



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
191 MAIN STREET
EAST MILLINOCKET, MAINE 04430

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

MEMORANDUM

DATE: September 3, 2014
TO: Commission Members
FROM: Debra Kaczowski, Permitting & Compliance *Debra A. Kaczowski*
RE: Administrative Settlement Agreement for Enforcement Case EC 2014-24
Ernest J. & Ann M. Santerre, Indian Purchase #4 Twp., Penobscot County, Maine

Attached is a staff recommendation for an Administrative Settlement Agreement for EC 2014-24 with Ernest J. and Ann M. Santerre for violations associated with their property on South Twin Lake in Indian Purchase Number 4 Twp., Penobscot County, Maine.

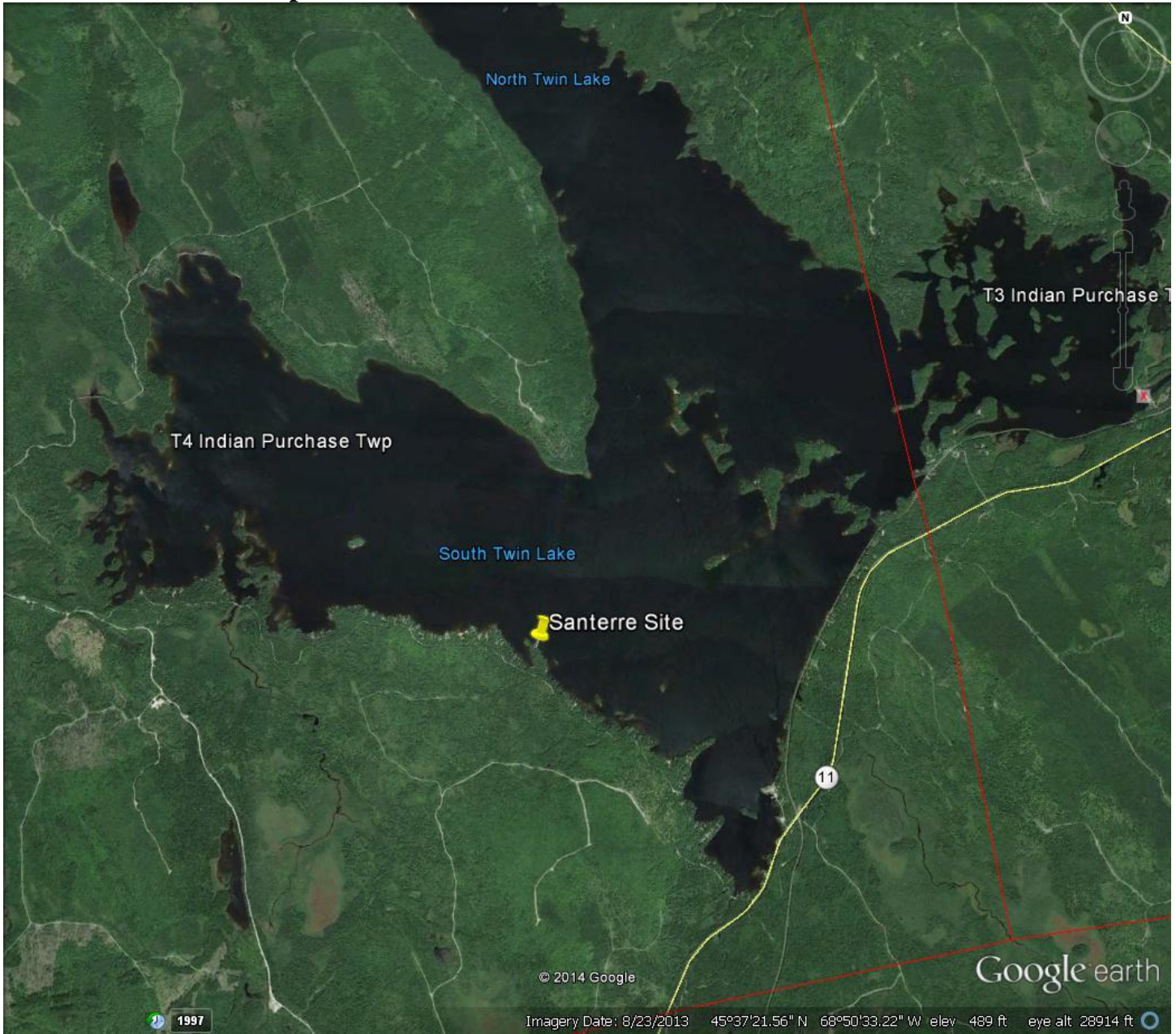
On May 28, 2014, staff conducted a site visit in response to a request for a Certificate of Compliance for Building Permit BP 8981. At the time of the site visit, staff observed that a 21 foot by 26 foot two-story addition with attached 4 foot by 6 foot entryway had been constructed 14 feet from the normal high water mark of South Twin Lake and the 18 foot by 26 foot pre-Commission camp that had been reconstructed and expanded, increasing the height with a second-story addition, without a permit amendment and in violation of the terms of Building Permit BP 8981. Staff further observed an attached 16 foot by 23 foot deck constructed 8 feet from the normal high water mark and a 12 foot by 24 foot reconstructed and expanded shed located 33 feet from the normal high water mark, all without prior authorization from the Commission and in excess of standards. The total combined footprint of all structures within 50 feet of South Twin Lake is approximately 1,700 square feet.

