



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI

DAVID P. LITTELL

GOVERNOR

COMMISSIONER

IN THE MATTER OF:

WILLIAM K. SANBORN,
SUSAN A. SANBORN,
DAVID A. SANBORN,
SCOTT W. SANBORN, and
ELIZABETH SPAZEK, f/k/a
ELIZABETH L. SANBORN
38 M.R.S.A. §§ 413, 420-C, 480-C, 483-A
2008-178-L

ADMINISTRATIVE CONSENT
AGREEMENT
(38 M.R.S.A. § 347-A)

This Agreement, by and among William K. Sanborn, Susan A. Sanborn, David A. Sanborn, Scott W. Sanborn, Elizabeth L. Spazek (f/k/a Elizabeth L. Sanborn), the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General, is entered into pursuant to the laws concerning the Department's Organization and Powers, 38 M.R.S.A. § 347-A(1)(A)(1).

THE PARTIES AGREE AS FOLLOWS:

- 1. William K. Sanborn is an individual whose address is 3 Hutchins Cove Drive, Kittery, Maine 04062.
2. Susan A. Sanborn is an individual whose address is 3 Hutchins Cove Drive, Kittery, Maine 04062.
3. David A. Sanborn is an individual whose address is 19 Littleworth Road, Dover, New Hampshire 03820.
4. Scott W. Sanborn is an individual whose address is 234 Linwood Avenue 2R, Fairfield, Connecticut 06824.
5. Elizabeth L. Spazek (f/k/a Elizabeth L. Sanborn) is an individual whose address is located in South Boston, Massachusetts.
6. The violations described herein occurred at one or more of the following properties on Strawberry Lane in Windham, Maine:

A. Property conveyed from William K. and Susan A. Sanborn to David A. Sanborn by Warranty Deed dated March 16, 1998, as described and recorded in Book 13666 on Page 193 of the Cumberland County Registry of Deeds.

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207) 760-3143

IN THE MATTER OF:

WILLIAM K. SANBORN, ET AL.	)	ADMINISTRATIVE CONSENT
WINDHAM, CUMBERLAND COUNTY, MAINE	)	AGREEMENT
38 M.R.S.A. §§ 413, 420-C, 480-C, 483-A	)	(38 M.R.S.A. § 347-A)
2008-178-L	)	

- B. Property conveyed from William K. and Susan A. Sanborn to David A. Sanborn by Warranty Deed dated March 16, 1998, as described and recorded in Book 13666 on Page 191 of the Cumberland County Registry of Deeds.
  - C. Property conveyed from William K. and Susan A. Sanborn to Scott W. Sanborn by Warranty Deed dated March 10, 1998, as described and recorded in Book 13666 on Page 197 of the Cumberland County Registry of Deeds.
  - D. Property conveyed from William K. and Susan A. Sanborn to Elizabeth L. Sanborn by Warranty Deed March 16, 1998, as described and recorded in Book 13666 on Page 195 of the Cumberland County Registry of Deeds.
  - E. Property conveyed from William K. and Susan A. Sanborn to Elizabeth L. Sanborn by Warranty Deed dated March 16, 1998, as described and recorded in Book 13666 on Page 185 of the Cumberland County Registry of Deeds.
  - F. Property conveyed from William K. Sanborn to Susan A. Sanborn and William K. Sanborn by Warranty Deed dated July 26, 2000, as described and recorded in Book 15625 on Page 154 of the Cumberland County Registry of Deeds.
  - G. Property conveyed from William K. and Susan A. Sanborn to William K. Sanborn by Warranty Deed dated March 16, 1998, as described and recorded in Book 13666 on Page 189 of the Cumberland County Registry of Deeds.
  - H. Property conveyed Kilton L. Lamb and F. Wayne Lamb to William K. Sanborn and Susan A. Sanborn by Warranty Deed dated December 29, 1997, as described and recorded in Book 13526 on Page 255 of the Cumberland County Registry of Deeds.
7. Throughout the period of time addressed by this Agreement, William K. Sanborn, Susan A. Sanborn, David A. Sanborn, Scott W. Sanborn, and Elizabeth L. Spazek (f/k/a Elizabeth L. Sanborn) (collectively "the Sanborns") were subject to the following Maine environmental standards:
- a. Maine's *Site Location of Development Law*, 38 M.R.S.A. § 483-A. This section states: A person may not construct or cause to be constructed or operate or cause to be operated or, in the case of a subdivision, sell or lease, offer for sale or lease or cause to be sold or leased any development of state or regional significance that may substantially affect the environment without first having obtained approval for this construction, operation, lease or sale from the Department. 38 M.R.S.A. § 483-A(1).

