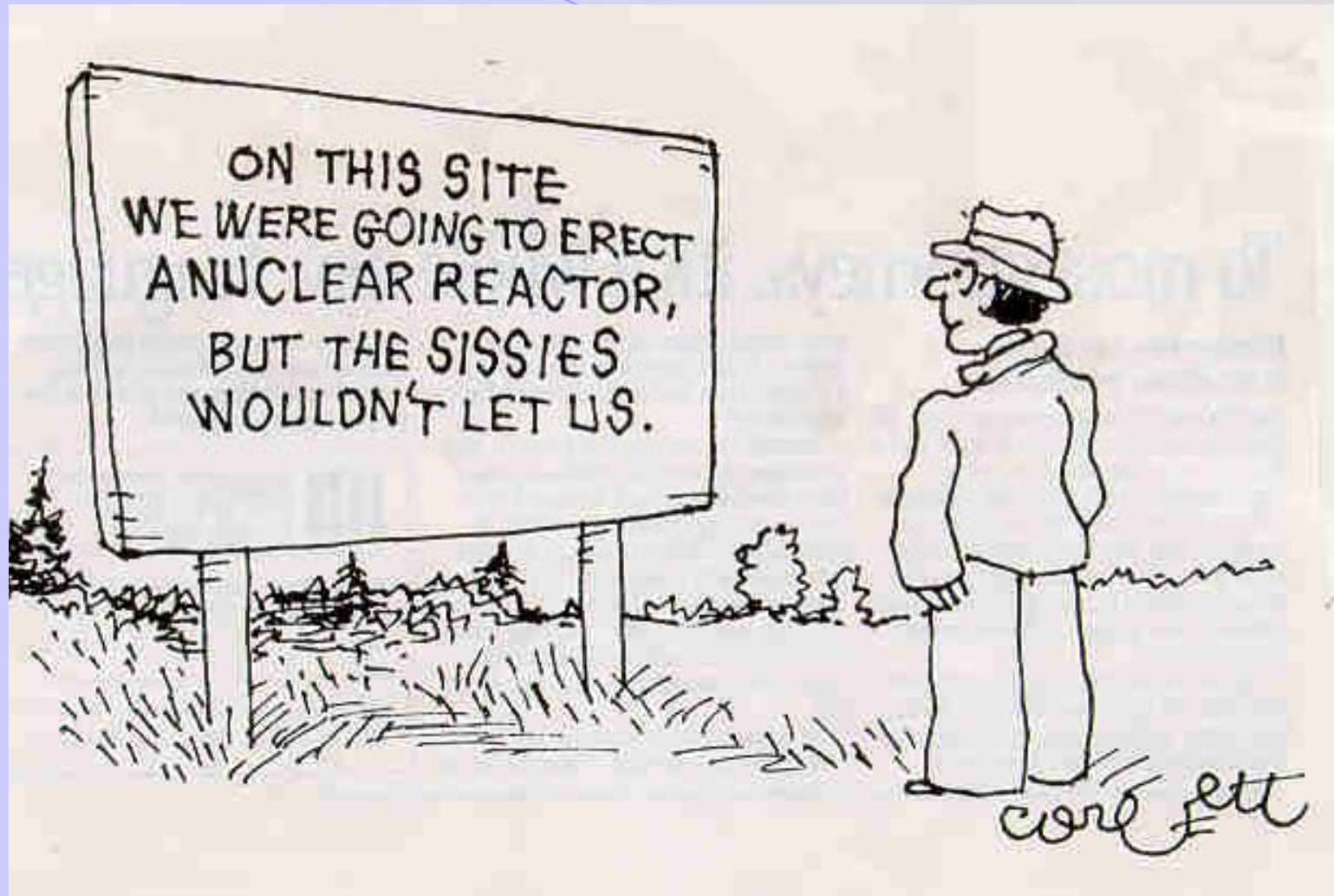


An Introduction to Wetlands Law



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Wetland Functions and Values

Prevent flooding and erosion

Filter out harmful pollutants

Habitat for endangered species

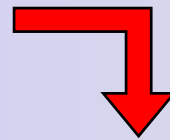
**Nesting grounds for birds and spawning
grounds for commercial fish**

