



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278-0090

JAN 13 2016

Regulatory Branch

SUBJECT: Permit Application Number NAN-2009-01043-WOR
by Cricket Valley Energy Center LLC

David Klinch
Epsilon Associates Inc.
3 Clock Tower Place, Suite 250
Maynard, Massachusetts 01754

Dear Mr. Klinch:

On March 10, 2015, the New York District of the U.S. Army Corps of Engineers received a request for Department of the Army authorization for the discharge of fill material into waters of the United States in association with the construction of the Cricket Valley Energy Center, including the construction of a 14.6-mile electricity transmission line that would connect to the existing Pleasant Valley Substation. The energy center site is located in the Swamp River watershed, in the Town of Dover, Dutchess County, New York. The proposed utility line would extend from the energy center site, through the Towns of Union Vale, LaGrange and Pleasant Valley, Dutchess County, New York.

By letter dated April 11, 2012, (copy enclosed) this office confirmed the extent of waters of the United States on the site of the proposed Cricket Valley Energy Center. These waters of the United States consist of approximately 26.48 acres of jurisdictional wetlands. Subsequent submittals entitled "Preliminary Site Plan", prepared by The Chazen Companies, dated February 24, 2012, last revised August 10, 2012; and "Overall Grading Plan", prepared by Burns and Roe Enterprises Inc., dated October 6, 2009, and last revised June 6, 2012; indicate that the total impacts to waters of the United States on the proposed energy center site would involve the discharge of fill material into a maximum of 0.083 acres of waters, including wetlands.

The drawings entitled "Wetland Delineation Sketch and Mapped Resources – FILE # NAN- Applicant Name: Cricket Valley Energy Center, LLC Proposed Project: Cricket Valley Transmission Project Location: Dutchess County, New York Figure 2", Sheets 1 of 35 through 35 of 35, dated April 2014, and last revised December 2015, indicate that approximately 0.185 acres of jurisdictional waters would be temporarily impacted in association with the construction of a 14.6-acre overhead electric transmission line, extending from the existing Pleasant Valley substation to the new Cricket Valley Energy Center.

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Based on the information submitted to this office, and accomplishment of notification in accordance with the applicable federal requirements, our review of the project indicates that an individual permit is not required. It appears that the activities within the jurisdiction of this office could be accomplished under Department of the Army Nationwide General Permit Number 39. The nationwide permits are prescribed as a Reissuance of Nationwide Permits in the Federal Register dated February 21, 2012 (77 FR 10184). The work may be performed without further authorization from this office provided the activity complies with the permit conditions listed in Section B, No. 39, Section C, any applicable New York District regional conditions, the following special conditions, and any applicable regional conditions added by the State of New York, copies enclosed.

Special Conditions

(A) In order to protect the Federally-listed endangered Indiana bat (*Myotis sodalis*) and the Federally-listed threatened northern long-eared bat (*Myotis septentrionalis*), the clearing of potential roosting trees shall occur only between October 1 and March 31. The permittee shall minimize site lighting through the use of shielded and downward-facing lighting fixtures. Bright orange construction fencing shall be used to separate areas to be graded from areas to be left undisturbed.

(B) In order to protect the Federally-listed threatened bog turtle (*Clemmys muhlenbergii*), the permittee shall conduct all utility line work in accordance with the document entitled "2014 Rare, Threatened, and Endangered Species Report – Cricket Valley Transmission Project Dutchess County, New York – NYS Public Service Commission Case 13-T-0585", prepared by Epsilon Associates, Inc., dated July 29, 2014, including the provision that a USFWS-approved bog turtle biologist shall monitor activities within potential bog turtle habitat areas. Additionally, on the energy center site, the applicant shall avoid and minimize indirect impacts to the bog turtle through protective measures, such as the placement of continuous slit fence and orange flagging outside of a 100-foot buffer around the wetlands both prior to and during construction.

This determination covers only the work described in the submitted material. Any major changes in the project may require additional authorizations from the New York District.

Care should be taken so that construction materials, including debris, do not enter any waterway to become drift or pollution hazards. You are to contact the appropriate state and local government officials to ensure that the subject work is performed in compliance with their requirements.

