

Attachment S

Preliminary Jurisdictional Determination



DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers, ATTN: CENAN-OP-RU
Upstate Regulatory Field Office
1 Buffington St., Building 10, 3rd Fl. North
Watervliet, New York 12189-4000

Upstate New York Section

7/13/2022

SUBJECT: Permit Application Number NAN-2021-00989-ULO
by Brookside Solar, LLC
Towns of Burke and Chateaugay, Franklin County, New York

Joshua Baird
Brookside Solar, LLC
195 Montague Street 14th Floor, Suite 1461
Brooklyn, New York 11201

Dear Mr. Baird:

On July 27, 2021, the New York District of the U.S. Army Corps of Engineers received a request for a Department of the Army jurisdictional determination for an approximately 1280-acre project area. Land within the project area is intended to be leased or purchased from owners of private property by Brookside Solar, LLC. This request was made by TRC Companies, Inc., as your consultant. The site is located in the St. Lawrence River watershed, along US Route 11, in the Towns of Burke and Chateaugay, Franklin County, New York. The proposed project would involve the establishment of a 100-megawatt (MW) solar facility.

The submittal received by this office on July 27, 2021, included a proposed delineation of the extent of potential waters of the United States within the project boundary. A site inspection was conducted by a representative of this office on November 10, 2021, in which it was agreed that changes would be made to the delineation and that the modified delineation would be submitted to this office. On April 14, 2022, this office received the modified delineation.

Based on the material submitted, including the drawings entitled "Brookside Solar LLC, Towns of Burke and Chateaugay, Franklin County, NY, Delineated Resources By Type", Figure 4, Sheets 1 through 7 of 7, prepared by TRC Companies, Inc., and dated April 2022, there are 73.15 acres of wetlands and 29,244.69 linear feet of stream channel within the 1280-acre review area that may be jurisdictional under Section 404 of the Clean Water Act.

This preliminary jurisdictional determination (JD) is non-binding and indicates that there may be waters of the United States, including wetlands, within the review area. A preliminary JD is advisory in nature and may not be appealed. As you requested, enclosed is a copy of the Preliminary Jurisdictional Determination Form signed by this office. Please be aware that for purposes of computation of impacts, compensatory mitigation requirements, and other resources protection measures, a permit decision made on the basis of a preliminary JD will treat all waters and wetlands that would be

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affected by the permitted activity as jurisdictional. If you wish, prior to commencement of any work on the site 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. 16-01, which can be found at:

<http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Guidance-Letters/>

In accordance with Regulatory Guidance Letter 05-02, "Preliminary jurisdictional determinations are not definitive determinations of areas within regulatory jurisdiction and do not have expiration dates." However, it is strongly recommended that the boundaries of the delineated waters be re-evaluated by a qualified consultant after five years of the date of this letter. This will ensure that any changes are appropriately identified and you do not inadvertently incur a violation of Federal law while working on your project site.

These determinations may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

It is strongly recommended that the development of the site be carried out in such a manner as to avoid as much as possible the discharge of dredged or fill material into the delineated waters of the United States. If the activities proposed for the site involve such discharges, authorization from this office may be necessary prior to the initiation of the proposed work. The extent of such discharge of fill will determine the level of authorization that would be required.

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 Roy Lofffield, of my staff, at (518) 266-6363.

Sincerely,



FOR AND ON BEHALF OF

Amy L. Gitchell

Chief, Upstate New York Section

Enclosures

cc: NYSDEC Region 5, Raybrook
Town of Burke
Town of Chateaugay
TRC Companies, Inc

cc Private Land Owners:
O Connor, Robert
Wood Hamilton F LT
Miller, Allen W
Johnston, Robert
Johnston Robert A
Miller, Andrew W
Amish Parochial School
Miller, Allen
Gregoire Farm Inc
Green, Kenneth J
Helm Francis L
Bilow, Donald
Swanston, John K
Lobdell L. Alan
LaBare Craig S
Swanston, John
Kayaplat Corporation
Puffer, Justin D
Hutchins, Heath L
Hutchins Heath
Roy, Francis
Bilow, Donald W

- 1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.
- 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 AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) 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) 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) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD; (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 PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives 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 AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, 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. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there "*may be*" waters of the U.S. and/or that there "*may be*" navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

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

Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

- Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:
Map: _____.
- Data sheets prepared/submitted by or on behalf of the PJD requestor.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report. Rationale: _____.
- 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: _____.
- 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 staff member
completing PJD

Signature and date of
person requesting PJD
(REQUIRED, unless obtaining
the signature is impracticable)¹

¹ Districts may establish timeframes for requestor to return signed PJD forms. If the requestor does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.