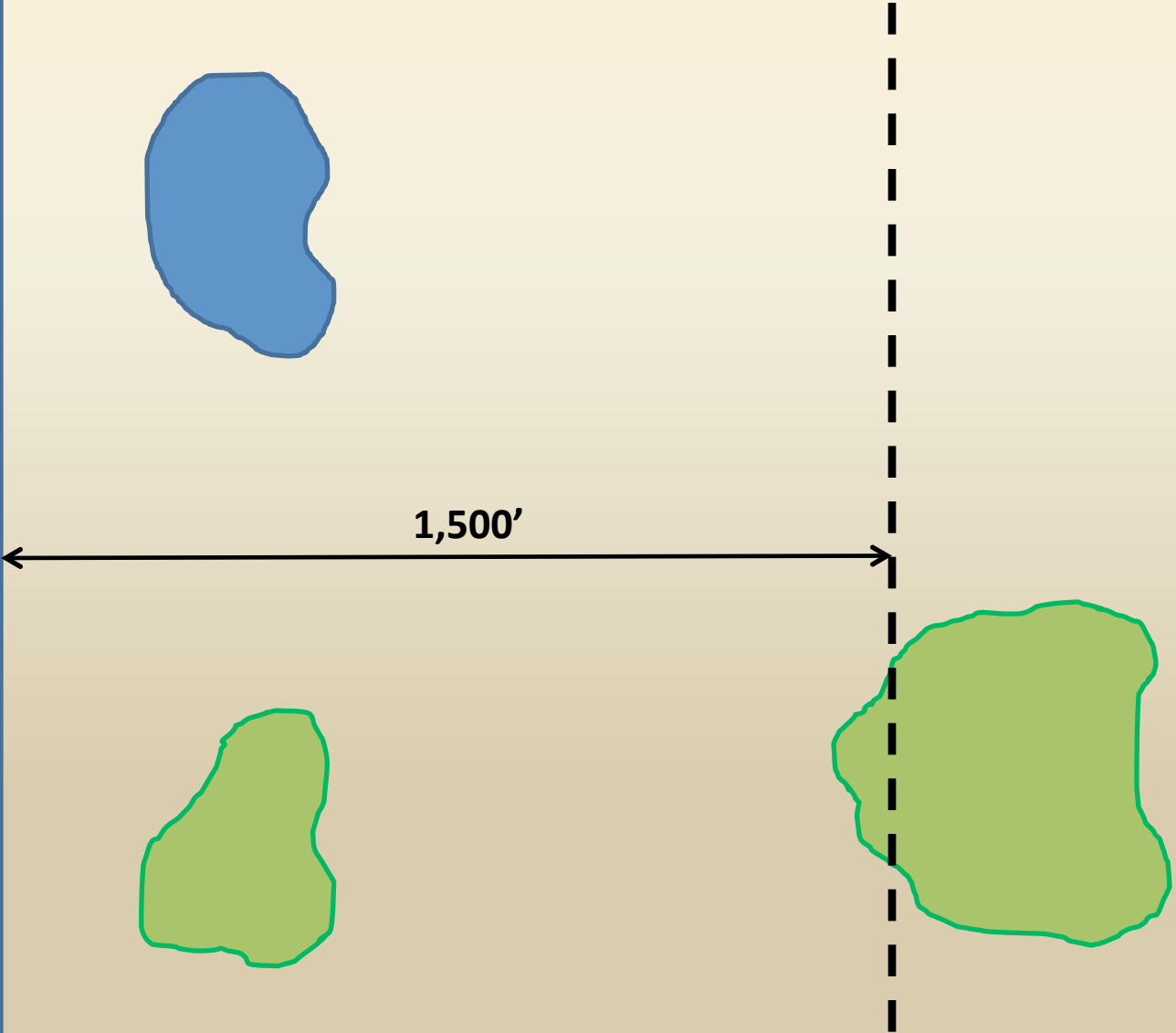
Adjacent Waters (High Tide)

TNW,
territorial sea,
Great Lakes OHWM

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High Tide Line
or OHWM

1,500'



Case By Case Significant Nexus Determination

- ❑ But by rule, significant nexus is established for
 - Prairie potholes
 - Carolina and Delmarva bays
 - Pocosins
 - Western vernal pools in California
 - Texas coastal prairie wetlands

