

# Today's Agenda

- 10:00 – 11:15** Overview of Corps & EGLE Regulatory Programs, Jurisdiction
- 11:15 – 11:30** Break
- 11:30 – 12:00** Wetland Delineations & Data Sheets
- 12:00 – 1:00** ~ LUNCH ~
- 1:00 – 2:00** The Complete Permit Application
- 2:00 – 3:00** MiWaters
- 3:00 – 3:15** Break
- 3:15 – 4:15** Permit Coordination & Evaluation
- 4:15 – 5:15** Mitigation

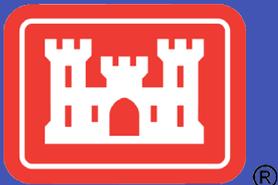
# Regulatory Overview

Regulatory Project Managers

Corps Detroit District Regulatory Office

EGLE Bay City District Office

October 17, 2019



US Army Corps of Engineers  
**BUILDING STRONG**<sup>®</sup>



Michigan Department of  
Environment, Great Lakes,  
and Energy

# Overview

- **Corps - Authorities & Jurisdictional Waters**
- EGLE Water Resources Regulations
- Activity Jurisdiction
- Geographic Jurisdiction
- Example Project



# Detroit District

**Mission: We serve the Nation by delivering world-class engineering and construction for –**

- Economic Vitality (Great Lakes Navigation)
- National Security
- Water Resources Management
- Environmental Sustainability
- Emergency Assistance

- 95 Navigation projects
- 99 miles of structures
- 611 miles of channels
- 3,200 miles of coastline



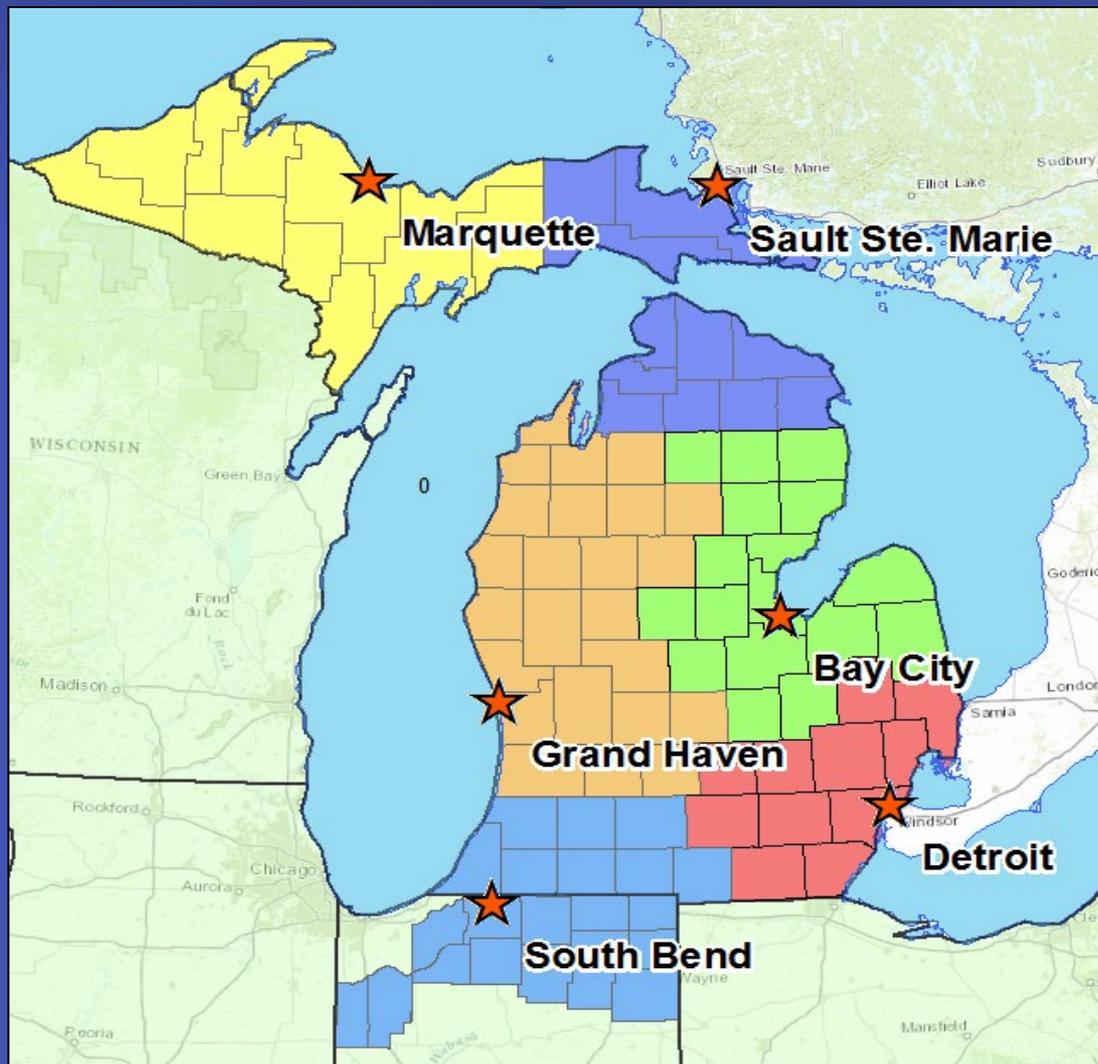


# Detroit District: Primary Missions

- Navigation/Hydropower
- Environmental Initiatives
- Flood Risk Management
- Emergency Management
- Recreation
- International & Interagency Support
- Military Construction
- **Regulatory Program**



# Regulatory Field Offices





# Regulatory Program Mission

To provide strong protection of the Nation's aquatic environment.

This will be accomplished through: coordination with agencies and the public; fair, reasonable, and timely decisions; accurate and timely jurisdiction determinations; and monitoring, compliance, and enforcement of permit laws, regulations and policies.



# Regulatory Authorities



## Section 10

### *Rivers and Harbors Act of 1899*

- Navigable waters of the U.S.
- Structures and work

## Section 404

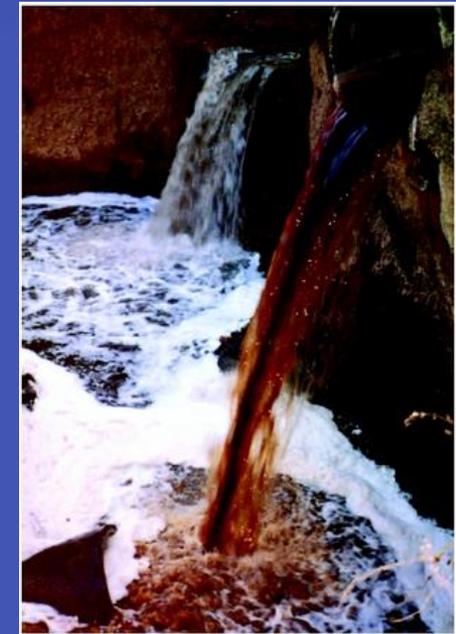
### *Clean Water Act*

- Waters of the U.S., including wetlands
- Discharge of dredged or fill material

# Section 10 of the Rivers and Harbors Act of 1899



# Section 404 of the Clean Water Act



# Overview

- Corps Program & Jurisdictional Waters
- **EGLE Water Resources Regulations**
- Activity Jurisdiction
- Geographic Jurisdiction (USACE & EGLE)
- Example Project



## Mission Statement

The Michigan Department of Environment, Great Lakes and Energy mission is to protect Michigan's environment and public health by managing air, water, land, and energy resources .



# Land and Water Management Programs

Since the mid-1970's, special resources that exist at the interface between land and water have been protected by programs in the Division





**These programs are based on several state laws enacted between 1955 and 1989 which are now codified as the following parts of the Natural Resources and Environmental Protection Act (NREPA):**

Part 31 – Floodplain Management

Part 301 – Inland Lakes and Streams

Part 303 – Wetlands Protection

Part 323 – Shorelands Protection and Management

Part 325 – Great Lakes Submerged Lands



**In conjunction with these programs, the Division also administers the following parts of NREPA:**

Part 35 – Use of Water in Mining Low-Grade Ore

Part 307 – Inland Lake Levels

Part 311 – Local River Management

Part 313 – Surplus Waters

Part 315 – Dam Safety

Part 326 – Great Lakes Submerged Logs Recovery

Part 339 – Control of Certain State Lands

Part 341 – Irrigation Districts

Part 353 – Sand Dune Protection and Management

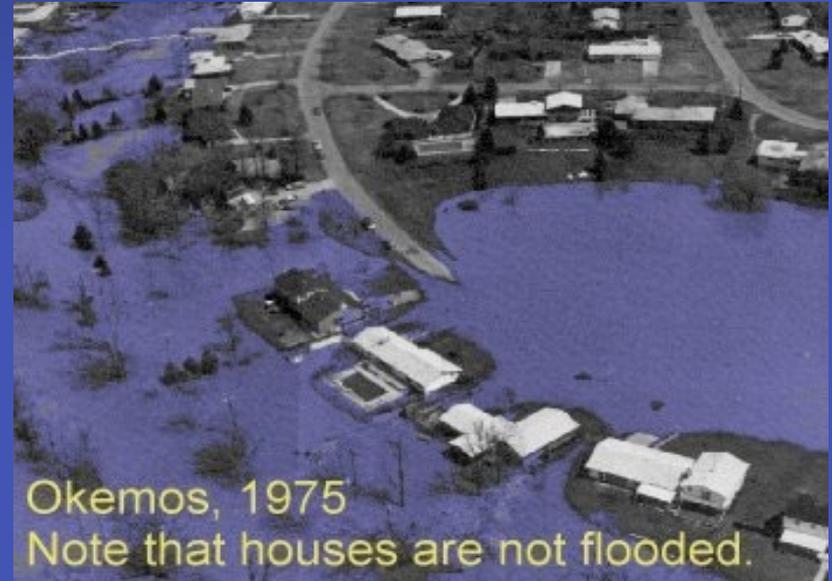
Part 761 – Aboriginal Records and Antiquities





# Part 31, Water Resources Protection (Floodplain Regulatory Authority)

Reduces property damage caused by flooding through regulation of activities in floodways and floodplains



Okemos, 1975  
Note that houses are not flooded.

## Regulated activities:

Any occupation, filling, or grade changes within floodplain.





# Part 301, Inland Lakes and Streams

Protects inland waters by regulating work in inland lakes and streams



Michigan has over 36,000 miles of streams, and more than 11,000 lakes and ponds, providing fish and wildlife habitat, and recreational opportunities





# Part 301 Regulated Activities

- Dredge or fill bottomland
- Construct, enlarge, extend, remove, or place a structure on bottomland
- Construct, reconfigure, or expand a marina
- Create, enlarge, or diminish an inland lake or stream
- Structurally interfere with the natural flow of an inland lake or stream
- Construct an artificial waterway that ultimately connects to or is within 500 feet of the OHWM of an existing inland lake or stream
- Connect any natural or artificial water with an existing inland lake or stream



# Part 303, Wetlands Protection

Protects wetland functions and values by requiring permits for activities within **regulated** wetlands.





# Part 303 Regulated Activities

- Deposit or place fill material in a wetland
- Dredge or remove soil or minerals from a wetland
- Construct, operate, or maintain any use or development within a wetland
- Drain surface water from a wetland





# Part 323, Shorelands Protection and Management

Identifies high-risk erosion areas along the Great Lakes shoreline and regulates construction in these areas



## Regulated activities:

Erect, install, move, or enlarge a permanent structure on a parcel of property, any portion of which is designated as a high-risk erosion area





# Part 353, Sand Dune Protection and Management

Protects Critical Dune Areas

- In 1989, the Dune law was amended to include residential, commercial and industrial development in designated critical dunes; this law is now Part 353
- 70,000 acres were designated as Critical Dune Areas (CDA)





# Part 353, Sand Dune Protection and Management

Protects Critical Dune Areas

## Regulated activities:

Any developmental, silvicultural, or recreational activity that significantly alters the physical characteristic of a critical dune area or a contour change



Site #4.



Site #6.

## Special exception:

Proposed contour changes to a grade that is steeper than 33%



# Part 325, Great Lakes Submerged Lands

Protects the public trust, riparian rights, and the environment



There is approximately  
3,288 miles of Great  
Lakes shoreline in  
Michigan



# Part 325 Regulated Activities

- Dredging
- Connecting a canal, ditch, lagoon, or similar waterway to the Great Lakes or Lake St. Clair



- Filling or construction on bottomlands
- Construction or expansion of marinas
- Removal of shoreline vegetation

# Overview

- Corps Program & Jurisdictional Waters
- EGLE Water Resources Regulations
- **Activity Jurisdiction**
- Geographic Jurisdiction (USACE & EGLE)
- Example Project

# Examples of activities that require a Corps and EGLE Permit



Docks, boat houses

# Examples of activities that require a Corps and EGLE Permit



Walkways/paths

# Examples of activities that require a Corps and EGLE Permit



In wetlands



In waterways

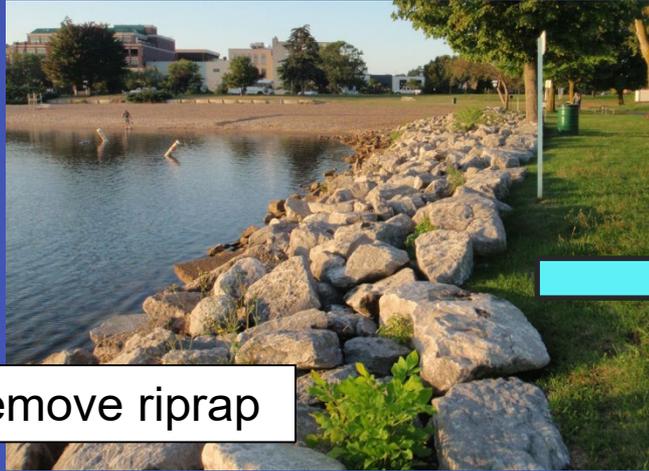
Placement of fill

# Examples of activities that require a Corps and EGLE Permit



Culverts

# Examples of activities that require a Corps and EGLE Permit



Remove riprap



Place stone



# Examples of activities that require a Corps and EGLE Permit



Marinas, Breakwaters

# Examples of activities that require a Corps and EGLE Permit



Mooring buoys

# Examples of activities that require a Corps and EGLE Permit



Dredging

# Examples of activities that require a Corps and EGLE Permit



Placement of sand, grooming

# Examples of activities that require a Corps and EGLE Permit



Riprap, Stairs

# Examples of activities that require a Corps and EGLE Permit



Seawalls and backfill

# Examples of activities that require a Corps and EGLE Permit



Temporary construction measures

# Examples of activities that require ONLY a Corps Permit

## Seasonal structures

Docks

Boat hoists

## State exemption

Private

Non-commercial

Removed annually

Does not impede use of water

Does not impede flow



# Examples of activities that require ONLY a EGLE permit

Regulated activities in:

- Inland lakes or streams (that are not Section 10 waters)
- Regulated wetlands not adjacent to Section 10 waters
- High Risk Erosion Areas
- Floodplains



# Overview

- Corps Program & Jurisdictional Waters
- EGLE Water Resources Regulations
- Activity Jurisdiction
- **Geographic Jurisdiction (USACE & EGLE)**
- Example Project

# Navigable Waters of the U.S.

Navigable Waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce (33 CFR Part 329).



# Navigable Waters

- Navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity.



