

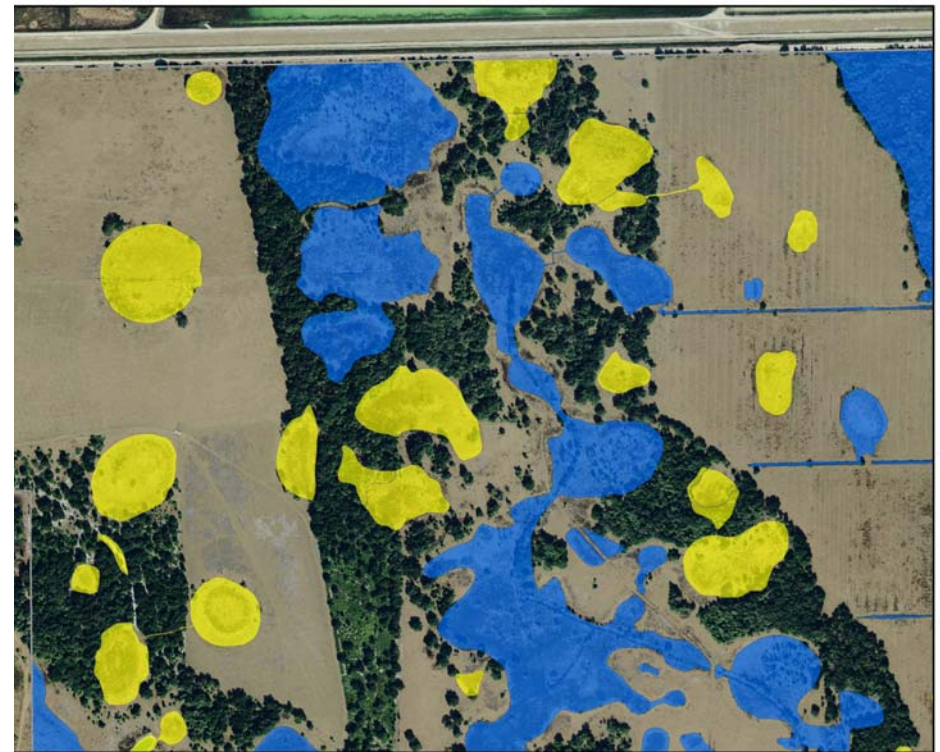
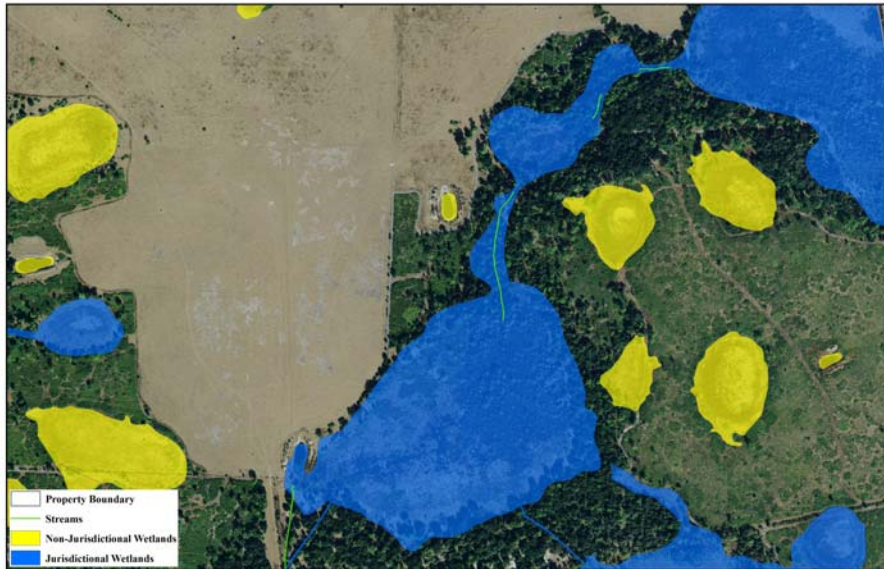
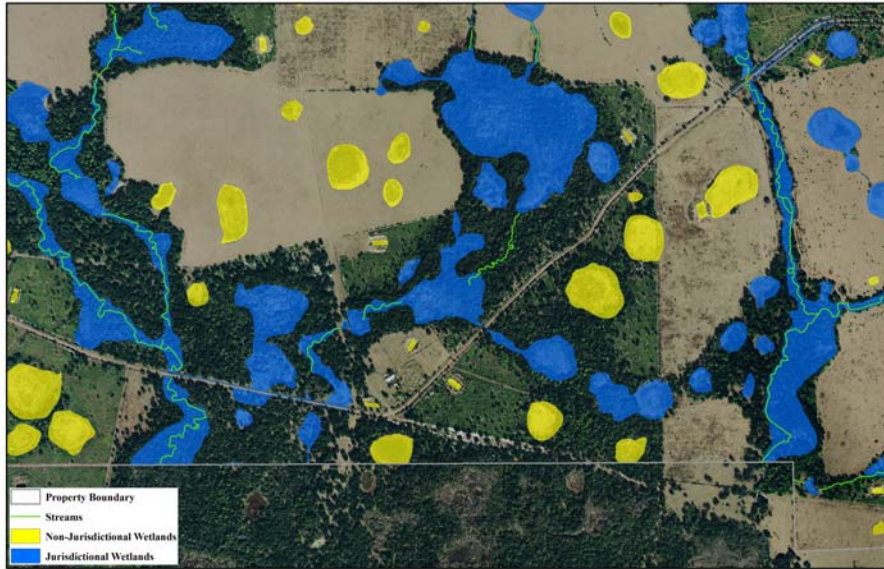
Effects of Draft Rule on Jurisdiction



Key Terms and Concepts

- **Floodplain** - An area bordering inland or coastal waters that was formed by sediment deposition from such water under present climatic conditions and is inundated during periods of moderate to high water flows.
- **Tributary** - A tributary, including wetlands, can be a natural, man-altered, or man-made water body and includes waters such as rivers, streams, lakes, impoundments, canals, and ditches not excluded in other parts of the rule.
- **Ditch Exclusion**- Ditches that are excavated wholly in uplands, drain only uplands or non-jurisdictional waters, and have less than perennial flow; and ditches that do not contribute flow (directly or indirectly). Perennial defined as year-round in years with normal rainfall.
- **Geographically-isolated Wetlands** – May be jurisdictional on a case-specific basis, provided that the wetland alone, or in combination with other similarly situated waters located in the same region, has a significant nexus to a water identified in paragraphs (a)(1) through (3) of section II.A
- **Significant Nexus** - a more than speculative or insubstantial effect that a water (including wetlands), either alone or in combination with other similarly situated waters in the region, on the chemical, physical or biological integrity of a water identified in paragraphs (a)(1) through (3) of section II.A.

