

**Suffolk County Shellfish Aquaculture Lease Program
in Peconic Bay and Gardiners Bay**

**Attachment C
Administrative Guidance**

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Introduction

The Suffolk County Shellfish Aquaculture Lease Program (Lease Program) in Peconic Bay and Gardiners Bay is designed to fulfill the requirements set forth in New York State Environmental Conservation Law §13-0302 (2004 Leasing Law) by establishing a framework for the leasing of underwater lands for the purpose of shellfish aquaculture that will minimize environmental impacts and user conflicts while supporting the growth of the shellfish aquaculture industry. The development of this program required the collective knowledge and input from numerous individuals, agencies, organizations, businesses, and other interested parties. Obtaining this knowledge was facilitated by the participation of the Aquaculture Lease Program Advisory Committee (ALPAC) at its meetings, which included public input sessions. In addition to ALPAC meetings, individual and group meetings were held that involved site visits to aquaculture operations and interviews with over 70 individuals including local government representatives, shellfish growers, baymen, fishermen, environmental organizations, professional/trade groups, recreational boaters, and marine scientists.

Significant data on the environmental characteristics and features of Peconic Bay and Gardiners Bay including wetlands, submerged aquatic vegetation, water quality, natural resources, and sediments were collected as part of the program development. In addition to the environmental information, data on socio-economic conditions and maritime traditions were also collected and analyzed to assess any impacts on resources that may occur through implementation of a lease program.

In accordance with the 2004 Leasing Law and in support of the maritime tradition of shellfish aquaculture in Peconic Bay and Gardiners Bay, Suffolk County has developed a Lease Program that will not only support the continuation of existing shellfish aquaculture in the bays, but also encourage moderate growth of the shellfish industry. This program provides individuals with an opportunity to obtain access to the underwater lands of Peconic Bay and Gardiners Bay for the purpose of commercial shellfish aquaculture. The program also provides municipalities, researchers and not-for-profit entities with the opportunity to obtain non-commercial shellfish cultivation leases for experimental/educational purposes and for shellfish resource restoration.

This document contains a full description of all aspects of the Lease Program. As such, it provides the basis for adoption of the program into law. It also contains all of the required information that is needed by a potential applicant to apply for a commercial or non-commercial shellfish aquaculture lease in Peconic Bay and Gardiners Bay, Suffolk County, New York.

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Definitions

- **Active Grant:** A private oyster grant with a documented historical use of the grant for shellfish aquaculture involving species other than oysters, within the 10-year period between January 1, 1999 and December 31, 2008.
- **Annual Acreage Cap Limit:** Leases for new shellfish aquaculture operations will consist of 5- or 10-acre parcels. The total acreage of all new shellfish aquaculture leases entered into shall not exceed 60 acres per year, exclusive of any acreage under lease to holders of Temporary Marine Area Use Assignments (TMAUAs) issued prior to December 31, 2007 and Private Oyster Grants. This limitation will result in a maximum acreage of 300 acres within the first five years of the program and a total of 600 acres by the 10th year of the program. Sixty acres/year of new leases represents a growth rate of 1% per year based on the total amount of underwater land acreage permitted for TMAUAs, and held under private oyster grant ownership that could potentially be used for cultivation, as of December 31, 2007.
- **Approved Waters:** waters which have been classified by the New York State Department of Environmental Conservation (NYSDEC) as certified for the taking of shellfish for human consumption on a regular basis.
- **Aquaculture:** shellfish cultivation for human use, consumption and resource restoration.
- **Aquaculture Lease Board:** The County will establish a board known as the Aquaculture Lease Board that will consist of: the Director of the Department of Planning or his/her designee; the Commissioner of the Department of Environment and Energy or his/her designee; and the Commissioner of the Department of Economic Development and Workforce Housing or his/her designee. The Aquaculture Lease Board, chaired by the Director of the Department of Planning or his/her designee, will determine those sites that will be available for lease. The Board will act by resolution adopted by majority vote.
- **Department:** Suffolk County Department of Planning.
- **Equipment:** rakes, cages, traps, floats, buoys, racks, rafts and nets and any other goods, supplies, furnishings, apparatus, etc., used for and in support of shellfish cultivation.

- **Fallow Grant:** If a grant has had no permitted shellfish cultivation activity involving species other than oysters for the 10-year period between January 1, 1999 and December 31, 2008, it will be considered “fallow” and may only enter the Lease Program in a limited phased process.
- **Off-Bottom Culture:** means the raising, breeding or growing of marine plant or animal life, including containment on, or in, any raft, rack, float, cage, box or other similar device or structure in any natural waters of the state (6 NYCRR Part 48.1).
- **On-Bottom Culture:** means the raising, breeding, growing or planting of marine plant or animal life on, or in, any natural underwater lands of the state (6 NYCRR Part 48.1).
- **Private Oyster Grant:** the underwater lands previously granted to private individuals by Suffolk County during the mid 1800s to the early 1900s, for purposes of oyster cultivation, pursuant to Chapter 385, Laws of 1884, and subsequent amendments.
- **Sensitive Area:** an environmentally and socio-economically sensitive area described and mapped in Figure 2 of the *Shellfish Aquaculture Lease Program Draft Generic Environmental Impact Statement*, as adopted in the *Final Generic Environmental Impact Statement*.
- **Shellfish:** means oysters, scallops, and all kinds of clams and mussels (ECL Article 11, §11-0103).
- **Shellfish Aquaculture Lease:** the document that conveys the right to conduct shellfish aquaculture activities on Suffolk County owned underwater lands or in the water column. Lease issuance by Suffolk County is discretionary.
- **Shellfish Aquaculture Lease Lands:** those lands conveyed by Suffolk County under a shellfish aquaculture lease document.
- **Shellfish Aquaculture Lease Program:** (“Lease Program”) shall mean the program established pursuant to the Resolution, and all written county policies, as amended, concerning the Program, including, without limitation, the Administrative Guidance,

incorporated by reference as Ex D, and any subsequent revisions thereto. This definition appears in the Model Shellfish Lease Agreement.

- **Shellfish Cultivation:** means the controlled, or partially controlled, raising, breeding, growing, and containment of shellfish in any marine hatchery or through on-bottom or off-bottom culture as permitted by the County, State Fish and Wildlife Law, federal agencies, and any other applicable local laws and ordinances. Shellfish Cultivation is the equivalent of shellfish aquaculture.
- **Shellfish Cultivation Zone:** the area in Peconic Bay and Gardiners Bay within which shellfish aquaculture leases can be issued. These areas are shown on the Shellfish Cultivation Zone Map adopted by Suffolk County. The zone includes Temporary Marine Area Use Assignment (TMAUA) locations, private oyster grants, and other contiguous areas where the impacts of shellfish aquaculture activities on environmental and socio-economic conditions will be minimal.
- **Shellfish Cultivation Zone Aquaculture Lease Sites Map:** the map that shows the Shellfish Cultivation Zone, portions of which have been subdivided by a grid system into 20-acre plots, each of which has been assigned a unique identifying number. Ten-acre leases are located within each plot. The grid system on this map does not apply to oyster grants, which have been identified using a separate numbering system.
- **Shellfish Seed:** any shellfish measuring less than legal size as established under New York State law or regulation.
- **Substantial Shellfish Aquaculture Activity:** a good faith effort to prepare an aquaculture site; acquire financing, equipment and/or seed; plant, cultivate, or harvest of cultivated product; or show other shellfish aquaculture-related activity on a shellfish aquaculture lease.
- **Temporary Marine Area Use Assignment (TMAUA):** a circular parcel of underwater land with a diameter of 500 feet (approximately five acres) issued by NYSDEC for the purposes of shellfish cultivation. All TMAUAs are for temporary use only, expiring on December 31 of the year issued. A TMAUA must be renewed each year with the

NYSDEC Division of Fish, Wildlife, and Marine Resources. All TMAUAs are permitted by NYSDEC for off-bottom shellfish culture only.

- **Wild Stock:** natural shellfish resources which grow within the waters of Peconic Bay and Gardiners Bay, and are not cultivated in any way.
- **2004 Leasing Law:** New York Environmental Conservation Law §13-0302.

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Chapter 1. Lease Application Process

1. Eligibility for Shellfish Aquaculture Leases

Individuals eligible for a shellfish aquaculture lease shall be at least 18 years of age. Each lease applicant is required to provide a federal tax ID number. The Department may establish additional criteria for eligibility. All shellfish aquaculture leases must be located within the Shellfish Cultivation Zone. The model lease agreement form is shown in Appendix A. The aquaculture lease shall be similar to the model lease. However, the County reserves the right to make changes to the model lease, if necessary.

2. Lease Program Participants

a.) NYSDEC Temporary Marine Area Use Assignments

The County Lease Program will provide for the incorporation of the existing Temporary Marine Area Use Assignments (TMAUAs) previously issued by NYSDEC into the lease program. To the extent possible, TMAUA holders will be permitted to remain at their current location and will be given preference to those sites. It should also be noted that pursuant to the 2004 Leasing Law, once the program is implemented, TMAUAs located in the area that is under County jurisdiction must be converted to a lease in order to continue aquaculture activities on that site. (Leases established from TMAUAs issued prior to December 31, 2007 will not be considered in the annual acreage cap for new lease development, i.e., 60 acres per year.)

i.) Holders of TMAUAs located within grids shown on the Shellfish Cultivation Zone Aquaculture Lease Sites map will be required to submit a lease application to the Suffolk County Department of Planning (Department) as described in Appendix B of this guidance document. The applicant can request that the existing operation (5-acre circular plot) be continued without change, or he/she can request an expansion (10-acre square lease) or modification of the current operation, at the same location. The application will be subject to the public review process and other lease requirements prior to issuance of a lease by Suffolk County. A TMAUA holder can request a 5- or 10-acre lease at a different location in the Shellfish Cultivation Zone. If issued at the new location, the lease holder would have to relocate operations to the new location and vacate the former TMAUA location.

- ii.) Holders of isolated TMAUAs, i.e., TMAUAs not within the grids shown on the Shellfish Cultivation Zone Aquaculture Lease Sites map, will be permitted to remain at that location, but must also submit a lease application to the Department. These TMAUA locations are regarded as out-lying plots in the Shellfish Cultivation Zone because they have been used for cultivation at these locations without apparent conflicts. These holders have to convert their TMAUA site into a County lease; however, they cannot expand or alter their permitted operations. The County lease will provide for continuation of operations allowed under the TMAUA program for the current site only. If the holder of an isolated TMAUA relocates operations to an available grid site within the Shellfish Cultivation Zone, the activity authorized by a lease can remain either a 5-acre off-bottom cultivation activity, or expand to a 10-acre on-/off-bottom activity in accordance with Lease Program requirements. Isolated TMAUAs located in a sensitive area included in the Shellfish Cultivation Zone that are not converted into County leases, or those that were converted and subsequently terminated by the County or lessee, will not be eligible for future lease and shall be removed from the Shellfish Cultivation Zone upon its next revision.
- iii.) Several existing TMAUAs appear to be located entirely or partially within 1,000 feet of the mean high water shoreline. The County has no leasing authority within this area. To allow for the participation of these sites in the Lease Program, a TMAUA holder will be given the opportunity to relocate operations to a plot outside of the 1,000 foot line as close to his/her original location as possible. The holders of such TMAUAs would have to fulfill the requirements of the lease application process, including submission of an application and fee, and public review and comment. If the new nearby site is in a sensitive area, the operations would be limited to those permitted under the current TMAUA. The holder of a TMAUA entirely or partially within 1,000 feet from shore will also be given the opportunity to relocate to an available grid site, and will be subject to the full lease review process. The activity authorized by the lease can either remain a 5-acre off-bottom cultivation activity, or expand to a 10-acre on-/off- bottom activity.
- iv.) TMAUA applicants who have submitted their applications to the NYSDEC after December 31, 2007, whose permits have been issued prior to the adoption of the

Lease Program, will be processed with existing TMAUA holders when converting into County leases. However, the acreage associated with these assignments issued after December 31, 2007 will be counted against the annual acreage cap limit for the program. During the first year of program implementation, these applicants will not be given the option to expand operations from 5 acres to 10 acres. TMAUA applicants that have not been issued permits prior to the adoption of the Lease Program will have no inherent right to lease location and will be subject to the random selection process, if applicable.

b.) *Existing Private Oyster Grants*

- i.) Oyster grant owners do not need to apply for a shellfish aquaculture lease if their farm operations are limited to oyster cultivation only. Oyster grant owners must apply for a lease if they wish to cultivate shellfish species other than oysters on grants or portions of grants located more than 1,000 feet seaward from the mean high water shoreline. Any such leases issued do not count toward the annual acreage cap limit for new leases during the first two, five-year periods of Lease Program implementation. Different limitations and procedures apply to active and fallow grants.
- ii.) Active Grant - An oyster grant holder can apply for a lease on his/her entire active grant, or a portion thereof, if the owner can document a prior historical or current use of the grant for shellfish aquaculture involving species other than oysters. To be considered active, the grant holder will need to provide documentation that aquaculture operations have been conducted on the grant within the 10-year period between January 1, 1999 and December 31, 2008. Documentation can consist of: receipt for purchase of seed stock; proof of revenue from shellfish sales from the subject parcel; or other documentation confirming that viable aquaculture activity has taken place on the grant. Copies of relevant NYSDEC permits will also need to be provided. Active grant holders can apply for a lease on their grant subject to a full application process, including public review and comment.
- iii.) Fallow Grant - If a grant has had no permitted aquaculture activity involving species other than oysters for the 10-year period between January 1, 1999 and December 31, 2008, it will be considered “fallow” and may only enter the Lease

Program in a limited phased process. A fallow grant holder may apply for up to two 10-acre leases on his/her site during the first five years of the Lease Program, and will be subject to the full application process including public review and comment. The program will be evaluated after five years, and at that time, a determination may be made to allow expansion of leases on these formerly fallow grants.

- iv.) The Department has identified a number of grants with title conflicts. Leases will not be issued on such grants until all title conflicts are resolved and documentation/proof of same has been submitted to the Department. If during the title vetting process, it is found that a grant is truly in public ownership and has reverted to the County, the underwater lands involved may only be leased if the land is within the Shellfish Cultivation Zone and is located outside of an environmentally/socio-economically sensitive area. However, it should be noted that the reverted grant lands will not be leased as a grant parcel, but shall be divided into 10-acre grid parcels, and shall be subject to new lease area requirements.
- v.) Any privately owned oyster grant that is taken by the County through tax default procedures shall not be sold at auction. Said parcels shall be retained for general County purposes and may be leased for shellfish cultivation if located outside of an environmentally/socio-economically sensitive area.

c.) Leases Subject to Annual Acreage Cap Limit

Those portions of the Shellfish Cultivation Zone that do not include TMAUAs or grants can also be leased subject to the annual acreage cap limit that applies during the first two, five-year periods of the program. These leases will be limited to 5 or 10 acres in size, with a cap of 60 acres leased during each year. Any unallocated acreage from a given year can be added to the cap for lease during a subsequent year or years. After five years, up to 300 acres could be leased, and after 10 years, the maximum area that could be leased would total 600 acres. Applications for these leases will be accepted and processed subject to the annual acreage cap limit, in accordance with the requirements given in Appendix B. No leases shall be granted after the annual acreage cap limit is reached. Lease applications will be processed in an order determined by a random selection procedure.

d.) *Non-commercial Lease*

Non-commercial leases include experimental/educational and resource restoration leases. These leases may be limited in scope and duration and must be located in the Shellfish Cultivation Zone as mapped. They will be reviewed on a case-by-case basis by the Department and will not be considered as part of the annual acreage cap limit on leases. Non-Commercial leases cannot be assigned or sublet.

3. Lease Application Period

Applications for leases must be submitted during a timeframe to be established by the Department. Applications submitted after that time period will only be reviewed at the discretion of the Department. All applications received by the Department will be stamped with the date and time they are received. The stamped date shall serve as documentation for receipt of the application by the Department.

4. Identification of Desired Lease Area

For non-grant lease applications, an applicant must identify a preferred lease location and two alternative locations on the Shellfish Cultivation Zone Aquaculture Lease Sites Map. (For current TMAUA holders, one of the three selected locations must be their current assignment site.) The map will indicate available locations broken down into 20-acre parcels (a 10-acre lease area with a buffer zone). Each parcel will be identified with a number designation. The Department will provide coordinates from the Shellfish Cultivation Zone Aquaculture Lease Sites Map for the four corners and center of each 10-acre lease site. The Shellfish Cultivation Zone Aquaculture Lease Sites Map will be available for viewing on the Suffolk County website and at the Department office. Those TMAUA holders prior to December 31, 2007 that wish to participate in the Lease Program will be given preference to the lease area where their TMAUA site is located. The Lease Map Identification Numbers are as follows:

- New lease sites that are part of the annual acreage cap limit will be identified by a designated grid number, as determined on the Shellfish Cultivation Zone Aquaculture Lease Sites Map.

- All TMAUAs, i.e., those that remain at their current locations which will be used for off-bottom culture only; those that are located either partially or totally within 1,000 feet of the shoreline buffer, and which must move to nearby locations; and those isolated TMAUAs located in a sensitive area with environmental and/or socio-economic conflicts, will be identified by the center point coordinates of the existing or newly relocated 5-acre circular plots, and an alphanumeric designation (i.e., A-1, A-2, etc.) on the Shellfish Cultivation Zone Aquaculture Lease Sites Map.
- All private grants will be labeled GR1 through GR65 as shown on the Shellfish Cultivation Zone Aquaculture Lease Sites Map.

The Department reserves the right, in its sole discretion, to deny a site requested by an applicant for leasing.

5. Pre-Application Meeting

Prior to completion of an application, the lease applicant is required to contact the Department to set up a pre-application meeting. The purpose of this meeting is to determine, prior to acceptance of the application, that there are no known existing conflicts in the proposed area or the alternative lease area sites. If no known conflicts exist, and the proposed sites are still available, the coordinates from the Shellfish Cultivation Zone Aquaculture Lease Sites Map for the lease area within the 20-acre parcel, and the two alternative sites, if applicable will be made available to the lease applicant. Applications submitted without a pre-application meeting will not be considered complete. NYSDEC will be invited to attend the pre-application meeting.