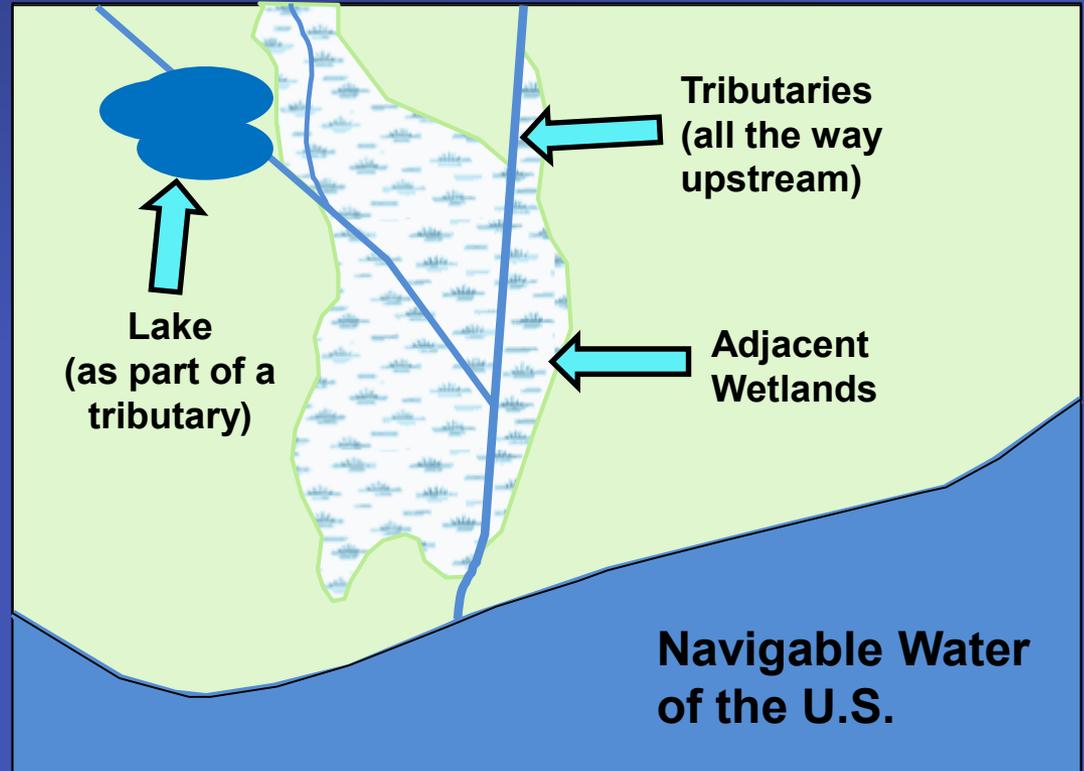
# Section 10 Limits of Navigability



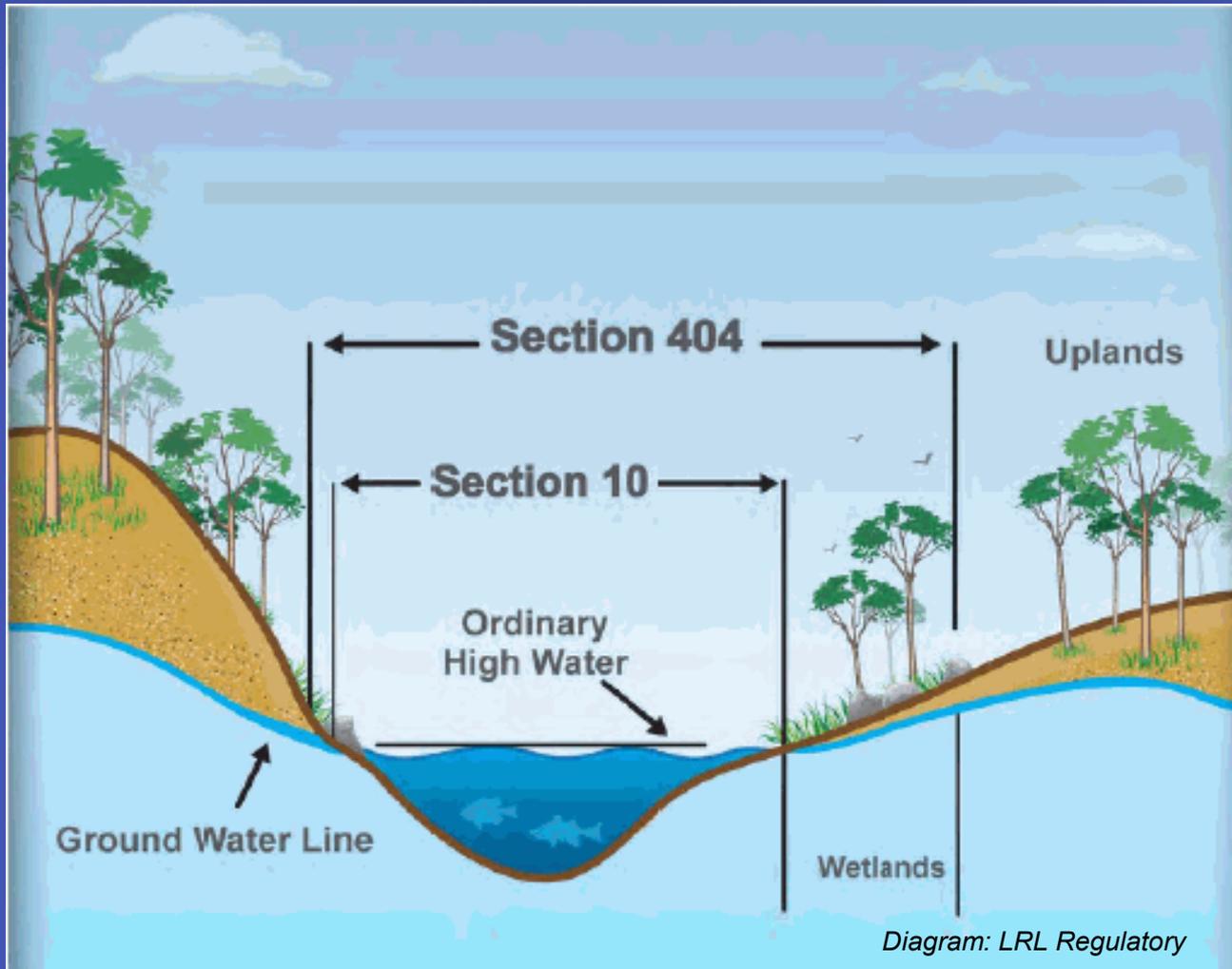
# Section 404

## Corps Waters of the U.S.

- Navigable waters of the U.S.
- Tributaries to Navigable Waters of the U.S.
- Wetlands adjacent to waters listed above
- All interstate waters including interstate wetlands.



# Sections 10 and 404 Jurisdiction



# Section 404 Program in Michigan

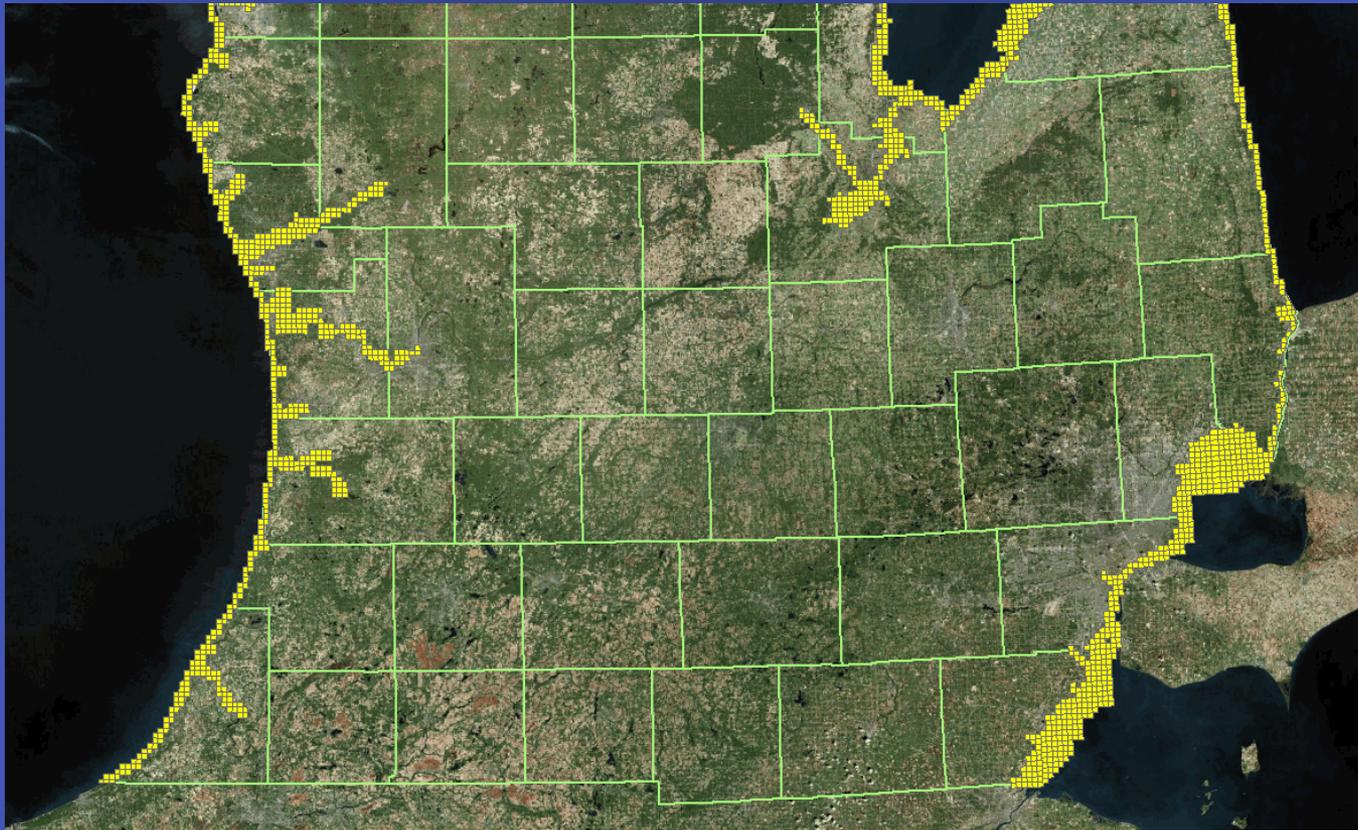


**Operates under a Memorandum of Agreement with the USEPA that defines the federal and state roles in the program**

- ▷ Administered under Michigan law: Parts 301 and 303 of the NREPA
- ▷ Policies and procedures specific to state needs
- ▷ Some projects require EPA review

**USACE retains jurisdiction over Section 10 waters and adjacent wetlands**

# Navigable Waters and Adjacent Wetlands



# Corps Jurisdiction Determination (JD) Options

- When either activity jurisdiction or geographic jurisdiction is in doubt – give us a call
- Have conversation with your project manager for your site specific situation

# No JD Option

- Default practice in State of Michigan is the No JD option
  - ▶ No JD does NOT mean the Corps does not have jurisdiction
  - ▶ Good option when jurisdictional questions may not arise
  - ▶ Requires less documentation



# Corps JD Options

## Preliminary JD

- Advisory in nature
- May shorten the processing time
- Not appealable

## Approved JD

- Official Corps determination
- May take longer
- Must have legal access to the property
- Appealable (33 CFR Part 331)
- Valid for 5 years

# Ordinary High Water Mark (OHWM)

- Jurisdictional limit for waterways
- Physical characteristics of the shoreline
  - Typically determined by a site visit
- OHWM by elevation on the Great Lakes
  - Used when OHWM can not be clearly determined by physical characteristics

# Corps & EGLE OHWMs IGLD 1985

	<b>Corps</b>	<b>EGLE</b>
Lake Superior	603.1'	602.6'
Lake Michigan/Huron	581.5'	580.5'
Lake St. Clair	576.3'	575.3'
Lake Erie	573.4'	572.2'

# OHWWM

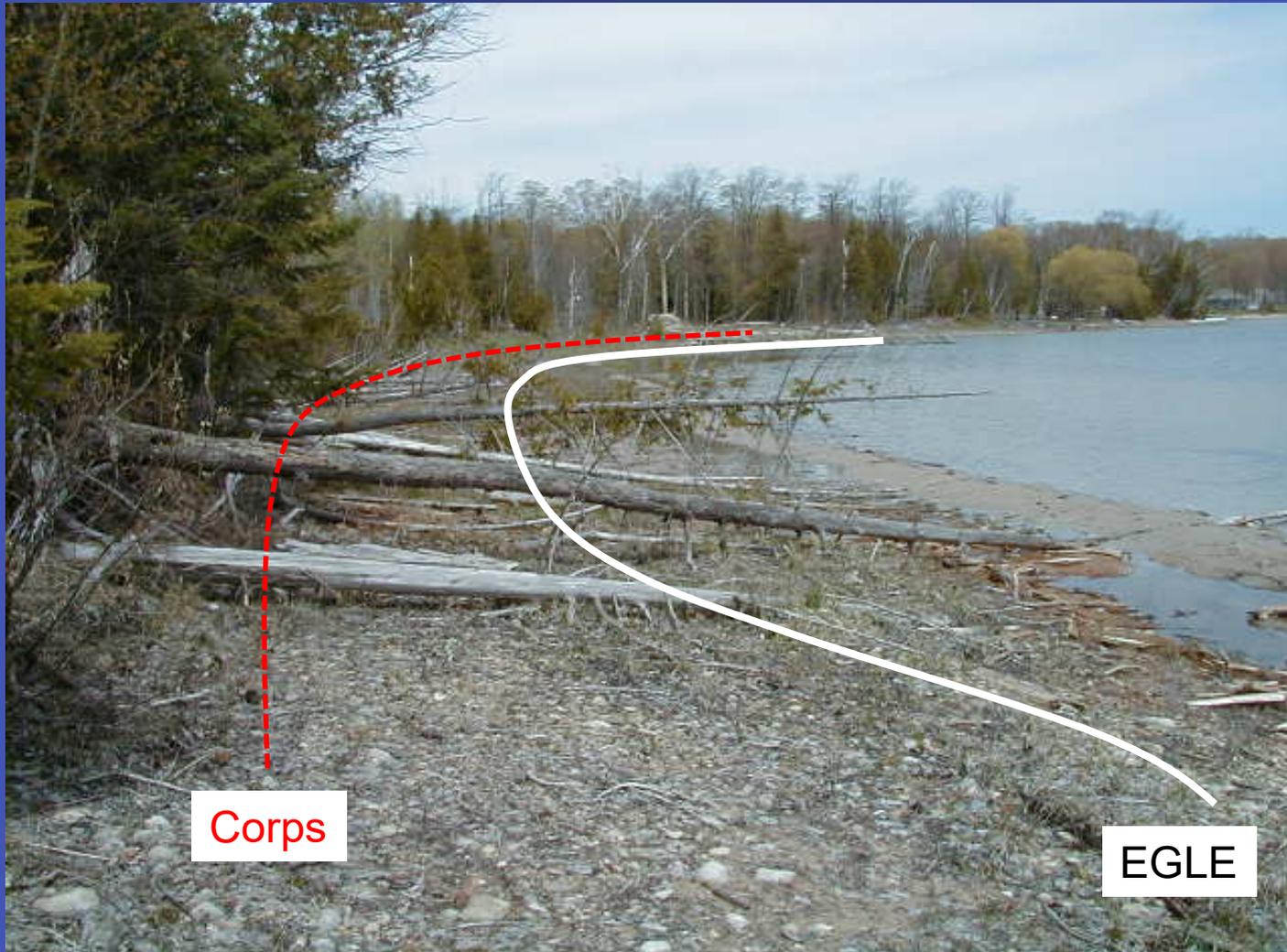
Corps OHWM (581.5' IGLD 1985)

Corps Jurisdictional Area

Approx 1'

EGLE  
OHWM  
580.5'