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Please note that this nationwide permit (NWP) verification is partially based on a preliminary jurisdictional determination (JD). As discussed above, an approved jurisdictional determination letter was issued for the site of the proposed energy center in a letter dated April 11, 2012. The route of the proposed 14.6-mile power line is the subject of the enclosed preliminary JD. A preliminary JD is not appealable. If you wish, prior to commencement of the authorized work you may request an approved JD, which may be appealed, by contacting the New York District, U.S. Army Corps of Engineers for further instruction. To assist you in this decision and address any questions you may have on the differences between preliminary and approved jurisdictional determinations, please review U.S. Army Corps of Engineers Regulatory Guidance Letter No. 08-02, which can be found at: <http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl08-02.pdf>

This verification is valid until March 18, 2017, unless the nationwide permit is modified, reissued, or revoked. This verification will remain valid until March 18, 2017, if the activity complies with the terms of any subsequent modifications of the nationwide permit authorization. If the nationwide permits are suspended, revoked, or modified in such a way that the activity would no longer comply with the terms and conditions of a nationwide permit, and the proposed activity has commenced, or is under contract to commence, the permittee shall have 12 months from the date of such action to complete the activity.

Within 30 days of the completion of the activity authorized by this permit and any mitigation required by this permit, you are to sign and submit the attached compliance certification form to this office.

In order for us to better serve you, please complete our Customer Service Survey located at <http://www.nan.usace.army.mil/Missions/Regulatory/CustomerSurvey.aspx>.

If any questions should arise concerning this matter, please contact Brian A. Orzel, of my staff, at (917) 790-8413.

Sincerely,


Rosita Miranda
Chief, Western Section

Enclosures

ATTACHMENT

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD):

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:
David Klinch, Epsilon Associates, 3 Clock Tower Place, Suite 250, Maynard, MA 01754

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District, Cricket Valley Energy Center LLC, NAN-2009-01043-WOR

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:
The energy center portion of the project received an approved JD on April 11, 2012, which expires April 11, 2017. This preliminary JD is only for the right of way for the 14.6-mile electrical transmission line that would extend from the energy center to the existing Pleasant Valley Substation.

State: New York County/parish/borough: Dutchess City: Dover, LaGrange, Pleasant Valley, Union Vale
Center coordinates of site (lat/long in degree decimal format):
Lat. 41.7039° N, Long. 73.6463° W.

Universal Transverse Mercator:

Name of nearest waterbody: Wappinger Creek

Identify (estimate) amount of waters in the review area:

Non-wetland waters: linear feet: width (ft) and/or acres.

Cowardin Class:

Stream Flow:

Wetlands: 3 acres.

Cowardin Class: Emergent

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal:

Non-Tidal:

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

Office (Desk) Determination. Date: December 14, 2015

Field Determination. Date(s):

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply)

- checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- 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:
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name:
- USDA Natural Resources Conservation Service Soil Survey. Citation:

- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):
or Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Other information (please specify):

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.


Signature and date of
Regulatory Project Manager

Signature and date of
person requesting preliminary JD

Site number	Latitude	Longitude	Cowardin Class	Estimated amount of aquatic resource in review area	Class of aquatic resource
Wetland 1KK	41.7011	-73.6348	PEM	0.15 acre	non-section 10 – wetland
Wetland 2D	41.7264	-73.7918	PEM	0.65 acre	non-section 10 – wetland
Wetland 2E	41.7288	-73.8044	PSS	0.45 acre	non-section 10 – wetland
Wetland 2J	41.7249	-73.7849	PEM	0.80 acre	non-section 10 – wetland
Wetland 3II	41.6800	-73.5795	PEM	0.15 acre	non-section 10 – wetland
Wetland 4B	41.7039	-73.6463	PEM	0.65 acre	non-section 10 – wetland
Wetland 4E	41.7026	-73.6372	PEM	0.15 acre	non-section 10 – wetland



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CENAN-OP-R

NATIONWIDE PERMIT COMPLIANCE CERTIFICATION AND REPORT FORM

Permittee: Cricket Valley Energy Center LLC

Permit No.: NAN-2009-01043

Date Permit Issued: JAN 13 2016

Location: Towns of Dover, LaGrange, Pleasant Valley, Union Vale, Dutchess County, New York

Within 30 days of the completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the address at the bottom of this form.

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date

Fold this form into thirds, with the bottom third facing outward. Tape it together and mail to the address below **or FAX to (212) 264-4260.**

Place Stamp
Here

Department of the Army
New York District Corps of Engineers
Jacob K. Javits Federal Building
26 Federal Plaza, Room 1937
ATTN: CENAN-OP-R
New York, New York 10278-0090