

DEPARTMENT OF MARINE RESOURCES

DLW Enterprises INC, Transferor

Long Cove Sea Farm LLC, Transferee

Aquaculture Lease Transfer Application

June 14, 2022

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**1. THE PROCEEDINGS**

DLW Enterprises Inc. applied to the Department of Marine Resource (DMR) to transfer the lease PEN LD2 to Long Cove Sea Farm, LLC. The lease site is 0.62<sup>1</sup> acres and is in Long Cove, Deer Isle, Hancock County. The lease was initially issued on February 21, 2003<sup>2</sup> and was comprised of two tracts totaling 2.95 acres. On February 28, 2011, tract two, comprised of 2.45 acres was transferred to Virginia Olsen.<sup>3</sup> DLW Enterprises retained tract one [0.62 acres] of PEN LD2, which is authorized for the cultivation of American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), and blue sea mussels (*Mytilus edulis*) using suspended culture techniques. PEN LD2 was most recently renewed on October 26, 2014. The current lease expires on February 20, 2023.

The transfer application was initially received on January 5, 2022 and accepted as complete on February 3, 2022. Notice of the completed application and 30-day comment period was published in the *Island Advantage* on February 24, 2022. DMR also provided notice of the completed application and the 30-day comment period to the Town of Deer Isle and its Harbormaster, riparian landowners within 1,000 feet of the aquaculture lease site, other state

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<sup>1</sup> DMR now calculates acreage using mapping software and is in the process of updating lease documents to reflect this new, highly accurate method. As a result of this new calculation method, the acreage listed may be slightly different than the acreage listed in the respective lease documents. The acreage listed in the executed lease document is .50 acres, but the mapping software calculates the acreage at .62 acres. If the transfer is granted, the agreement will be updated to reflect the .62 acres.

<sup>2</sup> The lease was initially issued to Maine Sea to Tree, LLC a Maine corporation wholly owned by Danny Weed. Maine Sea to Tree was dissolved and Mr. Weed requested that the name of the lessee be changed to his new company, DLW Enterprises Inc. Mr. Weed is the sole owner of DLW Enterprises. The name change was granted by DMR and took effect on May 16, 2016.

<sup>3</sup> The tract that was transferred to Virginia Olsen was given the site ID: PEN LD3. On May 15, 2015, PEN LD3 was transferred from Virginia Olsen to Abigail Barrows. Ms. Barrows owns Long Cove Sea Farm, LLC.

agencies, and to subscribers of DMR’s aquaculture list-serve. During the comment period, DMR received one comment. A lease transfer does not require a hearing, so no hearing was held.

## **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**

As part of the transfer application, transferees must provide documentation demonstrating that they have the financial and technical capacity to operate the lease site. Long Cove Sea Farm, LLC is wholly owned by Abigail Barrows, who holds the lease site PEN LD3.<sup>4</sup> Ms. Barrows has held PEN LD3 since the lease was transferred to her, from Virginia Olsen, on May 15, 2015. Ms. Barrows has experience in aquaculture and is familiar with Maine’s aquaculture rules and laws.<sup>5</sup> As part of the application, Ms. Barrows demonstrated that Long Cove Sea Farm, LLC has the financial capacity to operate the lease should the transfer be granted.<sup>6</sup>

On March 7, 2022, the Maine Department of Inland Fisheries (MEIF&W) submitted the following comment about the proposed transfer:

It is our understanding that this is the transfer of a previously approved existing lease. If so, this lease is located within a Shorebird Feeding Area and Tidal Waterfowl and Wading Bird Habitat, both of which are Significant Wildlife Habitats. So long as there is no expansion being proposed, we recommend that boat traffic and tending activities be minimized to the extent practicable during

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<sup>4</sup> Pg. 6 of the completed application and the corporate applicant form in the application.

<sup>5</sup> Long Cove Sea Farm does not hold any aquaculture leases. However, since the company is wholly owned by Ms. Barrows DMR’s assessment is based on the information she provided about her technical capability.

