



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**  
Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LP11-120  
Order LP11-020**

**IN THE MATTER** of an alleged  
contravention of subsection 5.(1) of the  
Prince Edward Island Lands Protection Act  
by Upton Farm Trust Inc.

**BEFORE THE COMMISSION**

On Wednesday, the 28<sup>th</sup> day of December, 2011

Allan Rankin, Vice-Chair  
John Broderick, Commissioner  
Leonard Gallant, Commissioner  
Ferne MacPhail, Commissioner

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# Order

**IN THE MATTER** of an alleged contravention of subsection 5.(1) of the Prince Edward Island Lands Protection Act (the Act) by Upton Farm Trust Inc. (the Corporation).

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# Order

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**WHEREAS**, subsection 5.(1) of the Act reads as follows:

*A corporation shall not have an aggregate land holding in excess of five acres or having a shore frontage in excess of one hundred and sixty-five feet unless it first receives permission to do so from the Lieutenant Governor in Council.*

**AND WHEREAS**, by deed dated April 13, 2011, the Corporation, of Charlottetown, Queens County, Prince Edward Island, acquired provincial parcels #1046259 and #1046242, consisting of 138.47 acres of land located in Charlottetown;

**AND WHEREAS**, on May 26, 2011, the Corporation filed a retroactive application with the Commission to acquire provincial parcels #1046259 and #1046242;

**AND WHEREAS** the application reported that the Corporation had acquired the parcels, by way of transfer, prior to making application to Executive Council for approval pursuant to the Act to acquire such land;

**AND WHEREAS** the application was subsequently approved by Executive Council on June 14, 2011 (Executive Council Order No. EC2011-289);

**AND WHEREAS**, by Notice of Intention dated November 8, 2011, the Corporation was advised of the apparent contravention and provided with an opportunity to respond;

**AND WHEREAS**, by way of letter dated November 17, 2011, the Commission received a response to the Notice of Intention from the Corporation's legal counsel;

**AND WHEREAS** the Commission has fully considered the original application, the Notice of Intention and the Corporation's legal counsel's response to the Notice of Intention and other relevant material before it;

**THE COMMISSION HEREBY FINDS** that the Corporation contravened the Act when it acquired provincial parcels #1046259 and #1046242, by deed dated April 13, 2011, without the approval of Executive Council;

**THE COMMISSION HEREBY IMPOSES**, pursuant to clause 15.1(1)(a) of the Act, a penalty in the amount of \$50.00 for the aforementioned contravention of the Act;

**THE COMMISSION HEREBY FIXES** February 1, 2012 as the date by which the Corporation must pay the \$50.00 penalty.

**DATED** at Charlottetown, Prince Edward Island, this 28th day of December, 2011.

**BY THE COMMISSION:**

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Allan Rankin, Commissioner

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John Broderick, Commissioner

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Leonard Gallant, Commissioner

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Ferne MacPhail, Commissioner

**TAKE NOTICE** that any person or corporation that has contravened section 2, 4, 5, 5.3, 6.1 or 6.2 is liable to a penalty, pursuant to subsection 15.1(1) of the Act, of not more than \$10,000;

Subsection 15.1(3) reads as follows:

*If any person or corporation fails to pay any penalty imposed by the Commission within the time fixed by the Commission for the payment of the penalty, the Commission may make application, without notice to the person or corporation, to a judge of the Supreme Court for an order that judgment for the amount of the penalty or any unpaid portion of the penalty may be entered in the court against the person or corporation.*

**AND FURTHER TAKE NOTICE** that section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

*12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.*

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written Request for Review, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13(1) and 13(2) of the **Act** provide as follows:

*13.(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.*

*(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.*

## **NOTICE: IRAC File Retention**

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.