# Corps & EGLE OHWM



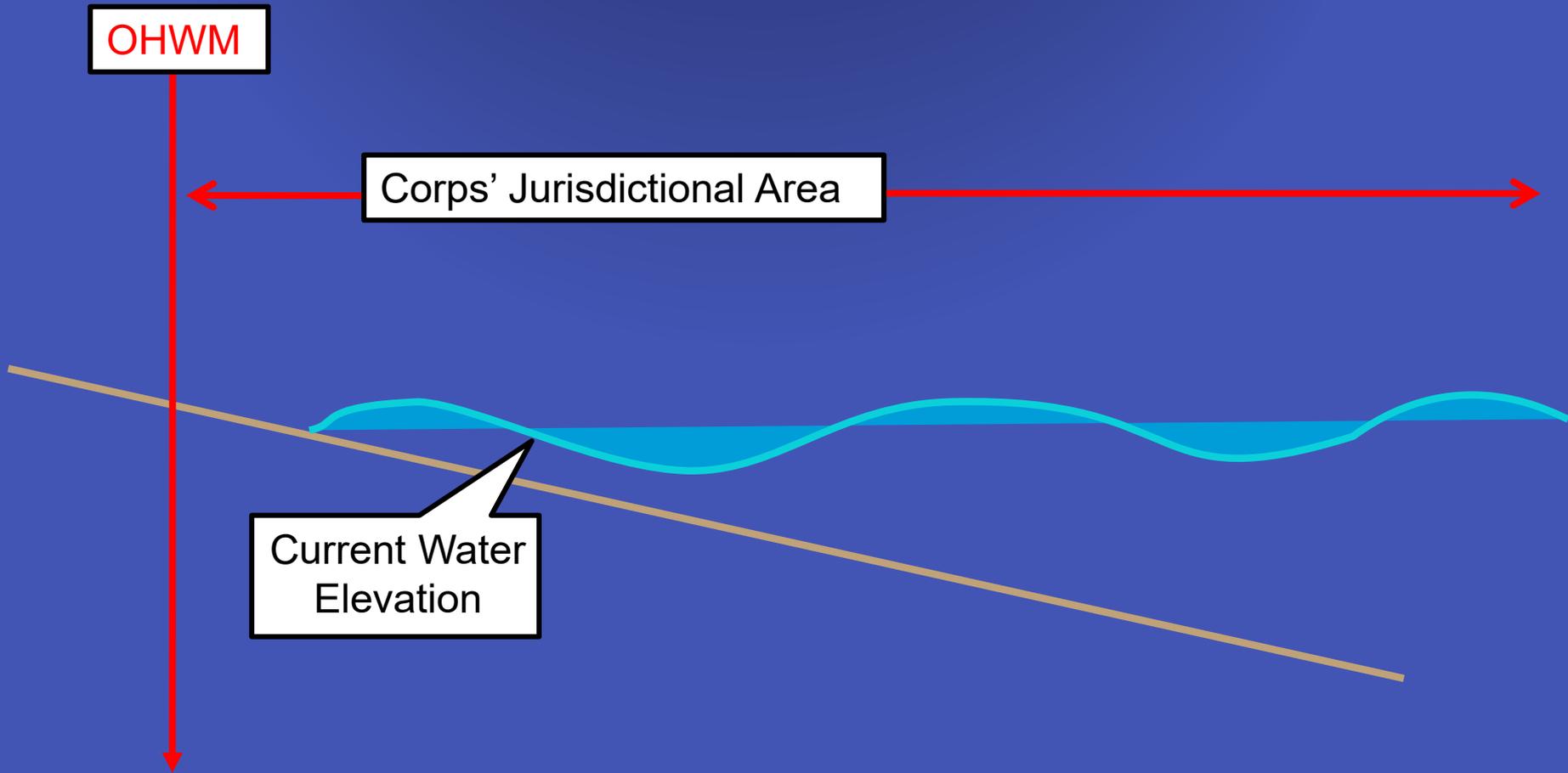
Corps

EGLE

# Corps OHWM

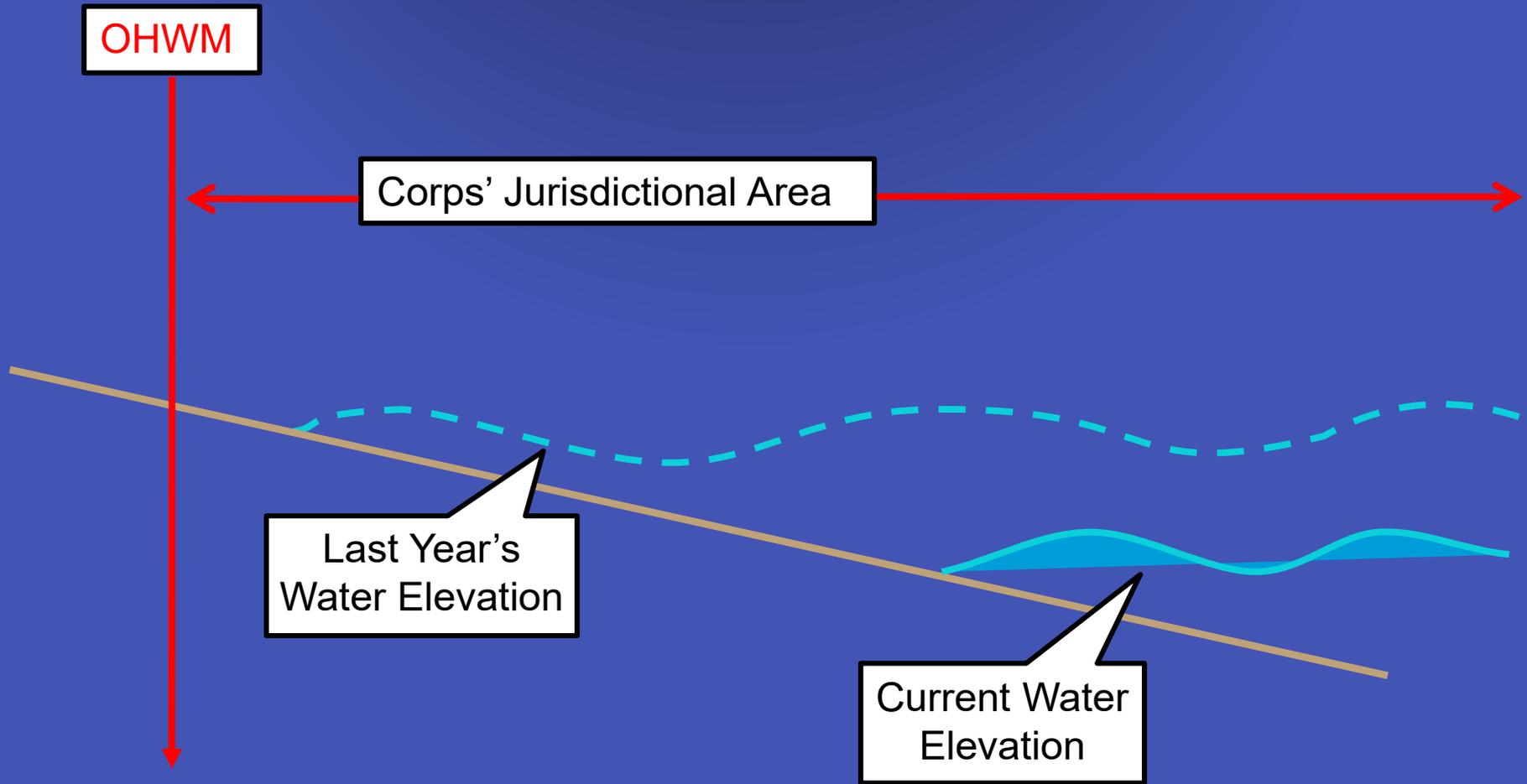


# Corps Ordinary High Water Mark



# Corps Ordinary High Water Mark

## One year later...



# Example

## Corps Ordinary High Water Mark

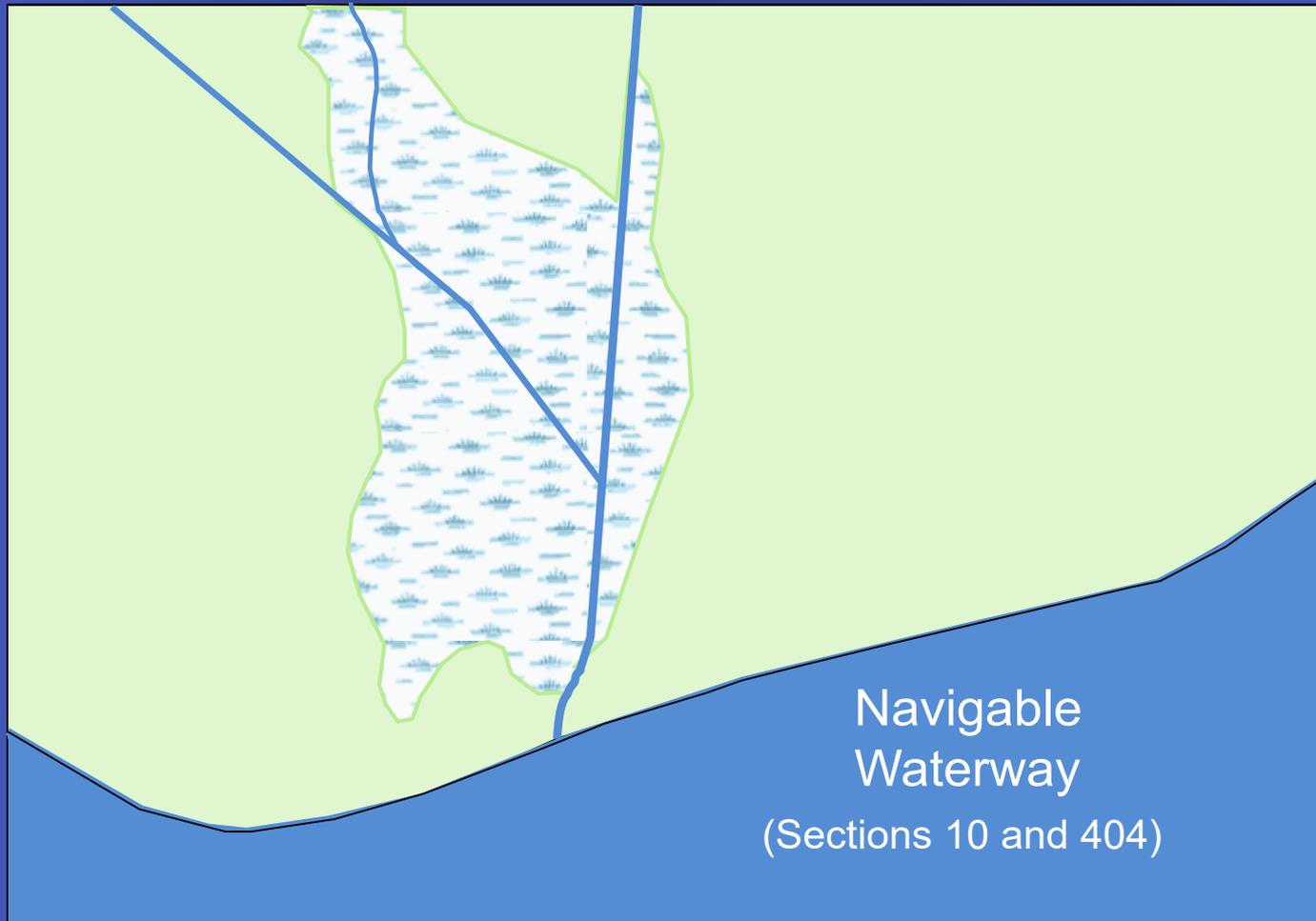


# Example

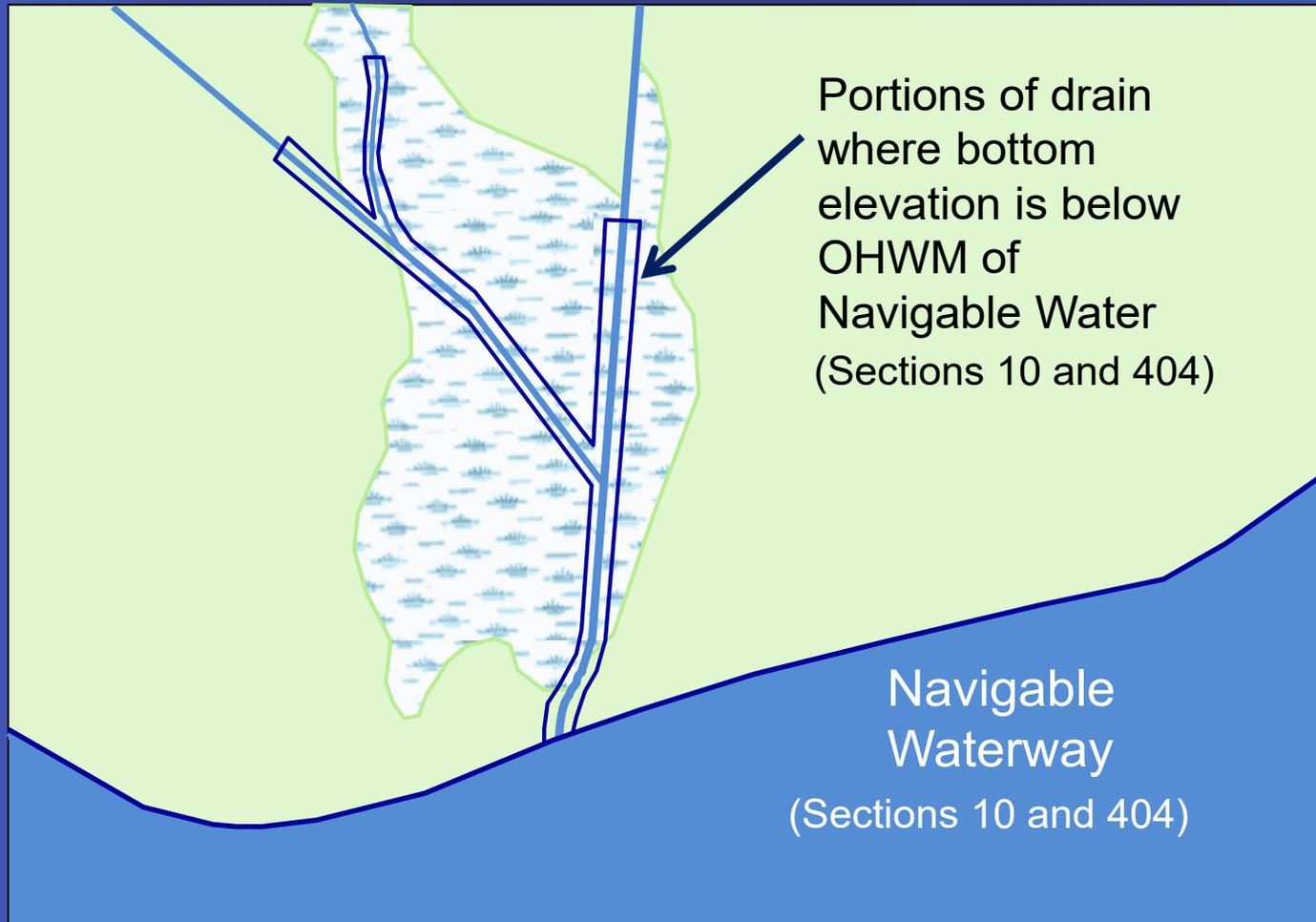
## Corps Ordinary High Water Mark



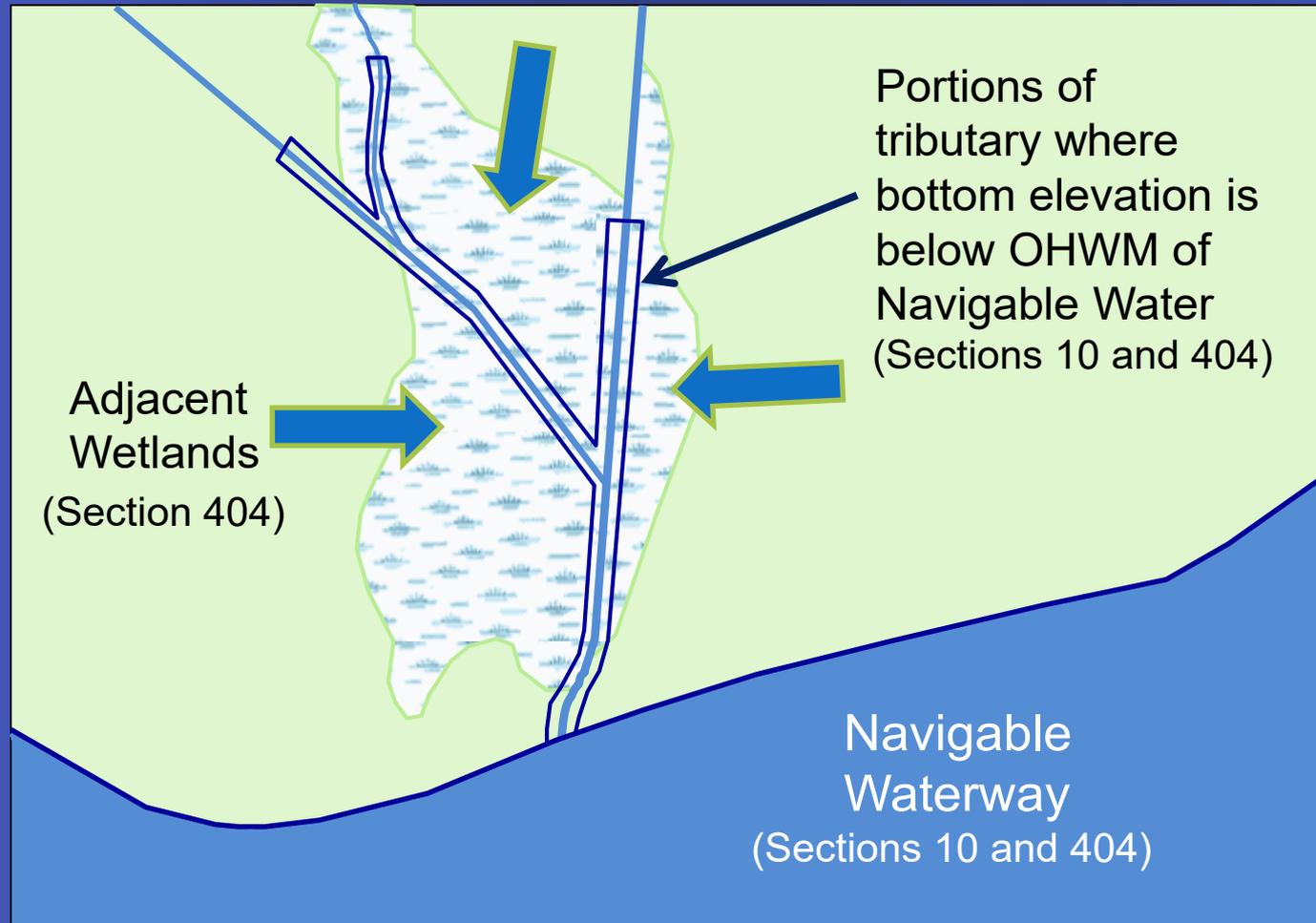
# Corps Section 10 Jurisdiction



# Corps Jurisdiction in Tributaries

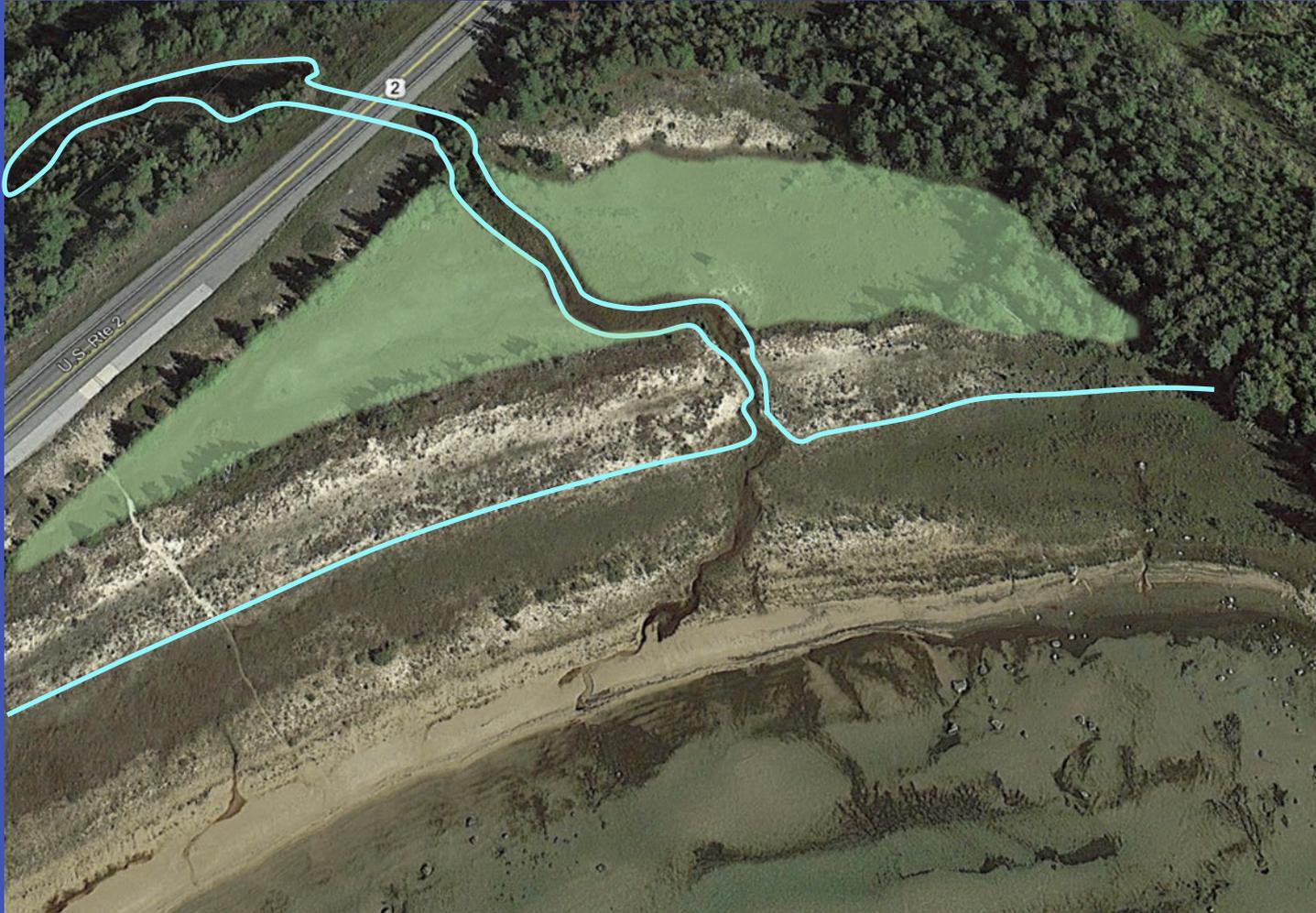