Source of recreation and income

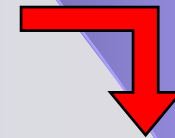


Wetland Losses in Conterminous United States

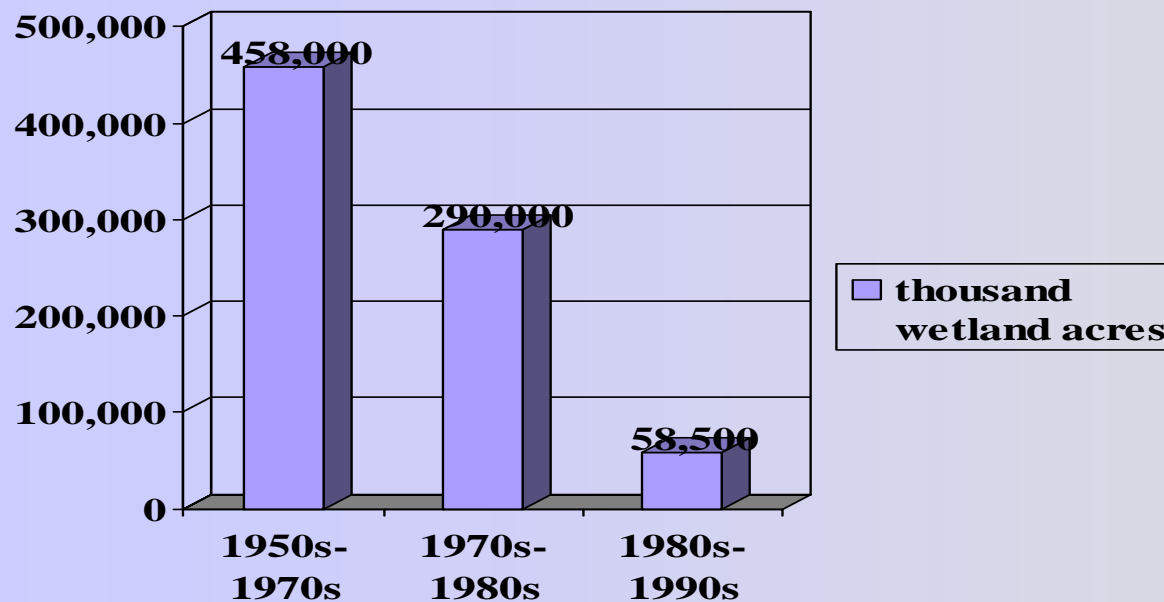
1700's: 221 million acres



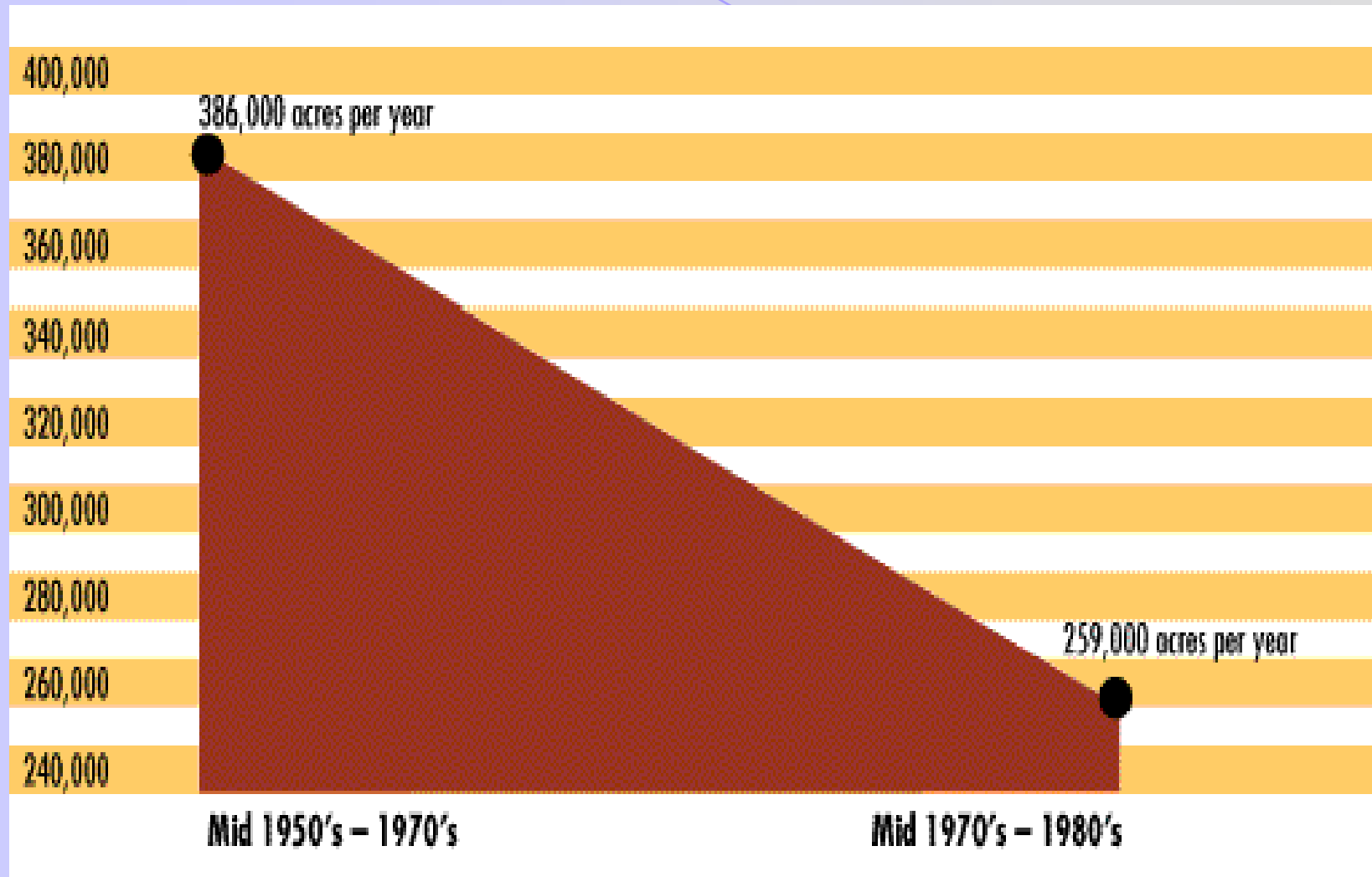
1990's: 105.5 million acres

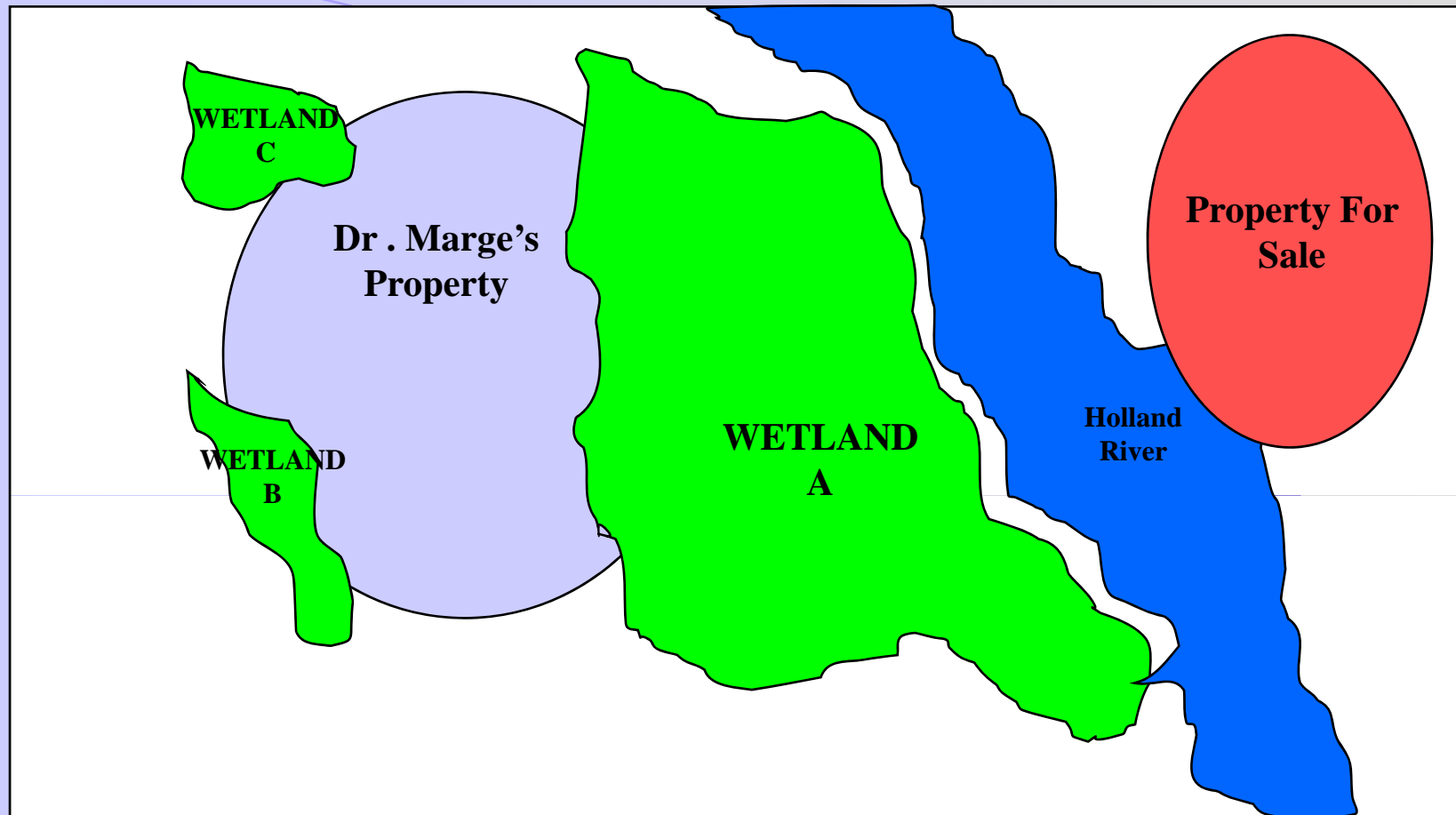


52% loss



Southeast Wetland Losses





1. Does Corps have jurisdiction over Holland River?
2. Does Corps have jurisdiction over Wetland A? B? C?
3. Does Dr. Marge need a permit to develop on her property?