Jurisdiction Under Rapanos Guidance

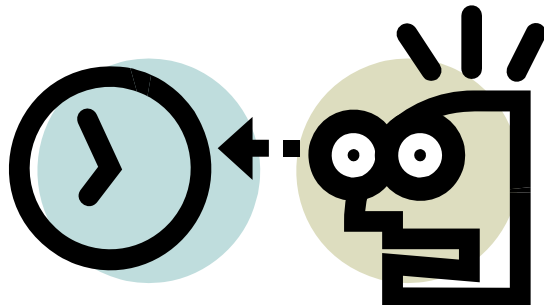


Application Preparation

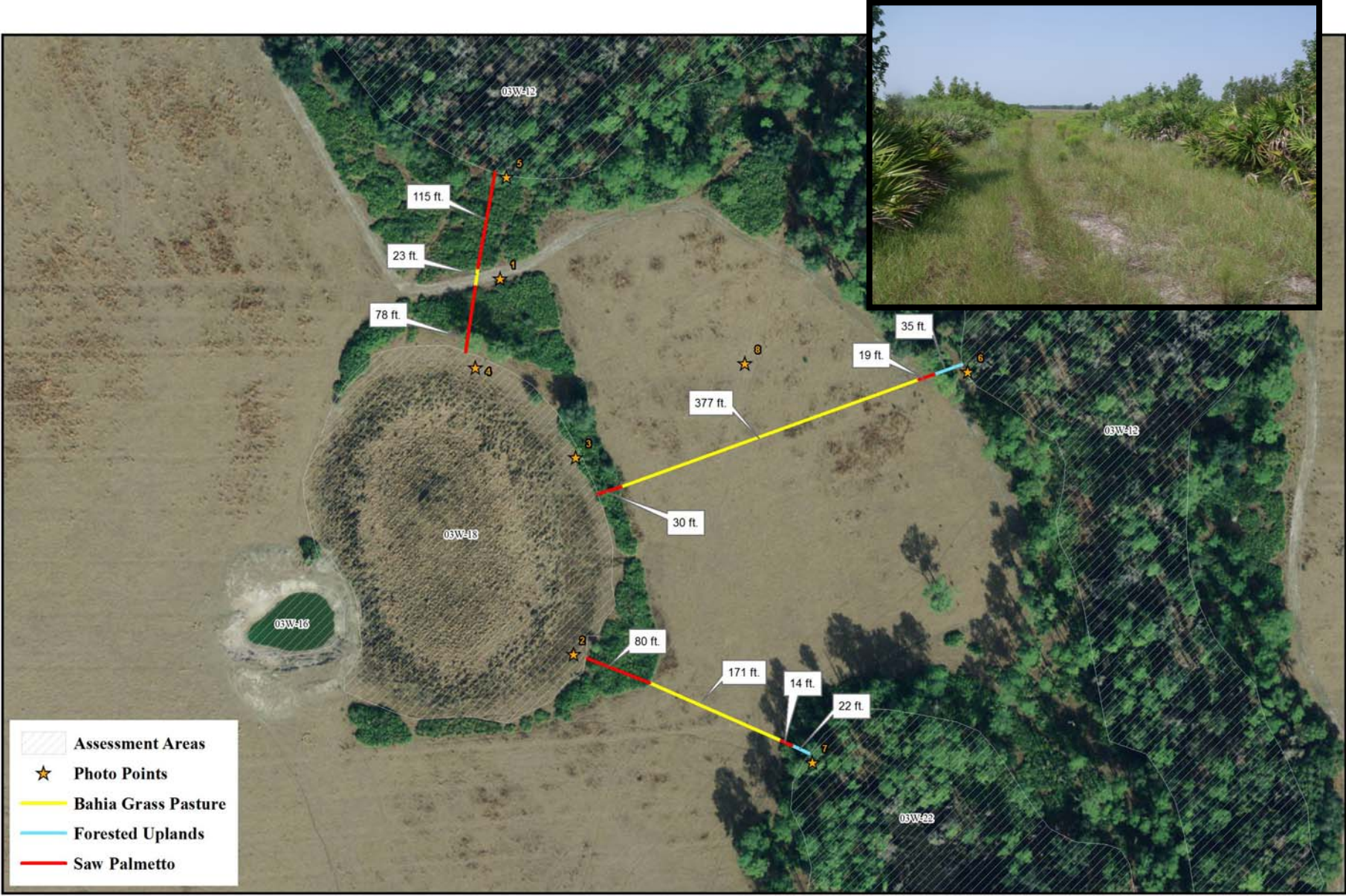
- Draft Rule Preamble states the following:

“The proposed rule will reduce documentation requirements and the time currently required for making jurisdictional determinations. It will provide needed clarity for regulators, stakeholders and the regulated public for identifying waters as “waters of the United States”, and reduce time and resource demanding case-specific analyses prior to determining jurisdiction and any need for permit or enforcement actions.”

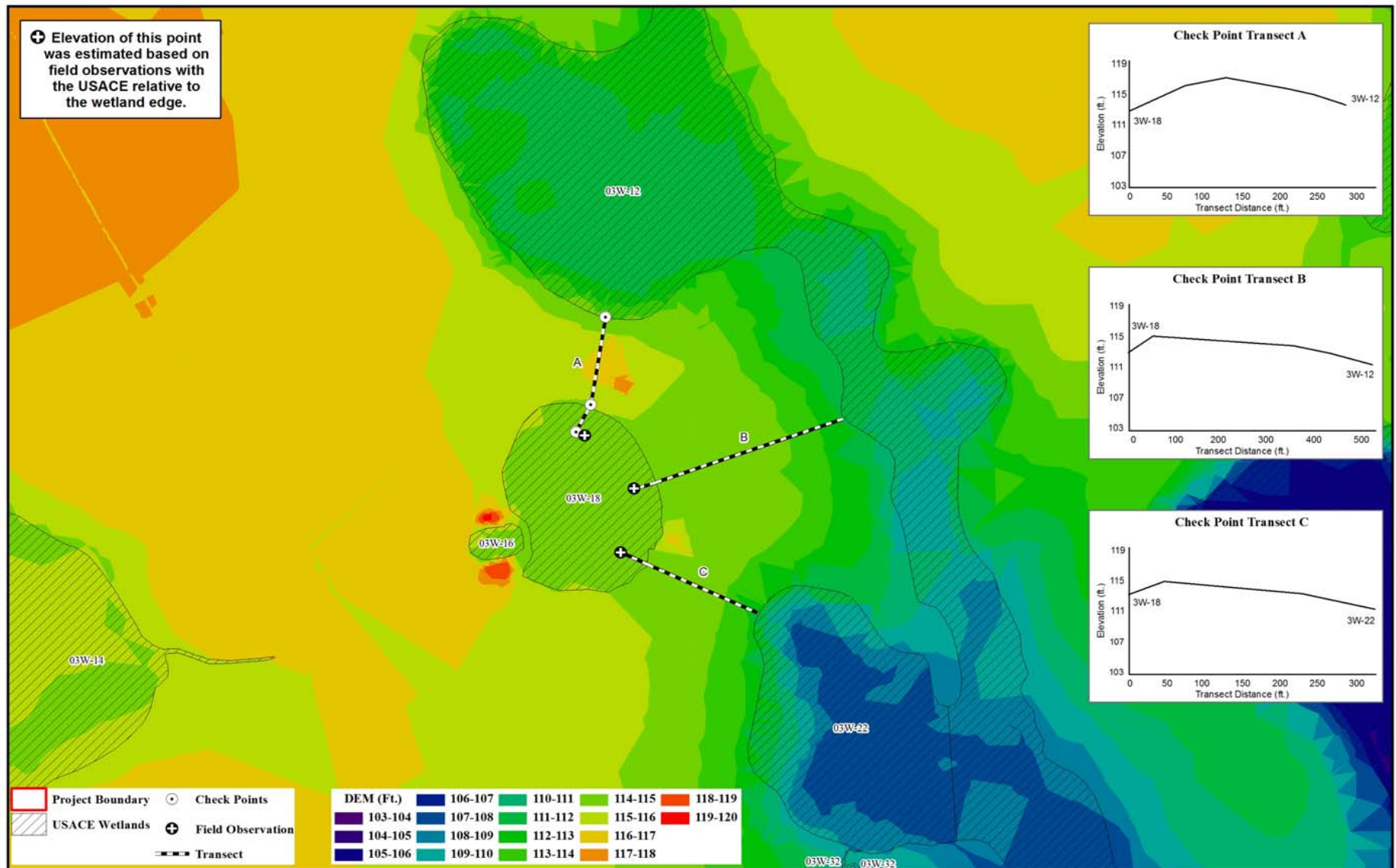
- Where is the reduction in time and resources?
- Are those reductions worth the cost?



