

SUFFOLK COUNTY SHELLFISH
AQUACULTURE LEASE PROGRAM IN
PECONIC BAY AND GARDINERS BAY

PROGRAM MANAGEMENT PLAN

August 2009



FINAL REPORT - CAPITAL PROJECT No. 7180.110



SUFFOLK COUNTY DEPARTMENT OF PLANNING

Suffolk County ■ New York

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



Steve Levy
Suffolk County Executive

Program Management Plan

August 2009

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

Thomas A. Isles, A.I.C.P.
Director of Planning

This publication is available on the WEB at:
www.suffolkcountyny.gov/aquaculture

Program Development
Suffolk County Department of Planning

Thomas A. Isles, A.I.C.P.
Director

Environmental Analysis Division

Project Manager: DeWitt S. Davies, Ph.D.
Chief Environmental Analyst

Lauretta Fischer
Principal Environmental Analyst

Michael Mulé
Senior Planner

Susan Filipowich
Environmental Planner

Barbara DelGiudice
Administrative Support

Michelle Weiss
Environmental Planner

Cartographic Division

Carl Lind
Cartographer

Kathryn Oheim
Assistant Cartographer

Suffolk County Department of Law

Jennifer B. Kohn, Esq.
Assistant County Attorney

Suffolk County Department of Environment and Energy

Anthony Abruzzo, L.S.
Map and Coordinate Supervisor

Donna Waide
Land Management Specialist IV

Cashin Associates, P.C.
1200 Veterans Memorial Highway
Hauppauge, NY 11788

Gregory T. Greene
Director of Environmental Programs

Keith W. Brewer
Senior Environmental Scientist

Kimberly Somers
Environmental Scientist

***Suffolk County Aquaculture Lease Program Advisory Committee
(ALPAC)***

Committee Members

Thomas A. Isles, A.I.C.P., Chairman DeWitt S. Davies, Ph.D. (<i>Alternate</i>)	Suffolk County Department of Planning
Carrie Meek Gallagher Camilo Salazar (<i>Alternate</i>)	Suffolk County Executive Designee
Hon. Jay H. Schneiderman	Suffolk County Legislature Environment, Planning and Agriculture Committee
Martin Trent	Suffolk County Department of Health Services
Kimberly Paulsen (<i>Alternate</i>)	
Gilbert Anderson, P.E. Robert H. Whelan, P.E. (<i>Alternate</i>)	Suffolk County Department of Public Works
John Aldred	Town of East Hampton
Victor Bethge	Town of Shelter Island
David O. Conover, Ph.D. William M. Wise (<i>Alternate</i>)	School of Marine and Atmospheric Sciences, Stony Brook University
Vacant Debra A. Barnes (<i>Alternate</i>)	New York State Department of Environmental Conservation, Bureau of Marine Resources
Wayne L. Grothe	The Nature Conservancy
Stuart Heath Arnold Leo (<i>Alternate</i>)	East Hampton Town Baymen's Association, Inc.
Lt. David Lessard	Town of Riverhead
James McMahon	Town of Southold
Gregg Rivara Christopher F. Smith (<i>Alternate</i>)	Cornell Cooperative Extension of Suffolk County
Karen Rivara	East End Marine Farmers Association
Cornelia G. Schlenk	New York Sea Grant Institute
Hon. Jon S. Semlear Hon. Edward J. Warner, Jr.	Town of Southampton (joint appointment)

***Suffolk County Aquaculture Lease Program Advisory Committee
(ALPAC)***

Previous Committee Members

Michael Deering	Suffolk County Executive Designee
Todd Stebbins (<i>Alternate</i>)	
Tamara S. Sadoo (<i>Alternate</i>)	
Edwin Cohen (<i>Alternate</i>)	Suffolk County Department of Public Works
Gordon C. Colvin	New York State Department of Environmental
James Gilmore	Conservation, Bureau of Marine Resources
Kenneth L. Koetzner	
Edward Bausman	Town of Shelter Island
Hon. Daniel P. Losquadro	Suffolk County Legislature – Sixth Legislative
Theresa Biegert (<i>Alternate</i>)	District
Hon. Vivian Vilorio-Fisher	Suffolk County Legislature – Fifth Legislative
	District

Table of Contents

Section	Page
EXECUTIVE SUMMARY	1
1.0 INTRODUCTION.....	7
1.1 Program Authorization and Development	7
1.2 Need for the Lease Program	8
1.3 Lease Program Goals	8
1.4 Lease Program Outcomes	9
2.0 PROGRAM DEVELOPMENT	10
2.1 Suffolk County’s Role in Shellfish Aquaculture	10
2.2 New York State 2004 Leasing Law	11
2.3 Aquaculture Lease Program Advisory Committee (ALPAC)	12
2.4 Outreach Effort to Identify Environmental and Socio-Economic Considerations .	13
2.5 Overview of Lease Program Implementation	14
2.6 Lease Program Website	16
3.0 STATE ENVIRONMENTAL QUALITY REVIEW (SEQRA)	17
3.1 SEQRA Compliance	17
3.2 SEQRA Timeline	17
3.3 Alternatives Analysis	18
4.0 STRUCTURE OF THE LEASE PROGRAM.....	21
4.1 Shellfish Cultivation Zone	21
4.2 Aquaculture Lease Sites Map	21
4.3 Lease Program Participants.....	26
4.3.1 Conversion of Temporary Marine Area Use Assignments into Leases.....	26
4.3.2 Leases on Oyster Grants	26
4.3.3 New Leases on Underwater Lands Not Currently Used for Shellfish Cultivation.....	26
4.4 Administrative Guidance	27
4.4.1 Lease Issuance Procedures.....	28
4.4.2 Model Lease.....	36
4.4.3 Fee Summary	41
5.0 PROGRAM IMPLEMENTATION	43
5.1 Local Law	43
5.2 Recommendations.....	43
5.2.1 Program Monitoring.....	43
5.2.2 Underwater Land Ownership Conflicts	43
5.3 Lease Boundary Survey	44
5.4 Schedule.....	45
5.5 Anticipated Shellfish Aquaculture Uses on Leases	46
6.0 REFERENCES.....	49

Table of Contents (continued)

Table	Page
Table 1 – Oyster Grants NYSDEC Culture Permit Status.....	22
Table 2 – NYSDEC Temporary Marine Area Use Assignments.....	24
Table 3 – General Summary of the Model Lease and Lessee’s Responsibilities.....	37
Table 4 – General Summary of Benefits to Lessee Under the Model Lease.....	40

Figure	Page
Figure 1 – TMAUAs in the Lease Program.....	30
Figure 2 – Private Oyster Grants in the Lease Program.....	32
Figure 3 – “New” Leases in the Lease Program.....	34

Attachments

- A - 2004 Leasing Law
- B - Resolution No. 646-2009
- C - Resolution No. 1028-2008
- D - Administrative Guidance
- E - Map 1 Shellfish Cultivation Zone
- F - Map 2 Aquaculture Lease Sites

EXECUTIVE SUMMARY

A new program that will provide secure access for conduct of private, commercial shellfish aquaculture in near-shore coastal waters has been developed by Suffolk County for publicly owned underwater lands in Peconic Bay and Gardiners Bay, New York. Pursuant to Chapter 425, Laws of New York 2004 (2004 Leasing Law), as codified in New York State Environmental Conservation Law §13-0302, the State of New York ceded title to approximately 100,000 acres of underwater lands in Peconic Bay and Gardiners Bay to Suffolk County for the purpose of shellfish cultivation, and authorized the County to prepare, adopt and implement a shellfish aquaculture lease program for this region. The 2004 Leasing Law also contains a sunset provision. If no shellfish cultivation leases have been executed by December 31, 2010, then the authority of Suffolk County to issue such leases shall terminate and the County will forfeit its title to the underwater lands in Peconic Bay and Gardiners Bay.

Suffolk County has addressed the initial part of the State of New York's challenge. A complete description of all aspects of the *Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay* is contained in this *Program Management Plan* document, which was prepared under Capital Project No. 7180.110 by the Suffolk County Department of Planning and its environmental consultant - Cashin Associates, P.C. - with extensive input from the Suffolk County Department of Law on the required local law; and assistance from the Suffolk County Department of Environment and Energy – Division of Real Estate, on underwater land survey requirements and title searches. The planning and environmental review process that led to the development of this lease program over a four year period was guided by the energetic participation of the County Executive's Aquaculture Lease Program Advisory Committee, which included representatives from local government, the commercial fishing industry, shellfish farmers, research institutions, regulatory agencies and environmental interests.

Suffolk County's authority is limited to the conveyance of underwater land for shellfish cultivation, and does not extend to the regulation of this activity. As such, the County controls: a. the *location* of shellfish farms through issuance of leases on underwater land in a formally adopted Shellfish Cultivation Zone; and b. the *extent and intensity* of aquaculture use through limits on lease size and number. However, lease applicants must still obtain all necessary regulatory permits from relevant government agencies for conduct of off-bottom or on-bottom shellfish culture activities on their leases.

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 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 December 2008, the County adopted Resolution No. 1028-2008 which completed State Environmental Quality Review Act requirements, and adopted the framework as described in the program *Generic Environmental Impact Statement* as the basis for administering the issuance of shellfish aquaculture leases.

The Shellfish Cultivation Zone map (Attachment E) shows the area within which shellfish leases can be issued. This 29,969-acre zone includes New York State Department of Environmental Conservation-issued Temporary Marine Area Use Assignment locations; historic, private oyster grants; and other contiguous areas where the impacts/conflicts of shellfish aquaculture activities on environmental resources/socio-economic concerns will be minimal. The Shellfish Cultivation Zone depicted on the map meets all criteria in the 2004 Leasing Law. In addition to addressing the access needs of existing shellfish aquaculture businesses, the lease program will accommodate growth in the industry. Leases for new shellfish farms will consist of 5- or 10-acre parcels. New shellfish aquaculture leases will be limited to a total of 60 additional acres per year, for a maximum of 300 acres during the first five years of the program, and a total of 600 acres by the tenth year of program implementation. Including those participants that will be given the opportunity to grandfather into the program, the *maximum* area that could be potentially leased during the first 10 years of program implementation is 3,173.5 acres, given the structure of the program and various assumptions. This is less than 2.9% of the area under County lease jurisdiction. The program also provides municipalities, researchers, and not-for-profit entities with the opportunity to obtain non-commercial shellfish cultivation leases for experimental, educational, and shellfish resource restoration purposes.

The *Program Management Plan* includes all administrative and procedural requirements that must be addressed by prospective lease applicants. As such, it provides a detailed “road map” with forms and instructions to be used by shellfish farmers when they apply for a shellfish aquaculture lease from Suffolk County. (See Attachment D - *Administrative Guidance*.) The responsibilities and performance requirements of prospective lessees are also described. The *Suffolk County Aquaculture Lease Program in Peconic Bay and Gardiners Bay* was formally established by passage of Resolution No. 646-2009 in August 2009 (Attachment B). This resolution also sets forth the framework for program implementation.

Summaries of the lease application process and lease requirements appear below:

Lease Application Process

Lease Program Participants

Leases from Suffolk County are required for the conduct of shellfish cultivation activities in Peconic Bay and Gardiners Bay (with the exception of oyster farming on private oyster grant lands).

Potential lease program participants include:

- Holders of NYSDEC Temporary Marine Area Use Assignments.
- Private oyster grant owners.
- Applicants for new leases subject to annual acreage cap limit (60 acres per year for the first 10 years of the program).

- Applicants for non-commercial leases (municipalities, researchers, etc.).

Pre-Application Meeting

All prospective lease applicants are required to attend a mandatory pre-application meeting with the Department of Planning prior to submitting their applications.

Submission and Review of Application

All lease program participants must submit an application to the Department of Planning during the application period established by the County. Lease applicants, other than private oyster grant owners, must identify a preferred lease site location and two alternative lease sites. The Department will review all complete applications received, and make a determination on applicant eligibility.

Number of Leases Permitted

Each applicant will be limited to two leases; separate applications are required for each lease. Second applications will only be considered when acreage is available and the annual acreage cap limit has not been met.

Public Notice

The Department of Planning will issue a public notice on all proposed lease sites. The public, regulatory agencies and municipalities will have 60 days to submit written comments on proposed lease sites to the Department in response to this public notice. All comments received will be summarized and submitted to the Aquaculture Lease Board, which consists of the Director of the Department of Planning; the Commissioner of the Department of Environment and Energy; and the Commissioner of the Department of Economic Development and Workforce Housing, or their designees.

Aquaculture Lease Board

The Aquaculture Lease Board will conduct a public meeting after the end of the public notice period, at which all potential lease sites in a given application cycle will be presented for consideration from a regional perspective. The public will be given the opportunity to make comments on all potential lease sites at this meeting. Subsequent to this meeting, the Aquaculture Lease Board will convene and make a determination on those lease sites that will be available for leasing; those lease sites that will be conditionally eligible; and those lease sites that will be eliminated from further consideration.

Preparation of Lease

The Department of Planning will then process lease applications, and lease documents will be prepared in conjunction with the Department of Law for execution. (If the aggregate acreage in lease applications for new leases exceeds the acreage available under the annual acreage cap limit, then the Department of Planning will conduct a random selection process to determine a priority order for processing the applications.)

For conditionally eligible lease sites, the applicant must conduct a benthic survey to objectively determine the population density of hard clams on the lease site. If the survey documents a hard clam density of 2.0 or more legal sized hard clams per square meter, the site in question cannot be leased.

Lease Requirements and Procedures

Site Location and Survey

The County shall cause a survey of each lease boundary to be prepared by a professional licensed land surveyor prior to lease issuance.

Application Fees

There will be an application fee of \$100 for the initial lease; a lease renewal; an expansion of acreage; relocation of the lease if not required by a governmental entity; and lease subletting or assignment.

Annual Lease Rental Fee

The lessee must pay \$200 plus \$5 per acre at the beginning of each year during a 10-year lease on County-owned land, i.e., one 10-acre lease would cost \$250 per year. For private grant land, the lease rental fee would be \$200 per year.

Shellfish Permits and Marking Lease Boundaries/Equipment

Lessees must comply with all applicable federal, state and local laws and regulations, and obtain necessary federal and state permits. Lessees must also meet permit requirements, if any, pertaining to marking lease boundaries with appropriate buoys and identifying the location of shellfish aquaculture gear. All shellfish aquaculture gear, e.g., cages, buoys, etc., must be marked with the lessee's name and lease plot identification number.

Annual Report

The lessee must submit an annual report, along with the annual lease rental fee 30 days prior to the lease anniversary date. Submission of this report is also required before the termination or expiration of a lease, and prior to approval of a lease renewal or assignment.

Expansion of Lease Acreage

Certain lessees may opt for an expansion of lease acreage; this would require a full application process.

Lease Assignment

If approved by the County, a lessee may choose to transfer its lease to another entity for the remainder of the lease term.

Subleasing

Subleasing is permitted subject to County approval, but is limited to one sublease per lease at any one time.

Lease Termination

The County or lessee may terminate a lease at any time during the lease term. If the lessee chooses to terminate a lease, it must submit a lease termination application to the County, pay all sums due, and remove all shellfish aquaculture equipment from the lease site.

Renewal

At the end of the initial, 10-year lease term, a lessee can file a lease renewal application with the Department of Planning, which will be subject to program requirements in effect at the time of renewal.

Hardship Exemption

Leased lands must be actively used for shellfish aquaculture. A lessee, who cannot demonstrate that substantial shellfish aquaculture activity has occurred on a lease site, may be eligible for a hardship exemption.

Outcomes of Lease Program Implementation

Issuance of shellfish cultivation leases prior to December 31, 2010 will lead to the outcomes below.

- Suffolk County will secure ownership title to approximately 100,000 acres of underwater land in Peconic Bay and Gardiners Bay. Suffolk County will also retain its authority to designate locations in these bays for the conduct of compatible shellfish culture activities in the future.
- Private investment in shellfish aquaculture businesses will increase and shellfish farms will be established at secure locations that do not pose conflicts with commercial fishermen and other bay users. This, in turn, will expand the marine-based economy of Suffolk County and create jobs that contribute to the quality of life and sense of place in East End communities.
- The production of large numbers of oysters, hard clams and bay scallops in dense populations on shellfish farms will augment the spawning potential of native shellfish populations. The millions of filter feeding bivalves on shellfish farms will also exert a positive influence on water quality by helping to control nutrient cycling and contributing to the preventions of noxious plankton blooms, such as brown tide. These and other ecosystem services associated with shellfish farms are provided on a sustainable basis at no or little cost to the general public.
- Shellfish cultivation leasing is institutionalized as a Suffolk County government responsibility and function.

The lease program will, in short, replace the existing antiquated, ad hoc system of providing access to marine resources for shellfish cultivation with a modern approach that will assure certainty in terms of its administration, accountability on the part of lessees, and equity among the diverse users of Peconic Bay and Gardiners Bay.

This page was intentionally left blank

1.0 INTRODUCTION

1.1 Program Authorization and Development

There is much interest today in pursuing private shellfish aquaculture in Peconic Bay and Gardiners Bay under a Suffolk County leasing program that is authorized by New York State law. This interest is buttressed by recent successes in private, intensive oyster aquaculture. It also reflects the decline in the commercial shellfish industry that has occurred in the region, and the lack of opportunity for baymen to harvest "wild" shellfish due to collapse of natural stocks. However, the debate over providing access to marine space for private use is vigorous; it is characterized by positions that reflect a wide spectrum of opinions from different interest groups. This debate is not limited to just the users of marine resources. Public policy decisions pertaining to aquaculture in Peconic Bay and Gardiners Bay include management actions and regulatory/permit functions. Such decisions involve different levels of government and jurisdictional issues.

New York Environmental Conservation Law §13-0302 (2004 Leasing Law), enacted on September 14, 2004, ceded title to approximately 100,000 acres of underwater lands in Peconic Bay and Gardiners Bay to Suffolk County for the purposes of establishing a shellfish cultivation lease program. This act of beneficence on the part of the State of New York is counterbalanced by a consequence of significant importance to Suffolk County due to inclusion of a sunset provision in the 2004 Leasing Law. If no leases have been executed by December 31, 2010, then the authority of Suffolk County to issue such leases shall terminate, and the County will forfeit its title to the underwater lands in Peconic Bay and Gardiners Bay. (The full text of the 2004 Leasing Law is contained in Attachment A.)

Suffolk County responded to the challenge in the 2004 Leasing Law: Resolution No. 150-2005, which was unanimously adopted by the County Legislature on March 15, 2005 and signed by the County Executive on March 21, 2005, amended the 2005 Capital Budget and appropriated funding for Capital Project No. 7180.110: Suffolk County Aquaculture Leasing Program (CP 7180.110). This funding has enabled Suffolk County to conduct the necessary technical work to develop a shellfish aquaculture leasing program in Peconic Bay and Gardiners Bay in accord with the provisions of the 2004 Leasing Law. The Suffolk County Department of Planning was assigned the responsibility to execute CP 7180.110. It was assisted in this endeavor by Cashin Associates, P.C., 1200 Veterans Memorial Highway, Hauppauge, NY 11788, the environmental consulting firm that was selected by the County as the successful proposer in response to RFP # 06/22934-tp. The project contract with Cashin Associates was fully executed by Suffolk County on February 28, 2007.

Work conducted under CP 7180.110 included data collection and spatial analysis to select areas where shellfish leasing could occur; defining the structure of the leasing program and how it would be implemented; and programmatic environmental review. This *Shellfish Aquaculture Lease Program Management Plan* (Plan) is the result of this work, which included extensive review and input from the Suffolk County Aquaculture Lease Program Advisory Committee, as described in Section 2.3. The Plan was submitted to the Suffolk County Executive and Suffolk County Legislature

for policy review and action in the spring of 2009. Subsequently, the Suffolk County Lease Program in Peconic Bay and Gardiners Bay (Lease Program) as described in the Plan, was formally adopted by the County in August 2009 by passage of Resolution No. 646-2009. (The full text of Resolution No. 646-2009 is contained in Attachment B.) The Lease Program has been prepared and adopted in accord with the provisions of the 2004 Leasing Law.

1.2 Need for the Lease Program

A lease program for Peconic Bay and Gardiners Bay is needed to provide a mechanism for shellfish aquaculturists to continue to cultivate shellfish species, such as the common oyster (*Crassostrea virginica*) and the hard clam (*Mercenaria mercenaria*), that have historically played and continue to play an important role in the maritime tradition in the Peconic Bay and Gardiners Bay region. Presently, shellfish aquaculture activities are conducted in these bays on private underwater land grants (oyster grants) and Temporary Marine Area Use Assignments (TMAUAs) administered by the New York State Department of Environmental Conservation (NYSDEC).

The Lease Program described in this Plan supports the continuation of the existing shellfish aquaculture operations in the bays, and also encourages moderate growth of the shellfish industry by providing individuals with an opportunity to obtain access to the underwater lands. It also provides further stability and security to existing shellfish aquaculture operations through issuance of 10-year leases under a program that is flexible to accommodate changes in the shellfish industry and environmental conditions.

1.3 Lease Program Goals

The process employed to develop the Lease Program was based on the need to meet the following goals:

- Sustain and maintain the marine resources and environmental quality of the Peconic and Gardiners Bay system.
- Design a program that provides people with the opportunity to obtain access to underwater lands for raising shellfish in a manner that is fair to all groups that use and enjoy this system.
- Provide the opportunity for controlled and predictable growth of shellfish farming at acceptable levels over both the near-term and longer time periods.

The Lease Program establishes a framework for the leasing of underwater lands for shellfish aquaculture that will minimize environmental impacts and user conflicts while supporting the growth of shellfish farming and the economic and natural resource benefits this use provides.

This Plan contains a full description of all aspects of the Lease Program. It also contains the required information that is needed by a potential applicant to apply for a shellfish aquaculture lease in Peconic Bay and Gardiners Bay. The Lease Program enables shellfish farmers to obtain commercial leases from Suffolk County. The

program also provides municipalities, researchers and not-for-profit entities with the opportunity to obtain non-commercial shellfish cultivation leases for experimental or educational purposes and for shellfish resource restoration.

1.4 Lease Program Outcomes

Adoption and implementation of the Lease Program will lead to the following outcomes:

- By issuing a shellfish cultivation lease prior to the sunset date of December 31, 2010, Suffolk County will secure the ownership title to approximately 100,000 acres of underwater land in Peconic Bay and Gardiners Bay ceded to it by the State of New York, as stipulated in the 2004 Leasing Law. Suffolk County will also retain its authority to designate locations in these bays for the conduct of compatible shellfish culture activities in the future.
- Successful implementation of the Lease Program will encourage private investment in shellfish aquaculture businesses and the establishment of shellfish farms at secure locations that do not pose conflicts with commercial fishermen and other bay users. This, in turn, will expand the marine-based economy of Suffolk County and create jobs that contribute to the quality of life and sense of place in East End communities.
- The operation of shellfish farms will result in the production of large numbers of oysters, hard clams and bay scallops in dense populations at various locations in the bay system. These shellfish will augment the spawning potential of native shellfish populations. The filter feeding bivalves on shellfish farms will also exert a positive influence on water quality by helping to control nutrient cycling and contributing to the prevention of noxious plankton blooms, such as brown tide. Off-bottom structures used in some shellfish farms also provide suitable substrate for both flora and fauna, which in turn, enhances overall habitat value. All of these ecosystem services associated with shellfish farms are provided on a sustainable basis at little or no cost to the general public.
- Shellfish cultivation leasing is institutionalized as a Suffolk County government responsibility and function. The Lease Program is implemented using administrative mechanisms that provide for continuing input from the Towns of Southold, Riverhead, Southampton, Shelter Island and East Hampton and consideration of local interests.

2.0 PROGRAM DEVELOPMENT

2.1 Suffolk County's Role in Shellfish Aquaculture

Suffolk County had certain authorities pertaining to shellfish aquaculture in Peconic Bay and Gardiners Bays under New York State law, and was actively engaged in the administration of a program that issued grants of underwater lands for private oyster farming. The following provides a brief historical overview of the events leading up to the passage of a new State law governing the authority to lease underwater lands for shellfish aquaculture in 2004.

Pursuant to Chapter 385 of the Laws of New York 1884, as amended, and Chapter 990 of the Laws of 1969, the underwater lands of Peconic Bay and Gardiners Bay were ceded to Suffolk County by the New York State Legislature. Chapter 385, *An Act to cede lands underwater of Gardiners and Peconic Bays, to Suffolk County, Long Island, for the cultivation of shellfish*, permitted Suffolk County to issue grants of underwater land for the purpose of *oyster culture* only. These "oyster grants" were issued in perpetuity so long as annual property taxes were paid. Chapter 990 of the Laws of New York 1969 gave Suffolk County the right to *lease* underwater lands for the purposes of *shellfish cultivation*. However, a leasing program was never enacted by the County because the program provisions required by Chapter 990 would have been too costly and cumbersome to implement.

The Suffolk County Aquaculture Committee was created in 2001 in response to passage of Resolution No. 487-2001 by the Suffolk County Legislature. The focus of the committee was on the potential role that Suffolk County could play in managing future shellfish cultivation activities in Peconic Bay and Gardiners Bay under Laws of New York 1969, Chapter 990.

The Nature Conservancy of Long Island formed the Peconic Bays Aquaculture Advisory Committee (PBAAC) in 2001 to examine the extent to which the waters and underwater lands of Peconic Bay and Gardiners Bay should be made available for private, commercial shellfish culture. This committee developed a generic management approach for private aquaculture in Peconic and Gardiners Bays. The recommendations made by the PBAAC are included in its report titled, *Final Report of the Peconic Bays Aquaculture Advisory Committee* (The Nature Conservancy 2002).

In June 2002, the Suffolk County Aquaculture Committee issued a report entitled *Policy Guidance for Suffolk County on Shellfish Cultivation in Peconic and Gardiners Bays*, which included recommendations on policy issues relating to the lease of underwater lands for shellfish farming. This committee recommended that Suffolk County should endorse the policy determination that "Private shellfish aquaculture is a legitimate water-dependent activity that requires the provision of secure and equitable access to publicly owned marine space for private use." (Suffolk County Department of Planning 2002) Based on this report, Suffolk County approved Resolution 1229-2002, directing the preparation of a plan for conduct of the surveys specified in the Laws of New York 1969, Chapter 990. Elements of the survey plan included: feasibility; methodology; projected survey costs; and potential sources of funding.

The resulting report - *Survey Plan for Shellfish Cultivation Leasing in Peconic and Gardiners Bays* (Suffolk County Department of Planning 2003) - evaluated several mapping components, and also identified several needed changes to State law, specifically Chapter 990 of the Laws of 1969, which would be required in order for the County to implement a successful shellfish cultivation leasing program. These recommendations were memorialized in Sense Resolution 39-2003, which was adopted by the Suffolk County Legislature in June 2003. In consideration of all the above efforts, the Suffolk County Executive's 2004 State Legislative Agenda endorsed the passage of a new bill by the New York State Legislature governing the lease process.

2.2 New York State 2004 Leasing Law

Pursuant to the New York Environmental Conservation Law (ECL) §13-0302, enacted on September 14, 2004 under Laws of New York 2004, Chapter 425, the State of New York ceded the underwater lands in Peconic Bay and Gardiners Bay seaward of the 1,000 feet high water mark to Suffolk County for the purpose of shellfish cultivation, provided that the various conditions and requirements as set forth in this law are met. Chapter 425 also repealed Laws of New York 1969, Chapter 990. The 2004 Leasing Law takes into account the recommendations made in the *Policy Guidance Report* and *Survey Plan*, and in the County Executive's 2004 State Legislative Agenda.

The 2004 Leasing Law contains provisions that eliminated onerous requirements, but also added safeguards to assure that the legitimate concerns of all bay user groups were considered during the process of developing the Lease Program. Requirements set forth in the 2004 Leasing Law to reduce the impacts of the Lease Program include restrictions on where leases cannot be located. Such areas defined by the 2004 Leasing Law are as follows:

- “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”
- “underwater lands where the leasing will result in a significant reduction of established commercial finfish or crustacean fisheries.”

The 2004 Leasing Law also required the County to adopt regulations governing: applications for leases; notices to be given; the form and term of leases; standards for the approval or denial of leases; administration of leases; the transfer or renewal of leases; marking grounds and testing; fees; recording of leases; bond; and other matters as are appropriate to the Lease Program.

A sunset provision is included in the 2004 Leasing Law. If no leases for shellfish aquaculture have been executed by December 31, 2010, the authority of Suffolk County to issue such leases shall terminate, and the County will forfeit its title to the underwater lands in Peconic Bay and Gardiners Bay back to the State of New York.

2.3 Aquaculture Lease Program Advisory Committee (ALPAC)

The development of the Lease Program was a formidable undertaking that required the collective knowledge and input from commercial fishermen, shellfish farmers, regulatory agencies, organizations, businesses and other parties associated with the Peconic Estuary. Obtaining this knowledge was facilitated by the participation of the Aquaculture Lease Program Advisory Committee (ALPAC), which was established by County Executive Orders Nos. 44-2005 and 45-2005. The membership of ALPAC was designated to consist of representation from the following 17 entities:

- Suffolk County Executive Office
- Suffolk County Legislature Environment, Planning and Agriculture Committee
- Suffolk County Department of Planning
- Suffolk County Department of Health Services
- Suffolk County Department of Public Works
- NYSDEC, Bureau of Marine Resources
- The Nature Conservancy
- East End Marine Farmers Association
- Town of Southold
- Town of Riverhead
- Town of Shelter Island
- Town of Southampton
- Town of East Hampton
- East Hampton Baymen's Association
- SUNY Stony Brook – Marine Sciences Research Center
- Cornell Cooperative Extension
- New York Sea Grant Institute

ALPAC was given the charge to advise the County Executive on the development of a shellfish aquaculture lease program that would be in accord with the requirements of the 2004 Leasing Law. The Suffolk County Department of Planning was directed to chair, convene and conduct the ALPAC meetings.

ALPAC held 20 working meetings between June 29, 2005 and April 21, 2009. Most of the meetings were held in Riverhead late in the day to accommodate attendance and participation of shellfish farmers, baymen, and others representing East End interests. The meetings were generally two to three hours long, and 30 to 50 people attended. Members of the public were permitted to attend ALPAC meetings, and they were able to provide their comments and/or suggestions during the public portion of each meeting. Communications pertaining to ALPAC meetings, and program

development were facilitated through the use of the regularly updated Department of Planning mailing list, which consisted of 171 individuals, including ALPAC members, government agency representatives and other interested parties.

Other special meetings and presentations were also part of the Lease Program development. Two project kickoff meetings were conducted by ALPAC to formally announce the start of substantive work on the project to develop the Lease Program: one held on January 31, 2007 at Southold Town Hall attended by 71 people; and the other on February 6, 2007 at Southampton Town Hall attended by 57 people. The meetings were widely advertised and held in the evening to provide the public the opportunity to attend either one or both of the meetings. Two public hearings were conducted during the project to fulfill the SEQRA process, as discussed in Section 3.2. In addition, the Department of Planning also gave formal presentations on the Lease Program at meetings of the Suffolk County Legislature Environment, Planning and Agriculture Committee, the Suffolk County Council on Environmental Quality and the Suffolk County Planning Commission.

2.4 Outreach Effort to Identify Environmental and Socio-Economic Considerations

The components of the Lease Program have been designed to assure that coastal waters and their natural resources are protected and maintained to the fullest extent possible. Extensive research on the environmental characteristics and features of Peconic and Gardiners Bays was conducted to identify areas of environmentally-sensitive resources (i.e., significant coastal fish and wildlife habitats; eelgrass beds; present and historic natural shellfish beds; and conditional and closed shellfish harvest areas, etc.) within the bays.

In addition to a review of existing reports and studies on the Peconic Estuary, 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, regulatory agencies and academic institutions. Results of the search and interviews identified environmentally-sensitive, and other important natural resource areas. This also afforded the opportunity for interested parties to comment on the development of the program, as well as to identify and designate environmentally-sensitive and other important natural resource areas on maps provided at the meetings. These maps were instrumental in developing the boundaries of the Shellfish Cultivation Zone. Over 67 letters were also sent out to individuals, government agencies, academia, and other interested parties from a list provided by ALPAC with a request for information.

The following is a list of interested parties who participated in the interviews:

- NYSDEC, Bureau of Marine Resources
- Suffolk County (Dept. of Health, Dept. of Planning, Division of Real Estate)
- Town Trustees (East Hampton, Southampton, Southold, Shelter Island)

- Town Officials (Riverhead)
- Local Constables and Harbor Masters
- Cornell Cooperative Extension
 - Suffolk County Marine Program
 - Aquaculture Research and Development
- NYS Shellfish Advisory Committee
- Peconic Estuary Program
- East End Marine Farmer's Association
- The Riverhead Foundation for Marine Research and Preservation
- Group for the South Fork
- The Nature Conservancy
- Marine Resource Advisory Committee
- East Hampton Commercial Fishing Advisory Committee
- Peconic Baykeeper
- Ducks Unlimited (via phone conversation)
- Long Island Association (via phone conversation)
- Local commercial fishermen and shellfishermen
 - Hampton Bays Baymen Association
 - North Shore Baymens Association
 - North Shore Captains Association
 - Montauk Captains Association (via phone conversation)
- Local recreational fishermen and shellfishermen
- Local seafood dealers, marina operators, yacht clubs, ferry operators
 - The Lobster Inn
 - Greenport Seafood Dock (via phone conversation)

The locations identified as environmental resource conditions were excluded from areas that could be potentially leased within the Shellfish Cultivation Zone.

2.5 Overview of Lease Program Implementation

The Lease Program has been designed to support current shellfish aquaculture businesses operating in Peconic Bay and Gardiners Bay, as well as allow the opportunity for new growth of the industry. Leases for new shellfish aquaculture operations (i.e., leases issued on underwater lands previously not used for shellfish aquaculture) will consist of 5- or 10-acre parcels. Such leases will be limited to a total of 60 additional acres per year, for a maximum of 300 acres within the first five

years of the program, and a total of 600 acres by the tenth year of the program. Sixty acres per year of new leases represents a growth rate of one percent (1%) per year based on the total amount of underwater land acreage that could potentially be used for cultivation, as of December 31, 2007. Currently, approximately 6,000 acres of underwater land are available for aquaculture activities (comprised of private oyster grants and TMAUAs).

The Lease Program has been designed to provide access to public lands for the purpose of shellfish aquaculture. Implementation of this program does not obviate the need to comply with all other relevant regulatory and permit requirements. In particular, shellfish harvesting activities are closely regulated under the NYS ECL by the NYSDEC. As the responsible regulatory agency, the NYSDEC issues permits for shellfish aquaculture and establishes conditions on aquaculture activities that must be met as part of permit requirements. The conditions can include, but are not limited to: types of shellfish to be cultured; number of shellfish to be cultured; number and types of equipment (e.g., cages); and harvesting methods. The NYSDEC also regulates shellfish harvesting activities relating to sanitary quality and species size limits. It is not the intent of the Suffolk County Lease Program, nor is it within the authority of the County, to regulate the specific activities and requirements that have been established under the ECL.

The implementation of the Lease Program will provide access to underwater lands for the continuation and expansion of the cultivation of the most common species currently being cultivated in Peconic Bay and Gardiners Bay: the common oyster (*Crassostrea virginica*), and the hard clam (*Mercenaria mercenaria*). There is also potential for the expansion of aquaculture as it relates to other species, such as bay scallops (*Aequipecten irradians*), deep-sea scallops (*Placopecten magellanicus*), blue mussels (*Mytilus edulis*), soft-shelled clams (*Mya arenaria*) and razor clams (*Ensis directus*). It is expected that these are the types of culture activities that will continue, and in some cases be expanded under the Lease Program, including the potential for development of new culture technologies as the industry grows.

Two types of shellfish aquaculture activities are expected to occur on leases issued under the Lease Program: on-bottom and off-bottom culture. On-bottom culture activities consist of cultivated species being placed directly on or in the bottom sediment where they remain until harvesting. Off-bottom culture involves the grow-out of species within containment structures, either placed on the bay bottom or suspended beneath the water surface. Off-bottom culture usually requires maintenance of the structure, and is more labor intensive than on-bottom culture. The type of culture activity chosen is dependent on the species selected for culture. For example, hard clams are cultured on-bottom. On the other hand, most oyster culture in the estuary is performed through the use of containment structures. Protection from predators is an important consideration in evaluating the use of off-bottom culture and containers for grow-out of shellfish stock.

As stated above, the Lease Program will provide access to underwater lands for shellfish aquaculture within the area ceded to the County by the 2004 Leasing Law. Although a NYSDEC shellfish cultivation permit is not initially required to obtain a

lease, the commencement of any shellfish cultivation activity on a lease issued by the County is contingent upon possession of a valid shellfish culture permit from the NYSDEC. The specific conditions of that permit must be established by the NYSDEC. Coordination between the County and NYSDEC will help to ensure that the Lease Program is carried out in accordance with proper environmental mitigation measures to protect existing resources and marine activities in Peconic Bay and Gardiners Bay.

In order to address any unforeseen impacts associated with the Lease Program, it will be implemented in such a way that will allow for program adjustments to mitigate those impacts. The Lease Program will be subject to two, five-year planning periods during the initial 10 years of the program. Each five-year planning period will allow for an additional 300 acres of underwater land to be made available for lease. The Lease Program will be subject to review during the second five-year period to establish program components after 10 years. This review will be based on an environmental assessment, which will include, but is not limited to: data on environmental conditions of the bays collected in the County's ongoing water quality monitoring program; results of the Lease Program to date; need/demand for additional lease space; and town, public and industry input.

2.6 Lease Program Website

The Lease Program website - (www.suffolkcountyny.gov/aquaculture) - has been maintained since the initiation of work on the specification of technical aspects of the program in June 2005. Complete records of all ALPAC meetings (notices, agendas, meeting summaries, presentations); consultant work task draft reports and associated maps; and all final program reports and related documentation are accessible on this website. The website will be maintained during the implementation of the Lease Program. As such, it will be used to post announcements of events and dates, such as calls for lease applications and related deadlines; and in general, keep the public informed of all meetings and actions that are taken during the public notice and lease site review process, and subsequent execution of lease agreements between Suffolk County and shellfish farmers.

3.0 STATE ENVIRONMENTAL QUALITY REVIEW (SEQRA)

3.1 SEQRA Compliance

This Lease Program has been developed in accordance with Article 8 of the New York State Environmental Conservation Law; Environmental Quality Review, Section 8-0109 and its implementing regulations, 6 NYCRR Part 617. In consideration of the potential for significant adverse impacts on the environment associated with the adoption of such a program, the County of Suffolk, as lead agency, has identified the *Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay* as a Type I action under SEQRA.

Recognizing the potential for significant adverse environmental impacts as a result of an adopted lease program, the County issued a positive declaration pursuant to SEQRA thus requiring the preparation of an Environmental Impact Statement. Considering the broad scope and nature of the project, a Generic Environmental Impact Statement (GEIS) was found to be most appropriate. Pursuant to the requirements of SEQRA, a Draft Generic Environmental Impact Statement (DGEIS), Final Generic Environmental Impact Statement (FGEIS), and Statement of Findings were prepared. These documents outlined the environmental basis for the County's Lease Program and set forth the conditions under which the program was to be developed and implemented upon its adoption.

3.2 SEQRA Timeline

As per 6 NYCRR Part 617, the Suffolk County Department of Planning, as initiating unit and part of the coordinated review process, issued a notice of intent to serve as lead agency on February 5, 2007. This notice identified the project as a Type I action and included a copy of the Environmental Assessment Form (EAF) that was distributed to all involved agencies including the NYSDEC and all East End Towns and Villages. Receiving no objection, Suffolk County assumed lead agency status. As lead agency, Suffolk County, through the adoption of Resolution 241-2007, officially determined that the proposed project had the potential to result in significant adverse impacts on the environment. As a result, a Positive Declaration was issued on April 11, 2007. Included with the determination of significance, Suffolk County distributed a Draft Scoping Document for the GEIS.

The Draft Scoping Document was posted on the Suffolk County Department of Planning web site and widely distributed to public officials, involved agencies and other interested parties. A combined Notice of Positive Declaration, Public Scoping, and Intent to Prepare a Draft Environmental Impact Statement was published in the *Environmental Notice Bulletin* on April 18, 2007.

A public scoping meeting was held on May 3, 2007 at the Suffolk County Community College, Eastern Campus to receive public comments on the Draft Scoping Document. Written comments were accepted through May 17, 2007, and a Final Scoping Document dated August 23, 2007, reflecting consideration of comments made during the scoping process was adopted by Suffolk County through Resolution 780-2007. A Notice of Completion was issued on September 6, 2007.

The DGEIS was then prepared in accordance with the Final Scoping Document. On March 19, 2008, pursuant to Chapter 279 of the Administrative Code, the Suffolk County Council on Environmental Quality, in Resolution 03-08, determined that the DGEIS was satisfactory with respect to its scope, content, and adequacy, and a Notice of Completion was issued. Copies of the DGEIS were posted on the Suffolk County Department of Planning web site and were widely distributed to public officials, involved agencies and other interested parties. Copies were also sent to East End libraries for convenient local viewing. A Notice of Completion and Public Hearing was published in the March 26, 2008 issue of the *Environmental Notice Bulletin*. Hearing notices were also published according to SEQRA Regulations in the *Smithtown News* and the *Long Island Business News*. All notices also invited written comments with respect to the DGEIS, and established a comment period extending to May 1, 2008.

On April 17, 2008, the Suffolk County Council on Environmental Quality in conjunction with the Suffolk County Department of Planning, Legislature and County Executive held a public hearing on the DGEIS at Riverhead Town Hall. A total of 15 speakers provided comments on the document. The public comment period was held open for a period of 10 business days following the hearing to allow the opportunity for further written commentaries. A total of 14 parties replied via written correspondence.

On June 24, 2008, Suffolk County reviewed all substantive comments received on the DGEIS and authorized the preparation of a FGEIS through Resolution 477-2008. A FGEIS was prepared to address all substantive comments that were raised during the public review process and was presented at the September 17, 2008 meeting of the Suffolk County Council on Environmental Quality. The FGEIS was also posted on the Suffolk County Department of Planning web site and copies were widely distributed to public officials, involved agencies and other interested parties. Copies were also sent to East End libraries for convenient local viewing. A Notice of Completion of the FGEIS was issued on September 3, 2008.

Suffolk County Resolution 1028-2008 (Attachment C) officially adopted the Statement of Findings on December 15, 2008, certifying that the requirements of SEQRA have been met and that the *Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay* will be developed consistent with social, economic, and other essential considerations and has chosen from among the reasonable alternatives available, the one that avoids or minimizes potential adverse environmental impacts to the maximum extent practicable. The formal adoption of the Findings Statement and completion of the SEQRA process authorized the County to proceed with the development and official adoption of the Lease Program.

3.3 Alternatives Analysis

The environmental review process requires the evaluation of all reasonable alternatives to a proposed action. This analysis allowed Suffolk County, as lead agency to evaluate the nature and magnitude of potential impacts associated with various project alternatives. Upon review of this analysis, an informed decision was made as to the least environmentally damaging practicable alternative that satisfied

the requirements set forth in the enabling legislation. Considering the expansive project area and the expectation of including numerous aquaculture operations, each having unique, site specific implications, the generic environmental impact statement evaluated the alternatives conceptually using hypothetical scenarios. The alternatives considered in the DGEIS for the Lease Program included: Minimum Lease (Alternative 1A); Minimum Lease with Moderate Growth (Alternative 1B); No Action (Alternative 2); Elimination of Existing Aquaculture Activities (Alternative 3); and Unlimited Lease Growth (Alternative 4).

The Minimum Lease Alternative represented a limited shellfish aquaculture program. It only provided for the establishment of leases on existing NYSDEC TMAUAs and private oyster grants that met all 2004 Leasing Law site restrictions. This scenario would have allowed the leasing of up to approximately 6,000 acres of bay bottom or about 5.4% of the 110,000 acre project area. While this alternative would have provided an increased level of security and stability to exiting operations, it would have prevented the expansion of aquaculture in the region as a whole. A minimum lease alternative would fail to satisfy the intent of the enabling legislation, which was to foster and encourage the establishment of shellfish aquaculture in Peconic and Gardiners Bays.

The Lease Program ultimately preferred and outlined in this Plan was first evaluated in the DGEIS as Alternative 1B, Minimum Lease with Moderate Growth. It too involved the conversion of eligible existing TMAUAs and private oyster grants into leases. This preferred alternative also allowed for the establishment of up to 600 additional acres of “new” 5- or 10-acre leases phased in over a ten year period with only 60 acres available for lease in a given year. This cautious approach will allow the County to evaluate and address social and ecological impacts incrementally and adjust the Lease Program as appropriate.

An alternatives analysis must always discuss a “No Action” alternative when evaluating the need for, and impacts of a proposed project. It is especially relevant for government actions involving the expenditure of public funds. Under this no action scenario, Suffolk County would not institute a shellfish aquaculture lease program. Access to underwater lands for shellfish aquaculture in Peconic and Gardiners Bays would be limited to the NYSDEC TMAUA program and private oyster grant holders. While no adverse environmental impacts would be expected, this alternative would provide no stability to existing aquaculture operations and restrict the potential for both socio-economic and ecological benefits associated with the moderate expansion of the aquaculture industry. As with the Minimum Lease Alternative, the No Action Alternative does not meet the fundamental objectives of the 2004 Leasing Law.

Alternative Three assessed the elimination of existing aquaculture activities in Peconic and Gardiners Bays altogether. This concept evaluated the impacts of not only the failure to implement a County lease program, but the termination of the NYSDEC TMAUA program in the project area as well. Aquaculture would then be limited to private oyster grants, very few of which are authorized to cultivate species other than oysters. The constriction of the East End aquaculture industry in this manner would have significant adverse effects on the local marine based economy

and its supporting sectors. Furthermore, the removal of existing shellfish operations would bring to an end the water quality and natural stock augmentation benefits derived from commercial aquaculture in the Peconics. While the County could choose to not implement a lease program, it does not have legal authority to terminate the NYSDEC TMAUA program. As such, this alternative is not a feasible option for the County.

Finally, an unlimited lease growth scenario was evaluated. Under these circumstances, in addition to converting existing eligible operations on NYSDEC TMAUAs and private oyster grants to leases, the County would authorize the unbridled issuance of “new” leases throughout the Peconic Bay system with no limit on size or scale. The impacts of such a program would be severe. The potential for the overproduction of shellfish and various user conflicts is apparent. While this alternative would encourage the development of aquaculture on the East End, it would violate stipulations of the 2004 Leasing Law restricting leases to areas that avoid environmental and socio-economic conflicts.

Upon review of the various potential iterations and likely consequences of the aquaculture lease program, a preferred alternative was chosen that attempts to balance the intentions of the 2004 Leasing Law with the legitimate concerns of program opponents. A full analysis of all program alternatives including the preferred action is provided in the Draft Generic Environmental Impact Statement and further clarified in the Final Generic Environmental Impact Statement.

4.0 STRUCTURE OF THE LEASE PROGRAM

4.1 Shellfish Cultivation Zone

According to the New York State Environmental Conservation Law §13-0302, “Leases may be issued only within areas designated as shellfish cultivation zones on a map or maps to be prepared and approved by the county of Suffolk.” The Shellfish Cultivation Zone map (Attachment E - Map 1) has been created in an effort to define the areas suitable for the potential placement of aquaculture leases that would have minimal impact on existing resources and activities. Leasing Law restrictions, interviews and meetings held with multiple user groups and extensive data analysis led to the delineation of various environmentally and socio-economically sensitive areas of the bay; all considered to be unsuitable areas for the establishment of shellfish aquaculture operations. Among those areas deemed inappropriate for the siting of leases were the underwater lands within 1,000 feet of mean high water, NYSDEC shellfish closure areas, areas that support multiple commercial fisheries, navigation channels, current and historic eelgrass bed locations, current commercial hard clam harvest areas and current and historic scallop beds.

Privately held oyster grants, existing NYSDEC TMAUAs and all remaining underwater lands not determined to be environmentally and/or socio-economically sensitive were included in the actual Shellfish Cultivation Zone. Leases may only be issued within the boundaries of this zone. This program acknowledges the potential for environmental and social conditions to change in the future. To address these changes, the Lease Program is subject to review after the first five years of implementation. At that time, adjustments could be made to the Shellfish Cultivation Zone boundary. If the boundary of the zone is in fact changed, then the amended map would have to be adopted by local law.

4.2 Aquaculture Lease Sites Map

With the Shellfish Cultivation Zone identifying areas suitable for aquaculture, in hand, the Aquaculture Lease Sites map (Attachment F - Map 2) was created for use as a planning tool to aid lease applicants in the site selection process, and to provide a visual representation of where aquaculture is currently taking place in Peconic and Gardiners Bays.

The Aquaculture Lease Sites map overlays private oyster grants, NYSDEC TMAUAs and individual 10-acre lease parcels onto the Shellfish Cultivation Zone. Each 10-acre lease parcel is assigned a unique identification number and is surrounded by a 10-acre area which will serve as a buffer zone. Private oyster grants and TMAUAs each have a separate numbering system that is used on the map.

Table 1 shows the map identification number for each of the private grants, along with ownership and NYSDEC culture permit information. Table 2 shows the identification number for all of the TMAUAs shown on the map, along with other information on permittee, gear permitted, etc.

Table 1. Oyster Grants NYSDEC Culture Permit Status
Page 1 of 2

Map ID	Lot	Lot 2	Lot 3	DSBL	Ownership	Species Permitted	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
GR1	57			1000 13400 0300 006000	Private												
GR2	64			1000 13400 0300 014000	Private											X	X
GR3	107	96		1000 13300 0100 003000	Private	EO, BS										X	X
GR4	113			1000 13300 0100 005000	Private	EO, BS											
GR5	116			1000 13300 0100 009000	Private	HC, EO, BS HC, EO, BS	X	X	X		X		X				
GR6	531			0700 02800 0100 015000	Private	EO										X	
GR7	140	141		1000 13300 0100 021000	Private	EO	X	X	X	X	X	X	X				
GR8	150			1000 13300 0100 026000	Private	HC, EO, BS, SC HC, EO	X	X	X	X	X	X	X	X		X	X
GR9	151			1000 13300 0100 025000	Private	HC, EO, BS EO	X	X	X	X	X	X	X				
GR10	153			1000 13300 0100 028002	Private	HC, EO HC, EO	X	X	X	X	X	X	X	X		X	X
GR11	162	166		1000 13300 0200 009000	Private	HC, EO	X	X	X	X	X						
GR13	184			1000 13200 0100 002000	Private												
GR14	197			1000 13200 0100 010000	Private												
GR15	198			1000 13200 0100 017000	Private												
GR16	213			1000 13200 0100 012000	Private												
GR17	257			0900 15400 0200 006000	Private												
GR18	258			0900 15400 0200 008000	Private												
GR19	259			0900 15400 0200 009000	Private												
GR20	261			0900 15400 0200 011000	Private								X				
GR21	444			0700 02800 0100 019000	Private	HC, EO, BS EO							X				
GR22	356			0300 20300 0100 017000	Private	HC, EO, BS EO							X				
GR23	421			0300 20400 0500 002000	Private												
GR24	437			0300 20400 0500 022000	Private												
GR25*	445			0700 02800 0100 020000	Private	HC, EO, BS							X				
GR26	446			0700 02800 0100 021000	Private								X				
GR27	447			0700 02800 0100 022000	Private	HC, EO, BS EO							X				
GR28	451			0700 02800 0100 027000	Private	EO					X	X	X	X	X	X	X
GR29	506			0700 02800 0100 087000	Private												
GR30	507			0700 02800 0100 088000	Private												
GR31	508			0700 02800 0100 089000	Private	EO							X	X	X	X	X
GR32	513			0700 02800 0100 095000	Private	EO, HC, BS							X	X	X	X	X
GR33	514			0700 02800 0100 096000	Private	EO, HC, BS							X	X	X	X	X
GR36	517			0700 02800 0100 099000	Private								X				
GR38	530			0700 02800 0100 013000	Private	HC, EO, BS EO							X				
GR39	208			1000 13200 0100 024000	Private												

Table 1. Oyster Grants NYSDEC Culture Permit Status
Page 2 of 2

Map ID	Lot	Lot 2	Lot 3	DSBL	Ownership	Species Permitted	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
GR40	207			1000 13200 0100 023000	Private	HC, EO, BS					X	X					
GR41	139	145	146	1000 13300 0100 020000	Private	EO									X		
					Private	HC		X	X								
					Private	HC		X	X								
GR42	206			1000 13200 0100 022000	Private	HC, EO, BS							X				
					Private	EO									X		
GR43	529			0700 02800 0100 012000	Private	HC, EO, BS	X	X	X	X	X	X	X	X	X	X	X
					Private	HC, EO, BS, SC, BM, RC											
GR44	154	156		1000 13300 0100 028001	Private	EO											
GR45	61			1000 13400 0300 009000	Private												
GR46	157			1000 13300 0200 001000	Private		X	X	X	X	X	X	X	X	X	X	X
GR47	191			1000 13200 0100 007000	Private												
GR48	173			1000 13300 0200 012000	Private	EO, HC, BS							X	X	X	X	X
					Private	HC, EO, BS	X	X	X	X	X	X	X	X	X	X	X
GR49	179			1000 13300 0200 016001	Private	EO											
GR50	2			0600 15000 0100 004000	Private	HC, EO, BS		X	X	X	X	X	X	X	X	X	X
GR51	550			1000 13300 0100 030000	Title Issue												
GR52	74A			1000 13400 0300 020002	Title Issue												
GR53	77A			1000 13400 0400 006002	Title Issue												
GR54	248			0900 15400 0100 015000	Title Issue												
GR55	381			0300 20400 0400 011000	Title Issue												
					Private	HC, BS, EO			X	X	X	X	X	X	X	X	X
GR56	253			0900 15400 0200 003000	Title Issue	BS, EC							X	X	X	X	X
GR57	254			0900 15400 0200 005000	Title Issue	HC, EO, BS			X	X	X	X	X	X	X	X	X
					Private	BS, EO											
GR58	293A			0900 00100 0100 010002	Title Issue	HC, EO	X	X	X	X	X	X	X	X	X	X	X
					Private	HC, EO, RC											
					Private	HC, EO, RS, BS											
					Private	EO, HC, BC, SC											
GR59	249			0900 15400 0100 013000	Title Issue	HC, BS, EO			X	X	X	X	X	X	X	X	X
					Private	BS, EO											
GR60	25			0600 15000 0200 002000	Title Issue	HC, BS, EO			X	X	X	X	X	X	X	X	X
GR61	203			1000 13200 0100 020000	Title Issue	BS, EO			X	X	X	X	X	X	X	X	X
GR62	158			1000 13300 0200 002000	Title Issue	BS, EO											
GR63	383			0300 20400 0400 014000	Title Issue												
GR64	422			0300 20400 0500 006000	Title Issue												
					Private	HC, BS, EO			X	X	X	X	X	X	X	X	X
GR65	252			0900 15400 0200 002000	Title Issue	BS, EO											

Note: Shading indicates oyster grants that have not had NYSDEC culture permits over the last 10 years.
The Underwater Lands Data Search Data Report (February 2008) was the source of ownership data.
* GR25 is labeled in error on Map 2. It appears as the easternmost GR27. The permit status of GR25 is depicted in error on Map 2. GR25 is considered an active grant.
Permit Data as of winter 2009

**Table 2. NYSDEC Temporary Marine Area Use Assignments
Page 1 of 2**

Lease Map ID	Lease Map Grid #	Permittee	Coordinates		Radius from Center (ft)	Date Issued	Species	Gear Permitted	Comment	Acres
A1	497	Wallace Steidle Coastal Farms, Inc.	40 57 40 N	72 25 32 W	250	1/2/1985	HC, EO	70- 8x8x7 wood racks	Raritan Bay hard clam relay site	5
A2	-	Mario Carrera Flanders	40 54 53 N	72 34 14 W	250	7/21/1993	HC, EO, BM, SC	150- 4x4', 11" high vinyl coated wire mesh cages		5
A3	406	Ken Homan Braun Oyster Company, Quogue	40 59 04 N	72 27 35 W	250	9/12/1995	HC, EO, BM, SC	250- 4x7' 1" high vinyl coated wire mesh	May culture in 2007	5
A4	632	Howard Pickrell Water Mill	40 58 31 N	72 22 53 W	250	11/13/1995	EO	400- 36X18' 3 1/2" high plastic cages	oyster grant holder	5
A5	-	Wayne Grothe East Quogue	40 54 36 N	72 32 08 W	250	11/13/1995	EO	400- 36X18' 3 1/2" high plastic cages		5
A6	-	Robert Conklin Riverhead; re-issued to Timothy Froelich	40 54 50 N	72 35 31 W	250	6/2/99 (original) 1/5/06 (re-issued)	active for oysters (HC, EO, BM in past)	50- 3x3x3' vinyl coated wire mesh cages		5
A7	4	David Lessard Twin Fork Oyster, Jamesport	40 56 06 N	72 34 06 W	250	8/18/2000	active for EO (HC, EO, BM in past)	300- 36x18x2" plastic mesh cages	oyster grant holder	5
A8	-	James Miller East Quogue	40 55 58 N	72 33 12 W	250	10/6/2000	active for EO (HC, EO, BM, SC, RC in past)	100- 6x10x5' cages; 500- 36x20x2.5" plastic mesh bags		5
A9	556	Ian Burtiuk Eastern Light Seafood of Hampton Bays	40 57 55 N	72 24 25 W	250	10/10/2000	HC, EO, BM, SC, RC in permit; active oysters in past	100- 6x10x5' cages; 500- 36x20x2.5" plastic mesh bags; 10- 10x6' upwellers rafts with 3x3' trays	inactive for 2007	5
A10	-	Bill Blanchard Peconic Bay Prime of Southold	41 01 34 N	72 26 14 W	187	1/2/2001	active for EO (HC, EO, BM, SC)	300- 6x3x4' wire mesh cages at each site		2.5
A11	-	Bill Blanchard Peconic Bay Prime of Southold	40 59 23 N	72 26 41 W	187	1/2/2001	active for EO (HC, EO, BM, SC)	300- 6x3x4' wire mesh cages at each site		2.5
A12	-	Gary Crowther Jamesport	40 56 46 N	72 32 55 W	250	4/5/2001	active for EO (HC, EO, BM, SC)	200- 2.5x3x4.5' steel and plastic mesh cages		5
A13	-	Stephen Gauger East Hampton	41 02 24 N	72 23 10 W	250	7/24/2001	active for EO (EO, BS)	200- 3x3x3' vinyl coated wire mesh cages		5
A14	-	John Fudjinski Whitecap Oyster Farms, New Suffolk	41 01 32 N	72 24 41 W	250	7/29/2002	HC, EO, BM, BS, SC	400- 6x3x4' wire mesh and wood cages each containing up to 12 polymesh shellfish bags		5
A15	-	Richard Maran Jr. Hampton Shellfish Co. Water Mill	40 57 27 N	72 27 46 W	250	10/7/2002	active for EO (HC, EO, BM, SC)	500- 3x3x2' plastic mesh cages		5
A16	-	Timothy Froelich (original); re-issued to Scott Gregory	40 57 26 N	72 32 07 W	250	7/16/99 (original) 7/17/03 (re-issued)	HC, EO, BS	50- 3x3x3' vinyl coated mesh cages		5
A17	262	Michael Craig Miller Place	40 57 23 N	72 29 23 W	250	4/9/2004	active for EO (EO, BS)	60- 50x36.5x36.5" cages		5
A18	424	Kerrin Craig Miller Place, Deeziak Oysters	40 58 8 N	72 26 45 W	250	4/26/2004	active for EO (EO, BS)	70- 50x36.5x36.5" cages		5

**Table 2. NYSDEC Temporary Marine Area Use Assignments
Page 2 of 2**

Lease Map ID	Lease Map Grid #	Permittee	Coordinates		Radius from Center (ft)	Date Issued	Species	Gear Permitted	Comment	Acres
A19	348	Steven Bolton (original) re-issued to Bill Peil	40 54 44 N	72 28 42 W	250	7/25/97 (original) 1/27/05 (re-issued)	active for EO (HC, EO, BS)	200- 54x36x24" steel and plastic mesh cages		5
A20	502	Roger Cornell Southold	41 00 38 N	72 25 13 W	250	9/14/2005	active for EO (HC, EO, BS)	200- 42x36x36" steel and plastic cages		5
A21	436	Thomas Gili West Babylon	41 00 34 N	72 26 23 W	250	10/3/2006	active for EO (HC, EO, BS)	250- 3x18"x3" cages		5
A22	-	Thomas Kehoe Northport	41 00 30 N	72 22 02 W	250	11/6/2006	active for EO (HC, EO, BS, SC, BM)	300- 4.5x4.5x2' cages		5
A23	226	Roger Boccio Northport	40 58 20.1 N	72 29 40.3 W	250	11/6/2006	active for EO (HC, EO, BS, SC, BM)	300- 4.5x4.5x2' cages		5
A24	-	Thomas Cornell Southold	40 59 36.9 N	72 25 56.28W	250	1/10/2008	HC, EO, BS	200- 42x36x36" steel and plastic cages		5
A25	-	Theodore Bucci Southold Harbor Lights Oyster Co.	41 00 23 N	72 20 35 W	250	1/17/2008	EO	250- 4'x3'x3" mesh cages		5
A26	-	Eric Cregreen Rockville Center	41 01 34.25N	72 20 7.5 W	250	pending	EO	10- 4.5x3x2' mesh cages		5
A27	-	Mark Terry (originally issued to Richard Hull)	40 54 17 N	72 31 04 W	250	1/10/2008	EO, BS	long lines capable of supporting 1,056 shellfish bags 2'x3'x3"	Wickatuck Oyster Co.	5
A28	252	William Caldwell Hampton Bays	40 55 36 N	72 34 59 W	180	9/9/2004	EO	100- 3x3x3' cages	Split TMAUA; two 2.5 acre sites	2.5
A29	-	William Caldwell Hampton Bays	40 54 09 N	72 29 40 W	180	9/9/2004	EO	100- 3x3x3' cages	Split TMAUA; two 2.5 acre sites	2.5
A30	178	Mike Moskowitz	40 54 59 N	72 30 14 W	250	Feb-08	HC, EO, BS, SS	long lines capable of supporting 1,200 cages 30"x30"x96"; 400 lantern nets 20"x8' and 500 pearl nets 20"x24"; and up to 15,000 shellfish bags 20"x40"x3"	Westhampton Beach Aquaculture *shellfish bags will rest directly on seafloor	5
A31	378	Kevin Greene	40 55 33 N	72 28 13 W	250	5/21/2008	EO	75- 4'x4'x4" mesh cages		5
A32	8	Brian Mastaglio	40 55 14.25 N	72 33 51 W	250	6/30/2009	EO	100- 3'x4'x4' cages		5

Notes:

(Species) in parenthesis represents species permitted but not yet cultivated.
EO - Eastern Oyster, HC - Hard Clam, SC - Soft Clam, BS - Bay Scallop, SS - Sea Scallop, BM - Blue Mussel, RC - Razor Clam
Data in this table reflects NYSDEC data as of September 2, 2009
Last Updated: September 2, 2009

4.3 Lease Program Participants

The Lease Program provides for the accommodation of TMAUA holders and private oyster grant owners who wish to participate in the County Lease Program. The program also provides for future growth of the industry by authorizing new leases on additional underwater lands for the purpose of shellfish cultivation within defined limits.

4.3.1 Conversion of Temporary Marine Area Use Assignments into Leases

Existing TMAUAs in Peconic Bay and Gardiners Bay must be converted into County leases when the Lease Program is implemented, in accordance with the provisions outlined in the *Administrative Guidance* document (Attachment D). All holders of existing TMAUAs will be given the option to relocate to an area within the Shellfish Cultivation Zone; those TMAUA holders that choose to relocate will be able to expand their operations to 10-acres on- or off-bottom, or maintain their current operation of a 5-acre off-bottom circular plot. Holders of TMAUAs located within the Shellfish Cultivation Zone can request that the existing operation be continued without change, or they can request an expansion or modification of operation, at that same location. Holders of isolated TMAUAs that are located in a sensitive area and not within the Shellfish Cultivation Zone will be able to continue their current operation (5-acre off-bottom circular plot), or they will be allowed to relocate their operation to an area within the Shellfish Cultivation Zone. Any holder of a TMAUA that is located entirely or partially within 1,000 feet of the mean high water shoreline, must either relocate to a plot outside the 1,000 foot line, as close to his/her original location as possible, or move to a location within the Shellfish Cultivation Zone.

4.3.2 Leases on Oyster Grants

An oyster grant owner who wishes to cultivate species other than oysters may apply for a lease on his/her 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. 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. Leases will not be issued on oyster grants with a title conflict until all title conflicts are resolved and documentation/proof of same has been submitted to the County. The program will be evaluated after five years, and at that time, a determination may be made to possibly allow expansion of leases on these formerly fallow grants.

4.3.3 New Leases on Underwater Lands Not Currently Used for Shellfish Cultivation

Those portions of the Shellfish Cultivation Zone that do not include TMAUAs or oyster 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 for on- or off-bottom culture, with a cap of 60

acres leased during each year. Lease applications will be processed in an order determined by a random selection procedure, if necessary in accord with the provisions found in the *Administrative Guidance*.

4.4 Administrative Guidance

The *Administrative Guidance* document (Attachment D) approved in Resolution No. 646-2009, was prepared to define, in detail, the administrative procedures, requirements and criteria for all aspects of the leasing process. 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. The *Administrative Guidance* addresses important elements of the leasing program including, but not limited to:

- lease program participants;
- lease application process;
- lease location and size;
- County administrative requirements;
- lease agreement;
- annual lease rental fee;
- annual report;
- lease modifications;
- lease renewal; and
- lease termination and nonrenewal.

Justifications for the standards and requirements of the Lease Program are stated in the *Administrative Guidance*. Also included in the *Administrative Guidance* are applications for leases; public notice requirements; the standards for the approval or denial of lease sites; the form and terms of a lease; procedures for the administration of leases; fees; and requirements to comply with related laws and regulations.

Staffing and other resources required by the County for the implementation of the Lease Program are discussed in the *Administrative Guidance*, as well as the Department of Planning's administrative responsibilities. The Department will not only be responsible for the day-to-day administration of the Lease Program, but will also make policy recommendations for any needed legislative action on the program; and assist the Aquaculture Lease Board in its decision making activity.

Resolution No. 646-2009 established the Aquaculture Lease Board. The Aquaculture Lease Board consists 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 is responsible for determining which sites will be available for lease during each year of the program.

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 also 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. The cooperation of the Department of Health Services will also be needed by the Department to address the recommendation to implement an environmental monitoring program in conjunction with the Lease Program.

4.4.1 Lease Issuance Procedures

All applicants for a shellfish aquaculture lease will be required to contact the Department and set up a pre-application meeting. The purpose of this meeting is to review the applicant's preferred lease sites and any potential conflicts that may exist at these site locations. The applicants will be guided through the overall application process, and the applicable forms will be explained. Lease applications will not be complete without first attending a pre-application meeting.

Subsequent to the pre-application meeting, applications must be completed and returned to the Department for review. Department staff will review all complete applications and make a determination on applicant eligibility. The public notice regarding all proposed lease sites will be issued by the Department and will have a 60-day written comment period. All comments received on proposed lease sites will be reviewed by the Department and included in a report that will be submitted to the Aquaculture Lease Board.

The Aquaculture Lease Board will convene two meetings at which all potential lease sites identified in lease applications will be presented for consideration from a regional perspective. There may be more than one application cycle during the first year or two of program implementation. The initial meeting of the Aquaculture Lease Board will give the public another opportunity to comment on any of the proposed lease sites. Subsequent to this public meeting, the Aquaculture Lease Board will meet again and make a determination on those sites that will be eligible for leasing based on the Department's staff report and all oral and written comments received. In the event an objection is raised on a proposed lease site that is based solely on hard calm productivity, and is found to be credible by the Department, the Aquaculture Lease Board may designate that site as conditionally eligible.

Once the sites eligible or conditionally eligible for leasing have been identified by the Aquaculture Lease Board, the Department will process those applications and if necessary conduct a Random Selection Process (RSP). This process will be used to determine a priority order for processing lease applications. The applicants that have sites that are conditionally eligible will have the option to either select an alternative eligible lease site, or choose to conduct a benthic

survey to refute the claims of natural clam productivity. If the results of the benthic survey find that the area in question is not naturally productive, the site may be leased. Should the site prove to be naturally productive, the applicant may either select an alternative eligible lease site, or choose not to participate in the Lease Program.

Those sites that have been selected will then be surveyed by a licensed land surveyor and an accurate survey of each lease boundary will be prepared. The first annual rental fee will be due upon signing of the lease by the applicant. Once the lease is issued the lessee must file a memo of the lease in the Office of the Suffolk County Clerk. Subsequent to the issuance and filing of the lease, it is the responsibility of the lessee to obtain all state or federal permits required to conduct shellfish aquaculture. In order to maintain a lease, a lease holder must file a Shellfish Aquaculture Lease Program Annual Report form with the Department, along with payment of the annual lease rental fee.

The specific lease application process for TMAUAs, private oyster grants, and “new” leases is shown in Figures 1, 2, and 3, respectively.

Figure 1. TMAUAs in the Lease Program

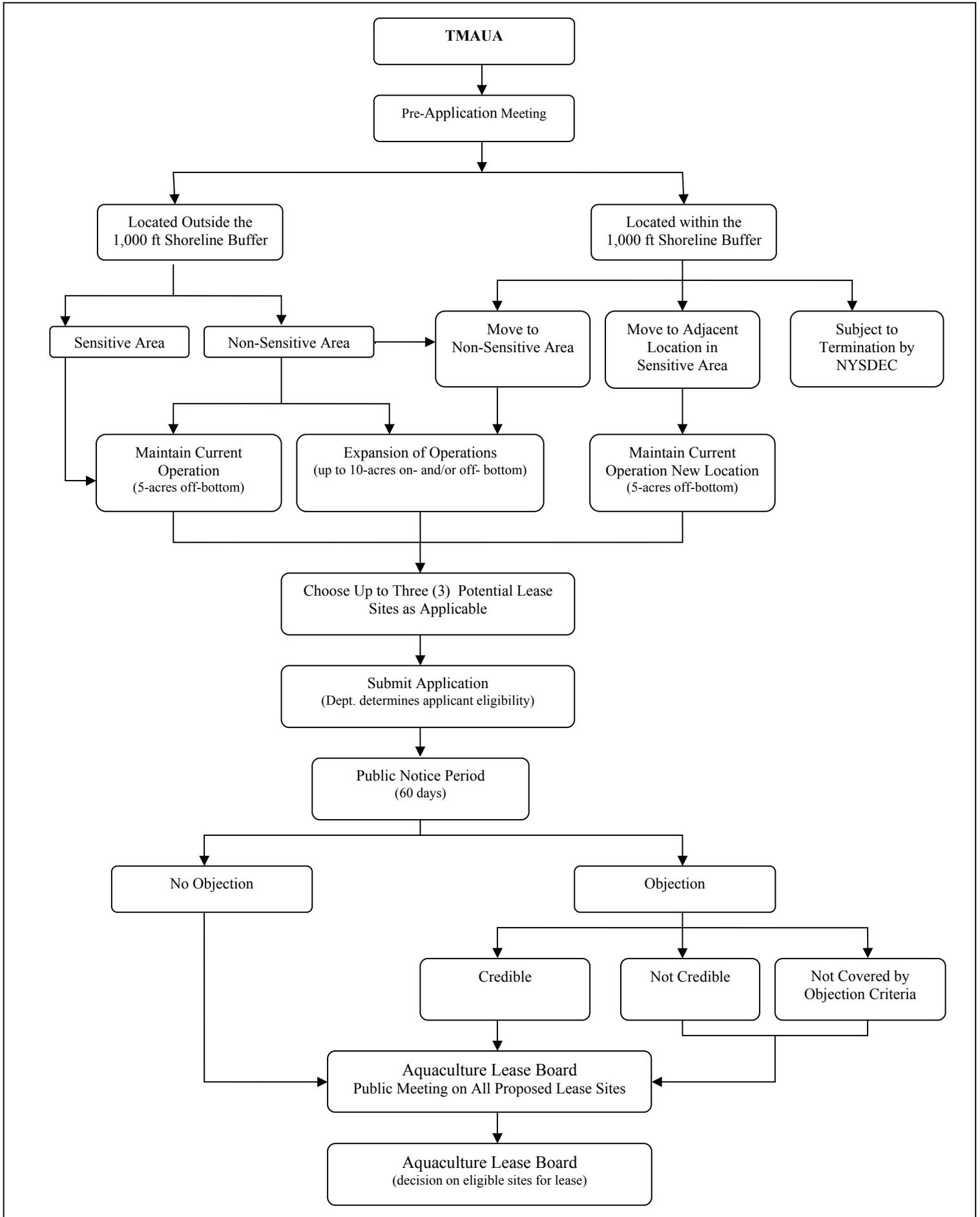


Figure 1. TMAUAs in the Lease Program (continued)

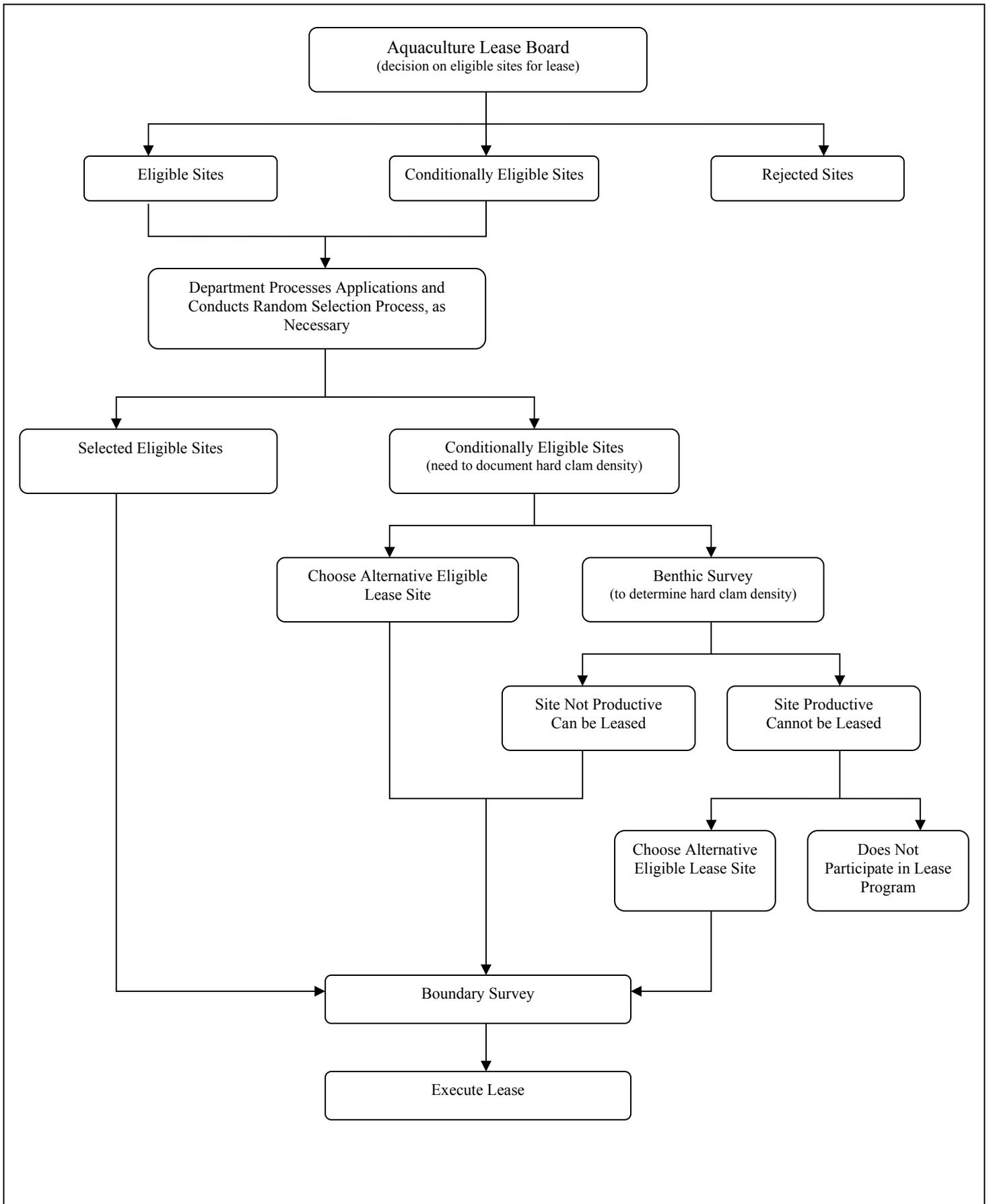


Figure 2. Private Oyster Grants in the Lease Program

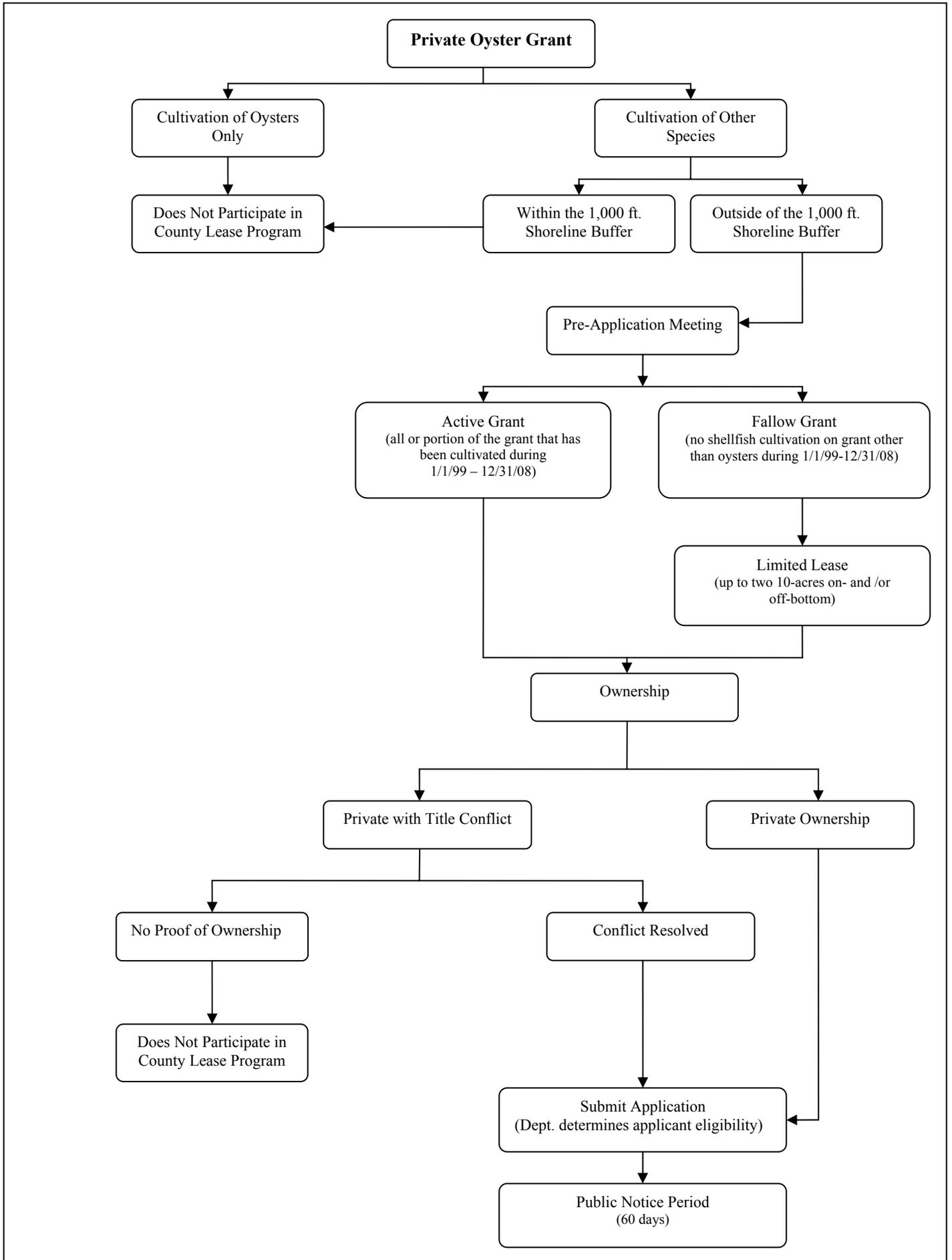


Figure 2. Private Oyster Grants in the Lease Program (continued)

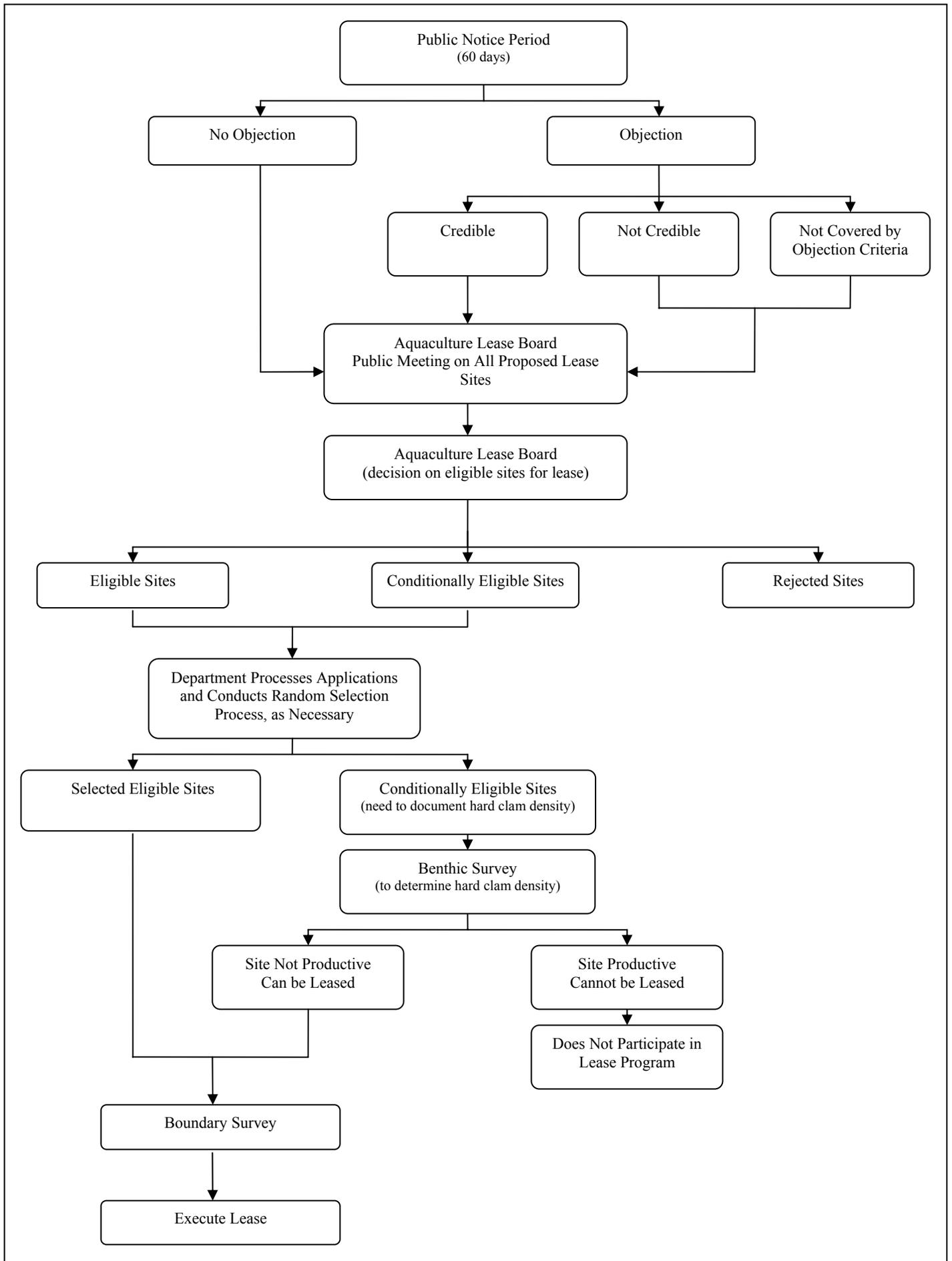


Figure 3. "New" Leases in the Lease Program

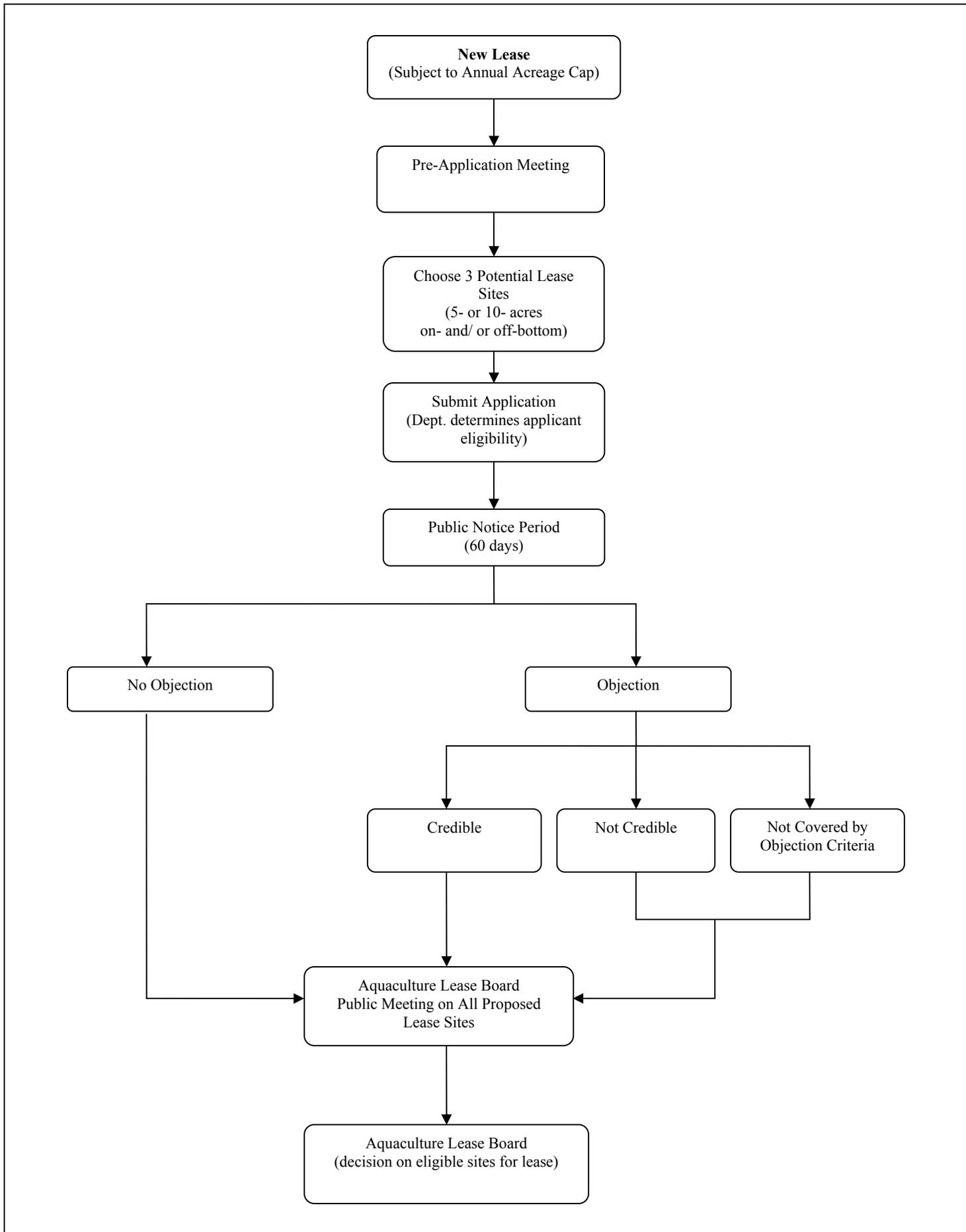
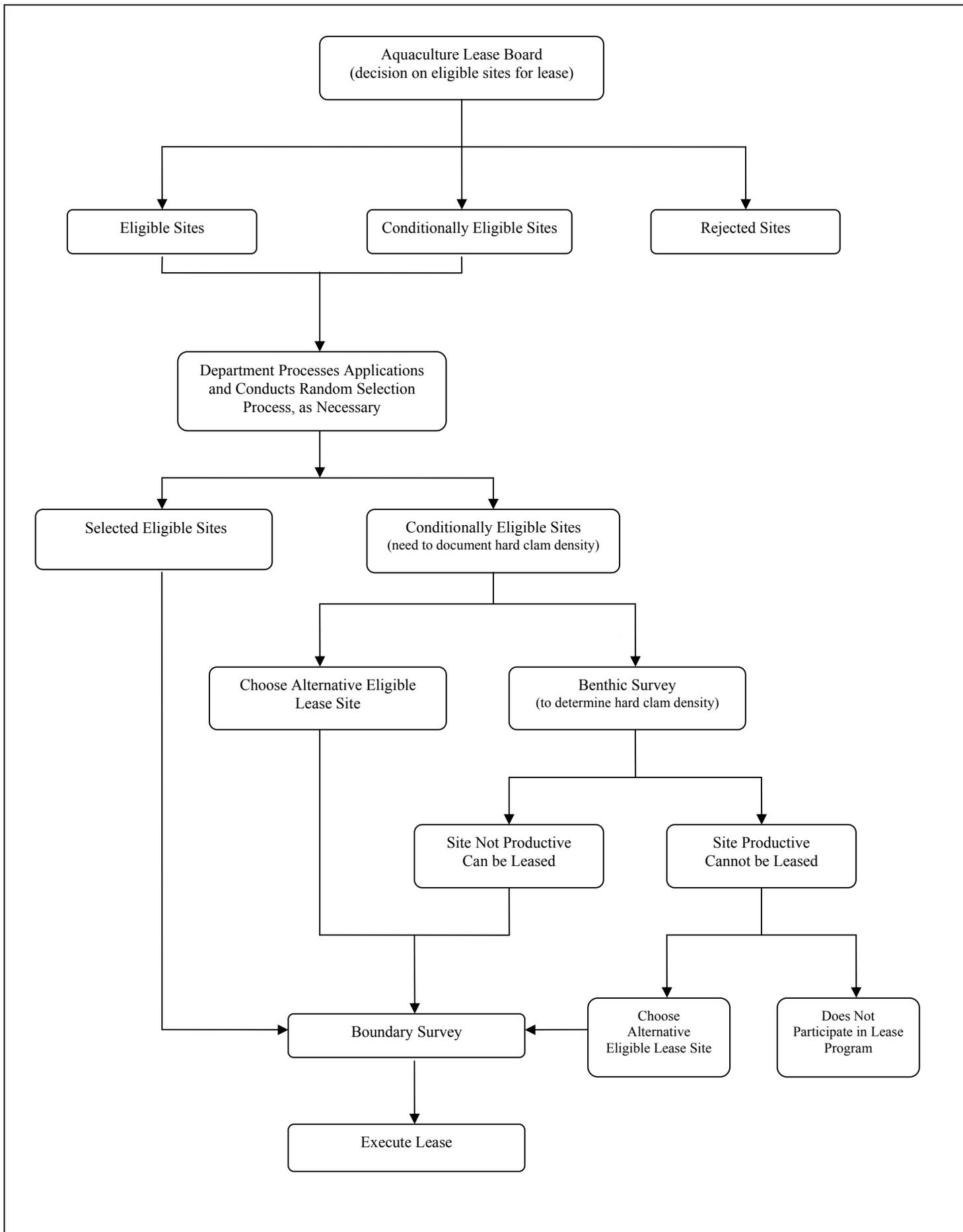


Figure 3. "New" Leases in the Lease Program (continued)



4.4.2 Model Lease

The Model Lease Agreement shown in *Administrative Guidance*, Appendix A, will be used to prepare the actual shellfish aquaculture leases that convey the right to conduct shellfish aquaculture activities on underwater lands owned by Suffolk County in Peconic Bay and Gardiners Bay. Such leases executed by the County and shellfish farmers are in essence, the formal operational link between the concepts and details found in the *Administrative Guidance* and Lease Program implementation.

Actual leases issued under the Suffolk County Shellfish Aquaculture Lease Program shall be substantially the same as the Model Lease, but changes may be made subject to the approval of the County Attorney. Therefore, actual leases entered into by the County may differ from the Model Lease.

A general summary of Model Lease provisions is contained in the following two tables. Table 3, entitled “General Summary of the Model Lease and Lessee’s Responsibilities,” includes generalized statements relating to the lease requirements as per the appropriate lease provisions. Table 4 is entitled “General Summary of Benefits to Lessee under the Model Lease,” and contains generalized statements relating to lease provisions that benefit the lessee.

Please note that these generalized summaries are for informational purposes only, and are **not** intended to be relied upon in entering into a lease, or to be a full description of actual lease terms and conditions. These summaries in no way define, supplement or diminish a lessee’s or prospective lessee’s obligations and rights under an actual lease. A prospective lessee should fully apprise itself of all terms of an actual lease by referring directly to such document, not the Model Lease or the tables herein.

Table 3. General Summary of the Model Lease and Lessee’s Responsibilities

Lease Provision	Summary
2, 4	County grants lessee a Lease for a 10-year Term for the sole purpose of shellfish cultivation, subject to compliance with the Lease provisions and applicable laws and permits.
5	Lessee may request a renewal in writing no less than 90 days before the end of the Term.
7	Lessee may request relocation of Leased Premises, subject to conditions of Lease and Lease Program. County may require relocation for environmental or public policy reasons.
8	Lessee shall notify County in the event of a change in cultivation practices.
9.d.	Lessee shall pay the Annual Rental Fee, Additional Rent and other fees and payments as required.
10	Lessee shall pay charges, fees, taxes or assessments (Impositions) if imposed upon the County.
11, 12	These paragraphs specify the circumstances constituting an Event of Default and the County’s Remedies.
13	Lessee shall surrender and vacate the Premises in the event of Termination or Expiration.
15	Lessee shall remove all equipment and personal property upon the expiration or termination of the Lease. Equipment not removed shall be deemed abandoned.
16	Lessee may terminate the Lease at any time, subject to conditions in Lease.
17	Lessee shall conduct “Substantial Shellfish Aquaculture Activity” during the Lease Term, unless excused by a hardship exemption.
18	Lessee shall comply with requirements and restrictions of the Lease, the Lease Program, and all laws related to noise, lighting and night time activities.
19	Lessee shall comply with the annual reporting requirements.
20	Lessee shall comply with and pay all required costs associated with federal and state laws, and permitting and licensing requirements for buoys, markers and any other equipment and structures.
21.b.	Lessee shall comply with labeling requirements for equipment and other objects used on the Premises.
22.a.	Lessee shall comply with the Lease and the Lease Program requirements for the repair and/or replacement of damaged buoys or other equipment.
23	Lessee shall comply with Lease Program requirements relating to alterations to the property.
24	Lessee shall accept Leased Premises “AS IS.”

Table 3. General Summary of the Model Lease and Lessee’s Responsibilities

Lease Provision	Summary
25	Lessee shall assume the risk of loss for destruction of equipment or other personal property.
26	Lessee shall comply with all Lease requirements, Lease Program requirements, permit requirements and all applicable laws and regulations, at lessee’s sole expense.
27	Lessee may use and store hazardous materials only if necessary and customary for shellfish cultivation or boat operations. Lessee shall comply, with all laws and regulations relating to the safe handling, use, treatment, storage, transportation, and disposal of hazardous materials at lessee’s expense, shall handle such materials with due care, and shall report releases as required by law.
28	Lessee shall comply with the Lease prohibitions against creating liens or encumbrances on the leased premises without prior written approval by the County.
29	Lessee shall comply with the Lease prohibitions against pledging or using the Premises as security for credit or a loan without prior written approval by the County.
27.e.,30	Lessee shall indemnify, defend and hold the County harmless for any of Lessee’s acts, omissions or negligence associated with lessee’s use of the premises or with respect to hazardous materials. Refer to the paragraphs for more specific requirements.
31	Lessee shall comply with the County’s insurance requirements.
32	Lessee shall permit the County to monitor compliance and inspect the Premises.
33	This paragraph specifies Lessee's rights and remedy in the event of interference or the exercise of Eminent Domain.
34	Lessee shall comply with NYSDEC shellfish regulations related to harvesting in approved waters, and prohibitions against harvesting except in approved waters. County assumes no liability for classification of waters.
35	Lessee shall comply with the Lease Program requirements for the Assignment of a Lease. Assignment requires County approval.
36	Lessee shall comply with the Lease requirements for Subletting the Leased Premises. Subletting requires County approval.
38	Lessee shall comply with the County’s requirements for preapproval of any public statements to media or press releases relating to the Lease or Lessee’s operations. This provision does not preclude advertising of business operations or sale of products.
44	Lessee shall comply with the County’s requirements relating to disclosure of conflicts of interest and shall not engage in activities that are in conflict with the goals of the County.

Table 3. General Summary of the Model Lease and Lessee’s Responsibilities

Lease Provision	Summary
46	Lessee shall comply with the County’s prohibition against contracting between parties having close business or family relationships.
48	Lessee shall comply with County requirements relating to disclosure of any civil, criminal or administrative violations of law relating to any listed areas associated with this Lease.
53	Lessee shall comply with the requirements for recording the Lease, or a Memorandum of Lease, no later than 60 days after execution of the Lease.
Exhibit B	Lessee shall comply with disclosure and certification requirements regarding conviction for a criminal offense, and other County legislative requirements set forth in Exhibit B.
Exhibit C	Lessee’s notices shall comply with the notice requirements in Exhibit C.

Table 4. General Summary of Benefits to Lessee under the Model Lease

Lease Provision	Summary
2.b.	Lease for sole purpose of shellfish cultivation, for a 10-year Term.
5	Option to renew for another 10-year Term, in the County's discretion, subject to current annual rent fee at time of renewal.
7	Ability to relocate Leased Premises, subject to conditions. County may require relocation based on environmental and policy considerations.
8	Ability to change shellfish cultivation practices subject to notification to County and regulatory requirements.
14	May retain possession of Premises after the Term of the Lease expires, as long as an application for renewal is pending with the County.
16	May terminate the Lease at any time subject to Lease paragraphs 13 and 15, payment of amounts owed, removal of equipment, and any other applicable Lease Program requirements.
17.b.	May apply for hardship exemption if lessee has been unable to conduct Substantial Shellfish Aquaculture Activity. A hardship exemption is subject to County approval.
21.a.	May place equipment on the Premises during the Lease Term for the purpose of Shellfish Cultivation activities, subject to conditions in Lease.
22.b.	Except in emergencies, 15 days notice shall be given to lessee prior to the County's entry into the Premises to repair, replace, or remove damaged or defective buoys or other equipment.
24	In the event of a title defect associated with the premises, the Lease may be terminated or Lessee may request relocation.
33	Right to compensation for lessee's interest in the event that an award is made for a taking under a claim of Eminent Domain, and the right to terminate or request relocation of Lease.
34	The Lease may be terminated, or lessee may request a relocation of the Lease Premises at the Lessee's sole expense, in the event that NYSDEC changes the classifications of water within the Lease Premises and the Premises are no longer approved for harvesting shellfish.
35	The Lease may be assigned to others subject to the Lease requirements for approving Assignments.
36	The Leased Premises may be Sublet subject to the Lease requirement for subletting.

4.4.3 Fee Summary

For an initial lease, applicants must submit a lease application to the Department of Planning, along with a \$100 application fee. An application fee will also be required when applying for a lease renewal, expansion of acreage, relocation of the lease if not required by a governmental entity, and lease subletting or assignment. The required application fee for Shellfish Aquaculture Lease Program applications will not be applied towards the Annual Lease Rental Fee.

The lessee must pay an Annual Lease Rental Fee of \$200 plus \$5 per acre at the beginning of each year during a 10-year lease on public land. For private grant land owners, the lease rental fee would be \$200 per year during a 10-year lease. Upon the execution of the lease, the lessee would be responsible for filing a memo of lease with the Suffolk County Clerks Office. Filing a memo of lease would cost \$75 plus \$5 per page. Once the lease is executed and filed with the County Clerk, the lessee will need to obtain all permits required by the NYSDEC or any other regulatory agencies prior to conducting any shellfish cultivation on the lease site. The lessee will be responsible for all fees relating to those permits.

This page was intentionally left blank.

5.0 PROGRAM IMPLEMENTATION

5.1 Local Law

In order to fulfill the requirements set forth in the 2004 Leasing Law, Suffolk County must adopt by local law, regulations governing the conduct of this Lease Program. Included as Attachment B, Resolution No. 646-2009 formally establishes the *Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay* and sets forth the framework for program implementation. It contains the requirements imposed upon shellfish farmers, establishes applicable fees and rent, and outlines program enforcement and penalty guidelines. In addition, Resolution No. 646-2009 formally approves the Shellfish Cultivation Zone map thus establishing the official area in which leases may be issued. Authority has been given to the Suffolk County Department of Planning to administer and oversee the Lease Program and develop and maintain administrative guidance procedures (Attachment D).

5.2 Recommendations

5.2.1 Program Monitoring

The Lease Program includes a monitoring component in response to the recommendations of the Suffolk County Council on Environmental Quality and Suffolk County Legislature. Suffolk County intends to monitor any impacts (either beneficial or otherwise) associated with the Lease Program. The monitoring program will include the 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 small scale of shellfish aquaculture activity conducted on leases is not likely to cause widespread changes in water quality. However, the County will evaluate the on-going water quality monitoring program conducted by the Suffolk County Department of Health Services under the Peconic Estuary Program, and determine how it could be modified or supplemented in order to enable the detection of cumulative impacts, if any. Coordination with ongoing monitoring activities conducted under the Peconic Estuary Program will be essential.

Lease Program monitoring will also include oversight to assure that lessees are in compliance with the terms and provisions of their respective leases, and preparation of annual reports on the status of the program.

5.2.2 Underwater Land Ownership Conflicts

Suffolk County has had a long and complex history of underwater land management in the Peconic Estuary. The State of New York first ceded the submerged lands of Peconic and Gardiners Bays to Suffolk County in 1884. This action permitted Suffolk County to issue grants of underwater land to private individuals for the purpose of oyster culture. Throughout the years, amendments were made to the initial legislation which allowed for the increase in grant acreage and required modifications in the implementation and administration of

the program. The prolonged and dynamic nature of the oyster grant system has resulted in a complex ownership pattern within the Estuary, making effective and responsible management particularly difficult. It is the recommendation of the Lease Program, as stated in *Policy Guidance for Suffolk County on Shellfish Cultivation in Peconic and Gardiners Bays* (Suffolk County Department of Planning 2002), that the County should, when the opportunity arises, return private grant lands to public ownership. This goal may be achieved through a variety of methods with little or no cost to the County.

One requirement of the grant system that has been in place since its inception is that all grantees must pay all appropriate property taxes on granted underwater lands. Failure to do so would result in a tax default revocation of the property. Over the years, Suffolk County has taken title to much of the originally granted property through these procedures. It is recommended that when taxes on previously granted lands are not paid, and the redemption period has expired, the County should continue to take title to such lands and dedicate them for general County purposes. Those lands that return to the County, that are located in the Shellfish Cultivation Zone, as mapped, may then be subject to lease.

Throughout the history of grant issuance, primitive record keeping and unconventional real estate practices have led to various anomalies in ownership status. According to the *Underwater Land Title Search Data Report* (Suffolk County Department of Planning 2008), 15 grant parcels have some sort of title issue associated with them, while the ownership of six others is altogether unknown. The Lease Program does require clear title before a parcel can be leased, however, the County should take the initiative to gain rightful title to those parcels with unknown or clouded title indicating a possible ownership interest to the County. Once again, those lands that do return to public ownership, that are located within the Shellfish Cultivation Zone, as mapped, may then be subject to lease.

According to the 2006/2007 inventory of underwater land Peconic and Gardiners Bays, there are 555 oyster lots on 467 Suffolk County tax parcels. Ownership of these parcels is divided among various public and private entities. In an effort to simplify the management and administration of any property-based activity in the Estuary, measures should be taken to dissolve all parcel boundaries between common owners in order to merge adjoining land and reduce the overall number of lots.

5.3 Lease Boundary Survey

In accordance with *Administrative Guidance*, Chapter 2, section 2, an accurate survey of each shellfish aquaculture lease boundary will be prepared by a licensed land surveyor prior to lease issuance. This will occur during the preparation of shellfish aquaculture leases between the County (lessor) and prospective shellfish farmers (lessees) on sites within the Shellfish Cultivation Zone that have been approved by the Aquaculture Lease Board. Initial funding for survey work has been secured

pursuant to Res. No. 610-2008, which authorized Capital Project (CP) # 7180.111 *Survey of Shellfish Aquaculture Leases in Peconic Bay and Gardiners Bay*.

The objectives of CP # 7180.111 are to: a.) locate shellfish aquaculture lease boundaries in the field, i.e., on the water, and install appropriate marker buoys to identify the location of said boundaries; and b.) prepare survey maps showing the boundaries of the leases. The survey maps will ultimately be incorporated in the shellfish aquaculture lease document between the County and the shellfish farmer.

Preparation of surveys by a licensed land surveyor employed by Suffolk County will ease the transition of existing shellfish farmers into the Lease Program, encourage participation of new farmers in the lease application process, and help to meet the impending sunset deadline of December 31, 2010 in the 2004 Leasing Law. It will also foster the establishment of an accurate accounting of all shellfish leaseholds using modern technology, which will assist in the administration and maintenance of program mapping in the future.

5.4 Schedule

As stated in *Administrative Guidance*, Chapter 1, section 3, The Department of Planning will establish the timeframe for soliciting applications for shellfish aquaculture leases. During the initial period of Lease Program implementation, applications for leases will be solicited in the following order:

- Phase 1 - Applications from holders of permitted TMAUAs that involve the conversion of assignments to leases.
- Phase 2 - Applications from owners of active and fallow private oyster grants that request leases for the cultivation of shellfish species other than oysters on such grants.
- Phase 3 - Applications from shellfish farmers that request new leases subject to the annual acreage cap limit.

Note that during the transition period, shellfish farmers that apply for leases will be able to continue to operate under the same conditions as required by NYSDEC on- and off-bottom culture of shellfish permits until a decision is made on their respective lease applications (*Administrative Guidance*, Chapter 2, section 1). Also, those owners of fallow private oyster grants that do not participate in Phase 2, may elect to participate in the Lease Program in subsequent years after the start of Phase 3.

It is anticipated that after these initial phases are completed, there will be a more defined schedule where there will be one annual cycle for solicitation of new leases during each calendar year. The announcement of such cycle would occur in the month of January.

There is also a need to track the acreage in new leases that is subject to the annual acreage cap limit. For the purposes of administering the cap limit during the first 10 years of program implementation, the first lease year will begin on January 1 and end

on December 31 during the calendar year after the year in which the Lease Program is adopted by the County. The second through tenth lease years will follow in like fashion.

5.5 Anticipated Shellfish Aquaculture Uses on Leases

The Lease Program will provide an opportunity for people to obtain access to underwater lands for raising shellfish. However, the program does not control how the leases will be used for shellfish farm activities. The types of shellfish raised, harvesting methods and gear used, and other operational conditions, will be subject to permit approval by NYSDEC. Nevertheless, it is anticipated that shellfish farm uses on leases will be similar to those already conducted on TMAUAs and active grants. This section provides a description of the nature of shellfish farm uses likely to occur under the Lease Program, in terms of types of shellfish raised, sizes of shellfish farms and general operational methods.

The existing TMAUAs are generally used for the off-bottom culture of oysters. It is anticipated that new leases will be used in a similar way. Oysters are very amenable to culture in small scale operations, and have consistently maintained good market value. With off-bottom culture, shellfish are raised in cages or other containment structures which allow the oysters to filter surrounding water while protecting them from predation and loss. The cages are typically made of metal or plastic mesh; are stacked together and placed on the bay bottom; and are connected to a line and marker float to enable retrieval. The cages are periodically pulled to the surface by a small boat equipped with a power winch, and the oysters are checked, sorted and removed if of harvestable size. The cages are then cleaned of marine growth and fouling before they are returned to the bottom.

The typical off-bottom culture oyster farm would use about 100 shellfish cages (5 feet long by 3 feet wide and 4 feet high.) There would be about 12 smaller mesh containers or bags within each cage to hold the shellfish. The farm would have a total of approximately 1,200 shellfish bags. About 80 cages would be used for holding larger size oysters, and about 20 cages would be used for holding seed oysters. With approximately 150 marketable oysters per bag and 500 seed oysters per bag, the typical farm would have about 265,000 oysters on the lease site at any one time.

Maintenance of the farm would be done with a small boat, in the 18 to 40 foot range. One to three people would be required for the work, several days per week during the busy periods. Farm operations would be minimal in the cold months from January to April, but would be more active during the shellfish growing season from spring to autumn. Several times per week, oysters would be removed from the cage and marketed to wholesalers and distributors. In some cases product is directly marketed to restaurants and retail outlets.

If 50 typical off-bottom culture farms were in operation under this program, over 13 million oysters would be managed on these farms at any one time, and up to 150

people could be directly employed full- or part-time. Additional employment would be generated in the distribution and marketing sectors of the shellfish economy.

Although most of the activity in the first five years after the start of Lease Program implementation is anticipated to be oyster culture, some of the leases may be used for other shellfish aquaculture activities. Some TMAUAs have been used for clam relay purposes, in which clams harvested from uncertified waters are held in cages temporarily until they are purified and marketable, under NYSDEC coordinated programs. Maintenance and retrieval of clam cages would be comparable to that performed for oyster culture. It is anticipated that some of the shellfish farmers will experiment with growing other species in cages, such as scallops. However, that activity is expected to be minor at least for the first five years of the program.

A small number of grant owners currently use on-bottom culture for raising shellfish, and this activity is expected to continue under the Lease Program. With on-bottom culture, shellfish are placed directly on or in the bay bottom where they grow and remain until harvest. On-bottom culture is typically used for both oysters and hard clams. The on-bottom culture activities of grant owners are expected to continue under the program. Expansion of activities to include new species or additional underwater lands within grants may occur, but such modifications would be subject to NYSDEC review and permit requirements. Owners of grants that are considered fallow, as defined in this program, may also apply for a lease, subject to review and approval under the program and NYSDEC permit process. Given that the time required to obtain permits, purchase gear and set up a shellfish farm can be lengthy (up to several years), it is not expected that there will be any sudden substantial increase in the amount of on-bottom culture beyond that which is already occurring, but a more gradual increase depending on market conditions and participant interest. The 10-acre size limit on new leases on fallow grants is likely to discourage any major expansion of on-bottom culture of shellfish in the bays during the first five years of the program.

In summary, what is expected to occur in the first five years of the program is a modest expansion of small scale shellfish farms in the Shellfish Cultivation Zone. This expansion will be comprised of:

1. Conversion of TMAUAs into the Lease Program, with operations similar to those that now exist, but with some expansion of individual operations due to the added security of investment provided by the program compared to the year-by-year renewal arrangement of the TMAUAs. Some TMAUAs holders may increase the number of cages, or experiment with other species of shellfish, but the general size and operation of the facilities are expected to be essentially unchanged.
2. Owners of active grants are expected to continue their operations under the Lease Program. There may be some expansion in terms of area farmed, number of shellfish cultured, and types of species farmed, but no major changes are anticipated.

3. The Lease Program provides some incentive to resume shellfish aquaculture on fallow grants. Acquisition of permits and approvals, and farm start-up activities will take significant time, so no substantial increase in shellfish farming on fallow grants is anticipated early in the program. Several fallow grants may become active on 10-acre lease plots obtained under the program.
4. New leases for 5- or 10-acre plots issued under the 300-acre limit during the first five years of the program will be used for small shellfish farm operations. These are anticipated to be primarily off-bottom culture operations for oysters dispersed throughout the Shellfish Cultivation Zone, and are expected to be similar to those permitted now in the TMAUA program.

The County Lease Program also has a provision for allowing non-commercial leases, i.e., experimental/educational and resource restoration leases. These leases must also be located in the Shellfish Cultivation Zone. The intent of this provision is to provide a means for obtaining access for aquaculture technology development, habitat evaluation, and educational purposes. Requests for non-commercial leases may come from private interests, as well as government agencies, universities, conservation organizations and municipalities. Although it is anticipated that there will be some interest in establishing these leases, it is anticipated that only a small number will be issued during the first several years of the Lease Program. The exact size and type of operations cannot be predicted at this time, because of the nature of the proposed lease use will depend on the specific request of the applicant.

Shellfish operations on leases issued under the program will generally not be apparent to the casual observer of the estuary from the shoreline. All equipment, such as shellfish cages, will be below the surface of the water. Any markers used by the farms for equipment will be over 1,000 feet from the shoreline, so they will not be easily noticed. Most of the shellfish handling and sorting operations will be done by small boat at the farm site, so they will not be near the shoreline. There will be an increase in shore side support facilities committed to aquaculture operations, such as docking for farm vessels and transport of farmed shellfish from the dock to markets, but this activity is expected to blend in with the commercial fishing and shellfishing operations already underway in the area. Boaters will observe an increase in marker buoys at farm sites, but they may not be readily distinguishable from other markers already present in the bay that are used for conch pots, fish traps and other commercial fishing activities. Overall, the Lease Program is expected to bring about subtle growth of the shellfish aquaculture industry, the extent of which will be largely dependent on market conditions and interest by individuals and organizations willing to commit time and investment to developing small scale aquaculture businesses.

6.0 REFERENCES

Cashin Associates, P.C. September 22, 2008. Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay - Generic Environmental Impact Statement of Findings. Contract report prepared for Suffolk County Department of Planning. Hauppauge, NY. 22 pp.

Cashin Associates, P.C. September 3, 2008. Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay - Final Generic Environmental Impact Statement. Contract report prepared for Suffolk County Department of Planning. Hauppauge, NY. 61 pp. and 8 appendices.

Cashin Associates, P.C. March 19, 2008. Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay - Draft Generic Environmental Impact Statement. Contract report prepared for Suffolk County Department of Planning. Hauppauge, NY. 345 pp.

Suffolk County Department of Planning. 2008. Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay: Underwater Land Title Search Data Report. Hauppauge, NY. 33 pp.

Suffolk County Department of Planning. 2003. Survey Plan for Shellfish Cultivation Leasing in Peconic and Gardiners Bays. Hauppauge, NY. 42 pp.

Suffolk County Department of Planning. 2002. Policy Guidance for Suffolk County on Shellfish Cultivation in Peconic and Gardiners Bays. Report of the Suffolk County Aquaculture Committee. Hauppauge, NY. 82 pp.

The Nature Conservancy. 2002. Final Report - Peconic Bays Aquaculture Advisory Committee. East Hampton, NY. 16 pp.

**ATTACHMENT A
2004 LEASING LAW**

Effective: September 14, 2004

McKinney's Consolidated Laws of New York Annotated [Currentness](#)

Environmental Conservation Law [\(Refs & Annos\)](#)

Chapter 43-B. Of the Consolidated Laws [\(Refs & Annos\)](#)

[Article 13](#). Marine and Coastal Resources [\(Refs & Annos\)](#)

[Title 3](#). Marine Fisheries [\(Refs & Annos\)](#)

→ **§ 13-0302. Lands underwater of Gardiner's and Peconic bays**

1. Underwater lands ceded to county of Suffolk. All the right, title and interest in which the people of the state of New York have in and to the lands under water of Gardiner's and Peconic bays in the county of Suffolk, except underwater lands within one thousand feet of the high water mark is hereby ceded to such county, for the purposes of shellfish cultivation, to be managed and controlled by such county, provided that such lands shall revert to the state when they shall cease to be used for shellfish cultivation. For the purposes of this section, the term "Gardiner's and Peconic bays" shall mean the waters of Gardiner's and Peconic bays and the tributaries thereof between the westerly shore of Great Peconic bay and an easterly line running from the most easterly point of Plum island to Goff point at the entrance of Napeague harbor.

2. Ratification. The grant of lands under the waters of Gardiner's and Peconic bays, by the commissioners of shell fisheries, in accordance with the provisions of chapter 385 of the laws of 1884, as amended, subsequently held and used by the grantees, heirs, successors, and assigns on which all taxes and assessments have been paid, are hereby ratified and confirmed. Any underwater lands in Gardiner's and Peconic Bays previously granted that revert or escheat to the state or are subject to tax deed by the county of Suffolk shall be available to the county for leasing pursuant to this section. All other lands under such waters, which pursuant to such chapters, have escheated or reverted to the state, are hereby ceded to Suffolk county for the purposes of the cultivation of shellfish, subject to existing valid grants and easements; provided however, that nothing in this section shall interfere with the right of the commissioner of general services to grant lands and easements under water to owners of adjacent uplands, pursuant to the provisions of the public lands law, or of the legislature to make such grants without regard to upland ownership, and to grant franchises to utilities, municipalities and governmental, educational, or scientific bodies for cables, outfalls, ecological studies, and experimentation with controlled marine life.

3. Leases. Suffolk county may lease lands under water ceded to it by the state for the purpose of shellfish cultivation. Provided if no such leases have been executed by December thirty-first, two thousand ten, such authority to lease pursuant to this section shall terminate.

a. Leases may be issued only within areas designated as shellfish cultivation zones on a map or maps to be prepared and approved by the county of Suffolk.

b. No lease shall be granted except upon written application on forms furnished by the county of Suffolk, and properly executed and signed by the applicant.

c. Before a lease is approved, notice shall be provided for at least two months by posting such notice at the bureau of marine resources in the department, the office of the county clerk, and the office of the town clerk in which all or any part of the lands to be leased are located. 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.

4. Establishment of shellfish cultivation zones. Before leasing or using the lands hereby ceded to it, the county of Suffolk shall cause an accurate survey to be made of such lands, and a map or maps to be prepared therefrom. Such map or maps shall establish shellfish cultivation zones within Gardiner's and Peconic bays. Such map or maps shall be approved by local law. After such map or maps have been adopted, the county shall have the authority to issue leases for shellfish cultivation within the shellfish cultivation zones, as provided herein. Such map or maps shall be updated by the county of Suffolk every five years.

a. Underwater lands within one thousand feet of the high water mark shall not be included in a shellfish cultivation zone.

b. Underwater lands where bay scallops are produced regularly and harvested on a commercial basis shall not be included in a shellfish cultivation zone.

c. 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 shall not be included in a shellfish cultivation zone.

d. Underwater lands where the leasing will result in a significant reduction of established commercial finfish or crustacean fisheries shall not be included in a shellfish cultivation zone.

5. Regulations. The county shall, by local law, before leasing any such underwater lands, adopt regulations governing:

a. applications for leases;

b. notices to be given;

c. the form and terms of leases;

d. standards for the approval or denial of leases;

e. administration of leases;

f. the transfer or renewal of leases;

g. marking grounds and testing;

h. fees;

i. recording of leases;

j. bonds; and

k. such other matters as are appropriate to the leasing program.

6. Department authority. Notwithstanding any of the provisions of this section:

a. any person engaging in the cultivation or harvesting of shellfish in a shellfish cultivation zone pursuant to this

section shall obtain a permit in accordance with [section 13-0316](#) of this title; and

b. the department shall regulate and control the use of certain types of vessels and equipment for harvesting shellfish, requirements for reseeding, the right to enter upon such leased lands for reseeding or making shellfish population surveys, and enforce all other applicable state laws relating to said underwater lands.

7. Duties of the county clerk. Leases issued pursuant to this section shall be recorded in the office of the county clerk in the manner and form to be determined by local law as provided in subdivision five of this section.

8. Summary proceedings. Upon the failure of a lessee to pay the rental on any date due under the terms of the lease or upon revocation as provided for by local law pursuant to subdivision five of this section, the county may, after written notice to the lessee declare the lease cancelled as of the date set forth in such notice, and may immediately thereafter evict the lessee from such lands. The provisions of article seven of the real property actions and proceedings law shall apply and govern the procedure in such case.

9. Disposition of fees and rents. All fees and rents received shall be deposited into the general fund of the county. However, in the alternative, nothing shall prohibit the county of Suffolk, by local law, from establishing a special fund for the promotion of aquaculture where such fees and rents shall be deposited.

CREDIT(S)

(Added [L.2004, c. 425, § 3, eff. Sept. 14, 2004.](#))

HISTORICAL AND STATUTORY NOTES

2006 Main Volume

L.2004, c. 425 legislation

L.2004, c. 425, §§ 1, 2, 4, provide:

“§ 1. Legislative findings. Pursuant to chapter 385 of the laws of 1884, as amended, and chapter 990 of the laws of 1969, the legislature ceded to the county of Suffolk the underwater lands of Gardiner's and Peconic bays as described in such chapters and provided for a statutory framework whereby the business of cultivating shellfish could be managed and regulated. Chapter 990 of the laws of 1969 gave the county of Suffolk the right to lease such underwater lands to persons engaged in shellfish cultivation. Such chapter also ratified and confirmed the title to underwater land grants pursuant to chapter 385 of the laws of 1884, as amended, in which taxes had been paid.

“After more than thirty years, the county of Suffolk still has not undertaken a leasing program to persons cultivating shellfish as was intended by chapter 990 of the laws of 1969. Such a program has not been established in spite of the fact that the potential economic benefits from promoting aquaculture to the county of Suffolk and the state of New York are substantial.

“A leasing program has not been enacted by the county of Suffolk because a shellfish cultivation program as permitted by the provisions of chapter 990 of the laws of 1969 would be too costly and cumbersome to implement. The failure to undertake an aquaculture leasing program for these underwater lands in Gardiner's and Peconic bays has resulted in adverse economic impacts and the loss of economic opportunity for the region.

“The county of Suffolk has worked diligently to study ways to foster shellfish cultivation in Gardiner's and Peconic

bays. By Resolution 487-2001, Suffolk county established a fourteen member Suffolk county aquaculture committee. In June 2002 such committee issued a report entitled "Policy Guidance for Suffolk County on Shellfish Cultivation in Peconic and Gardiner's Bays". Such report made recommendations on policy issues relating to the lease of underwater lands for the cultivation of shellfish.

"Based upon such report, Suffolk county approved Resolution 1229-2002 which directed the county's agencies to prepare a more specific survey plan for shellfish cultivation leasing in Peconic and Gardiner's bays. Such report was completed in April 2003. Such report, prepared by the county addresses policy issues related to shellfish cultivation, and identified several changes to state law, specifically chapter 990 of the laws of 1969, which would be required to implement a successful shellfish cultivation leasing program. Suffolk county, by Scnsc Resolution 39-2003 requested that the state make such legislative amendments. In addition, in July 2001, the Nature Conservancy of Long Island formed the Peconic Bay Aquaculture Advisory Committee to study and make recommendations with regard to the numerous issues involved in establishing a viable and environmentally sustainable aquaculture program in the Peconic region. This advisory committee identified eighteen specific recommendations for the aquaculture program. Those recommendations are incorporated as part of the the findings of this act. Such recommendations will be critical to the success of the county's shellfish cultivation leasing program.

"It is the purpose of this act to amend the existing law regarding the leasing of underwater lands in Gardiner's and Peconic bays in order to foster the establishment and obtain the economic benefits of a shellfish cultivation leasing program consistent with established conservation principles. It is also the purpose of this act to ratify, confirm, and clarify the rights to cultivate shellfish underwater land grants issued under previous statutes.

"§ 4. Effect of other laws. Any provision of chapter 385 of the laws of 1884, as amended, or any other general or special law to the contrary notwithstanding, this act shall be controlling, but all other provisions of such laws, specific, general, or special, not inconsistent herewith shall remain in full force and effect."

"§ 2. Chapter 990 of the laws of 1969, relating to ceding lands under water of Gardiner's and Peconic bays to Suffolk County and to the management of such lands for the cultivation of shellfish, is REPEALED."

McKinney's E. C. L. § 13-0302, NY ENVIR CONSER § 13-0302

Current through L.2009, chapters 1 to 14, 16, 17 and 50 to 56.

Copr (c) 2009 Thomson Reuters.

END OF DOCUMENT

ATTACHMENT B
RESOLUTION NO. 646-2009

Intro. Res. No. 1546-2009

Laid on Table 6/9/2009

Introduced by Presiding Officer, on request of the County Executive and Legislators
Schneiderman, Browning, Losquadro, Alden

**RESOLUTION NO. 646 -2009, ADOPTING LOCAL LAW
NO. 25 -2009, A LOCAL LAW ESTABLISHING THE SUFFOLK
COUNTY SHELLFISH AQUACULTURE LEASE PROGRAM IN
PECONIC BAY AND GARDINERS BAY**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on June 9, 2009, a proposed local law entitled, "**A LOCAL LAW ESTABLISHING THE SUFFOLK COUNTY SHELLFISH AQUACULTURE LEASE PROGRAM IN PECONIC BAY AND GARDINERS BAY;**" now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

**LOCAL LAW NO. 25 -2009, SUFFOLK COUNTY, NEW YORK
A LOCAL LAW ESTABLISHING THE SUFFOLK COUNTY
SHELLFISH AQUACULTURE LEASE PROGRAM IN PECONIC
BAY AND GARDINERS BAY**

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK, as follows:

Section 1. Legislative Intent.

This Legislature finds that New York State ceded all rights, title and interest to certain underwater lands of Peconic and Gardiners Bays formerly owned by the People of the State of New York to the County for purposes of Shellfish Cultivation, under New York Environmental Conservation Law §13-0302.

This Legislature finds that New York Environmental Conservation Law §13-0302 requires adoption of a local law in order to establish the Suffolk County Shellfish Aquaculture Lease Program for the underwater lands in Peconic and Gardiners Bays.

This Legislature further finds that since 1884, New York State has repeatedly attempted to establish a statutory framework whereby the business of cultivating shellfish could be fostered and managed.

This Legislature finds that in New York Environmental Conservation Law §13-0302, it was found that failure to undertake an Aquaculture leasing program for the underwater lands in Gardiners and Peconic Bays resulted in adverse economic impacts and the loss of economic opportunity for the region, and that New York Environmental Conservation Law §13-0302 was adopted in order to eliminate impediments, foster the establishment and obtain the economic benefits of a Shellfish Aquaculture lease program consistent with established conservation principles.

This Legislature finds and agrees that there will be potential economic benefits from the Suffolk County Shellfish Aquaculture Lease Program, including:

- Provision of additional opportunity for commercial fisherman to maintain their economic viability;
- An increase in employment in shellfish cultivation and marine related industries;
- Provision of income from sale of shellfish and increased sales tax revenue to the County.

This Legislature finds that the County's Shellfish Aquaculture Lease Program is consistent with established conservation principles and will provide water quality and environmental benefits to the County and its residents, such as:

- Augmenting the spawning potential of native shellfish populations;
- Exerting a positive influence on water quality by helping to control nutrient cycling and preventing noxious plankton blooms;
- Providing increased substrate for both flora and fauna on bottom structures.

This Legislature finds that the Suffolk County Shellfish Aquaculture Lease Program will provide cultural benefits, by strengthening the historic tradition of shellfishing in Suffolk County waters.

This Legislature finds that the Suffolk County Shellfish Aquaculture Lease Program will provide the additional public benefit of increasing access to underwater lands in the Peconic and Gardiners Bays for raising shellfish, while minimizing conflicts with commercial fishermen and other bay users.

This Legislature finds that the Suffolk County Shellfish Aquaculture Lease Program was developed by the Department of Planning with extensive input from the Aquaculture Lease Program Advisory Committee (ALPAC), established by Suffolk County Executive Orders No. 44-2005 and 45-2005, government officials, experts and the public, over a period of 4 years.

This Legislature finds that the Suffolk County Shellfish Aquaculture Lease Program was reviewed pursuant to the State Environmental Quality Review Act, New York Environmental Conservation Law Article 8 (SEQRA) as a Type I action, that a positive declaration was issued, and that a Draft and Final Generic Environmental Impact Statement were prepared.

This Legislature finds that the SEQRA process was completed by adoption of Res. No. 1028-2008, Adopting the State Environmental Quality Review Act Statement of Findings for the Final Generic Environmental Impact Statement on the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay.

This Legislature finds that the Suffolk County Shellfish Aquaculture Lease Program, as adopted herein, fully complies with the requirements of New York Environmental Conservation Law §13-0302.

Therefore, the purpose of this law is to establish the Suffolk County Shellfish Aquaculture Lease Program in a manner which complies with New York Environmental Conservation Law §13-0302, SEQRA and applicable laws concerning Shellfish Aquaculture.

Section 2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

- A.) Administrative Guidance: The document entitled "Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay Administrative Guidance," dated May 20, 2009, prepared by the Department, incorporated by reference and made a part hereof as Exhibit A, as adopted herein and as may be amended from time to time. The Administrative Guidance contains administrative procedures and forms for implementation of the Suffolk County Shellfish Aquaculture Lease Program and directives for conducting Shellfish Aquaculture under the Program.
- B.) 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.
- C.) Aquaculture: Shellfish cultivation for human use, consumption and resource restoration.
- D.) Aquaculture Lease Board: A board established by this local law to determine which proposed lease sites within the Shellfish Cultivation Zone will be eligible for leasing.
- E.) Department: Suffolk County Department of Planning.
- F.) Director: The Director of the Suffolk County Department of Planning.
- G.) Person: Individuals, corporations of all types, partnerships, joint ventures, associations, trusts, educational institutions, governments, trusts, trustees, and any other lawful entity.
- H.) 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.
- I.) Shellfish: Oysters, scallops, and all kinds of clams and mussels.
- J.) Shellfish Aquaculture Lease ("Lease"): The document that conveys a leasehold interest and the right to conduct Shellfish Aquaculture activities on Suffolk County owned underwater lands in Gardiners and Peconic Bays.
- K.) Shellfish Cultivation: 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 of Suffolk, New York State Fish and Wildlife Law (New York Environmental Conservation Law Article 11), and other applicable Federal, State and local laws and regulations. Shellfish Cultivation is the equivalent of Shellfish Aquaculture.
- L.) Shellfish Cultivation Zone: The area in Peconic Bay and Gardiners Bay within which Shellfish Aquaculture leases can be issued by the County of Suffolk. These areas are shown on the Shellfish Cultivation Zone Map adopted herein.
- M.) Shellfish Cultivation Zone Map: The map, dated May 20, 2009, prepared by the Department and the Suffolk County Department of Environment and Energy, depicting the Shellfish Cultivation Zone, incorporated by reference and made a part hereof as Exhibit B, as adopted herein and as may be amended from time to time.

- N.) Substantial Shellfish Aquaculture Activity: A good faith effort to prepare an aquaculture site; acquire financing, permits, equipment and/or seed; plant, cultivate, or harvest cultivated product; or other shellfish aquaculture-related activity related to a Shellfish Aquaculture lease.
- O.) Suffolk County Shellfish Aquaculture Lease Program: The program established herein for conveyance of Shellfish Aquaculture Leases, and all written County policies, as amended, concerning the Program, including, without limitation, this law and the Administrative Guidance.
- P.) Temporary Marine Area Use Assignment (TMAUA): An approval document issued by the New York State Department of Environmental Conservation for use of a circular parcel of underwater land with a diameter of 500 feet (approximately five acres) for the purposes of Shellfish Cultivation. All TMAUAs are for temporary use only, expiring on December 31 of the year issued.

Section 3. Acceptance of Underwater Lands in Peconic and Gardiners Bays.

- A.) The County of Suffolk hereby accepts from the State of New York all the right, title and interest in which the people of the State of New York have in and to the lands under water of Gardiners (a/k/a Gardiner's) and Peconic Bays in the County of Suffolk, except underwater lands within one thousand feet of the high water mark, as ceded to the County of Suffolk by New York Environmental Conservation Law §13-0302 (L. 2004, c. 425), subject to all terms and conditions thereof, for the purposes of shellfish cultivation, to be managed and controlled by the County of Suffolk, provided that such lands shall revert to the State of New York when they shall cease to be used for shellfish cultivation. Gardiners (a/k/a Gardiner's) and Peconic Bays shall mean the waters of Gardiners (a/k/a Gardiner's) and Peconic Bays and the tributaries hereof between the westerly shore of Great Peconic Bay and an easterly line running from the most easterly point of Plum Island to Goff Point at the entrance of Napeague Harbor.
- B.) In New York Environmental Conservation Law §13-0302 (L. 2004, c. 425), the State of New York ratified and confirmed the grant of lands under the waters of Gardiners (a/k/a Gardiner's) and Peconic Bays, by the New York State Commissioners of Shell Fisheries, in accordance with the provisions of chapter 385 of the laws of 1884, as amended, subsequently held and used by the grantees, heirs, successors, and assigns on which all taxes and assessments have been paid. The State of New York also provided that any underwater lands in Gardiners (a/k/a Gardiner's) and Peconic Bays previously granted that revert or escheat to the State of New York or are subject to tax deed by the County of Suffolk shall be available to the County of Suffolk for leasing, pursuant to New York Environmental Conservation Law §13-0302 (L. 2004, c.425). The County of Suffolk hereby accepts from the State of New York all the right, title and interest in which the people of the State of New York have or shall have in and to such lands described in this Subsection 3(B) and in New York Environmental Conservation Law §13-0302(2) (L. 2004, c.425).
- C.) Pursuant to New York Environmental Conservation Law §13-0302 (L. 2004, c. 425), all lands other than those described in Subsection 3(B) hereof under the waters of Gardiners (a/k/a Gardiner's) and Peconic Bays, which have escheated or reverted to the State of New York were ceded to the County of Suffolk for the purposes of the cultivation of shellfish, subject to existing valid grants and easements; provided however, that

nothing in New York Environmental Conservation Law §13-0302 shall interfere with the right of the New York State Commissioner of General Services to grant lands and easements underwater to owners of adjacent uplands, pursuant to the provisions of the public lands law, or of the New York State Legislature to make such grants without regard to upland ownership, and to grant franchises to utilities, municipalities and governmental, educational, or scientific bodies for cables, outfalls, ecological studies, and experimentation with controlled marine life. The County of Suffolk hereby accepts from the State of New York all the right, title and interest in which the people of the State of New York have in and to such lands described in this Subsection 3(C) and in New York Environmental Conservation Law §13-0302(2) (L. 2004, c. 425).

- D.) The Director, in consultation with the County Attorney, is hereby authorized, empowered and directed to take any and all steps necessary to protect the County's interest in the land accepted by this law.

Section 4. Establishment of the Suffolk County Shellfish Aquaculture Lease Program.

- A.) There is hereby established the Suffolk County Shellfish Aquaculture Lease Program, in order to foster shellfish aquaculture and restore and conserve the natural resources in Peconic and Gardiners Bays, and to implement the leasing program authorized by § 13-0302 of the New York Environmental Conservation Law.
- B.) Under the Suffolk County Shellfish Aquaculture Lease Program, the County of Suffolk may issue leases to underwater lands within the Shellfish Cultivation Zone for the purpose of shellfish aquaculture.
- C.) The Suffolk County Shellfish Aquaculture Lease Program shall be implemented in compliance with this law and New York Environmental Conservation Law §13-0302, notwithstanding any provision of the New York County Law or the Suffolk County Administrative Code or any other provisions to the contrary.
- D.) The Suffolk County Shellfish Aquaculture Lease Program shall be implemented in accordance with the conditions, thresholds and criteria adopted in Res. No. 1028-2008, Adopting the State Environmental Quality Review Act Statement of Findings for the Final Generic Environmental Impact Statement on the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay, and the Final Generic Environmental Impact Statement.
- E.) The Suffolk County Shellfish Aquaculture Lease Program shall be implemented in accordance with the New York State Fish and Wildlife Law (New York Environmental Conservation Law Article 11) and the New York Navigation Law.

Section 5. Requirements.

- A.) Prior to commencement of shellfish aquaculture on the underwater lands subject to the Suffolk County Shellfish Aquaculture Lease Program, any person conducting shellfish aquaculture shall obtain a Lease from the County of Suffolk.
- B.) A person shall conduct shellfish aquaculture in compliance with this law, the Administrative Guidance as defined herein, the Lease and any other written policies adopted by the County of Suffolk or the Director.

- C.) A person shall conduct shellfish aquaculture in compliance with all applicable Federal, State and local laws and permits.
- D.) This section shall not apply to Private Oyster Grant holders who are cultivating oysters only without a Lease.

Section 6. Prohibition.

- A.) No person shall conduct shellfish aquaculture on underwater lands ceded to the County of Suffolk by New York Environmental Conservation Law §13-0302 (L. 2004, c. 425), and accepted by this law, without a Lease from the County of Suffolk.
- B.) This section shall not apply to Private Oyster Grant holders who are cultivating oysters only without a Lease.

Section 7. Administration of Suffolk County Shellfish Aquaculture Lease Program; Administrative Guidance.

- A.) The document entitled "Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay Administrative Guidance," dated May 20, 2009, prepared by the Department, incorporated by reference and made a part hereof as Exhibit A, is hereby approved and shall constitute, in substantial form, the regulations of the Suffolk County Shellfish Aquaculture Lease Program, including the model forms and documents therein.
- B.) The Administrative Guidance may be amended from time to time by local law. After adoption of any amendments, the Director shall mail notice of such amendments (by regular or electronic mail) to the Supervisors of the Towns of Riverhead, Southampton, East Hampton, Southold and Shelter Island, the New York State Department of Environmental Conservation and all lessees.
- C.) The Department is hereby authorized, empowered and directed to administer, oversee and provide staff support for the Suffolk County Shellfish Aquaculture Lease Program and the Aquaculture Lease Board in accordance with this law and the Administrative Guidance.
- D.) The Department may establish procedures, timelines and additional model forms and documents, and may make non-substantive changes to the model forms and documents included in the Administrative Guidance, as necessary for implementation of the program or as deemed necessary by the Suffolk County Department of Law.
- E.) The Director shall maintain an official copy of the Administrative Guidance and shall post the document on the Suffolk County website.

Section 8. Suffolk County Shellfish Cultivation Zone Map.

- A.) The Shellfish Cultivation Zone Map, dated May 20, 2009, prepared by the Department and the Suffolk County Department of Environment and Energy, incorporated by reference and made a part hereof as Exhibit B, is hereby approved. The Shellfish Cultivation Zone Map shall depict the Shellfish Cultivation Zone.

- B.) The Shellfish Cultivation Zone Map shall be subject to review and update at least every five (5) years and a report thereon shall be submitted by the Director to the County Legislature and County Executive. The Shellfish Cultivation Zone Map shall be updated and amended by resolution of the Suffolk County Legislature.
- C.) The Director and the Suffolk County Clerk shall maintain official copies of the Shellfish Cultivation Zone Map and shall make the Map available for inspection. The Director shall also post the document on the Suffolk County website.

Section 9. Suffolk County Shellfish Aquaculture Lease Premises.

- A.) The premises leased by a Lease under the Suffolk County Shellfish Aquaculture Lease Program shall meet the following criteria:
 - 1.) Lease premises shall be located within the Shellfish Cultivation Zone.
 - 2.) Lease premises shall meet the criteria in New York Environmental Conservation Law §13-0302(4).
 - 3.) Lease premises shall be located in Approved Waters and shall meet all regulatory criteria.
 - 4.) The Aquaculture Lease Board shall determine which sites shall be available for leasing, in accordance with Section 13 of this law. Lease premises shall be located within a site approved by the Aquaculture Lease Board.
- B.) Maximum size of Lease premises shall be limited to 10 acres, except for the premises of Leases on Private Oyster Grants and Leases for *bona fide* non-commercial experimental, educational or resource restoration purposes.
- C.) The boundaries of premises leased hereunder shall be surveyed by a licensed land surveyor and a survey map shall be prepared by the surveyor and included in the Lease.
- D.) No more than 600 acres shall be leased at any one time over the first ten (10) year period of the program, exclusive of Leases issued for former Temporary Marine Area Use Assignment sites, Private Oyster Grants and Leases for experimental, educational and resource restoration purposes.

Section 10. Lease Approval, Renewal, Denial and Termination.

- A.) A Lease shall only be granted or renewed upon written application on forms furnished by the Department, properly executed and signed by the applicant, and submitted with the required fee.
- B.) The Director is hereby authorized, empowered and directed to take the following actions on behalf of the County of Suffolk where authorized by and in accordance with the standards, criteria and procedures in this law, the Administrative Guidance and the Suffolk County Shellfish Aquaculture Lease Program:
 - 1.) Enter into and renew Leases.

- 2.) Expand the size of or relocate the Lease premises.
- 3.) Deny or terminate a Lease.

The Director is hereby authorized, empowered and directed to execute any documents necessary to implement this law.

C.) To be eligible for a Lease, a person must meet the following criteria:

- 1.) An applicant for a lease shall be at least 18 years of age.
- 2.) An applicant or lessee shall not have been convicted of significant or repeated civil, criminal or administrative violations of the New York Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel by the applicant or lessee. Such determination shall be made by the Director in accordance with the New York Correction Law Article 23-A.
- 3.) A lessee shall obtain and be in compliance with permits or other approvals required by Federal, State or local law, as necessary for the activities on the Lease premises.
- 4.) An applicant or lessee shall be in compliance, and shall have complied with, the Suffolk County Shellfish Aquaculture Lease Program, as expressed in this law, the Administrative Guidance and any written policies adopted by the County of Suffolk.
- 5.) An applicant or lessee shall be, and shall have been, in compliance with the terms of any existing or previous lease.
- 6.) An applicant or lessee shall not have submitted false or fraudulent information or made misrepresentations to the Department.
- 7.) An applicant or lessee shall have submitted the documentation required for an applicant or lessee.
- 8.) An applicant or lessee shall have submitted fees and rent required by the Suffolk County Shellfish Aquaculture Lease Program.

The applicant or lessee shall have the opportunity to submit written comments regarding these criteria or on any other relevant topic to the Director.

D.) When the number of applicants for Leases exceeds the number of available Leases, the potential lessees shall be selected and prioritized through a random selection process of the applicants.

Section 11. Additional Terms and Conditions of Lease.

A.) A lease may be issued for a maximum term of 10 years, with one (1) option to renew for an additional ten (10) years, within the discretion of the County. A renewal shall be

subject to the terms and conditions of the Suffolk County Shellfish Aquaculture Lease Program, the Administrative Guidance, the application fee and the annual Lease rental fee as they exist at the time of renewal.

- B.) A lessee shall be required to conduct Substantial Shellfish Aquaculture Activity unless excused by a hardship exemption.
- C.) Activities on lands leased under this Program (including, but not limited to, shellfish cultivation, boundary marking, placement of equipment and navigation) shall be subject to all laws, rules, and regulations of, and permits required by, the Federal, State and local governments and agencies having jurisdiction.
- D.) Issuance of all Leases shall be subject to public notice. Notices shall be published and posted, and shall be available for inspection and copying, as required by New York Environmental Conservation Law §13-0302.
- E.) No Lease shall be granted which infringes upon an existing property right.
- F.) A Lease shall require that in the event that fees, taxes, assessments or other governmental charges are imposed upon the County of Suffolk as a result of the Lease or the lessee's shellfish cultivation activities, the lessee shall be required to reimburse the County for such fees, taxes, assessments or other governmental charges.
- G.) A lessee shall be required to indemnify the County of Suffolk and defend it against all liabilities, fines, judgments and damages arising out of the acts, omissions or negligence of the lessee, arising out of or in connection with lessee's use of the Lease site. The form of the indemnification shall be subject to approval by the County Attorney.
- H.) A Lease shall contain provisions for assignment and subletting.
- I.) Each Lease, or a Memorandum of Lease thereof, shall be recorded by the lessee in the Office of the Suffolk County Clerk.
- J.) A Lease shall be substantially the same as the model Lease in the Administrative Guidance, subject to approval by the County Attorney.
- K.) A lessee shall not be required to post a bond.
- L.) Upon the failure of a lessee to pay the annual Lease rental fee when due or upon revocation, the County may, after written notice to the lessee, declare the Lease cancelled as of the date set forth in such notice and may immediately thereafter evict the lessee from such lands. The provisions of article seven of the New York Real Property Actions and Proceedings Law shall apply and govern the procedure in such cases. The Lease may specify other remedies.

Section 12 . Fees and Rent.

- A.) The Lease application fee shall be one hundred (\$100.00) dollars and shall be non-refundable, except that the fee shall be refunded if an applicant is eliminated in the random selection process referred to in Subsection 10(D) of this law. An application fee shall be paid for initial Lease applications and applications to renew a Lease, expand the

Lease premises acreage, and assign or sublet a lease. When a lessee desires to change the location of the Lease premises at its convenience, an application fee shall also be paid.

- B.) The annual Lease rental fee shall be two hundred (\$200.00) dollars plus five (\$5.00) dollars per acre, except for oyster grant lands which shall not be charged an additional fee for acreage.
- C.) The State of New York and towns and villages within the County of Suffolk shall be exempt from payment of an application fee and the annual Lease rental fee.
- D.) The application fees and annual Lease rental fees may be amended by resolution of the Suffolk County Legislature.
- E.) Fees and rent shall be deposited in the County's general fund.

Section 13. Aquaculture Lease Board.

- A.) The Aquaculture Lease Board is hereby established.
- B.) The members of the Aquaculture Lease Board shall consist of the Director (who shall act as chairperson), the Commissioner of the Department of Environment and Energy and the Commissioner of the Department of Economic Development and Workforce Housing, or their designees.
- C.) The Aquaculture Lease Board shall review all proposed Lease sites and determine whether the proposed Lease sites shall be available for Leasing. The Aquaculture Lease Board shall conduct meetings as necessary to provide an opportunity for oral and written testimony or evidence concerning each proposed Lease site. The Aquaculture Lease Board shall consider such testimony or evidence in making its determinations. The Aquaculture Lease Board shall make its determination based upon:
 - 1.) Whether proposed sites meet the criteria of New York Environmental Conservation Law §13-0302 and the Suffolk County Shellfish Aquaculture Lease Program.
 - 2.) Factors affecting the desirability of the sites for shellfish cultivation, including, but not limited to, regional and environmental factors.
- D.) If an objection based on natural hard clam (*Mercenaria mercenaria*) productivity is deemed credible by the Aquaculture Lease Board, the Aquaculture Lease Board may find that a proposed Lease site is conditionally eligible, as provided in the Administrative Guidance. In this event, the Aquaculture Lease Board shall provide the Director with specific instructions for further disposition, in accordance with the Administrative Guidance.
- E.) The Aquaculture Lease Board shall act by resolution adopted by a majority of its members, shall keep minutes of its proceedings, and may establish its own meeting procedures.

Section 14. Monitoring Program.

Subject to available funding, the Department shall implement an environmental monitoring program and shall seek the cooperation of the Suffolk County Departments of Health Services and Environment and Energy in formulating and implementing the monitoring program. The monitoring program shall include collection of data on water quality and other ecological factors to assess potential beneficial or adverse impacts of the Shellfish Aquaculture Lease Program on the Peconic Estuary.

Section 15. Enforcement; Penalties; Other Remedies.

- A.) The Director shall enforce this law.
- B.) A violation of Subsection 6(A) of this law shall be subject to a civil penalty of one thousand (\$1,000.00) dollars for the first violation, and a civil penalty of five thousand (\$5,000.00) dollars for a subsequent violation. Such penalties may be obtained by an action brought in a court of competent jurisdiction.
- C.) Enforcement by imposition of civil penalties and/or equipment removal shall be in addition to, and not in lieu of, any other remedies available to the County of Suffolk at law or in equity, or available pursuant to a Lease.

Section 16. Equipment Removal.

- A.) Any equipment determined by the Department to be on underwater lands ceded to the County of Suffolk by New York Environmental Conservation Law §13-0302 (L. 2004, c. 425), and accepted by this law without a Lease in violation of this law shall be subject to removal. Upon such removal, the County shall hold the equipment for ten (10) calendar days. Upon the expiration of such ten (10) day period, if no claims of ownership are received and no attempt is made to secure return of the equipment, the equipment shall be deemed abandoned and may be disposed of by the County in any manner the County deems fit, including, but not limited to, sale, donation or destruction of such property. The County shall retain any sale proceeds.
- B.) Upon such removal, if the equipment is legibly tagged with the name of the owner and an address, the Department shall notify the owner by regular mail.
- C.) The owner may commence the process for return of the equipment by contacting the Department in writing to claim ownership. The written claim must be received before the expiration of the ten (10) day period in Subsection A. hereof. The Department shall return the equipment to the owner/claimant upon claimant's payment of the County of Suffolk's costs to remove, transport and store the equipment. The storage cost for such equipment shall be fifty (\$50) dollars per day.
- D.) The claimant shall have twenty (20) calendar days after the Department's receipt of a claim of ownership to complete all steps necessary for return of the equipment. After such twenty (20) day period, the equipment shall be deemed abandoned and may be disposed of in any manner the County deems fit, including, but not limited to, sale, donation or destruction of such property. The County shall retain any sale proceeds.

- E.) The County of Suffolk shall not be obligated to keep the equipment beyond the time periods described herein.
- F.) In the event of such equipment removal, the County shall not be liable for loss or damage to the equipment or to any contents thereof, or for disposal or destruction in accordance with this law.

Section 17. SEQRA Determination.

Res. No. 1028-2008, Adopting the State Environmental Quality Review Act Statement of Findings for the Final Generic Environmental Impact Statement on the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay, completed the process for review of this action under the State Environmental Quality Review Act, New York Environmental Conservation Law article 8 (SEQRA). The Suffolk County Shellfish Aquaculture Lease Program shall comply with the conditions, thresholds and criteria of Res. No. 1028-2008. Accordingly, this Legislature, as SEQRA lead agency, hereby determines that this resolution constitutes a Type II action, pursuant to Volume 6 of New York Code of Rules and Regulations (NYCRR) §§617.5(c)(20) and (27), in that the resolution pertains to routine or continuing agency administration and management, and implementation of a Program that was previously reviewed. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determinations.

Section 18. Severability.

If any clause, sentence, paragraph subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not effect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 19. Applicability.

This law shall apply to actions occurring on or after the effective date of this law.

Section 20. Effective Date.

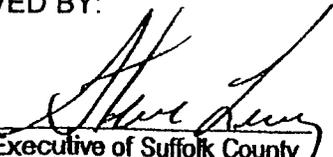
This law shall take effect immediately upon filing in the Office of the Secretary of State.

Section 21. Termination.

If a Lease for Shellfish Aquaculture is not executed by December 31, 2010, the Suffolk County Shellfish Aquaculture Leasing Program shall terminate.

DATED: August 4, 2009

APPROVED BY:


County Executive of Suffolk County

Date: August 19, 2009

After a public hearing duly held on August 18, 2009

Filed with the Secretary of State on September 1, 2009

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY



This is to Certify That I, TIM LAUBE, Clerk of the
of the County of Suffolk, have compared the foregoing copy of resolution with the
original resolution now on file in this office, and which was duly adopted by the
County Legislature of said County, on August 4, 2009, and signed by the
County Executive on August 19, 2009, after a public hearing duly held on
August 18, 2009 and filed with the Secretary of State on September 1, 2009
and that the same is a true and correct transcript of said resolution and of the whole
thereof.

In Witness Whereof, I have hereunto set my hand and the official
Seal of the County Legislature of the County of Suffolk on

Tim Laube

Clerk of the County Legislature

ATTACHMENT C
RESOLUTION NO. 1028-2008

Introduced by Presiding Officer, on request of the County Executive and Legislator Nowick

RESOLUTION NO. 1028 -2008, ADOPTING THE STATE ENVIRONMENTAL QUALITY REVIEW ACT STATEMENT OF FINDINGS FOR THE FINAL GENERIC ENVIRONMENTAL IMPACT STATEMENT ON THE SUFFOLK COUNTY SHELLFISH AQUACULTURE LEASE PROGRAM IN PECONIC BAY AND GARDINERS BAY

WHEREAS, the State of New York, through Environmental Conservation Law § 13-0302, ceded all rights, title and interest to the lands under water of Peconic and Gardiners Bays, except those underwater lands within one thousand feet of the high water mark to the County of Suffolk for the purposes of shellfish cultivation; and

WHEREAS, for the purposes of Environmental Conservation Law § 13-0302, the term "Peconic and Gardiners Bays" shall mean the waters of Peconic and Gardiners Bays and the tributaries thereof between the westerly shore of Great Peconic Bay and an easterly line running from the most easterly point of Plum Island to Goff Point at the entrance of Napeague Harbor; and

WHEREAS, Suffolk County may lease lands under water ceded to it by the State for the purposes of shellfish cultivation. If no such leases have been executed by December 31, 2010, such authority to lease pursuant to Environmental Conservation Law § 13-0302 shall terminate; and

WHEREAS, Resolution No. 150-2005 amended the Adopted 2005 Operating Budget to transfer funds from Water Quality Protection Fund 477 and appropriate said funds in connection with the Suffolk County Shellfish Aquaculture Lease Program (CP 7180.110); and

WHEREAS, the Aquaculture Lease Program Advisory Committee (ALPAC) was established by Executive Order Nos. 44-2005 and 45-2005 to provide guidance on the development of the leasing program; and

WHEREAS, this Legislature, in Resolution No. 241-2007 under the State Environmental Quality Review Act (hereinafter "SEQRA", N.Y. Environmental Conservation Law Article 8 and its implementing regulations), classified the action as Type I, and adopted a Positive Declaration for the Leasing Program, causing a Generic Environmental Impact Statement (hereinafter "GEIS") to be prepared; and

WHEREAS, this Legislature adopted the Final Scope for the GEIS, pursuant to Resolution No. 780-2007; and

WHEREAS, the GEIS was prepared in a public and open process with extensive input and guidance from ALPAC members, as well as the Council on Environmental Quality (hereinafter the "CEQ"), interested citizens of the County, and Local, State, and Federal agencies; and

WHEREAS, the Suffolk County Department of Planning caused the preparation of a Draft GEIS in accord with the procedures and rules of SEQRA as defined in 6 NYCRR Part 617; and

WHEREAS, pursuant to Chapter 279 of the Suffolk County Code the CEQ evaluated the Draft GEIS and found it to be satisfactory according to the standards set forth under SEQRA; and

WHEREAS, the CEQ then solicited public comments on the Draft GEIS, including holding a public hearing on April 17, 2008; and

WHEREAS, this Legislature, on the advice of the CEQ, found that comments received on the Draft GEIS were substantive in nature, requiring the preparation of a Final GEIS, as per Resolution No. 477-2008; and

WHEREAS, the Suffolk County Department of Planning therefore caused the preparation of a Final GEIS in accordance with the procedures and rules of SEQRA as defined in 6 NYCRR Part 617; and

WHEREAS, the Final GEIS was filed with the CEQ, a Notice of Completion of the FGEIS, in accordance with Article 8 of the ECL was prepared, and all documents were made available to the general public on September 3, 2008; and

WHEREAS, the CEQ forwarded the Final GEIS, together with its comments and recommendations and those received from the public to this Legislature, for consideration at the October 6, 2008 meeting of the Environment, Planning and Agriculture Committee of the Suffolk County Legislature, as part of CEQ Resolution No. 40-2008; and

WHEREAS, the Suffolk County Department of Planning caused to be prepared, a Statement of Findings; now, therefore be it

1st **RESOLVED**, that pursuant to 6 NYCRR Part 617 and Chapter 279 of the Suffolk County Code, the Legislature hereby adopts the Statement of Findings annexed hereto, as Exhibit "A", incorporated by reference and made a part thereof; certifies that the requirements of SEQRA have been met; and certifies that, consistent with social, economic and other essential considerations, the proposed Suffolk County Shellfish Aquaculture Lease Program will be developed from among the reasonable alternatives available, as the choice that avoids or minimizes potential adverse, environmental impacts, to the maximum extent practicable; and be it further

2nd **RESOLVED**, that the Legislature certifies that the adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporation, as conditions within the Statement of Findings, those mitigative measures that have been identified as practicable; and be it further

3rd **RESOLVED**, that the Legislature finds that it is in the best interest of the County to develop a shellfish aquaculture leasing program in Peconic Bay and Gardiners Bay to secure title to approximately 110,000 acres of underwater land and buttress a regionally significant industry; and be it further

4th **RESOLVED**, that the Legislature supports the program concepts described in the Statement of Findings, as a means to provide access to underwater lands for shellfish cultivation and establish a framework for future leasing of said property, consistent with applicable laws.

DATED: December 2, 2008

APPROVED BY:

/s/ Steve Levy
County Executive of Suffolk County

Date: December 15, 2008

EXHIBIT "A"

**SUFFOLK COUNTY SHELLFISH AQUACULTURE LEASE PROGRAM
IN PECONIC BAY AND GARDINERS BAY**

GENERIC ENVIRONMENTAL IMPACT STATEMENT

STATEMENT OF FINDINGS

Preparation Date: September 22, 2008

Issuance Date: As of adoption by the Suffolk County Legislature

SEQRA Classification: Type I

Lead Agency: County of Suffolk
H. Lee Dennison Building
100 Veterans Memorial Highway
Hauppauge, New York 11788

Contact Name: DeWitt S. Davies, Ph.D.
Chief Environmental Analyst
Suffolk County Department of Planning
H. Lee Dennison Building
100 Veterans Memorial Highway
Hauppauge, New York 11788

Prepared by: Cashin Associates, P.C.
1200 Veterans Memorial Highway
Hauppauge, New York 11788

Location: Underwater lands in Peconic Bay and Gardiners Bay, seaward of
1,000 feet from the high water mark, within the jurisdiction of
Suffolk County

1.0 Introduction

This Statement of Findings is issued pursuant to the State Environmental Quality Review Act ("SEQRA"), New York. Environmental Conservation Law (NYS ECL) Article 8, and its implementing regulations adopted by the New York State Department of Environmental Conservation ("NYSDEC") and codified at Title 6 of the New York Code of Rules and Regulations ("NYCRR") Part 617 (the "SEQRA Regulations"). This statement sets forth the findings of the Suffolk County (the County), with respect to the development of the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay as summarized in the Draft Generic Environmental Impact Statement (DGEIS), dated March 19, 2008 and further addressed in the Final Generic Environmental Impact Statement (FGEIS), dated September 3, 2008. Although, Suffolk County, as Lead Agency, has the authority to approve the

proposed action, implementation will require additional permitting from all relevant local, state, and federal agencies as more fully described in Section 3.0 of the DGEIS.

This Statement of Findings has been prepared to demonstrate that:

1. the procedural requirements of SEQRA have been met;
2. the proposed Lease Program was selected from among the reasonable alternatives as the choice that minimized potential adverse impacts;
3. as required by 6 NYCRR Section 617.11(d), consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable; and,
4. the comments and concerns submitted by the public as well as the Suffolk County Council on Environmental Quality have been addressed and mitigated to the maximum extent practicable.

2.0 Location of Proposed Action

The proposed Shellfish Aquaculture Lease Program study area is located in the Peconic Estuary system which comprises the coastal waters between the north and south forks of eastern Long Island, Suffolk County, New York (DGEIS, Figure 1). These coastal waters are within the boundaries of Suffolk County's five eastern towns: Riverhead, Southold, Southampton, East Hampton, and Shelter Island. The extent of County jurisdiction for shellfish aquaculture leasing purposes encompasses approximately 110,000 acres and extends from the western shore of Great Peconic Bay easterly to a line running from the easternmost point of Plum Island to Goff Point at the entrance to Napeague Harbor, excluding those underwater lands within 1,000 feet from the high water mark.

3.0 Description of Proposed Action

Pursuant to New York State Environmental Conservation Law §13-0302 (2004 Leasing Law), the State of New York ceded to Suffolk County all underwater lands of Peconic and Gardiners Bays seaward of 1,000 feet from the high water mark for the purposes of shellfish cultivation. The Peconic Estuary has approximately 158,000 acres of surface water area. However, the project study area consists of approximately two-thirds of the open water within the estuary, roughly 110,000 acres, which is naturally divided by peninsulas (necks) and islands into a series of interconnected embayments. The 2004 Leasing Law also requires that the County adopt regulations governing: applications for leases; notices to be given; the form and term of leases; standards for the approval or denial of leases; administration of leases; the transfer or renewal of leases; marking grounds and testing; fees; recording of leases; and other matters as are appropriate to the Lease Program. If no leases for shellfish aquaculture are executed by December 31, 2010, the authority of Suffolk County to issue such leases shall terminate and the County will forfeit any of its title to the underwater lands.

The County is proposing an action to institute a shellfish aquaculture lease program in Peconic and Gardiners Bays that will support existing aquaculture activities, and promote a moderate growth of the industry. The program components have been designed to ensure that any negative impacts on the environmental, socio-economic, and historic resources have been identified and either mitigated or eliminated entirely.

The Shellfish Aquaculture Lease Program proposed by the County has been designed to provide access to public lands for the purpose of shellfish aquaculture. Implementation of this program does not obviate the need to comply with all other relevant regulatory and permit requirements. In particular, shellfish harvesting activities are closely regulated under New York State Environmental Conservation Law by NYSDEC. As the regulatory agency, the NYSDEC issues permits for shellfish aquaculture and establishes conditions on aquaculture activities that must be met as part of permit requirements. The conditions can include, but are not limited to, types of shellfish to be cultured, number of shellfish to be cultured, number and types of equipment (e.g., cages), harvesting methods, and siting of aquaculture operations. NYSDEC also regulates shellfish harvesting activities relating to sanitary quality and species size limits. It is not the intent of the Suffolk County Lease Program, nor is it within the authority of the County, to regulate the specific activities and requirements that have been established under the Environmental Conservation Law. As stated above, the leasing program will be established to provide access to underwater lands for shellfish aquaculture within the area ceded to the County by the 2004 Leasing Law. Obtaining and renewing a lease with the County will be contingent upon possession of a valid aquaculture permit from the NYSDEC; the specific conditions of that permit must be established by the NYSDEC. The dual function of the County and

NYSDEC will help to ensure that the Lease Program is carried out in accordance with proper environmental mitigation measures to protect existing resources and marine activities in areas of Peconic and Gardiners Bays included in the program.

4.0 Procedural History

As per 6 NYCRR Section 617, the Suffolk County Department of Planning, on behalf of Suffolk County, conducted a coordinated review with NYSDEC and all East End Towns and Villages, sought SEQRA lead agency status and issued its Notice of Intent to serve as lead agency on February 5, 2007. In its role as lead agency, Suffolk County prepared and distributed an Environmental Assessment Form (EAF). The County was subsequently designated the SEQRA lead agency for the action. Based on the information contained in the EAF, Suffolk County, in Resolution #241-2007 determined that the project could have the potential to result in significant adverse environmental impacts and issued a Positive Declaration on April 11, 2007. In addition to the Positive Declaration, Suffolk County also issued a Draft Scoping Document for the GEIS. The Draft Scoping Document was posted on the Suffolk County Department of Planning web site and widely distributed to public officials and agencies and other interested parties. A combined Notice of Positive Declaration, Public Scoping, and Intent to Prepare a Draft Environmental Impact Statement was published in the *Environmental Notice Bulletin* on April 18, 2007.

A public scoping meeting was held on May 3, 2007, at the Suffolk County Community College, Eastern Campus; at 121 Speonk-Riverhead Road. Written comments were accepted through May 17, 2007, and a Final Scoping Document dated August 23, 2007, reflecting consideration of comments made during the scoping process, was adopted by Suffolk County through Resolution #780-2007, and a Notice of Completion of the Final Scoping Document on the Draft GEIS was issued on September 6, 2007.

The DGEIS was then prepared in accordance with the Final Scoping Document. On March 19, 2008, pursuant to Chapter 279 of the Administrative Code, the Suffolk County Council on Environmental Quality, in Resolution 03-08, determined that the DGEIS was satisfactory with respect to its scope, content, and adequacy, and a Notice of Completion was issued. Copies of the DGEIS were posted on the Suffolk County Department of Planning web site and were widely distributed to public officials and agencies and other interested parties. Copies were also sent to East End libraries for convenient local viewing. A Notice of Completion and Public Hearing was published in the March 26, 2008 issue of the *Environmental Notice Bulletin*. Hearing notices were also published according to SEQRA Regulations in the *Smithtown News* and the *Long Island Business News*. All notices also invited written comments with respect to the DGEIS, and established a comment period extending to May 1, 2008.

On April 17, 2008, the Suffolk County Council on Environmental Quality in conjunction with the Suffolk County Department of Planning, Legislature and County Executive held a public hearing on the DGEIS at Riverhead Town Hall, 200 Howell Avenue, Riverhead.

On June 24, 2008, Suffolk County reviewed all substantive comments on the DGEIS and authorized the preparation of a FGEIS through Resolution 477-2008.

A FGEIS has been prepared to address all substantive comments that were raised during the public review process of the DGEIS and was presented at the September 17, 2008 meeting of the Suffolk County Council on Environmental Quality. The FGEIS was also posted on the Suffolk County Department of Planning web site and copies were widely distributed to public officials and agencies and other interested parties. Copies were also sent to East End libraries for convenient local viewing. A Notice of Completion of Final GEIS was issued on September 3, 2008.

The remaining steps of the process for the proposed action, including completion of SEQRA review and subsequent actions, are as follows:

- Based on the information and analysis contained in the DGEIS and FGEIS, the County will adopt a Statement of Findings, which is the final environmental basis for the County decision, and will: (a) establish whether the proposed action avoids or mitigates significant adverse environmental impacts to the maximum extent practicable, consistent with social, economic, and other essential considerations from among the reasonable alternatives available (Positive Findings); or (b) establish that the proposed action

does not satisfy this prerequisite for approval (Negative Findings). Adoption of this Findings Statement completes the SEQRA process.

- Using Positive Findings, the County can proceed with the official adoption of the Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay and associated management techniques, which comprise the proposed action.

5.0 Alternatives Considered

Alternative 1A - Minimum Lease

The minimum lease alternative as described in the DGEIS would allow for all existing aquaculture activities currently operating in Peconic and Gardiners Bays that comply with the requirements set forth in the 2004 Lease Law to become part of the County's Lease Program. Private land grants would be eligible, as well as the NYSDEC Temporary Marine Area Use Assignments (TMAUAs) located within those areas identified as to avoid environmentally or socio-economically sensitive areas. There would be no provision for additional leases on underwater lands not previously used for shellfish aquaculture.

Alternative 1B - Proposed Action (Minimum Lease with Moderate Growth)

Under this preferred alternative, Suffolk County would allow for the inclusion of existing aquaculture activities seaward of the 1,000 feet from high water mark, and provide for a moderate growth of the aquaculture industry. Portions of oyster grants that are currently permitted to cultivate species other than oysters, or have been so between January 1, 1999 and December 31, 2008, would be allowed to convert to a Suffolk County aquaculture lease. Fallow grants and those that have been used to cultivate oysters only in the above-mentioned time period would be allowed up to two 10-acre leases within grant boundaries. TMAUAs that fall within the environmentally/socio-economically sensitive area must remain 5-acre circular plots. Those that lie outside this area have the opportunity to expand to 10-acre square sites. Furthermore, in keeping with the intent of the 2004 Lease Law, Suffolk County would also allow for up to 60 acres of new leases a year for the first 10 years of the program. These leases would be square in shape and located in areas that have been previously identified so as to minimize environmental and/or socio-economic impacts to the greatest extent possible.

Alternative 2 - No Action

As described by 6 NYCRR § 617.9(b)(5)(iii)(v), "Preparation and Content of Environmental Impact Statements," the No-Action alternative "evaluate(s) the adverse or beneficial site changes that are likely to occur in the reasonably foreseeable future, in the absence of the proposed action." The No-Action alternative is the primary frame of reference for evaluation whether the proposed components of this lease program conform to the requirements of SEQRA. Should the County decide not to proceed with the development and adoption of the proposed lease program, aquaculture in the Peconic Estuary would remain limited to use of existing oyster grants and the TMAUAs. The County would not comply with the 2004 Leasing Law and would subsequently lose all rights, title and interest to approximately 110,000 acres of underwater lands for the purposes of shellfish cultivation.

Alternative 3 - Elimination of Existing Aquaculture Activities

This alternative suggests that the County will not support any shellfish aquaculture activities in the Peconic Bay System. This alternative assumes the hypothetical case that the TMAUAs and grant lands will also no longer be available for aquaculture. In addition, this alternative suggests an action that will intentionally create a negative impact to certain environmental and socio-economic resources and, although addressed as an alternative in the DGEIS, would not be practicable or meet the intent of the 2004 Leasing Law.

Alternative 4 - Unlimited Lease Growth

An unlimited growth alternative would not only allow the continuance of the TMAUAs program and aquaculture on private oyster grants, but would also allow for the unbridled addition of new lease areas within the Peconic Bay System. Allowing for the unlimited growth potential of private aquaculture practices could potentially have a severe negative effect on other East End maritime industries, as well as pose a possible threat to the environmental integrity of the bays. Although evaluated as part of the SEQRA process, the unlimited growth alternative would not be practicable, and should be avoided to prevent unavoidable environmental and socio-economic impacts.

6.0 Findings Concerning Relevant Environmental Impacts

6.1 Natural Resources

6.1.1 Amplification of Native and Exotic Shellfish Diseases

Shellfish diseases naturally occur in the marine environment, and some of them are known to affect both wild and cultured populations of shellfish. When introduced or amplified by aquaculture, diseases and parasites could theoretically be a threat to wild shellfish populations. While the proposed lease program will not cause or create new shellfish diseases, the potential for disease outbreaks in limited density natural populations as a result of seed importation cannot be dismissed.

Mitigation

Regulatory requirements under the jurisdiction of NYSDEC already provide for the reduction of risk from introduced shellfish diseases. To minimize the potential for disease introduction, local sources of shellfish seed should be used for cultivation. Information on disease history for each lot and site of origin should be provided. A certificate certifying each lot to be disease-free will be required.

In addition, the NYSDEC is currently working on adopting a “Policy of Acceptable Origin of Shell and Shellstock for Introduction in New York.” Criteria identified include: the use of native species only; restriction on the source of shellfish to locations north of New York with no known disease presence (specific exceptions apply); health certification required prior to the issuance of a permit; Shellfish Importation Permit required prior to importing shellfish from locations outside of New York; and altered strains generally not permitted to be introduced into state waters with the exception of disease resistant stocks. These requirements will serve to avoid adverse impacts associated with the use of non-native species.

6.1.2 Shellfish Harvest Techniques

On-bottom harvesting of cultivated shellfish is typically done through either manually operated devices or mechanical equipment, such as dredges. Although any type of disturbance to the bay bottom, mechanical or not, could be considered to adversely impact benthic flora and fauna, mechanical harvest methods seem to be the major issue of concern for the proposed action. Effects are generally related to the intensity of the operation, the time scale within which the operations are undertaken, and the bottom type of the area being harvested. For example, structured and vegetated bottoms are more likely to be adversely affected by mechanical harvesting than flat, un-vegetated bottoms.

Mitigation

Limiting the number and area of leases and using a conservative growth rate of new leases, will provide for the opportunity to learn from experience what the impacts of aquaculture would be at selected sites. A limit on the total area of underwater lands committed to aquaculture will limit the extent of potential adverse impacts to ecological and socio-economic conditions in the bay system.

The program will provide for the placement of leases in areas where conflicts with existing users of the estuary, and environmental impacts to sensitive marine and coastal environments will both be minimized.

If the use of mechanical devices is permitted by the NYSDEC on a lease under the County’s program, impacts to environmentally-sensitive areas (i.e., eelgrass beds, natural and historic shellfish beds) would be minimized, as new leases would not be issued in such areas. Because of the limits on the number and area of leases mentioned above, the amount of lease area that would be actually subject to mechanical harvest would be minimal, and therefore, the estuary bottom that would be affected would also be minimal. The actual authorization of mechanical harvesting on a lease must be approved by the NYSDEC through the existing regulatory permit process under NYS ECL.

6.1.3 Impacts to Sediment Characteristics and Benthic Fauna

Shellfish aquaculture structures can lower current velocities or alter current patterns in growing areas

which may increase sediment deposition through bio-deposition from bivalve feeding. This could have a significant impact in areas that already have limited current velocity. The increase in sedimentation can change the infaunal community structure to one dominated by deposit-feeding species.

Another impact associated with shellfish aquaculture structures is sediment scouring. Aquaculture gear may present obstructions to local tidal flow with flow increasing around and underneath the structure. Tidal flow restrictions from a large grouping of submerged gear may result in strong tidal flow underneath, possibly resulting in localized scouring and a coarsening of the bottom sediments.

Mitigation

Several different mitigation measures to avoid any adverse impacts to the sediment and benthic fauna are listed in the DGEIS and FGEIS which include, but are not limited to: controlling lease size; limiting the number of leases; limiting the type of culture; limiting the biomass of shellfish; and monitoring of environmental conditions. These mitigation measures will allow the County to diversify the placement of shellfish leases and the NYSDEC to modify activities on such leases to ensure that minimal impacts are sustained in any given environment found within the project area.

By utilizing one or more of the above-mentioned mitigation methods, the County believes that any impact associated with the proposed action, such as increased sediment deposition or changes to benthic fauna, can be mitigated. For example, by limiting the number of leases and/or limiting biomass of shellfish on a lease in areas with limited velocity, any significant impacts to that area from the proposed action can be reduced or eliminated.

Impacts from the proposed action that may result in sediment scouring can also be mitigated utilizing one or more of the methods mentioned above. For example, by limiting the type of culture activity (i.e., not allowing off-bottom structures in areas prone to high sediment scouring), sediment scouring that could result from the proposed action can be eliminated or mitigated.

6.1.4 Impact to Phytoplankton Composition and Nutrient Cycling

Shellfish bivalves feed by filtering particulate matter including phytoplankton and zooplankton from the water column. Introduction of additional numbers of filtering shellfish will theoretically affect the abundance and composition of plankton communities which, in turn, will affect nutrient cycling in the bays.

Mitigation

The level of any impact on plankton composition and nutrient cycling is scale dependent, and the small increase in shellfish populations proposed under the aquaculture program will not have significant adverse impacts. Aquaculture may have beneficial effects by increasing the numbers of shellfish in the bays, which historically had greater shellfish populations, and by providing additional filtering capacity for moderating plankton populations. Additional mitigation of potential impacts to phytoplankton composition and nutrient cycling will be brought about by program components that limit the size of aquaculture sites, provide buffer areas between sites, limit the numbers and biomass of cultured species, distribute leases throughout the bay system, and provide for monitoring of environmental conditions.

The environmental monitoring program should include water quality and ecological analyses necessary to assess both possible adverse and beneficial effects of aquaculture for Peconic Bay and Gardiners Bay.

6.1.5 Displacement and Attraction of Species

Aquaculture infrastructure can alter benthic communities by providing both substrate for attachment and forage/refuge areas. These alterations have the potential to increase secondary productivity and may impact local species through shading, sedimentation, and erosion, by disturbances associated with gear set-up and harvesting.

Mitigation

The displacement and attraction of species, like many other impacts that could potentially develop from the

proposed action, are scale-dependent. In other words, an impact's severity will be dependent upon the size of the action. For this reason, several of the mitigation methods discussed in the DGEIS and FGEIS about this impact relate to limiting lease numbers, lease sizes, types of culture activity, and biomass of shellfish. Plot rotation by individual aquaculture operations is also another method discussed. Including this impact as another parameter to be monitored will help to assess any potential issues as the County's aquaculture program grows in accordance with its moderate growth potential.

Much of data acquired during the research portion of this project suggested that submerged aquaculture gear, in general, increases species diversity and improves nursery habitat for mobile invertebrates and juvenile fish. It is suggested that the gear creates underwater structure that provides refuge from predation, reduces physical and physiological stress, enhances settlement and recruitment, and increases food supply. This improved habitat can be potentially beneficial to native species, especially in areas devoid of any relief or hard substrate. This would also hold true with areas that have been impacted by anthropogenic actions, such as over-harvesting.

6.1.6 Suspended Sediment/Turbidity

The concern expressed over the potential for the proposed action to suspend sediments and create turbidity is linked to mechanical harvesting methods. There is a fear that large-scale harvesting by mechanical dredges will create extensive turbidity plumes that will significantly impact the bay system.

Mitigation

The method of shellfish harvest is regulated and controlled by the NYSDEC. The County is prepared to coordinate with NYSDEC to implement a best management practice (BMP) approach that will help to avoid any significant impacts within the project area. As discussed in Section 3.0, the County Lease Program will provide for access to underwater lands, while the NYSDEC maintains regulatory authority over aquaculture operations under NYS ECL.

As discussed in the DGEIS and the FGEIS documents, few aquaculture operations exist that meet the documentation of existing activity requirements set forth by the NYSDEC that make them eligible to conduct mechanical harvesting on their sites.

6.1.7 Carrying Capacity-Phytoplankton/Nutrients Depletion

The suggested adverse impact is that shellfish associated with increased aquaculture operations could overly deplete the plankton resources through filter feeding, and adversely affect competing species.

Mitigation

As discussed under item 6.1.4, the scale of the proposed alternative provides for only a moderate increase in shellfish populations. The potential increase in shellfish populations is not expected to have significant impacts on bay-wide plankton populations. Several different mitigation measures to avoid any adverse impacts to the carrying capacity and nutrient depletion are listed in the DGEIS and FGEIS which include, but are not limited to: controlling the lease size; limiting the number of leases; limiting the type of lease; limiting the biomass of shellfish; and monitoring of environmental conditions. These mitigation measures will allow the County to diversify the aquaculture program to ensure minimal impacts occur in any given environment within the project area.

Based on the above, it is concluded that there will be no significant impact to the carrying capacity of the bay system because of the program's small scale commitment of resources (a maximum potential use of less than 3% of the total bay system).

6.1.8 Enhanced Recruitment

It is believed that the proposed action will not have a significant adverse impact on recruitment. In fact, the data acquired during the information gathering part of the program development seems to indicate that shellfish aquaculture has a positive impact on wild stock populations. Aquacultured shellfish provide a breeding stock that can serve to increase shellfish spawning, setting, and recruitment in the surrounding

areas. It should be noted that the NYSDEC regulates aquaculture activities through a permitting process that helps to ensure that impacts to the wild shellfish stock of the Peconic Bay system are minimized.

6.1.9 Site Impacts and Down-drift Impacts

It is believed that the proposed action will not have significant adverse site and down-drift impacts. As stated previously, because the proposed action will only involve less than a maximum of 3 percent of the Peconic Bay system, any site or down-drift impacts that may occur will most likely be localized and no more severe than those impacts caused by commercial fishery activities currently occurring in the bay.

6.1.10 Accidental Release of Shellfish

It is believed that the proposed action will not have a significant adverse impact related to the accidental release of non-native or exotic shellfish. Several mitigation methods discussed in the DGEIS and FGEIS are designed to eliminate or mitigate this impact, including the use of local seed stock. In addition, the NYSDEC regulates importation through its permitting process.

6.1.11 Genetic Changes

It is believed that the proposed action will not have any significant adverse impacts on the genetics of wild stock. As stated in the DGEIS, because there is the potential for the comingling of genes between selectively bred and wild shellfish stocks, one of the County's mitigation recommendations is to use local varieties of shellfish stock in culture operations. The NYSDEC also regulates the use of shellfish stock in aquaculture programs.

6.1.12 Impacts to Protected and Important Species

It is believed that the proposed action will not have any significant adverse impacts to protected and important species. As part of the program's design, significant research was performed to delineate environmental and socio-economic sensitive areas. Such areas were not included in the area where leases could be issued (i.e., the Shellfish Cultivation Zone) in order to ensure minimal impacts to protected and important species. Should additional information indicating the presence of protected and/or important species arise during the public review process, an alternative site will have to be selected.

6.2 Socio-Economic and Cultural Impacts

6.2.1 Loss of Harvest Area

Off-bottom shellfish aquaculture structures could preclude the use of the water column and underwater land for commercial and recreational fisherman. In addition, if a lease site becomes abandoned, aquaculture gear could impact fishing vessels and associated gear.

Mitigation

Under the proposed program, the area in which a lease may be placed has been delineated to reduce impacts to commercial and recreational fisherman. This includes naturally productive finfish and shellfish areas. The application process also provides for the opportunity for the public to object to a chosen site for productivity reasons which would, in turn, require either a benthic survey or the selection of an alternative location. The lease program also has an administrative mechanism that provides for the identification of gear owners and the removal of aquaculture gear in the event that a lease is terminated or abandoned.

6.2.2 Loss of Maritime Traditions

As early as the mid 1800s, aquaculture has been utilized as a means to sustain shellfisheries on Long Island. Therefore, as a maritime tradition in itself, it is believed that the proposed action will not have a significant adverse impact on the loss of maritime traditions, but instead promote them.

6.2.3 Changes in Employment Opportunities/Incomes

As fishery opportunities decline and state/federal catch and license regulations increase, the ability to earn a sustainable income by harvesting wild marine life has become more difficult. Although there are mixed opinions among baymen about possibly entering the aquaculture industry, the proposed action will provide

the opportunity for a displaced fisherman to remain employed in a maritime industry, if he or she wishes to do so. Therefore, the proposed action will not have a significant adverse impact on employment opportunities, but instead may increase them.

6.2.4 Value of Fishery Resources

It is possible that increased production of cultured shellfish may result in a higher demand for cultured shellfish than those harvested from wild stocks. However, shellfish prices are currently governed by out-of-state suppliers, and the shellfish industry on Long Island is losing ground to out-of-state aquaculture operations, not local aquaculture businesses. Therefore, it is believed that the proposed action will not have a significant adverse impact on the value of fishery resources and, in fact, may help keep the Long Island shellfish industry competitive.

6.2.5 Potential Supplemental Income

Any increased activity in the maritime industries in Peconic Bay and Gardiners Bay has the potential to supplement East End residents' incomes. Therefore, it is believed that the proposed action will not have a significant adverse impact on potential supplemental income, but instead, it may provide opportunities to increase such income.

6.2.6 Shoreline Facilities

It is believed that the proposed action will not have a significant adverse impact on shoreline facilities, but instead may provide opportunities for restoring local waterfronts by increasing the demand for seafood processing areas, marine mechanics and boat repair businesses, aquaculture gear manufacturing, and related water-dependent activities.

6.2.7 Conflicts over Lease Boundaries

Conflicts between users of public resources are not uncommon, and are sometimes unavoidable. However, it is believed that the proposed action will not have a significant adverse impact related to conflicts over lease boundaries.

Mitigation

The County has several different mitigation methods included in the DGEIS and FGEIS to address conflicts over lease boundaries. Most importantly, the boundaries of all leases will be properly marked in a standardized fashion that clearly identifies the corners of the lease plots. Lease boundaries must be surveyed and marked by a New York State licensed surveyor. Lease plots will be surrounded by substantial buffer zones. Therefore, it is believed that the proposed action will not have a significant adverse impact on conflicts over lease boundaries.

6.3 Transportation

6.3.1 Hazards to Navigation

Underwater structures or gear associated with the proposed action could have the potential to adversely impact navigation. In addition, an increase in the number of shellfish aquaculture leases would also increase the number of buoys marking the sites, and locating gear, thus possibly creating navigational hazards.

Mitigation

By requiring standards for marking lease areas; notifying the public, towns, and government agencies during the public comment period of the leasing process; and limiting the placement of structures and requiring lease buffer zones, the County believes that any potential adverse impact from the proposed action on navigation will be minimized/mitigated.

6.3.2 Restrictions on Use

The placement of gear in public water will preclude the use of the water column and underwater land by commercial and recreational fishermen. Floating gear could impact recreational activities, such as boating,

windsurfing, and waterskiing.

Mitigation

The mitigation methods described in Section 6.3.1 above, would also apply when mitigating impacts from the proposed action on restricting use. Because of the scaled down level of leasing (a maximum potential use of less than 3 percent of entire system), restrictions on use are expected to be minimal. Therefore, it is believed that the proposed action will not have a significant adverse impact on restricting use of the bay system.

6.4 Visual

6.4.1 Loss of Aesthetic Values/Qualities

Boundary markers for lease sites, as well as individual gear markers, may interfere with the visual resources of the estuary. Some off-bottom culture gear involves numerous markers or floatation devices that intrude upon the visual resources/seascape views.

Mitigation

The 1,000-foot shoreline buffer will minimize the view of floating markers and buoys associated with submerged aquaculture gear from the shoreline and important scenic vistas. Visual impacts from large floating structures or gear can be mitigated by restricting the use of such gear where aesthetic values would be significantly impacted. Markers or buoys associated with submerged gear should be visually unobtrusive, standardized, and deployed in a minimum amount per lease site. In addition, underwater lands in high traffic areas, mooring areas, and popular fishing areas have been excluded from leasing as part of the process to develop the proposed program.

6.5 Use and Conservation of Energy

It is believed that the proposed action will not impact the use and conservation of energy.

6.6 Solid Waste Management

While shellfish aquaculture operations may generate some solid waste, it is not expected to have a significant impact on solid waste management.

6.7 Acquisition of Land

It is believed that the proposed action will not have a significant impact on the acquisition of land.

6.8 Groundwater Resources

It is believed that the proposed action will not impact groundwater resources.

6.9 Air Quality

It is believed that the proposed action will have no impact on air quality.

7.0 Cumulative and Growth Inducing Impacts

Shellfish aquaculture leasing in the Peconic Estuary will be limited. Given that the magnitude of aquaculture activity proposed is not extensive, and that cumulative on and off-site impacts are proportional to both the number and spatial extent of culture operations, it follows that growth inducing impacts will also be limited.

7.1 Existing Aquaculture, Fishing/Shellfishing

The adoption and implementation of the *Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay* is likely to increase the area of the estuary utilized for aquaculture operations. However, a carefully considered and controlled expansion under the program can help protect sensitive habitats, avoid immediate and cumulative adverse impacts on present finfishing and/or shellfishing activities, and prevent unacceptable industry growth. While some areas of bottom and surface water will become unavailable for finfishing or

shellfishing, the lease program is designed to avoid currently and potentially productive areas.

7.2 Shore-side Requirements

For the proposed project, it is anticipated that existing shoreline facilities can accommodate the increase in shellfish aquaculture activities likely to occur over the next 10 years or more. Certain commercial facilities associated with fishing of wild stocks have declined in use as wild stocks have declined (e.g., bay scallops), and aquaculture activities may help to off-set some of this loss.

8.0 Unavoidable Adverse Impacts

Although most of the potential adverse impacts associated with the proposed action can be mitigated, few unavoidable impacts remain. However, the magnitude of these unavoidable impacts, like cumulative effects, is scale-related and are expected to be minimal.

8.1 Restriction on Navigation

In some areas, aquaculture activities on leases will restrict vessel navigation, and boaters will be required to navigate around lease boundary markers and gear buoys. The degree of this impact is likely to be minimal, since leases will be limited in number and size, and the scale of operations will also be limited.

8.2 Loss of Access to Bottomlands

The New York State Environmental Conservation Law prohibits others from taking shellfish from licensed aquaculture operations and from tampering or damaging aquaculture equipment. Cultured shellfish cannot be taken by other commercial fishermen, and the placement of aquaculture gear will restrict certain commercial fishing activities as well as recreational activities within the aquaculture sites. These impacts will be very limited due to the scale down nature of the proposed alternative.

8.3 Loss of Access to Water Column

Commercial and recreational fisherman and other recreational uses may be restricted in some areas where submerged aquaculture gear would pose a hazard to such uses. However, the degree of this impact is likely to be minimal, since leases will be limited in number and size, and the scale of operations will also be limited.

8.4 Loss of Bottomland to Other Species

Benthic species and submerged aquatic vegetation (SAV) beds may be impacted by the placement of aquaculture gear on the bottom, or from shading effects from suspended gear. The degree of impact to eelgrass is expected to be non-existent, since leases will not be issued in areas where eelgrass beds exist. In addition, no lease will be permitted within 1,000 feet of the shoreline where the majority of the historic and current eelgrass beds are known to occur. The degree of impacts to bottom-dwelling finfish is expected to be minimal, since leases will be limited in number and size, and the scale of operations will also be limited.

8.5 Utilization of Shoreline Areas

Off-loading and staging efforts associated with aquaculture will most likely take place at existing shoreline facilities, such as marinas and public boat ramps. This increase in usage may affect other users of these shoreline areas. However, since the number of leases is limited, and because they will be dispersed throughout the estuary, the degree of this impact is expected to be minimal. Use of shoreline areas for aquaculture operations may tend to offset declines in usage from diminished wild stock fisheries.

8.6 Escape of Cultured Bivalves

On-bottom hard clam culture involves a technique known as broadcasting (i.e., planting) seed on the bay bottom. During the broadcasting process, it is not uncommon for some seed to intermittently escape into the wild. However, the NYSDEC policy requires the use of native shellfish species only; therefore any escape of seed would pose minimal if any risk to native populations or the environment. In fact, spawning activity of cultured shellfish may help to restore/augment native shellfish populations.

9.0 Irreversible and Irretrievable Commitments of Resources

It is believed that the proposed action will not result in an irreversible and irretrievable commitment of resources.

10.0 Alternatives

10.1 Overview of Alternatives Analysis

A discussion of alternatives to the proposed action is required by SEQRA. It is important to discuss reasonable alternatives to the project, or portions of the project, that achieve the same or similar objectives of the project sponsor (i.e., Suffolk County). The purpose of the alternatives analysis is to provide comparative assessment of the impacts of each alternative. A “no action” alternative must always be discussed and is especially relevant for governmental actions involving the expenditure of public funds. For the preparation of Generic EISs, the alternatives analysis must address alternative actions at the conceptual stage, and because of the broad scope of future site specific actions following a Generic EIS, hypothetical scenarios are appropriate for the alternatives analysis.

During the scoping process and follow-up development of the proposed alternative, several alternatives were identified for consideration in the Draft GEIS. As a Generic EIS, the use of specific types of equipment, technologies and other site related activities could not be performed. Site selection under the proposed aquaculture plan will be performed at a later stage through a lease application review process by the County, and the process will be subject to public and agency review. Furthermore, specific lease sites will be subject to permit application review, most importantly by the NYSDEC, which is the issuing agency for aquaculture permits.

As required by SEQRA, alternatives to the proposed County Lease Program (Alternative 1B) were identified and are addressed below in this section. The alternatives considered include a minimum lease program (1A), a no action alternative (2), an elimination of aquaculture alternative (3), and an unlimited growth alternative (4). These alternatives represent the range of hypothetical alternatives to the proposed action.

As part of the analysis, the potential maximum acreages of underwater land committed to shellfish aquaculture have been calculated for each alternative including the recommended alternative. The results of this calculation demonstrate that the total amount of underwater land potentially committed to shellfish aquaculture under the program is a very small (approximately 2.9 percent) portion of the total area.

10.2 Alternative 1A – Minimum Lease

Alternative 1A represents a reduced scale shellfish aquaculture lease program. It provides for the establishment of leases only on sites where aquaculture is presently or has recently been conducted (i.e., grants and TMAUAs). The restrictions of the 2004 Leasing Law still apply, specifically the exclusion of areas 1,000 feet from the shore, areas identified as productive for other fisheries, and areas where significant conflicts with other users of the estuary cannot be avoided.

This alternative allows the conversion of all existing NYSDEC TMAUAs and private oyster grants that meet the 2004 Leasing Law requirements into leases issued under the Suffolk County Aquaculture Lease Program.

Aquaculture 1A Components

- Currently the combined acreage of these two entities (grants and TMAUAs) that meet the 2004 Leasing Law requirements is a total of approximately 2553.5 acres, which is approximately 2.3 percent of the 110,000 acres of underwater land within the project area.
- Those TMAUAs that appear to be within the 1,000 ft. shoreline buffer are not within the jurisdiction of this program and will not be considered for leasing. However, the area directly offshore of 1,000 ft. in the same general area of the TMAUAs (within the cultivation zone) will be made available for leasing.
- Some of the grants have a portion of their acreage located within the 1,000 ft. shoreline buffer. Those portions of the grants that are within the 1,000 ft. shoreline buffer zone will be excluded from the lease program. However, all of the remaining acreage of those grants that is located in the cultivation zone will be permitted to participate in the County Lease Program.
- Private grant owners will be allowed to apply for an aquaculture lease for species other than oysters and, dependent on past and current activities, will be permitted into the program on a case-by-case

basis as applicable under the 2004 Lease Law. Expansion of aquaculture operations on grants will also be subject to NYSDEC regulatory process as well.

Assessment

This alternative is similar to Alternative 1B (Proposed Action) in that it will provide for establishment of County leases for grants and TMAUAs. It differs in one important way – it does not provide for any expansion of aquaculture into new areas of the estuary. With the exception of moderate growth in Alternative 1B, the impacts of this alternative would be comparable to the impacts of the proposed action because the total acreage of underwater lands committed to aquaculture is comparable under both scenarios. This alternative would provide an increased level of security and business stability to existing grant and TMAUAs holders. Although impacts of this alternative are comparable to that of the proposed action, Alternative 1A is deemed to be unacceptable because it does not satisfy an important mandate of the 2004 Leasing Law, which is to provide for an expansion of aquaculture in the Peconic/Gardiners Bay system.

Also in contrast to Alternative 1B, this alternative would not have a provision for educational/experimental leases and municipal leases for shellfish resource restoration, which represent beneficial impacts associated with the proposed action. This alternative was not considered further because it did not meet the primary objective of the 2004 Leasing Law.

10.3 Alternative 1B – Proposed Action (Minimum Lease with Moderate Growth)

This alternative includes all areas being considered in Alternative 1A and also provides for future growth of the industry by permitting additional use of underwater lands for aquaculture within defined limits. This alternative would make available approximately an additional 300 acres of bottom land for new entities at the end of the first five-year period, and another approximately 300 acres at the end of 10 years. This alternative is the proposed action. The full description of this alternative, its program components, and associated impacts are given in Sections 1 through 4 of the DGEIS document, and modified in the FGEIS. Currently this alternative will include all TMAUAs and underwater land grants seaward of the 1,000 ft. buffer zone that will meet the County's program requirements. This alternative includes the acreage discussed in Alternative 1A and allows for an additional 600 acres during the first 10 years of the program. This total potential acreage to be committed to shellfish aquaculture under this alternative after 10 years is approximately 3,153.5 acres (2.9 percent of 110,000 acres available).

10.4 Alternative 2 – No Action

Under this No Action Alternative, Suffolk County would not institute a Shellfish Aquaculture Lease Program for Peconic Bay and Gardiners Bay and no Shellfish Cultivation Zone Map would be adopted. Access to bottom lands for aquaculture would be obtained under current practices. These current practices include the existing NYSDEC TMAUAs and all 65 of the underwater land grants that have the right to cultivate oysters. Under this alternative, between the NYSDEC TMAUAs and privately owned oyster grants there is a total conceivable area of approximately 5,977 acres of underwater land available for aquaculture activity. No leases would exist under this alternative.

No ecological or physical impacts associated with the proposed action would be expected under the No Action alternative. It would not provide any further stability or security to existing aquaculture activities, and it would not provide a program for expansion of aquaculture. The TMAUAs would be subject to annual approval by the NYSDEC, and growth would be limited by the constraints of the TMAUA program and permitted activities on existing privately owned oyster grants. Socio-economic benefits of an expanded and improved aquaculture program would not be realized. The beneficial impacts of expanded aquaculture on the ecology of the estuary, such as those related to water quality and improved spawning stock, would not be realized. A positive impact of this alternative is that there would be no expenditure of County funds required to implement and manage a lease program; conversely, there would be no revenue generated by lease fees and economic activity. Although this alternative would not have significant environmental impact beyond that of current conditions, the No Action alternative was deemed unacceptable because it does not meet the fundamental objectives of the 2004 Leasing Law.

10.5 Alternative 3 – Elimination of Existing Aquaculture Activities

Under Alternative 3, Suffolk County would not institute a Shellfish Aquaculture Lease Program for Peconic and Gardiners Bays and no Shellfish Cultivation Zone Map would be adopted. In addition, under this hypothetical alternative, TMAUAs would no longer be issued by NYSDEC in the Peconic Estuary, all existing TMAUAs

would be terminated, and shellfish aquaculture would be eliminated on oyster grants. Under this alternative there would be no acreage available for shellfish cultivation in the County's program.

Existing shellfish aquaculture businesses currently operating under TMAUAs would be forced to cease operations. The termination of the existing shellfish aquaculture businesses would have adverse economic impacts on existing aquaculture operations and companies/individuals who provide supplies to those operators, including hatcheries that provide seed. This alternative would not have beneficial impacts to the bays' ecology, or to socio-economic conditions of the area that are associated with an expansion of aquaculture. Furthermore, this alternative is not viable due to the fact that Suffolk County does not have legal authority to terminate the NYSDEC TMAUA program if no County Lease Program is adopted.

This alternative was deemed unacceptable because it does not meet the objectives of the 2004 Leasing Law, it would have adverse socio-economic impacts, and would not have the beneficial impacts associated with aquacultural activity.

10.6 Alternative 4 – Unlimited Lease Growth

This alternative would provide for the unlimited growth of aquaculture throughout the Peconic Bay/Gardiners Bay system. Allowing this alternative would make available the entire 110,000 acres of underwater land ceded to the County.

This alternative would involve the conversion of all NYSDEC TMAUAs and private oyster grants into leases issued under the Suffolk County Aquaculture Lease Program and would allow for the addition of new leases throughout the entire estuary without excluding areas that are environmentally or socio-economically sensitive (in conflict with the 2004 Leasing Law). Under this alternative, the amount of new leases would not be restricted to a defined growth rate, and a cap on new leases would not be implemented. This alternative would have significant adverse impacts in numerous areas:

- Impacts on ecological resources would be greater than that of the proposed action because the amount of underwater land committed to aquaculture would be potentially many times larger than that associated with the proposed action.
- Lessons learned from a phased program would be unavailable, and the potential for the occurrence of irreversible ecological effects would be magnified.
- Impacts to other users of the estuary would be intensified because aquaculture would expand into areas presently used by other groups including commercial fishermen, recreational boaters, and other commercial operations. In contrast, the proposed action is designed to minimize conflict with other users of the estuary.
- This alternative could have adverse impacts to economic conditions if expanded aquaculture suppressed product value because of overproduction.
- This alternative would conflict with other jurisdictions, such as those associated with town and village Local Waterfront Revitalization Plans (LWRPs) because leases could potentially be placed in areas deemed by LWRPs as environmentally or socio-economically important.
- Enforcement needs would be substantially greater than those for the proposed alternative, because of the greater potential for user conflicts, gear conflicts, abandoned gear, vandalism and theft, and unauthorized activity by aquaculture operations.
- Alternative 4 would meet the objectives of the 2004 Leasing Law by providing for an expansion of aquaculture, but would be in contradiction of the law by not providing for protection of existing fisheries and environmental conditions in the estuary. Alternative 4 has been deemed unacceptable because it would not comply with all the objectives of the 2004 Leasing Law and would potentially have adverse impacts to environmental and socio-economic conditions.

This alternative is not considered feasible since it is an extreme alternative that would likely cause conflicts with other commercial and recreational users of the estuary.

10.7 Summary of Impact Analysis of Alternatives

Alternatives 1A, 1B and 2 have the least potential for significant adverse environmental, socio-economic, and cultural impacts. The expansion of aquaculture activities under the proposed action, Alternative 1B, will reduce the potential of significant adverse impacts through specific mitigation measures, as discussed in detail in Section 5. The potential for significant adverse impacts associated with Alternatives 1A and 2 would also be minimal since the extent of shellfish aquaculture operations would be equal to or less than what currently

exists. The elimination of aquaculture activities under Alternative 3 would result in potential significant adverse socio-economic impacts to the local shellfish industry and to baymen currently earning their income from the industry. The greatest amount of significant adverse impacts would occur under Alternative 4, based on the extreme scale of aquaculture activities. Table 1 shows the total acreage conceivable for each alternative and the potential impacts that would likely occur for each.

11.0 Conclusion

The County has fully considered the relevant environmental impacts, facts, and conclusions disclosed in the DGEIS and FGEIS for the Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay, Suffolk County, New York. Having analyzed the relevant socio-economic and environmental impacts and other considerations set forth in this Statement of Findings, Suffolk County, as the Lead Agency, hereby certifies that: the requirements of 6 NYCRR Part 617 have been met; the findings are consistent with social, economic, and other essential considerations from among the reasonable alternatives available in such a way to minimize or avoid the adverse environmental impacts disclosed in the EIS to the maximum extent practicable; and adverse environmental effects revealed in the SEQRA process will be minimized or avoided to the maximum extent practicable through the mitigation methods that were identified as practicable in DGEIS, FGEIS, and Statement of Findings.

In addition, the implementation of the *Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay* is expected to yield the following benefits:

- Provide people with the opportunity to obtain access to underwater lands for raising shellfish.
- Encourage private investment in aquaculture businesses and the establishment of shellfish farms at secure locations that do not pose conflicts with commercial fishermen and other bay users.
- Expand the marine-based economy and create related job opportunities.
- Augment the spawning potential of native shellfish populations and exert positive influence on water quality by helping to control nutrient cycling and to prevent noxious plankton blooms as a result of the increase in the number of shellfish.
- Provide other potential positive impacts related to the establishment of aquaculture leases such as increasing suitable substrate for both flora and fauna on bottom structures as well as commensal relationships between commercial fishing activities and culture activities.
- Provide additional opportunity for commercial fisherman to maintain their economic viability.
- Help to re-establish and strengthen traditional shellfish farming activities which have experienced decline since the early 1900s.
- Establish a monitoring program that will help to provide data and information about the shellfish aquaculture activities in Peconic Bay and Gardiners Bay.
- Provide a mechanism for the establishment of educational/experimental shellfish aquaculture operations which will enable valuable scientific and operational information to be collected.

Table 1. Total Conceivable Acreage and Potential Impact Outcomes for Each Alternative

ALTERNATIVE	Alt. 1A Minimum Lease	Alt. 1B Minimum Lease Moderate Growth	Alt. 2 No Action	Alt. 3 Elimination of Aquaculture	Alt. 4 Unlimited Lease Growth
Potential Major Negative Impacts					
Geology	N	N	N	N	Y

Water column	N	N	N	N	Y
Water quality	N	N	N	N	Y
Submerged Aquatic Vegetation	N	N	N	N	Y
Sediment transport	N	N	N	N	Y
CNRAs	N	N	N	N	Y
Protected species	N	N	N	N	Y
User activities	N	N	N	N	Y
Potential Minor Negative Impacts					
Introduction of shellfish pathogens/diseases	N	N	N	N	Y
Harvest method impacts	N	N	N	N	Y
Sediment characteristics & benthos impacts	N	N	N	N	Y
Phytoplankton composition & nutrient cycling	N	N	N	N	Y
Restrictions on public access	N	N	N	N	Y
Maritime traditions	N	N	N	Y	Y
Employment / incomes	N	N	N	Y	Y
Wild fishery industry	N	N	N	N	Y
Navigation	N	N	N	N	Y
Aesthetic values	N	N	N	N	Y
Energy	N	N	N	N	Y
Beneficial Impacts					
Economy (direct and support sectors)	N	Y	N	N	Y
Employment opportunities	N	Y	N	N	Y
Maritime traditions	N	Y	N	N	Y
Ecology	N	Y	N	N	N
Seafood production	N	Y	N	N	Y
Total Conceivable Acreage of Leased Underwater Lands	2,553.5⁽¹⁾	3,153.5⁽¹⁾	5,977^(1,2)	0	110,000

Notes: Y=Yes N=No

⁽¹⁾ Please note that these estimated acreages do not include a possible total of 20 acres associated with the Winery LLC site near Plum Island, which was added to the Shellfish Cultivation Zone during the FGEIS process.

⁽²⁾ Leases would not exist, but aquaculture would be performed on TMAUAs and grants.

ATTACHMENT D
ADMINISTRATIVE GUIDANCE

**SHELLFISH AQUACULTURE LEASE PROGRAM
IN PECONIC BAY AND GARDINERS BAY
SUFFOLK COUNTY, NY**



**Steve Levy
Suffolk County Executive**

Administrative Guidance

**Suffolk County Department of Planning
H. Lee Dennison Building
100 Veterans Memorial Highway
PO Box 6100
Hauppauge, NY 11788-0099**

May 20, 2009

This page was intentionally left blank.

Table of Contents

	<u>Page</u>
Introduction.....	5
Definitions	7
Chapter 1. Lease Application Process.....	11
1. Eligibility for Shellfish Aquaculture Leases.....	11
2. Lease Program Participants	11
3. Lease Application Period	14
4. Identification of Desired Lease Area	14
5. Pre-Application Meeting.....	14
6. Submission and Review of Application	15
7. Number of Leases Permitted	15
8. Public Notice	16
9. Objections Regarding Lease Site, Review and Benthic Survey	16
10. Decision on Lease Site Eligibility.....	18
11. Establishment of Application Priority	19
Chapter 2. Lease Requirements and Procedures.....	21
1. Lease Required and Transition for TMAUA Holders and Oyster Grant Owners	21
2. Site Location, Survey, Boundary and Equipment Marking.....	21
3. Annual Lease Rental Fee	21
4. Annual Report/Operation Plan.....	22
5. Expansion of Lease Acreage	22
6. Lease Assignment	23
7. Subleasing.....	23
8. Lease Termination/Non-renewal by the County	23
9. Substantial Cultivation/Hardship Exemption	23
10. Lease Renewal.....	24
11. Lease Termination by Lessee.....	24
12. Noise and Lighting	24
13. General Enforcement Policy	25
14. Shellfish Regulations.....	25
15. Approved Waters.....	26
16. Water Quality Changes	26
17. Harvest of Shellfish Transferred from Other Waters	26
18. Handling of Shellfish.....	26
19. Corporate Applicants	26
20. Partnership Applicants.....	27
21. Local Waterfront Revitalization Program Consistency	27
Chapter 3. County Administrative Requirements.....	29

Appendices

Appendix A - Model Lease Agreement

Appendix B - Model Lease Application

Appendix C - Model Annual Report Form

Appendix D - Model Lease Assignment Application

Appendix E - Model Sublease Application

Appendix F - Model Lease Termination Application

Appendix G - Model Lease Renewal Application

Appendix H - Shellfish Productivity Survey

Appendix I - Contact Information

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. This Attachment C - Administrative Guidance 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 the required information, definitions, procedures, forms, etc. 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.

This page was intentionally left blank.

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:** a board established by Local Law (no. to be inserted) to determine which proposed lease sites within the Shellfish Cultivation Zone will be eligible for leasing.
- **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.
- **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 a leasehold interest and the right to conduct shellfish aquaculture activities on Suffolk County owned underwater lands.
- **Shellfish Aquaculture Lease Lands:** those lands conveyed by Suffolk County under a shellfish aquaculture lease document.
- **Shellfish Cultivation:** 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 of Suffolk, New York State Fish and Wildlife Law (N.Y. Environmental Conservation Law Article 11), and other applicable Federal, State and local laws and regulations. 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 the County of Suffolk. The zone includes Temporary Marine Area Use Assignment (TMAUA) locations, private oyster grants, and other areas where the impacts of shellfish aquaculture activities on environmental and socio-economic conditions will be minimal.
- **Shellfish Cultivation Zone Map:** the map, dated May 20, 2009, prepared by the Department, depicting the Shellfish Cultivation Zone.
- **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 cultivated product; or show other shellfish aquaculture-related activity on a shellfish

aquaculture lease.

- **Suffolk County Shellfish Aquaculture Lease Program:** the program established pursuant to Local Law (no. to be inserted), and all written County policies, as amended, concerning the program, including, without limitation, the Administrative Guidance.
- **Temporary Marine Area Use Assignment (TMAUA):** an approval document issued by the New York State Department of Environmental Conservation for use of a circular parcel of underwater land with a diameter of 500 feet (approximately five acres) for the purposes of Shellfish Cultivation. All TMAUAs are for temporary use only, expiring on December 31 of the year issued.
- **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.

This page was intentionally left blank.

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. 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 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 requirements for 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 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 should not be sold at auction. Said parcels should 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 by the Department 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 for each application cycle 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 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 Aquaculture Lease Sites map for the four corners and center of each 10-acre lease site. The 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 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 the 1,000 foot high water mark 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 Aquaculture Lease Sites map.
- All private grants will be labeled GR1 through GR65 as shown on the Aquaculture Lease Sites map.

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 familiarize the applicant with the lease process, and to discuss proposed lease sites. If proposed sites are available, the applicant may submit an application to lease one of such sites. 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:

- An applicant for a lease shall be at least 18 years of age.
- An applicant or lessee shall not have been convicted of significant or repeated civil, criminal or administrative violations of the Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel by the applicant or lessee. Such determination shall be made by the Director in accordance with the New York Correction Law Article 23-A.
- A lessee shall obtain and be in compliance with permits or other approvals required by Federal, State or local law, as necessary for the activities on the Lease premises.
- An applicant or lessee shall be in compliance, and shall have complied with, the Suffolk County Shellfish Aquaculture Lease Program, as expressed in this law, the Administrative Guidance and any written policies adopted by the County of Suffolk.
- An applicant or lessee shall be, and shall have been, in compliance with the terms of any existing or previous lease.
- An applicant or lessee shall not have submitted false or fraudulent information or made misrepresentations to the Department.
- An applicant or lessee shall have submitted the documentation required for an applicant or lessee.
- An applicant or lessee shall have submitted fees and rent required by the Suffolk County Shellfish Aquaculture Lease Program.

The applicant or lessee shall have the opportunity to submit written comments regarding these criteria or on any other relevant topic to the Director. 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 at any one time. 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 and at its meetings when making its decision on which sites will be available for leasing. (See Chapter 3, County Administrative Requirements.) Lease premises shall be located within a site approved by the Aquaculture Lease Board.

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, based on environmental and socio-economic factors.

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 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 Aquaculture Lease Board 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 proposed 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 available for leasing, and those sites that will be eliminated from further consideration. If an objection based on natural hard clam (*Mercenaria mercenaria*) productivity is deemed credible by the Aquaculture Lease Board, the Aquaculture Lease Board may find that a proposed Lease site is conditionally eligible, subject to further testing as provided in the Administrative Guidance. In this event, the Aquaculture Lease Board shall provide the Director with specific instructions for further disposition, in accordance with the Administrative Guidance.

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:

- Whether proposed sites meet the criteria of New York Environmental Conservation Law §13-0302 and the Suffolk County Shellfish Aquaculture Lease Program.
- Factors affecting the desirability of the sites for shellfish cultivation, including, but not limited to, regional and environmental factors.

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 available 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.

This page was intentionally left blank.

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 in Peconic and Gardiners Bays 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 oyster 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 premises 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 an expansion of lease premises acreage 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 subject to the approval of the County Attorney. If the County terminates a lease or denies its renewal, the acreage involved that was originally part of the annual acreage cap limit will be added back to the acreage available under the cap limit for lease in future years.

9. Substantial Cultivation/Hardship Exemption

A lessee, who cannot demonstrate substantial shellfish aquaculture activity, may be eligible for a hardship exemption, 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 Department 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.) Factors that would affect the lessee's eligibility for a lease.
- iv.) Whether the application to the County is timely, sufficient and accurate.
- v.) 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. If the lessee terminates a lease or does not want to renew such lease, the acreage involved that was originally part of the acreage cap limit will be added back to the acreage available under the cap limit for lease in future years.

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 that 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 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 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 bullet items 4 and 5 above has ever been convicted of significant or repeated civil, criminal or administrative violations of the Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel by the applicant or lessee. Such determination shall be made by the Director in accordance with the New York Correction Law Article 23-A.

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.

This page was intentionally left blank.

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 inquiries 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 at a subsequent meeting to make the decision, based on a regional and environmental perspective, on which potential lease sites will be available 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 maximum size of new 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 may establish procedures, timelines and additional model forms and documents, and may make non-substantive changes to the model forms and documents included in the Administrative Guidance, as necessary for implementation of the program or as deemed necessary by the Suffolk County Department of Law.

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 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.).

This page was intentionally left blank.

Appendix A

Model Lease Agreement

This page was intentionally left blank.

Model Shellfish Lease
Law No.: 09-PL-004

COUNTY OF SUFFOLK
SHELLFISH CULTIVATION LEASE AGREEMENT

Lessee: _____

Lease No: _____

Expiration Date: _____

This page was intentionally left blank.

TABLE OF CONTENTS

1. Definitions
2. Lease of Premises
3. Authority
4. Term
5. Option to Renew
6. Expansion of Acreage
7. Relocation of Leasehold Interest
8. Change in Cultivation Practices
9. Annual Rental Fee; Additional Rent
10. Taxes and Impositions
11. Termination by County for Cause; Event of Default
12. Remedies
13. Surrender
14. Holdover
15. Removal of Equipment and Personal Property
16. Termination by Lessee
17. Substantial Shellfish Aquaculture Activity
18. Noise and Lighting
19. Annual Reporting/Operation Plan
20. Buoys
21. Equipment
22. Repair of Equipment or Buoy; Emergency Condition
23. Alterations
24. Warranties
25. Risk of Loss
26. Compliance with Law and Permits
27. Hazardous Materials
28. Liens or Encumbrances
29. No Credit Without Prior Approval
30. Indemnification
31. Insurance
32. Right To Inspect and Monitor; Regulatory Authority
33. Interference; Eminent Domain
34. Harvest from Approved Waters
35. Assignment
36. Sublease
37. County Representatives
38. Public Relations
39. Non-Discrimination
40. Governing Law
41. Lessee's Authority to Enter Lease
42. No Waiver
43. Business Day
44. Conflicts of Interest

45. Cooperation on Claims
46. Certification
47. Not in Default
48. Disclosure of Violations
49. Suffolk County Legislative Requirements
50. Severability
51. Notices
52. Merger; No Oral Changes; No Representations
53. Recording

EXHIBIT A Coordinates and Survey Map of the Premises

EXHIBIT B Suffolk County Legislative Requirements

EXHIBIT C Notices and Contact Persons

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

EXHIBIT E Suffolk County Local Law No. ____ - 20__ (the "Local Law"), incorporated by reference.

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 Local Law No. ____ - 20__ (the “Local Law”) (Ex. E); and

WHEREAS, the County is leasing parcels of underwater lands for purposes of shellfish cultivation pursuant to such statutory authority, the Local Law 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.

“Local Law” shall mean Suffolk County Local Law 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 Local Law, 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 Local Law No. ____ - 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 exemption (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 exemption. A Lessee who cannot demonstrate Substantial Shellfish Aquaculture Activity may be eligible for a hardship exemption, at the sole discretion of the Department. A hardship exemption 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 exemption 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 Leasehold Interest).

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: _____

Thomas A. Isles
Director of Planning

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

Date: _____

Date: _____

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

By: _____

Assistant County Attorney

Date: _____

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

This page was intentionally left blank.

EXHIBIT A
Coordinates and Survey Map of Premises

This page was intentionally left blank.

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

This page was intentionally left blank.

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).

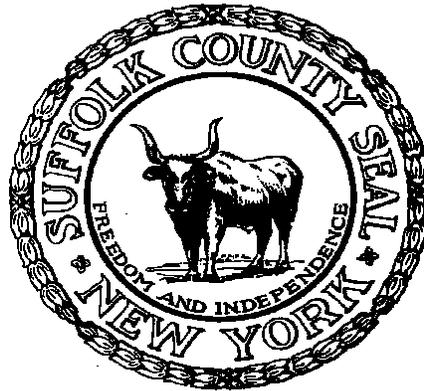
End of Text for Exhibit C

Appendix B

Model Lease Application

This page was intentionally left blank.

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

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.

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 significant or repeated civil, criminal or administrative violations of the Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel?

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.

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 significant or repeated civil, criminal or administrative violations of the Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel?

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 significant or repeated civil, criminal or administrative violations of the Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel?

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

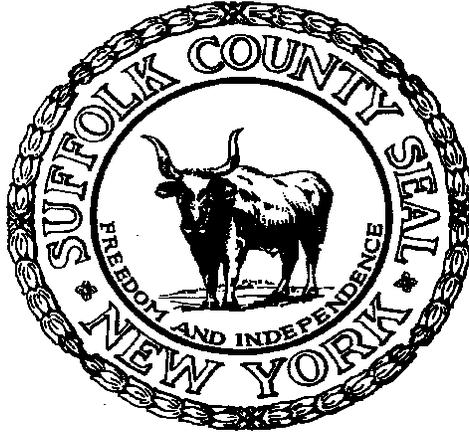
A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered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

This page was intentionally left blank.

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: _____

Aquaculture Lease Sites map 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: _____ *

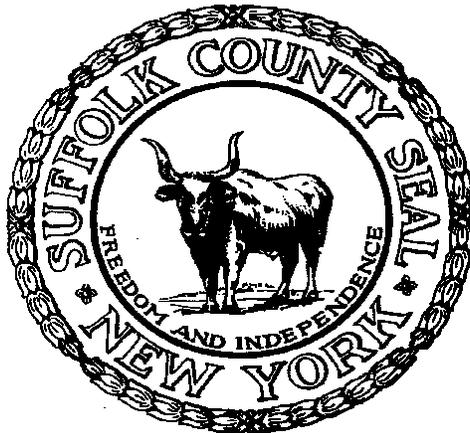
*See Attached Summary of Reasons for Incomplete & Directions for Submitting Additional Information, if Applicable.

This page was intentionally left blank.

Appendix C
Model Annual Report Form

This page was intentionally left blank.

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 significant or repeated civil, criminal or administrative violations of the Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel 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 significant or repeated civil, criminal or administrative violations of the Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel 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 significant or repeated civil, criminal or administrative violations of the Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel 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

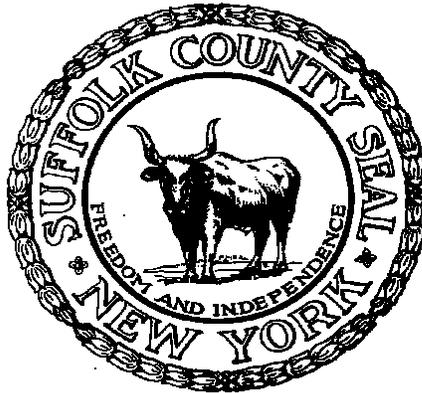
A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered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

This page was intentionally left blank.

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)

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 significant or repeated civil, criminal or administrative violations of the Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel?

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 significant or repeated civil, criminal or administrative violations of the Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel:

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 significant or repeated civil, criminal or administrative violations of the Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel:

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.

This page was intentionally left blank.

Appendix E
Model Sublease Application

This page was intentionally left blank.

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 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 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.

This page was intentionally left blank.

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)

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:

- 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.	_____	_____

Term of Proposed Sublease _____

Has the prospective Sublessee been convicted or found guilty of significant or repeated civil, criminal or administrative violations of the Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel?

- 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 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.

This page was intentionally left blank.

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 significant or repeated civil, criminal or administrative violations of the Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel?

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 significant or repeated civil, criminal or administrative violations of the Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel?

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.

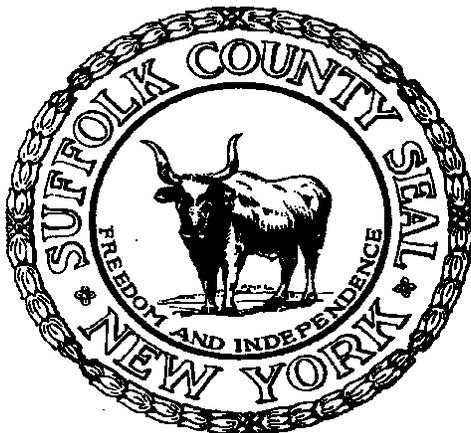
Offering a false instrument for filing in the second degree is a class A misdemeanor.

This page was intentionally left blank.

Appendix F
Model Lease Termination Application

This page was intentionally left blank.

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.

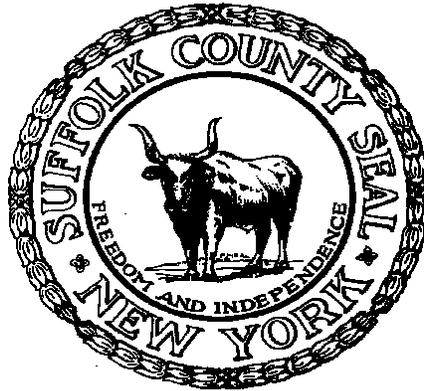
Offering a false instrument for filing in the second degree is a class A misdemeanor.

This page was intentionally left blank.

Appendix G
Model Lease Renewal Application

This page was intentionally left blank.

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.

If the lease renewal 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 renew this lease and 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:

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 significant or repeated civil, criminal or administrative violations of the Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel?

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 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.

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 significant or repeated civil, criminal or administrative violations of the Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel:

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 significant or repeated civil, criminal or administrative violations of the Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel:

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.

This page was intentionally left blank.

Appendix H

Shellfish Productivity Survey

This page was intentionally left blank.

Suffolk County Aquaculture Lease Program in Peconic Bay and Gardiners 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.

This page was intentionally left blank.

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.

This page was intentionally left blank.

Appendix I

Contact Information

This page was intentionally left blank.

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

ATTACHMENT E
MAP 1
SHELLFISH CULTIVATION ZONE

ATTACHMENT F
MAP 2
AQUACULTURE LEASE SITES

Suffolk County Department of Planning

Thomas A. Isles, AICP
DIRECTOR

Daniel J. Gulizio, AICP
DEPUTY DIRECTOR

ADMINISTRATION

Lynne Chieffo
Chrissy Einemann

ENVIRONMENTAL ANALYSIS

DeWitt Davies, Ph.D.
Lauretta Fischer
Michael Mulé
Susan Filipowich
Barbara DelGiudice

ZONING AND SUBDIVISION REVIEW

Andrew Freleng, AICP
Theodore Klein
John Corral
Dorothy Sonnichsen

COUNCIL ON ENVIRONMENTAL QUALITY

James Bagg
Christine DeSalvo

PLANNING AND RESEARCH

Peter Lambert
Jessica Kalmbacher
Andrew Amakawa
Karen Timlin

CARTOGRAPHY AND GIS

Carl Lind
Kate Oheim
Thomas Frisenda
Vincent Leogrande

LONG ISLAND REGIONAL PLANNING COUNCIL

Seth Forman, Ph.D., AICP



SUFFOLK COUNTY
DEPARTMENT OF
PLANNING

STEVE LEVY
SUFFOLK COUNTY EXECUTIVE

