

## STAFF SUMMARY FOR DECEMBER 11-12, 2019

**34. CHARLES FRIEND OYSTER COMPANY****Today's Item****Information** ☐**Action** ☒

Consider renewing Charles Friend Oyster Company's state water bottom lease for purposes of aquaculture in Tomales Bay for a period of 15 years.

**Summary of Previous/Future Actions**

- |   |                                    |
|---|------------------------------------|
| • Received request to renew lease               | Aug 4-5, 2015; Fortuna             |
| • Approved request to extend lease for one year | Feb 10-11, 2016; Sacramento        |
| • Approved request to extend lease for one year | Feb 8-9, 2017; Rohnert Park        |
| • Approved request to extend lease for one year | Feb 7-8, 2018; Sacramento          |
| • Approved request to extend lease for one year | Feb 6, 2019; Sacramento            |
| • <b>Today consider lease renewal</b>           | <b>Dec 11-12, 2019; Sacramento</b> |

**Background**

FGC has the authority to lease state water bottoms to any person for aquaculture for an initial lease term not to exceed 25 years (sections 15400 and 15405, California Fish and Game Code). A lessee shall have a prior right to renew the lease on terms agreed upon between FGC and the lessee (Section 15406, Fish and Game Code).

Charles Friend Oyster Company, Inc. (CFOC) has held FGC-issued State Water Bottom Lease No. M-430-04 since 1999 for the purposes of culturing shellfish in Tomales Bay (Exhibit 1). CFOC requested to renew the lease prior to its expiration on Feb 29, 2016. However, in lieu of renewal, FGC granted a limited-term lease extension while specific non-compliance issues were addressed by the company. To date, four one-year lease extensions have been granted (Exhibit 2).

The most recent extension (granted Feb 6, 2019) was intended to provide Ms. Heidi Gregory, the new farm manager for CFOC, time to familiarize herself with CFOC operations and fulfill remaining requirements for lease clean-up and permitting with the appropriate regulatory agencies. The lease extension expires Feb 6, 2020.

In Sep 2019, DFW conducted a lease inspection and confirmed that the operations are now in good working order and that previously-noted areas of disrepair and noncompliance were adequately corrected. In addition, DFW has confirmed that CFOC has secured approval from the California Coastal Commission for operations on the lease site and has made notable progress toward coming into full permit compliance with other agencies, as detailed in DFW's memo (Exhibit 3). DFW considers the progress to be sufficient to warrant recommending full renewal of the lease.

The proposed project is subject to the "Class 1" or "Existing Facilities" categorical exemption pursuant to California Environmental Quality Act (CEQA) guidelines (Section 15301). The lease does not increase, decrease, or change existing operations or allow for new activities by the lessee (Exhibit 4). Staff has reviewed all of the available information possessed by FGC

## STAFF SUMMARY FOR DECEMBER 11-12, 2019

relevant to the issue and does not believe renewing the lease poses any unusual circumstances that would constitute an exception to the Class 1 categorical exemption.

If approved, under this renewal rent would be updated to reflect the current fee structure, which bases fees on the average past ten years of production. DFW has identified that CFOC classifies as a “low productivity site” and, as such, CFOC’s annual rent would now be \$50/acre/year. The total acreage for the lease is 6.19 acres, for an annual rent of \$3,095/year. A draft lease using the current lease template is provided as Exhibit 5.

### Significant Public Comments

Morgan Patton and Ashley Eagle-Gibbs of the Environmental Action Committee of West Marin support the CFOC lease renewal as well as developing an aquaculture best management practices rulemaking (Exhibit 6).

### Recommendation

**FGC staff:** Approve CFOC’s lease renewal, consistent with DFW’s recommendation.

**DFW:** Approve CFOC’s request to renew State Water Bottom Lease M-430-04, for a period of 15 years.

### Exhibits

1. [Current State Water Bottom Lease M-430-04](#) and amendments (for background only)
2. [Staff summary from Feb 6, 2019 FGC meeting](#), Agenda Item 27 (for background only)
3. [DFW memo](#), received Nov 26, 2019
4. [Draft notice of exemption](#) with attachment
5. [Lease renewal package](#): draft lease renewal, legal description, and map
6. [Letter from Morgan Patton, Executive Director, and Ashley Eagle-Gibbs](#), Conservation Director, Environmental Action Committee of West Marin, received Nov 26, 2019

### Motion/Direction

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission determines the project is exempt from CEQA as being categorically exempt based on the record and approves the renewal of State Water Bottom Lease M-430-04, to Charles Friend Oyster Company, Inc. for a period of 15 years.