# Corps Jurisdiction in Tributaries



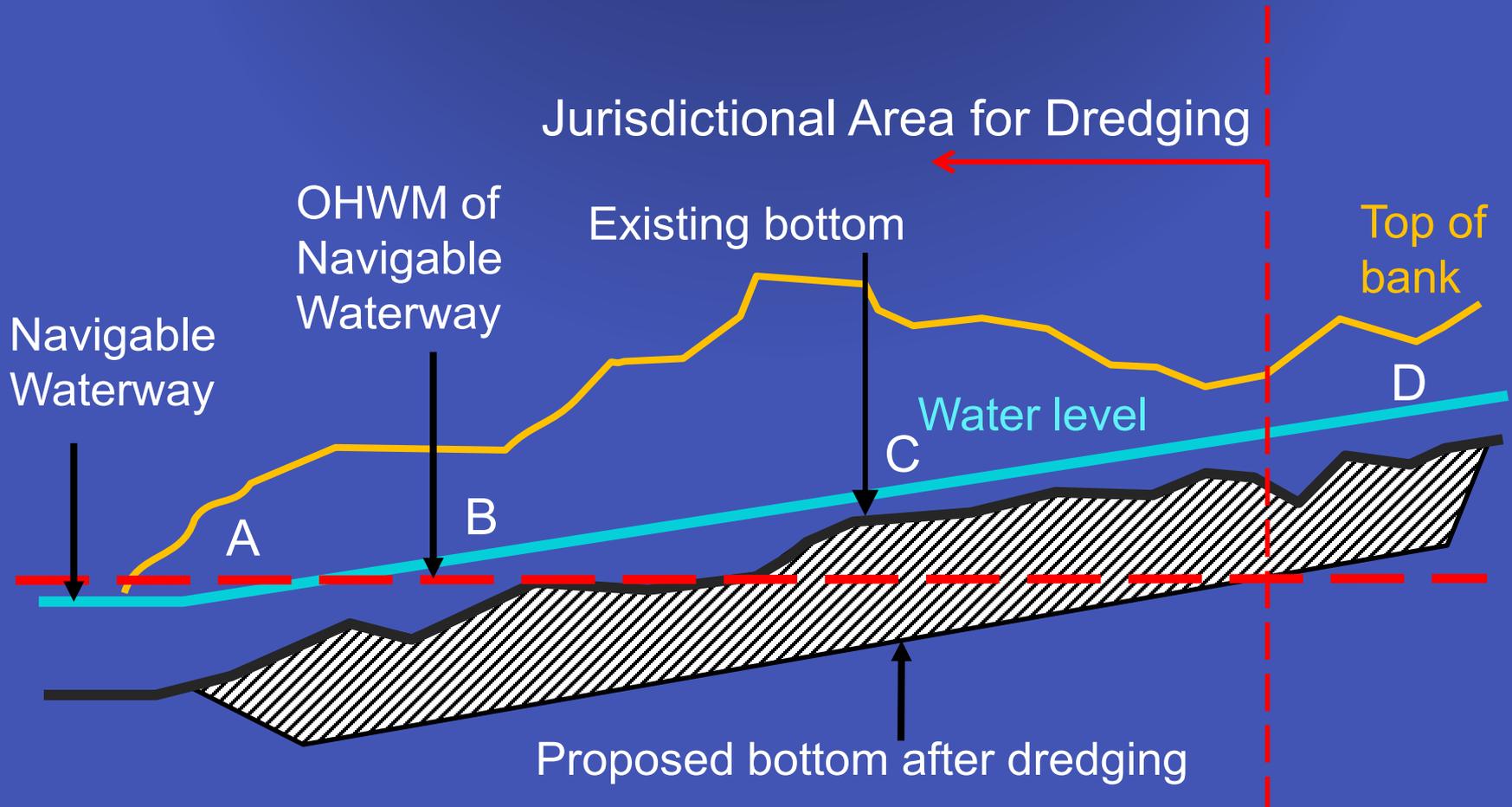
# Example

## Corps Ordinary High Water Mark

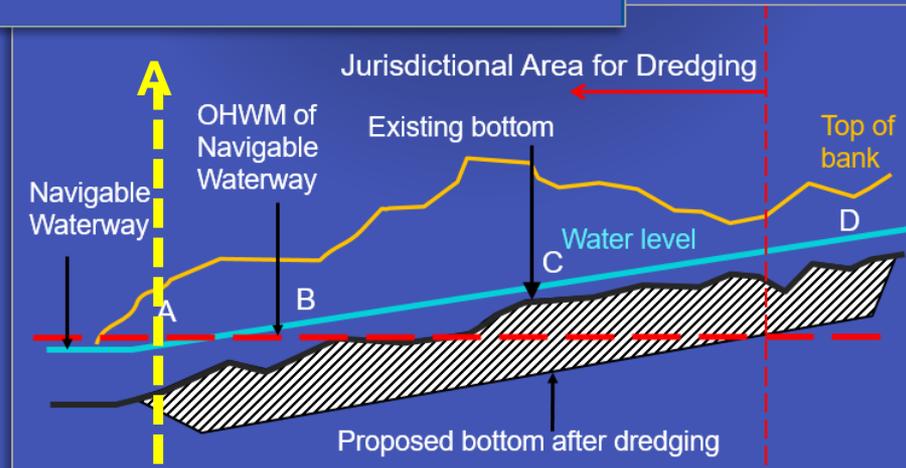
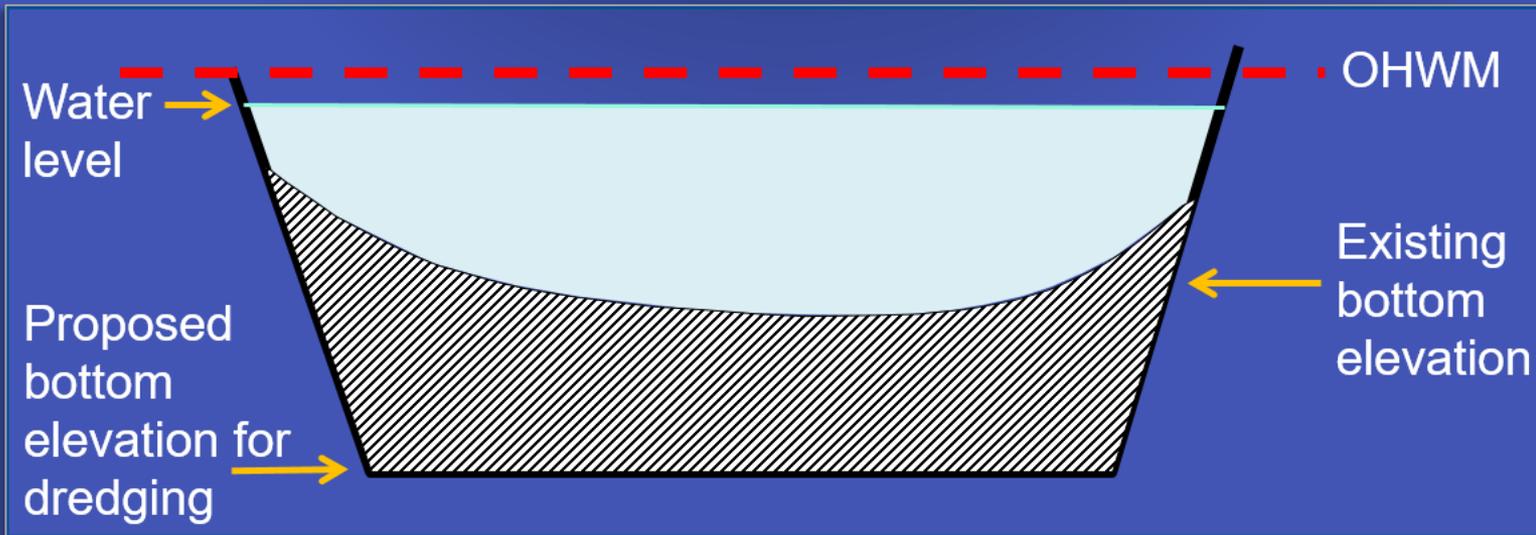


# Example

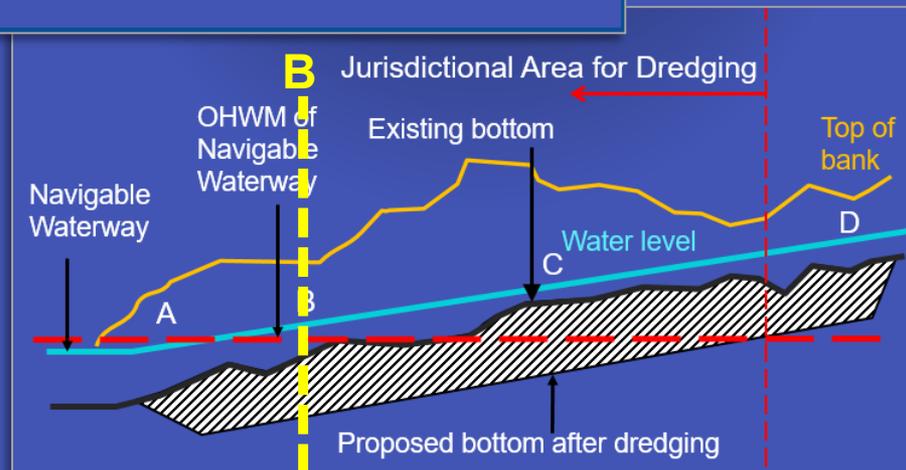
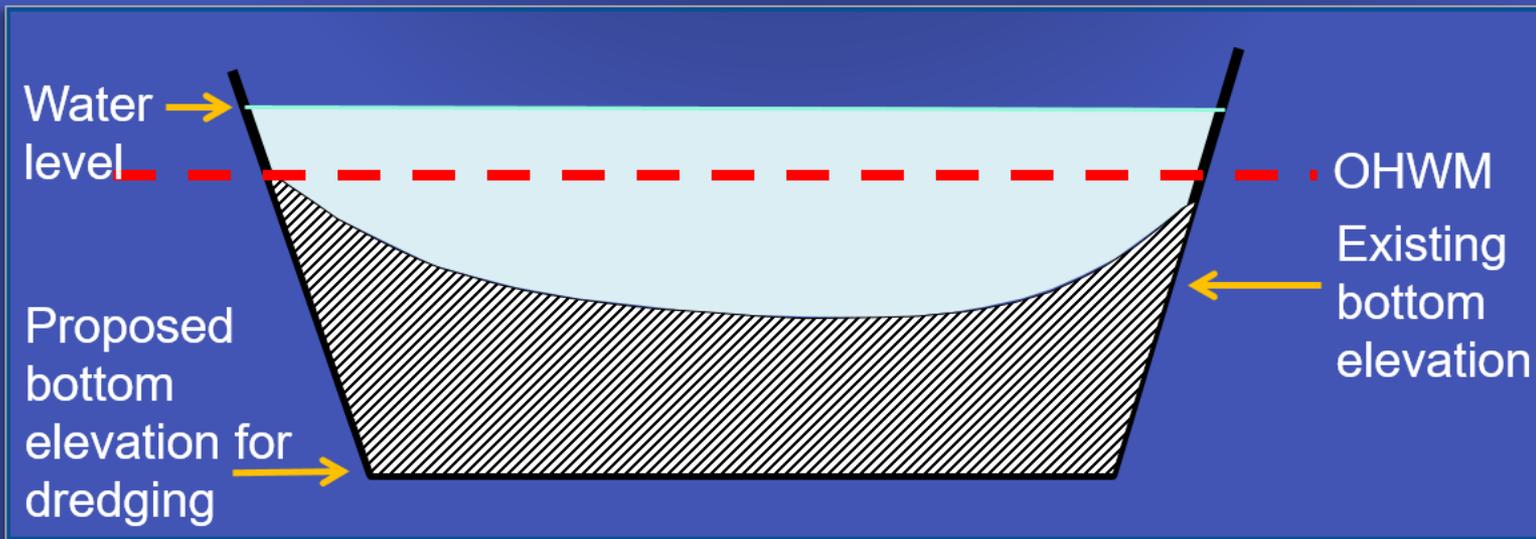
## Corps Jurisdiction – Drain Cleanout



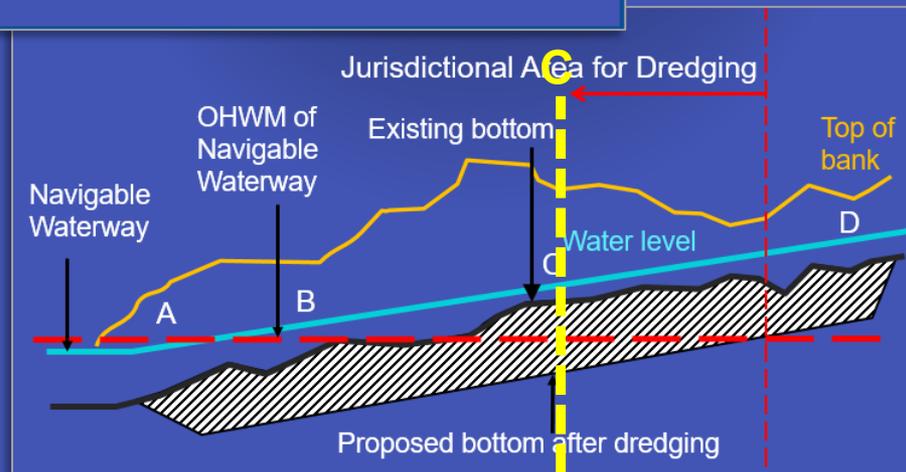
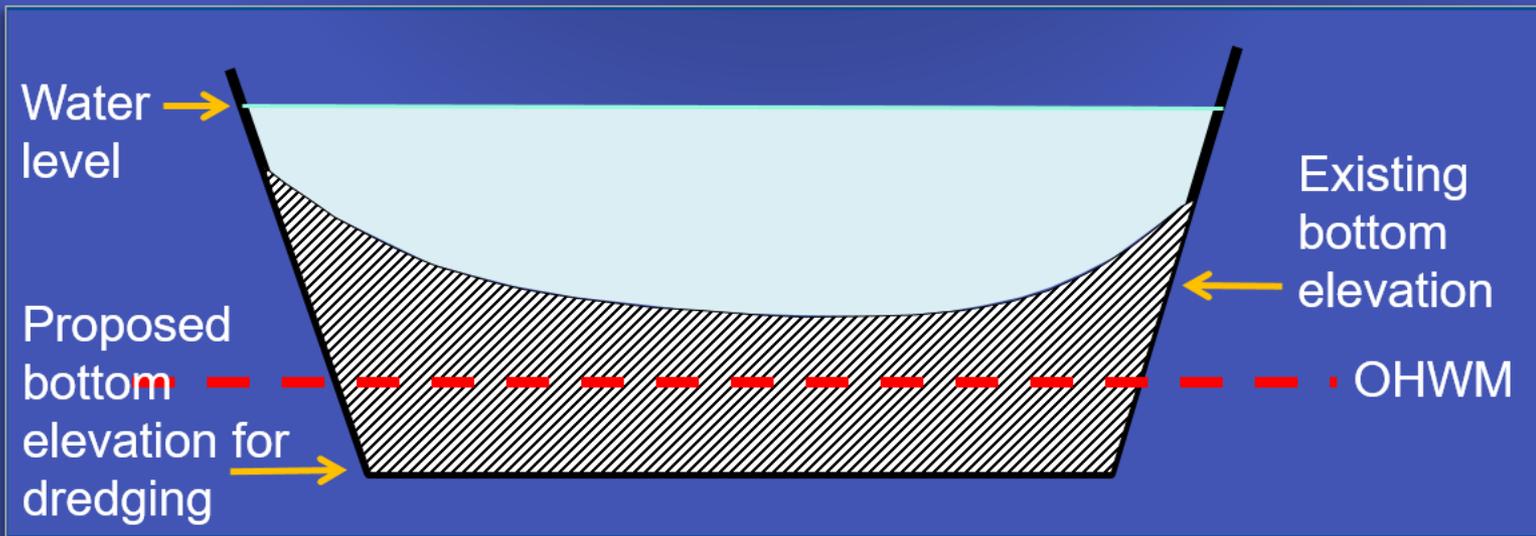
# Example Corps Jurisdiction Drain Cleanout Cross-section A



