



**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): 2/18/2021

ORM Number: MVP-2020-01621-BGO

Associated JDs: MVP-2020-01621-BGO Delineation Concurrence, TH 169 Redefine (TH 10/101to 197th Ave.) SP 7106-87 Wetland Delineation Report, May 2020

Review Area Location¹: State/Territory: Minnesota City: Elk River County/Parish/Borough: Sherburne County

Center Coordinates of Review Area: Latitude 45.297551 Longitude -93.551415

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
- ☐ 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.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination	
N/A.	N/A.	N/A.	N/A.	N/A.

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.	N/A.

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 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.



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Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴ The review area for this determination contains four wetlands labeled as Wetlands 1 through 4 on the attached figures labeled as 2020-01621-BGO AJD Attachments, Pages 1-12 of 12. The southern portion of the review area is located along Zane Street NW and the northern portion of the review area is located south of Evans Street NW, east of Trunk Highway (TH) 169 in the city of Elk River, MN.			
Exclusion Name	Exclusion Size		Exclusion ⁵
Wetland 1, Wetland 2, Wetland 3	0.64	acre(s)	(b)(1) Non-adjacent wetland.
			<p>Wetlands 1-3 are three separate isolated wetland basins located in the southern portion of the review area in-between TH 169 and a large commercial development on the east side of the highway. All three wetlands are surrounded by uplands and do not have a direct hydrologic surface connection to potential downstream waters.</p> <p>Wetlands 1 and 2 are in a depressional area next to the Park and Ride facility on TH 169 and are bounded by constructed slopes to the east and west. The delineation also noted topographic breaks along the north and south boundaries of both wetlands and no apparent surface water outlets were observed.</p> <p>Wetland 3 is in a depressional area at the south end of the review area and is bounded by a constructed berm to the north and a parking area to the south. The surrounding area along the highway was also investigated in a separate delineation report prepared for the TH 169 Reconstruction Project in May 2020. The nearest aquatic resource identified in that report is a roadside ditch wetland located approximately 250 feet to the southwest. The entire area between Wetland 3 and the roadside ditch was delineated as uplands and no apparent surface water outlets or connections were observed between these aquatic resources.</p> <p>Based on this review, Wetlands 1-3 are not</p>

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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Excluded waters ((b)(1) – (b)(12)):⁴ The review area for this determination contains four wetlands labeled as Wetlands 1 through 4 on the attached figures labeled as 2020-01621-BGO AJD Attachments, Pages 1-12 of 12. The southern portion of the review area is located along Zane Street NW and the northern portion of the review area is located south of Evans Street NW, east of Trunk Highway (TH) 169 in the city of Elk River, MN.

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			jurisdictional under the Navigable Waters Protection Rule (NWPR) because they meet the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). The assessed wetlands do not abut jurisdictional waters, are not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and are not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.
Wetland 4	10.73	acre(s)	<p>(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.</p> <p>Wetland 4 is a small natural pond located in the northern portion of the review area on the east side of TH 169. The pond is surrounded by upland development and is identified as an isolated basin on USGS Topographic Maps. National Wetland Inventory data describes the hydrogeomorphic classification of the pond as <i>Terrene Pond Vertical</i>, also indicating the pond is geographically isolated and lacking a channelized outlet. These classifications are supported by the delineation which identified several storm sewer inlets from surrounding developments, but no apparent surface water outlets or connections to potential downstream waters.</p> <p>Based on this review, Wetland 4 is not jurisdictional under the NWPR because it meets the requirements of the exclusion for non-jurisdictional lakes, ponds, and impoundments under paragraph (b)(1). The assessed pond is an isolated basin that does not contribute surface water flow to a downstream jurisdictional water and is not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment. This was confirmed by reviewing the data sources in Section III.A.</p>

III. SUPPORTING INFORMATION



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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: [TH 169 REDEFINE Level 2 Wetland Delineation Report, November 6, 2020](#)

This information [is](#) sufficient for purposes of this AJD.

Rationale: [N/A](#)

☐ Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).

☒ Photographs: [Aerial: 2017 FSA and Google Earth Imagery, 1991-2020](#)

☐ Corps site visit(s) conducted on: [Date\(s\)](#).

☐ Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\)](#).

☐ Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

☐ USDA NRCS Soil Survey: [Title\(s\) and/or date\(s\)](#).

☒ USFWS NWI maps: [USFWS NWI of MN, 1974-1978](#)

☒ USGS topographic maps: [USGS Topographic Quads \(USA Topo Maps\)](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS/WBD/NHD data/maps	National Hydrography Dataset (USGS Service)
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local wetland inventory maps	DNR NWI Update – MN, 2010-2018
Other Sources	2-Foot Contours Minnesota (LIDAR Service)

B. Typical year assessment(s): [N/A](#)

C. Additional comments to support AJD: [N/A](#)