In order to resolve the violations, the Santerres have agreed to pay a \$2,000 monetary penalty, reduce the 16 foot by 23 foot lakeside deck located 8 feet from the normal high water mark of South Twin Lake to a 12 by 23 foot deck to be located 12 feet from the normal high water mark, and remove the 10 foot by 15 foot shed located 8 feet from the normal high water mark. The existing 18 foot by 26 foot two-story dwelling unit and 21 foot by 26 foot two-story addition with attached 4 foot by 6 foot entryway located 14 feet from the normal high water mark of South Twin Lake with attached 12 foot by 23 foot lakeside deck located 12 feet from the normal high water mark of South Twin Lake and the 12 foot by 24 foot shed located 33 feet from the normal high water mark of the lake, may remain on the property in its current location. Should 50% or more of the dwelling unit, deck, or shed be removed, replaced, damaged or destroyed for whatever reason, it may not be repaired or replaced unless the repairs or replacement structure fully complies with the Commission's standards applicable at the time to the maximum possible extent.

Staff believes that this agreement is in keeping with your Compliance and Enforcement Response Policy and request that you ratify the agreement.

Enclosures: Proposed Settlement Agreement EC 14-24; Location Map; Site Plan

Xc: EC 14-03/BP 8981 Files
Santerre Location Map





STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

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EXECUTIVE DIRECTOR

ADMINISTRATIVE SETTLEMENT AGREEMENT
 In the Matter of

Ernest J. & Ann M. Santerre)	STATE OF MAINE
37 Spruce Point)	Land Use Planning Commission
Indian Purchase Number 4 Twp., ME 04462)	(Enforcement Case EC 2014-24)

This Administrative Settlement Agreement (“Agreement”) by and among Ernest J. & Ann M. Santerre (hereinafter the "Santerres") and the Maine Land Use Planning Commission (hereinafter the "Commission") is entered into pursuant to 12 M.R.S. subsection 685-C(8) and the Commission's Compliance and Enforcement Response Policy.

The Santerres and the Commission agree as follows:

1. **Commission Authority:** Pursuant to 12 M.R.S. chapter 206-A, the Commission has regulatory authority over the activities described herein.
2. **Respondents:** The Santerres are residents of Indian Purchase Number 4 Twp., Penobscot County, Maine.
3. **Location:** The Santerres own a lot on South Twin Lake in Indian Purchase Number 4 Twp., Penobscot County, Maine described in Maine Revenue Service tax records as Lot 82, Plan 15 on Map #PE033 of the property tax maps for Indian Purchase Number 4 Twp., and by the former lessor, Katahdin Timberlands, LLC, as Lease Lot #ST-82 (formerly Lot #223). The Santerres’ lot is located on a peninsula, situated between two other camp lots, has shorefrontage on two opposing ends of their lot, and is approximately 0.25 acres with approximately 121 feet of shoreline frontage on South Twin Lake.

Katahdin Timberlands, LLC owns one-hundred seventy-three (173) leased lots in Indian Purchase Number 4 Twp. abutting or near South Twin Lake as shown on plat plans entitled “Final Survey Plan South Twin Lake, Indian Purchase Number 4 Township, Penobscot County, Maine” submitted to the Commission for review (*reference Advisory Ruling AR 13-5*). Katahdin Timberlands, LLC has surveyed and sold Lot #ST-82 (the “subject property”) to the Santerres, which is subject to this Agreement.

4. **Zoning:** (D-RS) Residential Development Subdistrict
5. **Affected Waterbody:** South Twin Lake

The Commission has identified South Twin Lake as a resource class 1B, management classes 3 and 5, relatively accessible, relatively developed lake of statewide significance with outstanding scenic values and significant fisheries, shore character, and cultural resources.