6. Submission and Review of Application

The Department will provide application forms which must be completed and returned to the Department. Once an application has been submitted to the Department, a determination will be made as to whether the application is complete. The Department shall provide written notice to the applicant indicating that the application is complete, or incomplete. If incomplete, the Department will indicate the additional information required.

The Department will review all complete applications received, and make a determination on applicant eligibility based on the following criteria:

- The applicant is less than 18 years of age or does not have a federal tax identification number.
- Evidence of significant or repeated civil, criminal or administrative violation of the Environmental Conservation Law or other State or federal or local law, as it pertains to shellfish, finfish, other marine resource, environmental protection, food sanitation, navigation, operation of a vehicle or vessel, or other activities to be conducted under the lease. Such violations shall be considered by the County in accordance with applicable law.
- The application contains false information or does not contain the associated documentation required for County leases.
- The Department shall provide written notice to those applicants determined to be ineligible to participate in the lease process.

7. Number of Leases Permitted

Under the Lease Program, applicants will be limited to two leases. Separate applications must be submitted for each lease. The application for a second lease will be considered by the Department only if there is lease acreage available after all other applications requesting one (initial) lease have been processed. If the annual acreage cap limit has been met, the second lease application will be returned to the applicant. The same criteria for issuing a second lease will apply for the application process in subsequent years.

8. Public Notice

Upon acceptance of the completed lease applications, the Department will issue a public notice regarding all proposed lease sites, in accordance with ECL §13-0302. Notice shall be provided for at least two months by posting such notice at the Bureau of Marine Resources in the NYSDEC, the office of the county clerk, and the office of the town clerk in the towns of Riverhead, Southampton, Southold, East Hampton and Shelter Island. Such notice shall also be published in the official newspaper of the County. The notice shall include the name of

the applicant and the boundaries and areas of the potential lease sites. A copy of the proposed lease shall be available for public inspection and copying in the office of the county clerk.

The notice will have a 60-day written comment period during which the public, regulatory agencies and municipalities may submit written comments on the proposed operation and location of the lease and alternative lease sites. The Aquaculture Lease Board will take into consideration all comments received on a proposed lease site during the public comment period when making its decision on which sites will be eligible for leasing. (See Chapter 3, County Administrative Requirements.)

9. Objections Regarding Lease Site, Review and Benthic Survey

The 2004 Leasing Law contains the requirements that the following lands **not** be included in the Shellfish Cultivation Zone.

- Underwater lands where bay scallops are produced regularly and harvested on a commercial basis,
- Underwater lands where there is an indicated presence of shellfish in sufficient quantity and quality and so located as to support significant hand raking and/or tonging harvesting, and
- Underwater lands where the leasing will result in a significant reduction of established commercial finfish or crustacean fisheries.

In addition, the County has established its own criteria for lands to be excluded from the Shellfish Cultivation Zone, including lands that are environmentally and socio-economically sensitive.

The creation of the Shellfish Cultivation Zone was a laborious multi-phased process taking over a year to complete. Meetings and interviews were conducted with various bay users, scholars and regulatory agencies to establish recent and historical clamming and bay scallop grounds. Interviewees were asked to outline those areas of Peconic Bay and Gardiners Bay in which they felt shellfish aquaculture would be inappropriate. In addition to the qualitative analysis conducted, there was a thorough review of existing data on various environmental resource conditions including eelgrass distribution and essential fish habitat. Once compiled

and evaluated, all relevant environmental and socio-economic data were mapped using ArcGIS software. These areas were then removed from consideration and the remaining area seaward of 1,000 feet from mean high water was established as the Shellfish Cultivation Zone, which includes these areas suitable for the potential issuance of future shellfish aquaculture leases. The County also recognized the existence of privately-owned rights to underwater land in Peconic Bay and Gardiners Bay. Hence, all private oyster grant lands seaward of 1,000 feet from mean high water were included in the Shellfish Cultivation Zone. The water column lease located to the south of Plum Island that was issued by NYS Office of General Services was also included in the Shellfish Cultivation Zone.

The County will consider objections made concerning all the above criteria and any other comments received from the general public, relevant to the proposed lease. The Department will notify the lease applicant of any objections. If an objection is raised pertaining to natural productivity or a commercial fishery during the public comment period, the Department will make a determination as to whether the objection is credible. For an objection to be considered credible, the objector must provide to the Department proper notarized documentation as described below. If the objection is credible, the lease applicant will have the option to select one of his/her alternative sites, or if involving an alleged hard clam commercial fishery, may cause a benthic survey to be conducted at his/her own expense.

a.) Credible Objection Criteria

For the Department to deem an objection regarding natural productivity and commercial fishery as credible, the concerned party must include a copy of his/her commercial harvest license and documented proof on what was harvested and sold. A notarized letter from the concerned party must be submitted to the Department stating that harvest activity in the area in question within the previous five years disqualifies the leasing of the subject property because the criteria in the 2004 Leasing Law are not met. In addition to commercial interests, municipal, academic or other technically qualified persons who can demonstrate specialized knowledge of the estuary may also comment and should provide documentation supporting their claim. All objections require a notarized letter highlighting the issue in question. The County may request additional information from the objecting party.

b.) Benthic Survey

If a credible objection is raised on an applicant's primary lease site, he/she can then choose to lease one of the remaining alternate lease sites. If a lease applicant wishes to dispute the objection pertaining to the existence of wild shellfish stocks (i.e. hard clams), he/she must conduct a benthic survey at his/her own expense. An accepted scientific method for performing a benthic survey appropriate for assessing shellfish abundance must be utilized, and a report of findings must be completed by qualified personnel and submitted to the Department.

For hard clams, a mean density of less than two commercially harvestable size clams per square meter (greater than 1 inch shell thickness) would be considered low density and low productivity for clams. This estimate is based on the clam densities found during clam surveys from Long Island water bodies, including Peconic Bay and Gardiners Bay. (See Appendix H)

Bay scallops are notorious for appearing in different locations from one year to the next, so area restrictions are difficult to apply without extensive data available on short time scales. Because of the transient nature of bay scallop populations, a density estimate is not a reliable way to address scallop productivity. Instead, the presence of scallops would have to be addressed on a case-by-case basis to render a decision as to whether an area is productive for scallops. Similarly, populations of other transient species (e.g. whelks) cannot be adequately assessed by means of a benthic survey.

Accepted methods for determining clam abundance would be bottom grab samples, dredge samples and/or diver surveys, performed in a scientific manner. Statistically reliable estimates of clam abundance would need to be calculated from field survey work for the lease area in question. (See Appendix H)

The County reserves the right to consider any relevant data or information pertaining to a site's productivity in making its decision regarding lease site approval.

10. Decision on Lease Site Eligibility

The Department shall prepare a staff report on the lease application, including the findings of fact, and submit same to the Aquaculture Lease Board. This staff report shall include a

summary of each application, and a synopsis of all comments received on the application in a response to the public notice.

The Aquaculture Lease Board shall convene a public meeting at which all potential lease sites identified in lease applications received in each application cycle, will be presented for consideration from a regional perspective. This will include a summary of the staff report referred to above. It is anticipated that there will be at least one application cycle conducted by the Department of Planning each year of the Lease Program. There may be more than one application cycle during the first year or two of program implementation to consider applications submitted by TMAUA holders and private grant owners that want to participate in the Lease Program. The public will be given the opportunity to present comments and information pertaining to all potential lease sites at this meeting.

Subsequent to this public meeting, the Aquaculture Lease Board shall meet and make a determination on those sites that will be eligible for leasing, and those sites that will be eliminated from further consideration. Sites that have had objections raised based solely on natural clam productivity and are found to be credible by the Department will be designated conditionally eligible by the Aquaculture Lease Board. The Department will then process all applications for eligible and conditionally eligible sites. At this time, applicants for conditionally eligible sites may either select an alternative eligible site, or choose to conduct a benthic survey to refute the claims of natural hard clam productivity. If the results of the benthic survey indicate productivity below the threshold criteria described in this document (Appendix H), the site in question may be leased and a boundary survey must then be prepared. Should the site prove to be productive based on criteria stated herein, the applicant may either select an alternative eligible lease site, or choose not to participate in the lease program and forfeit his/her application fee.

The Aquaculture Lease Board shall make its determination to eliminate sites based on one or more of the following conditions:

- The lease site is documented to contain significant quantities of naturally productive shellfish.
- There is a clear and documented conflict with an existing use of the site.
- The lease site violates the conditions in the 2004 Leasing Law.

- Failure to meet other criteria established by the Aquaculture Lease Board or the Director of the Department of Planning. (See Chapter 3, County Administrative Requirements for a description of the Aquaculture Lease Board and its' activities.)

11. Establishment of Application Priority

Once the sites eligible for leasing are identified by the Aquaculture Lease Board, it may be necessary to conduct a Random Selection Process (RSP) to determine a priority order for processing lease applications. This will occur, if the aggregate acreage in new lease applications exceeds the acreage available under the annual acreage cap limit, in any given year. The Department will use a RSP that mimics the process currently used by the NYSDEC in issuing new commercial licenses and permits that are subject to limited entry pursuant to Environmental Conservation Law (ECL) Section 13-0328. In the event that all of the proposed lease sites chosen by the applicant have been rejected by the Aquaculture Lease Board, and the applicant still wishes to participate in the Lease Program, he/she will be permitted to select from remaining eligible lease sites after the RSP has been conducted.

In the event a RSP takes place, those lease applicants that are not selected in a given application cycle, will not be given any preference for selection during any subsequent applications cycles. In effect, there will be no preference given to those applicants not chosen in a specific year for the following year.

The Department will also use the RSP to decide the order of priority that gives preference to one applicant seeking to lease a particular site that is identified in other lease applications. This situation could arise where TMAUA holders seek alternative lease locations that do not include their current TMAUA site.

The RSP is described below:

- Write all applicants' names on separate pieces of paper.
- Place all papers with applicants' names in a "hat."
- Names will be drawn from the "hat" and assigned a random number.
- Applicants' names and assigned numbers will be posted for viewing.
- Each assigned number will be placed on a ping pong ball.

- The numbered balls will be placed in a “hat.”
- The numbered balls will all be drawn from the “hat.”
- As the numbered balls are drawn from the “hat” the order in which they are drawn is posted. This will be the order of priority in which the applications are processed.

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Chapter 2. Lease Requirements and Procedures

1. Lease Required and Transition for TMAUA Holders and Oyster Grant Owners.

It shall be unlawful for an entity that does not have a shellfish aquaculture lease (Appendix A) issued by the County to conduct any type of shellfish aquaculture operation situated on lands under the jurisdiction of the County, with one exception. Owners of oyster grants retain their right to conduct oyster culture on their grant lands, and do not need a lease from Suffolk County for this type of culture activity. All private oyster grant owners wishing to cultivate shellfish species other than oysters, and all TMAUA holders who wish to enter the Lease Program will have to follow the lease requirements and restrictions described in Chapter 1, Section 2. Lease Program Participants, a.) and b.) above. The process required to phase out TMAUAs and convert those sites into the program involves coordination between the County and NYSDEC. During the transition period, lease applicants will be able to continue to operate under the same conditions as required by NYSDEC on- and off-bottom culture of shellfish permits while a lease application is pending.

2. Site Location, Survey, Boundary and Equipment Marking.

The County of Suffolk shall cause to be prepared by a licensed land surveyor, an accurate survey of each lease boundary prior to lease issuance, and shall establish lease boundaries in the field in accordance with coordinates provided by a professional licensed land surveyor, employed by Suffolk County. A survey must also be prepared for an expansion of lease acreage, or the relocation of a lease, unless the County possesses a current survey of the expansion or relocation area. The lessee shall pay for the cost of such survey if the request for the expansion or relocation is made by the lessee. Once leases are issued, the lessee must meet Federal and New York State regulatory agency permit requirements, if any, pertaining to marking lease boundaries with appropriate buoys; and identifying the location of shellfish aquaculture gear.

The United States Coast Guard (USCG) is the regulatory agency that determines the type of buoy required to alert mariners of the submerged or floating structures on a shellfish aquaculture lease. Currently, the USCG requires buoys that are 36" in height, white in color, with two horizontal retro-reflective orange bands placed completely around the circumference of the buoy and two vertical open faced diamonds placed 180 degrees apart

between the two orange bands. The buoys are required to have a daytime visibility range of one nautical mile and be radar reflective for night time and low visibility navigation. The lease holder must contact the local US Coast Guard Private Aids to Navigation Office to confirm all requirements and for approval of marking devices. Gear buoys will be at the discretion of the lessee, unless required by law. Gear buoys must be permanently marked with the lessee's name and lease plot identification number.

3. Annual Lease Rental Fee

Lease holders will be required to pay an annual lease rental fee, as described below. The first annual lease rental fee will be due upon signing of the lease by the applicant. For subsequent years, payment will be due 30 days before the lease anniversary date, i.e., if the lease was issued on February 1st, the annual lease rental fee would be due 30 days before that date of each year. Lease rental and application fees will be waived for public entities (state agencies, towns, villages, etc.). Application fees shall be charged for the initial lease, lease renewal, expansion of lease acreage, relocation of the lease if not required by a governmental entity, and lease transfer, subletting or assignment.

Application fees are generally non-refundable, with one exception. In the event that the random selection process is employed, and an applicant is not selected for consideration in a given lease application cycle, the application fee will be returned to the applicant.

	Non-Commercial Lease	Commercial Lease
Acreage Limit	Case-by-case basis	Generally, 5 or 10 acres; could vary for active private grants
Duration	Case-by-case basis	10 years; 10 year option to renew at the County's discretion.
Public Notice and Comment Period	Mandatory	Mandatory
Decision	Within 120 days after the end of public comment period	Within 120 days after the end of public comment period
Lease Application Fee	\$100 (non-refundable)	\$100 (non-refundable)
Annual Lease Rental Fee	\$200 plus \$5 per acre	Public land: \$200 plus \$5 per acre Private grant land: \$200

4. Annual Report/Operation Plan

In order to maintain a lease, a lease holder must file a Shellfish Aquaculture Lease Program Annual Report Form (Appendix C) (“Annual Report”) with the Department, 30 days before the lease anniversary date, with payment of the annual lease rental fee. The lessee will also be required to submit this report 30 days before the termination or expiration of a lease and prior to approval of a lease renewal or assignment. The Annual Report shall generally include the following information pertaining to the lease site: description of the site and activities conducted types of structures, species being cultivated, quantity of species being cultivated, source of seed stock, and quantities brought to market. Information regarding civil, criminal or administrative violations which the lessee or sublessee, were convicted of or found guilty of during the reporting period shall also be included. Copies of all current required permits from the NYSDEC, U.S. Coast Guard, and U.S. Army Corps of Engineers (if applicable) shall also be submitted with the Annual Report.

5. Expansion of Lease Acreage

Upon annual reporting, certain lessees may opt for expansion of lease acreage. Such an action will require a full application process, including a pre-application meeting, a public review and comment period and application fee. This option would be available to those individuals who entered the Lease Program as a continuation of a previous NYSDEC TMAUA located outside of an environmentally and socio-economically sensitive area as mapped, and initially chose to remain at five acres in size. These former TMAUA holders may expand their operation to 10 acres inclusive of the original TMAUA area. Grant holders with leases on only a portion of their site may also request an expansion of aquaculture activities within the boundary of their grant. This provision does not apply to 10-acre leases issued on fallow grants. Lessees requesting a lease modification can submit a Lease Application to the Department with the annual reporting form.

6. Lease Assignment

A lessee may assign his/her lease to another entity for the remaining lease term. The assignee is subject to the same standards that are applied to the initial lease applicant. A lease assignment must undergo a complete application process with review and public

comment. A Lease Assignment Application (Appendix D) must be submitted, along with the required application fee.

7. Subleasing

Subleasing is permitted, as described in Appendix E, but is limited to a total of one sublease per lease at any one time. The sublessee must obtain all permits required by NYSDEC or any other regulatory agency prior to conducting shellfish cultivation operations on the leased parcel. The sublease site boundaries must be surveyed by a licensed land surveyor and included on a survey filed with the County along with the sublease agreement. The sublessee must maintain all appropriate insurance coverage as dictated in the primary lease agreement naming the County as an additionally insured. A sublease does not relieve the lease holder from the covenants, obligations, duties, and responsibilities existing pursuant to its shellfish aquaculture lease, which shall remain in full force and effect

8. Lease Termination/Non-renewal by the County

The County may terminate or deny renewal of a lease based on failure to comply with the terms of the lease, including but not limited to, failure to pay fees. A lease may also be terminated or denied renewal if it is determined that substantial shellfish aquaculture activity, as defined earlier, has not been conducted on the lease site within the preceding year, or if it is documented that the lease activities caused substantial damage to existing environmental conditions. Violation of the New York State Environmental Conservation Law as it relates to shellfish activities shall also be cause for termination or non-renewal of a lease. The Department may include in the lease other conditions, actions or omissions which shall be cause for termination or non-renewal of a lease.

9. Substantial Cultivation/Hardship Allowance

A lessee, who cannot demonstrate substantial shellfish aquaculture activity, may be eligible for a hardship allowance, provided appropriate evidence can be shown as to why no activity has been conducted on the lease site. Suitable evidence of hardship includes, but is not limited to, medical records, financial statements and water quality data.