**OR**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission does not approve the renewal of State Water Bottom Lease M-430-04, to Charles Friend Oyster Company, Inc..

**TO LEASE OF STATE WATER BOTTOMS FOR AQUACULTURE  
LEASE NO. M-430-04**

This amendment of aquaculture lease made and entered into as of the 1st day of January 1993, by and between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "lessor", and Bay Bottom Beds Inc., hereinafter referred to as "Lessee".

**W I T N E S S E T H:**

**WHEREAS**, on March 1, 1991, Lessor did enter into Lease Agreement No. M-430-17 with Shellfish Unlimited (a partnership comprised of Point Reyes Oyster Company and Bay Bottom Beds Inc.) for the purpose of cultivating oysters, mussels and clams, and

**WHEREAS**, Lessee has heretofore informed Lessor that the partnership has been dissolved and the partners have requested that the water bottom acreage contained in said leasehold (123.8 acres) be divided equally between the two partners in two, two 61.9-acre parcels, and

**WHEREAS**, Lessor has requested at a duly called and noticed hearing of the Fish and Game Commission of the State of California, that the partition and redescription of said lease would be in the best interest of the State of California.

**NOW, THEREFORE, THIS AMENDMENT WITNESSETH:**

That, in accordance with a request for partition of said lease made by Lessor and accepted at a duly called and noticed hearing of the Fish and Game Commission of the State of California, pursuant to Fish and Game Code Section 15400, Lessor does hereby grant to Lessee the exclusive privilege to cultivate shellfish thereon, and in those certain tidelands of the State of California, described as follows:

All that certain real property situated in the County of Marin, State of California, described as follows:

In Tomales Bay, Marin County, State of California, starting from Bench Mark 8 located at approximately 38°12'38.7" North Latitude, 122°55'22" West Longitude on the Tomales Bay Quadrangle, Marin County, California, U.S. Dept. of the Interior Geological Survey 7.5 minute series topographic map; thence North 83°31' West for a distance of 2,749.3 feet to the top of Preston Point Rock lying off the northeast end of Preston Point; thence South 65°57'51" West 2,128.40 feet to the true point of beginning; thence South 50°27'48" East 807.00 feet; thence N 46°50'24" E 1,028.82 feet; thence N 35°53'07" W 539.10 feet; thence N 29°23'42" E 655.05 feet; thence N 59°41'17" W 670.79 feet; thence S 58°38'08"

W 2,190.75 feet; thence S 51°18'13" E 1078.38 feet; thence N 39°32'12" E 357.16 feet; to the true point of beginning.

This parcel of water bottoms, formerly a portion of Aquaculture Lease No. M-430-17, containing an area of 61.9± acres, more or less, comprises Aquaculture Lease No. M-430-04. (Appendices 1 & 2).

This lease, in accordance with provisions of Fish and Game Code Section 15400, as may from time to time be amended or changed by the State Legislature, is for the sole purpose of cultivating Pacific oyster (Crassostrea gigas), Sumino oyster (C. rivularis), Eastern oyster (C. virginica), flat oyster (Ostrea edulis), Native oyster (O. lurida), Manila clam (Tapes japonica), California sea mussel (Mytilus californianus), and bay mussel (M. edulis), in the previously designated area.

The cultivation of additional species of aquatic plants and animals requires the approval of the Fish and Game Commission. Seed stocks must be certified before planting in compliance with Fish and Game Code Section 15201, and must be planted by Lessee in a manner and at a size approved by Lessor to assure that harvested animals are a product of the lease. A request for certification of planting stock will be submitted by Lessee to the Lessor at least ten (10) days prior to the proposed date of inspection.

Shellfish cultivation methods approved for the lease shall be long lines, rafts, stakes, racks and bags, rack and tray, floats, and bottom culture within the area approved by the Commission. No other mode of operation or culture method is authorized, unless Lessee shall first obtain approval from the Fish and Game Commission.

The required ten (10) day notice of intent to plant shellfish on the lease shall be given to the Department of Fish and Game, Marine Resources Division, 1136 Duer Road, Sebastopol, CA 95473. In addition to the ten (10) day notice, the Marine Unit Manager, Mr. Thomas Moore, telephone (707) 823-9236, shall be given notice at least 24 hours prior to the date of planting, giving details on where the shellfish seed can be inspected.