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2008-178-L	)	

- i. A “subdivision” ... is the division of a parcel of land into fifteen or more lots to be offered for sale or lease to the general public within any five-year period, if the aggregate land area includes more than thirty acres. 38 M.R.S.A. § 482(5).
  - ii. “Parcel of land” is defined as the block or piece of land a developer owns or has sufficient title, right or interest in regardless of size or whether the block of land is divided into lots, and regardless of whether individual lots within the block are contiguous, as long as the lots treated together are all part of a common scheme of development. *Definitions of Terms Used in the Site Location of Development Law and Regulations*, 06-096 CMR 371(1)(L).
  - iii. “Developer” means a person as defined in 38 M.R.S.A. Section 482(4) ... selling or leasing, causing to be sold or leased, offering for sale or lease, or intending to sell or lease lots in a development. 06-096 CMR 371(1)(E).
  - iv. A combination of persons is treated as a single person for the purpose of 38 M.R.S.A. § 482(4) if together they pursue a common scheme of development even though an individual person in the combination owns separate parcels which may not be subject to the Site Location Law if the parcels were developed separately. 06-096 CMR 371(1)(M).
  - v. The term “common scheme of development” is defined as a plan or process of development which takes place on contiguous or non-contiguous parcels or lots in the same immediate vicinity and exhibits characteristics of a unified approach, method, or effect, such as: unified ownership, management, or supervision; sharing of common equipment or labor; or common financing. 06-096 CMR 371(1)(C).
- b. Maine’s *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C. This section requires a permit from the Department for activities, including dredging, filling or displacing soil or vegetation, in, on or over any protected natural resource including a stream, or adjacent to a stream, that may cause material or soil to be washed into a great pond, river, stream or brook.
- c. Maine’s *Erosion and Sedimentation Control Law*, 38 M.R.S.A. § 420-C. This section requires adequate erosion control measures to be in place and functional before and throughout any activity that involves filling, displacing or exposing soil or other earthen materials.

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2008-178-L	)	

- d. Maine's *Water Pollution Control Laws*, 38 M.R.S.A. § 413(1). This section requires a permit from the Department to discharge any pollutant, including rock, sand or dirt, into waters of the state.<sup>1</sup>
  - i. "Pollutant" is defined to include rock, sand, and dirt. 38 M.R.S.A. § 361-A(4-A).
  - ii. "Discharge" means any emptying, dumping, disposing or other addition of any pollutant to waters of the State. 38 M.R.S.A. § 361-A(1).
  - iii. "Waters of the State" are defined as 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. 38 M.R.S.A. § 361-A(7).
  - iv. Streams are considered waters of the State pursuant to 38 M.R.S.A. § 361-A(7).

**Site Location of Development Law**

- 8. On June 17, 2004, William K. Sanborn, Susan A. Sanborn, Elizabeth L. Sanborn, Scott W. Sanborn, and David A. Sanborn, as respective owners of the properties described in Paragraph 6, entered into a Declaration of Protective Covenants and Common Easements thereby creating the "Elizabeth Farms Homeowners Association" ("Elizabeth Farms"). The Declaration of Protective Covenants and Common Easements was recorded on July 6, 2005 in Book 22846 on Page 152-159 of the Cumberland County Registry of Deeds.
- 9. Each parcel in the Elizabeth Farms subdivision is accessed via Strawberry Lane, a private way, and each is provided with common underground utilities.
- 10. The aggregate land area, as defined in 38 M.R.S.A. § 482(5), of the properties described in Paragraph 6 and included in Elizabeth Farms as described in Paragraph 8 is more than thirty acres.
- 11. On December 7, 2005, an inspection of Elizabeth Farms by Department staff revealed that the Sanborns were offering for sale to the general public sixteen lots in the Elizabeth Farms subdivision.
- 12. On May 30, 2007, William K. Sanborn and Susan A. Sanborn granted to Marc N. St. Pierre and Melissa S. St. Pierre via Warranty Deed a property located within Elizabeth Farms as described and recorded in Book 25165 on Page 219 in the Cumberland County Registry of Deeds.

