DRY LAND APPROVED JURISDICTIONAL DETERMINATION FORM[1]
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): November 9, 2021

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CELRP-RG-S 2021-00285

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: West Virginia County/parish/borough: Berkeley City: Martinsburg
Center coordinates of site (lat/long in degree decimal format): Lat. 39.469823 °, Long. -77.919283 °
Universal Transverse Mercator: 18T, 248873/4372984
Name of nearest waterbody: UNT to Opequon Creek
Name of watershed or Hydrologic Unit Code (HUC): HUC12: 020700040909, Hoke Run-Opequon Creek

- [x] Check if map/diagram of review area is available upon request.
- [ ] Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- [x] Office (Desk) Determination. Date: November 9, 2021
- [x] Field Determination. Date(s): September 22, 2021

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **are no** "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **are no** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

SECTION III: DATA SOURCES.

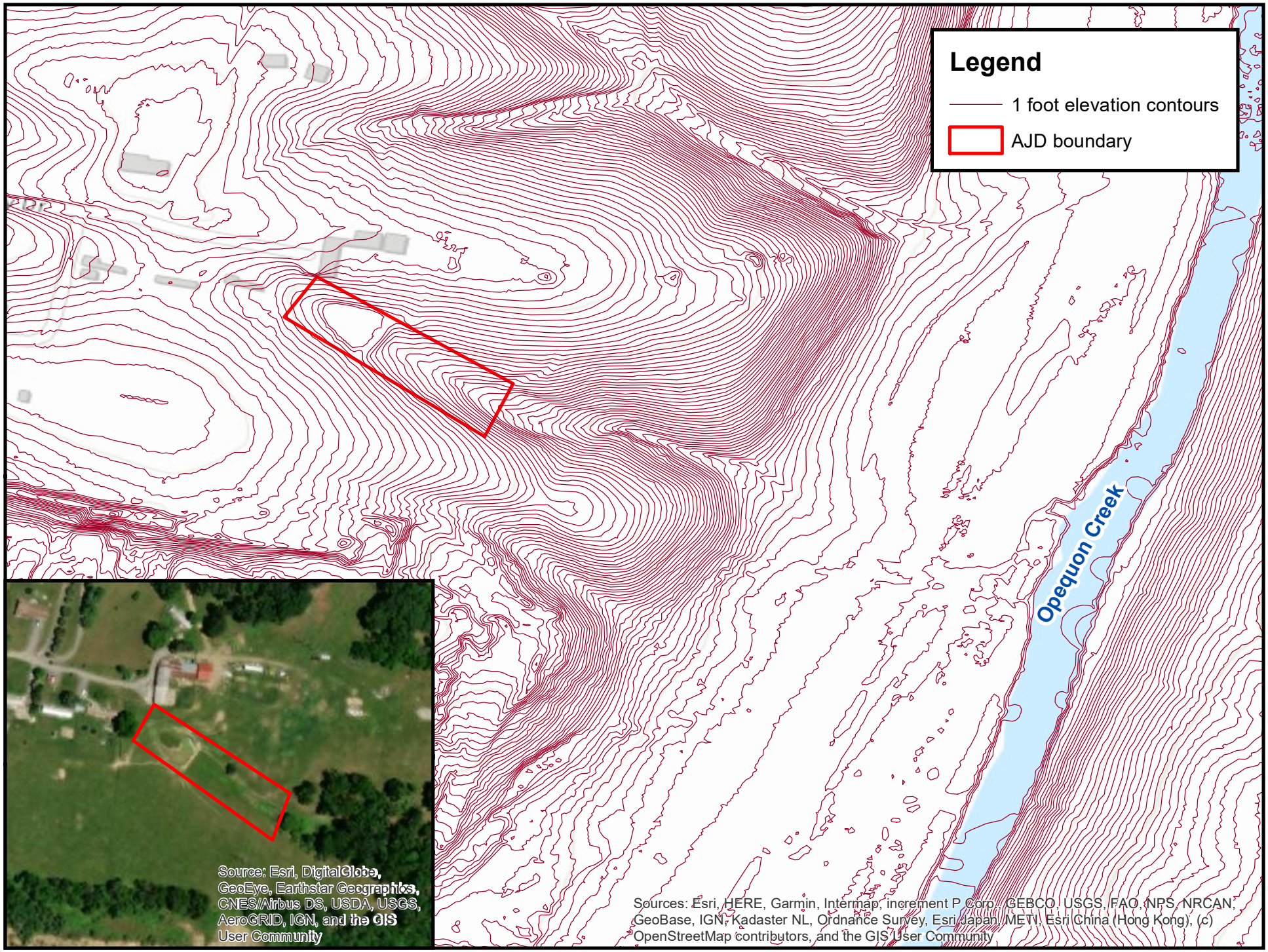
A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- [x] Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Applicant provided an aerial photograph showing the vicinity of the requested JD
- [ ] Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - [ ] Office concurs with data sheets/delineation report.
  - [ ] Office does not concur with data sheets/delineation report.
- [ ] Data sheets prepared by the Corps: *Click here to enter text.*
- [x] U.S. Geological Survey Hydrologic Atlas: HUC 8: 02070004 (Opequon Creek); HUC 12: 02070040909 (Hoke Run-Opequon Creek); NHD data
  - [x] USGS NHD data.
  - [x] USGS 8 and 12 digit HUC maps.
- [x] U.S. Geological Survey map(s). Cite scale & quad name: Martinsburg 2019
- [ ] USDA Natural Resources Conservation Service Soil Survey. Citation: *Click here to enter text.*
- [x] National wetlands inventory map(s). Cite name: USFWS NWI Surface Waters and Wetlands mapper
- [ ] State/Local wetland inventory map(s): *Click here to enter text.*
- [x] FEMA/FIRM maps: FEMA NFHL viewer
- [ ] 100-year Floodplain Elevation is: *Click here to enter text.* (National Geodectic Vertical Datum of 1929)
- [x] Photographs: [x] Aerial (Name & Date): Google Earth: October 2017, September 2015, February 2015, May 2013, May 2010, February 1990
  - [ ] or [x] Other (Name & Date): 22 September 2021
- [ ] Previous determination(s). File no. and date of response letter: *Click here to enter text.*
- [ ] Applicable/supporting case law: *Click here to enter text.*
- [ ] Applicable/supporting scientific literature: *Click here to enter text.*
- [x] Other information (please specify): Weather observations while on-site; Applicant descriptions of AJD area; Antecedent Precipitation Tool