- ❑ Other waters determined based on significant nexus test

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Significant Nexus

❑ Tributary – by definition

❑ Adjacent – by definition

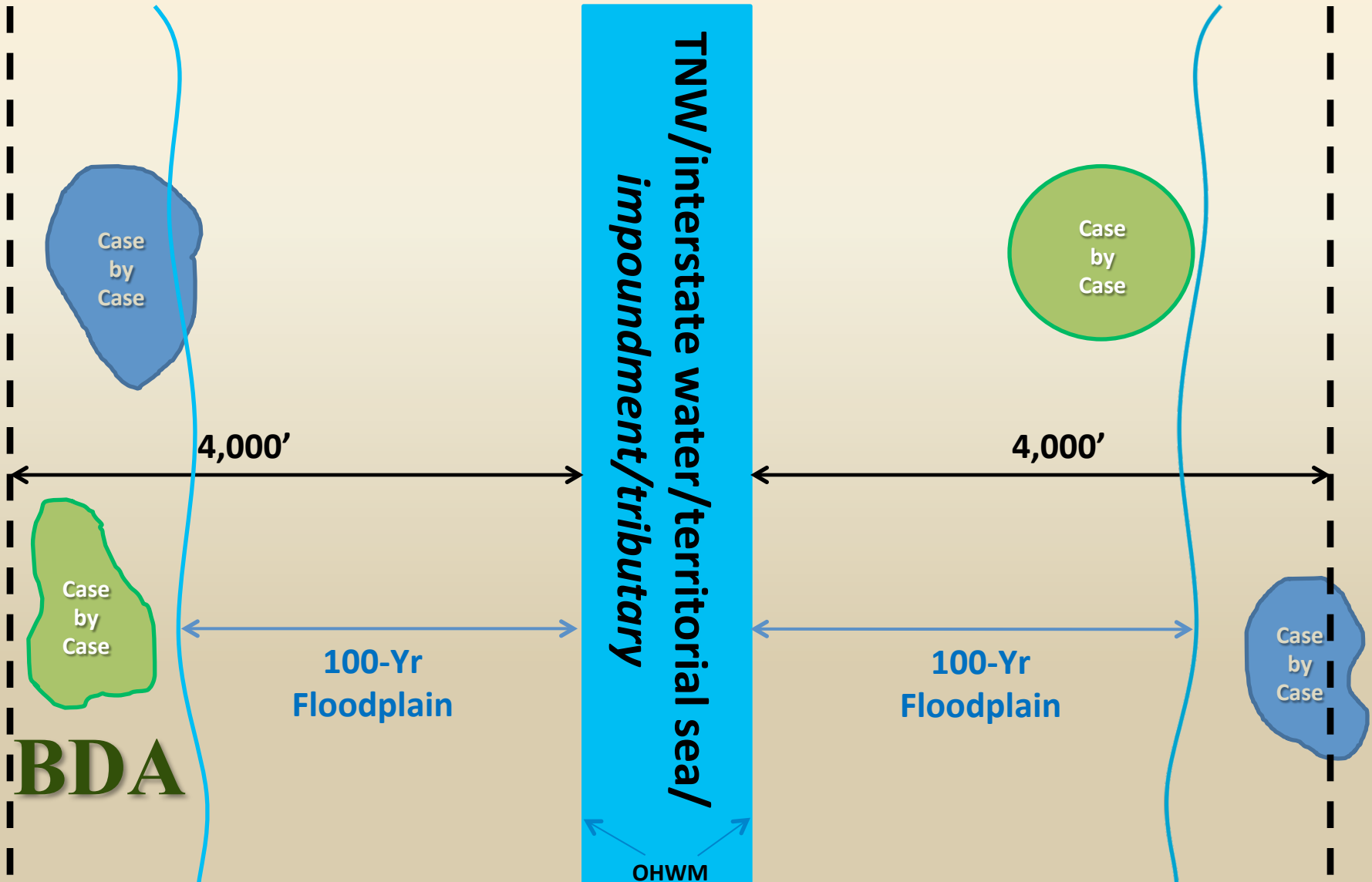
❑ Any single function

- Sediment trapping
- Nutrient recycling
- Pollutant trapping, transformation, filtering, transport
- Retention or attenuation of flood waters
- Runoff storage
- Contribution of flow
- Export of organic matter
- Export of food resources
- Provision of life cycle dependent aquatic habitat
(foraging, feeding, nesting, breeding, spawning, or use as nursery area)