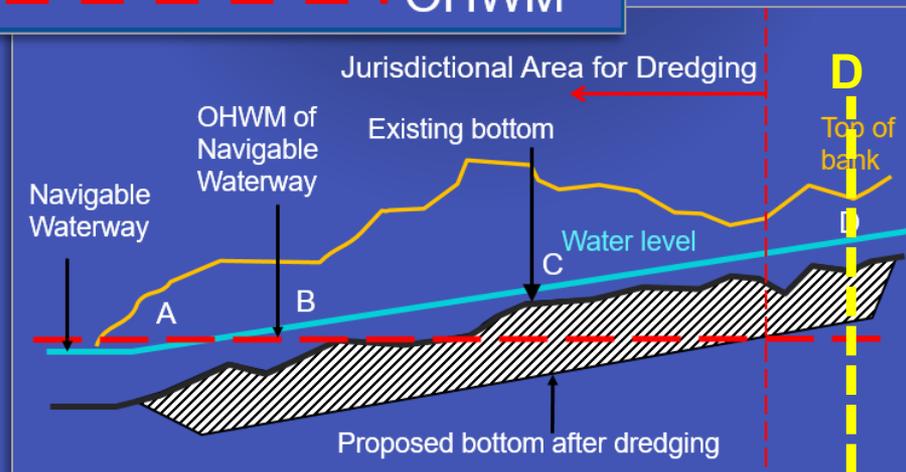
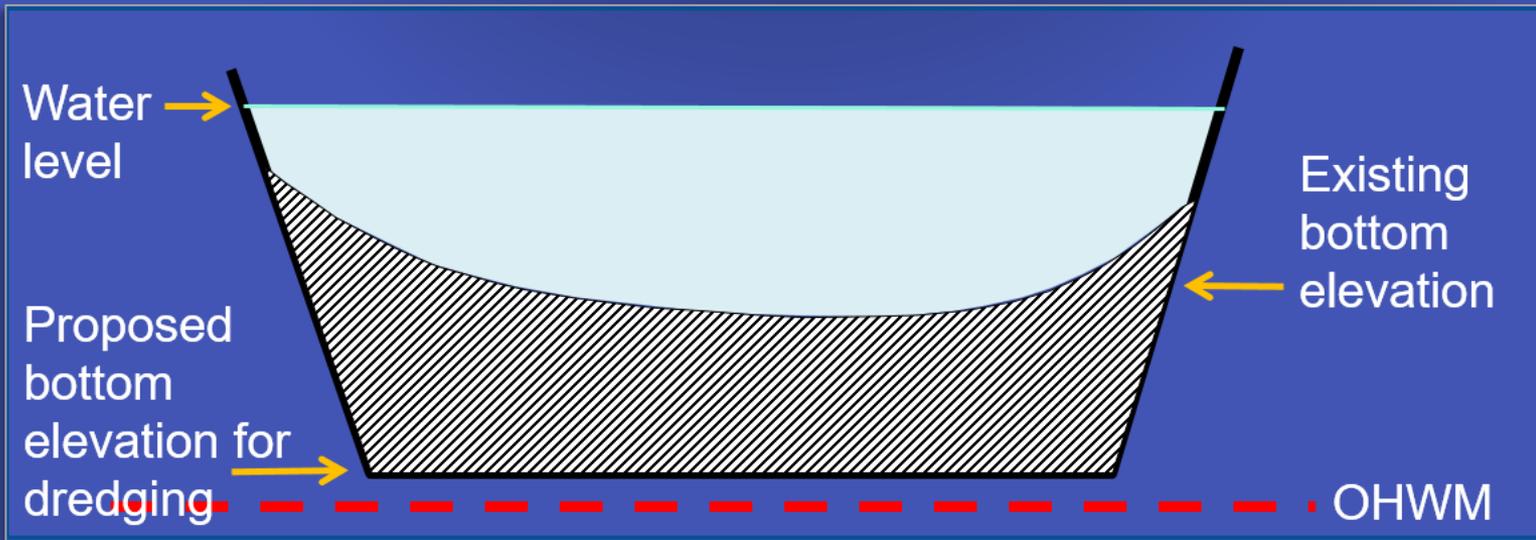
# Example Corps Jurisdiction Drain Cleanout Cross-section B



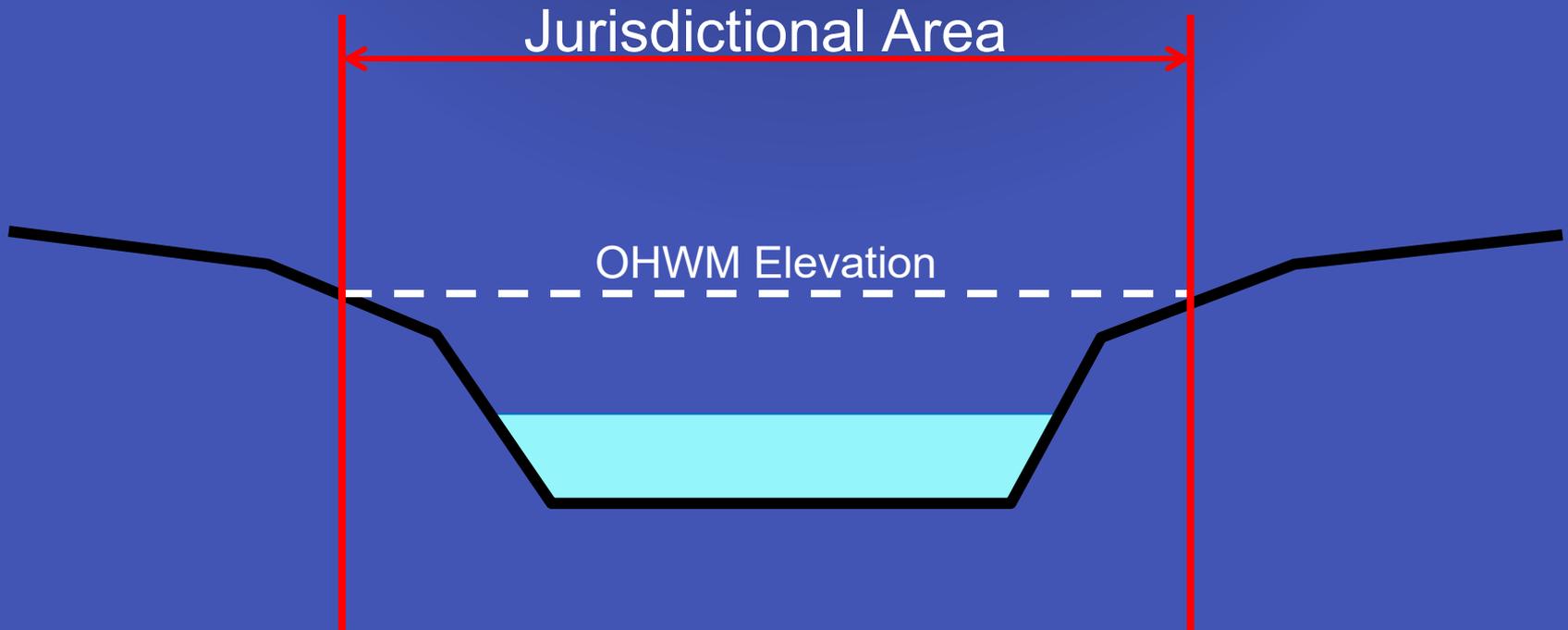
# Example Corps Jurisdiction Drain Cleanout Cross-section C



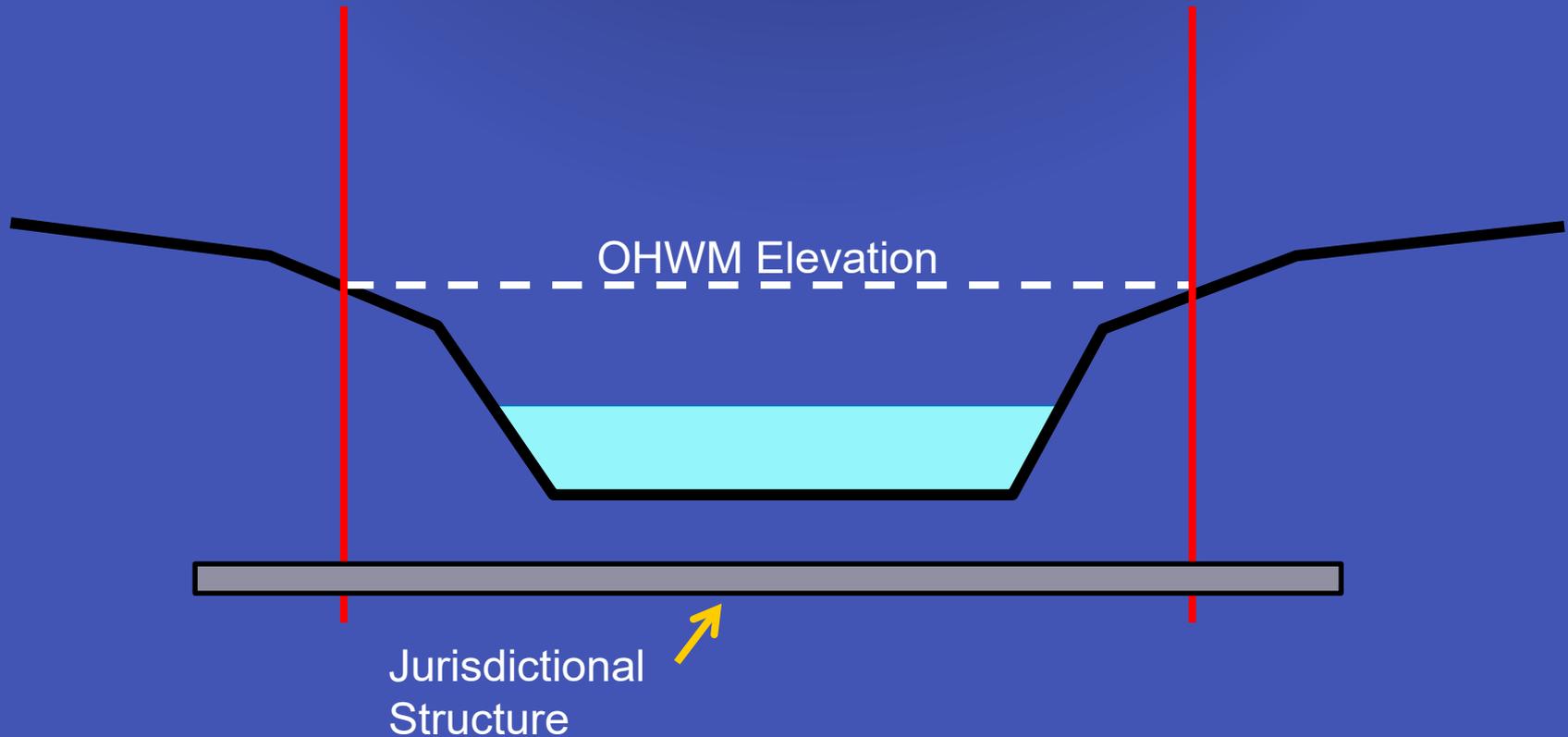
# Example Corps Jurisdiction Drain Cleanout Cross-section D