6. **Background:**

The Santerres' lot was historically developed with an 18 foot by 26 foot pre-Commission, seasonal camp with an enclosed 8 foot by 21 foot porch, and a 10 foot by 18 foot deck located 0 feet (on the deck side) from the normal high water mark of South Twin Lake. The lot was further developed with a 6 foot by 18 foot and a 10 foot by 15 foot pre-Commission sheds located approximately 33 feet and 8 feet, respectively, from the normal high water mark of the lake.

On June 15, 1995, staff issued Building Permit BP 8981 to Ernie and Ann Santerre authorizing the construction of an 18 foot by 26 foot one-story addition with a 4 foot by 6 foot entryway. The proposed one-story addition, excluding the entryway, would raise the roof to a height of 20 feet, total 425 square feet, and contain a pressurized water supply and plumbing facilities. BP 8981 required that the addition with entryway be setback at least 10 feet from South Twin Lake.

7. **Description of Activities:**

On July 1, 2013 and May 28, 2014, staff conducted a site visit in response to a request for a Certificate of Compliance for Building Permit BP 8981. At the time of the site visit, staff observed that the 18 foot by 26 foot pre-Commission camp had been reconstructed and expanded in height as a result of a 21 foot by 26 foot two-story, 23 foot high addition with an attached 4 foot by 6 foot entryway setback 14 feet from the normal high water mark of South Twin Lake. The reconstruction and expansion in height of the pre-Commission camp were undertaken without prior approval from the Commission and in violation of the terms of Building Permit BP 8981. Staff further observed an attached 16 foot by 23 foot deck constructed 8 feet from the normal high water mark and a 12 foot by 24 foot reconstructed and expanded shed located 33 feet from the normal high water mark, all without prior authorization from the Commission and in excess of standards. The total combined footprint of all structures within 50 feet of South Twin Lake is approximately 1700 square feet.

8. **Violations:** The construction described in Paragraph 7 above resulted in violations of the following sections of 12 M.R.S. Chapter 206-A, the following sections of the Commission's Land Use Districts and Standards (Standards), and the following Conditions of the Standard Conditions of Approval for Building Permit BP 8981, stated in relevant part below:

12 M.R.S. § 685-B(1)(A)

A structure or part of a structure may not be erected, changed, converted or wholly or partly altered or enlarged in its use or structural form without a permit issued by the commission. Normal maintenance or repair may be made to a structure or part of a structure without a permit issued by the commission in locations other than areas of special flood hazard as defined in the commission's rules.

12 M.R.S. § 685-B(5)

Limitation, expiration, transfer and revocation of approval. Commission authorization pursuant to this section shall permit only the arrangement and construction set forth in the approval as issued. Change in use, arrangement or construction shall be considered a violation of this chapter and punishable as provided in this chapter.

A violation of any condition attached to a commission approval or permit, or any change in use, arrangement or construction from that approved, shall be deemed a violation of this chapter.

Standards, Section 10.11, C (ver 1991 August 15) (in effect at the time issuance of permit)

Any legally existing nonconforming dwelling unit may be reconstructed if damaged or destroyed, regardless of cause, if reconstructed within a period of two (2) years from the date of such damage or destruction, provided that the Commission approves a building permit for such reconstruction. In considering an application for such a permit, the Commission may, consistent with public health, safety and welfare, waive, to the minimum extent necessary, those standards which made the original dwelling nonconforming, provided, however, that in no case shall the Commission waive such standards so as to increase the extent of nonconformity.

Standards, Section 10.11, D (ver 1991 August 15) (in effect at the time issuance of permit)

Expansions of legally existing nonconforming dwelling units, including but not limited to additional stories, rooms and detached bunkhouses having no water supply and no sewage disposal facilities, which are not greater in size than the original dwelling unit, and which will not increase the extent of nonconformity with the Commission's standards, shall be exempt from the requirements of Section 685-B,1 of the Commission's statute.

For the purposes of determining the allowable size of such expansions, the size of the existing dwelling unit shall consist of all enclosed living areas on one or more stories, including enclosed porches, measured by their exterior dimensions. The size of the existing dwelling unit shall not include such accessory structures as open decks or patios, or attached garages and tool and wood sheds.

Standards, Section 10.11,B,1

Criteria for Approval. Permits are required for all expansions, reconstructions, relocations, changes of use, or other development of nonconforming structures, uses and lots, except where specifically provided in Section 10.11. In order to obtain a permit, the applicant must meet the approval criteria in 12 M.R.S.A. §685-B(4) and demonstrate that:

- a. the project will not adversely affect surrounding uses and resources; and
- b. there is no increase in the extent of nonconformance, except as provided in Section 10.11,B,9 or in instances where a road setback is waived by the Commission in order to increase the extent of conformance with a water body setback.