10. Lease Renewal

A lessee must file a Lease Renewal Application (Appendix G) with the Department in order to renew a lease at the end of the initial lease term. Renewal requests should be submitted with the required application fee no later than three months prior to the expiration of the lease term, and will be subject to review and approval by the County. Renewals will be made based upon the terms and conditions of the Lease Program in effect at the time of renewal, including the rental fees and other charges current at that time. The Department will issue a letter to the lease holder informing it of the approval or non-renewal. The lease holder will be required to submit the annual lease rental fee payment to the County upon receiving the lease renewal approval notice from the Department.

a.) *Factors for Consideration in Lease Renewal, Expansion of Acreage, Assignment, Sublease or Other Actions Affecting the Lease*

The County shall consider the following factors in determining whether to renew a lease or take other actions affecting the lease:

- i.) Whether applicable law or regulations or the Lease Program have changed materially since the issuance of the existing lease.
- ii.) Whether there has been a material change in environmental conditions or shellfish aquaculture technology or methods.
- iii.) Whether the lessee is currently in default of any term or condition of the lease or has committed an event of default in the past.
- iv.) Whether the lessee has a history of noncompliance with the Lease Program, or any laws or regulations related to the activities under the lease.
- v.) Whether an opportunity for public comment is required by law or is deemed necessary by the Department
- vi.) Whether the application to the County is timely, sufficient and accurate.
- vii.) Any other information deemed relevant by the County.

11. Lease Termination by Lessee

If a lessee wishes to terminate his/her lease prior to or at the end of the lease term, he/she must submit a Lease Termination Application (Appendix F). The lease shall be terminated by the County upon final execution of a lease termination document by both parties, payment of all fees due and owing, and removal of all aquaculture equipment on the lease site. Once

the lease is terminated, the lessee shall not be responsible for annual payments for the remainder of the 10-year lease term. Fees already due and owing shall not be refunded at termination.

12. Noise and Lighting

All lessees shall be required to conduct shellfish aquaculture activities in a manner that is respectful of other marine users and the environment. Lessees shall:

- Restrict noise generation and use of artificial light to harvesting activities, normal operational practices and maintenance of safety;
- Make every reasonable effort to minimize noise during regular farming activities. Ensure well-maintained sound suppression devices (i.e., mufflers) are used while operating equipment;
- Ensure that all non-navigation lighting be aimed and of a brightness so as not to cause unnecessary adverse affects on other users and the marine environment, and where possible, should be shielded from all but essential directions; and
- Make every reasonable effort to minimize light during night time operations. Night time operations are limited to the maintenance of buoys and other activities permitted by ECL §13-0309.

13. General Enforcement Policy

The County has the authority to enforce shellfish aquaculture lease policies, regulations and applicable statutes which shall include the following:

- Authority to enter and inspect – The County has the authority to enter and inspect any and all areas subject to a shellfish aquaculture lease agreement for the purpose of determining compliance with the terms and provisions of the lease.
- Authority to monitor and take samples.
- Violations – Violations of and/or noncompliance with lease stipulations or regulations set forth in the Lease Program will be subject to termination or non-renewal of the lease agreement. Upon failure to pay the annual fee or upon other grounds for termination, the lessee may be subject to summary eviction proceedings.
- Markings – All shellfish aquaculture gear, e.g., cages, buoys, must be marked with the lessee's name and lease plot identification number as identified from the Shellfish

Cultivation Zone Aquaculture Lease Sites Map. Said markings must be maintained. The lessee is responsible for obtaining all necessary permits and licenses under federal and state law, including any permits for buoys and private aid markers required by the USCG and/or US Army Corps of Engineers (USACE).

- Maintenance and Removal – All shellfish aquaculture gear and the contents thereof are the possession and responsibility of the lessee, who shall be responsible for maintenance and eventual removal of same. If the equipment is not removed upon termination, revocation, or expiration of the lease, the equipment and its contents shall be deemed abandoned and lessee shall be liable to the County for the cost of the removal.

14. Shellfish Regulations

A lessee must comply with all applicable federal, state and local laws and regulations, including, but not limited to, those relating to harvest, handling, tagging, storage, sale, sanitary control and aquaculture of shellfish. A lessee must obtain all necessary state and federal permits (including, without limitation, shellfish cultivation permits) prior to commencement of activities at the site.

The harvest and landing of wild shellfish by the lessee may only be allowed when such harvest is unavoidable and incidental to the harvest of cultured shellfish. No person shall possess wild undersize shellfish on a lease site without the prior written authorization from NYSDEC. The lessee must also comply with all laws and regulations including, but not limited to, those relating to food storage, sanitation and navigation.

15. Approved Waters

Shellfish may only be harvested from approved waters, as determined by NYSDEC.

16. Water Quality Changes

Water quality and water quality classifications of waters within New York State are subject to change due to various environmental conditions as determined by the NYSDEC, and in some cases, the lessee may be required to respond to those changes. If such a response is warranted, the County shall not assume any liability for any changes in classification and

shall assume no liability to the lessee for damages incurred due to such actions. However, the lessee may terminate the lease or apply to relocate it.

17. Harvest of Shellfish Transferred from Other Waters

The transplanting or relay of shellfish from uncertified waters to lease areas for natural cleansing will be permitted under the Lease Program, so long as all regulatory requirements from the NYSDEC relating to this type of shellfish aquaculture are met.

18. Handling of Shellfish

Lessees shall conduct all shellfish aquaculture activities and operations involving or relating to the possession and handling of cultivated shellfish to prevent contamination and decomposition of such shellfish in accordance with all applicable New York State laws, rules and regulations for sanitary control over shellfish and aquaculture.

19. Corporate Applicants

If the lease applicant is a corporate entity, the following information must be submitted as part of the lease application:

- The date and state of incorporation and copy of the Certificate of Incorporation;
- The names, addresses and titles of all officers;
- The name and addresses of all directors;
- Whether the corporation, or any shareholder, director, or officer has applied for a shellfish aquaculture lease for underwater lands in Peconic Bay or Gardiners Bay in the past, and the outcome or current status of that application or lease;
- The names and addresses of all shareholders, who own or control at least 5% of the outstanding stock and the percentage of the outstanding stock currently owned or controlled by each such shareholder;
- The names and addresses of shareholders, directors, or officers owning an interest, either directly or beneficially, in any other New York State shellfish aquaculture operation, as well as the quantity of acreage attributed to each such person.
- Whether the corporation or any officer, director, or shareholder listed in item 5 above has ever been convicted or found guilty of a civil, criminal, or administrative violation of any marine resources or environmental protection law, whether state or federal.

An officer of the corporation must sign the lease application. The application must be accompanied by a corporate resolution authorizing the application.

20. Partnership Applicants

If the lease applicant is a partnership, the following information must be submitted as part of the lease application:

- The date and state in which the partnership was formed and a copy of either the Certificate of Limited Partnership or documentation of the formation of a General Partnership;
- The names, addresses, and ownership shares of all partners;
- Whether the partnership or any partner has applied for a shellfish aquaculture lease for the underwater lands of Peconic Bay or Gardiners Bay in the past and the outcome or current status of that application or lease;
- Whether the partnership or any partner owns an interest, either directly or beneficially, in any other New York State shellfish aquaculture operation, as well as the quantity of acreage from the existing operation;
- Whether the partnership or any partner has ever been convicted or found guilty of a civil, criminal or administrative violation of marine resources or environmental protection law, whether state or federal; and
- The application must be signed by a partner.

21. Local Waterfront Revitalization Program Consistency

Towns and villages should respond to lease application public notices and provide the Department with information and comment as to whether or not proposed activities described in public notices are consistent with approved Local Waterfront Revitalization Programs.

Chapter 3. County Administrative Requirements

The Department will be responsible for administering the lease program upon its adoption into law. In this role, the Department will assist the Aquaculture Lease Board in its decision making activity, as well as seek the cooperation and support of the Suffolk County Departments of Law; Environment and Energy; Public Works; and Health Services in various aspects of Lease Program implementation as described below.

- The Department will be responsible for day-to-day administration of the Lease Program. This will involve activities, such as providing information to the public on the Lease Program; guiding interested parties through the lease application process; responding to inquires on the Lease Program from government agencies; determinations on lease applicant eligibility; tracking leases through approval; decisions on lease transfer, assignment, sub-leasing, termination and renewal; recordkeeping; and serving as staff to the Aquaculture Lease Board. The Department will also make policy recommendations for any needed legislative action on the program.
- The Aquaculture Lease Board will be established when the Lease Program is adopted into law by the County. The Aquaculture Lease Board shall consist of: the Director of the Department of Planning or his/her designee; the Commissioner of the Department of Environment and Energy or his/her designee; and the Commissioner of the Department of Economic Development and Workforce Housing or his/her designee. This Board will conduct a public meeting(s) to review all potential lease sites identified in lease applications, and consider all written comments received in response to public notice issuance as well as oral and written comments made and submitted at the public meeting(s), including Department staff commentary. The Aquaculture Lease Board will then reconvene after this public meeting(s) to make the decision, based on a regional perspective, on which potential lease sites will be eligible for lease consideration, as well as those sites that will be removed from such consideration. The Aquaculture Lease Board will act by resolution adopted by a majority vote.
- The Department will seek the cooperation and assistance of the Department of Law in the review of all legal aspects of the Lease Program, including review and execution of shellfish aquaculture leases.
- The Department will seek technical support from the Department of Energy and Environment (Real Property Acquisition Division) and the Department of Public Works

(Bridges, Structures & Waterways Division, Hydrographic Survey Section) in securing the services of a licensed land surveyor and the preparation of survey maps showing the boundaries and location of plots to be leased for shellfish cultivation under the Lease Program. Initial funding for this work has been provided under Capital Project No. 8710.111.

- The Department will seek the cooperation of the Department of Health Services (Office of Ecology) to address the recommendation that an environmental monitoring program be implemented in conjunction with the Lease Program. This monitoring program will include collection of data on those specific water quality and ecological parameters that are needed to assess any potential beneficial or adverse impacts on the Peconic Estuary associated with shellfish farms on plots leased by the County. The details of a final monitoring program and required resources have not yet been determined. Coordination with ongoing monitoring activities conducted under the Peconic Estuary Program will be essential.

There are a number of actions that are required on a periodic basis to effectively monitor the Lease Program, make adjustments where necessary to assure that the program is being implemented to meet anticipated goals, and to address the requirements in the 2004 Lease Law, as discussed below.

- The Department will issue an annual report, generally in February of each calendar year, which summarizes the status of the Lease Program; actions taken by the Aquaculture Lease Board, data on lease activities, i.e., number of leases in effect, etc. for the previous year. This report will be submitted to the Aquaculture Lease Board and will be made available to County officials, agencies and the public.
- An administrative review will be conducted by the Department after five years to affirm or modify program components that would govern program implementation after 10 years. This review would include the following:
 - a. Assessment of the Shellfish Cultivation Zone Map to determine if the boundaries of said zone should be changed as a result of socio-economic, environmental and fishery-related considerations. If it becomes necessary to change the boundary of the Shellfish Cultivation Zone, the amended map must be adopted into law.

- b. Determine whether the size of leases on fallow grants should be changed.
- c. Evaluate the prudence of issuing leases larger than 10 acres, but not exceeding 50 acres.
- If significant changes in the Lease Program are warranted after 10 years, such as expansion of total lease area; increase in the number of new leases; change in lease location, an environmental review will be conducted to assess the potential impacts of such changes. Major policy changes in the Lease Program, such as those listed above would be subject to legislative approval. However, the Department will have the ability to make changes to administrative procedures that govern the implementation of the program.

Existing staff personnel in the Department will be assigned to conduct the administrative work required to implement the Lease Program. This workload is expected to be intensive during the first two to three years of the program, given the need to familiarize shellfish farmers with program procedures and enable them to secure access for use of TMAUA sites and private grants for shellfish cultivation under leases issued by the County. After the initial period, attention will be devoted to annual lease review, and processing new lease applications each year that will accommodate moderate, controlled growth in the industry under the annual acreage cap limit. Monitoring lessee performance will be a continuing function conducted by the staff.

Additional resources will be needed for special program needs over the first decade of implementation, e.g., enhanced monitoring of positive and negative impacts of shellfish culture activities on the marine environment; conduct of lease boundary surveys and field operations that may become necessary; Shellfish Cultivation Zone Map boundary review; and programmatic environmental review after 10 years. It is anticipated that the principal source for support for addressing these needs will be the Suffolk County Water Quality Protection and Restoration Program and Land Stewardship Initiative. Projects that implement the Lease Program are eligible for water quality/land stewardship funding since they relate directly and explicitly to “the management of underwater lands subject to the Suffolk County Shellfish Aquaculture Leasing Authority” as indicated in the Suffolk County Charter, Section 12-2 B.) (1.) (a.) (2) (c.).

Appendix A
Model Lease Agreement

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COUNTY OF SUFFOLK
SHELLFISH CULTIVATION LEASE AGREEMENT

DRAFT

Lessee: _____

Lease No: _____

Expiration Date: _____

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EXHIBIT A Coordinates and Survey Map of the Premises

EXHIBIT B Suffolk County Legislative Requirements

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EXHIBIT D Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay ("Administrative Guidance"), incorporated by reference.

EXHIBIT E Suffolk County Resolution No. _____, dated the ____ day of _____, 200@ (the "Resolution"), incorporated by reference.

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WHEREAS, the New York State Legislature ceded all rights, title and interest to certain underwater lands of Peconic and Gardiner Bays formerly owned by the People of the State of New York to the County for purposes of shellfish cultivation, according to Environmental Conservation Law (“ECL”) §13-0302 (“2004 Leasing Law”); and

WHEREAS, since 1884, New York State has repeatedly attempted to establish a statutory framework whereby the business of cultivating shellfish could be fostered and managed; and

WHEREAS, in the 2004 Leasing Law, the N.Y.S. Legislature found that failure to undertake an aquaculture leasing program for these underwater lands in Gardiner's and Peconic bays had resulted in adverse economic impacts and the loss of economic opportunity for the region; and

WHEREAS, the 2004 Leasing Law was adopted in order to eliminate impediments, foster the establishment and obtain the economic benefits of a shellfish cultivation leasing program consistent with established conservation principles; and

WHEREAS, the County’s Shellfish Aquaculture Lease Program will carry out the public benefits stated above, and also provide water quality, environmental, cultural and other public benefits to the County and its residents; and

WHEREAS, the County’s Shellfish Aquaculture Lease Program was established by Suffolk County Resolution No. _____, dated the ____ day of _____, 20__ - (the “Resolution”).
_____ (Ex. E); and

WHEREAS, the County is leasing parcels of underwater lands for purposes of shellfish cultivation pursuant to such statutory authority, the Resolution and other written County policies such as the Administrative Guidance (Ex. D); and

WHEREAS the purpose of this Lease is to provide the Lessee with a possessory interest in certain parcel(s) for its purposes of Shellfish Cultivation as defined herein, and according to the conditions and for the Term of years as defined herein; and

WHEREAS, the execution of this Lease complies with all statutory preconditions to granting Shellfish Cultivation leases according to ECL §13-0302, including but not limited to the notice requirements of ECL §13-0302.3(c).

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions

“Administrative Guidance” shall mean the document entitled “Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay Administrative Guidance,” which is incorporated by reference and made a part hereof as Ex. D.

“Aquaculture” shall mean shellfish cultivation for human use, consumption, and resource restoration.

“Department” shall mean the Suffolk County Department of Planning.

“Environmentally and socio-economically sensitive area” shall mean an area described and mapped in Figure 2 of the Lease Program *Draft Generic Environmental Impact Statement*, as adopted in the *Final Generic Environmental Impact Statement*.

“Equipment” shall mean rakes, cages, traps, floats, racks, rafts, nets, gear buoys and any other goods, supplies, furnishings, apparatus, etc., used for and in support of Shellfish Cultivation. Buoys marking Lease boundaries are not included.

“Full application process” shall include payment of an application fee, publication and posting of the notice of application, a full public comment period and review by the Aquaculture Lease Board.

“Resolution” shall mean Suffolk County Res. No. _____-20____, which is incorporated by reference and made a part hereof as Ex. E.

“Shellfish” shall mean oysters, scallops, and all kinds of clams and mussels as defined in ECL § 11-0103.9.

“Shellfish Aquaculture Lease Program” (“Lease Program”) shall mean the Program established pursuant to the Resolution, and all written County policies, as amended, concerning the Program, including, without limitation, the Administrative Guidance, incorporated by reference as Ex D, and any subsequent revisions thereto.

“Shellfish Cultivation” shall mean the controlled, or partially controlled, raising, breeding, growing, and containment of shellfish in any marine hatchery or through on-bottom or off-bottom culture as permitted by the County, State Fish and Wildlife Law (N.Y. Env'tl. Conserv. Law Article 11) and any other applicable Federal, State, and local laws, ordinances, and regulations. Shellfish Cultivation is equivalent to shellfish aquaculture.

“Substantial Shellfish Aquaculture Activity” shall mean a good faith effort to prepare an aquaculture site; acquire financing, Equipment and/or seed, plant, cultivate, or harvest cultivated product; or show other shellfish aquaculture-related activity on a shellfish aquaculture lease.

2. Lease of Premises

a. In consideration of the terms, conditions and covenants herein contained, County grants to Lessee, and Lessee hereby accepts from County the lease of underwater lands, comprising approximately _____ (acres), located at @, _____ as identified in the coordinates and the Survey Map attached hereto, and made a part hereof as Exhibit A (the “Premises”).

b. The Premises are leased to Lessee for the sole purpose of conducting Shellfish Cultivation, in accordance with the Lease, the 2004 Leasing Law, and the Lease Program. Lessee has examined these documents and all other documents constituting the Lease Program and is fully aware of the intended purpose thereof. Lessee's occupancy shall not be used for any other purpose without the County's prior written permission.

c. The Premises and anything on or under the surface, excluding naturally occurring fish and wildlife, shall be the sole property of the County at all times during the period of this Lease. Lessee's right to occupy the Premises shall continue only so long as the Lessee shall comply strictly and promptly with each and all of the undertakings, provisions, covenants, agreements, stipulations, and conditions contained herein.

3. Authority

- a. The County is entering into this Lease under the authority of Suffolk County Resolution No. ____ - 20 , dated the ____ day of _____, 20 ____, which is incorporated herein by reference.
- b. In its sole discretion, County reserves the right to amend or modify the documents and policies constituting the Lease Program at any time. Lessee shall comply with all such amendments or modifications.

4. Term

The term of this Lease (the “Term”) shall commence as of _____ (“Commencement Date”) and shall expire at midnight on _____ (“Expiration Date”), or on such earlier date that this Lease may terminate or expire as provided for herein.