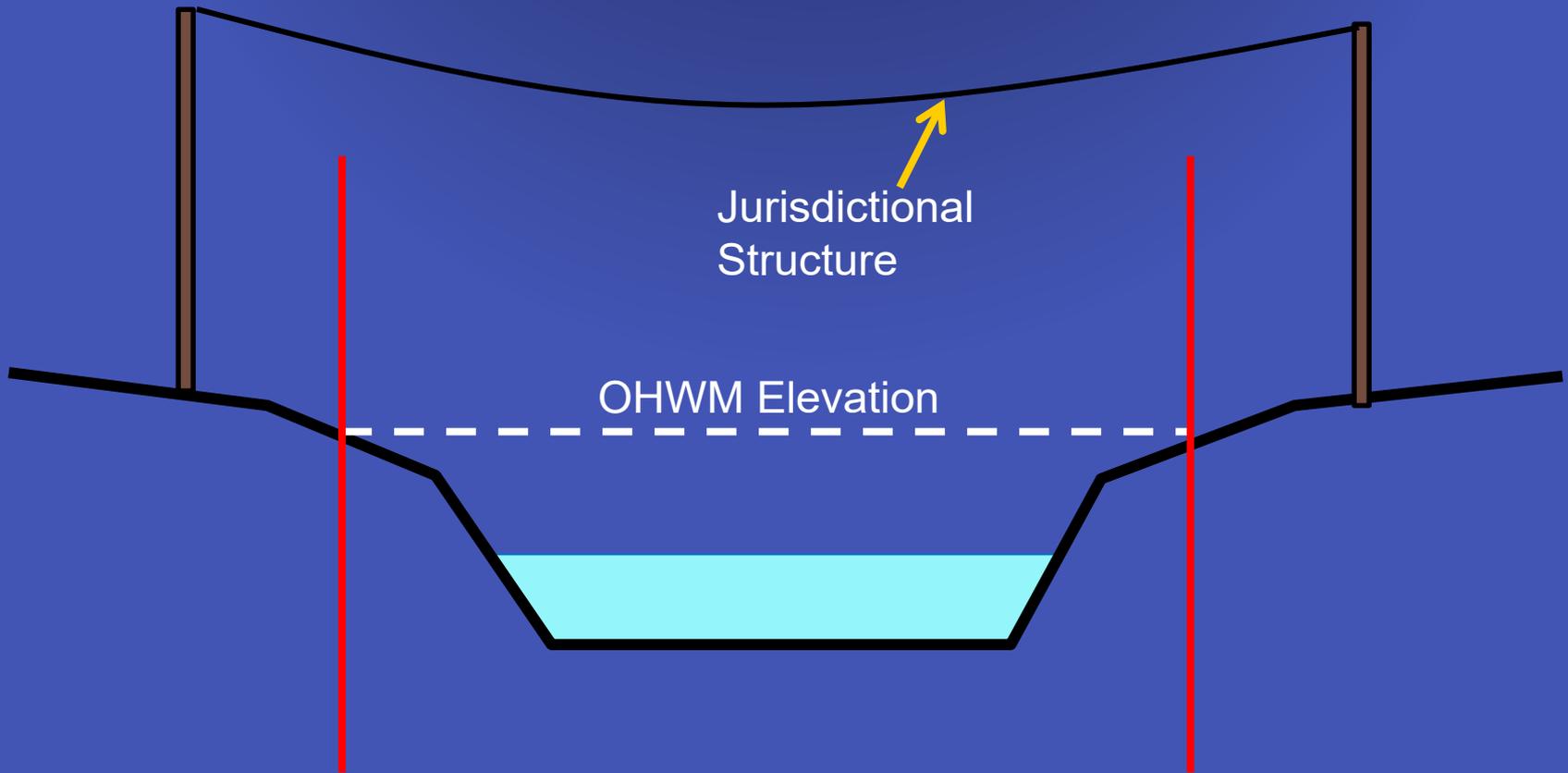
# Corps Jurisdiction - Example



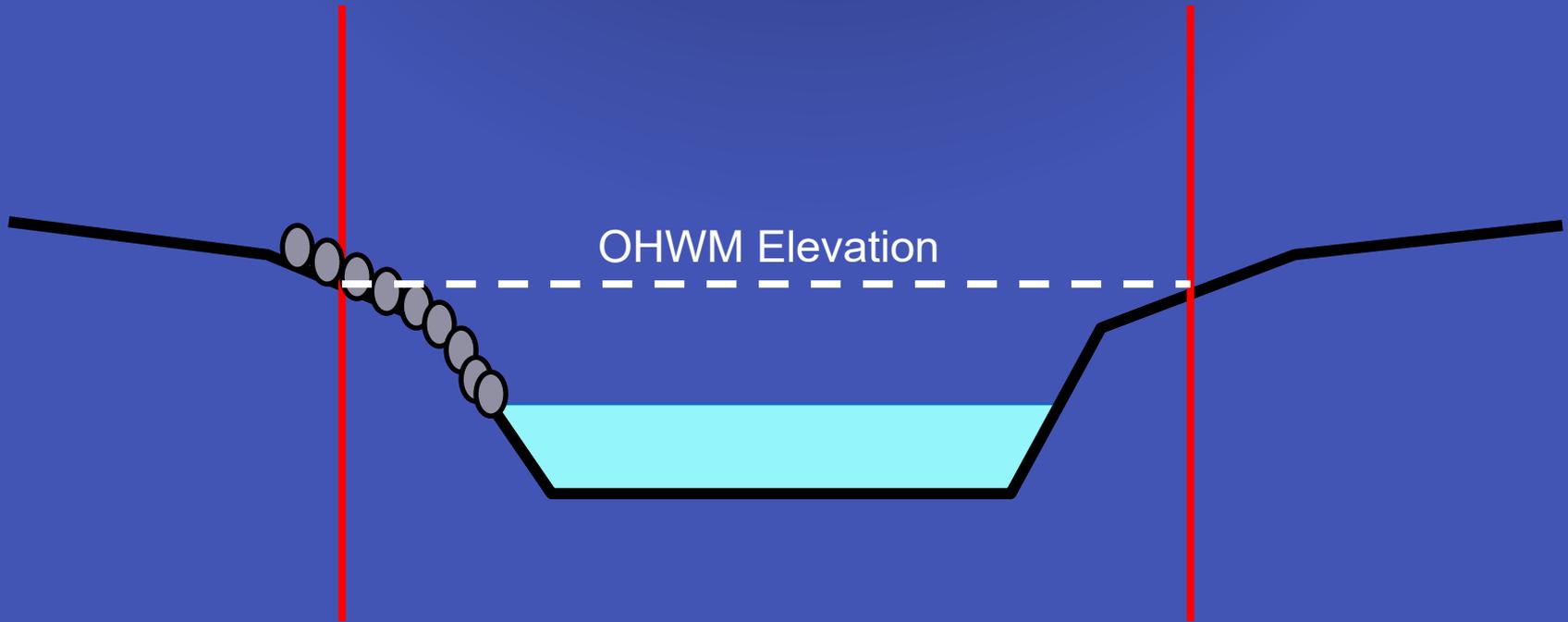
# Corps Jurisdiction - Example



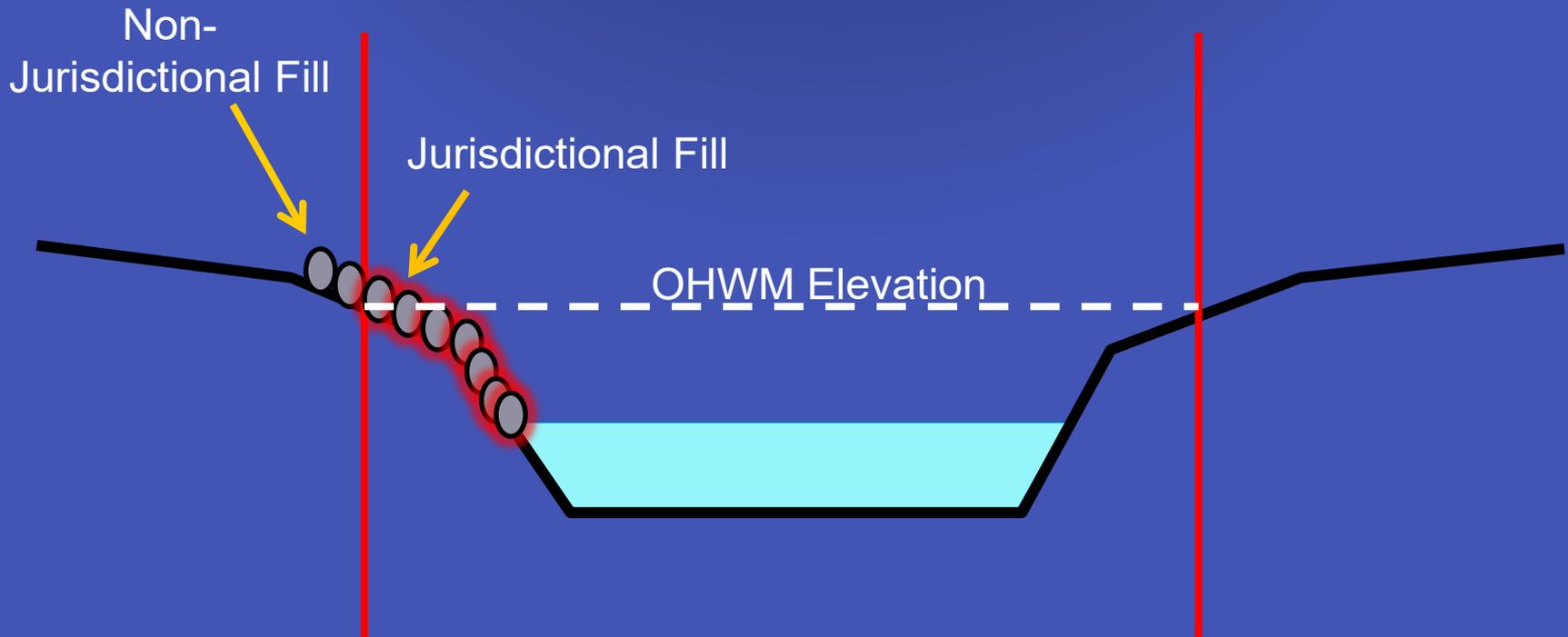
# Structures Overhead



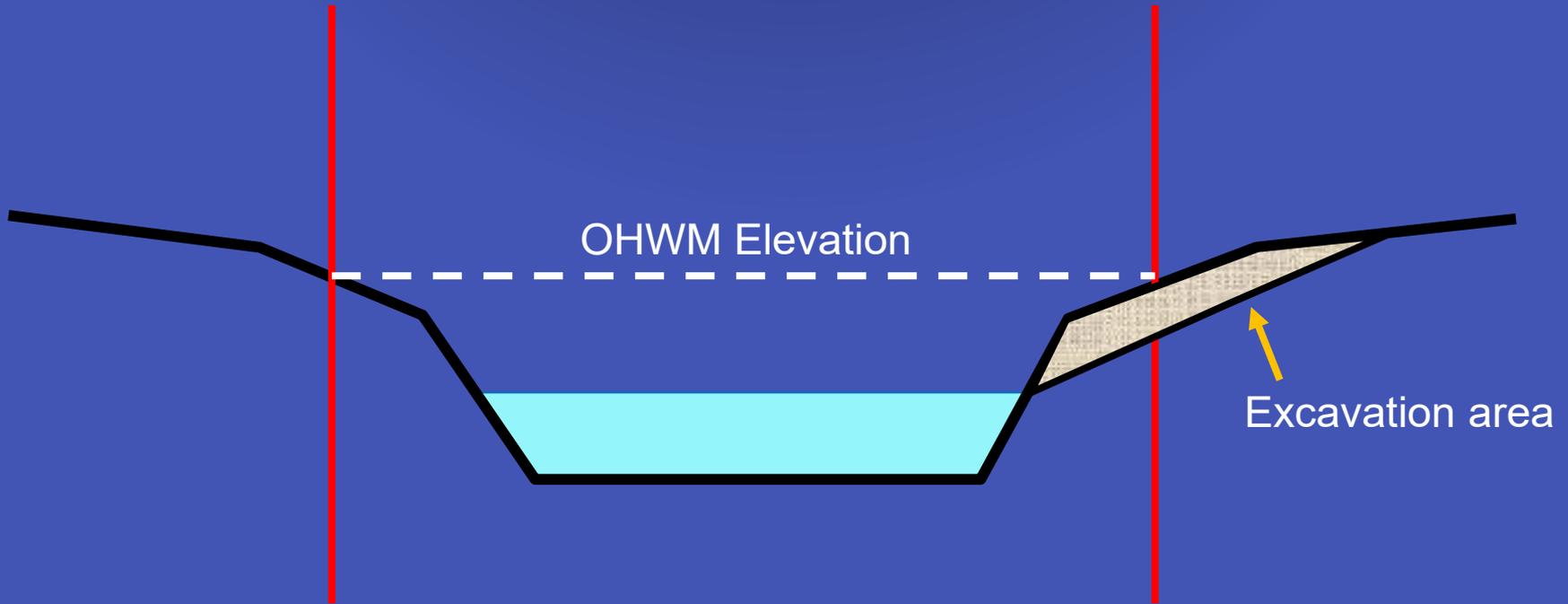
# Corps Jurisdiction - Example



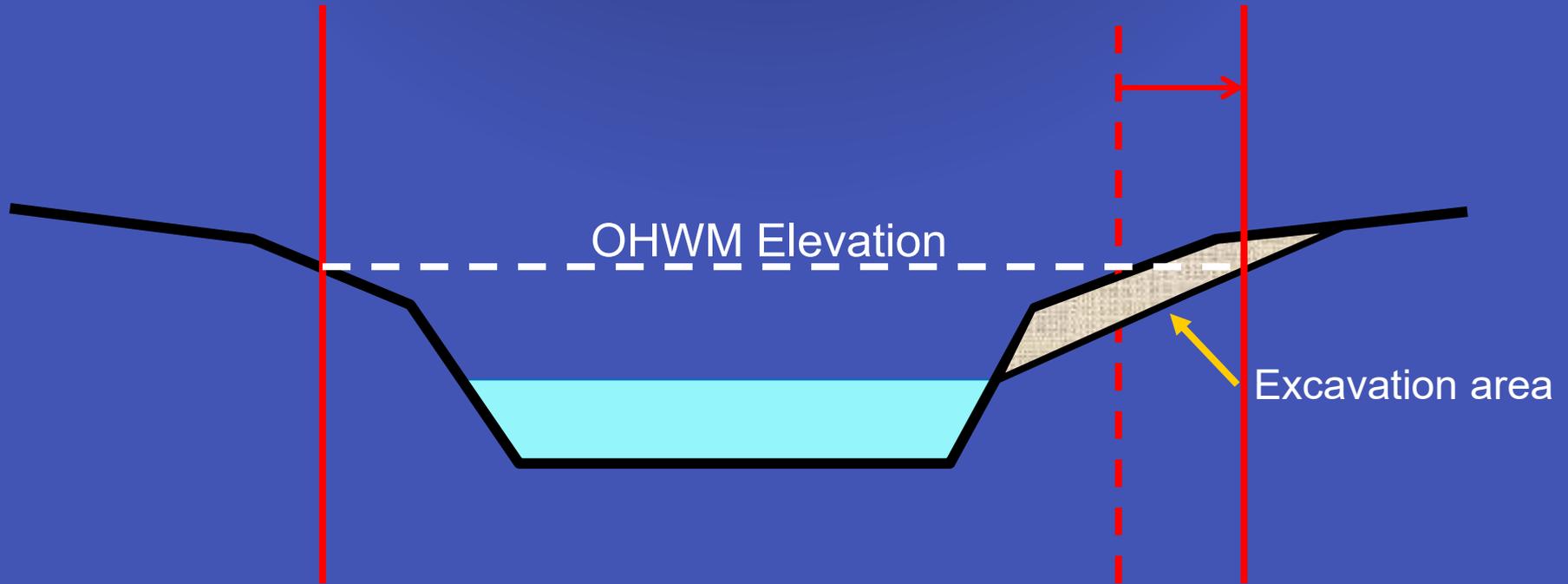
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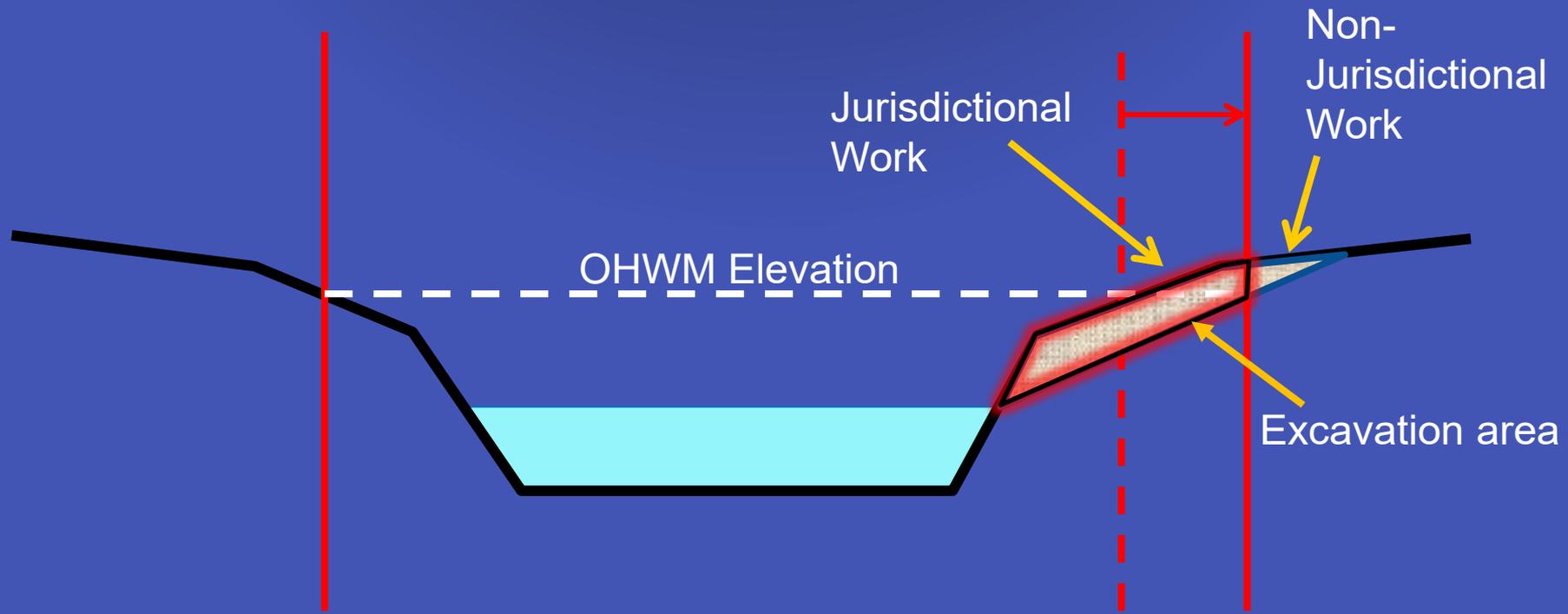
# Corps Jurisdiction - Example

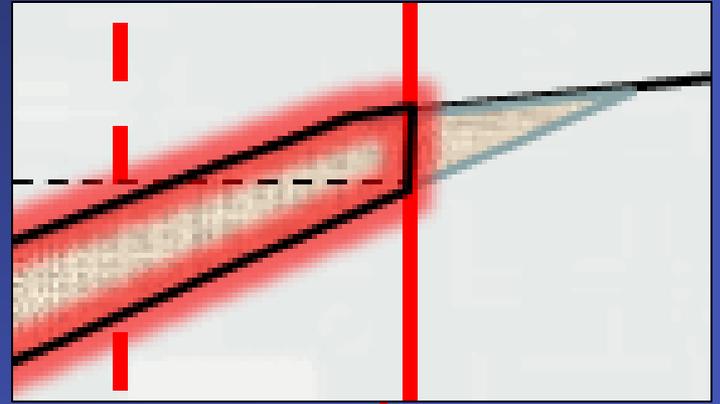
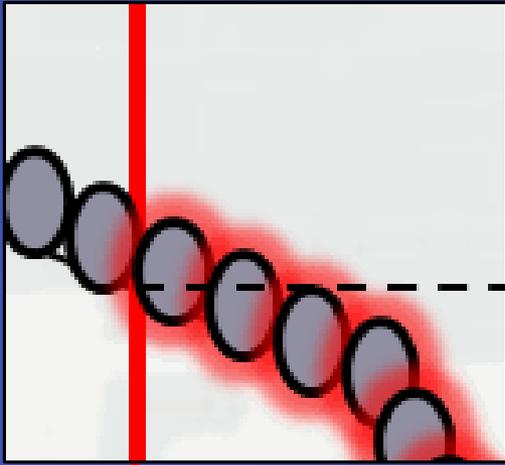


# Corps Jurisdiction - Example



# Corps Jurisdiction - Example









# EGLE Jurisdiction

Part 31: Drainage area greater than 2 sq. miles

Part 301: Ordinary High Water Mark (OHWM)

Part 303:

- Connected to or located within 1,000 feet of one of the Great Lakes or Lake St. Clair
- Connected to or located within 500 feet of an inland lake, pond, river, or stream
- Greater than 5 acres in size
- The EGLE has determined that the wetland is essential to the preservation of the state's natural resources

Part 323: Areas designated on map

Part 325: Elevation of 580.5 feet IGLD85 (Lake Huron)

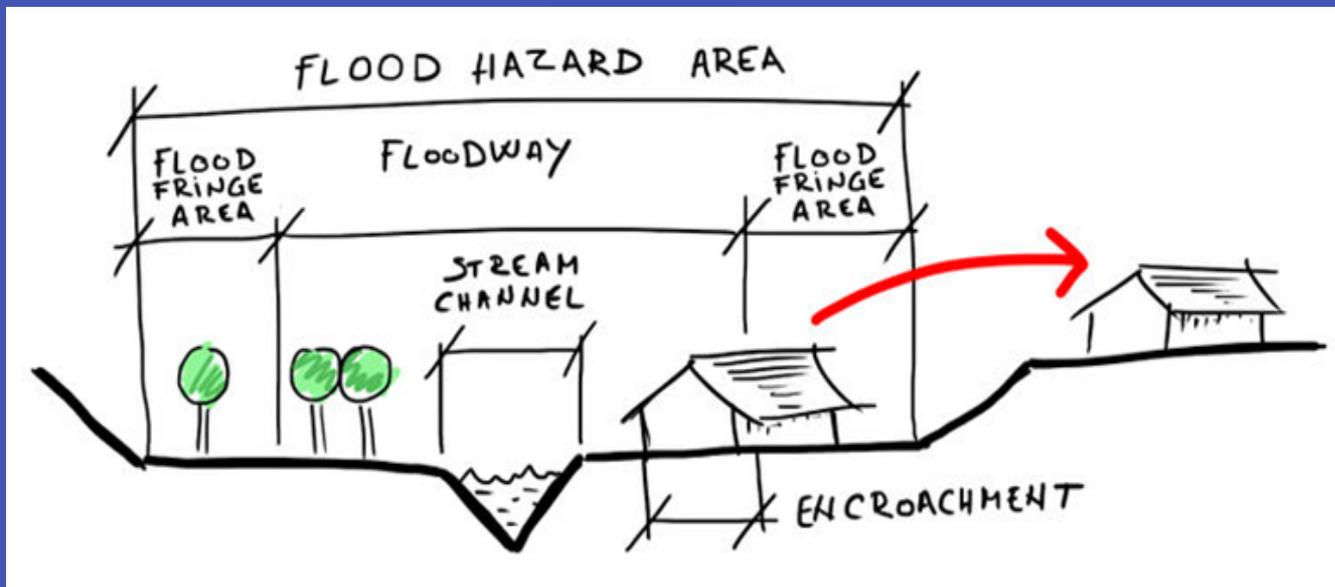
575.3 feet IGLD85 (Lake St. Clair)



# Part 31, Floodplains

- All streams and drains have a floodplain
- Non-mapped floodplains may be regulated!
- We do not have a publically available map of all regulated floodplain areas.
- Please call your local floodplain engineer to determine if the drainage area for your project is  $>$  or  $<$  2 sq. miles.

