



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): December 23, 2020

ORM Number: LRB-2020-00700

Associated JDs: N/A

Review Area Location¹:

State/Territory: NY City: Binghamton and the Town of Vestal County: Broome County
Center Coordinates of Review Area: Latitude 42.091145, Longitude -75.939783

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list **MUST** be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A	N/A	N/A	N/A

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters)³

(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A	N/A	N/A	N/A

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
Stream 6	347 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Stream 6 appears on the USGS map as an intermittent stream and can be seen on all aerial photographs in the same general location as indicated on the USGS map. Stream 6 begins outside of the review area and can be seen on aerial photographs, it then flows through two culverts within the study area, under Vestal Avenue and NYS Route 434 and empties into the Susquehanna River, Stream 13. Water can be seen in aerial photographs from 2011 and 2013 and no water in the photo from 2017, water flow was also evident during 2016 site visits by the consultant but was not evident during a site visit in 2020. The APT was run (see

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			Section III, B for details) and the channel appears to have water in it during the wet months and does not flow during dry months. Water can be seen within the channel on aerial photographs from 10/5/2011 and 5/13/2015 and was also present during the original delineation between 10/24/2016 and 11/1/2016, which are all occurred during the wet season according to the APT. Water is not present in aerial photography dated 10/2/2017 which was taken during drier than normal conditions and during the consultants visit on 7/30/2020 which was conducted during the dry season. Based on aerial photographs and onsite observations Stream 6 contributes flow directly to the Susquehanna River for several months each year but does not have perennial flow.
Stream 7	51 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Stream 7 does not appear on the USGS map as an intermittent stream but can be visibly seen from aerial photographs. Stream 7 abuts Wetland CC and then flows under NYS Route 434 and into the Susquehanna River. Water can be seen in aerial photographs from 2011 and 2013 and no water in the photo from 2017, water flow was also evident during in 2016 site visits by the consultant but was not evident during a site visit in 2020. The APT was run (see Section III, B for details) and the channel appears to have water in it during the wet months and does not flow during dry months. Water can be seen within the channel on aerial photographs from 10/5/2011 and 5/13/2015 and was also present during the original delineation between 10/24/2016 and 11/1/2016, which are all occurred during the wet season according to the APT. Water is not present in aerial photography dated 10/2/2017 which was taken during drier than normal conditions and during the consultants visit on 7/30/2020 which was conducted during the dry season. Based on the aerial photographs and onsite observations Stream 7 contributes flow directly to the Susquehanna River for several months each year but does not have perennial flow.
Stream 8	45 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Stream 8 appears on the USGS map as a perennial stream and can be seen on all aerial photographs in the same general location as indicated on the USGS map. The only portion of Stream 8 within the review area is located from a culvert under NYS Route 434 until it reaches the Susquehanna River. In all aerial photographs and during all site visits, the stream had flow to include water being present on the aerial photograph from 10/2/2017, when according to the APT (see Section III, B for details) conditions were drier than normal. Based on the stream having flow even during drier than normal conditions, having water present in each aerial photograph, and flow being present during each site visit by the consultant, Stream 8 contributes

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			flow directly into the Susquehanna River throughout the year.
Stream 13	4,500 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Stream 13 is the Susquehanna River, which appears on all aerial photography, USGS maps, and all other resources as a perennial tributary. The Susquehanna River flows from New York, through Pennsylvania, and into Maryland, where it empties directly into the Chesapeake Bay, an embayment of the Atlantic Ocean.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):

(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A	N/A	N/A	N/A

Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland CC	0.117 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland CC is adjacent to and touches Stream 7, an intermittent a(2) stream which flows into the Susquehanna River.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Stream 1	100 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 1 is an ephemeral feature. The ephemeral nature of the feature was determined by evaluation of historic aerial photographs, photographs taken at the time of the delineation, and on-site observations by the delineator indicating that water only flows through the ephemeral feature after rainfall events and snow melt. The stream consists of a man-made channel that contains the flow and receives most of its flow from the stormwater system of the road on the upstream end of the feature and then the channel becomes undefined, but likely contributes water to Wetland C. The channel has a bedrock bottom and soils are classified as non-hydric (0% hydric rating according to the soil survey). Other than the shallow concave channel, no obvious indication of flow was observed during the delineation, site visit or on aerial photos.
Stream 2	99 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 2 is an ephemeral feature. The ephemeral nature of the feature was determined by evaluation of historic aerial photographs, photographs taken at the time of the delineation, and on-site observations by the delineator indicating that water only flows through the ephemeral feature after rainfall events and snow melt. The stream consists of a man-made metal corrugated metal half pipe which contains the flow, receives most of its flow from the stormwater system of the road on the upstream end of the feature, and water passes through a culvert before emptying into the