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Significant Nexus

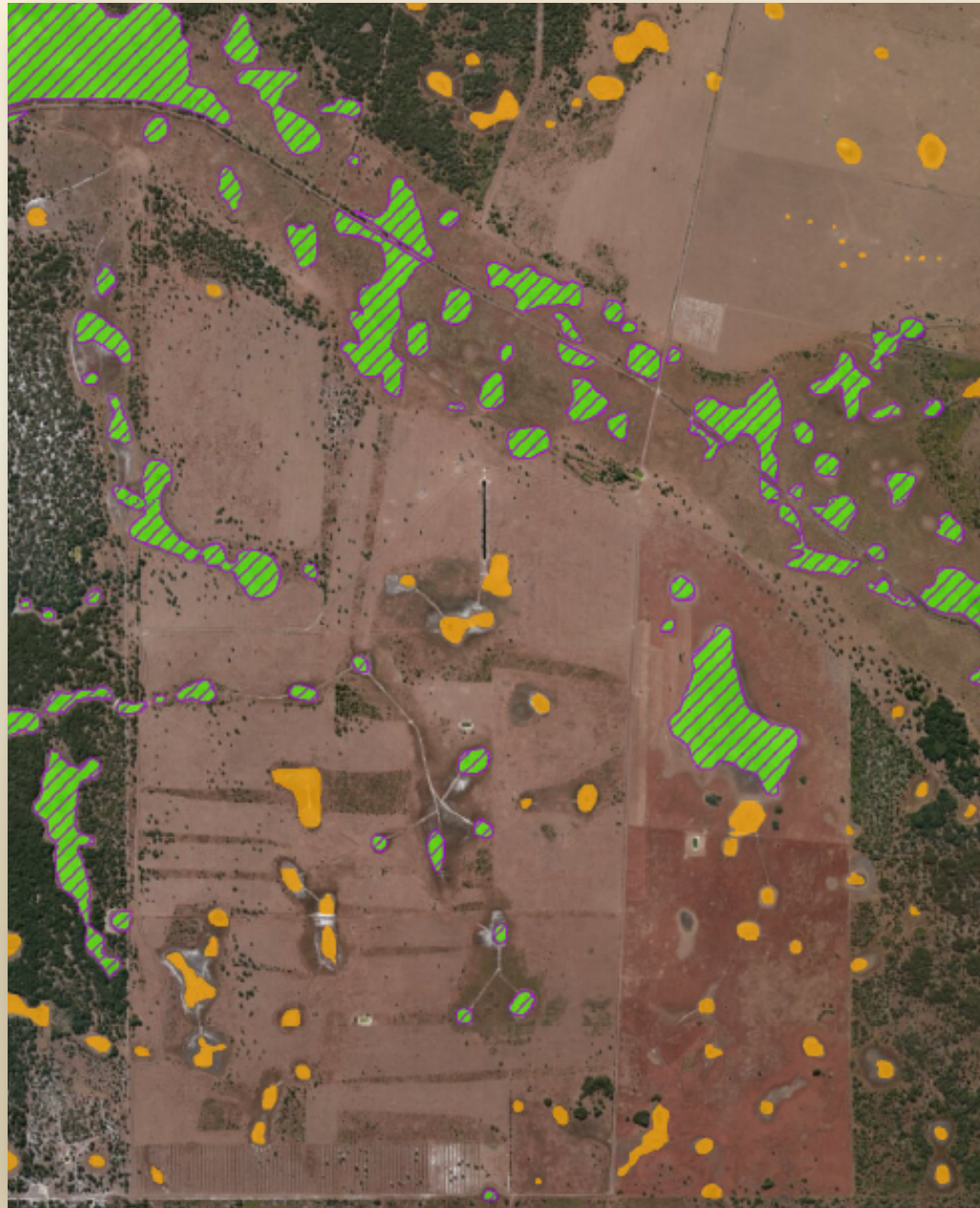
Case by Case – Similarly Situated





Application of the WOTUS Rule


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Approved ACOE Jurisdictional Determination



