

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Peter J. Horne, Transferor
Aquaculture Lease Transfer Application
Maquoit Bay, Freeport

**Lease MAQ BR1
Docket # 2013-07-T**
Christian Horne &
Maine Oyster, Inc., Transferees
June 19, 2014

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

1. THE PROCEEDINGS

Peter Horne applied to the Department of Marine Resources (“DMR”) to transfer to Christian Horne and Maine Oyster, Inc., a 5-acre aquaculture lease MAQ BR1, located in the coastal waters of the State of Maine in Maquoit Bay in the Town of Freeport in Cumberland County. The lease was originally granted on July 1, 1985 to Chance Along Sea Farms, Inc. It was renewed in 1995 and 2005 for subsequent ten-year terms for the purpose of cultivating American/eastern oysters (*Crassostrea virginica*), soft clams (*Mya arenaria*), blue sea mussels (*Mytilus edulis*), sea scallops (*Placopecten magellanicus*), ocean quahog/hard clams (*Arctica islandica*), and surf/hen clams (*Spisula solidissima*), using bottom and suspended culture techniques. The lease was transferred to Peter Horne in 1992. The current lease expires on June 30, 2015.

The transfer application was accepted as complete on February 20, 2013. The Department provided a notice of the application and of the 14-day comment period to all riparian owners, the Town of Freeport, the general mailing list of interested persons, and the following reviewing agencies: U.S. Army Corps of Engineers, U.S. Coast Guard, National Marine Fisheries Service, Maine Dept. of Inland Fisheries & Wildlife, Maine Dept. of Conservation, and DMR Marine Patrol. A notice of the application and comment period was published in the *Portland Press Herald* on February 22, 2013. No comments were received.

2. STATUTORY CRITERIA & FINDINGS OF FACT

Lease transfer requests are governed by 12 M.R.S.A. §6072 (12-A) and DMR Rule 2.60. They provide that the Commissioner of DMR may grant a transfer upon determining that: (A) the change in the lessee’s identity does not cause any of the original criteria for issuing a lease to be violated; (B) the transfer is not intended to circumvent the preference guidelines for treatment of competing applications; (C) the transfer is not for speculative purposes; and (D) the transfer will not cause the transferee to be a tenant in more than 1,000 acres of aquaculture leases in Maine.

A. Effect of Lessee Change on Lease Criteria

The transferees have met the same requirements for providing information about financial and technical capacity as is required for an applicant for a standard lease. They have extensive experience in shellfish aquaculture and are acquainted with Maine’s aquaculture laws and rules. According to the transfer application, the transferees plan no changes in the aquaculture activities taking place on the lease site.

No comments on this transfer application were received by the Department. There is no evidence that the change in the identity of the lessee will affect any of the statutory criteria for issuing an aquaculture lease.

THEREFORE, I FIND that the change in the identity of the lessee does not violate any of the lease issuance criteria set forth in 12 MRSA §6072 (7-A).

B. Effect on Preference Guidelines

There are no competing applications for this lease site, so the preference guidelines are not relevant to this application.

THEREFORE, I FIND that the lease transfer is not intended to circumvent the preference guidelines for treatment of competing applications as set forth in 12 MRSA §6072 (8).

C. Speculative Purposes

Rule 2.60 provides that in considering whether a transfer is being conducted for speculative purposes, the Department must consider “whether the current lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term”. It is clear from annual reports filed with DMR by Transferor that aquaculture has been conducted on this lease site.

THEREFORE, I FIND that the lease transfer is not for speculative purposes.

D. Acres Leased by Transferee

The statute and rule require that in order to grant the lease transfer, the Commissioner must find that “the transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.” According to DMR records, the transferees hold the following leases:

Maine Oyster, Inc.: SHE LE 2.96 acres, SHE LE2 1.57 acres, CAS LNI 3.92 acres, CAS LAM 3.94 acres, MAQ BRE 9.91 acres (co-lessee with Edward Bradley; decision pending)

Christian Horne: MAQ BRW 11.82 acres (co-lessee with Edward Bradley; decision pending)

THEREFORE, I FIND that the lease transfer will not cause either transferee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

3. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

1. The change in the identity of the lessee does not violate any of the lease issuance criteria set forth in 12 MRSA §6072 (7-A);
2. The lease transfer is not intended to circumvent the preference guidelines for treatment of competing applications as set forth in 12 MRSA §6072 (8);
3. The lease transfer is not for speculative purposes; and
4. The lease transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

These findings of fact and conclusions of law having been made as required by 12 MRSA §6072 (12-A) and by DMR rule 2.60, this lease transfer may be granted.

4. DECISION

Based on the foregoing, I grant the requested transfer of the aquaculture lease MAQ BR1 from Peter J. Horne to Christian Horne and Maine Oyster, Inc. The term of the lease is not affected by the transfer, so the new lease will expire on the same date as the current lease, June 30, 2015.

All provisions of the existing lease shall continue in full force and effect, including all conditions on the lease, as noted below. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.40 (2) (A), conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

5. CONDITIONS

Pursuant to 12 MRSA §6072 (7-B), the Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the lease.

The existing condition on this lease, which continues in effect after the transfer, is:

The lease shall be marked in accordance with the requirements of the U. S. Coast Guard and the Department of Marine Resources.

6. REVOCATION OF LEASE

The Commissioner may commence revocation procedures if it is determined that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law is not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

6/19/14



Patrick C. Keliher
Commissioner,
Department of Marine Resources