



**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): 4/15/2021

ORM Number: MVP-2020-01621-BGO

Associated JDs: MVP-2020-01621-BGO, February 18, 2021

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

Center Coordinates of Review Area: Latitude 45.317914 Longitude -93.561022

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.	

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.	

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	
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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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴ The review area for this determination includes 14 roadside ditches labeled as Wet Ditch 6A, 6B, 7, 8, 10, 11A, 11B, 12, 14, 16, 17, 19, 20A, and 20B and three stormwater ponds labeled as Storm Pond 5, 9, and 18 on the attached figures labeled 2020-01621-BGO AJD Attachments, Pages 1-8 of 8.				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wet Ditch 6A, 6B, 7, 8, 10, 11A, 11B, 12, 14, 16, 17, 19, 20A, and 20B	2.76	acre(s)	(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).	The roadside ditches were constructed in uplands to convey runoff from the adjacent roadway and are now linear wetlands that meet the definition of “ditch” under paragraph (c)(2). In addition, the ditches are not (a)(1) waters, are not relocated tributaries, are not constructed in a tributary, and are not constructed in an adjacent wetland. This was confirmed by reviewing aerial photography, national hydrography data, and the wetland delineation report. Based on this review, the assessed ditches are not jurisdictional under the Navigable Waters Protection Rule (NWPR) because they meet the requirements of the exclusion for ditches under paragraph (b)(5).
Storm Pond 5, 9, and 18	0.39	acre(s)	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff.	The stormwater ponds were constructed in uplands to treat runoff from the highway and surrounding developments. This was confirmed by reviewing aerial photography and the wetland delineation report, which shows the stormwater ponds were constructed in predominantly nonhydric soils and previously developed upland areas. Based on this review, the assessed stormwater ponds are not jurisdictional under the NWPR because they meet the requirements of the exclusion for stormwater control features constructed in uplands or non-jurisdictional waters under paragraph (b)(10).

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: TH 169 Redefine, Elk River – Joint Application, April 2020 and TH 169 Redefine (TH 10/101 to 197th Ave.) SP 7106-87 Wetland Delineation Report, May 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).

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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- ☒ 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