STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JANET T. MILLS
GOVERNOR

MELANIE LOYZIM
COMMISSIONER

IN THE MATTER OF

TOWER SOLAR PARTNERS, LLC	)	
EMBDEN, SOMERSET COUNTY	)	
SITE LOCATION OF DEVELOPMENT ACT	)	**ADMINISTRATIVE CONSENT**
EROSION & SEDIMENTATION CONTROL LAW	)	**AGREEMENT**
POLLUTION CONTROL LAW	)	**38 M.R.S. § 347-A**
249	)	

This Administrative Consent Agreement (Agreement), by and among Tower Solar Partners, LLC and the State of Maine, Department of Environmental Protection (Department), as approved by the Maine Board of Environmental Protection (Board), and the Office of the Attorney General (OAG) is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S. §§ 347-A(1) and 341-D(6).

The parties agree as follows:

1. Tower Solar Partners, LLC is a State of Delaware limited liability company. EDF Renewables Services, Inc. (EDFR) obtained an option to lease from Laurie Attwood a 35-acre parcel of land identified as Lot 18 on Map 9 of the Town of Embden's (Town) tax maps and located on Kennebec River Road. EDFR assigned to Tower Solar Partners, LLC its interest in the option to lease the parcel to construct a 5 megawatt (MW) solar generation facility in the Town. The parcel is described and recorded in Book 2621, Page 210 of the Somerset County Registry of Deeds. The property was transferred from Laurie L. Attwood to Trinity Holdings, LLC on May 11, 2022, in a warranty deed recorded in Book 5873, Page 150 of the Somerset County Registry of Deeds. Trinity Holdings, LLC entered into a lease agreement with Tower Solar Partners, LLC on May 11, 2022, and recorded the memorandum of the lease in Book 5883, Page 193 of the Somerset County Registry of Deeds. The solar facility occupies approximately 30 acres of the parcel.

2. The property described in Paragraph 1 of this Agreement is adjacent to the Kennebec River and Alder Brook. The Kennebec River and Alder Brook are protected natural resources pursuant to the *Natural Resources Protection Act* (NRPA), 38 M.R.S. § 480-B(8). The Kennebec River and Alder Brook are Waters of the State as defined by the *Protection and Improvement of Waters Law*, in 38 M.R.S. § 361-A(7). Earthen materials discharged to the river and brook are considered pollutants pursuant to 38 M.R.S. § 361-A(4-A).

3. On May 24, 2021, in Department Order #L-28928-PS-A-N/L-29828-TB-B-N (the "Department Order"), the Department approved a *Site Location of Development Act*

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(SLODA) permit for the construction of a 5.0-megawatt solar energy development, occupying approximately 30.3 acres of land, pursuant to the SLODA and the NRPA. The Department Order was issued to Tower Solar Partners, LLC. The applicant also submitted a Notice of Intent (NOI #71481) to comply with the standards and requirements of the Maine Construction General Permit (W008157-5Y-A-N, effective July 21, 2006). NOI #71481 was accepted by the Department on December 16, 2020.

4. On September 11, 2022, Department staff attended a pre-construction meeting with representatives from Tower Solar Partners, LLC, and its contractors. In the meeting, Department staff reviewed erosion control expectations and the importance of following all permit conditions and Department best practices. Bonneau & Son Excavation L.L.C. was hired by EDFR to be the civil contractor for the site.

5. Throughout the period addressed by this agreement, Tower Solar Partners, LLC was subject to the following statutory and regulatory requirements:

   a. 38 M.R.S § 480-B(8-9):

      8. Protected natural resource. "Protected natural resource" means coastal sand dune systems, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water system primary protection areas, great ponds or rivers, streams or brooks, as these terms are defined in this article.

      9. River, stream or brook. "River, stream or brook" means a channel between defined banks. A channel is created by the action of surface water and has 2 or more of the following characteristics.

         A. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if that is not available, a 15-minute series topographic map.

         B. It contains or is known to contain flowing water continuously for a period of at least 6 months of the year in most years.

         C. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.

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D. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.

E. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

"River, stream or brook" does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining storm water or a grassy swale.

b. 38 M.R.S. § 361-A(7):

7. Waters of the State. "Waters of the State" means any and all surface and subsurface waters that are contained within, flow through, or under or border upon this State or any portion of the State, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State, but not excluding waters susceptible to use in interstate or foreign commerce, or whose use, degradation or destruction would affect interstate or foreign commerce.

c. 38 M.R.S. § 361-A(4-A):

4-A. Pollutant. "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial, or agricultural wastes of any kind.

d. 38 M.R.S. § 361-A(1):

1. Discharge. "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant to water of the State.

e. 38 M.R.S. § 413(1):

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1. License required. No person may directly or indirectly discharge or cause to be discharged any pollutant without first obtaining a license therefor from the department.

f. 38 M.R.S § 483-A(2):

2. Compliance with order or permit required. A person having an interest in, or undertaking an activity on, a parcel of land affected by an order or permit issued by the department may not act contrary to that order or permit.

g. Department Order, Standard Condition A:

The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited without prior approval of the Board, and the applicant shall include deed restrictions to that effect.

f. Department Order, Standard Condition 2:

In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.

g. Department Order, Special Condition 4:

The applicant shall sequence its construction of the proposed project such that the amount of work that will be conducted will be limited to 10 acres of exposed soil at a time.

h. 38 M.R.S. § 420-C:

A person who conducts, or causes to be conducted, an activity that involves filling, displacing, or exposing soil or other earthen materials shall take measures

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> to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource as defined in section 480-B. Erosion control measures must be in place before the activity begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken, and the site must be maintained to prevent unreasonable erosion and sedimentation…

6. On October 14, 2022, Department staff were notified by the Town's Code Enforcement Officer (CEO) and a neighbor that sediment-laden water was leaving the site boundaries and entering Alder Brook. Department staff received images from the CEO verifying the complaint.

7. On October 18, 2022, Department staff conducted a site visit and observed the following:

   a. Sediment-laden water entering neighboring properties and Alder Brook;

   b. Sediment-laden water entering the Kennebec River via Alder Brook;

   c. Approximately 30 acres of the site was disturbed and unstable at one time; and

   d. Erosion and sedimentation control measures were inadequately or improperly installed and not maintained.

8. On October 19, 2022, Department staff received a complaint and photographs from the CEO that large amounts of sediment left the site and was tracked onto Kennebec River Road. Department staff contacted Tower Solar Partners, LLC, who confirmed that logging equipment leaving the site tracked sediment onto the road.

9. On October 26, 2022, Department staff received images from the CEO of sediment-laden water leaving the site and entering Alder Brook. Department staff contacted Bonneau & Son Excavation L.L.C., who advised staff that a silt fence had failed, allowing sediment to leave the site.

10. On December 7, 2022, Department staff conducted a site visit and observed the following:

    a. Sediment-laden water entering neighboring properties and Alder Brook;
    b. Sediment-laden water entering the Kennebec River via Alder Brook; and

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c. Erosion and sedimentation control measures were not adequately preventing the movement of soils off site and into protected natural resources.

11. On March 23, 2023, and April 1, 2023, Department staff received inspection reports from the third-party inspector and images from the CEO of sediment-laden water entering Alder Brook.

12. In summary, the following was observed by Department staff and the CEO on varying dates:

a. Approximately 30 acres of the Site was disturbed and unstable at one time, contrary to Special Condition 4 of the Department Order, which limits the total acreage of disturbed soil to 10 acres at one time.

b. Erosion controls were overwhelmed. The controls were inadequately installed and not maintained, contrary to the approved plans referenced in the Department Order.

c. Stormwater structures were eroding and overwhelmed. The structures were inadequately installed and not maintained, contrary to the approved plans referenced in the Department Order.

d. There was noticeable erosion of soils throughout the Site.

e. Sediment was transported to neighboring properties and into protected natural resources on and off the Site, including Alder Brook and the Kennebec River.

f. Sediment was tracked onto Kennebec River Rd.