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			Susquehanna River. Under the corrugated metal, the channel has a bedrock bottom and soils are classified as non-hydric (0% hydric rating according to the soil survey). Other than the corrugated metal constructed channel, no obvious indication of flow was observed during the delineation, site visit or on aerial photos.
Stream 3	104 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 3 is an ephemeral feature. The ephemeral nature of the feature was determined by evaluation of historic aerial photographs, photographs taken at the time of the delineation, and on-site observations by the delineator indicating that water only flows through the ephemeral feature after rainfall events and snow melt. The stream consists of a man-made channel which contains the flow, receives most of its flow from the stormwater system of the road on the upstream end of the feature, and water passes through a culvert before emptying into the Susquehanna River. Under the corrugated metal, the channel has a bedrock bottom soils are classified as non-hydric (0% hydric rating according to the soil survey). Other than the corrugated metal constructed channel, no obvious indication of flow was observed during the delineation, site visit or on aerial photos.
Stream 4	103 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 4 is an ephemeral feature. The ephemeral nature of the feature was determined by evaluation of historic aerial photographs, photographs taken at the time of the delineation, and on-site observations by the delineator indicating that water only flows through the ephemeral feature after rainfall events and snow melt. The stream consists of a man-made metal corrugated metal half pipe which contains the flow, receives most of its flow from the stormwater system of the road on the upstream end of the feature, and water passes through a culvert before emptying into the Susquehanna River. Under the corrugated metal, the channel has a bedrock bottom and soils are classified as non-hydric (0% hydric rating according to the soil survey). Other than the corrugated metal constructed channel, no obvious indication of flow was observed during the delineation, site visit or on aerial photos.
Stream 5	227 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 5 is an ephemeral feature. The ephemeral nature of the feature was determined by evaluation of historic aerial photographs, photographs taken at the time of the delineation, and on-site observations by the delineator indicating that water only flows through the ephemeral feature after rainfall events and snow melt. The stream consists of a man-made channel which contains the flow, receives most of its flow from the stormwater system of the road on the upstream end of the feature, and water passes through a culvert before emptying into the Susquehanna River. The channel has a bedrock bottom and soils are classified as non-hydric (0% hydric rating according to the soil survey). Other

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			than the shallow concave bedrock channel, no obvious indication of flow was observed during the delineation, site visit or on aerial photos.
Stream 9	31 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 9 is an ephemeral feature. The ephemeral nature of the feature was determined by evaluation of historic aerial photographs, photographs taken at the time of the delineation, and on-site observations by the delineator indicating that water only flows through the ephemeral feature after rainfall events and snow melt. The stream consists of a man-made channel which contains the flow, receives most of its flow from the stormwater system of the road on the upstream end of the feature, and water only flows from a culvert before emptying into the Susquehanna River. The channel has a bedrock bottom and soils are classified as non-hydric (0% hydric rating according to the soil survey). Other than the shallow concave channel, no obvious indication of flow was observed during the delineation, site visit or on aerial photos.
Stream 10	40 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 10 is an ephemeral feature. The ephemeral nature of the feature was determined by evaluation of historic aerial photographs, photographs taken at the time of the delineation, and on-site observations by the delineator indicating that water flows through the ephemeral feature after rainfall events and snow melt. The stream consists of a man-made channel which contains the flow, receives most of its flow from the stormwater system of the road on the upstream end of the feature, and water only flows from a culvert before emptying into the Susquehanna River. The channel has a bedrock bottom and soils are classified as non-hydric (0% hydric rating according to the soil survey). Other than the shallow concave channel, no obvious indication of flow was observed during the delineation, site visit or on aerial photos.
Stream 11	28 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 11 is an ephemeral feature that was constructed as a portion of the stormwater system for the city, the stormwater system has been rerouted and the stream only sees occasional flow during rain or snow events only. The ephemeral nature of the feature was determined by evaluation of historic aerial photographs, photographs taken at the time of the delineation, and on-site observations by the delineator indicating that water only flows through the ephemeral feature after rainfall events and snow melt. The stream consists of a man-made channel which contains the flow, receives most of its flow from the stormwater system of the road on the upstream end of the feature, and flows from a culvert before emptying into the Susquehanna River. The channel soils are classified as non-hydric (0% hydric rating according to the soil survey). Other than the shallow concave channel, no obvious indication of flow was observed during the