<sup>6</sup> Letter from Camden National Bank indicating that Long Cove Sea Farm, LLC has an account in good standing. Letter saved to case file and dated June 6, 2022.

the months of May 1 - June 20, and from August 1 - October 1, to minimize impacts on wildlife utilizing this habitat.<sup>7</sup>

Long Cove Sea Farm, LLC is not proposing to modify any elements of the existing operations authorized on PEN LD2. An expansion of the lease site is not proposed. If the transfer is granted only the holder of the lease would change. This site was initially issued on February 21, 2003 and has subsequently been renewed. On May 9, 2022, MEIF&W clarified that PEN LD2 was located outside of Tidal Waterfowl and Wading Bird Habitat and Shorebird Areas. MEIF&W further noted that so long as PEN LD2 did not intersect with mapped habitats minimal impacts were anticipated.<sup>8</sup>

MEIF&W's comments do not suggest that the change in lease holder would violate any of the original criteria for granting the lease. Rather, the initial comment was a recommendation that activities be minimized to the extent practical during the specified time periods to limit potential impacts to wildlife. That comment appeared to be based on the MEIF&W's assessment that the site was within a designated habitat type. MEIF&W did not provide specific guidance on what mitigation measures would be preferable and then later clarified that the site was not within the designated habitat type. DMR provided a copy of the comment to Long Cove Sea Farm, LLC. If the transfer is granted, Long Cove Sea Farm, LLC may follow-up with MEIF&W for additional guidance.

DMR did not receive any other comments concerning the lease transfer. Based on a review of the record there is no evidence to indicate that a change in lease holder would otherwise violate the original criteria for granting a standard lease.

**Therefore, I find** that the change in the identity of the lessee does not violate any of the issuance criteria set forth in 12 M.R.S.A. §6072(7-A).

#### **B. Effect on Preference Guidelines**

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

**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 M.R.S.A. §6072(8).

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<sup>7</sup> CF: Email from B. Settele to DMR Aquaculture dated 3/7/2022.

<sup>8</sup> CF: Email from B. Settele to DMR Aquaculture dated May 9, 2022.

### **C. Speculative Purposes**

DMR 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.” Based on the transfer application and a review of DMR’s records, DLW Enterprises has conducted aquaculture activities on the lease site during its term.

**Therefore, I find** that the lease transfer is not for speculative purposes.

### **D. Acres Leased by Transferee**

In accordance with rule and statute, the proposed transfer cannot result in the transferee being a tenant of any kind in leases covering an aggregate of more than 1,000 acres. Long Cove Sea Farm does not hold any aquaculture leases. If the transfer is granted, Long Cove Sea Farm would hold 0.62 acres.<sup>9</sup>

**Therefore, I find** that 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.

### **3. Conclusions of Law**

Based on the above findings, I conclude 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 lease transfer will not 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 M.R.S.A. §6072(12-A) and Chapter 2.60 of DMR’s regulations, this transfer may be granted.

### **4. Decision**

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<sup>9</sup> Abigail Barrows wholly owns Long Cove Sea Farm. According to Department records, Ms. Barrows holds PEN LD3, which is 2.45 acres. Ms. Barrows is also in the process of applying for a 4.24-acre standard lease in Pickering Cove, Deer Isle.

Based on the foregoing, I grant the requested transfer of PEN LD2 from DLW Enterprises, Inc., to Long Cove Sea Farm, LLC. The term of the lease is not affected by the transfer. All provisions of the existing lease shall continue in full force and effect, including the conditions noted below unless modified by this decision. 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's regulations.

**5. Conditions**

The existing conditions on this lease are:

- a. The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80; and
- b. Navigation shall be allowed on the open areas of the lease.

Condition "a" which pertains to site markings is contemplated in existing rule and is a requirement of all lease agreements. Therefore, condition "a" will be removed.

**6. Monitoring and Revocation of Lease**

In accordance with 12 M.R.S.A. §6072(11), DMR shall monitor the lease on an annual basis. The Commissioner may initiate revocation proceedings if the lease holder fails to comply the provisions set forth in 12 M.R.S.A. §6072(11) and applicable rule.