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<sup>1</sup> A discharger may either apply for an individual permit from the Department under 38 M.R.S.A § 413(1) or in the alternative may comply with the terms of an existing general permit pursuant to the Department's *Rule Concerning General Permits for Certain Wastewater Discharges*, 06-096 CMR 529(2)(b)(2).

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2008-178-L	)	

13. On June 18, 2007, David A. Sanborn granted to Darren R. Emerson and Stacie L. Emerson via a Warranty Deed a property located within Elizabeth Farms as described and recorded in Book 25211 on Page 15 of the Cumberland County Registry of Deeds.
14. On July 9, 2007, William K. Sanborn granted to Alan A. Gale and Susan M. Gale via a Warranty Deed a property located within Elizabeth Farms as described and recorded in Book 25279 on Page 40 of the Cumberland County Registry of Deeds.
15. The Sanborns have not acquired a permit from the Department to sell or lease or offer for sale or lease any development on the properties described in Paragraph 6.
16. By engaging in a plan or process of development which takes place on contiguous or non-contiguous parcels or lots in the same immediate vicinity and exhibiting characteristics of a unified approach, including unified management or supervision, sharing of common underground utilities, sharing a common private access way, sharing common areas, sharing easement areas, and sharing membership in a homeowner's association, and/or using common financing the Sanborns have engaged in a common scheme of development as defined by 06-096 CMR 371(1)(C).
17. By engaging in a common scheme of development, the Sanborns are treated as a single person for the purpose of 38 M.R.S.A. § 482(4), and as a single developer as defined by 06-096 CMR 371(1)(E).
18. Because the properties described in Paragraph 6 have been treated together as part of a common scheme of development, Elizabeth Farms is considered a "parcel of land" under 06-096 CMR 371(1)(L).
19. By selling and offering for sale to the general public within a five year period, without a permit from the Department, sixteen lots divided from a parcel of land with an aggregate land area of more than thirty acres, the Sanborns have violated Maine's *Site Location of Development Law*, 38 M.R.S.A. § 483-A.

**Natural Resources Protection Act & Water Pollution Control Laws**

20. The property identified in Paragraph 6(G) contains a stream, as defined by 38 M.R.S.A. § 480-B(9). A stream is a protected natural resource as defined in 38 M.R.S.A. § 480-B(8).
21. The Department's inspection of the property identified in Paragraph 6(G) on December 7, 2005 revealed that a pond and drainage channel were constructed by dredging a portion of the stream. The project also involved removing vegetation and disturbing soil adjacent to the stream. The stream flows off the property identified in Paragraph 6(G) into an unnamed tributary, which flows into the Pleasant River. Water flowing from the pond

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2008-178-L	)	

and stream into the unnamed tributary was brown in color, indicating the presence of dirt or sediment.

22. By dredging a stream and removing vegetation and disturbing soil adjacent to a stream without first obtaining a permit from the Department, William K. Sanborn violated 38 M.R.S.A. §§ 480-C(1) & (2)(A).
23. By discharging a pollutant, specifically soil, into a stream without first obtaining a permit from the Department, William K. Sanborn violated 38 M.R.S.A. § 413(1).

**Erosion and Sedimentation Control Law**

24. The Department's inspection of the property identified in Paragraph 6(G) on December 7, 2005 revealed that more than one acre of soil was exposed associated with the construction of a home adjacent to the man-made pond and the stream identified in Paragraph 20, and no erosion controls were in place.
25. The Department's inspection of the property identified in Paragraph 6(G) on April 17, 2008 revealed that two foundation holes have been dug and that erosion from these holes and the access way to the holes was resulting in sedimentation to the pond and stream. At the time of the inspection no erosion controls were in place.
26. By conducting or causing filling, displacing or exposing soil without implementing sufficient erosion controls to prevent erosion beyond the project site or into a protected natural resource during the construction of a home, William K. Sanborn violated 38 M.R.S.A. § 420-C.

**General Provisions**

27. On January 19, 2006, the Department issued a Notice of Violation to William K. Sanborn for the violations described in Paragraphs 8-24 and 26 in accordance to 38 M.R.S.A. § 347-A(1)(B).
28. On May 13, 2008, the Department issued a Notice of Violation to William K. Sanborn for the violations described in Paragraphs 8-26 in accordance to 38 M.R.S.A. § 347-A(1)(B).
29. For the purposes of this Agreement, the Sanborns agree that they received proper notice of all violations identified herein pursuant to 38 M.R.S.A. § 347-A(1)(B).
30. Pursuant to 38 M.R.S.A. §§ 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection ("Board"), which is part of the Department.
31. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.