Standards, Section 10.11,C,1

Expansion. A permit is required for the expansion of a nonconforming structure, except as provided in Section 10.27,P. In addition to meeting permit requirements, expansions must also comply with the following limitations. These limitations do not apply to water dependent uses as defined in Section 10.02.

- a. **Certain Expansions Prohibited.** If any portion of a structure is located within 25 feet, horizontal distance, of the normal high water mark of a water body, expansion of that portion of the structure, which includes an increase in height or an increase in floor area, is prohibited. That portion beyond 25 feet may be expanded provided the size limitations in Section 10.11,C,1,b are met.
- b. **Size of Structures Near Water Bodies Limited.** The maximum size of expansions of nonconforming structures is limited within 100 feet, horizontal distance, of the normal high water mark of bodies of standing water 10 acres or greater in size or flowing waters draining 50 square miles or more.

Legally existing, principal and accessory structures located within the areas described in Section C,1,b,(1) and (2) above may be expanded subject to the other requirements of this section, provided that lot coverage limitations and other applicable land use standards are met. The maximum height of all structures within these areas shall be 25 feet, or existing structure height, whichever is greater. The maximum combined footprint for all structures within these areas may not exceed the limits in Table 10.11,C-1.

Closest Distance of Expansion from Water Body	Maximum Combined Footprint* for all Structures not Meeting Water Body Setbacks
Greater than 25 and less than 50 feet.	750 square feet.
Between 50 and 75 feet.	1,000 square feet.
Greater than 75 and less than 100 feet (if applicable setback is more than 75 feet).	1,500 square feet.

Table 10.11,C-1. Limitations on size of structures near water bodies.

* Expansions that increase the height of a structure or increase the floor area of a structure, such as the addition of a loft or second story, require permits but are not included in the calculation of the footprint of the structure.

Standards, Section 10.11,C,2

Reconstruction or Replacement. A legally existing, nonconforming structure may be reconstructed or replaced with a permit, provided that the permit application is completed and filed within two years of the date of damage, destruction or removal; the structure was in regular active use within a two year period immediately preceding the damage, destruction, or removal; and if the reconstruction or replacement involves expansion, the structure meets the requirements of Section 10.11,C,1.

Standard, Section 10.11,C,5

New, Detached Accessory Structures. The construction of new, detached accessory structures that do not meet water body setbacks is allowed with a permit only if the structure cannot be physically sited on the lot to meet the water body setback requirement. In this case, the new accessory structure shall meet setbacks to the maximum extent possible, shall not be located closer to the normal high water mark than the principal structure, shall not be located within 25 feet of the normal high water mark, shall not be located closer than 20 feet to the road in conformance with the provisions of Section 10.11,B,6, and shall be of a size and height that, when combined with legally existing principal buildings will not exceed the size and height requirements of Section 10.11,C,1,b.

Standard, Section 10.26,D,1,b

Minimum Setbacks. The minimum setback for structures located near a body of standing water 10 acres or greater in size is 100 feet from the nearest shoreline.

Condition #2 of the Standard Conditions of Approval (ver. 10/90)

This permit is dependent upon and limited to the proposal as set forth in the application and supporting documents, except as modified by the Commission in granting this permit. Any variation therefrom is subject to the prior review and approval of the Maine Land Use Regulation Commission. Any variation from the application or the conditions of approval undertaken without approval of the Commission constitutes a violation of Land Use Regulation Commission law.