Corps Authority to Regulate Wetlands

Section 10 of Rivers & Harbors Act – Corps can regulate “navigable waters” & should consider ecological & conservation factors when issuing a permit.

Section 404 of Clean Water Act – Corps/EPA can regulate discharge of dredged & fill material into “waters of the United States” . . . All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce.

Section 10 of Rivers & Harbors Act –

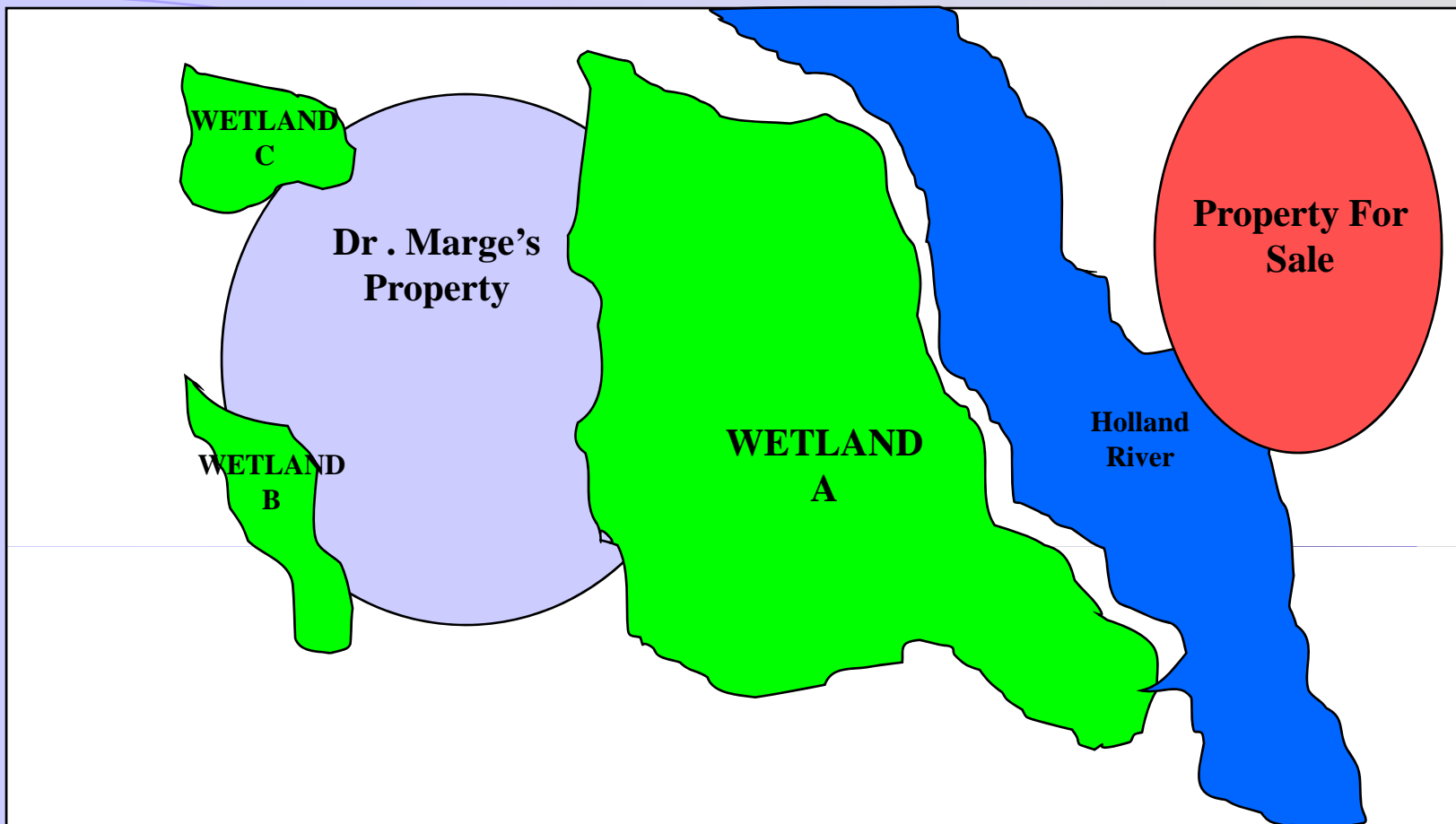
(1899)