5. Option to Renew

- a. Upon written request of the Lessee, received by the County no less than ninety (90) days prior to the expiration of the current term of this Lease, the County may, in its discretion, renew the Lease for an additional period of ten (10) years from the date upon which it would otherwise expire, or until (Insert Termination Date of Renewal). Lessee shall submit an application fee with the request to renew.
- b. Any Lease Renewal shall conform to the Lease Program and applicable laws and resolutions as they exist at the time of renewal. The Lease Renewal shall impose the Annual Rental Fee and any other charges required by the Lease Program and applicable laws and resolutions as they exist at the time of renewal.

6. Expansion of Acreage

(Note: Insert in Lease where Administrative Guidance permits expansion of the lease acreage during the lease term. Currently Administrative Guidance allows lease expansion for a former N.Y.S. Department of Environmental Conservation (NYSDEC) Temporary Marine Area Use Assignment (TMAUA) as of 12/31/07, which is located outside of an Environmentally and Socio-Economically Sensitive Area and where the Lessee initially chose to remain at five acres in size, or where the holder of an active Grant has leased only a portion of the grant acreage. This provision does not apply to 10-acre leases issued on fallow grants.)

Lessee may request an expansion of lease acreage to ten (10) acres by submitting a new Lease Application Form to the Department with Lessee’s annual reporting form. Expansion of Lease acreage shall be subject to a full application process (including payment of an application fee). Expansion of Lease acreage shall be subject to a survey, unless the County possesses a current survey for the new boundaries. The cost of the survey shall be borne by Lessee.

7. Relocation of Leasehold Interest

- a. Lessee may request a relocation of the Leasehold Interest or may terminate the Lease, in the event that the waters within the Premises have become unsuitable for shellfish cultivation by reason of government action or in the event that all or part of the Premises has been interfered with or taken by eminent domain. Under these circumstances, relocation shall be subject to a full application process, unless the Aquaculture Lease Board has previously approved the new location within one (1) calendar year prior to the request. No application fee shall be payable upon such relocation.

b. County may require that the Leasehold Interest be relocated based upon environmental or other public policy considerations. In such event, Lessee shall be given a period of time to harvest existing seed stock or may terminate the Lease. The period of time shall be determined by the County in accordance with the Lease Program. Under these circumstances, relocation shall be subject to a full application process, unless the Aquaculture Lease Board has previously approved the new location within one (1) calendar year prior to the request. No application fee shall be payable upon such relocation.

c. Lessee may request relocation of the Leasehold Interest at its convenience for any reason up to two (2) times during the term of the Lease, subject to a full application process and payment of an application fee. In such event, Lessee shall bear the cost of a survey (if required.)

d. Relocation of the Leasehold Interest shall be subject to a new survey, unless the County possesses a current survey for the new boundaries.

8. Change in Cultivation Practices

Lessee shall notify the Department of changes in the type of shellfish cultivation (on or off-bottom), the species being cultivated, the gear type and amount and the source of the shellfish stock, on a form to be furnished by the County. All such changes shall be subject to appropriate permits and licenses.

9. Annual Rental Fee; Additional Rent

a. Lessee shall pay to the County an Annual Rental Fee of _____. The Annual Rental Fee shall be due upon signing of the Lease by the applicant, and thereafter, thirty (30) days prior to the anniversary date of the Commencement Date for each year during the Term on the Lease.

b. All remittances required to be made to the County shall be paid by check or money order payable to the County Treasurer.

c. Lessee shall pay County, as "Additional Rent," all payments other than the Annual Rental Fee required to be made by Lessee under this Lease to County, whether or not such payments shall be designated as Additional Rent. Unless otherwise provided, Additional Rent shall be due and payable 15 days after notice of demand by the County.

d. Lessee shall pay "Rent," meaning Annual Rental Fee, Additional Rent, and any other additional fees or payments required to be paid to the County hereunder without abatement, offset, or deduction, except as specifically provided for herein.

10. Taxes and Impositions

a. Lessee shall pay to the County the following charges, fees, taxes, or assessments ("Impositions") for periods falling within the Term, in the event that such Impositions are imposed upon the County:

i. All real property taxes or payments in lieu thereof due with respect to the Premises or any portion thereof; and

ii. Any other governmental charges, levies or assessments, whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character (including interest and penalties thereon), which at any time during or in respect of the Term may be assessed, levied, imposed on or in respect of or be a lien upon the Premises or any part thereof, or any estate, right or interest therein, or any occupancy, use or possession of or activity conducted on the Premises or any part thereof.

- b. County shall notify Lessee of any Impositions in writing, and Lessee's payment to County shall be due thirty days after delivery of the Notice to Lessee.
- c. Lessee shall, at the end of the Term, deposit with the County an amount sufficient to pay Lessee's pro rata share of all Impositions for the calendar year in which the Lease terminates. Payments for any partial period covered by this Lease shall be prorated.
- d. Lessee shall indemnify, protect, and hold harmless the County and the Premises from any lien or liability with respect to any such Imposition or contest thereof, including all costs and expenses relating thereto.
- e. The amount paid by County under this provision shall be deemed Additional Rent and may be recovered from Lessee as such.

11. Termination by County for Cause; Event of Default

- a. This Lease may be terminated by the County upon default by Lessee, without prejudice to any other remedies that the County may have against the other party.
- b. The occurrence of any one of the following events shall constitute an "Event of Default" by Lessee, and shall be grounds for termination.
 - i. Lessee's failure to pay the Annual Rent Fee, Additional Rent, any other fee, assessment or tax related to the Premises or any other fee stipulated and agreed to be paid (or any installment thereof) within ten (10) days after the same shall be due and payable, whether or not Lessee shall have received notice of the same;
 - ii. The vacating, abandoning or discontinuance of the operation of the Premises for Substantial Shellfish Aquaculture Activity for a period of one year, unless excused by a hardship allowance (See Section 17. Substantial Shellfish Aquaculture Activity);
 - iii. Lessee's conduct of Shellfish Cultivation activities is contrary to the County's policies, as expressed in this Lease and the Lease Program;
 - iv. Lessee's Shellfish Cultivation activities have caused injury to the public, marine life and habitats, water quality, natural resources or other environmental conditions. The occurrence of this Event of Default shall be subject to immediate termination, at the County's option;
 - v. Emergency or other condition dangerous to life, health or the environment. The occurrence of this Event of Default shall be subject to immediate termination, at the County's option;
 - vi. The occurrence of any act which operates to deprive the Lessee permanently of the rights, powers and privileges necessary for the proper conduct and operation of the Premises;
 - vii. If Lessee shall be a corporation and fails to remain in good standing in the State of incorporation;
 - viii. If Lessee is adjudicated bankrupt or insolvent in any proceeding, or if a trustee or receiver is appointed for all or substantially all of the Lessee's assets;

ix. Lessee's failure to comply with any Federal, State or local law or regulation, or failure to comply with any permit, license or authorization required for the activities hereunder, shall be subject to immediate termination, at the County's option;

x. Lessee's failure to observe or perform any of the other covenants, agreements, terms or conditions provided for in this Lease to be observed or performed by Lessee not involving the payment of money, and Lessee does not cure such failure within thirty (30) days after written notice thereof by or on behalf of County. If such failure is incapable of being cured with diligence within thirty (30) days, it shall be an Event of Default if Lessee does not commence to cure such failure within thirty (30) days, or to diligently prosecute such cure to completion within a reasonable period of time.

c. If any Event of Default occurs, then in addition to and without prejudice to any other right or remedy given hereunder or by law or in equity and notwithstanding any waiver of any former breach of covenant, the County may treat the occurrence of such Event of Default as a breach of this Lease, and the County may exercise the following remedies described herein. Reference in this Lease to any particular remedy shall not preclude County from exercising any other remedy at law or in equity to which it may be entitled.

12. Remedies

a. Unless otherwise stated herein, County may terminate this lease by giving to Lessee a Notice of Termination, specifying a termination date of this Lease no less than thirty (30) days after the date on which such Notice is given. After the giving of such Notice of Termination, at midnight as of the termination date specified therein, the term of this Lease and all right, title, and interest of the Lessee hereunder shall expire as fully and completely on the day so specified as if that day were the date herein specifically fixed for the expiration of the term,

b. In the event of a termination for cause, the County shall be entitled to any Rent, fines, assessments, and/or taxes owed at the time of termination; and the Lessee shall comply with Section 15. Removal of Equipment and Personal Property. Under these circumstances, the County reserves the option to exercise its rights and apply any portion or all of the remaining Rent Fee in its possession to monies due to the County relating to Termination of this Lease.

c. Upon termination, the County may exercise the remedies described in New York Real Property Actions and Proceedings Law, and recover from Lessee the value of unpaid Rent.

d. If the County has not terminated Lessee's right to possession of the Premises, the County may exercise the remedies described in New York Real Property Actions and Proceedings Law to collect, by suit or otherwise, each installment of the Rent that becomes due hereunder, or to enforce by suit or otherwise, performance or observance of any agreement, covenant or condition hereof on the part of Lessee to be performed or observed.

e. If County shall commence any proceeding for non-payment of Rent, or any other payment of any kind to which County may be entitled or which it may claim hereunder, Lessee shall not interpose any counterclaim or set-off of whatever nature or description in any such proceeding.

f. The parties hereto specifically agree that Lessee's covenant to pay Rent or any other payments required hereunder are independent of all other covenants and agreements herein contained, provided, however, that this shall not be construed as a waiver of Lessee's right to assert such claim in any separate action brought by Lessee.

g. Unless and until this Lease has been terminated, Lessee shall remain fully liable and responsible to perform all of the covenants and to observe all the conditions of this Lease throughout the remainder of the Term, and, in addition, Lessee shall pay to County, upon demand and as Additional Rent, the total sum of all costs, losses, damages and expenses, including reasonable attorneys fees, as County incurs, directly or indirectly, because of the occurrence of any Event of Default.

13. Surrender

a. Upon termination or expiration of the Lease, Lessee shall immediately surrender the Premises to the County. Lessee shall remove all Equipment and vacate the premises.

b. If Lessee fails to so surrender, the County may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Lessee and any other person who may be occupying such Premises or any part thereof without being liable for prosecution or any claim of damages therefore; and Lessee agrees to pay to the County on demand the amount of all loss and damage which the County may suffer by reason of such termination.

14. Holdover

Lessee may remain in possession of the Premises after the expiration of this Lease so long as an application for renewal of the Lease has been made and is currently pending.

15. Removal of Equipment and Personal Property

a. Equipment and any other personal property owned by Lessee, may be removed by Lessee at any time prior to the expiration or termination of this Lease.

b. In the event that Lessee seeks to terminate the Lease, prior to final execution of a Lease Termination document by the County, Lessee shall remove, at its sole cost and expense, all Equipment, personal property owned by Lessee, trash or other deleterious matter (as determined by the County) which has been attached to or placed in, on, over or under the Premises by the Lessee.

c. Within thirty (30) days after termination of the Lease by the County or expiration of this Lease, Lessee shall remove all such Equipment and personal property, trash or other deleterious matter. Such removal shall be conducted at Lessee's sole cost and expense and shall satisfy any requirements stated in this Lease and the Lease Program.

d. Any of Lessee's Equipment, personal property or cultivated shellfish remaining on the Premises thirty (30) days after the termination or expiration of this Lease shall be deemed to have been abandoned and either may be retained by the COUNTY as its property or may be disposed of as COUNTY may see fit at Lessee's sole cost and expense, without liability for any damage which may occur. If any property so removed is sold, the COUNTY may receive and retain the proceeds of such sale.

e. The County shall not be liable to prosecution, or for any damages to, or loss of any personal property belonging to any party upon or occupying said Premises or any part thereof from any causes whatsoever by reason of such removal. Lessee expressly waives any and all claims for damages and loss against the County or its officers; employees and agents for or on account of any act done or caused to be done in exercising this right.

16. Termination by Lessee

a. Throughout the Term of the Lease, Lessee may request early termination of this Lease at anytime, at its convenience, in the manner prescribed, and on the proper County lease termination form, as defined in the Lease Program, subject to all notification and County approval requirements therein. The County shall be entitled to any Rent, fines, assessments and/or taxes owed at the time of termination. County shall not refund any Rent paid by Lessee and reserves the option to apply any portion or all of the remaining Rent in its possession to costs due to the County relating to termination of this Lease. Lessee shall comply with Section 15. Removal of Equipment and Personal Property.

b. The Lease shall be terminated upon final execution of the County lease termination document by both parties. County shall not execute such document unless all financial terms and other conditions of this Lease have been complied with.

17. Substantial Shellfish Aquaculture Activity

a. Throughout the Term of the Lease, Lessee agrees to conduct Substantial Shellfish Aquaculture Activity, as defined herein and in the Lease Program.

b. Failure to conduct Substantial Shellfish Aquaculture Activity may be excused by a hardship allowance. A Lessee who cannot demonstrate Substantial Shellfish Aquaculture Activity may be eligible for a hardship allowance, at the sole discretion of the County. A hardship allowance may be granted upon written request by the Lessee, submitted to the County with appropriate evidence showing why such activity has not been conducted on the lease site. The length of the hardship allowance shall be determined in the sole discretion of the County.

18. Noise and Lighting

Lessee shall conduct shellfish aquaculture activities in a manner that is respectful of other marine users and the environment. Lessee shall comply with requirements and restrictions in the Lease Program and applicable laws on generation of noise, use of lighting and night-time activities.

19. Annual Reporting/Operation Plan

Lessee shall be responsible for submitting an annual report of lease activities to the Department 30 days before each lease anniversary date, prior to the approval of a lease renewal, assignment or sublease, and prior to termination or expiration, in the form specified by and with the information required by the Administrative Guidance Ex D.

20. Buoys

a. Lessee is responsible for obtaining and complying with, at its sole expense, all necessary permits and licenses under federal and state law, including permits or licenses required by the U.S. Coast Guard and/or US Army Corps of Engineers for buoys, navigational aids and any other Equipment or structures installed by Lessee on the Premises. Prior to commencing Shellfish Cultivation on the Premises or installation of any Equipment, structures, buoys or navigational aids, Lessee shall submit to the Department proof of required licenses and permits.

b. Lessee shall install all buoys, navigational aids and Equipment at Lessee's sole cost and expense. Lessee shall mark all buoys, navigational aids and Equipment with the Lessee's name and lease plot identification number as identified from the Aquaculture Lease Sites Map. Said markings must be maintained by Lessee.

c. Installation of gear buoys shall be at the discretion of the Lessee, except as required by the Lease Program or by any governmental authority.

21. Equipment

a. Lessee shall have the right to place Equipment in or on the Premises consistent with the purpose of shellfish cultivation. No permanent structures shall be placed upon the Premises.

b. All shellfish aquaculture Equipment and the contents thereof are the possessions of and responsibility of the Lessee. Lessee shall mark all shellfish aquaculture Equipment with the Lessee's name and lease plot identification number as identified from the Aquaculture Lease Sites Map. Said markings must be maintained by Lessee.

22. Repair of Equipment or Buoy; Emergency Condition

a. Lessee shall repair, replace or remove a damaged buoy or other Equipment if such damaged buoy or Equipment constitutes a danger to the public or the environment.

b. County may, at its option, repair, replace or remove a damaged buoy or other Equipment, or remediate an emergency condition on the Premises, if, in County's judgment, such damaged buoy or Equipment or condition constitutes a danger to the public or the environment. Except in case of an emergency (when no notice shall be given), before making or performing any such repair, replacement or removal, the County shall first give Lessee fifteen (15) days written notice thereof. In the event the County undertakes such work, the cost of any such work shall be Additional Rent. County's performance of any such work shall not be deemed a waiver of Lessee's obligation to perform such work in the future.

23. Alterations

Lessee shall not make any physical alterations to the property except those customarily associated with shellfish cultivation and permitted by the New York State Department of Environmental Conservation and/or other governmental agencies.

24. Warranties

a. Lessee acknowledges that Lessee has full knowledge of all matters pertaining to the Premises, including, but not limited to, the condition of title to the same and the physical condition of the same, and that Lessee is leasing the Property "AS IS."

b. The County makes no warranty of any kind or nature, express, implied or otherwise, or any representation or covenants of any kind or nature in connection with the title to or condition of the Property or any part thereof, and the County shall not be liable for any latent or patent defects therein or be obligated in any way whatsoever to correct or repair any such latent or patent defects. In the event that the Premises are subject to a title defect or other encumbrance affecting County's ability to lease the Premises, Lessee's sole remedy is to terminate the lease or request relocation (Section 7. Relocation of Premises).

25. Risk of Loss

The risk of loss or destruction from any peril to Equipment or other personal property of the Lessee shall be borne entirely by the Lessee. It is further understood that the Lessee waives any right to subrogation

against the County for loss or destruction to the Equipment or other personal property of the Lessee while on the Premises.

26. Compliance with Law and Permits

a. Lessee shall comply with and its use of the Premises shall be subject to, all statutes, laws, ordinances, rules, regulations, and requirements of all governmental authorities having jurisdiction thereof, including, but not limited to, laws and regulations relating to:

- i. Harvest, handling, tagging, storage, sale, sanitary control and aquaculture of shellfish.
- ii. The transfer or relay of shellfish from uncertified waters to lease areas for natural cleansing.
- iii. Harvest and possession of wild shellfish.
- iv. Food storage, sanitation and handling to prevent contamination and decomposition of shellfish.
- v. Navigation.

b. Prior to commencement of any shellfish aquaculture, Lessee shall, at its sole cost and expense, procure, maintain and comply with during the Term all permits, authorizations, and licenses necessary for Lessee's use or operation of Premises or any portion thereof, including, without limitation, any permits necessary for shellfish cultivation.