Documentation of Other Waters



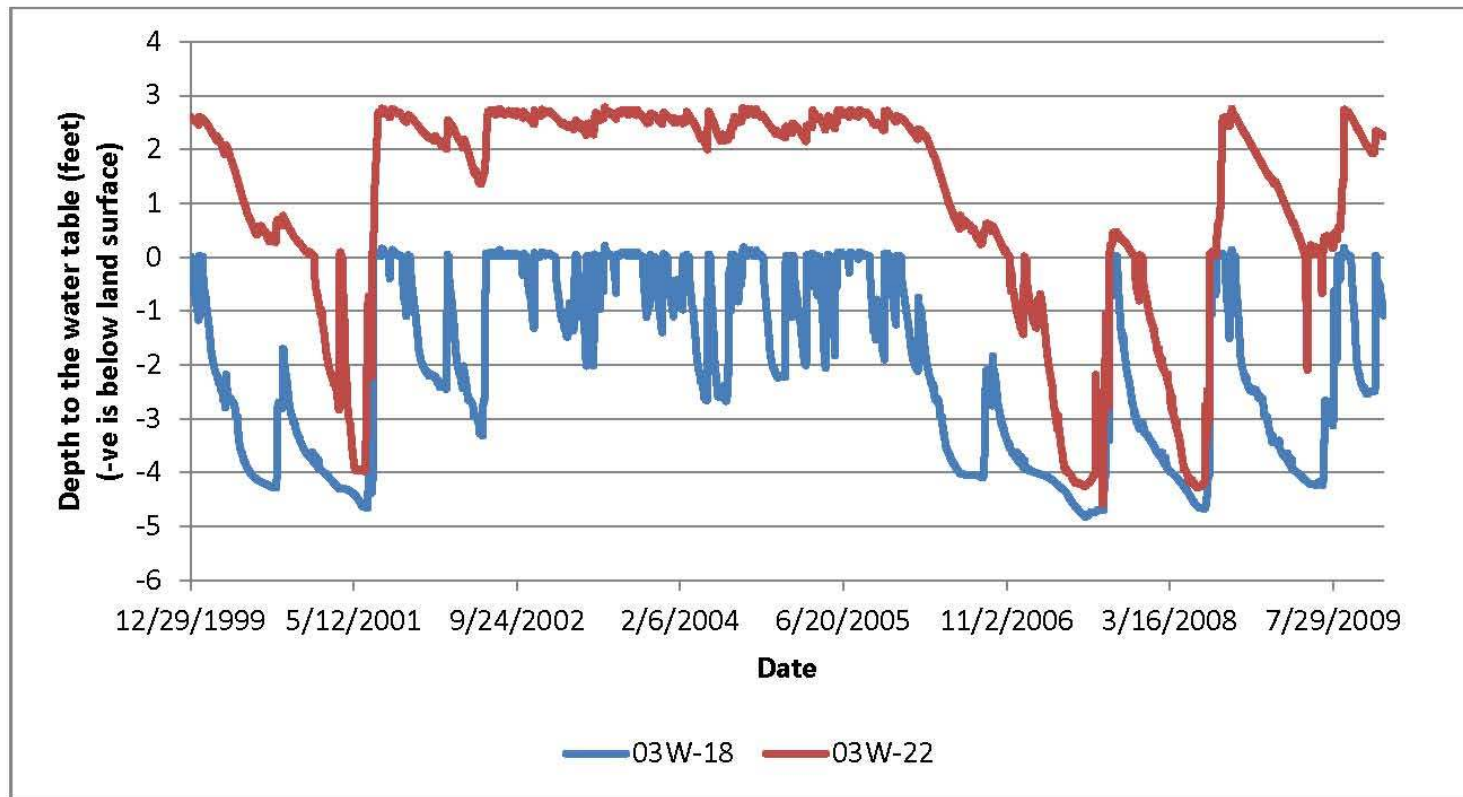
Documentation of Other Waters



Documentation of Other Waters

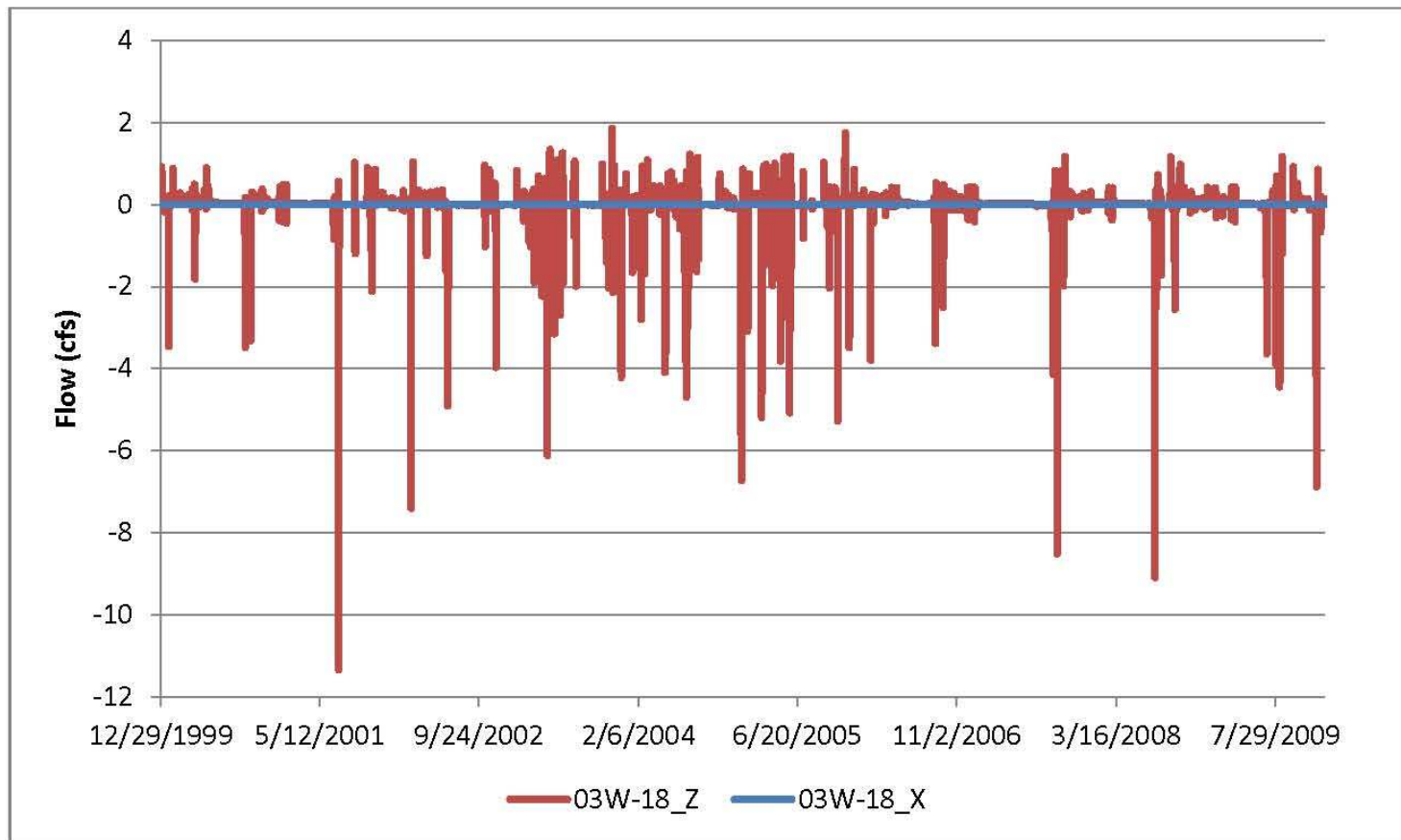


Documentation of Other Waters



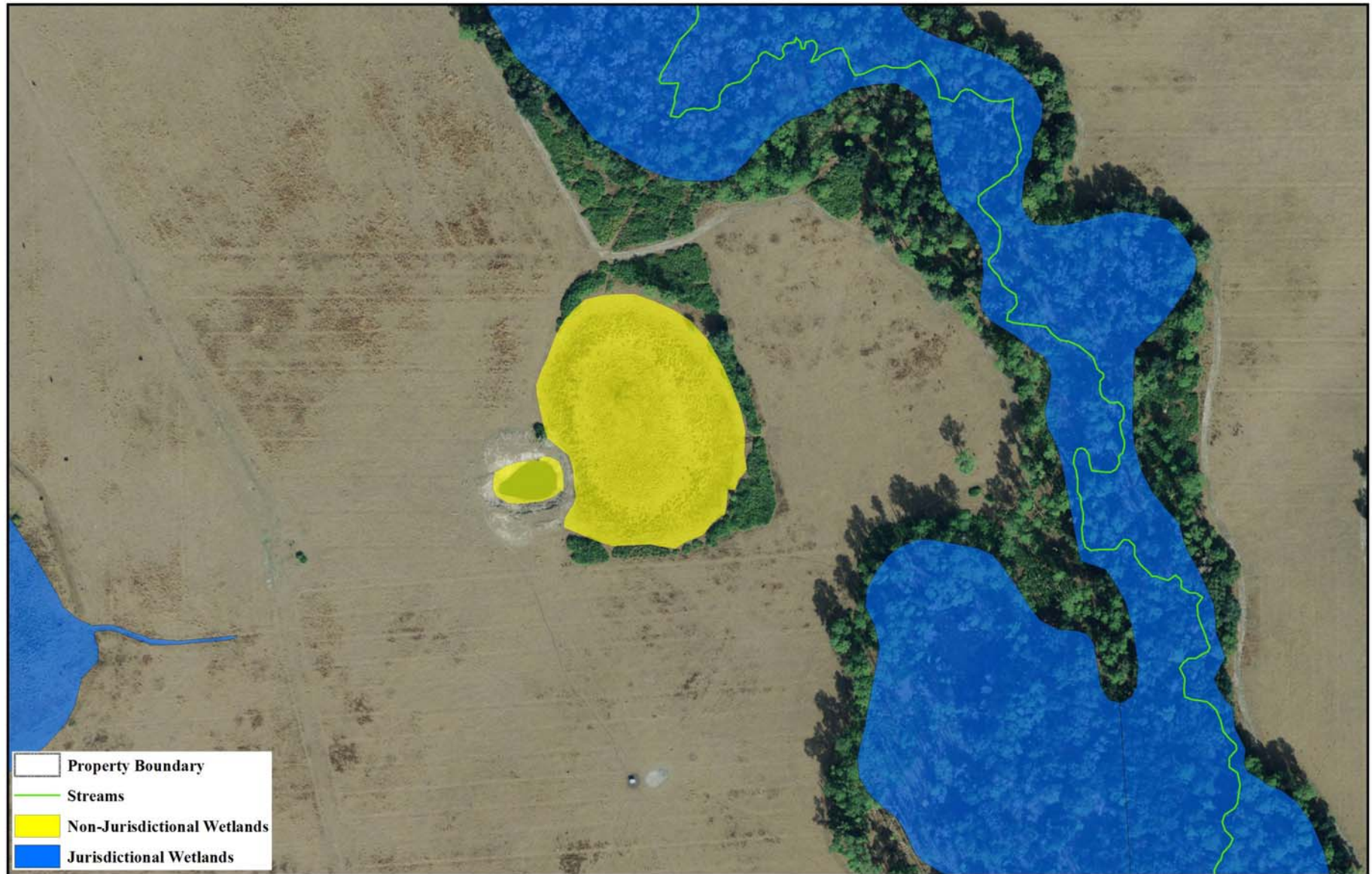
Simulated Depth to the Water Table Time-Series for Wetlands 03W-18 (Isolated) and 03W-22 (Jurisdictional)

Documentation of Other Waters



Simulated Groundwater Flow in X direction (+ve West to East) and Z direction (+ve upper to lower aquifer)