- **Corps**
- **Regulate obstruction to Navigation**
- **“navigable waters”**
- **Should consider ecological & conservation factor when issuing a permit.**

Section 404 of Clean Water Act –

(1972)

- **Corps/EPA**
- **Regulate discharge of dredged & fill material**
- **into “waters of the United States”**
All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce.



What do you first ask?

- 1. Are the areas wetlands?**
- 2. Is your activity covered by federal law?**
- 3. If so, what type of permit do you need?**

“Waters of the United States”

- **Navigable Waters**
- **Interstate Waters**
- **Other Waters, The Use, Degradation or Destruction Of Which Could Effect Interstate Commerce**
- **Impoundments**
- **Tributaries To Any Of The Above**
- **Territorial Seas**

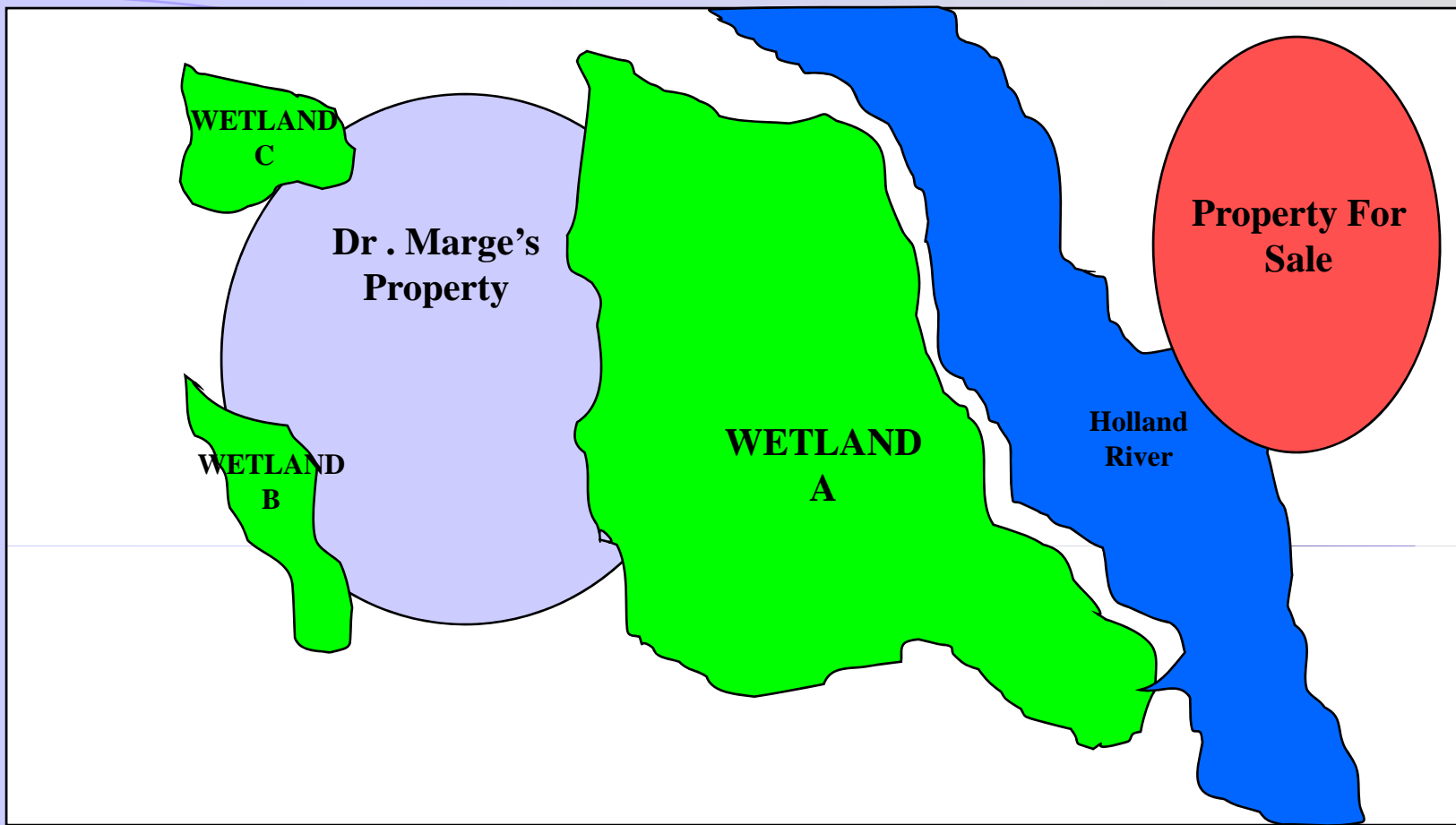
And,

Wetlands Adjacent To Any Of The Above

What is a Wetland?

Corps/EPA:

“areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”



