

September 24, 2004

Amy Mills
Assistance Attorney General
Department of the Attorney General
6 State House Station
Augusta, Maine 04333-0006

Re #1: Settlement Agreement between Winterville Plantation and the State of Maine-Land Use Regulation Commission (LURC). LURC Enforcement Case # EC 94-001

Re #2: Letter of Warning issued to the Town of Eagle Lake by the State of Maine-Land Use Regulation Commission. LURC Enforcement Case # EC 2002-146

Dear Ms. Mills:

Earlier this year Maine Public Employees for Environmental Responsibility (PEER) received information regarding two violations of Maine's Land Use Regulation Commission Standards that were committed by municipalities in Aroostook County. The first breach of law was committed in 1993 by Winterville Plantation and was never completely resolved; and the second was by the Town of Eagle Lake in 2002, which involved an almost nonexistent penalty for substantiated violations. Both violations occurred under the administration of a Mr. James Nadeau, the municipal leader of both communities.

These violations are relevant because last spring Mr. Nadeau was appointed as a Commissioner to the Land Use Regulation Commission and in that capacity, it is imperative that all violations, which occurred prior to his confirmation be legally resolved. However, at the time of his confirmation, the violations were not resolved. Maine PEER requests that your office investigates the two enforcement cases and determine if the first action of the Settlement Agreement was fully complied with, and in reference to the second violation, if the Town of Eagle Lake was adequately penalized for the violations committed.

Evidence supplied by the State documented that Winterville Plantation did not meet all of the conditions of a Settlement Agreement. If that is the case, then the Plantation needs to pay the state the two thousand eight hundred dollars penalty as required by the Settlement Agreement as well as other fines that maybe necessary.

In regards to the second infringement, the Town of Eagle Lake, given Mr. Nadeau's past performance, was not adequately fined to match the severity of violations.

Copies of the State's documents are enclosed.

For Specific details of each case, please see below:

Re: 1: Settlement Agreement between the Plantation of Winterville and the State of Maine-Land Use Regulation Commission (LURC). LURC Enforcement Case # EC 94-001.

In 1993 Winterville Plantation violated LURC Standards by harvesting 5.5 acres within a LURC Fish and Wildlife Protection Subdistrict without written notification to the (LURC) Commission and without a plan agreement with the Maine Department of Inland Fisheries and Wildlife or a Forestry Operations Permit from the Commission. In addition, the Plantation harvested timber from within Shoreland Protection Subdistricts without having filed a Notification with the Commission, as required by the Commissions Standards. (According the public records Winterville violated LURC's Land Use Standards Section 10.16,C,3,a,(12) and Section 10.17,A5,(i).) As a resolution to the violations, the State and Winterville officials signed a Settlement Agreement dated April 20, 1994, May 12, 1994 and May 31, 1994 in which the Town of Winterville agreed to take certain actions to resolve the enforcement complaints.

There are several areas where Winterville Plantation has not met the full requirements of the Administrative Settlement Agreement. Those requirements were:

* On April 20th, 1994 Winterville's First Assessor James Nadeau signed a legally binding agreement to resolve the violations. Mr. Nadeau agreed to pay a six hundred dollar civility penalty within ten days of the effective date of the Settlement Agreement. The effective date of the Agreement was May 31, 1994 and Winterville Plantation did not submit a check to the state until July 1, 1994, well after the require time period.

* By July 15, 1994 [the Plantation] was required to pay two thousand eight hundred dollars (\$2,800), unless by that date, Winterville Plantation has successfully petitioned for rezoning and the Commission has so designated the 23-acre area described in the Settlement Agreement. If the Plantation did succeed in rezoning the area then the Agreement allowed for the penalty amount to be waived.

To date neither has the Plantation successfully petitioned for the rezoning nor has it paid the penalty required under the Settlement Agreement. The Agreement does not allow for the Plantation to ignore the rezoning nor does it excuse the penalty if the rezoning does not occur. The Agreement is a legally binding document and should not be allowed to lapse.

Re #2: Letter of Warning from the State of Maine-Land Use Regulation Commission to the Town of Eagle Lake. LURC Enforcement Case # EC 2002-146

In November of 2002 LURC opened an Enforcement Investigation for violations of Land Use Standards by the Town of Eagle Lake. Specifically the Town cleared, filled and

graded approximately a 10,000 square foot area with out a LURC permit. The Town compounded the violation by trespassing on state land when it began the project without acquiring right, title or interest to the site. The Town has been able to commit these violations with virtually no repercussions:

* On September 9, 2003, almost a year after the trespass, the Bureau of Parks and Lands issued a twenty-five year lease to the Town of Eagle Lake for the area where the trespass occurred at a one time fee of one hundred dollars. The state issued the lease without taking any enforcement action or penalizing the Town for the trespass (According to public records the Town violated the following laws 12M.R.S.A. Section 68-B,1,C; Standards , Section 10.17,A,6,b; and Standards Section 10.17,A,6,f).

* On August 9, 2004 the Land Use Regulation Commission sent the Town of Eagle Lake a Letter of Warning for the construction and the trespass. Once again the violation was resolved without the Town incurring any apparent monetary penalty.

Previous to this violation, Mr. Nadeau, as the leader of Winterville, was involved with three separate violations of LURC Standards. In light of Mr. Nadeau's track record, a Letter of Warning for the 2003 violation does not seem to be an appropriate penalty. It appears that the Land Use Regulation Commission and the Bureau of Parks and Lands are either choosing to ignore legally binding documents or take such a soft-handed approach that the penalty does not fit the crime and does not serve as a deterrent against future violations.

Maine PEER is requesting that you review these cases to determine if the Settlement Agreement for Winterville Plantation (Enforcement Case # EC 94-001) was properly enforced and executed, and if the State fulfilled its obligation to protect State property (Enforcement Case 2002-146) by meeting the full requirements of the law. If the requirements of law in either case was not fulfilled then Winterville Plantation and the Town of Eagle Lake should be required to pay fines as identified in Settlement Agreements and pay additionally penalties commencing from the first day of the violations.

Thank you for your consideration to my request and please feel free to contact me if I may answer any questions.

Sincerely,

Tim Caverly, Director