Dated: \_\_\_\_\_

6/14/2022



**Patrick C. Keliher, Commissioner  
Department of Marine Resources**

STATE OF MAINE  
AQUACULTURE LEASE

Lease PEN LD2

*This is a lease conveying certain limited rights in the submerged lands and waters of the State of Maine. Please read the lease carefully and abide by its terms.*

**THIS LEASE is entered into by:**

**The Department of Marine Resources**, an agency of the State of Maine, by its Commissioner acting pursuant to the provisions of 12 M.R.S. § 6072 and § 6072-A, hereinafter the "Lessor", and

**DLW Enterprises, Inc.**, a corporation organized pursuant to the laws of the State of Maine, hereinafter referred to, individually and collectively, as the case may be, as the "Lessee". This lease was previously in the name of Maine Sea to Tree, LLC, a Maine corporation solely owned by Danny Weed. The corporation Maine Sea to Tree, LLC is being dissolved and the owner, Danny Weed, is changing the name of the lessee to his new corporation, DLW Enterprises, Inc., which is solely owned by him.

**LESSOR HEREBY LEASES TO LESSEE** on the terms and conditions hereinafter set forth, the following described submerged land situated in **Long Cove, Deer Isle, County of Hancock**, Maine, to wit: **one tract, containing 0.50 acres**, more or less, of coastal waters and public land and described more particularly as follows:

STARTING at the point Latitude 44°12'41.10"N, Longitude 68°40'08.08"W (datum NAD83/WGS84), and point of beginning; thence 279.62° True, a distance of 302.89 feet to the northwest corner; thence 191.77° True, a distance of 86.06 feet to the southwest corner; thence 99.87° True, a distance of 302.89 feet to the southeast corner; thence 11.73° True, a distance of 87.39 feet to the northeast corner and point of beginning;

hereinafter referred to as "the leased premises".

1. **TERM.** The term of this lease is **for the remainder of the ten (10) years, beginning on the 21<sup>st</sup> day of February, 2013, and continuing to the 20<sup>th</sup> day of February, 2023.** Within one year of the granting of this lease to Lessee, the Commissioner of Marine Resources shall review the lease to determine whether revocation pursuant to the standards of 12 M.R.S. § 6072(11) or § 6072-A (22) is warranted.
2. **USE OF LEASE.** Lessee, and Lessee's agents, contractors, employees and invitees are hereby authorized to use the leased premises to cultivate **American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), and blue sea mussels (*Mytilus edulis*), using suspended culture techniques**
3. **OTHER USES.** Lessor reserves the right to make the greatest multiple, compatible uses of the leased area, but shall preserve the rights of Lessee to the extent necessary to carry out the lease purpose.

4. **ASSIGNMENT.** The rights leased herein by Lessor may not be assigned or sublet by Lessee.
  
5. **RENT.** Rent shall be payable hereunder as follows: One hundred dollars (\$100) per acre per year payable on or before each October 1st throughout the term hereof; rent for the first year (or any fraction of the current year) being due and payable upon execution of this lease. Lessor reserves the right to increase the rental fee pursuant to 12 M.R.S. §6072 (9) and § 6072-A (14).
  
6. **INDEMNITY.** Lessee agrees to defend or cause to be defended and to indemnify and hold the Lessor harmless from and against any and all manner of claims, suits, expenses, damages or causes of action for damages arising out of, or allegedly arising out of, in whole or in part, the use or occupancy of the premises by Lessee and Lessee's agents, contractors, employees and invitees.
  
7. **PERFORMANCE BOND.** Lessee shall post a bond or establish an escrow account as required by Department Regulations Chapters 2.40 and 2.64 in the amount of \$5,000.00, conditioned upon Lessee's performance of the obligations contained in this aquaculture lease.
  
8. **MAINTENANCE.**
  - a. Lessee shall mark the lease tracts by means of buoys or by other devices in the manner described in Chapter 2.80 of the Department's Regulations and maintain the markings when the area is not covered with ice.
  
  - b. Lessee shall maintain the lease area in good order, as required by Department Regulations, Chapter 2.75.
  