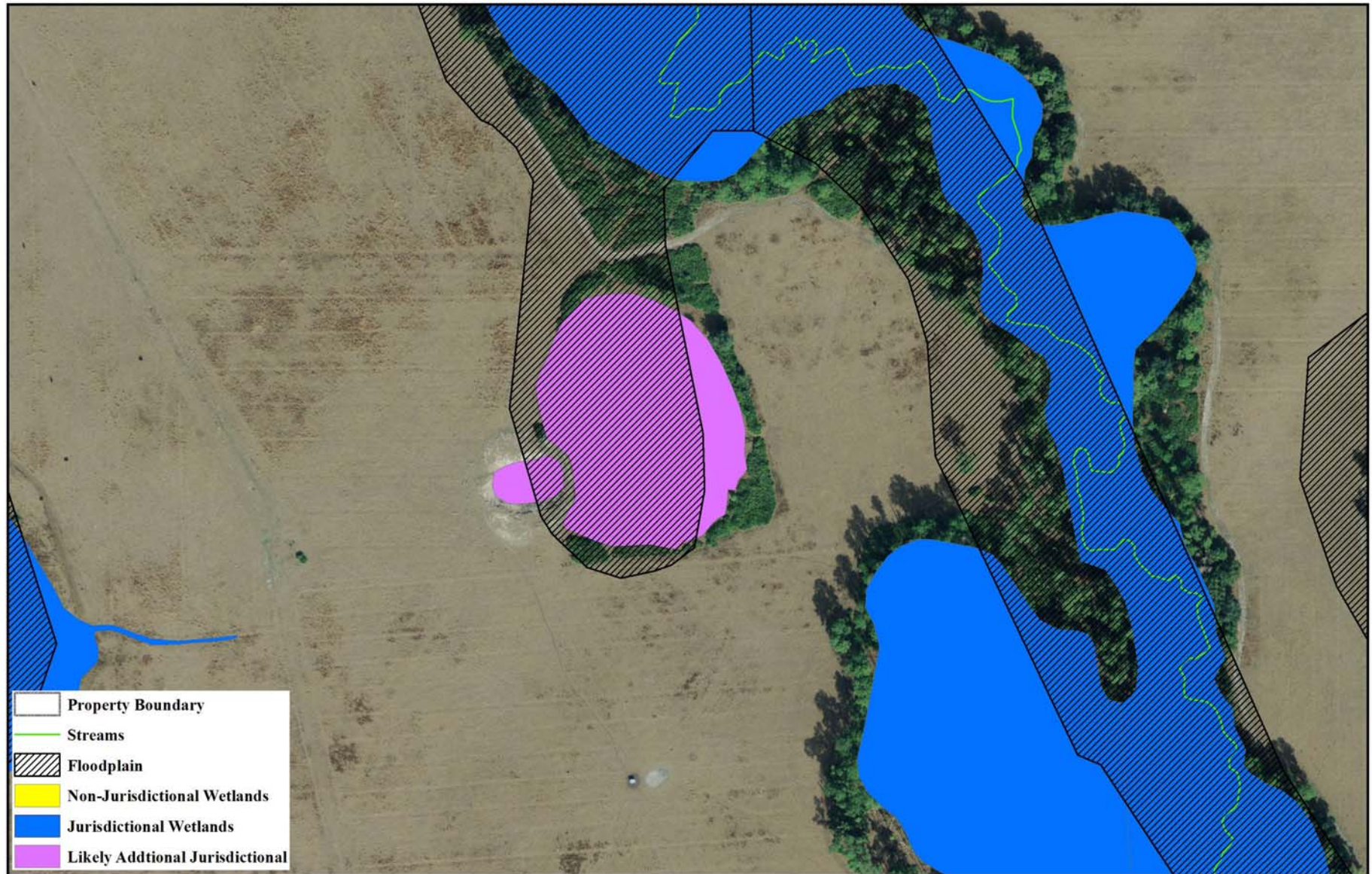
Jurisdiction Under Rapanos Guidance



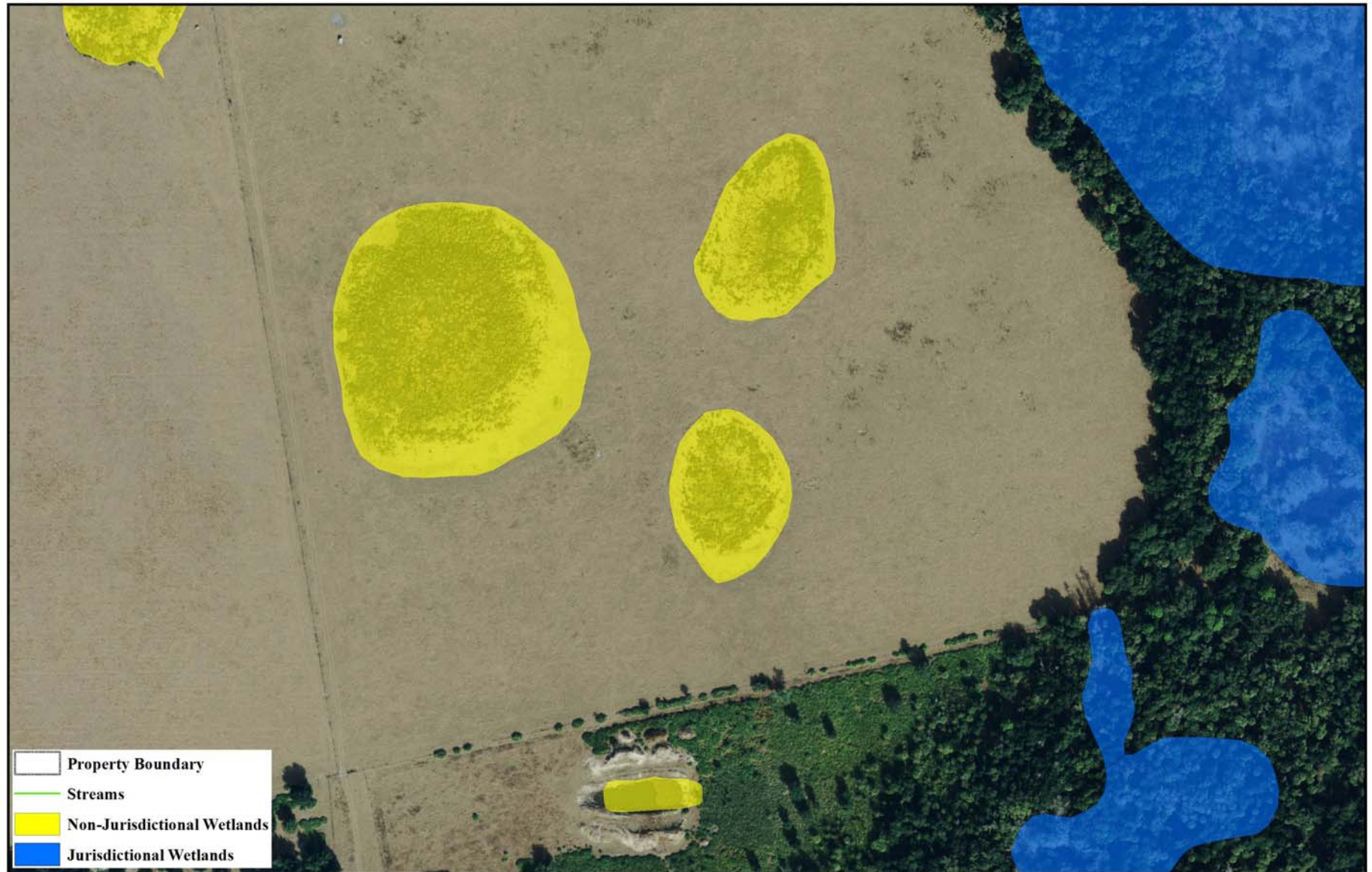
Draft Rule?