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			delineation, site visit or on aerial photos.
Stream 12	24 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 12 is an ephemeral feature. The entire stream channel is located in the review area and the stream channel begins at the outlet of a culvert and empties into the main channel of Stream 6. The ephemeral nature of the feature was determined by evaluation of historic aerial photographs, photographs taken at the time of the delineation, and on-site observations by the delineator indicating that water only flows through the ephemeral feature after rainfall events and snow melt. The stream consists of a man-made channel which contains the flow, receives most of its flow from the stormwater system of the road on the upstream end of the feature, and water empties into Stream 6. The channel has a bedrock bottom and soils are classified as non-hydric (0% hydric rating according to the soil survey). Other than the shallow concave channel, no obvious indication of flow was observed during the delineation, site visit or on aerial photos.
Wetland A	0.045 acres	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	Wetland A is a roadside ditch system between Route 434 and a steep slope. According to the USDA Soil Survey soils are Chenango and Howard gravelly loams with 25 to 40 percent slopes, a hydric rating of 0%, and no rating for flooding or ponding frequency. The ditch was constructed in upland soils and was not constructed in a relocated tributary.
Wetland B	0.034 acres	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	Wetland B is a roadside ditch system between Route 434 and a steep slope. According to the USDA Soil Survey soils are Chenango and Howard gravelly loams with 25 to 40 percent slopes, a hydric rating of 0%, and no rating for flooding or ponding frequency. The ditch was constructed in upland soils and was not constructed in a relocated tributary.
Wetland C	1.003 acres	(b)(1) Non-adjacent wetland	Wetland C does not abut any (a)(1)-(a)(3) water. The nearest (a)(1)-(a)(3) waters are unnamed tributaries to the Susquehanna River, Stream 7 to the east, and Stream 6 to the west. Wetland C does not abut either of these waters. Wetland C is not inundated by any a(1)-a(3) water during a typical year. Wetland C lies between a man-made four lane highway, a steep embankment and a US Army Corps of Engineer (USACE) levy system. Wetland C is located within a Zone B flood zone as designated by the Federal Emergency Management Agency (FEMA), which is defined by FEMA as an area that may flood during 100 year to 500-year flood events. There is no evidence to indicate that the nearest a(1)-a(3) waters, Stream 6 or Stream 7, inundate any part of Wetland A during a typical year. Wetland C and Stream 6 are separated by a USACE levy system designed to keep the waters separate up to a 500-year storm event. Stream 7 is approximately a

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			<p>five-foot drop in elevation and would need to exceed a 100-year flood event to inundate Wetland C. There is no evidence of Wetland C being inundated during any year.</p> <p>Wetland C is not separated from an adjacent water by a natural berm or feature. Wetland C is generally triangular with the northern and eastern edges of the wetland contained by manmade features and the southern edge of the wetland contained by a steep embankment.</p> <p>Wetland C is separated from potential adjacent waters by manmade features. As stated above, Wetland C is bordered on two sides by manmade features. The four-lane divided highway to the north does not have a culvert under the road which connects the wetland to anything on the northern side of the road. The wetland is separated from Wetland CC by the USACE levy system, which is designed to be impermeable and not allow water to pass through the levy, there are no culverts or other connections between Wetland C and other waters.</p>
Wetland D	0.033 acres	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	Wetland D is a roadside ditch system between Route 434 and a steep slope. According to the USDA Soil Survey soils are Middlebury silt loam with a hydric rating of 0%, an occasional rating for flooding, and no rating for ponding frequency. The ditch was constructed in upland soils and was not constructed in a relocated tributary.
Wetland E	0.043 acres	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	Wetland E is a roadside ditch system between Route 434 and the USACE levy system, which runs parallel to the road at this location. According to the USDA Soil Survey soils are Middlebury silt loam with a hydric rating of 0%, an occasional rating for flooding, and no rating for ponding frequency. The ditch was constructed in upland soils and was not constructed in a relocated tributary.
Wetland EE	0.02 acres	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	Wetland EE is a roadside ditch system between Route 434 and the USACE levy system, which runs parallel to the road at this location. According to the USDA Soil Survey soils are Middlebury silt loam with a hydric rating of 0%, an occasional rating for flooding, and no rating for ponding frequency. The ditch was constructed in upland soils and was not constructed in a relocated tributary.
Wetland F	0.098 acres	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	Wetland F is a roadside ditch system between Route 434 and commercial parking lots. According to the USDA Soil Survey soils are Unadilla silt loam with a hydric rating of 0%, and no rating for flooding or ponding frequency. The ditch was constructed in upland soils and was not constructed in a relocated tributary.