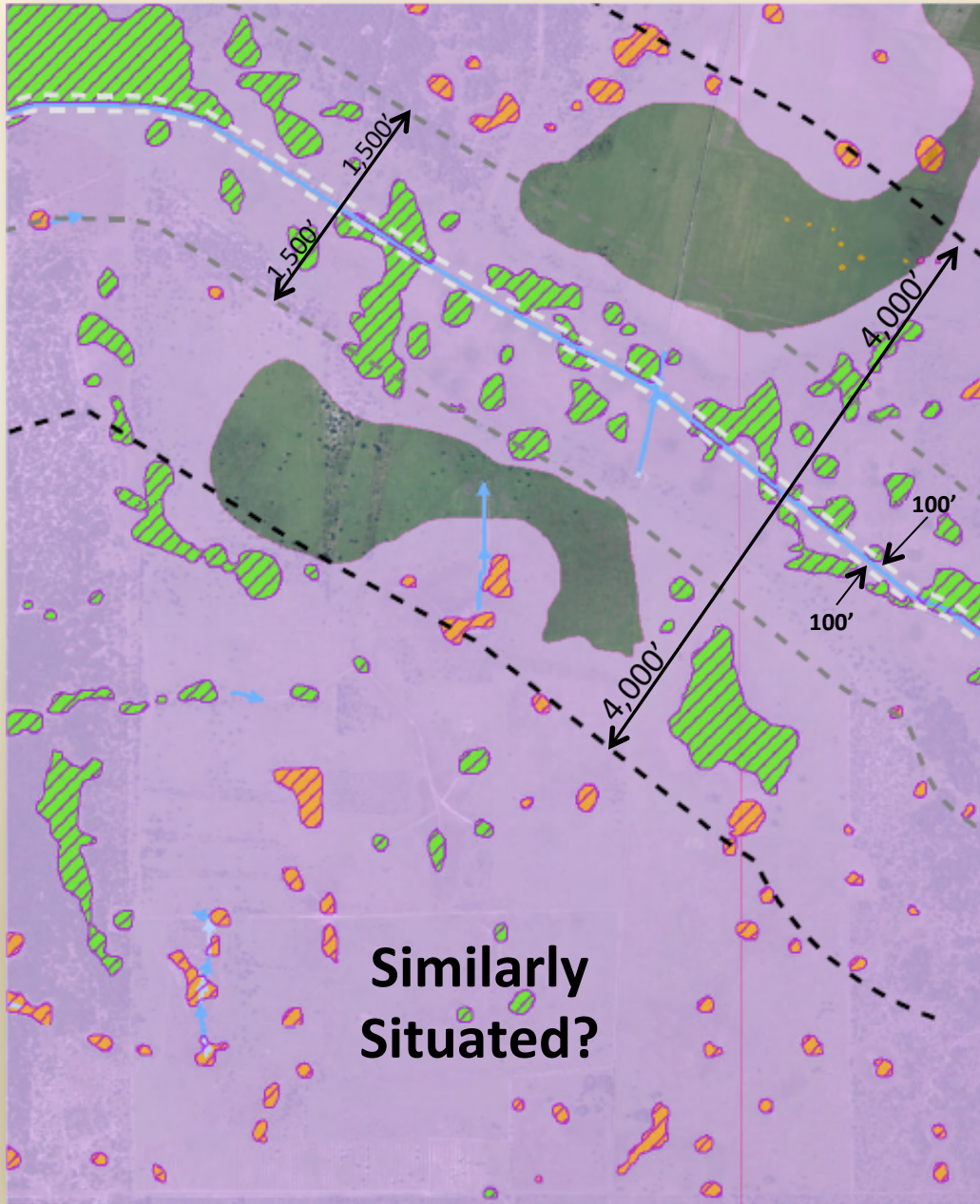
 Regulated WOTUS
(353.1 ac)

 Jurisdictional
Wetlands
(353.1 ac)

 Isolated
Non- Jurisdictional
Wetlands
(88.6 ac)

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Application of WOTUS Rule



-  Regulated WOTUS under new Rule (441.2 ac)
-  Area Located within 100-Yr Floodplain
-  Jurisdictional Wetlands (353.1 ac)
-  Isolated Non- Jurisdictional Wetlands (88.6 ac)

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Similarly Situated?