9. **DEFAULT.** The following events shall be deemed to be events of default hereunder:
  - a. If Lessee fails to pay when due any rent payable hereunder;
  
  - b. If Lessee does not comply with any other provision of this Lease and does not cure such noncompliance within 30 days after notice thereof to Lessee, or where such noncompliance cannot be cured within 30 days, if Lessee fails to promptly and diligently undertake to cure such noncompliance and cause the same to be cured as soon as reasonably possible;
  
  - c. If Lessee shall make a transfer in fraud of creditors or be adjudged bankrupt or insolvent in any proceedings;
  
  - d. If a receiver or trustee shall be appointed for all or substantially all assets of Lessee;
  
  - e. If Lessee shall abandon any substantial portion of the leased premises;
  
  - f. If substantially no aquaculture has been conducted on the leased premises within the preceding year, or if Lessee has conducted aquaculture activities in a manner substantially injurious to marine organisms; or

- g. If Lessee fails to comply with all applicable Department of Marine Resources statutes, rules and regulations.
  - h. Upon the occurrence of any such event of default, Lessor may, in addition to (and not instead of) any other remedies available at law or equity, revoke this lease. A lease revocation shall be an adjudicatory proceeding under the Maine Administrative Procedure Act, Title 5, Chapter 375, subchapter IV. A hearing with public notice shall be held prior to revoking any lease.
10. **ENTRY.** The Lessor, its agents and representatives shall have access to the premises at all reasonable times for the purpose of inspecting the same and securing compliance with the terms and conditions of this Lease.
11. **NOTICE.** Notice required to be given to Lessor or Lessee under this lease shall be deemed to have been given when actually delivered or when deposited in the U.S. mail, first class, postage prepaid, addressed as follows:

TO THE LESSOR: Department of Marine Resources  
Attention: Aquaculture Leasing Program  
21 State House Station  
Augusta, Maine 04333

TO THE LESSEE: At the address given below or at such other address as Lessee may have theretofore specified by written notice actually received and placed on record with Lessor.

12. **ALTERATION.** Lessee may make no alteration to the premises without Lessor's prior written consent except that specifically authorized by the regulatory permits in effect on the date of the signing of this document and any permits issued after the signing of this document, which form a part of this Lease.
13. **CONDITIONS.** The following conditions are imposed on this lease by the decision dated October 26, 2014, DMR Docket # 2012-17-R.
- a. The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80; and
  - b. Navigation shall be allowed on the open areas of the lease.

14. **VARIANCE.**
- a. The lease shall be operated in a manner consistent with the specifications contained in the original application for this lease site, as modified by the Commissioner's decision on that application and by all other applications and decisions of any kind relating to this lease site.
  - b. The lessee may, with the written approval of the Department, vary from these specifications and conditions provided the Department determines that such operation pursuant to the variance would continue to satisfy all lease decision

criteria. The Department's decision whether to approve a variance request is discretionary.

- 15. MISCELLANEOUS. This lease shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective legal representatives. Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any provision of this Lease, shall be deemed a waiver of or a consent to any subsequent breach of the same or any other provision. Lessee shall comply with all applicable laws, regulations and ordinances of governmental entities that have jurisdiction over the leased premises. This lease contains the entire agreement of the parties and may not be modified except by a writing subscribed by both parties.

The Lessee expressly agrees to all terms and conditions herein.

Executed this 16th day of May, 2016

Lessee: DLW Enterprises, Inc.

Lessor: State of Maine
Department of Marine Resources

By: [Signature]
Danny Weed, Sole Owner

By: [Signature]
Diantha C. Robinson,
Aquaculture Hearing Officer

Lessee's Address:
DLW Enterprises, Inc.
Attn: Danny Weed
683 North Sedgwick Road
Sedgwick, ME 05676

Notary Attestation:

Notary Attestation:

State of Maine
County of Hancock

State of Maine
County of Kennebec

Personally appeared Danny Weed of DLW Enterprises, Inc. and acknowledged this to be his free act and deed before me.

Personally appeared Diantha C. Robinson for the Department of Marine Resources and acknowledged this to be her free act and deed before me.