27. Hazardous Materials

a. This section is not intended and shall not be construed to prohibit the use and storage of hazardous materials, as defined herein, in amounts used in the customary, usual and ordinary course of Lessee's vessel operation or shellfish aquaculture activities, provided the same are handled, used, treated, stored, transported and disposed of in the manner required or recommended by the applicable government authorities and with due care. The Lessee shall not generate, treat, release, store, discharge, dispose of, transport, use, handle or permit hazardous materials, except such usual and customary types and quantities referred to above, on the Premises, nor shall Lessee permit its subtenants, guests, contractors or any other person to do any of the foregoing.

b. "Hazardous materials" shall include, but not be limited to, hazardous substances, pollutants, contaminants, hazardous materials or hazardous waste, flammable explosives, gasoline, petroleum products, polychlorinated biphenyl, radioactive materials, hazardous wastes, toxic substances, asbestos, or asbestos-containing material, or any other substance or material as defined by federal state or local environmental law, local law, ordinance, rule or regulation, including, but not limited to, the Solid Waste Disposal Act/Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, *et seq.*, the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act as amended, 42 U.S.C. 9601, *et seq.*, the Toxic Substances Control Act, as amended, 15 U.S.C. 2601, *et seq.*, the Federal Insecticide Fungicide and Rodenticide Act, as amended, 7 U.S.C. 136, *et seq.*, and the Safe Drinking Water Act, as amended, 42 U.S.C. 300f, *et seq.*, the N.Y. Environmental Conservation Law, as amended, and the N.Y. Navigation Law, as amended.

c. In the event of any release of hazardous materials or hazardous substances, except releases in accordance with applicable permits and law, Lessee shall promptly report such release to the applicable governmental authorities and to the County and shall provide to the Department copies of any reports required to be filed by any other governmental agency in connection with such release. At a minimum, such spill shall be reported immediately to the New York State Department of Environmental Conservation, the Suffolk County Department of Health Services, (tel. _____) and the Suffolk County Department of Fire, Rescue and Emergency Services (tel. _____).

d. Lessee shall exercise due care with respect to such release and shall comply with the directives and orders of the appropriate governmental authority.

e. Lessee shall indemnify, defend and save harmless the Department, the County/Licensors and its officers, officials, members, employees, agents and invitees from and against all liabilities, obligations, claims, damages, penalties, causes of actions, costs and expenses (including reasonable attorney's fees) whatsoever imposed upon or incurred by or asserted against the Department or County/Licensors and its officers, officials, members, employees, agents and invitees arising from Lessee's or Lessee's agents', servants', contractors', sublessees' and invitees' acts or omissions or negligence, by reason of:

- i. the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any hazardous materials on, under, from or affecting the Premises or any other property;
- ii. any personal injury (including wrongful death), property damage (real or personal) or natural resource damage arising out of or related to such hazardous materials;
- iii. any lawsuit brought or threatened or settlement reached or governmental order relating to such hazardous materials (provided, however that Lessee will be given the opportunity, if available with no adverse effect to the County/Licensors, to contest any such settlement on the grounds therefore with the opposing person or entity, after paying same); or
- iv. any violations of laws, ordinances, rules, orders, or regulations which are based upon or any way related to such hazardous materials, health, safety or environment, including, but not limited to, attorney or consultant fees, investigation and laboratory fees, court costs, and litigation expenses.

f. This Section 27 shall survive the termination or expiration of this Agreement.

28. Liens or Encumbrances

Lessee shall not, without County's written consent: permit the creation or imposition of any liens or encumbrances upon the Premises. In the event said liens have been created by or permitted by Lessee in violation of this provision, Lessee, at its sole cost and expense, will immediately discharge as of record any such lien or encumbrance.

29. No Credit Without Prior Approval

Lessee agrees that this Lease shall not be pledged, hypothecated, or put up as security for a loan, credit or for any reason whatsoever, without prior written approval of the County.

30. Indemnification

Lessee shall protect, indemnify and hold harmless the County and its officers, officials, employees, contractors, agents, invitees and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorneys' fees, arising out of the acts, omissions or negligence of Lessee arising out of or in connection with Lessee's use of the Premises. Lessee shall defend the County and its officers, officials, employees, contractors, agents and other persons in any suit, including appeals, or at the County's option, pay reasonable attorney's fees for defense of any such suit arising out of the acts, omissions, or negligence of

Lessee, its officers, employees, subcontractors, agents, invitees or other persons, if any, in connection with use of the Premises. The liability of the Lessee shall not be limited to the insurance coverage (if any) prescribed below.

31. Insurance

In the event that the Lessee maintains a commercial general liability or a marine general liability policy covering the Premises and the shellfish cultivation activities conducted thereon, or the Lessee maintains insurance on its boats, such as a marine protection and indemnity policy, Lessee shall furnish to the County Declaration Pages for each such policy of insurance and, upon request, a true and certified original copy of each such policy evidencing compliance with the insurance requirements as stated herein. The County of Suffolk shall be named as an additional insured on all such policies.

32. Right to Inspect and Monitor; Regulatory Authority

- a. County may, but shall not be obligated to, enter and inspect the Premises at any time. The County will use its best efforts not to unreasonably interfere with Lessee's operation during inspection.
- b. County shall have the right to conduct environmental monitoring or sampling in, upon or over the Premises.
- c. This Lease shall not impair any of the County's regulatory authority.

33. Interference; Eminent Domain

- a. Except as otherwise provided herein, Lessee shall have no claim against the County for any damage, should Lessee's possession of the Premises or any part thereof be disturbed or interfered with or affected in any manner by reason of the acts or omissions of any person, or by reason of the enactment or adoption of any law, ordinance or regulation or by reason of any other act of any governmental authority, or for any other reason not in County's control.
- b. If, as a result of the exercise of the power of eminent domain or a conveyance in lieu thereof (hereinafter referred to as a "Proceeding"), a majority or more of the entire Premises ("materially all"), shall be taken, this Lease and all right, title and interest of the Lessee hereunder shall cease and come to an end on the earlier of the date on which possession is taken by the condemning authority or the date of vesting of title pursuant to such Proceedings. The County and Lessee shall each receive the value of their respective interests in the Premises, together with interest thereon from the date of taking to the date of payment at the rate paid on the award, and attorney's fees and other costs to the extent awarded. The values of the County's and Lessee's respective interests in the Premises shall be established by the same court of law or other trier of fact that establishes the amount of the condemnation award.
- c. In the event of such interference or the exercise of eminent domain, Lessee's sole remedy with respect to the County shall be to terminate or request relocation of the lease in accordance with the Lease Program.

34. Harvest from Approved Waters

Shellfish may only be harvested from approved waters, as determined by New York State Department of Environmental Conservation (NYSDEC). In the event that NYSDEC water quality and water quality classifications of waters within New York State change due to various environmental conditions as determined by the NYSDEC, and the Lessee or the County is required to respond to those changes, the County shall not assume any liability for any changes in classification and shall assume no liability to the

Lessee for damages incurred due to such actions. Lessee's sole remedy in such event shall be to terminate the lease or apply to the County to relocate it, in accordance with the Lease Program.

35. Assignment

Lessee shall not assign (or transfer) the Lease without the County's prior written approval. Lease assignment may be requested by submission to County of a Lease Assignment Application and an application fee. A lease assignment shall be subject to a complete application review process and the assignee shall meet the same standards as are applied to an initial lease applicant. In addition, the County shall consider the factors listed in the Lease Program. Upon the County's approval of an Assignment, both Lessee (as Assignor) and Assignee shall execute an Assignment document in a form approved by the County.

36. Sublease

a. Notwithstanding any sublease approved by the County during the Term, the Lessee shall remain liable to the County hereunder and shall guarantee Sublessee's full and faithful execution of and compliance with all covenants, terms and conditions contained in this Lease, and shall cause all agreements between the Lessee and its Sublessee to expressly incorporate this Lease by reference into the terms and conditions therein.

b. Further, the County will not be required to first look to any sublessee of Lessee for the performance of any obligations of Lessee under this Lease, and the County shall not be required to assume any affirmative obligations with respect to any subtenant. However, in the event of a Default by the Lessee relating to these provisions, the County reserves all rights and remedies at law or in equity to enforce the obligations and duties of the sublessee through this Lease.

c. Lessee is limited to no more than one (1) sublease of all or a portion of the Leased Parcel at any time during the Term of this Lease.

37. County Representatives

It is expressly understood and agreed by and between the parties hereto that the officers, officials, employees and agents of the County are acting in a representative capacity for the County of Suffolk and not for their own benefit, and that neither Lessee nor any occupant of the Premises shall have any claim against them or any of them as individuals in any event whatsoever.

38. Public Relations

The Department shall have the right to approve all press releases and other statements to the newspapers, radio, television, and other media made by Lessee relating to this transaction and the occupancy of the Premises. In no way shall this prevent or preclude the lessee from advertising business operations or matters related to the sale of product associated with the leasehold.

39. Non-Discrimination

Lessee shall comply with all Federal and State non-discrimination laws.

40. Governing Law

This Lease shall be construed and interpreted in accordance with the laws of the State of New York, and without regard to its conflict of laws provisions. Venues shall be designated as Suffolk County, New York or the United States District Court for the Eastern District of New York.

41. Lessee's Authority to Enter Lease

Lessee represents that it has full power and has been duly authorized by all necessary action, to execute and deliver this Lease and to perform its obligations under this Lease.

42. No Waiver

Failure by the County or Lessee to insist upon the strict performance of any covenant, agreement, term or condition of this Lease, or to exercise any right or remedy consequent upon a breach thereof, or acceptance of full or partial Rent during any such breach, shall not constitute a waiver of any breach or of such covenant, agreement, term or condition hereof.

43. Business Day

If the day for performing any action required under this Lease does not occur on a County business day, the due date shall be on the next day when the County is open for official business

44. Conflicts of Interest

a. Lessee agrees that it will not during the term of this Lease engage in any activity that is contrary to and/or in conflict with the goals and purposes of the County.

b. Lessee is charged with the duty to disclose to the County the existence of any such adverse interests, whether existing or potential. This duty shall continue throughout the term of this Lease. The determination as to whether or when a conflict exists or may potentially exist shall ultimately be made by the County Attorney after full disclosure is obtained.

45. Cooperation on Claims

Each of the parties hereto agrees to render diligently to the other party, without additional compensation, any and all cooperation, that may be required to defend the other party, its employees and designated representatives against any claim, demand or action that may be brought against the other party, its employees or designated representatives in connection with this Lease.

46. Certification

The parties to this Lease hereby certify that, other than the funds provided in this Lease and other valid contracts with the County, there is no known relationship within the third degree of consanguinity, life partner or business, commercial, economic, or financial relationship between the parties, the signatories to this Lease, and any partners, members, directors, or shareholders of five percent (5%) (or more) of any party to this Lease.

47. Not in Default

Lessee warrants that it is not, and shall not be during the Term of this Lease, in arrears to the County for taxes or upon debt or contract and is not, and shall not be during the term of this Lease, in default as surety, contractor or otherwise on any obligation to the County

48. Disclosure of Violations

Lessee certifies that it has disclosed to County, in writing, whether it has ever been convicted or found guilty of any civil, criminal or administrative violations of law, related to the following subjects: marine or environmental protection laws, laws related to shellfish aquaculture and food sanitation, and laws related to navigation and operation of a vessel, whether Federal, State, or local. Lessee certifies that such disclosure has also been made, if applicable, with respect to officers, directors and shareholders (for a corporate Lessee) and for all partners (for a partnership Lessee) Lessee shall update this certification annually.

49. Suffolk County Legislative Requirements

The Parties agree to be bound by the terms of the Suffolk County Legislative Requirements, annexed hereto as "Exhibit B," and made a part hereof.

50. Severability

It is expressly agreed that if any term or provision of this Lease and or any amendment hereto, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of this Lease and any amendment hereto, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and every other term and provision of this Lease and any amendment hereto shall be valid and shall be enforced to the fullest extent permitted by law.

51. Notices

Notices relating to this Lease shall be provided in accordance with the provisions set forth in "Exhibit C."

52. Merger; No Oral Changes; No Representations.

It is expressly agreed that this Lease represents the entire agreement of the parties, that all previous understandings are merged in this Lease. Neither party has made any representations or promises, except as expressly contained herein. No modification of this Lease shall be valid unless written in the form of an Amendment and executed by both parties.

53. Recording

Lessee shall record a memorandum of this lease pursuant to Real Property Law §291-c in the Office of the Suffolk County Clerk, no later than 60 days after final signature on the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed and delivered as of the date last set forth below.

County of Suffolk

Lessee

By: _____

By: _____

Name:
Title: Deputy County Executive

Name:
Title:
Fed. Tax I.D. No.

Date: _____

Date: _____

**Approved as to Legality
Christine Malafi,
Suffolk County Attorney**

By: _____

Assistant County Attorney

Date: _____

**Recommended: Department of
Planning**

By: _____

Thomas A. Isles
Director of Planning

Date: _____

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ACKNOWLEDGEMENT

STATE OF NEW YORK }

SS:

COUNTY OF SUFFOLK }

On the ____ day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK }

SS:

COUNTY OF SUFFOLK }

On the ____ day of _____ in the year 20__ before me, the undersigned, personally appeared _____, *Deputy County Executive*, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT A
Coordinates and Survey Map of Premises

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EXHIBIT B

Suffolk County Legislative Requirements

1. Contractor's/Vendor's Public Disclosure Statement

The Contractor represents and warrants that it has filed with the Comptroller of Suffolk County the verified public disclosure statement required by Suffolk County Administrative Code Article V, Section A5-7 and shall file an update of such statement with the said Comptroller on or before the 31st day of January in each year of this Agreement's duration. The Contractor acknowledges that such filing is a material, contractual and statutory duty and that the failure to file such statement shall constitute a material breach of this Agreement, for which the County shall be entitled, upon a determination that such breach has occurred, to damages, in addition to all other legal remedies, of fifteen percent (15%) of the amount of the Agreement.

Required Form: Suffolk County Form SCEX 22; entitled "Contractor's/Vendor's Public Disclosure Statement"

2. Gratuities

The Contractor represents and warrants that it has not offered or given any gratuity to any official, employee or agent of Suffolk County or New York State or of any political party, with the purpose or intent of securing an agreement or securing favorable treatment with respect to the awarding or amending of an agreement or the making of any determinations with respect to the performance of an agreement, and that the signer of this Agreement has read and is familiar with the provisions of Local Law No. 32-1980 of Suffolk County (Chapter 386 of the Suffolk County Code).

3. Non Responsible Bidder

The Contractor represents and warrants that it has read and is familiar with the provisions of Suffolk County Code Chapter 143, Article II, §§143-5 through 143-9. Upon signing this Agreement the Contractor certifies that he, she, it, or they have not been convicted of a criminal offense within the last ten (10) years. The term "conviction" shall mean a finding of guilty after a trial or a plea of guilty to an offense covered under the provision of Section 143-5 of the Suffolk County Code under "No responsible Bidder."

4. Suffolk County Local Laws

Suffolk County Local Laws, Rules and Regulations can be found on the Suffolk County web site at [www.co.suffolk](http://www.co.suffolk.ny.us)<<http://www.co.suffolk.ny.us>>. Click on "Laws of Suffolk County" under "Suffolk County Links."

End of Text for Exhibit B

EXHIBIT C

Article I.

Article II. Notices and Contact Persons

1. Operational Notices

Any communication, notice, claim for payment, reports, insurance, or other submission necessary or required to be made by the parties regarding this Agreement shall be in writing and shall be given to the County or the Lessee or their designated representative at the following addresses or at such other address that may be specified in writing by the parties and must be delivered as follows:

**For the Department:
By Regular or Certified Mail in Postpaid Envelope or by
Courier Service**

Suffolk County Department of Planning
H. Lee Dennison Building, 4th Floor
100 Veterans Memorial Highway
P.O. Box 6100
Hauppauge, New York 11788
Attn.: Director of Planning

**For the Lessee:
By Regular or Certified Mail in Postpaid Envelope or by
Courier Service or by Fax or by Email**

At the address set forth on page one of this Lease, attention of the person who executed this Lease or such other designee as the parties may agree in writing.

2. Notices Relating to Termination and/or Litigation

In the event the Lessee receives a notice or claim or becomes a party (plaintiff, petitioner, defendant, respondent, third party complainant, third party defendant) to a lawsuit or any legal proceeding related to this Lease, Lessee shall immediately deliver to the County Attorney, at the address set forth below, copies of all papers filed by or against the Lessee.

Any communication regarding termination shall be in writing and shall be given to the County or Lessee or their designated representative at the following addresses or at such other addresses that may be specified in writing by the parties and must be delivered as follows.

**By Regular and Certified Mail in Postpaid Envelope or by
Nationally Recognized Courier Service or Personally and by First Class Mail
Fax or E-mail notice shall not be used.**

For the County:
Suffolk County Department of Planning, at the address given above

and

Christine Malafi, County Attorney
Suffolk County Department of Law
H. Lee Dennison Building
100 Veterans Memorial Highway
Hauppauge, New York 11788

For Lessee:

At the address set forth on page one of this Agreement, attention to the person who executed this Agreement or such other designee as the parties may agree in writing.

3. Notices shall be deemed to have been duly delivered (i) if mailed by registered or certified mail, upon the seventh business day after the mailing thereof; or (ii) if by nationally recognized overnight courier service, upon the first business day subsequent to the transmittal thereof; or (iii) if personally, pursuant to New York Civil Practice Law and Rules Section 311; or (iv) if by fax or email, upon the transmittal thereof. "Business Day" shall be defined as any day except a Saturday, a Sunday, or any day in which commercial banks are required or authorized to close in Suffolk County, New York.
4. Each party shall give prompt written notice to the other party of the appointment of successor(s) to the designated contact person(s).

End of Text for Exhibit C

Appendix B
Model Lease Application

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COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM
LEASE APPLICATION**

This is an application for a shellfish aquaculture lease for the underwater lands within the Peconic Bay/Gardiners Bay Shellfish Cultivation Zone. This application is for on-bottom and off-bottom commercial shellfish cultivation activities, as well as non-commercial shellfish cultivation for experimental/educational or resource restoration purposes. A lease must be executed before the applicant can conduct any shellfish cultivation activities. Once the County approves the lease, the applicant may apply for required permits from the NYSDEC and other regulatory agencies.