[1] This form is for use only in recording approved JDs involving dry land. It extracts the relevant elements of the longer approved JD form in use since 2007 for aquatic areas and adds no new fields.

B. REQUIRED ADDITIONAL COMMENTS TO SUPPORT JD. EXPLAIN RATIONALE FOR DETERMINATION THAT THE REVIEW AREA ONLY INCLUDES DRY LAND: Mr. Butts is requesting an AJD because his property may contain a stream, and he had begun filling in a portion of this area already. He wished to ensure that work he's done is compliant and to continue filling in the remaining portion of this area to expand his existing pasture land. While visiting the site, it was evident that fill had occurred at the top of a valley. The fill prism extended down sharply to the valley bottom and ended at a fence line under some powerlines which cross the area. Being a valley bottom, it is expected that some sort of water feature has the potential to exist here. Upon walking the area below the fill prism, no sign of water feature was observed: no wetland characteristics (vegetation, hydrology) nor was a stream bed or bank observed. Looking down the valley below the AJD area, the elevation dropped rapidly into a "toe" region of the slope which contained some pooled water (not flowing) near where the valley bottom became a ditched feature which then entered another field/pasture area. Looking back into the AJD area and exploring the valley bottom, there is evidence of flow: particularly the presence of erosional features and some wracking of materials. Though these present evidence that surface flow may occur occasionally, the lack of bed & bank, substrate, or other signs of an identifiable stream (intermittent, perennial, or ephemeral) were not present. Further, my site visit occurred on the heels of a large rain event and it was raining a bit while I was on-site. No surface flow was occurring. Nor did Mr. Butts observe any flow in these areas during the rain event the previous days. In talking with Mr. Butts, he had indicated that he has never observed flow in this stream feature. The top-of-valley area contained a stock pond – this area as well as approximately 250 linear feet of valley bottom are now covered by fill materials. Mr. Butts explained that the pond and valley bottom have never contained flowing water. He further explained that he believed the pond was built to hold ambient accumulating precipitation or meant to be manually filled, as the pond sat pretty much on the top of the hillside and had very little potential of intercepting groundwater flow. I must agree that the pond did not appear to be located in an area which would be likely to receive input from groundwater. No hillside seeps were observed within the AJD boundary area. In looking at remote sensing data, no water features are indicated by any of the sources I had reviewed. The total drainage of this valley bottom appears to drain less than an acre of upland.

Conclusion: Previously filled area contained a stock pond which appeared to have been constructed wholly within upland. The valley bottom does not appear to contain identifiable stream (no bed & bank, no substrate present) or wetland (no hydrophytic vegetation or hydrology indicators present) features. Given that no water features are present, the Corps asserts that the AJD review area only includes dry land.


Legend
1 foot elevation contours
AJD boundary
Opequon Creek
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community
Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community


Facing Southeast looking down valley bottom. Some wracking of materials found as evidence of surface flows, though no identifiable bed & bank of a stream feature.
Facing Northwest looking up valley towards fill prism. Erosional feature and outwash is observed at the bottom of the valley.