2. Is your activity covered by federal law?

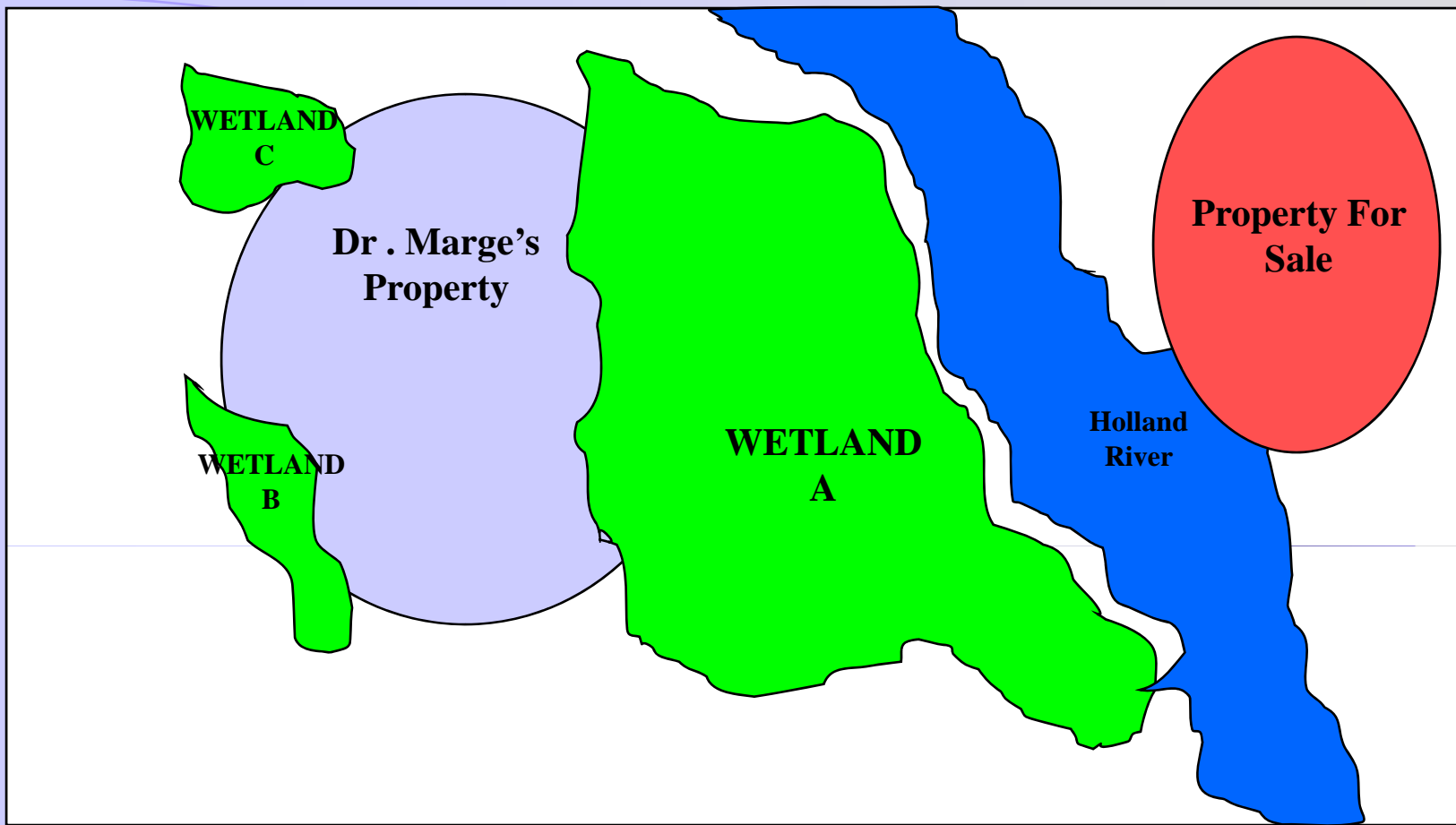
Exemptions under the Clean Water Act

Normal farming

Silviculture

Ranching

Emergency reconstruction



3. If you're not exempt, what type of permit do you need?

Types of Permits Available from Corps

General Permit

State/Regional/Nationwide

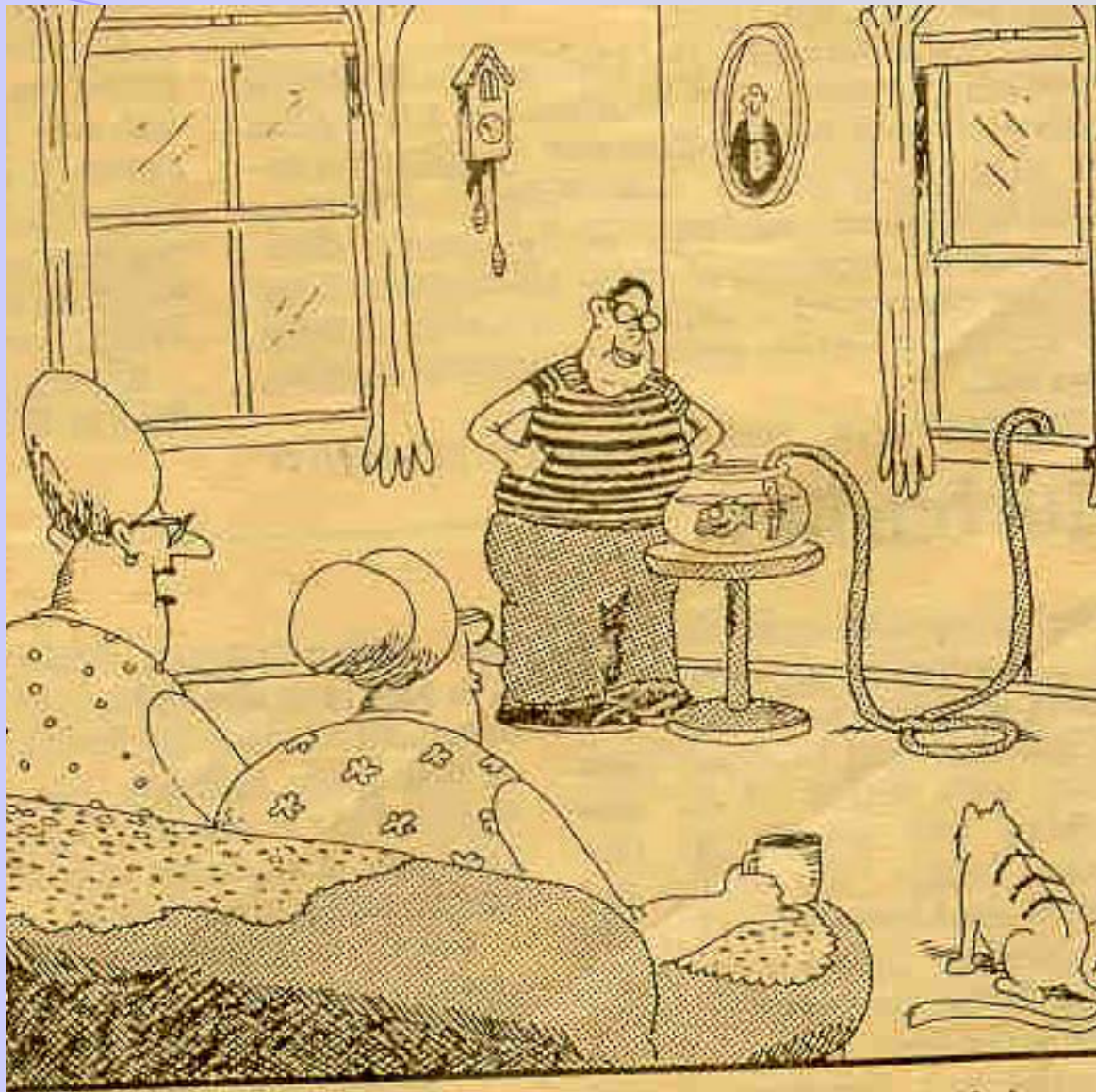
Granted for CATEGORY of activity if:

similar in nature

minimal adverse individual effects