[www.Michigan.gov/floodplainmanagement](http://www.Michigan.gov/floodplainmanagement)

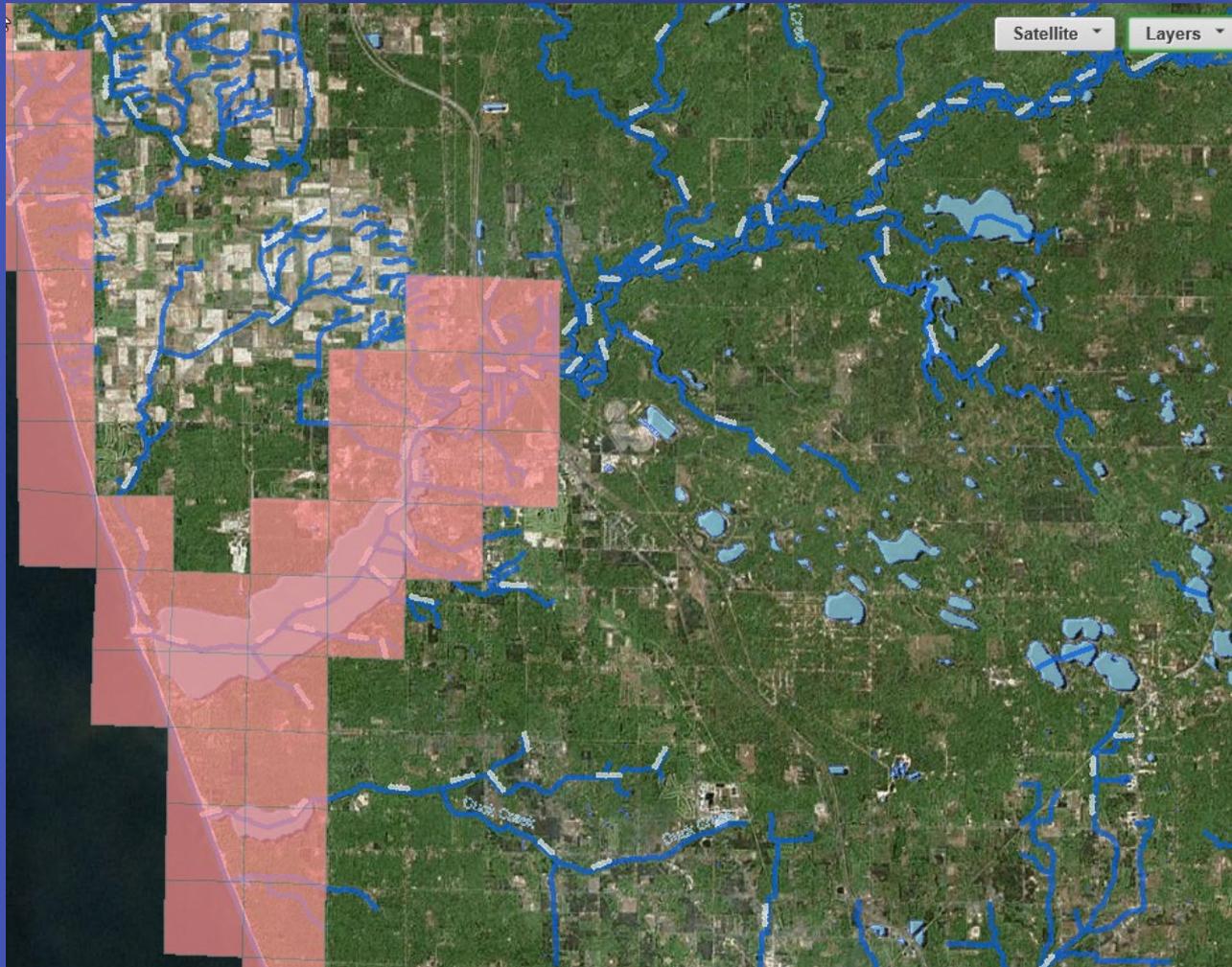


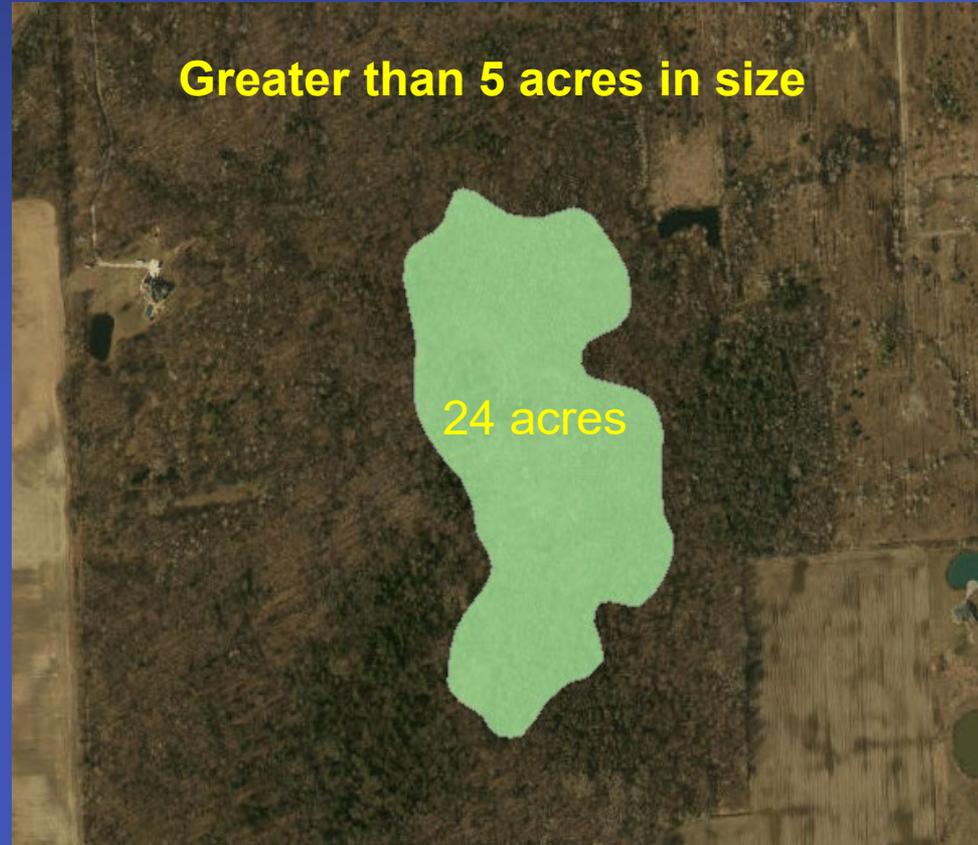


# Part 301, Inland Lakes and Streams (OHWM)



# Section 10 vs Part 301







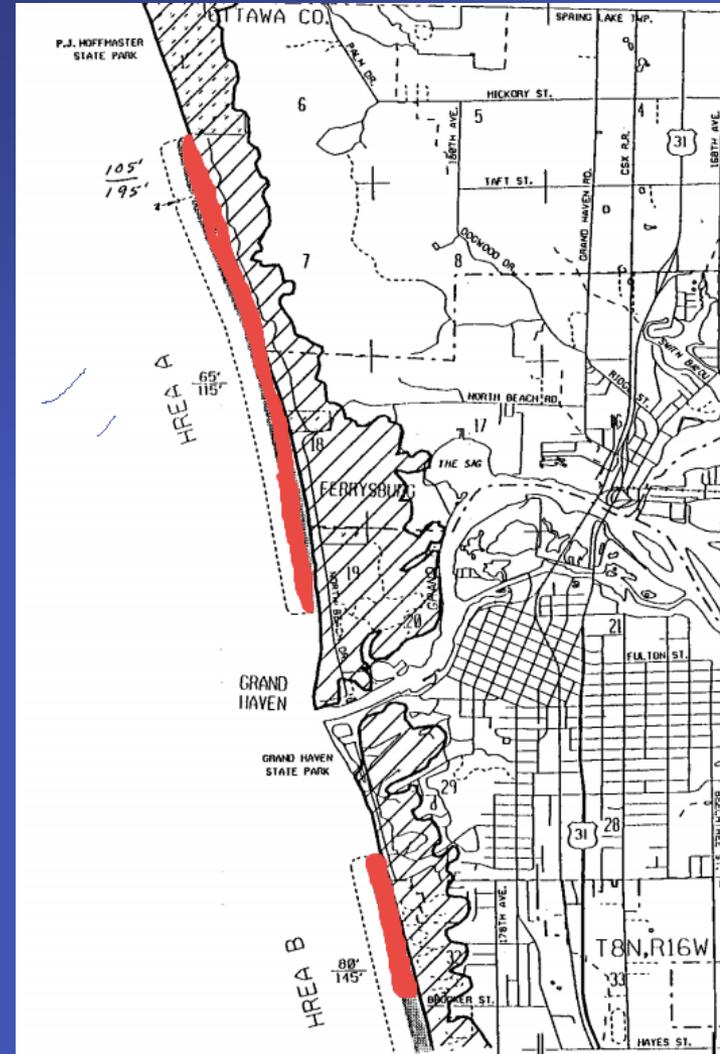
# Part 323, Shorelands Protection and Management

 High Risk Erosion Area

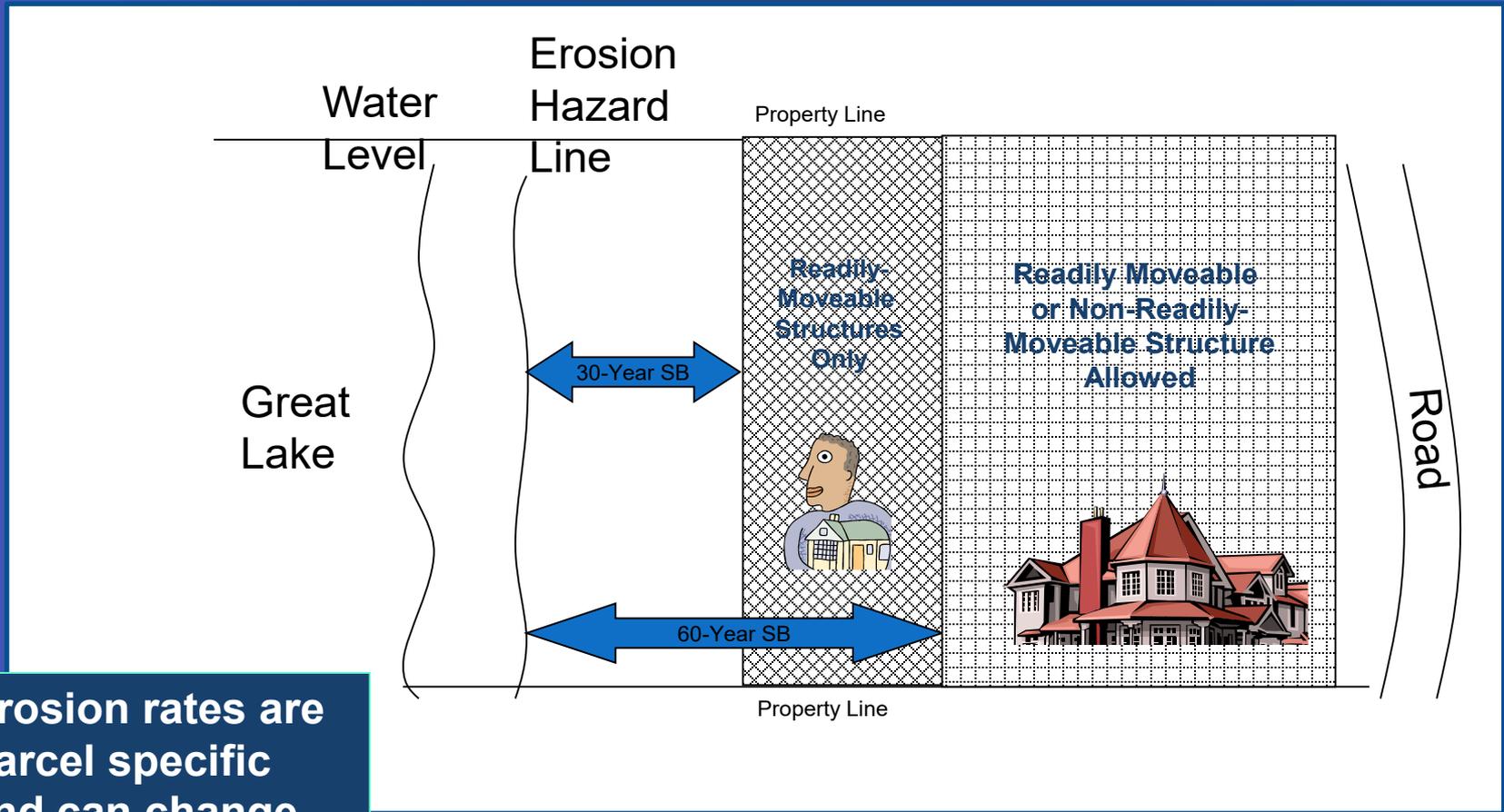
Interactive map at  
<http://www.mcgi.state.mi.us/wetlands/>

or

PDF maps available at  
[www.michigan.gov/criticaldunes](http://www.michigan.gov/criticaldunes)



# Part 323, Shorelands Protection and Management



Erosion rates are parcel specific and can change over time.



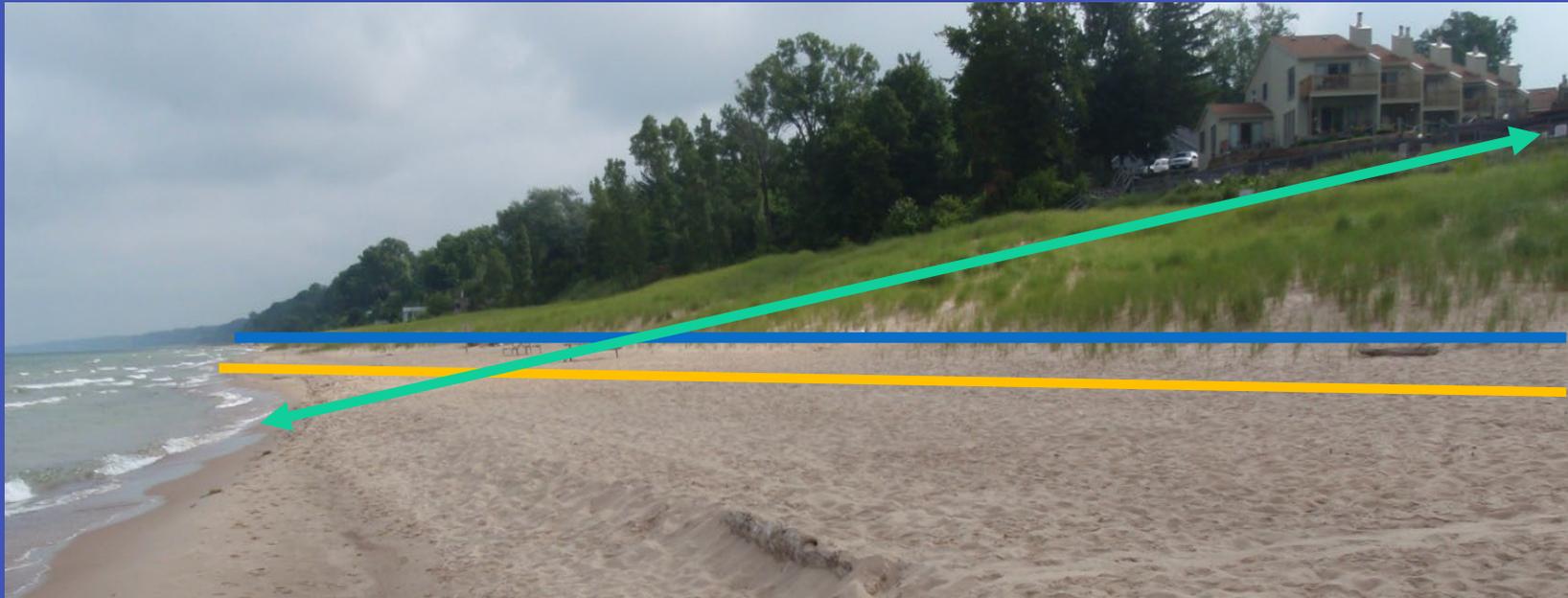


# EGLE Part 325: Example on Lake Michigan

- Corps regulates to 581.5 IGLD85
- EGLE regulates to 580.5 IGLD85
- Critical Dunes



Water's edge to  
mapped boundary

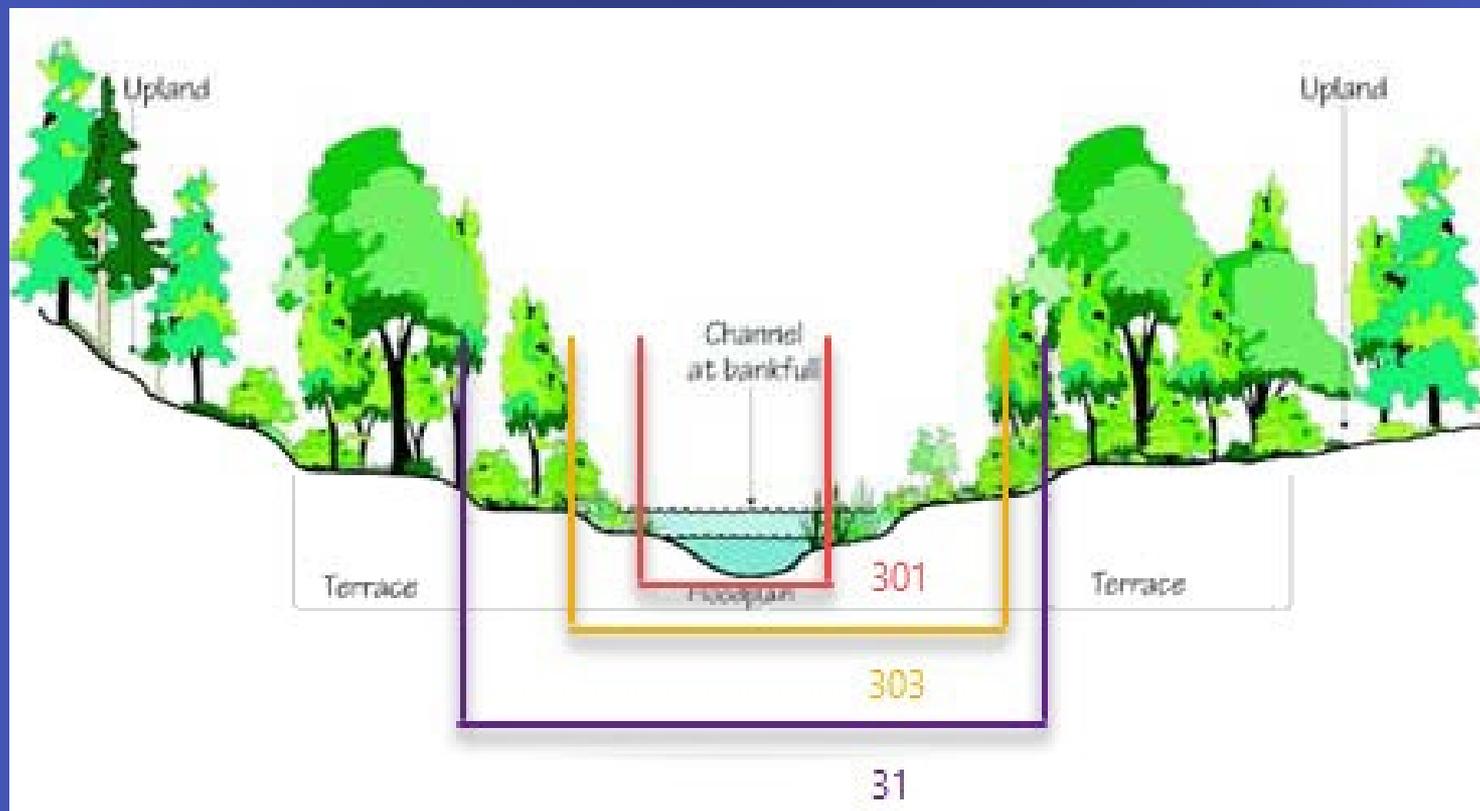




# Part 325, Great Lakes Submerged Lands (OHWM – Lake Huron)

- Corps regulates to 581.5 IGLD85 .....
- EGLE regulates to 580.5 IGLD85 \_\_\_\_\_





Many statutes overlap. Depending on where your project area is located, three or more statutes may apply.