EACH LEASE APPLICANT IS REQUIRED TO ATTEND A PRE-APPLICATION MEETING WITH THE COUNTY PRIOR TO COMPLETING AN APPLICATION. PLEASE CALL THE AQUACULTURE ADMINISTRATOR AT THE COUNTY DEPARTMENT OF PLANNING AT 631-853-5191 TO SET UP A MEETING. AN APPLICATION WILL NOT BE CONSIDERED COMPLETE UNTIL A PRE-APPLICATION MEETING IS HELD.

Suffolk County requires a **non-refundable** application fee for shellfish aquaculture lease program applications, which shall not be applied towards the annual lease rental fee due upon execution of the lease agreement of \$200 plus \$5 per acre for a lease on public land; or \$200 for a lease on private grant land.

Shellfish Aquaculture Lease Program Application Fee: \$100

Please make your check or money order payable to the Suffolk County Treasurer.

Mailing Instructions:

Provide one copy of your application to the Suffolk County Department of Planning at the address listed below. **Applications for a lease must be submitted to the County no later than _____ of the year in which the applicant wishes to obtain a lease.** The applicant shall be notified upon receipt when the application has been reviewed and accepted as complete by the County, or if the application is incomplete.

SUFFOLK COUNTY DEPARTMENT OF PLANNING
ATTN: Aquaculture Administrator
P.O. Box 6100
Hauppauge, NY 11788-0099

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DESCRIPTION OF THE LEASE APPLICATION PROCESS

The following information outlines the process leading to the approval of a shellfish aquaculture lease.

1. **Pre-application Meeting:** Prior to completing an application, each lease applicant must contact the Suffolk County Department of Planning to set up a pre-application meeting. Applications submitted without a pre-application meeting will not be considered complete.
2. **Public Comment Period:** Before the lease is approved, notice shall be provided for at least two months by posting such notice at the New York State Department of Environmental Conservation Bureau of Marine Resources, in the Suffolk County Department of Planning, the Office of the County Clerk, and the Clerk's Office in all East End towns. Such notice shall also be published in the official newspaper of the County. The notice shall include the name of the lessee, the boundaries of the lease, and the area of the lease. A copy of the proposed lease shall be available for public inspection and copying in the Office of the County Clerk. In addition to receiving written comments, the Aquaculture Lease Board shall hold a public meeting at which all potential lease sites identified in all lease applications will be presented for consideration from a regional perspective.
3. **Decision:** Upon review of all oral and written public comment, the Aquaculture Lease Board will make a determination as to which sites will be eligible for lease. Department staff will then conduct a random selection procedure, as necessary to establish application priority. The Department will then process all approved applications. If approved, Suffolk County will send a letter of approval and a copy of the lease agreement to the applicant. The lease agreement must then be signed and returned to the County for final execution.
4. **Requirements Once a Lease is Issued:** The lessee must obtain all permits required by NYSDEC or any other regulatory agency prior to conducting shellfish cultivation operations on the lease site. Lease site boundaries must be adequately marked according to requirements and permitting set forth by the US Coast Guard Private Aids to Navigation & NYSDEC. Maintenance of the lease shall be subject to the ability to demonstrate substantial shellfish aquaculture activity.

SHELLFISH AQUACULTURE LEASE PROGRAM
LEASE APPLICATION

Name: _____
(For corporate or partnership applicants, please also complete Attachment A)

Address: _____

City: _____

County: _____

State, Zip: _____

Telephone: business _____ home _____ cellular _____

Email address: _____

Federal Tax ID No. _____

Date of Pre-application meeting: _____

Lease Type:

- Commercial Experimental/Educational Resource Restoration

Location of Lease Site: _____

(town)

(waterbody)

Preferred Lease Sites (Suffolk County Shellfish Aquaculture Lease Sites Map ID#):

1. _____

2. _____

3. _____

Site Status:

- TMAUA Oyster Grant N/A

If a TMAUA, please indicate on-/off-bottom shellfish culture permit number: _____

If a private oyster grant, please indicate Suffolk County Tax Map number: _____.

Please submit a copy of the deed for the oyster grant. Please also provide a copy of the grant survey, if available.

Is assignment or grant currently being cultivated? Yes No N/A

Has the grant been cultivated between 1/1/99 – 12/31/08? Yes No

If the subject lease is on a private oyster grant, please list the grant owner's name and contact information:

If the proposed lease site is on a private oyster grant and the application is not being submitted by the grant owner, provide proof of the grant owner's permission for the applicant to conduct shellfish cultivation activities under a lease issued by Suffolk County.

Total Acreage Requested

5 Ac 10 Ac Other (oyster grant)

If other, please indicate acreage: _____ Ac

Type of Culture Operation:

ON-BOTTOM OFF-BOTTOM

List of Species to be Cultivated:

Eastern Oyster Razor Clam
 Hard Clam Bay Scallop
 Blue Mussel Other: _____

Culture Gear:

	<u>Gear Type</u>	<u>Amount</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Harvest Method:

Potential Shellfish Stock Source:

	<u>Hatchery Name</u>	<u>Location</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Explanation of Non-Commercial lease project (purpose, goals, design and, expected length of study):

(Attach additional information if necessary.)

Planned use of shellfish cultured from non-commercial lease site (e.g., left in-place, harvested for off-site analysis, etc.):

Has the lease applicant been convicted or found guilty of any civil, criminal or administrative violation of marine or environmental protection law, whether state or federal?

Yes No

If yes, explain: _____

\$ 100 Lease Program Application Fee Enclosed:

Please make check or money order payable to the Suffolk County Treasurer.

Lease Application Status Form enclosed (Attachment B):

I hereby state that the information included in this application is true and correct and that I have read and understand regulations of the New York State Department of Environmental Conservation, and the requirements of the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay governing shellfish aquaculture.

Signature: _____ Date: _____

The Application must be executed by an authorized party. If a corporation, the form should be signed by an officer and a certified, duly-adopted corporate resolution authorizing the application should be attached. If a partnership, the form should be signed by a partner.

McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or other wise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

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Attachment A – Corporate or Partnership Lease Applicants

I. Corporate Applicants

Please provide the following additional information if you are a corporate entity applying for a lease.

C-1. The date and state in which incorporated (include a copy of the Certificate and Articles of Incorporation):

C-2. The names, addresses and titles of all officers:

C-3. The name and addresses of all directors:

C-4. Has the corporation, or any shareholder, director, or officer applied for a shellfish aquaculture lease for underwater lands in Peconic Bay or Gardiners Bay in the past, and if so, state the outcome or current status of that application or lease:

C-5. Names and addresses of all shareholders, who own or control at least 5% of the outstanding stock and the percentage of the outstanding stock currently owned or controlled by each such shareholder:

C-6. Names and addresses of shareholders, directors, or officers owning an interest, either directly or beneficially, in any other New York State shellfish cultivation operation as well as the quantity of acreage attributed to each such person:

C-7. Whether the corporation or any officer, director or shareholder has ever been convicted or found guilty of a civil, criminal or administrative violation of any marine resources or environmental protection law, whether state or federal?

Yes No

If yes, explain: _____

Signature: _____ Date: _____

The Application must be executed by an officer and must be accompanied by a certified, duly adopted corporate resolution authorizing the application.

McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

II. Partnership Applicants

Please provide the following additional information if you are a partnership applying for a lease.

P-1. The date and state in which the partnership was formed (include a copy of either the Certificate of Limited Partnership or documentation of the formation of a General Partnership): _____

P-2. The names, addresses, and ownership shares of all partners:

P-3. Has the partnership or any partner applied for a shellfish cultivation lease for the underwater lands of Peconic Bay or Gardiners Bay in the past, and if so, state the outcome or current status of that application or lease:

P-4. State whether the partnership (or any partner) owns an interest, either directly or beneficially, in any other New York State shellfish cultivation operation as well as the quantity of acreage from the existing operation:

P-5. Has the partnership or any partner been convicted or found guilty of a civil, criminal or administrative violation of any marine resources or environmental protection law, whether state or federal? Yes No

If yes, explain: _____

Signature: _____ Date: _____

The Application must be executed by a partner.

McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

Attachment B – Lease Application Status Form

COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM
LEASE APPLICATION STATUS FORM**

Date: _____

Name of Applicant(s): _____

Mailing Address: _____

Phone: _____

Suffolk County Shellfish Aquaculture Lease Sites Map Grid ID# (List 3 Preferred Lease Sites)

1st: _____

2nd: _____

3rd: _____

DO NOT WRITE BELOW THIS LINE

TO BE COMPLETED BY S.C. DEPARTMENT OF PLANNING

Date & Time Application Received by County: _____

County Representative: _____

Contact Information: _____

Status:

Complete: _____

Incomplete: _____ *

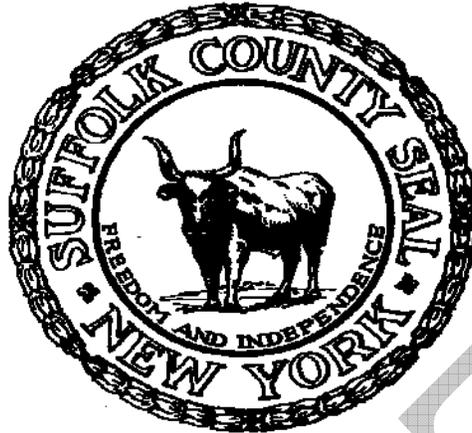
* See Attached Summary of Reasons for Incomplete & Directions for Submitting Additional Information, if Applicable.

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Appendix C
Model Annual Report Form

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COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM
ANNUAL REPORT FORM**

Lessees must provide an Annual Report on their lease activities on an annual basis and submit it to the County with the annual lease rental fee, 30 days before the lease anniversary date. The lessee will also be required to submit this report 30 days before the termination or expiration of a lease and prior to approval of a lease renewal or assignment. The Annual Report form submitted by a lessee should include information on activities conducted on any sublease involving the leased premise and copies of all current required permits.

Annual Lease Rental Fee: \$ _____

Mailing Instructions:

Provide one copy of the Annual Report Form, along with a check or money order made payable to the Suffolk County Treasurer for the annual lease rental fee described in the lease, to the Suffolk County Department of Planning at the address below 30 days before the lease anniversary date.

SUFFOLK COUNTY DEPARTMENT OF PLANNING
ATTN: Aquaculture Administrator
P.O. Box 6100
Hauppauge, NY 11788-0099

Shellfish Stock Source:

	<u>Hatchery Name</u>	<u>Location</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Harvest Method:

Provide a brief description of the shellfish aquaculture activities on the lease site, including the number of employees working on the lease site:

Provide a description and the location of structures on the lease site:

If this is a Non-Commercial lease project, then please describe the purpose and goals of the experimental / educational and / or resource restoration activities conducted, and provide a summary of the results and data collected to date:

(Attach additional information if necessary)

Describe predator control measures, if any conducted on the lease site:

Describe the maintenance measures of the shellfish aquaculture operation:

Report the quantity of shellfish seed planted on and harvested from the lease for this reporting year:

# of Seed Planted	Shellfish Species Planted					
	Eastern Oyster	Hard Clam	Blue Mussel	Razor Clam	Bay Scallop	Other
0 - 50,000						
50,001 - 100,000						
100,001 - 250,000						
250,001 - 500,000						
500,001 - 1,000,000						
1,000,000 +						

# of Shellfish Harvested	Shellfish Species Harvested					
	Eastern Oyster	Hard Clam	Blue Mussel	Razor Clam	Bay Scallop	Other
0 - 50,000						
50,001 - 100,000						
100,001 - 250,000						
250,001 - 500,000						
500,001 - 1,000,000						
1,000,000 +						

A lessee may modify his/her lease aquaculture activities (type of culture, species cultivated, gear type) upon notice to the County.

Annual Lease Rental Fee Enclosed (if applicable):

Please make check or money order payable to the Suffolk County Treasurer.

Please answer as appropriate for the period covered by the Annual Report:

Has the lessee or sublessee been convicted or found guilty of a civil, criminal or administrative violation of any marine resources or environmental protection law, whether state or federal, since the most recent lease application or Annual Report?

If the lessee or the sublessee is a corporation, has the corporation or any officer, director or shareholder ever been convicted or found guilty of a civil, criminal or administrative violation of any marine resources or environmental protection law, whether state or federal, since the most recent lease application or Annual Report?

If the lessee or the sublessee is a partnership, has the partnership or any partner ever been convicted or found guilty of a civil, criminal or administrative violation of marine resources or environmental protection law, whether state or federal, since the most recent lease application or Annual Report?

Yes No

If yes, explain: _____

I hereby state that the information included in this Annual Report is true and correct and that I have read and understand regulations of the New York State Department of Environmental Conservation, and the requirements of the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay governing shellfish aquaculture.

Signature: _____ Date: _____

The Application must be executed by an authorized party. If a corporation, the form should be signed by an officer and a corporate resolution authorizing the application should be attached. If a partnership, the form should be signed by a partner.

McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree

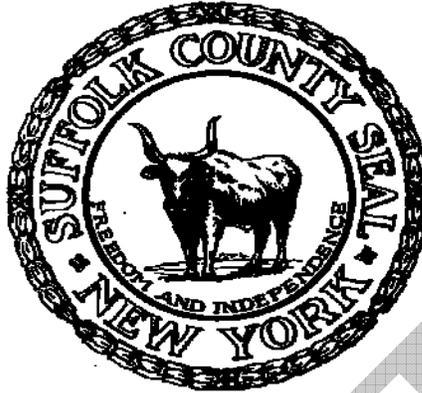
A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

Appendix D
Model Lease Assignment Application

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COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM
LEASE ASSIGNMENT APPLICATION**

This is an application for the assignment of an existing shellfish aquaculture lease. A new lease must be executed before the assignee can conduct any shellfish cultivation activity.

EACH EXISTING LEASE HOLDER, AS THE APPLICANT, AND THE PROPOSED ASSIGNEE ARE REQUIRED TO ATTEND A PRE-APPLICATION MEETING WITH THE COUNTY PRIOR TO COMPLETING AN APPLICATION. PLEASE CALL THE *AQUACULTURE ADMINSTRATOR* AT THE COUNTY DEPARTMENT OF PLANNING AT 631-853-5191 TO SET UP A MEETING. AN APPLICATION WILL NOT BE CONSIDERED COMPLETE UNTIL A PRE-APPLICATION MEETING IS HELD.

Suffolk County requires a **non-refundable** application fee for shellfish aquaculture lease assignment applications which shall not be applied towards the annual lease rental fee for the first year of the lease.

Shellfish Aquaculture Lease Assignment Application Fee: \$100

Please make your check or money order payable to the Suffolk County Treasurer.

Mailing Instructions:

Provide one copy of your application to the Suffolk County Department of Planning at the address listed below. The applicant shall be notified upon receipt when the application has been reviewed and accepted as complete by the County.

SUFFOLK COUNTY DEPARTMENT OF PLANNING
ATTN: Aquaculture Administrator
P.O. Box 6100
Hauppauge, NY 11788-0099

DESCRIPTION OF THE LEASE ASSIGNMENT APPLICATION PROCESS

The following information outlines the process leading to the approval of an assignment of a shellfish aquaculture lease.

1. **Pre-application Meeting:** Prior to completing an application, each lease applicant must contact the Suffolk County Department of Planning to set up a pre-application meeting between the Department, the applicant and the proposed assignee. Applications submitted without a pre-application meeting will not be considered complete.
2. **Public Comment Period:** Before the assignment is approved, notice shall be provided for at least two months by posting such notice at the New York State Department of Environmental Conservation Bureau of Marine Resources, in the Suffolk County Department of Planning, the Office of the County Clerk, and the Clerk's Office in all East End towns. Such notice shall also be published in the official newspaper of the County. The notice shall include the name of the lessee, the boundaries of the lease, and the area of the lease. A copy of the proposed lease shall be available for public inspection and copying in the Office of The County Clerk.
3. **Decision:** The County will make a determination as to whether or not the assignment is approved. Input and comments provided by the towns, NYSDEC, and the public will be taken into consideration by the County during the lease application review process. If not approved, the applicant will receive a letter denying the application, or asking for further information. If completed and approved, Suffolk County will send a letter of approval and a copy of the lease agreement to the applicant. The lease agreement must be signed by the applicant and the proposed assignee and returned to the County for final execution.
4. **Requirements Once a Lease is Assigned:** The party to whom the lease is being assigned must obtain all permits required by NYSDEC or any other regulatory agency prior to conducting shellfish cultivation operations on the lease site. The Assignee must contact the local US Coast Guard Private Aids to Navigation Office for approval of any significant changes to marking devices on the lease site.

SHELLFISH AQUACULTURE LEASE PROGRAM
LEASE ASSIGNMENT APPLICATION

Current Lease Holder Information

Name: _____
Address: _____
City: _____
County: _____
State, Zip: _____
Telephone: business _____ home _____ cell _____
Email address: _____
Suffolk County Lease Number: _____

Prospective Assignee Information (attach additional information on separate sheets):

Name: _____
Address: _____
City: _____
County: _____
State, Zip: _____
Telephone: business _____ home _____ cell _____
Email address: _____

Identify shellfish cultivation leases, if any, presently held by the assignee:

Location of lease site: _____
(town) (waterbody)

Suffolk County Shellfish Aquaculture Lease Sites Map ID#: _____

If a private oyster grant, please indicate Suffolk County Tax Map number: _____
Please also provide a copy of the grant survey, if available.

If the subject Leased Parcel is on a private oyster grant, please list the grant holder's name and contact information:

If the proposed lease site is on a private oyster grant and the application is not being submitted by grant owner, provide with this application, proof of the grant owner's permission for the applicant to assign this lease to the prospective assignee to conduct shellfish cultivation activities under a lease issued by Suffolk County.