minimal adverse cumulative effects

Individual Permit



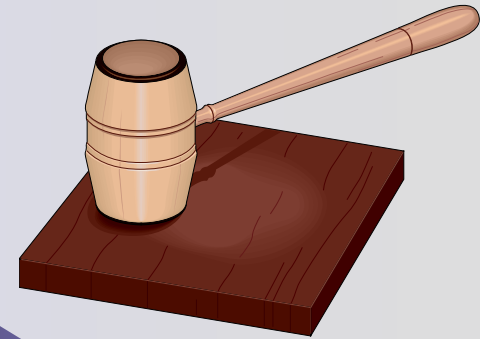
"Oh, there goes Lenny again — draining off the goldfish bowl. . . . He wants to one day work for the Army Corps of Engineers, you know."

REGULATORS



(1986) Corps Guidance

****including “migratory bird rule”**



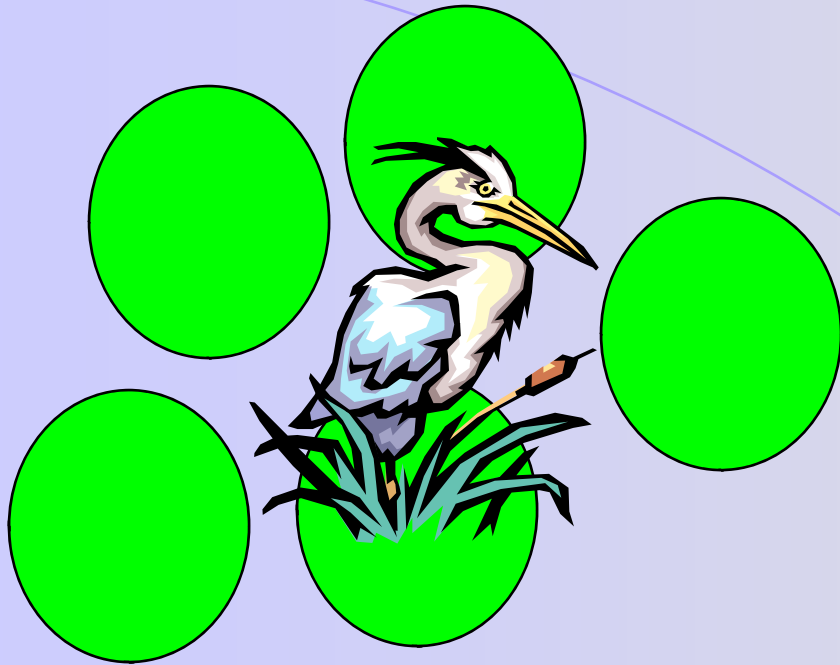
(1990-1993) Circuits Split over Corps Jurisdiction

“waters of the United States”

All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce.