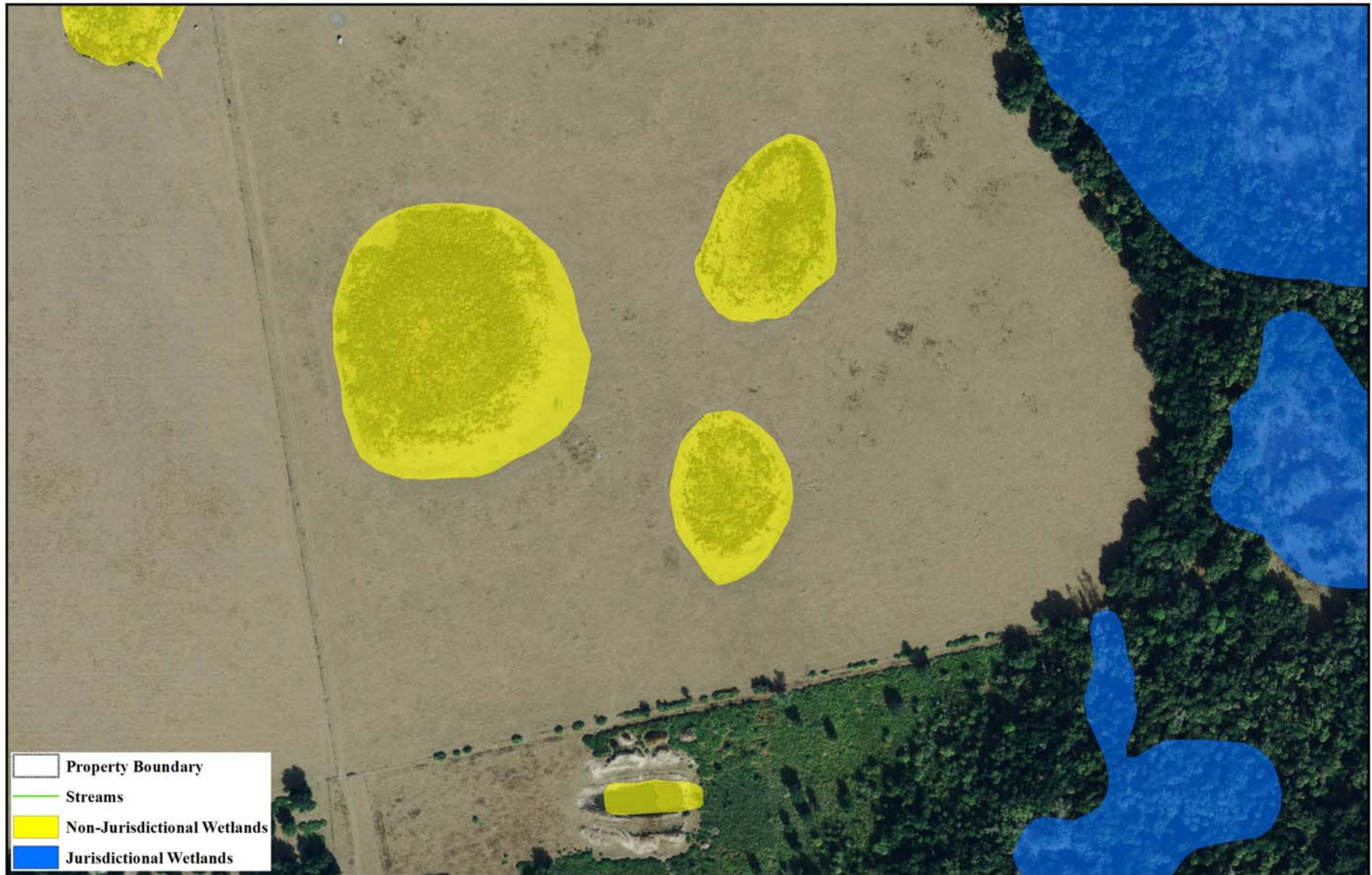
Location, Location, Location



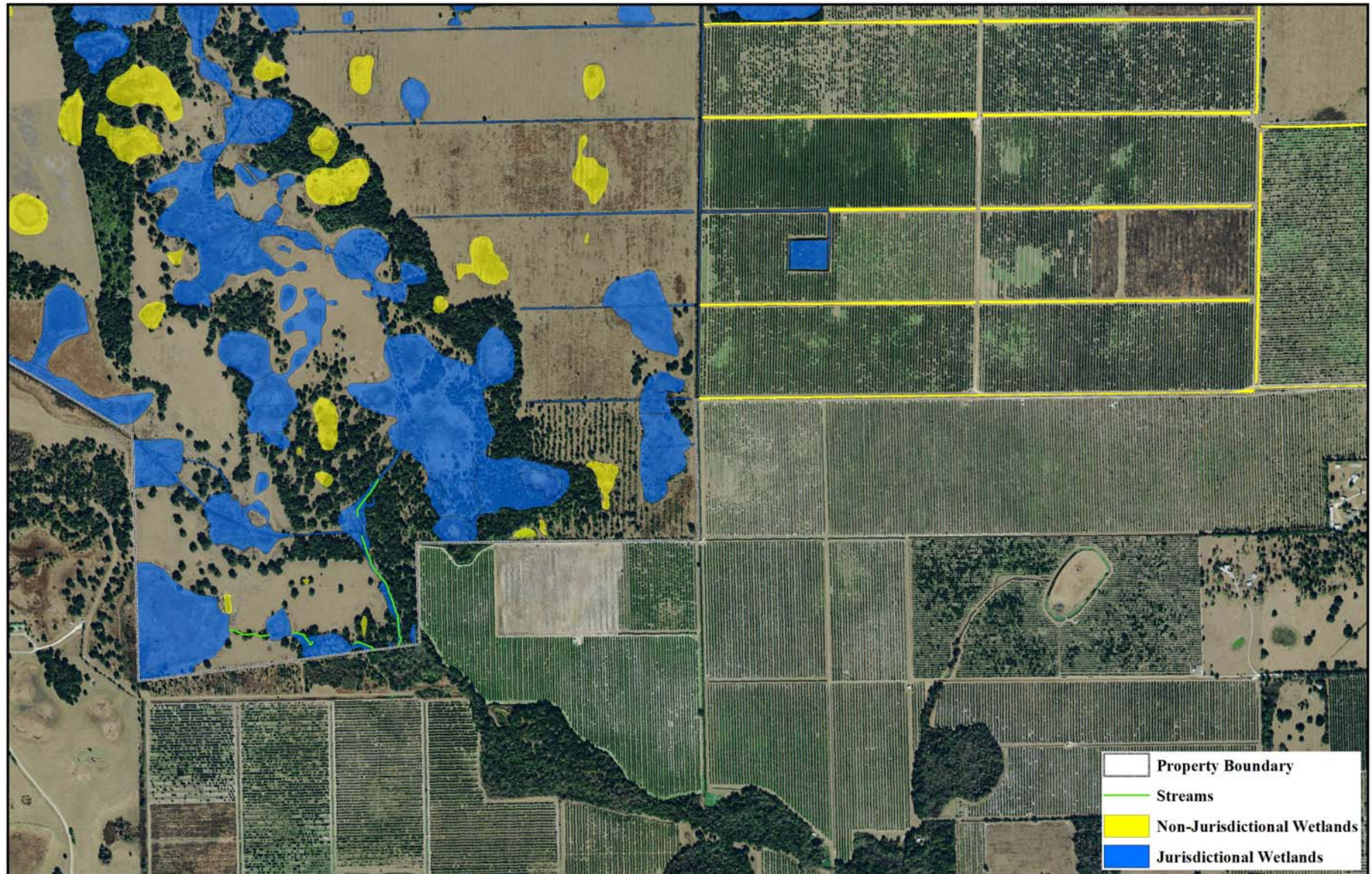
Jurisdiction Under Rapanos Guidance



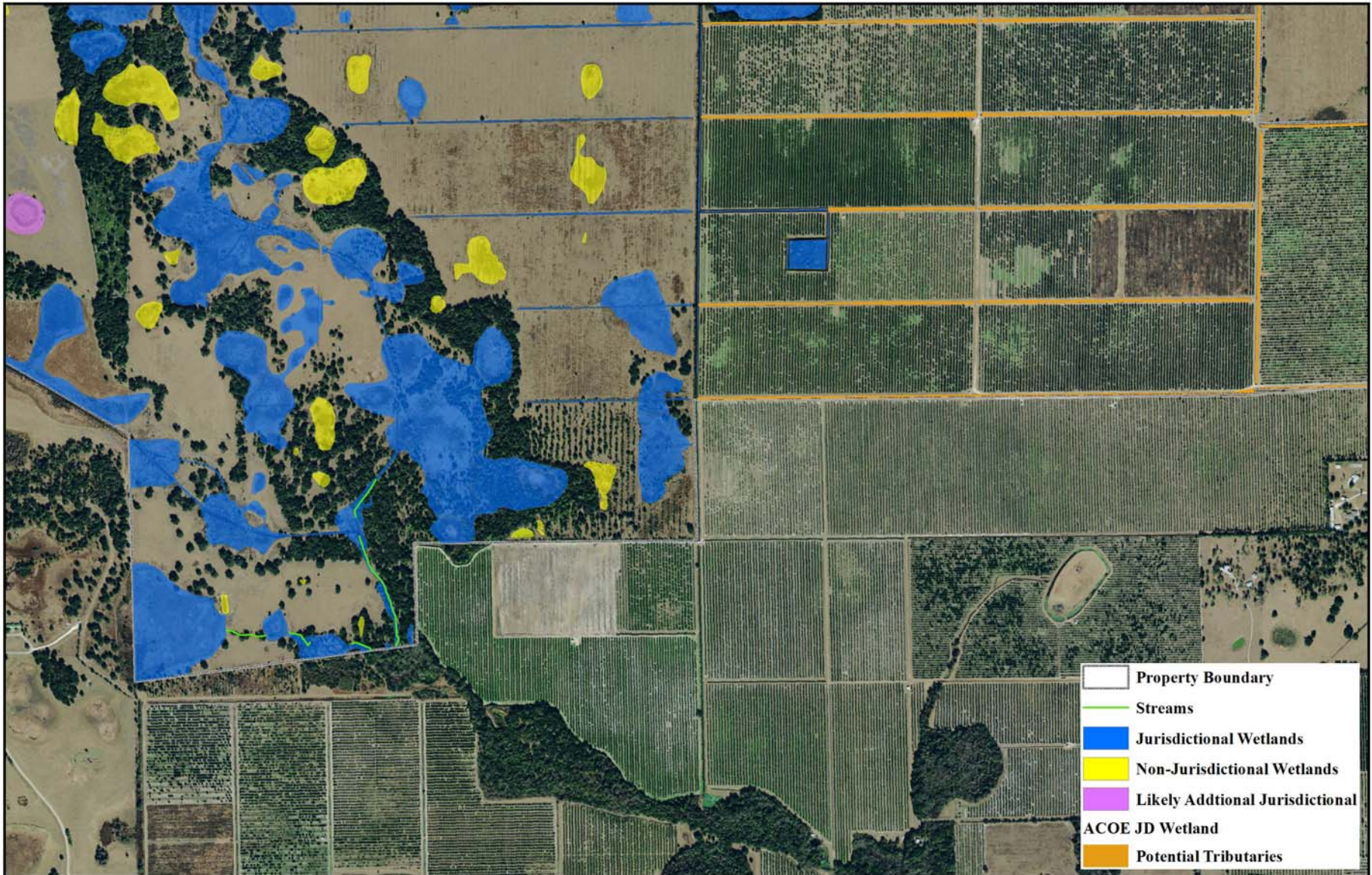
Draft Rule?



Jurisdiction Under Rapanos Guidance



Draft Rule?



Summary of Changes in Jurisdiction

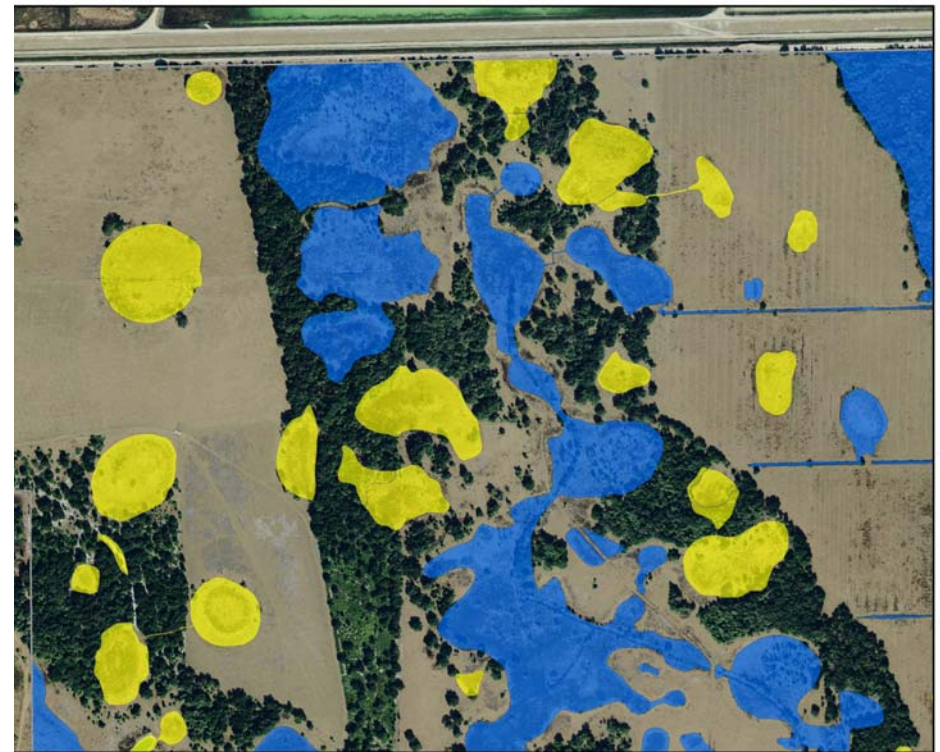
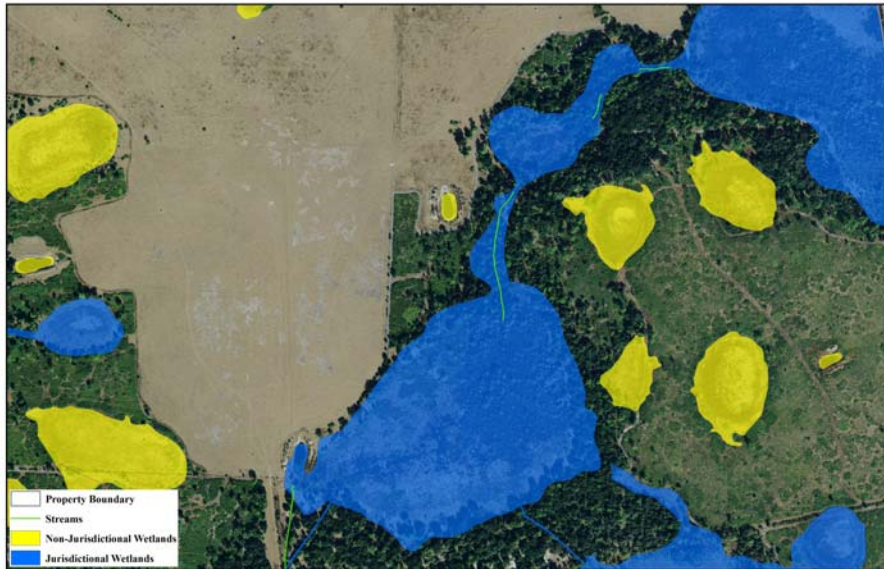
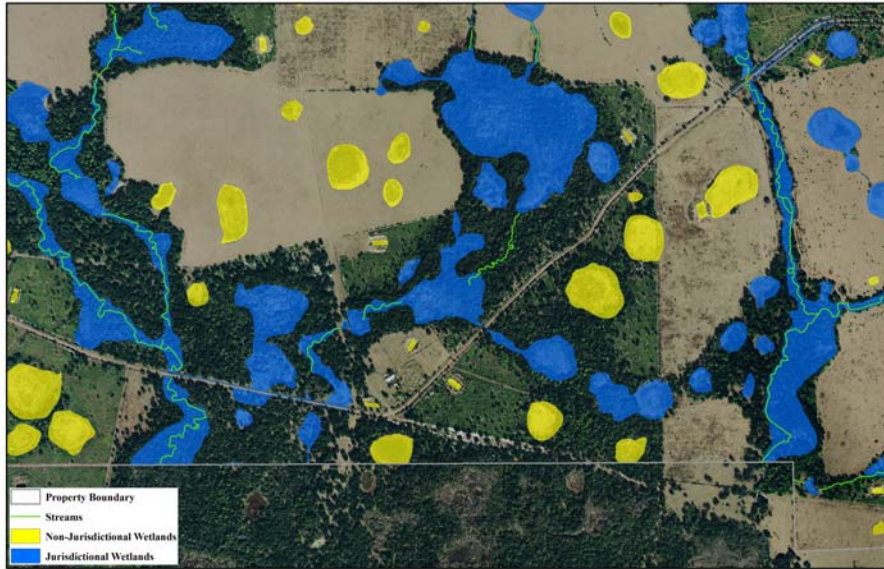
- No wetlands considered jurisdictional under the approved Rapanos determination would likely be considered non-jurisdictional if the Draft WOTUS Rule were applied.
- All wetlands in the “floodplain” would be jurisdictional because they would be deemed adjacent.
- All tributaries would be jurisdictional, but it is unclear to what extent ditches may be considered tributaries.
- Other Waters...