[Signature]
Notary Public
My Commission Expires: \_\_\_\_\_

[Signature]
Cindy L. Burke, Notary Public
My Commission Expires: August 1, 2020

REBECCA EMERSON
Notary Public, State Of Maine
My Commission Expires November 1, 2021

**STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES**

**Maine Sea to Tree, LLC  
PEN LD 2**

Aquaculture Lease Renewal Application  
Suspended culture of shellfish, Long Cove,  
Deer Isle

Docket #2012-17-R  
October 26, 2014

**FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION**

Maine Sea to Tree, LLC applied to the Department on October 29, 2012, to renew the aquaculture lease, PEN LD2, for a period of ten years to February 20, 2023. The 0.5 acre lease is issued for suspended culture of eastern /American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*) and blue mussels (*Mytilus edulis*) located in Long Cove, Deer Isle, Hancock County, Maine. This lease was initially issued on February 21, 2003 for 2.95 acres in two tracts. Tract two, consisting of 2.45 acres was transferred to Virginia Olsen, operating as Oceanville Seafood. The decision granting the transfer was entered on February 28, 2011 and a new lease for PEN LD2 was executed on March 30, 2011 for the remainder of the lease term.

**1. PROCEDURE**

Notice of the application for lease renewal and the 30-day public comment period and opportunity to request a public hearing was published in the *Island Advantages* on December 13, 2012 and on January 24, 2013 and in the *Commercial Fisheries News* in February, 2013. Personal notice was given to the municipality and to riparian landowners within 1,000 feet of the lease site. No comments and no requests for a hearing on this application were received by the Department during the comment period.

**2. STATUTORY CRITERIA**

Applications for aquaculture lease renewals are governed by 12 M.R.S.A. §6072(12) and by Chapter 2.45 of the Department's rules, which provide that an aquaculture lease shall be renewed if: the lessee has complied with the lease agreement during its term; the Commissioner determines

that renewal of the lease is in the best interest of the state; the renewal will not cause the lessee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres; and the lease is not being held for speculative purposes.

**A. Compliance with lease**

The review of the records of this lease discloses that all annual reports have been filed, the rent is paid to date, the bond is current, and the site has passed inspection by DMR Marine Patrol. There are no outstanding complaints regarding this lease.

**Therefore, I find** that the applicant has complied with the lease agreement during its term.

**B. Best interest of the State of Maine**

In determining whether it is in the best interest of state to renew the lease, the Department takes into consideration, among other things, the potential for conflict with other new or existing uses of the area which the Commissioner determines to be a higher use of the area from the perspective of the public interest. There is no evidence of conflicts with other new or existing uses of the area.

**Therefore, I find** that it is in the best interests of the State of Maine to renew this lease.

**C. Aggregate lease holdings**

According to DMR records, the total lease acreage held by lessee, including this lease, PEN LD2, consisting of 0.5 acres, will not exceed 1,000 acres.

**Therefore, I find** that the renewal of this lease will not cause the applicant to lease more than 1,000 acres.

**D. Speculative purposes**

Rule 2.45 provides that in considering whether a lease is being held 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 the lessee and by the statement of the lessee on the renewal application that aquaculture has been conducted on this lease site.

**Therefore, I find** that the lease is not for speculative purposes.

**3. LEASE CONDITIONS**

The following conditions are carried over from the original lease and will apply to the renewed lease:

- Navigation shall be allowed on the open areas of the lease; and
- The lease area must be marked in accordance with the U.S. Coast Guard requirements and Department of Marine Resources Chapter 2.80.

**4. DECISION**

The Commissioner of Marine Resources grants the application of Maine Sea to Tree, LLC, to renew its aquaculture lease, PEN LD2, for a period of ten years to February 20, 2023. The renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease, except as modified by this decision.

**5. REVOCAION OF LEASE**

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §6072 (11) and DMR Rule Chapter 2.42 that no substantial aquaculture has been conducted within the preceding year, that the lease activities are substantially injurious to marine organisms, or that any of the conditions of the lease or any applicable laws or regulations have been violated.

Dated: 10/26/14

  
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**Patrick C. Keliher, Commissioner**  
**Department of Marine Resources**