9. **Official Record:** This Agreement shall not be effective nor become part of the official record unless and until it is ratified by the Commission.
10. **Conditions:** To resolve the violations described in Paragraph 7 and 8 above, the Santerres jointly and severally agree to:
 - A. By October 15, 2014, pay a civil penalty of two thousand dollars (\$2,000). The payment shall be by check or money order made payable to the "Treasurer, State of Maine" c/o Maine Land Use Planning Commission, 22 State House Station, Augusta, Maine 04333-0022.
 - B. By October 15, 2014, reduce the 16 foot by 23 foot lakeside deck located 8 feet from the normal high water mark of Ambejejus Lake to a 12 by 23 foot deck to be located 12 feet from the normal high water mark of South Twin Lake and remove the 10 foot by 15 foot shed located 8 feet from the normal high water mark. Construction debris must be disposed of in a proper manner, in compliance with applicable state and federal solid waste laws and rules.
 - C. The following restrictions on the use of the subject property: The existing 18 foot by 26 foot two-story dwelling unit and 21 foot by 26 foot two-story addition with attached 4 foot by 6 foot entryway located 14 feet from the normal high water mark of South Twin Lake with attached 12 foot by 23 foot lakeside deck located 12 feet from the normal high water mark of South Twin Lake and the 12 foot by 24 foot shed located 33 feet from the normal high water mark of the lake as shown in the attached site plan labeled "Addendum A, Santerre After-Site Plan", may remain on the property in their current location for so long as all of the terms and conditions of this Agreement are complied with. Normal maintenance and repair of the dwelling unit, including the existing addition and associated entryway, the lakeside deck, and 12 foot by 24 foot shed are allowed, however, should 50% or more of the dwelling unit, deck, or shed be removed, replaced, damaged or destroyed for whatever reason, it may not be repaired or replaced unless the repairs or replacement structure fully complies with applicable Commission standards to the maximum possible extent and then only by prior permit approval from the Commission. Any expansion of the buildings, including, but not limited to, decks or porches, is strictly prohibited.
 - D. The following conditions governing the conveyance of the subject property: the Santerres shall not sell, lease, transfer, or otherwise convey the subject property unless and until all terms and conditions of this Agreement are completed to the satisfaction of the Commission, and then such sale, lease, transfer or other conveyance shall be made with full disclosure of the terms of this Agreement to the buyer, lessee or recipient, and made subject to terms of sale, lease or transfer that obligate the buyer, lessee or recipient of the subject property to fully comply with the terms of this Agreement. This Agreement shall be binding upon the Santerres, their heirs, successors and assigns in the subject property or any portion of it. Any person acquiring all or any portion of the subject property shall be subject to this Agreement and bound to comply with the terms hereof as if that person were the Santerres.
 - E. The following actions to be taken by the Santerres and the Commission to record this Agreement in the Penobscot County Registry of Deeds: By October 15, 2014, the Santerres shall submit to the Commission the recording fee, in the amount of \$36.00 to be paid to the Penobscot County Registry of Deeds, for the recording of this Agreement. Payment must be by check or money order, made payable to the Penobscot County Registry of Deeds. Upon receipt of payment, staff will record the Agreement in the Penobscot County Registry of Deeds in a manner that causes it to be properly indexed to the subject property. In the event that the Santerres fail to submit the appropriate recording fee, the Commission may record the Agreement in the Penobscot County Registry of Deeds without waiver of the violation caused by the Santerres' failure to do so.

11. **Release:** In consideration for, but only upon completion of, the actions called for in Paragraph 10 above in accordance with the terms and conditions of this Agreement, the Commission and the Attorney General shall release their causes of action against the Santerres arising from the violations described in Paragraphs 7 and 8 above.

SIGNATURES FOLLOW

Respondents

By: Ernest J. Santerre Date: 9-3-14
Ernest J. Santerre

STATE OF MAINE
County of Penobscot, ss.

Date: 9/3, 2014

Personally appeared the above named Ernest J. Santerre and acknowledged the foregoing to be his free act and deed.

Before me,

Jean M. Cyr
Notary Public
JEAN M CYR
(Type or Print Name as Signed)



My Commission Expires: 12/2/2020
Jean M. Cyr, Notary Public
State of Maine
My Commission Expires 12/02/2020

By: Ann M. Santerre Date: 9/3/14
Ann M. Santerre

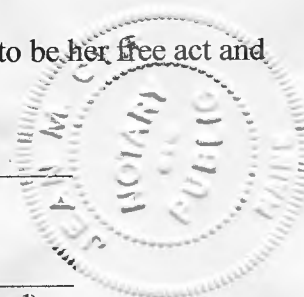
STATE OF Maine
County of Penobscot, ss.

Date: 9/3, 2014

Personally appeared the above named Ann M. Santerre and acknowledged the foregoing to be her free act and deed.

Before me,

Jean M. Cyr
Notary Public
JEAN M CYR
(Type or Print Name as Signed)



My Commission Expires: 12/2/2020
Jean M. Cyr, Notary Public
State of Maine
My Commission Expires 12/02/2020

Maine Land Use Planning Commission

By: _____ Date: _____
Nicholas D. Livesay, Director

STATE OF MAINE
County of Kennebec, ss.

Date: _____, 2014

Personally appeared the above named Nicholas D. Livesay, in his capacity as Director of the Maine Land Use Planning Commission, and acknowledged the foregoing to be his free act and deed in his said capacity and the free act and deed of the Maine Land Use Planning Commission.

Before me,

Notary Public

(Type or Print Name as Signed)

My Commission Expires: _____

Office of Attorney General

By: _____ Date: _____
Lauren E. Parker, AAG

Addendum A
Santerre After Site Plan
(Enforcement Cases EC 14-24)