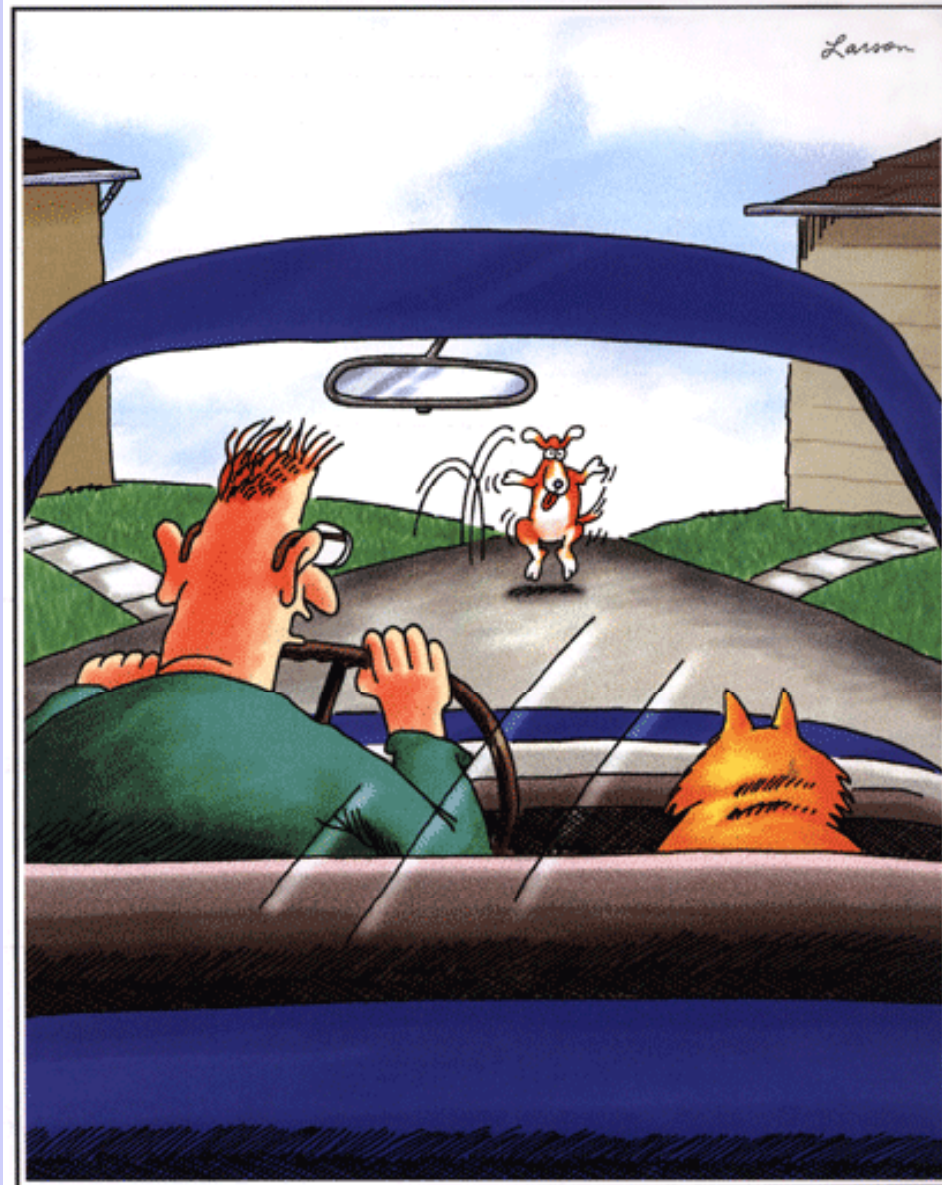


(2001) Solid Waste Agency of Northern Cook County v. Corps
“SWANCC”

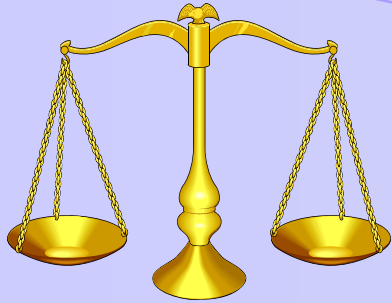


SWANCC:

**Based on lack of authority under the CWA,
Corps could no longer claim jurisdiction of
intrastate isolated nonnavigable waterways
using the migratory bird rule**



"Well, look who's excited to see you back from being de-clawed."



What happens now?