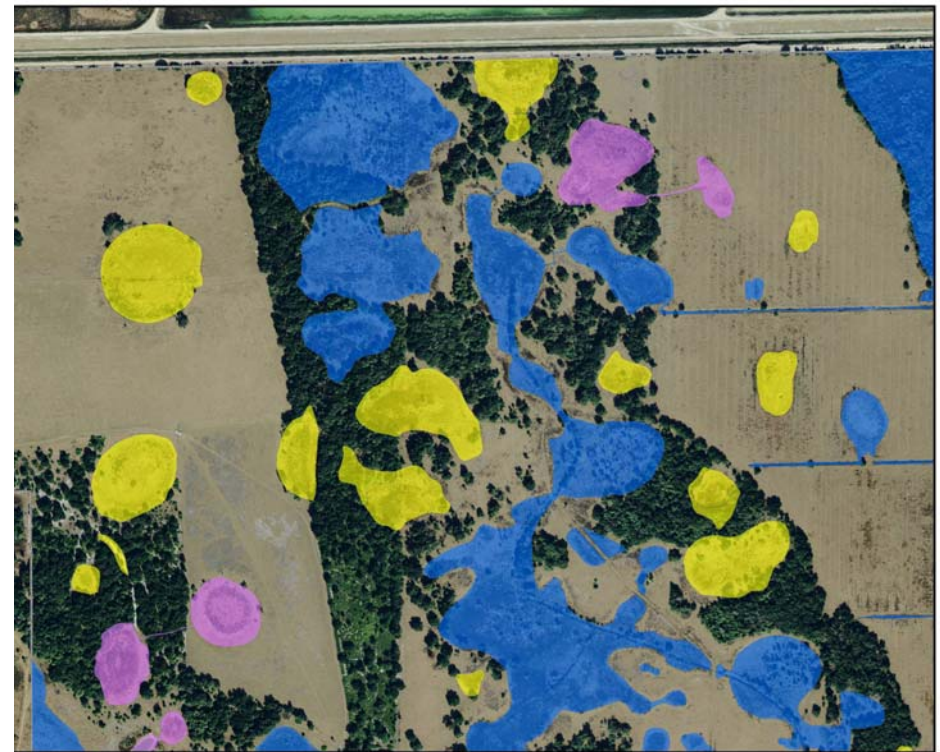
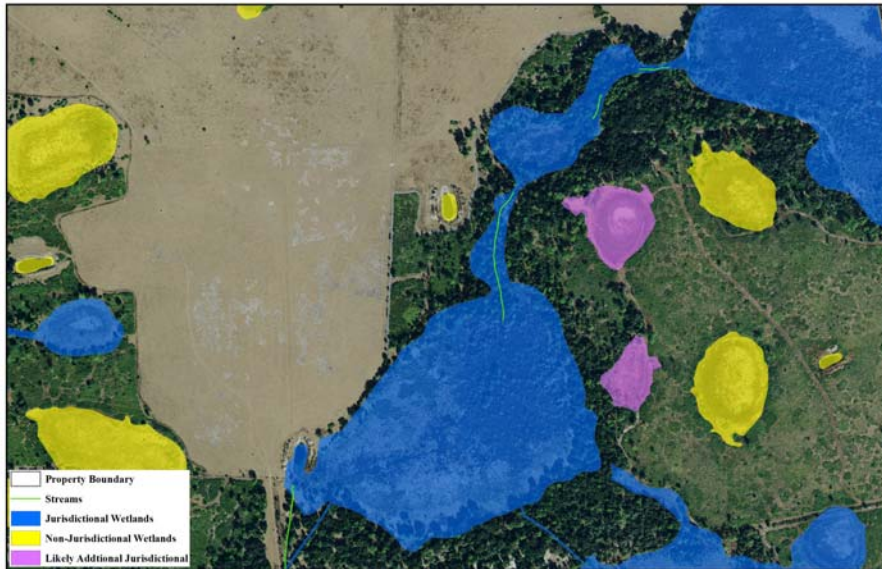
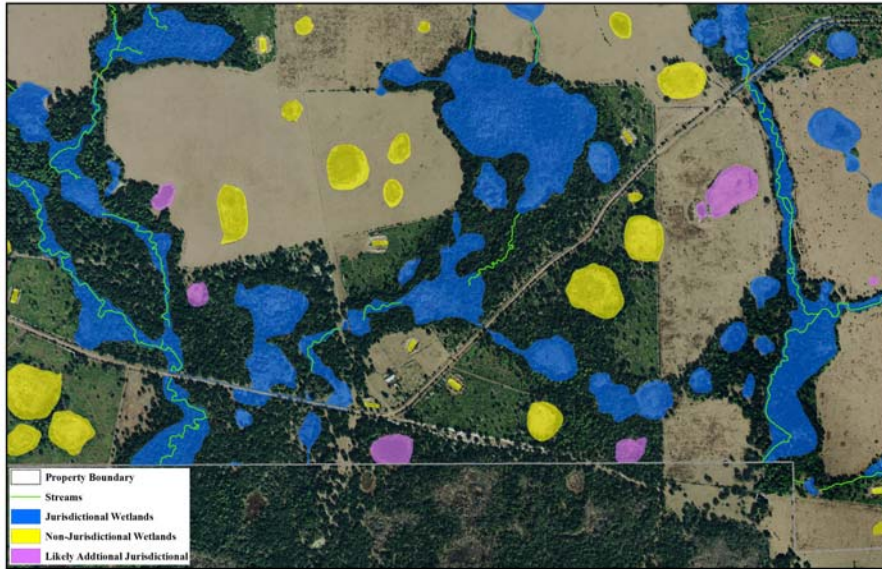
Summary of Changes in Jurisdiction

- Significant Nexus necessary to exert jurisdiction over “Other Waters”
- Other Waters (geographically isolated wetlands) have “connectivity” in the sense that they are the first line of defense in protecting streams from polluted waters.
- ***“... it is difficult to generalize about their effects on downstream waters from the currently available literature... for certain functions (e.g., sediment removal and water storage), downstream effects arise from wetland isolation rather than connectivity.”***
- These wetlands may also be aggregated to evaluate their effects on downstream waters.

Jurisdiction Under Rapanos Guidance



Result of Changes in Jurisdiction



Effects of Draft Rule Application

- 50 acres of additional jurisdiction on example project
- Average functional score of 0.65 = 32.5 units
- Average per unit cost of mitigation bank credits in the basin is \$141,500
- Total cost of \$4.6 Million
- Effects on smaller projects could also include substantially increased permitting timeframes, increased public scrutiny, potential redesign, etc.