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III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

Information submitted by, or on behalf of, the applicant/consultant: *Wetland Assessment and Delineation Report, prepared by Shumaker Consulting Engineering and Land Surveying dated May 2018.*

This information is not sufficient for purposes of this AJD.

Rationale: *The JD submittal was initially prepared by the consultant to be reviewed under previous rules and did not contain specifics related to the NWPR. Additional information, specifically relating to the flow regime of the delineated waters had to be obtained by the consultant to be able to make a determination under the NWPR, this information was provided in emails with attachments that are included in the public record.*

Data sheets prepared by the Corps: *Title(s) and/or date(s).*

Photographs: *Aerial Photographs: Google Earth Pro dated: 10/5/2011; 5/13/2015; and 10/2/2017. Photographs provided by the consultant in the wetland delineation and photographs taken during a consultant site visit with NYS DEC on 8/25/2020.*

Corps Site visit(s) conducted on: *Date(s).*

Previous Jurisdictional Determinations (AJDs or PJDs): *ORM Number(s) and date(s).*

Antecedent Precipitation Tool: The APT was run for each aerial photograph, as well as each date of photo provided by the consultant.

USDA NRCS Soil Survey: *USDA Web Soil Survey (<https://websoilsurvey.nrcs.usda.gov/app/>) Accessed December 14, 2020.*

USFWS NWI maps: *National Wetland Inventory Map (<https://www.fws.gov/wetlands/data/Mapper.html>) accessed December 14, 2020.*

USGS topographic maps: *1:24K, Binghamton West Quad.*

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	NYS Wetland Map (NYSDEC Environmental Resource Mapper website accessed December 14, 2020) https://gisservices.dec.ny.gov/gis/erm/
Other Sources	FEMA Firm Map 3600380002C accessed December 14, 2020 from https://hazards-fema.maps.arcgis.com/apps/webappviewer/index.html?id=8b0adb51996444d4879338b5529aa9cd

B. Typical year assessment(s):

The APT pulls precipitation data from NOAA's Daily Global Historical Climatology Network. The APT evaluates normal precipitation conditions based on the three 30-day periods preceding the

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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observation date. For each period, a weighted condition value is assigned by determining whether the 30-day precipitation total falls within, above, or below the 70th and 30th percentiles for totals from the same date range over the preceding 30 years. The APT then makes a determination of “normal,” “wetter than normal,” or “drier than normal” based on the condition value sum. The APT also displays results generated via the Palmer Drought Severity Index and the University of Delaware WebWIMP.

The attached table summarizes the APT results for each aerial photograph reviewed and three site visits by the consultant. This information is referenced above.

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition
42.088886	-75.936823	10/5/2011	7.83	Extreme wetness	Wet Season	17	Wetter than Normal
42.088886	-75.936823	5/13/2015	-1.79	Mild drought	Wet Season	11	Normal Conditions
42.088886	-75.936823	10/24/2016	-0.28	Normal	Wet Season	14	Normal Conditions
42.088886	-75.936823	11/1/2016	-0.6	Incipient drought	Wet Season	13	Normal Conditions
42.088886	-75.936823	1/31/2017	0.49	Normal	Wet Season	15	Wetter than Normal
42.088886	-75.936823	10/2/2017	0.71	Normal	Wet Season	8	Drier than Normal
42.088886	-75.936823	8/25/2020	0.91	Mild wetness	Dry Season	12	Normal Conditions

C. Additional comments to support AJD:

The USGS Map (ORM) showed no wetlands at the project site, but there is a small depression indicated by contour lines at the location of Wetland C and both Stream 6 and Stream 8 appear on the USGS map. The NWI wetland map (ORM) shows a potential wetland at the location of Wetland C and both Stream 6 and Stream 8. The NRCS soils maps show the entire project area to be contain 0% of hydric elements, ponding frequency as none, and flooding frequency as occasional for the eastern end of the project site. The NYSDEC Environmental Resource Mapper shows no wetlands in the vicinity of the project site. The FEMA Firm map shows that the far eastern side of the review area includes Zone B flood hazard, where flooding may be expected between a 100 and 500 year flood, with the majority of the review area in Zone X, where flooding is only expected in an event greater than a 500 year flood. The flood zone map helps demonstrate that wetlands CC (which is jurisdictional since it is adjacent to Stream 7), D, E, and EE are only inundated by a(1)-a(3) waters between 100 year and 500 year floods and that it is unlikely that these wetlands are inundated by a(1)-a(3) waters in a typical year, all other wetlands are in Zone X and outside of the 500 year flood zone.

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

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