Total acreage of current lease (lease to be assigned):

Current type of culture operation:

- ON-BOTTOM OFF-BOTTOM

List of Species Currently Cultivated:

- Eastern Oyster Razor Clam
 Hard Clam Bay Scallop
 Blue Mussel Other: _____

Current Culture Gear:

	<u>Gear Type</u>	<u>Amount</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Current Shellfish Stock Source:

	<u>Hatchery Name</u>	<u>Location</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Proposed lease operations:

Type of culture operation:

- ON-BOTTOM OFF-BOTTOM

List of Species to be Cultivated:

- Eastern Oyster Razor Clam
 Hard Clam Bay Scallop
 Blue Mussel Other: _____

Culture Gear:

	<u>Gear Type</u>	<u>Amount</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Shellfish Stock Source:

	<u>Hatchery Name</u>	<u>Location</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Has the prospective Assignee ever been convicted or found guilty of a civil criminal or administrative any violation of marine or environmental protection law, whether state or federal? Yes No

If yes, explain: _____

\$ 100 Lease Assignment Application Fee Enclosed:

Please make check or money order payable to the Suffolk County Treasurer.

I hereby state that the information included in this application is true and correct and that I have read and understand regulations of the New York State Department of Environmental Conservation, and the requirements of the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay governing shellfish aquaculture.

Signature of Assignor: _____ Date: _____

Signature of Assignee: _____ Date: _____

The Application must be executed by an authorized party. If a corporation, the form should be signed by an officer and a corporate resolution authorizing the application should be attached. If a partnership, the form should be signed by a partner.

McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

Attachment A – Corporate or Partnership Lease Applicants

I. Corporate Applicants

Please provide the following additional information if you are a corporate entity applying to be the assignee of a lease.

C-1. The date and state in which Incorporated (include a copy of the Certificate and Articles of Incorporation): _____

C-2. The names, addresses and titles of all officers:

C-3. The name and addresses of all directors:

C-4. Has the corporation, or any shareholder, director, or officer applied for a shellfish aquaculture lease for underwater lands in Peconic Bay or Gardiners Bay in the past, and if so, state the outcome or current status of that application or lease:

C-5. Names and addresses of all shareholders, who own or control at least 5% of the outstanding stock and the percentage of the outstanding stock currently owned or controlled by each such shareholder:

C-6. Names and addresses of shareholders, directors, or officers owning an interest, either directly or beneficially, in any other New York State shellfish aquaculture operation as well as the quantity of acreage attributed to each such person:

- C-7. Whether the corporation or any officer, director or shareholder has ever been convicted or found guilty of a civil, criminal or administrative violation of any marine resources or environmental protection law, whether state or federal: Yes No

If yes, explain: _____

Signature: _____

Date: _____

The Application must be executed by a partner.

McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or other wise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

II. Partnership Applicants

Please provide the following additional information if you are a partnership applying to be the assignee of a lease.

- P-1. The date and state in which the partnership was formed (include a copy of either the Certificate of Limited Partnership or documentation of the formation of a General Partnership): _____

- P-2. The names, addresses, and ownership shares of all partners:

- P-3. Has the partnership or any partner applied for a shellfish cultivation lease for the underwater lands of Peconic Bay or Gardiners Bay in the past, and if so, state the outcome or current status of that application or lease:

P-4. State whether the partnership (or any partner) owns an interest, either directly or beneficially, in any other New York State shellfish cultivation operation as well as the quantity of acreage from the existing operation:

P-5. Has the partnership or any partner been convicted or found guilty of a civil, criminal or administrative violation of any marine resources or environmental protection law, whether state or federal: Yes No

If yes, explain: _____

Signature: _____ Date: _____

The Application must be executed by an authorized party. If a corporation, the form should be signed by an officer and a corporate resolution authorizing the application should be attached. If a partnership, the form should be signed by a partner.

McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or other wise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

Appendix E
Model Sublease Application

DRAFT

COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM
SUBLEASE APPLICATION**

This is an application by the lessee and the prospective sublessee seeking County approval to sublease all or a portion of the lease parcel. A sublease must be executed before the sublessee can conduct any shellfish cultivation activities.

EACH LEASE HOLDER, AS THE APPLICANT, AND THE PROPOSED SUBLEASE HOLDER/SUBLESSEE ARE REQUIRED TO ATTEND A PRE-APPLICATION MEETING WITH THE COUNTY PRIOR TO COMPLETING AN APPLICATION. PLEASE CALL THE AQUACULTURE ADMINISTRATOR AT THE COUNTY DEPARTMENT OF PLANNING AT 631-853-5191 TO SET UP A MEETING. AN APPLICATION WILL NOT BE CONSIDERED COMPLETE UNTIL A PRE-APPLICATION MEETING IS HELD.

Suffolk County requires a **non-refundable** application fee for shellfish aquaculture sublease applications which shall not be applied to the annual lease rental fee.

Sublease Application Fee: \$100

Please make your check or money order payable to the Suffolk County Treasurer.

Mailing Instructions:

Provide one copy of your application to the Suffolk County Department of Planning at the address listed below. **Application for the approval of a sublease may be submitted to the County anytime during the Term of the Lease.** The applicant shall be notified upon receipt when the application has been reviewed and accepted as complete by the County.

SUFFOLK COUNTY DEPARTMENT OF PLANNING
ATTN: Aquaculture Administrator
P.O. Box 6100
Hauppauge, NY 11788-0099

DESCRIPTION OF THE SUBLEASE APPLICATION PROCESS

The following information outlines the process leading to the approval of a shellfish aquaculture sublease.

1. **Pre-application Meeting:** Prior to completing an application, each sublease applicant and prospective sublessee must contact Suffolk County Department of Planning to set up a pre-application meeting. Applications submitted without a pre-application meeting will not be considered complete.
2. **Public Comment Period:** Before the authorization to sublease is approved, notice shall be provided for at least two months by posting such notice at the New York State Department of Environmental Conservation Bureau of Marine Resources, in the Suffolk County Department of Planning, the Office of the County Clerk, and the Clerk's Office of all East End towns. Such notice shall also be published in the official newspaper of the County. The notice shall include the name of the lessee, the name of the sublessee, the boundaries of the lease, and the area of the sublease on the lease. A copy of the proposed sublease shall be available for public inspection and copying in the Office of the County Clerk.
3. **Decision:** The County will make a determination as to whether or not the application is approved. Input and comments provided by the towns, NYSDEC, and public will be taken into consideration by the County during the sublease application review process. If not approved, the applicant will receive a letter denying the application, asking for further information or providing reasons for denying the application. If completed and approved, Suffolk County will send a letter of approval to the applicant. The applicant must then submit a copy of the sublease agreement to the County for review, along with a site plan showing the location of the sublease on the lease. The County will review the draft document and notify the applicant of its approval or rejection after appropriate revisions are made, if necessary. The approved sublease agreement may then be executed by the applicant and the sublessee. The applicant must submit a copy of the executed sublease agreement to the County for its records.

4. **Requirements Once a Sublease is Approved:** The sublessee must obtain all permits required by NYSDEC or any other regulatory agency prior to conducting shellfish cultivation operations on the lease. The sublease site boundaries must be surveyed by a licensed land surveyor and adequately marked according to requirements and permitting set forth by the U.S. Coast Guard Private Aids to Navigation and NYSDEC. (The cost for preparation and marking of a boundary is the responsibility of the applicant and prospective sublessee.) The applicant must file a site plan with the County, along with the sublease application.

This application and any subsequent sublease agreement do not relieve the lessee from the covenants, obligations, duties, and responsibilities existing pursuant to his/her Shellfish Aquaculture lease which shall remain in full force and effect. There shall only be one (1) sublease allowed to exist at any time on a lease.

A sublessee shall be subject to all of the same restrictions, covenants, obligations, duties and responsibilities existing pursuant to the County's aquaculture lease with the lessee, including, without limitation, any insurance and indemnification requirements. The sublease shall incorporate such restrictions and requirements and the County reserves the right to approve the sublease.

SHELLFISH AQUACULTURE LEASE PROGRAM
SUBLEASE APPLICATION

Current Lease Owner Information

Name: _____
Address: _____
City: _____
County: _____
State, Zip: _____
Telephone: business _____ home _____ cell _____
Email address: _____
Suffolk County Lease Number: _____

Prospective Sublessee Information (Attach Additional Information on Separate Sheets):

Name: _____
Address: _____
City: _____
County: _____
State, Zip: _____
Telephone: business _____ home _____ cell _____
Email address: _____

Identify shellfish cultivation lease(s), if any, presently held by the prospective Sublessee:

Location of lease site(s): _____
(town) (waterbody)

Suffolk County Shellfish Aquaculture Lease Sites Map ID#: _____

Additional Information for the Leased Parcel to be Subleased

If a private oyster grant, please indicate Suffolk County Tax Map number: _____

Please also provide a copy of the grant survey, if available.

If the subject lease is on a private oyster grant, please list the grant owner's name and contact information: _____

If the proposed sublease site is on a private oyster grant and the application is not being submitted by the grant owner, provide proof of the grant owner's permission for the applicant to sublease the parcel to the prospective sublessee for the purpose of conducting shellfish cultivation activities.

Total acreage of lease: _____

Current type of culture operation:

- ON-BOTTOM OFF-BOTTOM

List of species currently cultivated:

- Eastern Oyster Razor Clam
 Hard Clam Bay Scallop
 Blue Mussel Other: _____

Current Culture Gear:

	<u>Gear Type</u>	<u>Amount</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Current Shellfish Stock Source:

	<u>Hatchery Name</u>	<u>Location</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Proposed lease operations:

Type of culture operation:

- ON-BOTTOM OFF-BOTTOM

List of Species to be Cultivated:

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> Eastern Oyster | <input type="checkbox"/> Razor Clam |
| <input type="checkbox"/> Hard Clam | <input type="checkbox"/> Bay Scallop |
| <input type="checkbox"/> Blue Mussel | <input type="checkbox"/> Other: _____ |

Culture Gear:

	<u>Gear Type</u>	<u>Amount</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Shellfish Stock Source:

	<u>Hatchery Name</u>	<u>Location</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Term of Proposed Sublease _____

Has the prospective Sublessee been convicted or found guilty of any violation of marine or environmental protection law, whether state or federal? Yes No

If yes, explain: _____

\$ 100 Sublease Application Fee Enclosed:

Please make check or money order payable to the Suffolk County Treasurer.

Each of the undersigned parties hereby states individually that the information included in this application is true and correct and that they have read and understand regulations of the New York State Department of Environmental Conservation rules governing shellfish aquaculture, and the requirements of the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay.

The undersigned parties to this application agree to include the following provision in their sublease agreement, to be reviewed by the County as part of this application:

“INCORPORATION OF THE SHELLFISH AQUACULTURE LEASE (“PRIME LEASE”)

The Sublessee, insofar as is applicable to this Sublease Agreement, shall be bound to the Sublessor and shall assume toward Sublessor all of the obligations and responsibilities subject to the limits set forth in the Prime Lease Agreement between the Sublessor (as the “Lessee”) and the County of Suffolk (“County” as the Lessor) that Sublessor, as the Lessee, assumes towards the County under the provisions of the Prime Lease Agreement for the Leased Parcel, identified as: *Insert Suffolk County Lease Number Here:* _____ ; which is incorporated by reference herein this Sublease Agreement. The Sublessor, as applicable, shall have the benefits of all rights, remedies and redress against the Sublessee which the County, by the Lease Agreement, has against the Lessee. In the event of a conflict between the terms of this Sublease Agreement and the Prime Lease Agreement, including any and all attachments thereto and amendments thereof, the terms of the Prime Lease Agreement shall control.”

Signature of Lessee: _____
Date: _____

Signature of Prospective Sublessee: _____
Date: _____

The Application must be executed by authorized parties. If a corporation, the form should be signed by an officer and must be accompanied by a corporate resolution authorizing the application. If a partnership, the form shall be signed by a partner.

McKinney’s Penal Law § 175.35 Offering a false instrument for filing in the first degree

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

McKinney’s Penal Law § 175.30 Offering a false instrument for filing in the second degree

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

Attachment A – Corporate or Partnership Lease Applicants

I. Corporate Applicants

Please provide the following additional information if you are a corporate entity applying for a lease.

C-1. The date and state in which incorporated (include a copy of the Certificate and Articles of Incorporation): _____

C-2. The names, addresses and titles of all officers:

C-3. The name and addresses of all directors:

C-4. Has the corporation, or any shareholder, director, or officer applied for a shellfish aquaculture lease for underwater lands in Peconic Bay or Gardiners Bay in the past, and if so, state the outcome or current status of that application or lease:

C-5. Names and addresses of all shareholders, who own or control at least 5% of the outstanding stock and the percentage of the outstanding stock currently owned or controlled by each such shareholder:

- C-6. Names and addresses of shareholders, directors, or officers owning an interest, either directly or beneficially, in any other New York State shellfish cultivation operation as well as the quantity of acreage attributed to each such person:

- C-7. Whether the corporation or any officer, director or shareholder has ever been convicted or found guilty of a civil, criminal or administrative violation of any marine resources or environmental protection law, whether state or federal?

Yes No

If yes, explain: _____

Signature: _____ Date: _____

The Application must be executed by an officer and must be accompanied by a certified, duly adopted corporate resolution authorizing the application.

McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or other wise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

II. Partnership Applicants

Please provide the following additional information if you are a partnership applying for a lease.

- P-1. The date and state in which the partnership was formed (include a copy of either the Certificate of Limited Partnership or documentation of the formation of a General Partnership): _____

P-2. The names, addresses, and ownership shares of all partners:

P-3. Has the partnership or any partner applied for a shellfish cultivation lease for the underwater lands of Peconic Bay or Gardiners Bay in the past, and if so, state the outcome or current status of that application or lease:

P-4. State whether the partnership (or any partner) owns an interest, either directly or beneficially, in any other New York State shellfish cultivation operation as well as the quantity of acreage from the existing operation:

P-5. Has the partnership or any partner been convicted or found guilty of a civil, criminal or administrative violation of any marine resources or environmental protection law, whether state or federal? Yes No

If yes, explain: _____

Signature: _____ Date: _____

The Application must be executed by a partner.

McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or other wise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

Appendix F
Model Lease Termination Application

DRAFT

COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM
LEASE TERMINATION APPLICATION**

Lease holders wishing to terminate their lease must submit the following application to the Department. In addition, the lessee will be required to submit an Annual Report to the County, which covers the period in the year prior to the termination date.

Mailing Instructions:

Provide one copy of the Lease Termination Application to the Suffolk County Department of Planning at the address listed below.

SUFFOLK COUNTY DEPARTMENT OF PLANNING
ATTN: Aquaculture Administrator
P.O. Box 6100
Hauppauge, NY 11788-0099

List of Species Previously Cultivated:

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> Eastern Oyster | <input type="checkbox"/> Razor Clam |
| <input type="checkbox"/> Hard Clam | <input type="checkbox"/> Bay Scallop |
| <input type="checkbox"/> Blue Mussel | <input type="checkbox"/> Other: _____ |

Date of Equipment Removal: _____

Culture Gear:

	<u>Gear Type</u>	<u>Amount</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Please provide an explanation for lease termination request:

I hereby state that the information included in this form is true and correct.
I hereby certify that all equipment installed by the lessee within the boundaries of the leased areas has been removed.

Signature: _____ Date: _____

The termination request must be executed by authorized parties. If a corporation, the form should be signed by an officer and must be accompanied by a certified, duly-adopted corporate resolution authorizing the application. If a partnership, the form shall be signed by a partner.

McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

**Appendix G
Model Lease Renewal Application**

DRAFT

COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM
LEASE RENEWAL APPLICATION**

This is a renewal application for a shellfish aquaculture lease for the underwater lands within the Peconic Bay/Gardiners Bay Shellfish Cultivation Zone. This application is for on-bottom and off-bottom commercial shellfish culture activities, as well as non-commercial shellfish cultivation for experimental/educational or resource restoration purposes.

Suffolk County requires a **non-refundable** application fee for shellfish aquaculture lease renewal applications which shall not be applied towards the annual lease rental fee.

Shellfish Aquaculture Lease Renewal Application Fee: \$100

Please make your check or money order payable to the Suffolk County Treasurer.

Mailing Instructions:

Provide one copy of your application to the Suffolk County Department of Planning at the address listed below. **Applications for a lease renewal must be submitted to the County at least six months in advance.** The applicant shall be notified upon receipt when the application has been reviewed and accepted as complete by the County.

SUFFOLK COUNTY DEPARTMENT OF PLANNING
ATTN: Aquaculture Administrator
P.O. Box 6100
Hauppauge, NY 11788-0099

DESCRIPTION OF THE LEASE RENEWAL APPLICATION PROCESS

The following information outlines the process leading to the approval of a shellfish aquaculture lease renewal.

1. **Public Comment Period:** Before the lease is renewed, notice shall be provided for at least two months by posting such notice at the New York State Department of Environmental Conservation Bureau of Marine Resources, in the Suffolk County Department of Planning, the Office of the County Clerk, and the Office of the Clerk in all East End towns. Such notice shall also be published in the official newspaper of the County. The notice shall include the name of the lessee, the boundaries of the lease, and the area of the lease. A copy of the proposed lease shall be available for public inspection and copying in the Office of the County Clerk.
2. **Decision:** The County will make a determination as to whether or not the application is approved. Input and comments provided by the towns, NYSDEC, and public will be taken into consideration by the County during the lease renewal application review process. If not approved, the applicant will receive a letter denying the application, or asking for further information. If completed and approved, Suffolk County will send a letter of approval and a copy of the lease renewal agreement to be signed by the applicant. The lease renewal agreement must then be signed and returned to the County for final execution.
3. **Requirements Prior to Issuance of Lease Renewal:** The lessee must provide copies of all existing permits required by NYSDEC or any other regulatory agency with the lease renewal application.

Total Acreage Requested

- 5 Ac 10 Ac Other (oyster grant)

If other, please indicate acreage: _____Ac

Type of Culture Operation:

- ON-BOTTOM OFF-BOTTOM

List of Species to be Cultivated:

- Eastern Oyster Razor Clam
 Hard Clam Bay Scallop
 Blue Mussel Other: _____

Culture Gear:

	<u>Gear Type</u>	<u>Amount</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Harvest Method:

Shellfish Stock Source:

	<u>Hatchery Name</u>	<u>Location</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

If this is a Non-Commercial lease project please provide an explanation of project (purpose, goals, and design; expected length of study and the results and data collected to date):

(Attach additional information if necessary.)

Planned use of shellfish cultured from non-commercial lease site
(e.g., left in-place, harvested for off-site analysis, etc.):

Has the Lessee been convicted or found guilty of a civil, criminal or administrative violation of marine or environmental protection law, whether state or federal? Yes No

If yes, explain: _____

\$ 100 Shellfish Aquaculture Lease Renewal Application Fee enclosed:

Please make check or money order payable to the Suffolk County Treasurer.

I hereby state that the information included in this application is true and correct and that I have read and understand regulations of the New York State Department of Environmental Conservation, and the requirements of the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay governing shellfish aquaculture.

Signature: _____ Date: _____

The Application must be executed by an authorized party. If a corporation, the form should be signed by an officer and must be accompanied by a corporate resolution authorizing the application. If a partnership, the form should be signed by a partner.

McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

Attachment A – Corporate or Partnership Lease Applicants

I. Corporate Applicants

Please provide the following additional information if you are a corporate entity applying for a lease renewal.

C-1. The date and state in which Incorporated (include a copy of the Certificate and Articles of Incorporation):

C-2. The names, addresses and titles of all officers:

C-3. The name and addresses of all directors:

C-4. Has the corporation, or any shareholder, director, or officer applied for a shellfish aquaculture lease for underwater lands in Peconic Bay or Gardiners Bay in the past, and if so, state the outcome or current status of that application or lease:

C-5. Names and addresses of all shareholders, who own or control at least 5% of the outstanding stock and the percentage of the outstanding stock currently owned or controlled by each such shareholder:

C-6. Names and addresses of shareholders, directors, or officers owning an interest, either directly or beneficially, in any other New York State shellfish aquaculture operation as well as the quantity of acreage attributed to each such person:

C-7. Whether the corporation or any officer, director or shareholder has ever been convicted or found guilty of a civil, criminal or administrative violation of any marine resources or environmental protection law, whether state or federal: Yes No

If yes, explain: _____

Applicant Signature: _____ Date: _____

The Application must be executed by an officer and must be accompanied by a corporate resolution authorizing the application.

McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or other wise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

II. Partnership Applicants

Please provide the following additional information if you are a partnership applying for a lease.

P-1. The date and state in which the partnership was formed (include a copy of either the Certificate of Limited Partnership or documentation of the formation of a General Partnership): _____

P-2. The names, addresses, and ownership shares of all partners:

P-3. Has the partnership or any partner applied for a shellfish aquaculture lease for the underwater lands of Peconic Bay or Gardiners Bay in the past, and if so, state the outcome or current status of that application or lease:

P-4. State whether the partnership (or any partner) owns an interest, either directly or beneficially, in any other New York State shellfish aquaculture operation as well as the quantity of acreage from the existing operation:

P-5. Has the partnership or any partner been convicted or found guilty of a civil, criminal or administrative violation of any marine resources or environmental protection law, whether state or federal: Yes No

If yes, explain: _____

Signature: _____ Date: _____

The Application must be executed by a partner.

McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

**Appendix H
Shellfish Productivity Survey**

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**Suffolk County Aquaculture Lease Program
Gardiners Bay and Peconic Bay
Shellfish Productivity Survey**

Background Information

The intent of the Lease Program is to provide access for shellfish aquaculture on non-productive underwater lands within the Shellfish Cultivation Zone. Establishment of the Shellfish Cultivation Zone was based on a comprehensive review of available information regarding where commercial fishing activities have recently and historically been conducted. Nevertheless, the program recognizes that there is still the possibility that a lease could be proposed where a viable commercial stock exists. The program has provisions for public review of proposed lease sites and for the submission of additional data relevant to fisheries at proposed sites. In some cases, a benthic survey could be required as a part of the lease review and approval process, in order to confirm whether a viable “commercial stock” exists. If a site is proven to have a “natural stock” capable of supporting a shellfish, finfish or crustacean harvest activity, it would not be eligible for lease issuance.

In some cases a benthic survey will be required to determine if a proposed lease site has viable populations of commercially valuable shellfish. For hard clam populations, a density of 2 clams per square meter (/sqm) has been established as the minimum density for indicating a viable commercial clam resource. (Note: it is recognized that clam density alone is not the only factor determining if a site has commercially viable stocks; other factors include substrate type and depth, both of which affect ability to harvest clams.) This criteria was established by considering clam densities found in previous studies of the Peconic/Gardiners Bay system, as well as densities found in other productive Long Island embayments. A density standard for other species harvested from Peconic and Gardiners Bays (i.e., bay scallops, whelks) was considered not applicable because populations of those species are mobile, compared to the relatively sessile hard clam populations. Furthermore, hard clam stocks were cited as a concern expressed in public comment during the lease program development process.

Existing Data on Shellfish in Peconic Bay and Gardiners Bay

Available data on hard clam populations in the Peconic and Gardiners Bays are limited. Anecdotal information about where clams have been harvested in recent years has been reviewed and incorporated into the establishment of the Shellfish Cultivation Zone. The findings of three prior shellfish inventories were also reviewed. These studies were:

- Shellfish survey of deep waters of the Peconic Estuary by NYSDEC in 1979 and 1980 (NYSDEC 1982)
- Assessment of shellfish resources in the deep water areas of the Peconic Estuary in 1995 (Lewis et al. 1997)
- Assessment of shellfish resources in the tributaries and embayments of the Peconic Estuary, 1997 (Lewis and Rivara 1998)

The 1995 deep water survey (Lewis et al. 1997) was performed to assess the status of the shellfish stock in deeper waters of the estuary (2 meters to 9.1 meters deep), beyond the near shore areas, embayments and tributaries. The survey provided data to compare to the findings of NYSDEC (1982). Areas of the estuary from Flanders Bay east to Gardiners Bay were surveyed. The study area of this survey generally coincides with the Shellfish Cultivation Zone in that it also does not include near shore areas and embayments. The survey consisted of benthic sampling at 124 stations with the use of a hydraulic dredge. The survey found that clams were generally distributed throughout the estuary; 61 of the 124 stations were recorded to have clams. The average density of hard clams was 0.16 clams/sqm, with a maximum recorded density at one station of 4.3 clams/sqm. The following conclusions were made in the report:

- Abundance of clams was less in open bay areas, and somewhat higher in fringe areas nearer to shore.
- Chowder clams comprised the most abundant size class of clams, indicating that stock recruitment has been extremely low.
- The deep water of the estuary “is not currently productive of the commercially harvested species of shellfish” and the deep waters of the estuary are “empty not naturally productive with respect to commercial shellfish.”

- Shellfish aquaculture “may be feasible and would not interfere with natural shellfish production which is extremely low in the deep waters.”
- Abundance of shellfish decreased significantly between the 1979/80 survey and the 1995 survey.
- “The deep waters of the Peconic Estuary are not naturally productive shellfish areas but could support mariculture activities... .”
- Greatest concentrations of shellfish were found at stations within 1,000 feet of the shoreline in most cases.
- Only a small number of scallops were found; this was attributed in part to the conclusion that “most of the deep water areas do not contain suitable scallop habitats.”
- No soft clams were recorded; this was attributable to the conclusions that soft clams tended to inhabit shallow waters.
- The majority of stations had no clams or clams at very low density, and only several stations had clams at densities considered moderate (above 2 clams/sqm).

Lewis and Rivara (1998) documented shellfish abundance in shallow waters (1 foot to 6 feet deep). The report indicated that clams were found at 75 percent of the stations sampled. At those stations where clams were found, the overall abundance was approximately 0.5 clams/sqm. Seventeen stations had clam abundance over 1 clams/sqm. The report made the following conclusions:

- Overall abundance of clams was greater than that found in the deep water survey, but must still be considered low.
- No significant numbers of bay scallops were found.
- Chowder clams were the most dominant size category.
- “Good water quality in many of the creeks with low abundance of naturally occurring stock suggests the ability to continue or expand the shellfish mariculture in those areas.”
“Numerous areas exist that could support shellfish mariculture activities... .”

Shellfish Abundance in Other Areas

One of the most productive clam harvest areas on Long Island over the past 10 years has been the Oyster Bay Harbor/Cold Spring Harbor Complex on Long Island’s north shore. The Town of

Oyster Bay performed a comprehensive shellfish survey in the harbor in 2007 (Town of Oyster Bay, September 2007). The survey only included the public grounds, and not those conveyed under lease to a private shellfish company. The density of clams for the study area was found to be 6.3 clams/sqm, with a maximum of 87 clams/sqm. Areas characterized as low clam abundance had clam densities ranging from 0 to 3.1 clams/sqm. Areas utilized by commercial clammers generally show concentrations in the moderate range (3.2 to 9.5 clams/sqm) and high range (above 96 clams/sqm). The overall density of legal sized clams was approximately 4.3 clams/sqm. An earlier survey of Oyster Bay Cold Spring Harbor performed in 1999, when the bay was considered somewhat less productive, showed an overall density of 3.5 clams/sqm (Town of Oyster Bay, February 2000). A study of Huntington and Northport Bay in 1998 by the Town of Huntington found an average clam density of 7.7 clams/sqm. The Huntington area was considered to be a productive harvest area at the time (Town of Oyster Bay, February 2000). A study of hard clam populations in South Oyster Bay in 2004 found an average density of 3.5 clams per sqm (Town of Oyster Bay, April 2007).

In the 1980s when clam production in the bay was near its peak, a comprehensive clam density survey of the Great South Bay System was performed. This survey found average densities in various sub-areas of the bay ranging from 3.3 clams/sqm to 7.8 clams/sqm in the most productive zones (United States Environmental Protection Agency, October 1981). The overall average of all waters from South Oyster Bay to Moriches Bay was found to be 5.5 clams/sqm. Discussions with Town of Brookhaven Division of Environmental Control and The Nature Conservancy have indicated that clam densities in the Brookhaven portion of Great South Bay have undergone a general, consistent decline since the productive years of the 1970s and 1980s. Clam density in much of Great South Bay under jurisdiction of the Town of Brookhaven and The Nature Conservancy is well below 3 clams/sqm. The Nature Conservancy is working on a hard clam restoration program for the bay and has set a restoration goal of 6 clams/sqm. Clam densities in the Town of Islip and Babylon portions of Great South Bay have also experienced major declines, and the clam fishery is presently at minimal levels.

A report on clam densities recorded in the Town of Islip portion of Great South Bay from 1986 to 2003 is provided by Kraeuter et al. (2005). Clam density for clams over 1 year old was approximately 6.5 clams/sqm in 1978, when the clam fishing was near its peak production

(Kraeuter et al. 2005). Densities have shown a consistent dramatic decline since then, to a level of approximately 1 clam/sqm in 2003, when the clam fishing was essentially in collapse. The report also provides density data for other East Coast embayments, and densities ranged from 0.23 clams/sqm (Sinepuxet Bay, MD) to 7.72 clams/sqm (Raritan Bay, NJ).

Guideline for Assessing Potential Productivity

Review of the above information indicates that productive clam areas typically have densities of 5 clams/sqm and higher. Densities below 2 or 3 clams/sqm are generally characterized as relatively low abundance. Available data for the Peconic and Gardiners Bays indicate that most of the open waters have low abundance of clams, although it is reported that harvestable quantities are present in certain areas.

A density of 2 clams/sqm was selected as the guideline to assess whether an area has harvestable quantities of clams. The 2 clams/sqm guideline is for legal size clams only. The presence of seed clams, although indicative of clam spawning and setting success, does not necessarily mean that an area will ultimately be productive for legal size clams. Predator and mortality can drastically reduce populations of seed clams before they reach harvestable size. The 2 clams/sqm guideline was selected as a reasonable, conservative approximation of potentially harvestable clam stocks, since actual surveys indicate that productive harvest areas typically have a greater density of clams.

As stated above, density criteria were not established for bay scallops and other mobile species. Evidence that an area is productive for species other than clams must be based on documentation that harvestable stock is present, from documented information from harvesters, or data from regulatory/governmental authorities. The program must have a degree of flexibility to account for resources that are not as stable and fixed as hard clam populations.

The County reserves the right to consider any relevant data and information pertaining to a site's productivity in making its decision regarding lease site approval, including the presence of significant numbers of seed clams.

Ground Truthing Survey Methodology

If a potential lessee applicant opts to ground truth a proposed lease site challenged because of reported hard clam resources, a field survey must be performed to determine the density of clams within the subject area. The survey must include benthic sampling suitable to calculate a mean clam density for the subject area. The survey must include an adequate number of sample stations within the subject area to calculate a mean density that is statistically significant. Sampling methods can include bottom grabs, suction benthic samplers, diver surveys, or other scientifically acceptable methods. The number of samples to be taken would depend on the methodology utilized and the area of each sample. Sample sites must be randomly distributed throughout the study area. The survey would have to be conducted by a credentialed investigator who can validate the survey findings and issue a report documenting the methodology, data analysis, and findings.

Examples of Possible Sampling Methodologies

A sample methodology could include the use of a diver survey to collect data on clam abundance. A diver survey would be conducted by utilizing a SCUBA diver to collect all shellfish from a series of stations within the proposed 10-acre lease area. Shellfish should be collected within a fixed sample area (e.g., 1 sqm) by means of a diver-operated suction dredge and/or hand raking. Approximately 10 stations could be sampled within the 10-acre parcel. Stations should be selected at random within the area. One method to randomly select sample locations is to divide the parcel into a grid, assign a number to each grid square, and utilize a random number generator to pick sample locations. Legal size clams recovered for each station should be used to calculate a density. The mean densities recorded can be calculated by averaging the density for each station. Station locations should be recorded in the field by GPS to an accuracy of approximately 10 feet.

A survey can also be performed by methods previously used by NYSDEC, Marine Science Research Center and Cornell Cooperative Extension (Lewis and Rivara 1998). In this method, a hydraulic clam dredge towed from a boat would be utilized to sample clams within a proposed lease parcel. To standardize the length of the tow, a 200 foot weighted line was released from the boat during the tow to determine the length of the tow. A hydraulic dredge with an opening

of one foot, a bar spanning of $\frac{3}{4}$ inch and a cutting edge set at a dredge penetration depth of 3 inches, was used. The number of clams and other shellfish caught in each tow should be recorded. The catch per tow can be converted into a square meter density based on the total area of bay bottom covered by each tow (calculated as 9.29 square meters in the Cornell Cooperative Extension work). In the 10-acre parcel, it is estimated that 5 tows should be performed in randomly selected areas, in order to calculate a mean clam density.

Another sampling method could utilize a mechanical clam shell bucket operated by a barge mounted crane. Typical buckets cover an area of approximately 1 sq meter. The sediment materials retrieved by the bucket should be washed through a series of grates in order to recover clams and other shellfish from the sediment. Shellfish caught by each grab can be recorded and a density measurement calculated. The density recorded at each station can be utilized to calculate a mean density for the lease parcel. With a sample size of approximately 1 sqm, a total of 10 stations should be sampled within the lease area, at randomly selected positions within the parcel.

A findings report, which provides detailed information on methodology, shellfish density at each station, and mean clam density (with standard deviation and confidence limits), should be prepared by a qualified environmental professional.

The above methodologies are provided as examples; other scientifically valid methods of determining hard clam density can be utilized. Studies may be done objectively by a qualified independent biologist or other specialist.

References

Kraeuter, John N., S. Buckner and Eric N. Powell. 2005. A Note on a Spawner – Recruit Relationship for a Heavily Exploited Bivalve: The Case of Northern Quahogs (Hard Clams), *Mercenaria Mercenaria* in Great South Bay New York, Journal of Shellfish Research, Vol. 24, No. 4.

NYSDEC. 1982. Assessment of New York's shellfish resources. Completion report prepared by New York State Department of Environmental Conservation for the National Oceanic and Atmospheric Administration. 161 pp.

Lewis, D., Kassner, J., Cerrato, R., Finch, R. 1997. An Assessment of Shellfish Resources in the Deep Water Areas of the Peconic Estuary. Marine Sciences Research Center. State University of New York at Stony Brook. 28 pp. and appendices.

Lewis, D. and Rivara, G. 1998. An Assessment of Shellfish Resources in the Tributaries and Embayments of the Peconic Estuary. Marine Program, Cornell Cooperative Extension of Suffolk County. Special Report 98-101.

Town of Oyster Bay, February 2000. Clam Density Survey for the Oyster Bay Harbor/Cold Spring Harbor Complex.

Town of Oyster Bay, April 2007. Draft South Oyster Bay Hard Clam Population Survey.

Town of Oyster Bay, September 2007. Clam Density Survey for the Oyster Bay Harbor/Cold Spring Harbor Complex.

United States Environmental Protection Agency, Region II, October 1981. Estuarine Impact Assessment (Shellfish Resources) for the Nassau-Suffolk Streamflow Augmentation Alternatives, Draft Report on Existing Conditions.

**Appendix I
Contact Information**

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Contact Information

Suffolk County Department of Planning

Attention: Aquaculture Administrator
P.O. Box 6100
Hauppauge, NY 11788-0099
(631) 853-5191

New York State Department of Environmental Conservation

Bureau of Marine Resources
Division of Fish, Wildlife and Marine Resources
205 North Belle Mead Road, Suite 1
East Setauket, New York 11733
(631) 444-0475

New York State Department of State

Division of Coastal Resources
41 State Street – 8th Floor
Albany, NY 12231
(518) 473-6000

United States Army Corps of Engineers, New York District

Attention: CENAN-OP-R
26 Federal Plaza
New York, New York 10278-0090
(971) 790-8411
FAX: (212) 264-4260

United States Coast Guard

Private Aids to Navigation Division
First Coast Guard District
408 Atlantic Avenue
Boston, MA 02110
(617) 223-8347

Cornell Cooperative Extension of Suffolk County

Aquaculture Specialist
3690 Cedar Beach Road
Southold, NY 11971
(631) 852-8660