# Overview

- Corps Program & Jurisdictional Waters
- EGLE Water Resources Regulations
- Activity Jurisdiction
- Geographic Jurisdiction (USACE & EGLE)
- **Example Project**

# Applying Jurisdiction



# Proposed Project Site

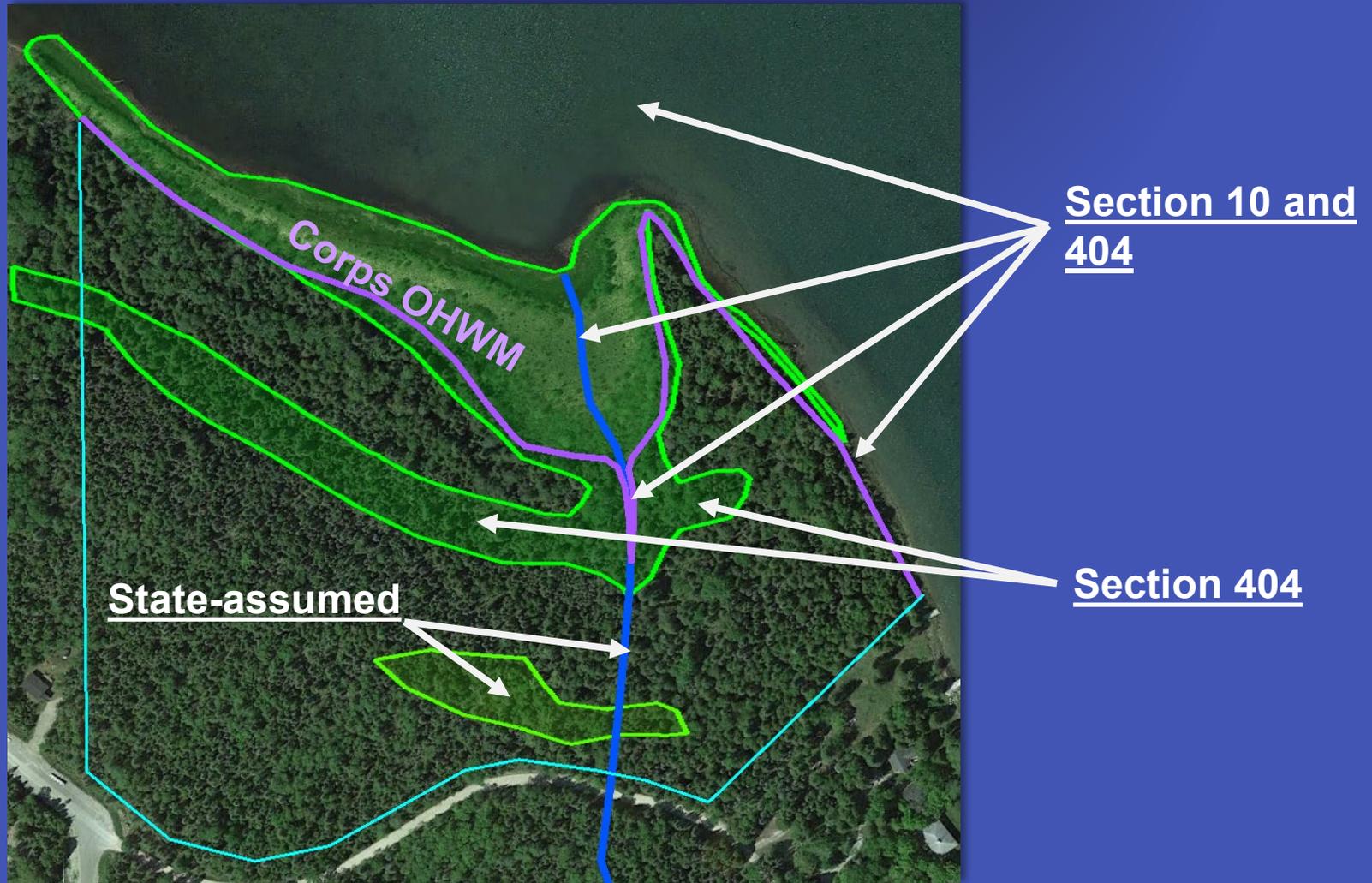


-  Property Line
-  Wetland Boundary
-  Tributary
-  Corps OHWM

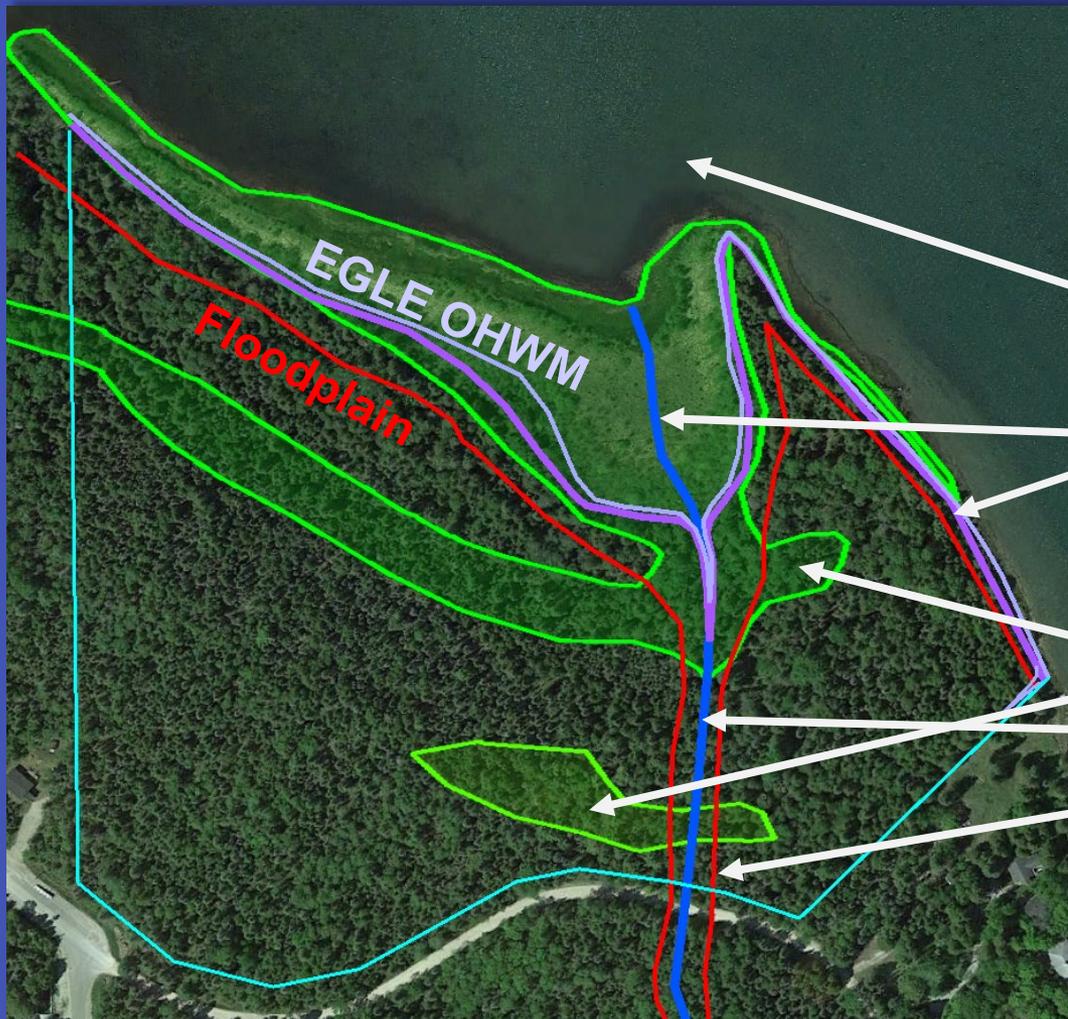
# Example Project



# Geographic Jurisdiction - Corps



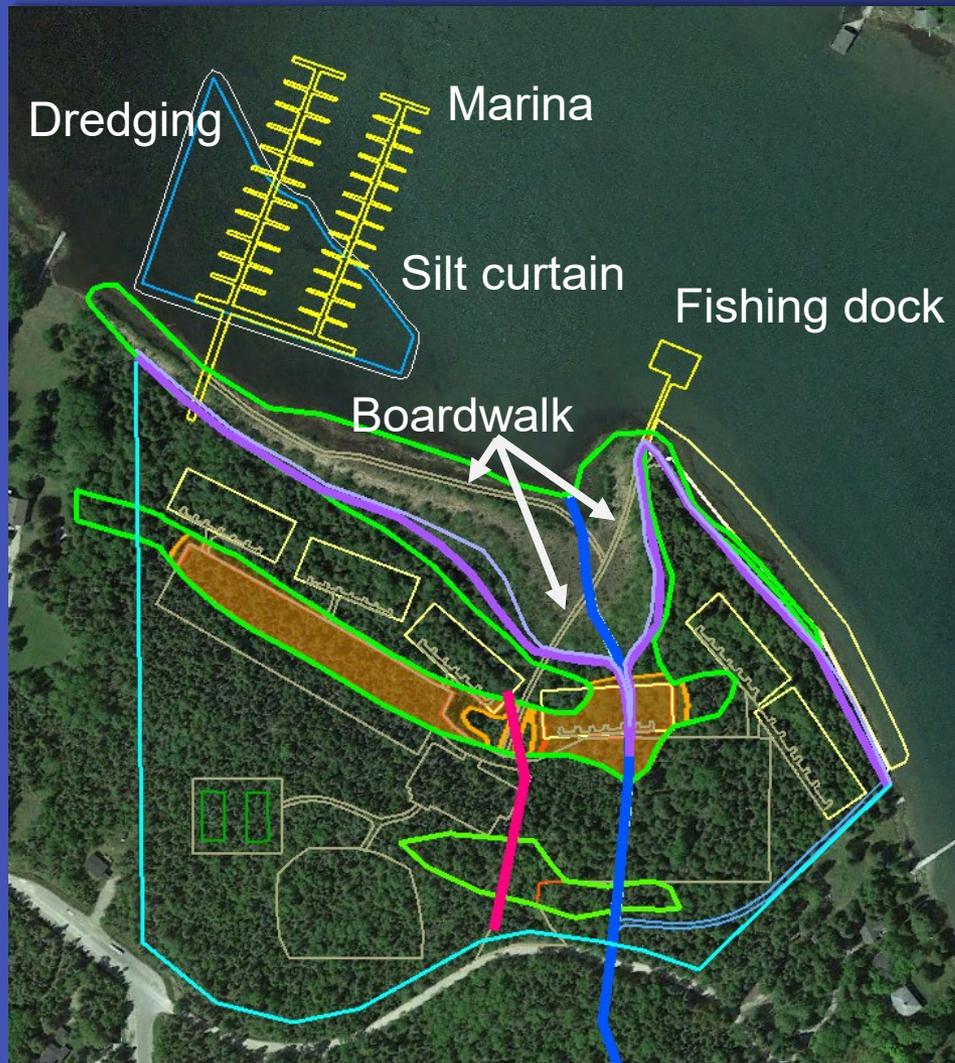
# Geographic Jurisdiction - EGLE



Waterward:  
Part 325, Great Lake  
Part 301, River and Shoreline

Landward:  
Part 303, Wetland  
Part 301, Stream  
Part 31, Floodplain

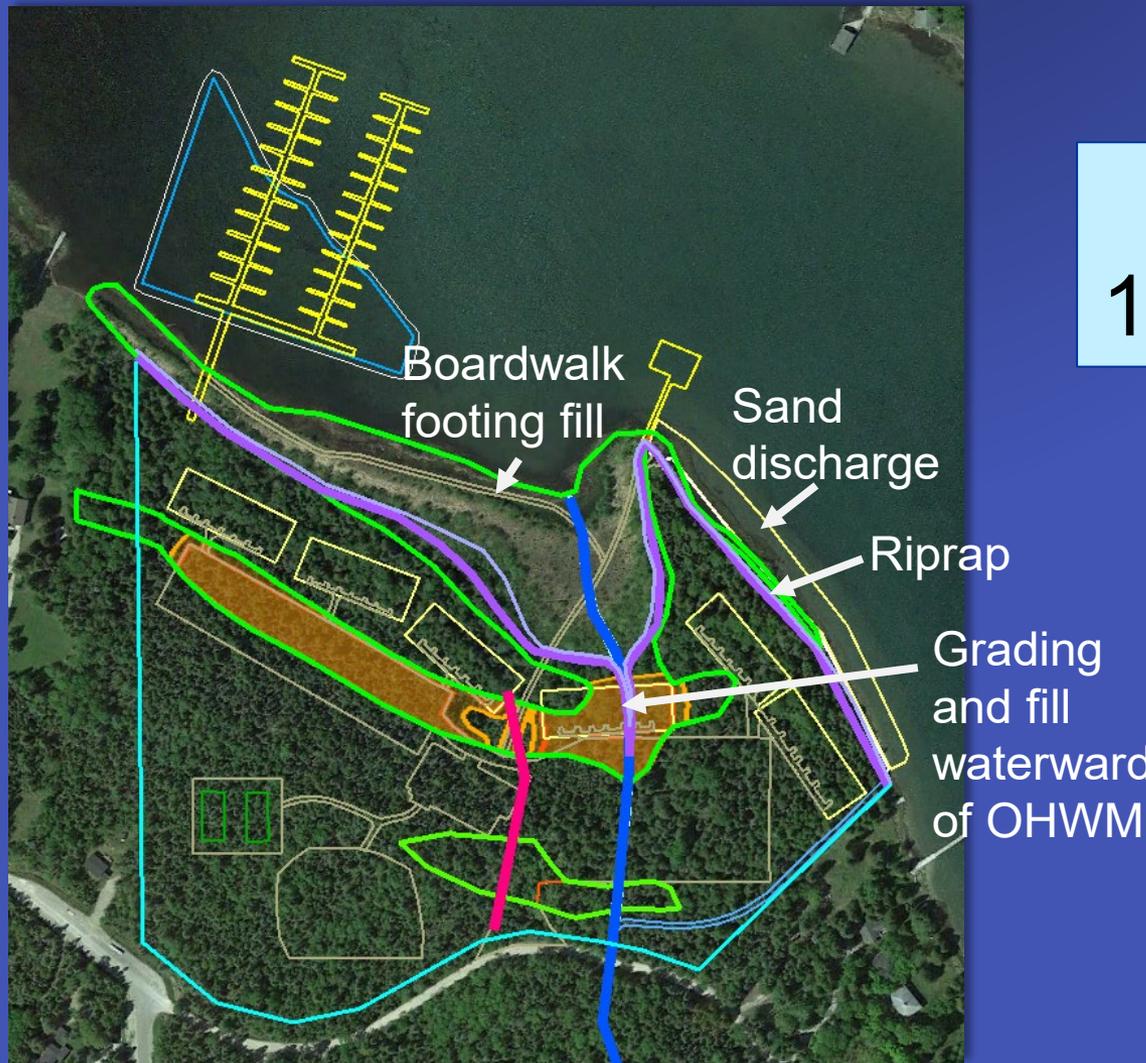
# Activity Jurisdiction - Corps



Section 10  
only

# Activity Jurisdiction - Corps

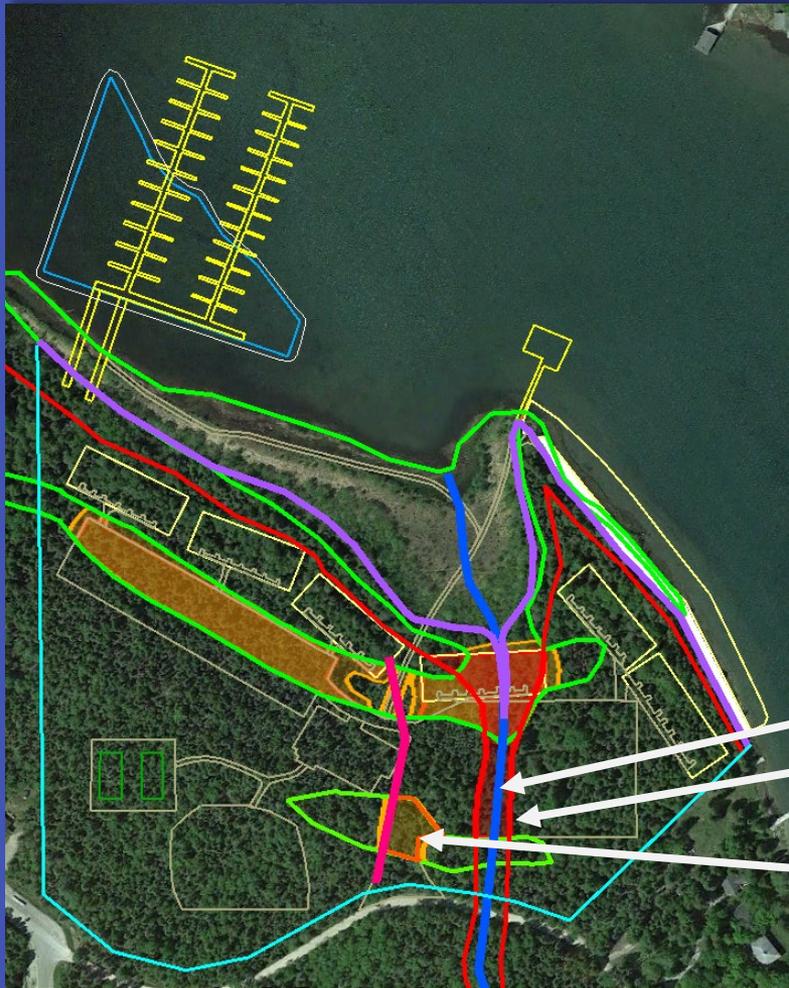
Sections  
10 and 404





# Activity Jurisdiction - EGLE

- Corps-regulated activities plus:



Additional stream fill

Floodplain fill

Additional wetland fill

# Riparian interest

- Applicant would need an easement from adjacent owners

OR

- Modify the project to fit within RIA



# Questions ?