13. The activities described in Paragraphs 6-12 of this Agreement constitute the following violations:

a. By conducting or causing to be conducted an activity that involves exposing soil or other earthen materials without preventing unreasonable erosion of soil or sediment beyond the project site and into a protected natural resource, Tower Solar Partners, LLC violated the *Erosion and Sedimentation Control law*, 38 M.R.S. § 420-C.

b. By failing to ensure that erosion control measures were in place before the activity began and failing to ensure that the erosion control measures remained in

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place and functional until the site was permanently stabilized, Tower Solar Partners, LLC violated the *Erosion and Sedimentation Control law*, 38 M.R.S. § 420-C.

c. By failing to take all necessary actions to ensure that its activities or those of its agents did not result in noticeable erosion of soils on the site during the construction and opening up 30 acres of the site without obtaining Department approval, Tower Solar Partners, LLC violated Standard Condition A and Special Conditions 2 and 4 of Department Order #L-28928-PS-A-N/L-29828-TB-B-N and 38 M.R.S § 483-A(2).

d. By discharging a pollutant, namely soil, to waters of the state without first obtaining a license from the Department, Tower Solar Partners, LLC violated the *Protection and Improvement of Waters Act*, 38 M.R.S. § 413.

14. On November 29, 2022, and May 12, 2023, the Department issued Notices of Violation to Tower Solar Partners, LLC for the violations described in Paragraph 13 of this Agreement in accordance with 38 M.R.S. § 347-A(1)(B).

15. The parties agree that this Agreement constitutes a legally sufficient NOV pursuant to 38 M.R.S. § 347-A(1)(B) for any violations cited in this Agreement but not previously noticed, and that parties have been adequately noticed for all violations herein.

16. In response to the violations observed by Department staff, Tower Solar Partners, LLC submitted an updated Site-Specific Erosion and Sedimentation Control Plan dated December 5, 2022, and implemented a series of corrective measures which included:

a. Hiring of a third-party inspector;

b. Engaging an environmental consulting firm to review and design corrective measures;

c. Developing and implementing additional erosion control plans including stone check dams and haybales along the access road and Kennebec River Rd;

d. Installing additional sediment basins;

e. Expanding erosion control mix perimeter berms and stone check dams;

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f. Dedicating an erosion and sedimentation control crew to inspect and maintain erosion and sedimentation controls; and

g. Establishing a 100-foot grassed buffer in sensitive areas of the site.

17. As of July 2023, based on the third-party inspection reports and staff site visits conducted in June and July 2023, Tower Solar Partners, LLC has installed and maintained erosion and sedimentation controls and stabilized the site to the satisfaction of Department staff.

18. The Department has regulatory authority over the activities described herein.

19. This Agreement shall not become effective until it is approved by the Board and the OAG.

20. To resolve the violations referred to in Paragraph 13 of this Agreement, Tower Solar Partners, LLC agrees to pay to the *Treasurer, State of Maine*, immediately upon signing this Agreement, a civil monetary penalty in the amount of one-hundred forty-eight thousand eight-hundred thirty-six dollars ($148,836.00).

21. The Department and the OAG grant a release of their causes of action against Tower Solar Partners, LLC for the specific violations listed in Paragraph 13 of this Agreement on the express condition that all actions listed in Paragraph 20 of this Agreement are completed to the satisfaction of the Department and the OAG. The release shall not become effective until this condition is satisfied, as determined by the Department and the OAG in their sole discretion.

22. Any non-compliance with this Agreement voids the release set forth in Paragraph 21 of this Agreement and may lead to an enforcement action pursuant to 38 M.R.S. §§ 347-A(1)(A), 347-A(5), or 348, as well as pursuit of other remedies.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of nine (9) pages.

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TOWER SOLAR PARTNERS, LLC

BY: _____ DATE: November 2, 2023
RICK JUSTICE, VICE PRESIDENT, ENGINEERING & CONSTRUCTION, TOWER SOLAR PARTNERS, LLC

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____ DATE: _____
SUSAN LESSARD, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: _____ DATE: _____
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL

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