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32. To resolve the violations described in Paragraphs 8–19 of this Agreement, the Sanborns agree to:

- i. Pay to the *Treasurer, State of Maine*, a civil monetary penalty as follows:
  1. pay the amount of two thousand five hundred dollars (\$2,500.00) immediately upon signing this agreement;
  2. pay the amount of four thousand dollars (\$4,000.00) no later than June 15, 2009.
- ii. No later than March 15, 2009, submit a plan to the Department to reduce the number of lots in the Elizabeth Farms subdivision to fewer than fifteen lots. The plan is subject to review and approval by the Department.
- iii. No later than March 15, 2009, submit an after-the-fact *Stormwater Management* permit application to the Department pursuant to 38 M.R.S.A. § 420-D and rules thereunder that is complete for processing as described in the Department’s *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2, addressing the development described in Paragraphs 8–19. If the after-the-fact application is approved, comply with all terms and condition of the permit. If the after-the-fact application is not submitted by the date specified, or is wholly or in part denied, returned, or withdrawn, within thirty days of denial, return, or withdrawal, the Sanborns shall submit a restoration plan to the Department to reduce the disturbed area to less than one acre. The plan is subject to review and approval by the Department and must include a specific time schedule for all phases of the restoration.

33. To resolve the violations described in Paragraphs 20–26 of this Agreement, William K. Sanborn agrees to:

- i. Pay to the *Treasurer, State of Maine*, a civil monetary penalty in the amount of four thousand dollars (\$4,000.00) no later than September 15, 2009.
- ii. No later than June 15, 2009, submit an after-the-fact *Natural Resources Protection Act* permit application to the Department pursuant to 38 M.R.S.A. § 480-C and rules thereunder that is complete for processing as described in the Department’s *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2, addressing the *Natural Resources Protection Act* violations described in Paragraphs 20–22 of this Agreement. If the after-the-fact application is approved, comply with all terms and condition of the permit. If the after-the-fact application is not submitted by the date specified, or is wholly or in part denied, returned, or withdrawn, within thirty days of denial, return, or withdrawal, William K. Sanborn shall submit a restoration plan to the Department to restore the stream and adjacent area. The plan is subject to review and approval by the Department and must include a specific time schedule for all phases of the restoration.

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2008-178-L	)	

34. The Department and Office of the Attorney General grant a release of their causes of action against the Sanborns for the specific violation listed in Paragraphs 8–19 of this Agreement on the express condition that all actions listed in Paragraph 32 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until all requirements of this Agreement are satisfied.
35. The Department and Office of the Attorney General grant a release of their causes of action against William K. Sanborn for the specific violation listed in Paragraphs 20–26 of this Agreement on the express condition that all actions listed in Paragraph 33 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until all requirements of this Agreement are satisfied.
36. Non-compliance with Paragraphs 32 and 33 of this Agreement void the respective releases set forth in Paragraphs 34 and 35 of this Agreement and may lead to an enforcement action pursuant to 38 M.R.S.A. §§ 347-A(1)(A), 347-A(5), or 348, as well as pursuit of other remedies.
37. Actions taken pursuant to this Agreement shall be completed in accordance with the requirements of all applicable local, state, and federal laws, rules, laws, and orders including but not limited to licensing requirements.
38. The provisions of this Agreement shall apply to, and be binding on, the parties and their officers, agents, servants, employees, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Agreement.

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

WILLIAM K. SANBORN



DATE: 3/15/19

WILLIAM K. SANBORN

SUSAN A. SANBORN



DATE: 3/15/19

SUSAN A. SANBORN

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38 M.R.S.A. §§ 413, 420-C, 480-C, 483-A )  
2008-178-L )

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AGREEMENT  
(38 M.R.S.A. § 347-A)

SCOTT W. SANBORN

Scott W. Sanborn DATE: 3/19/09  
SCOTT W. SANBORN

DAVID A. SANBORN

David A. Sanborn DATE: 3/15/09  
DAVID A. SANBORN

ELIZABETH L. SPAZEK (f/k/a ELIZABETH L. SANBORN)

Elizabeth Spazek DATE: 3/16/09  
ELIZABETH L. SPAZEK (f/k/a ELIZABETH L. SANBORN)

MAINE BOARD OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
ERNEST W. HILTON, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL