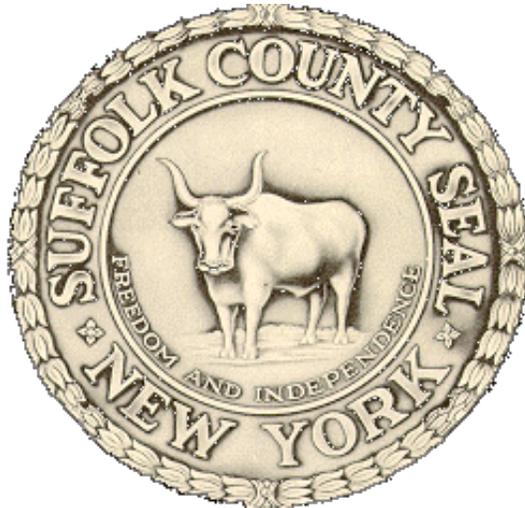


**SHELLFISH AQUACULTURE LEASE PROGRAM  
IN PECONIC BAY AND GARDINERS BAY  
SUFFOLK COUNTY, NY**



**Steven Bellone  
Suffolk County Executive**

**Ten Year Review  
Revised Administrative Guidance**

**Suffolk County Department of Economic Development and Planning  
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## **RAG-1 Introduction**

**“The program has proven to be an excellent tool to promote shellfish economic development, and, in the process, improve water quality in Suffolk County Bays.”**

**-Suffolk County Executive Steve Bellone**

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 110,000 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 Suffolk County Shellfish Aquaculture Lease Program (Lease Program) in Peconic Bay and Gardiners Bay established a framework for the leasing of underwater lands for the purpose of encouraging and supporting the growth of the shellfish aquaculture industry. The Lease Program was adopted by Suffolk County Local Law No. 25-2009 and codified in Chapter 475, Article II of the Suffolk County Code. Implementation of the Lease Program began in 2010 and the successful execution of the first Shellfish Aquaculture Lease Agreement by the December 31, 2010 sunset provision, fulfilled the requirement stipulated in the New York State Environmental Conservation Law §13-0302 (2004 Leasing Law); thus securing the County’s title to approximately 110,000 acres of underwater land in Peconic Bay and Gardiners Bay.

Since the implementation of the Lease Program in 2010, Suffolk County has conducted nine lease application cycles; the demand for new leases always exceeding the lease acreage that was available under the annual cap limit of 60 acres per year. While the County has executed over 80 Shellfish Aquaculture Leases, as of November 5, 2020, 58 shellfish cultivation leases are in place covering a total of 810 acres in Peconic and Gardiners Bays. Under provisions of the Lease Program, the County was able to add back to the acreage cap, lease acreage that originated from the acreage cap and was subsequently terminated. Each of the 58 leases has provided the opportunity for the establishment of private shellfish farming operation on which the leaseholders are able to cultivate oysters, hard clams and/or bay scallops. The level of interest in the Lease Program continues to grow, and the demand for new leases from a diverse pool of applicants remains strong.

Also codified in Chapter 475 Article II of the Suffolk County Code, is the document entitled, “Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay Program Administrative Guidance,” dated May 20, 2009, prepared by the Department, incorporated by reference and made a part of as Exhibit A. This document constitutes the regulations of the Lease Program; outlining the administrative procedures, implementation of the Lease Program, and directives for conducting Shellfish Aquaculture under the program. Included in the Law is a provision for the periodic administrative review of the Lease Program and the adopted Shellfish Cultivation Zone, which would allow the County to identify and propose

revisions to the program based on the experience gained during the first ten years of operation; as well as changed environmental and socio-economic conditions.

The development of the Lease Program was funded under Capital Project # 7180.110 (Res. No. 150-2005; Into. Res. No. 2226-2004, Amending the Adopted 2005 Operating Budget to Transfer Funds from Fund 477 Water Quality Protection, Amending the 2005 Capital Budget and Program, and Appropriating Funds in Connection with the Aquaculture Leasing Program [CP 7180]). The remaining funds from this original allocation (\$100,000) was utilized to conduct the required Ten Year Review of the Lease Program, as required under the Administrative Guidance that was adopted in August of 2009. The Ten Year Review included the evaluation of the Lease Program in light of early operational experience; the review and amendment of the Shellfish Cultivation Zone and associated maps; and the development of recommendations specifying how the Lease Program should be implemented when the annual acreage cap limit expired after 2019; all which would be considered and adopted by the County.

This Revised Administrative Guidance contains a full description of all aspects of the Lease Program, revised in accordance with the Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay Ten Year Review. As such, it provides the basis to continue the Lease Program beyond the first ten years. This document also contains all the updated definitions, procedures, forms, and required information 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. As such, it provides a detailed “road map” with steps and instructions to be used by new lease applicants when they apply for a shellfish aquaculture lease. Responsibilities and performance requirements of existing leaseholders and prospective lease applicants have also been updated and are described herein.

The Department will continue to be proactive in implementing the Lease Program, e.g., by encouraging prospective shellfish farmers to start new businesses; reducing the burden of administrative and regulatory permit constraints; and responding to changes in the knowledge base relating to shellfish aquaculture in coastal waters.

The next ten years of the Lease Program is expected to increase private investment in shellfish aquaculture businesses. 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 prevention of noxious plankton blooms, such as brown tide. These and other ecosystem services associated with shellfish farms are provided on a sustainable basis at little to no cost to the general public.

## **RAG-2 Definitions**

1. **Annual Acreage Cap Limit:** the total acreage of new shellfish aquaculture leases entered into during the second ten years of the Lease Program, also known as Phase 2, shall not exceed 600 acres; however, any unused acreage during a particular year shall be carried over to the next year and made available for leasing. Leases for new shellfish aquaculture operations shall consist of 10-acre parcels. This limitation shall result in the lease of 60 additional acres per year. This rate of growth for the second ten-year period is consistent with that of the first ten-year period.
2. **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.
3. **Aquaculture:** the cultivation of shellfish for human use, consumption, resource restoration or other beneficial use.
4. **Aquaculture Lease Board:** a board established pursuant to Section 475-18 of the Suffolk County Code that shall determine which proposed lease sites within the Shellfish Cultivation Zone will be eligible for leasing.
5. **Aquaculture Lease Sites Map:** the map that shows the Shellfish Cultivation Zone (as revised in [2020] 2021), 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.
6. **Department:** Suffolk County Department of Economic Development and Planning.
7. **Equipment:** rakes, cages, mesh bags, trays, racks, marker floats, buoys, rafts, anchors, chains, ropes, nets and any other goods, supplies, furnishings, apparatus, etc., used for and in support of shellfish cultivation.
8. **Expansion of Lease:** acquisition of additional shellfish lease acreage under the Lease Program may be obtained in some instances by certain eligible lessees through one of the following methods; expansion of lease premises acreage from a five (5) acre lease to a ten

- (10) acre lease within the lease site, or for an oyster grant owner with a lease covering only a portion of his/her grant, an application to expand the lease to the entire grant parcel.
9. **Floating Objects:** shall mean any anchored marker or platform floating on the surface of the water other than aids to navigation and shall include but not be limited to, bathing beach markers, speed zone markers, information markers, swimming or diving floats, mooring buoys, fishing buoys, and ski jumps (NYS Navigation Law Article 1, Section 2).
  10. **Floating Shellfish Culture Gear:** floats, cages, baskets, mesh bags, trays, nets, tubes or other containers used to contain shellfish or seaweed (as applicable) located at or near the surface of the water; or within the water column; but not including floating markers, buoys and similar equipment used to mark lease site boundaries or submerged equipment.
  11. **Lease Area Boundary Survey:** a physical survey of the proposed lease area, conducted by a New York State licensed land surveyor, which establishes the perimeter of a lease area as it relates to a site's legal description. The requirements and specifications for the lease site boundary surveys are described in Appendix A of the Revised Administrative Guidance.
  12. **Lease Site Boundary Survey Map:** a map prepared by a NYS licensed land surveyor that has been signed and sealed, which depicts the subject lease area and includes the site coordinates and a legal description of the lease site boundaries. The Lease Site Boundary Survey map must meet the specifications established by the County as described in Appendix A of the Revised Administrative Guidance.
  13. **Legacy Acreage:** lease cap acreage from the initial 2010 lease acreage cap that is available for leasing.
  14. **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).
  15. **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).
  16. **Phase 2:** shall mean the second ten-year period of the Lease Program; beginning upon filing of the Local Law [insert number]-2021, "A Local Law to Amend, Update and Reorganize Chapter 475 Article II of the Suffolk County Code" with the Secretary of State. Phase 2 includes the consecutive years starting in 2021 and ending in 2030.
  17. **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.

18. **Seaweed Cultivation:** the controlled or partially controlled growing of seaweeds or other macro-algae as permitted by New York State, Suffolk County or other governmental authorities in accordance with applicable Federal, State and local laws and regulations.
19. **Sensitive Area:** an environmentally and socio-economically sensitive area identified through literature search, existing reports/studies, and public outreach, such as scallop harvest areas, submerged aquatic vegetation beds, uncertified shellfishing areas and other areas unsuitable for aquaculture, as identified on *Public Comment and Focus Group Map 2* (Environmentally Sensitive Areas) of the Ten-Year Review.
20. **Shellfish:** means oysters, scallops, and all kinds of clams and mussels (ECL Article 11, §11-0103).
21. **Shellfish Aquaculture Lease:** the document that conveys a leasehold interest and the right to conduct shellfish aquaculture activities on Suffolk County owned underwater lands.
22. **Shellfish Aquaculture Lease Lands:** those lands conveyed by Suffolk County under a shellfish aquaculture lease document.
23. **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.
24. **Shellfish Cultivation Zone:** the area in Peconic Bay and Gardiners Bay within which shellfish aquaculture leases may be issued. These areas are shown on the Ten-Year Review Revised Shellfish Cultivation Zone Map dated November 20, 2020, adopted by the County of Suffolk. The zone includes private oyster grants and other areas where the impacts of shellfish aquaculture activities will be minimal.
25. **Shellfish Cultivation Zone Map:** the map, dated November 20, 2020, prepared by the Department, depicting the Shellfish Cultivation Zone.
26. **Shellfish Seed:** any shellfish measuring less than legal size as established under New York State law or regulation.
27. **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. In addition to shellfish cultivation activities, evidence of substantial shellfish aquaculture activity may include documentation in the form of receipts for equipment and/or shellfish seed purchases, landings reports, records of product sales, photographs, or other relevant

documents. A lease will be considered not to have substantial shellfish aquaculture activity if lease activity as described above is not documented for two consecutive years in the annual report forms.

28. **Suffolk County Shellfish Aquaculture Lease Program (a/k/a Lease Program or SCALP):** the program established pursuant to Section 475-9 and, more generally, Chapter 475, Article II, of the Suffolk County Code, as they may be amended and all written County policies, as concerning the program, including, without limitation, this Revised Administrative Guidance, dated November 20, 2020.
29. **Wild Stock:** natural shellfish resources which grow within the waters of Peconic Bay and Gardiners Bay, and are not cultivated in any way.
30. **2004 Leasing Law:** New York Environmental Conservation Law §13-0302.
31. **2010 Lease Acreage Cap Limit:** Limitation of 600 acres of new lease acreage that could be leased during the first ten years (2010-2019) of the program implementation, also known as Phase 1. This cap did not include leases issued for former Temporary Marine Area Use Assignments or private oyster grants. The first ten years of the Suffolk County Shellfish Aquaculture Lease Program began upon the first execution of aquaculture leases in 2010 and ended in 2019. Although the Program was enacted in 2009, no leases were issued until 2010, therefore the Program's start date is 2010.

## **RAG-3 Lease Application and Execution Process**

### **3.1 Eligibility for Shellfish Aquaculture Leases**

A.) Individuals eligible for a shellfish aquaculture lease shall be at least 18 years of age. Each lease applicant is required to provide photo identification, date of birth, a Social Security number and/or federal tax ID number (EIN). All proposed shellfish aquaculture leases must be located within the adopted Shellfish Cultivation Zone. Applicants are required to submit a shellfish cultivation plan meeting the requirements outlined in Appendix C. The aquaculture lease agreement shall be similar to the Shellfish Aquaculture Lease, which is available on the Suffolk County Lease Program website. However, the County reserves the right to make changes to the lease, if necessary.

B.) All lease applicants must submit a shellfish aquaculture business plan, which shall include estimated start-up costs for a commercial shellfish aquaculture operation on the subject lease site and which documents the cost for boat, marina fees, mooring fees, shellfish equipment, shellfish seed stock, etc. as outlined in Appendix D.

C.) In addition to the requirements discussed above, all lease applicants must also satisfy any one of the following criteria:

- i. Completion of a recognized course of study in shellfish aquaculture, marine science or related disciplines; technical training program.
- ii. Prior shellfish aquaculture experience (two or more years) as an employee or apprentice.
- iii. Prior experience (three or more years) as a commercial baymen and/or shellfisherman.
- iv. Additional experience, not listed above, may be taken into consideration by the Department.

### **3.2 Lease Program Participants**

#### **A.) Existing Shellfish Aquaculture Leaseholders**

- i. The Suffolk County Lease Program shall include the existing Shellfish Aquaculture Leaseholders who applied for and obtained a lease during the first ten years (2010 to 2019) of the Lease Program. The first Lease was executed in 2010. However, only those leaseholders who meet the Substantial Shellfish Aquaculture Activity requirements, as defined in the Revised Administrative Guidance, shall be eligible to apply to renew their lease for an additional ten (10) years, within the discretion of the County.
- ii. During the second 10-year period, also known as Phase 2 (2021-2030) of the Lease Program, the Department may issue second leases to existing leaseholders. Leaseholders that can demonstrate a need for a second lease and meet the eligibility requirements described in RAG 4.7 may apply for a second 10-acre lease site in accordance with the procedures described herein.

B.) *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 that wish to cultivate shellfish species other than oysters on an oyster grant or portions of an oyster grant, must apply for a lease. An oyster grant owner may apply for a lease on his/her entire oyster grant, provided the oyster grant or portions of the oyster grant are located more than 1,000 feet seaward from the mean high water shoreline. Oyster grant holders that apply for a lease on their grant are subject to a full application process, including public review and comment; any such leases issued do not count toward the annual acreage cap limit for new leases. Permits issued by the NYSDEC and/or other regulatory agencies shall identify where the cultivation of species other than oysters may take place within a leased area.
- ii. The Department has identified a number of oyster 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 underwater land is within the Shellfish Cultivation Zone. However, it should be noted that the reverted grant lands shall not be leased as a grant parcel, but may be divided into 10-acre grid parcels, and shall be subject to new lease area requirements.
- iii. Any privately-owned oyster grant that is taken by the County through tax default procedures shall not be sold at auction. Said parcels should be retained for general County purposes and may be leased for shellfish cultivation if located within the Shellfish Cultivation Zone and outside of an environmentally/socio-economically sensitive area.

C.) *Leases Subject to Annual Acreage Cap Limit*

- i. Those portions of the Shellfish Cultivation Zone, excluding leased areas or private oyster grants, may be leased subject to the acreage cap limit of 600 acres, which applies to Phase 2 of the program (2021-2030). These leases shall be limited to 10 acres in size, with a cap of 60 acres leased during each year. Any unallocated acreage from a given year may be added to the cap for leasing during a subsequent year or years. Upon completion of Phase 2, a total of 600 additional acres may be leased.
- ii. Applications for new leases received after January 1, 2021 shall be accepted and processed subject to the Phase 2 annual acreage cap limit, in accordance with requirements described herein. Lease applicants must meet requirements set forth in RAG 3.1 above; lease applications may be subject to a random selection

procedure. No leases shall be issued after the Phase 2 annual acreage cap limit is reached; however, this limitation shall not include carry-over from a previous year or legacy acreage from the 2010 Lease acreage cap limit. At the discretion of the County, legacy acreage from the 2010 annual acreage cap may be issued to existing leaseholders for second leases or an expansion of lease.

*D.) Non-commercial Shellfish Aquaculture Lease*

- i. Non-commercial leases include experimental, educational and resource restoration leases; and may be limited in scope and duration by the Department. Non-commercial leases must be located in the Shellfish Cultivation Zone as mapped and are subject to a full application process. These leases, however, will not count toward the annual acreage cap limit for new leases. Non-Commercial leases cannot be assigned; and shall be subject to termination in the sole discretion of the County.
- ii. Examples of non-commercial leases may include but are not limited to: shellfish aquaculture research projects implemented by a municipality, university, college and other educational institution; community shellfish gardening programs or shellfish aquaculture training program implemented and administered by municipalities, non-profit organizations and/or academic/educational institution; and resource restoration projects sponsored by non-profit organizations and conservation groups.

**3.3. Number of Leases Permitted**

A.) Under the Lease Program, leaseholders shall be limited to two leases at any one time. Lease applicants are not permitted to submit multiple lease applications during a given application cycle. The application for a second lease shall be considered at the discretion of the Department, provided there is acreage available after all eligible applicants requesting one (initial) lease have been processed. Legacy acreage from the 2010 acreage cap limit may be made available at the discretion of the Department to existing leaseholders who can document substantial shellfish aquaculture activities, demonstrate the need for a second lease and meet the eligibility requirements for lease expansion as described in RAG-4.7 Application for a second lease shall require a full application process, including a pre-application meeting, a public review and comment period, and approval by the Aquaculture Lease Board, as applicable. The term of a second lease shall be independent of the initial lease term. Oyster grant owners that own more than one oyster grant shall not be subject to this limitation.

**3.4 Lease Application Period**

A.) Applications for leases and/or second leases must be submitted during a timeframe established by the Department for a given application cycle. All applications received by the Department will be stamped with the date they are received, this shall serve as documentation for receipt of the application by the Department. Applications must be

received by the Department on the due date established by the Department. Incomplete applications received on the last day of the application period or any application received after the established date will not be accepted and will be returned. It is anticipated that there will be at least one application cycle conducted by the Department during each calendar year. In addition to an annual lease application cycle, additional lease application cycles may be implemented at the discretion of the Department.

### **3.5 Identification of Desired Lease Area**

A.) For non-oyster grant lease applications, an applicant must identify a preferred lease location and two alternative lease locations as identified on the Aquaculture Lease Sites map. The map will indicate available locations broken down into 20-acre parcels (a 10-acre lease area with a 10-acre buffer area). Each parcel will be identified with a number or alphanumeric designation. Lease Program maps will be available for viewing on the Suffolk County website, at the Department office and at the Suffolk County Clerk's Office. The Department shall make the coordinates for the four corners and center point of each 10-acre lease site, as shown on the Aquaculture Lease Sites map, available on the Lease Program website. The SCALP GIS Map Viewer will indicate which 10-acre lease sites are available for leasing. The lease map identification numbers are as follows:

- i. Lease sites that are subject to an annual acreage cap limit will be identified by a designated grid number, as determined on the Aquaculture Lease Sites map.
- ii. Lease sites added as a result of the Ten-Year Review that was completed in 2020 will be identified with a designated alphanumeric grid number (i.e., T-1, T-2, etc.) as shown on the Aquaculture Lease Sites map.
- iii. All private grants will be labeled with GR designations as shown on the Aquaculture Lease Sites map.

### **3.6 Pre-Application Meeting**

A.) Prior to completion and submission of a new lease application, lease assignment, lease site relocation or lease renewal, the lease applicant and/or leaseholder 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 application process, review prospective lease areas or sites; and update a leaseholder on any changes to the program. If desired sites are available, subsequent to the pre-application meeting, the applicant may submit an application to obtain a lease on one of the proposed sites. Applications submitted without having satisfied the pre-application meeting requirement will not be considered complete. The County reserves the right to waive this requirement, or may request that this required meeting be conducted virtually. Staff from the NYSDEC Division of Marine Resources shall be invited to attend the pre-application meeting. Applicants and/or leaseholders should be prepared to discuss the proposed shellfish cultivation activities and their proposed cultivation plan.

### **3.7 Submission of Application**

A.) The Department shall provide application forms which must be completed and returned to the Department during the established lease application period. 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 the receipt of a complete application. Incomplete applications will be returned to the applicant with a notice that identifies the information that is missing; provided there is adequate time remaining in the application period, an applicant may resubmit their application with the missing/requested information. Incomplete applications received on the last day of the application period or any application received after the established due date will not be accepted and shall be returned to the applicant.

### **3.8 Review of Application**

A.) The Department will only consider complete applications received during the established lease application period, and shall make a determination on applicant eligibility based on the following criteria:

- i. An applicant for a lease shall be at least 18 years of age.
- ii. 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.
- iii. 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.
- iv. An applicant or lessee shall be, and shall have been, in compliance with the terms of any existing or previous lease.
- v. An applicant or lessee shall not have submitted false or fraudulent information or made misrepresentations to the Department.
- vi. An applicant or lessee shall have submitted the documentation required for an applicant or lessee.
- vii. An applicant must meet eligibility standards as established in RAG 3.1 of this document.

viii. An applicant or lessee shall have submitted the required application fees and/or rent required by the Suffolk County Shellfish Aquaculture Lease Program.

ix. A lessee shall have obtained 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.

B.) An applicant or lessee shall have the opportunity to submit written comments regarding these criteria or on any other relevant topic to the Director of Planning. The Department shall provide written notice to those applicants determined to be ineligible to participate in the lease process.

### **3.9 Establishment of Application Priority**

A.) Once the Department makes a determination on applicant eligibility, 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 developed and 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.

B.) 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 application cycles. In effect, there will be no preference given to those applicants not chosen in a specific year for the following year.

The RSP is described below:

- i.** Write all applicants' names on separate pieces of paper.
- ii.** Place all papers with applicants' names in a "hat."
- iii.** Names will be drawn from the "hat" and assigned a random number.
- iv.** Applicants' names and assigned numbers will be posted for viewing.
- v.** Each assigned number will be placed on a ping pong ball.
- vi.** The numbered balls will be placed in a "hat."
- vii.** The numbered balls will all be drawn from the "hat."
- viii.** 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.

C.) *The Department may 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.* Unless one of the applicants is an existing leaseholder, preference will be given to the existing leaseholder applying for a second lease or relocation.

D.) *The Department may also use an online RSP to select lease applicants in the event a RSP is necessary. If an online RSP is utilized, Section 3.9 (B) will be updated.*

### **3.10 Public Notice**

A.) Upon acceptance of the completed lease applications and conduct of the RSP, if required, the Department shall issue a public notice regarding all proposed lease sites for the applicants proceeding in the lease application process, in accordance with ECL §13-0302. Notice shall be provided for at least two months by posting such notice in the office of the Department, the NYSDEC Division of Marine Resources, the Office of the Suffolk County Clerk, the office of the town clerk in the towns of Riverhead, Southampton, Southold, East Hampton and Shelter Island, and the office of the East Hampton, Southampton and Southold Town Trustees. Such notice shall also be published in the official newspaper of the County, as well as a local newspaper where the lease sites are located, emailed to all who have signed up for notifications regarding SCALP and made available on the Lease Program website. The notice shall include the name of the applicant; proposed lease site(s), [and]the respective boundaries, and name of the Town where the lease is located; proposed operation type; and proposed cultivation method. The notice will include a 60-day written comment period during which the regulatory agencies, municipalities, user groups and general public may submit written comments on the proposed operation and location of the lease and alternative lease sites. The Aquaculture Lease Board shall 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 RAG-5, County Administrative Requirements.) Lease premises shall be located within a site approved by the Aquaculture Lease Board.

### **3.11 Objections Regarding Lease Site, Review and Benthic Survey**

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

- i. Underwater lands within one thousand feet of the high water mark;
- ii. Underwater lands where bay scallops are produced regularly and harvested on a commercial basis;
- iii. 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
- iv. Underwater lands where the leasing will result in a significant reduction of established commercial finfish or crustacean fisheries.

B.) In addition to the State's requirements, the County established additional considerations for underwater lands to be excluded from the Shellfish Cultivation Zone, based on environmental and socio-economic factors, such as navigational hazards.

C.) The creation of the Revised Shellfish Cultivation Zone was a major component of the Ten-Year Review Project during which, the County reevaluated the factors initially considered during the development of the Shellfish Cultivation Zone, which was adopted in 2009. This was an extensive, multi-phased process that consisted of public meetings, focus group meetings, and meetings conducted in each of the five east end towns. Additionally, the project consultants conducted interviews with bay users, shellfish farmers, academics and regulatory agencies to identify eelgrass distribution and environmentally sensitive areas, as well as recent and historic bay scallop and/or shellfishing grounds. Throughout the public outreach meetings, the County received comments from the various user/ interest groups that utilize and enjoy Peconic and Gardiners Bays. This public outreach effort took over a year to complete and also included a focus on identifying areas of concern for recreational bay users.

D.) The project consultants and Department staff also reached out to the NYSDEC's Division of Marine Resources to obtain data and relevant information regarding essential finfish habitat and areas considered to be environmentally significant by the NYSDEC. All the information that was received and/or collected during public outreach meetings or public comment periods was compiled and subsequently mapped using ArcGIS software for further evaluation. The Public Comment and Focus Group Maps illustrate the results of all the comments that were received during public outreach meetings that were conducted January 2019 to December 2019. As a result of the public outreach and the information that was collected, certain areas were then removed from consideration; and other areas seaward of 1,000 feet from mean high water were considered for addition to the Shellfish Cultivation Zone.

E.) Revisions to the Shellfish Cultivation Zone also included the review and update of the privately-owned underwater lands in Peconic Bay and Gardiners Bay. Grant parcels that were identified as having continued private ownership interests seaward of 1,000 feet from mean high water were included in the Revised Shellfish Cultivation Zone; oyster grants that were acquired by the County will be retained by the County and may be made available for leasing. Existing leases that were issued during the first ten years of the Lease Program, as well as the lease located to the south of Plum Island, which was issued by NYS Office of General Services, were also included in the Revised Shellfish Cultivation Zone.

F.) 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 and/or comments that are received regarding their application. 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 determined to be credible and/or involves an alleged hard clam commercial fishery, the Department shall require the applicant to conduct a benthic survey at the applicant's own expense. Under either of the above circumstances, the lease applicant will have the option to select one of his/her alternative proposed lease sites that is approved by the Aquaculture Lease Board.

*i. 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, landings report or documented proof on what was harvested, and sales receipts documenting sales. A notarized letter from the concerned party must also be submitted to the Department, which documents harvest activity within the previous five years in the subject area and would disqualify 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 or submittal of forms from the objecting party.

*ii. 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 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.

- a. 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.

iii. 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 E).

iv. 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. The revised cultivation zone map considered reported commercially viable scallop harvest areas during the ten-year review process.

- v. 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.

### **3.12 Decision on Lease Site Eligibility**

A) The Department shall prepare a staff report on the lease application, including proposed findings of fact, and submit the same to the Aquaculture Lease Board. This staff report shall include a summary of each application and the proposed shellfish aquaculture operation, and a synopsis of all comments received on the application in a response to the public notice.

B) The Aquaculture Lease Board shall convene a public meeting during which all potential lease sites identified in the lease applications received under a given application cycle, will be presented for consideration from a regional perspective. This will include a summary of the staff report referred to above. The public will be given the opportunity to present additional comments and information pertaining to proposed lease sites at this meeting.

C) The Aquaculture Lease Board shall make a determination on those proposed sites that may be approved by the County and made available for leasing, and those sites that will be disapproved and not available for leasing during that calendar year. 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 approved and subject to further sampling as provided in the Administrative Guidance. In this event, the Aquaculture Lease Board shall provide the Director of Planning with specific instructions for further disposition, in accordance with the Administrative Guidance. If a substantial amount of comments and/or objections are received during this meeting, or certain comments require additional time to analyze; the Aquaculture Lease Board may table the subject lease application and reconvene after additional vetting of comments has been conducted and a determination has been made by the Department regarding whether the comment(s) is credible.

D) The Department shall then process all approved lease site applications and/ or conditionally approved lease site applications. At this time, applicants whose proposed site(s) were conditionally approved 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 D), the site in question may be leased and a boundary survey must then

be prepared by the applicant or applicant's agent. Should the site prove to be productive based on criteria stated herein, the applicant may either select an alternative eligible lease site, or choose to withdraw from the lease application cycle and forfeit his/her application fee.

E) The Aquaculture Lease Board may make its determination to disapprove lease sites based on one or more of the following conditions:

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

### **3.13 Lease Area Boundary Survey**

A.) Pursuant to §475-14 C Article II of the Suffolk County Code, prior to the execution of a lease agreement, 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 attached to the shellfish aquaculture lease.

B.) Subsequent to lease site approval by the Aquaculture Lease Board, lease applicants will receive notification regarding the determination(s) made by the Aquaculture Lease Board on the proposed lease site(s). Lease applicants will be required to verify their desire to proceed with a lease execution. It is the responsibility of the lease applicant to procure the services of a NYS Licensed Surveyor to prepare an accurate survey of the lease boundary and establish lease boundaries in the field in accordance with coordinates provided by a professional licensed land surveyor employed by the County and in accordance with the specifications provided in Appendix A of the Revised Administrative Guidance. Upon completion of the physical boundary survey, the applicant's surveyor must prepare a lease site boundary survey map in accordance with the specifications provided in Appendix A. The applicant is required to submit to the Department six hard copies of the lease site boundary survey map which have been signed and sealed by the land surveyor for attachment to the Shellfish Aquaculture Lease Agreement.

C.) Lease applicants shall have six months from the date of notification to submit the required copies of their final lease site boundary survey map to the Department. The lease applicant is responsible for contracting and paying for the lease site boundary survey. If the required lease site boundary survey maps are not received by the Department within the established six-month period; the County shall terminate the lease application and discontinue the lease execution process.

D.) A lease area boundary survey shall also be prepared for an expansion of lease acreage, or the relocation of a lease, unless the County possesses a current boundary survey for the expansion or relocation area. The lessee shall procure and pay for the cost of such survey and will be required to submit the required copies of the lease site boundary survey map to be attached to the amended lease agreement. The County may require verification by a licensed land surveyor of a lease site boundary survey conducted for a prior lease applicant.

### **3.14 Lease Execution**

A.) Once the applicant has submitted the required eight copies of the lease site boundary survey map, the Department shall prepare the required Shellfish Aquaculture Lease Agreement for execution. The Department will send a draft of the Lease Agreement to the lease applicant to review; the applicant will have 45 days from the date of notice to contact the Department and schedule a date and time for the applicant to come to the Division of Planning and Environment to sign the required lease documents. Once the lease has been executed, a PDF of the document will be sent via email to the leaseholder for their records; a hard copy will also be sent to the leaseholder once the lease has been recorded in the Office of the Suffolk County Clerk, along with a copy of the Recording Page.

B.) If the lease applicant has not signed his/her Shellfish Aquaculture Lease Agreement within the established 45-day time period, the Department may terminate the lease application and discontinue the lease execution process. Unleased acreage shall be returned to the Annual Acreage Cap Limit and made available for lease during a subsequent lease application cycle.

## **RAG-4 Lease Requirements and Procedures**

### **4.1 Lease Required**

It shall be unlawful for an entity that does not have a shellfish aquaculture lease issued by the County to conduct any type of shellfish aquaculture 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 that wish to cultivate shellfish species other than oysters, are required to follow the applicable lease requirements and restrictions described in RAG-3.2 Lease Program Participants, A.), B.) and C.) above.

#### **4.2 Shellfish Regulations and Submission of Regulatory Permit Applications**

A.) A lessee must comply with all applicable federal, state and local laws and regulations, including, but not limited to, those relating to cultivation, harvest, handling, tagging, storage, sale, sanitary control and aquaculture of shellfish. Prior to starting any shellfish cultivation activities, leaseholders must obtain all required Federal and State regulatory permits, (including, without limitation, on/off-bottom culture permit, shellfish bed permit, digger's permit, etc.)

B.) Leaseholders shall have six months from the date of Departmental notification regarding the Aquaculture Lease Board's decision to submit permit applications to the applicable Federal and State regulatory agencies; hard copies or PDF's of the permit applications shall be submitted to the Department to document completion of this requirement. If the required regulatory permit applications have not been submitted within the established timeframe, this shall be cause for termination of lease by the County. Lessees must submit hard copies or PDF's of all permits or other forms of authorization once they are issued by the respective regulatory agency.

C.) 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.

#### **4.3 Lease Site Boundary and Equipment Marking Requirements**

A.) As required by the NYSDEC On-/Off- Bottom Culture Permit, the Leaseholder shall be required to mark either the boundaries of the leased underwater lands and/or the subarea of the leased where shellfish aquaculture activities are taking place. 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 or within an aquaculture lease area. The required markers, which meet the USCG specifications are described in Appendix B of the Revised Administrative Guidance document. Lessees should contact the local USCG Private Aids to Navigation Team to confirm that they have met all USCG requirements, as well as for approval/verification of marking devices.

B.) Leaseholders are required to submit photos of boundary markers to the Department once they have been deployed on the lease site. Photos of equipment/gear identification markers should also be submitted prior to starting cultivation activities and with annual reporting information. Lessee shall be responsible for making reasonable efforts to maintain lease site boundary markers and verify that they are accurately positioned.

C.) Equipment/gear buoys will be deployed and maintained at the discretion of the lessee, unless required by law. Depending on the type of equipment/gear that is permitted,

leaseholders may also need to contact the National Oceanic and Atmospheric Administration (NOAA) to initiate the appropriate chart and Coast Pilot corrections. At minimum, equipment/gear must be permanently marked with the lessee's name, lease site identification number and NYSDEC on/off-bottom culture permit number.

#### 4.4 Lease Program Fees

##### A.) Lease Application Fees

Application fees described below are non-refundable. Application fees shall be charged for an initial lease, lease renewal, expansion of lease, lease assignment and relocation of the lease. A leaseholder that requests to relocate or assign his/her lease shall be charged a higher fee to cover costs associated with the publication of the required public notices. Lease application fees may be waived by the Director for public entities (state agencies, towns, villages, etc.); or for leaseholders that are required to relocate their lease due to changes in environmental conditions.

Application Fees	Non-Commercial 10-Acre Lease	Commercial 10- Acre Lease	Commercial Lease on Oyster Grant
Term	Case-by-case basis	10 Years; option to renew for an additional 10 years at the County's discretion	10 Years; option to renew for an additional 10 years at the County's discretion
Lease Application	\$150 (non-refundable)	\$150 (non-refundable)	\$150 (non-refundable)
Lease Assignment/ Relocation/ and Renewal Application	\$200 (non-refundable)	\$200 (non-refundable)	\$150 (non-refundable)

##### B.) Annual Lease Rental Fees

Leaseholders 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 January 1<sup>st</sup>, the annual lease rental fee would be due 30 days before that date of each year. Annual lease rental fees may be waived for public entities (state agencies, towns, villages, etc.) at the County's discretion.

Annual Lease Rental Fee	Non-Commercial 10-Acre Lease	Commercial 10- Acre Lease	Commercial Lease on Oyster Grant
Term	Case-by-case basis	10 Years; option to renew for an additional 10 years at the County's discretion	10 Years; option to renew for an additional 10 years at the County's discretion
Years 1 thru 3:	\$100 per lease	- \$200 plus \$5 per acre - \$100 per 10-acre lease for United States Veterans residing in Suffolk County - \$250 plus \$25 per acre for non-County residents	-\$200 per oyster grant
Years 4 and 5:	\$200 per lease	- \$250 plus \$25 per acre - \$200 per 10- acre lease for United States Veterans residing in Suffolk County - \$450 plus \$55 per acre for non-County residents	-\$250 per oyster grant
Years 6 thru 10:	\$300 per lease	- \$300 plus \$45 per acre - \$300 per 10-acre lease for United States Veterans residing in Suffolk County - \$600 plus \$90 per acre for non-County residents	-\$300 per oyster grant

#### 4.5 Annual Reporting Requirements

A.) Leaseholders are required to complete a Shellfish Aquaculture Leaseholder Annual Report form (Annual Report) every year that they hold their lease and submit the same to the Department, 30-days prior to the lease anniversary date; along with payment of the annual lease rental fee, a completed SC Form 22 *Contractor's/Vendor's Public Disclosure Statement*; and copies of renewed regulatory permits. The lessee shall also be required to submit this report 30-days before the expiration of a lease and prior to applying for a lease renewal, relocation or assignment. The Annual Report shall generally include but is not limited to the following information: description of shellfish cultivation activities, types of gear/equipment used, areas within the lease site that are being used for cultivation, shellfish species being cultivated, quantity of species under cultivation, layout of farming operation, source of seed stock, shellfish landings and quantities brought to market, and self-certification of commercial agricultural production as defined by New York State Agriculture and Markets Law Article 25-AA §301, after the first five years of a lease. Photos documenting the maintenance of the required boundary markers; and marking of shellfish equipment and gear may also be required. Additional information regarding gear/equipment supply purchases, product distribution, number of employees, etc. may also be required by the Department. If

information regarding civil, criminal or administrative violations which the lessee was convicted of or found guilty of during the reporting period has not already been disclosed to the Department, leaseholder must disclose this information in the Annual Report form with outcome of the violation.

B.) Hard copies and/or PDF's of required permit renewals or permit amendments issued by U.S. Coast Guard, U.S. Army Corps of Engineers (if applicable) and/or the NYSDEC (*i.e.*, *NYSDEC Off-Bottom Culture Permit, Shellfish Bed Permit, and Marine Permit Certificate*) must be submitted with the Annual Reporting information.

#### **4.6 Substantial Shellfish Aquaculture Activity**

A.) Leaseholders are required to conduct substantial shellfish aquaculture activity in order to retain their lease with Suffolk County. A leaseholder shall be considered to be conducting substantial shellfish aquaculture activities provided he/she can document to the Department the planting or deployment of shellfish, cultivation or maintenance of shellfish, harvest of cultivated product; or documentation of other activities related to shellfish farming within the lease area. Documentation may consist of, but is not limited to, landings reports and records of harvest or product sales. Substantial shellfish aquaculture activities may also include, but are not limited to, the following: actions or steps taken by the lessee to prepare the aquaculture lease site; the purchase of necessary shellfish and/or gear/equipment; application to obtain required regulatory permits; or acquisition of financing. These types of actions or activities may be documented by submitting invoices or receipts of purchase for equipment, buoys, markers, bags, baskets, tags, shellfish seed, and gear for a boat, etc. Photographs or other relevant documents may be submitted. *A lessee will be considered by the Department not to have conducted substantial shellfish aquaculture activity if lease activities described above are not documented for two consecutive years.*

#### **4.7 Expansion of Lease Acreage**

A.) Certain oyster grant owners/lessees may opt for an expansion of lease premises acreage from a five (5) acre lease to ten (10) acres within the lease site. Oyster grant owners that applied for and received a lease on only a portion of their grant parcel may apply for an expansion of lease, which, if approved, would include their entire grant acreage; provided the acre(s) are seaward of 1,000 feet from mean high water.

B.) Leaseholders that can demonstrate a need for a second lease, can document substantial shellfish aquaculture activities on their initial lease site and meet the eligibility requirements may apply for a second 10-acre lease site in accordance with the County lease application procedures. Expansion of a lease or acquisition of a second lease shall require a full application process which includes a pre-application meeting; a public notice and comment period; and approval by the Aquaculture Lease Board.

#### **4.8 Lease Assignment**

A.) A lessee that no longer wishes to retain his/her lease with the County may apply to assign his/her lease to another entity, the “assignee”, for the remaining portion of the lease term. Lease assignments shall be reviewed by the Department. Applications shall be rejected if shellfish aquaculture activities have not been put into operation on the subject lease area. The assignee shall be subject to the eligibility standards as specified herein. A lease assignment is subject to a complete application process with review and public comment; however, the site will not be subject to approval by the Aquaculture Lease Board, as the lease site was previously approved by the Aquaculture Lease Board. A Lease Assignment Application must be submitted by the leaseholder, the “assignor”, along with the required application fee and supporting documentation. No profit shall be made by the lessee in the assignment of a lease.

*B.) For applicants who ultimately wish to have their lease issued to a corporation, LLC, partnership, or DBA, it is recommended that they pursue this during their initial application for a lease, rather than entering into a lease first and then seeking an assignment. While sole proprietors who successfully obtain a lease may subsequently apply to assign their lease to a corporation, LLC, partnership or DBA that they own or are a member of; approval of a subsequent lease assignment is at the discretion of the County.*

#### **4.9 Lease Relocation**

A.) A lessee may apply to relocate his/her shellfish aquaculture operation from his/her existing lease site to another available lease area at the discretion of the Department or during an annual lease application cycle. Leaseholders must submit a Lease Site Relocation Application, application fee and supporting documents requested. The Department has the discretion to consider relocation applications on an emergency basis otherwise relocations applications will be considered at the same time as new applications. A lease site relocation shall be subject to notice, a public comment period and approval by the Aquaculture Lease Board, unless the subject lease site was previously approved by the Aquaculture Lease Board within one (1) calendar year prior to the request; or if the lease site was previously leased and the lease was terminated within the last six months prior to the request. Lease site relocations shall not be subject to the annual acreage cap limit for new leases under a given lease application cycle.

B.) If the relocation is approved by the Department, the leaseholder must satisfy the lease site boundary survey requirements for their new lease area; the lease acreage amount and term of lease shall remain the same. Prior to the conduct of any shellfish farming activities, all required regulatory permits must be amended to reflect the relocation of the shellfish farming operation. Hard copies or PDF’s of the amended permits shall be submitted to the County by the leaseholder. In addition, all required paperwork (e.g. a lease amendment or other necessary documents) to relocate the lease must be executed and submitted to the County by the leaseholder. Leaseholders will be given a specified amount of time to relocate all shellfish, equipment, markers, etc. from their original lease site to the relocation area. Authorization for use of the original lease shall expire and all gear, equipment, markers, etc.,

must be removed from the original lease area. The final relocation authorization shall be conditioned upon removing all gear and equipment from the former lease site. Any gear and / or equipment left in or on the former lease area may be removed by the County at the expense of the former leaseholder.

#### **4.10 Subleasing**

Subleasing shall not be permitted under new leases or lease renewals executed on or after the effective date of Local Law [insert number]-2021, “A Local Law to Amend, Update and Reorganize Chapter 475 Article II of the Suffolk County Code,” and this Administrative Guidance.

#### **4.11 Lease Termination/Non-renewal by the County**

A.) The County may terminate or deny a lease renewal based on failure to comply with the terms of the lease, Chapter 475 of the Suffolk County Code and/or this Administrative Guidance, or lack of eligibility as described therein. Such failures shall include but are not limited to, failure to pay Lease Program fees, and failure to submit required forms, documents, regulatory permits and/or permit applications. 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 have caused substantial damage to existing environmental conditions. Leaseholders which 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 shall also be cause for termination or non-renewal of a lease. Subject to the approval of the County Attorney, the Department may include in the lease other conditions, actions or omissions which shall be cause for termination or non-renewal of a lease.

B.) If the County terminates a lease or denies lease renewal and the acreage involved is from the 2010 annual acreage cap limit or the Phase 2 acreage cap limit, this acreage shall be returned to the overall acreage cap and made available for lease in future years; or made available for issuance of a second lease to existing leaseholders.

C.) If a lease is terminated for reasons beyond the control of the leaseholder or at the discretion of the County, an opportunity may be offered to the leaseholder to relocate to a different lease site.

#### **4.12 Hardship Exemption**

A.) A lessee, who cannot demonstrate substantial shellfish aquaculture activity as defined herein, may be eligible for a hardship exemption, provided appropriate evidence can be shown as to why no activity or actions have been taken to conduct shellfish aquaculture activities on the lease site. Suitable evidence of hardship includes, but is not limited to documented losses of gear/shellfish; damage to boat or other equipment due to major weather

events and natural disasters; water quality data; family or personal medical issues; or financial statements. Issuance of a hardship exemption shall be at the discretion of the County based on review of the requested documentation. Hardship exemptions shall not be granted for more than three years during a lease term. Exemptions would be submitted on an annual basis to the Department.

#### **4.13 Lease Termination by Lessee**

A.) A lessee may request to terminate his/her lease at any time prior to the end of his/her lease term. To initiate this process, leaseholders must complete and submit the *Combined Lease Termination Application & Final Leaseholder Annual Reporting Form* (available on the Lease Program website) to the Department. Upon receipt and review of this document, the Department will prepare the required lease termination documents; leaseholders shall have the option of coming to the office to sign their termination agreements or may request to have the documents mailed to them for signature. Leaseholders who request that the lease termination documents be mailed to them will be responsible for having the required documents notarized by a Notary Public and return the same to the County for final execution. 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.

#### **4.14 Lease Renewal**

A.) If a lessee wishes to renew his/her lease at the end of the initial 10 year lease term, he/she must submit a Lease Renewal Application (available on the Lease Program website), along with an application fee and a completed Leaseholder Annual Report Form no later than three months prior to the expiration of the lease term. Lease renewals shall be subject to approval in the discretion of the County. Lease Renewals shall be subject to public comment. Lease Renewals shall be subject to the terms and conditions of the Lease Program in effect at the time of renewal, including but not limited to applicable provisions in the Suffolk County Code, Lease Program policies, requirements, rental fees and other charges current at that time. The Department shall notify the leaseholder of either the approval or disapproval of the lease renewal. Subsequent to receiving notification of approval from the Department, the leaseholder must verify his/her desire to renew the lease for an additional term of 10 years. The Department will send a draft Lease Agreement to review and a notice to the leaseholder; the leaseholder will have 45-days from the date of the notice to contact the Department and schedule a day/time for leaseholder to come to the Division of Planning and Environment and sign the required lease documents. The leaseholder shall be required to submit the annual lease rental fee payment to the County upon signature of the lease agreement. Once the lease has been fully executed, a PDF of the document will be sent via email to the leaseholder for his/her records; a hard copy will also be sent to the leaseholder

once the lease has been recorded in the Office of the Suffolk County Clerk, along with the Recording Page.

B.) In the event the Department disapproves the lease renewal application, a letter identifying the reasons for disapproval will be sent to the leaseholder; the leaseholder shall be required to remove all shellfish gear/equipment from the lease site prior to the expiration of the lease.

C.) If the leaseholder has not signed his/her Shellfish Aquaculture Lease Agreement within the established 45-day time period, the Department may terminate the lease renewal application and discontinue the lease execution process. The leaseholder shall be required to remove all shellfish gear/equipment from the subject lease area. Upon failure of the former leaseholder to remove his/her shellfish gear/equipment, the leaseholder may be subject to a summary eviction proceeding. If the acreage involved was originally part of an acreage cap limit, upon repossession of the lease area by the County, the acreage will be added back to the acreage cap and made available for lease during a subsequent lease application cycle.

*Factors for Consideration in Lease Renewal, Lease Relocation, Expansion of Acreage, Assignment or Other Actions Affecting the Lease:*

- i. Whether applicable laws, 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, complete, sufficient and accurate.
- v. Any other information deemed relevant by the County.

#### **4.15 Noise and Lighting**

A.) 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:

- i. Restrict noise generation and use of artificial light for normal operational practices, maintenance of safety, and for harvesting activities;
- ii. Make every reasonable effort to minimize noise during regular farming, cultivating and harvesting activities. Ensure that well-maintained sound suppression devices (i.e., mufflers) are used while operating equipment;
- iii. Ensure that all non-navigation lighting be aimed and of a brightness so as not to cause unnecessary adverse effects on other users and the marine environment, and where possible; and shield such lighting from all but essential directions; and
- iv. 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.

#### **4.16 General Enforcement Policy**

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

- i. 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.
- ii. Authority to monitor and take samples from any and all areas subject to a shellfish aquaculture lease agreement.
- iii. Violations – Violations of and/or noncompliance with lease stipulations or regulations set forth in the Lease Program may 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.
- iv. Permit Regulations - The lessee is responsible for obtaining all necessary regulatory permits and licenses under Federal and State law, including any permits for boundary marker buoys and/or private aids to navigation markers required by the US Coast Guard and/or US Army Corps of Engineers (marker specifications in Appendix B).
- v. Marking requirements for aquaculture gear/equipment – For identification purposes the lessee shall be responsible for marking all shellfish aquaculture gear/equipment under its ownership, e.g., cages, bags, trays, buoys, etc. Each of which must be marked with the lessee’s name and lease site identification number as identified from the Aquaculture Lease Sites map. Said markings shall be maintained by the lessee year-round and replaced when markings are no longer legible.
- vi. 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 retrieval of any equipment/gear that leaves the leased area. Lessee shall also be responsible for the eventual removal of all equipment/gear. If the equipment/gear is not removed upon termination, revocation, or expiration of the lease, the equipment/gear and its contents shall be deemed abandoned and lessee shall be liable to the County for the cost of locating and removal of equipment/gear.

#### **4.17 Approved Waters**

A.) Shellfish may only be harvested from certified waters for shellfish harvesting, as determined by NYSDEC.

#### **4.18 Water Quality Changes**

A.) 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 NYS Dep’t of Environmental Conservation (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.

#### **4.19 Harvest and/or Transfer of Shellfish from Other Waters**

A.) The transplanting or relay of shellfish from uncertified waters to lease areas for natural cleansing shall be permitted under the Lease Program, so long as all regulatory requirements from the NYSDEC relating to this type of shellfish aquaculture are met. The relay or moving of shellfish from a lease area, private oyster grant or other certified waters to another lease area located in a different water body may also be allowed, pending required regulatory approval from the NYSDEC, prior to transfer of shellfish.

#### **4.20 Handling of Shellfish**

A.) 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.

#### **4.21 Corporate Applicants**

A.) If the lease applicant is a corporate entity, the following information must be submitted as part of the lease application (for all required information see Lease Application posted on the Shellfish Aquaculture Lease Program website).

- i. The date and state of incorporation and copy of the Certificate of Incorporation;
- ii. The type of corporation (domestic or foreign);
- iii. DBA, if applicable (General Business Certificate);
- iv. The Federal Tax ID Number or EIN;
- v. 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;
- vi. The name and addresses of all directors;
- vii. The names, addresses and titles of all officers;
- viii. 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;
- ix. 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;
- x. Whether the corporation or any officer, director, or shareholder listed in bullet items 5 and 8 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.

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

#### **4.22 Partnership Applicants**

A.) If the lease applicant is a partnership, the following information must be submitted as part of the lease application (for all required information see Lease Application posted on the Shellfish Aquaculture Lease Program website).

- i. 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;
- ii. The names, addresses, and ownership shares of all partners;
- iii. DBA if applicable (General Business Certificate);
- iv. The Federal Tax ID Number or EIN;
- v. 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;
- vi. 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;
- vii. 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.

B.) The application must be signed by a partner.

#### **4.23 Limited Liability Company (LLC) Applicants**

A.) If the lease applicant is a Limited Liability Company, the following must be submitted as part of the lease application (for all required information see Lease Application posted on the Shellfish Aquaculture Lease Program website).

- i. The date and state in which the LLC was formed (include a copy of the Articles of Organization);
- ii. The type of LLC (domestic or foreign);
- iii. DBA if applicable (General Business Certificate);
- iv. The Federal Tax ID Number or EIN;
- v. The names, addresses, and ownership interest of all members;
- vi. The names, addresses, titles and ownership interest (if any) of all person authorized to manage the LLC and to enter into contracts;
- vii. A copy of the LLC's Operating Agreement;

- viii. A certified resolution that lists all of the members, states who is authorized to manage the LLC, and authorizes entry into the subject Shellfish Aquaculture Lease with the County of Suffolk;
- ix. Whether the LLC or any member owns an interest, either directly or beneficially in any other New York State shellfish cultivation operation;
- x. Whether the LLC or any member has been convicted or found guilty of any 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.

B.) A member of the LLC, who is authorized to manage the LLC, must sign the lease application.

#### **4.24 Local Waterfront Revitalization Program Consistency**

A.) 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.

### **RAG-5 County Administrative Requirements**

A.) The Department will be responsible for administering the Lease Program. 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 and Health Services in various aspects of Lease Program implementation as described below.

- i. The Department will be responsible for day-to-day administration of the Lease Program. This responsibility involves 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 issuance of leases, lease assignment, termination and renewal; recordkeeping; processing and preparing required lease documents; and serving as staff to the Aquaculture Lease Board. The Department will also make policy recommendations for any needed legislative action on the Lease Program.
- ii. The Aquaculture Lease Board shall consist of: the Commissioner of the Department of Economic Development and Planning (who shall act as

chairperson) or his/her designee; the Director of the Division of Planning and Environment or his/her designee; the Commissioner of the Department of Health Services or his/her designee; [one representative appointed by the Suffolk County Legislator from District 1 and one representative appointed by the Suffolk County Legislator from District 2;] one representative from each of the Towns of East Hampton, Town of Riverhead, Town of Shelter Island, Town of Southampton, and Town of Southold, to be designated by the County Executive, and selected from the following user groups: the shellfishing industry, member of a recreational boating organization, and commercial harvester/baymen, and one representative from a[n] marine organization that works within the Peconic Estuary to be designated by the County Executive.

- iii. The Aquaculture Lease Board shall 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 make decisions, based on a regional and environmental perspective, on which potential lease sites will be available for lease, as well as those sites that will be disapproved under a given application cycle. (Note that final decisions on approving a lease for any specific site are made by the Director.) The Aquaculture Lease Board shall act by resolution adopted by a majority vote. If additional information is needed or comments are received during the public comment portion of an Aquaculture Lease Board meeting, and the information or comments require additional review or vetting; the Aquaculture Lease Board may table the matter and reconvene at a subsequent meeting to make their determination.
- iv. 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 lease documents; and termination and eviction of defaulting leaseholders.
- v. The Department shall seek the cooperation of the Department of Health Services (Division of Environmental Quality) to conduct inspections of leased areas; and may implement environmental monitoring which may 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. Pursuant to Contract No. 525-8224-1170-00-00001 between the Suffolk County Department of Health Services and the Research Foundation for State University of New York, The Suffolk County Peconic Aquaculture Lease Monitoring (PALM) Plan was developed. The PALM plan is included in Appendix G; implementation of the monitoring plan shall be subject to available funding. Coordination with ongoing

monitoring activities conducted under the Peconic Estuary Program will be essential.

B.) 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 address the requirements in the 2004 Lease Law, as discussed below.

- i. The Department [may] shall 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, number of leases issued, etc. for the previous year. This report will be submitted to the Commissioner and may be made available to County officials, agencies and the public.
- ii. The Department may conduct annual inspections of leased areas to verify activities and compliance of the lease agreement. Inspections are subject to the Dept. of Health Service's Division of Environmental Quality's availability and/or funding required to conduct inspections.
- iii. Pursuant to State and Local Law the Shellfish Cultivation Zone shall be subject to review every five (5) years. If it is determined that significant revisions to the Shellfish Cultivation Zone are warranted (i.e., addition or removal of areas based on environmental conditions); the Department may make adjustments, which shall be subject to review and approval by the Suffolk County Legislature. Updates to the Shellfish Cultivation Zone map or other Lease Program maps may be subject to available funding.
- iv. An administrative review of the Lease Program [may] shall be conducted by the Department every 10 years to evaluate and potentially amend program components, which will govern program implementation and management for the subsequent 10-year period. This review may include the following:
  - a.) Assessment of the Shellfish Cultivation Zone map to determine if the boundaries and/or areas included in said zone should be changed as a result of socio-economic, user conflict, 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.) Evaluate the prudence of issuing leases larger than 10 acres, but not exceeding 50 acres (with exception to leases on oyster grants).

- c.) Evaluate the option of extending or reducing the term of lease, no less than 5 years but not exceeding 25 years.
  
- v. As a result of an administrative review, if it is determined that significant changes to the Lease Program are warranted, such a[s expansion] change of total lease area, change in lease area locations, or an increase in the number of new leases, an environmental review may need to 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 make non-substantive changes to the existing forms, applications, lease documents, etc. that are referenced in this Revised Administrative Guidance or posted on the Lease Program website, as necessary for implementation of the program, or if deemed necessary by the Suffolk County Department of Law. The Department may also establish policies, guidelines, procedures, timelines and additional forms and/or documents; as necessary, in consultation with the Department of Law. If an administrative review determines changes to the 2004 Leasing Law are warranted the Department may recommend that the County request the NYS Legislature amend Environmental Conservation Law §13-0302.

C). The workload associated with the implementation and oversight of the Lease Program was extensive and particularly demanding during the first 10 years of the program given the need to educate the public and familiarize shellfish farmers with program procedures; conduct annual lease application cycles; execute and carryout required Lease Program procedures; and manage leases that were issued by the County. The existing staff in the Department, which were assigned to conduct the administrative work required to implement and oversee the Lease Program, shall continue to administer the Lease Program in accordance with the requirements included here within. The County expects that the workload will continue to be intensive once implementation of the second 10 years of the Lease Program is underway and staff begins conducting new lease application cycles; and begins accepting and processing applications for lease renewals. The conduct and processing of new lease applications will continue to accommodate moderate growth in the industry under the established annual acreage cap limit. Monitoring lessee performance and annual lease review will be a continuing function conducted by the staff. Improvements made to the annual reporting information and lease requirements will make leaseholders more accountable; resulting in fewer leases going unused for long periods of time. Department staff will continue to coordinate with other County Departments, regulatory agencies and municipalities to effectively manage the Lease Program.

D.) Additional resources may be needed for specific program needs during the second decade of implementation, e.g., monitoring/research regarding potential positive and/or negative impacts of shellfish culture activities on the marine environment; Shellfish Cultivation Zone boundary review; expansion of County jurisdiction within the 1,000-foot buffer and a potential supplemental environmental review; and the programmatic review after the second 10 years of the Lease Program. 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.). It is anticipated that a principal source for support for addressing these needs will be the Suffolk County Water Quality Protection and Restoration Program and Land Stewardship Initiative; and is subject to available funding.