- **How far will the courts go to find a navigable water connection?**
- **Corps must establish a sufficient nexus between the subject water body and a navigable water.**
- **How will courts interpret adjacency?**

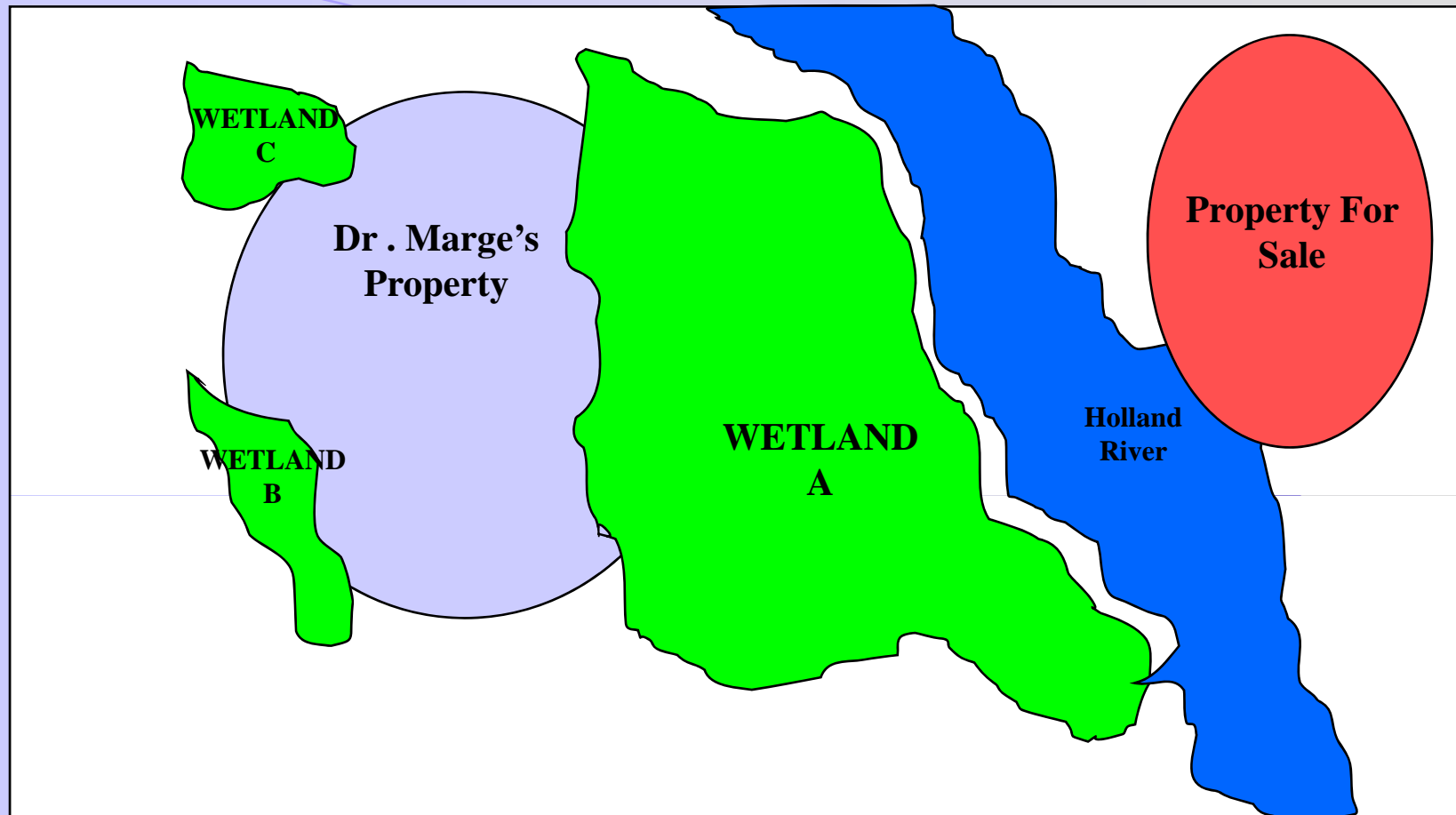
Ditch Construction in Wetlands



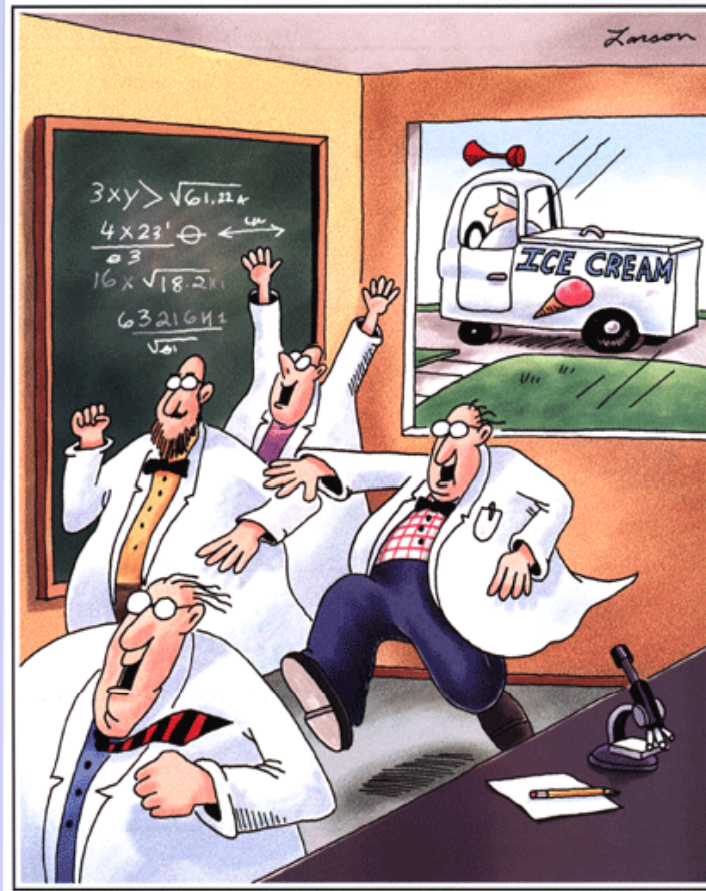
**The Tulloch Rule &
“Incidental Fallback”**

Primary causes of wetland loss in Mississippi

- Conversion to agriculture
- Commercial and residential development
- Agricultural and industrial runoff
- Highway and flood control projects



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We all must be diligent!

Sea Grant Legal Program

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