This amended lease falls within the authorized term of the initial lease of twenty-five (25) years which commenced on the 1st day of March, 1991, and ends on February 29, 2016, for a total rental of two thousand one hundred and sixty-six dollars and fifty cents (\$2,166.50) per year, and a privilege tax on all products harvested as provided by Fish and Game Code sections 8051 and 15406.7. Said annual rental will be payable to Lessor on a fiscal year basis, July 1 - June 30, and within thirty (30) days of the commencement of the lease, or after receipt of the consummated lease agreement. If said annual rental is not paid within sixty

(60) days after the close of the month in which it is due, an additional 10 percent penalty shall be paid. Lessor, at its option, may declare the lease abandoned for failure to pay such rental fees within 90 days from the beginning of the rental period; although such abandonment shall not relieve Lessee of his obligation to pay such rental and penalty which are due and owing. Lessee agrees to pay Lessor reasonable attorney fees and costs incurred in collecting any amounts and/or penalties due and owing from Lessee under the provisions of this lease. Lessee agrees to pay said rent to Lessor at its office in the City of Sacramento, State of California, or at such other place as Lessor may, from time to time, designate.

Lessee expressly recognizes and acknowledges that any payments by Lessee as provided for herein, are subject to the provisions of Fish and Game Code Section 15410, which provides that all leases shall be subject to the power of the Legislature to increase or decrease the rents, fees, taxes, and other charges relating to the lease, but no increase in rent shall be applicable to an existing lease until it is renewed.

This lease is made upon the following terms, conditions and covenants, to wit:

A. This lease may, at the option of the Lessee, be renewed for additional periods not to exceed 25 years each. If Lessee desires to enter into a new lease for a period commencing after expiration of the initial 25-year term, Lessee shall give notice to Lessor one (1) year prior to termination of the lease. The lease may be renewed if, during the notification period, terms for a new lease are agreed upon by Lessee and the Commission.

B. Lessee shall keep records as required in accordance with Fish and Game Code Section 15414, on forms to be supplied by Lessor, and shall maintain adequate accounting records sufficient to determine monies due to Lessor by the 10th day of each month, for all shellfish harvested during the preceding calendar month. Lessor reserves the right to inspect Lessee's premises, equipment, and all books at any time and records of Lessee pertaining to Lessee's cultivation on the leased premises.

C. In order to provide assurance to Lessor that this aquaculture lease is utilized for the purpose stated in the lease application, the lease shall be improved at no less than the minimum rate established by Commission regulations (Appendix 3). This annual rate of planting for shellfish shall be:

Off-bottom culture: 309,500 single seed less than 1 year old  
(@ 5,000/acre) or 61.9 cases (@ 80 lbs.  
shellstock/case) of seed-bearing shell.



The term of improvement for this lease shall be two years, with the minimum rate of planting for the entire acreage being reached by July 1, 1994. The minimum annual rate of planting for the entire acreage will be maintained thereafter until the end of the lease.

The minimum annual harvest requirement for the lease will be an average of 123,800 (@ 2,000/acre) oysters, clams or other shellfish, effective July 1, 1994.

A minimum rate of planting shall be negotiated for option period. Lessor may declare this lease terminated if Lessee fails to meet these cultivation and harvesting requirements and if Lessee, at any time, is proven to be failing in good faith, to pursue the purpose of this lease.

D. If, at any time subsequent to the beginning date of this lease, the use of cultural devices authorized herein shall fall into a state of disrepair or otherwise become an environmental or aesthetic degradation, as determined by Lessor, then upon written notice by Lessor, Lessee shall have sixty (60) days to repair and correct conditions cited by Lessor. Failure to comply with written notice shall be grounds for termination of this lease and Lessee shall, at the option of Lessor, remove all improvements located on lands covered by this lease.

As a financial guarantee of growing structure removal and/or clean-up expense in the event a lease is abandoned or otherwise terminated, Lessee shall place on deposit, pursuant to the "Escrow Agreement For Clean-up of Aquaculture Leases, Tomales Bay, California", a sum in a proportion that the Lessee's individual acreage bears to the total acreage of specified leased parcels of State water bottoms in Tomales Bay, Marin County, California, until the sum of five thousand dollars (\$5,000.00) is reached. This escrow deposit is established in compliance with Section 7 of the Fish and Game Commission Policy, Awarding of Tomales Bay Aquaculture Leases, adopted January 7<sup>12</sup>, 1989 (Appendix 3<sup>4</sup>). Such money shall be deposited over a two-year period, payable one-half upon entering upon the lease, and one-half upon the first anniversary of such inception date. The escrow deposit shall be increased if the Fish and Game Commission determines that, if abandoned, any particular culture operation is likely to be more expensive to remove. The escrow deposit may be reduced by the Commission upon demonstration that the probable cost of removal of all improvements would be less than the deposit previously required. In its annual proof of use report, the Lessor shall advise the Commission of its best estimate of the probable cost of removal for each lease operation. The escrow agreement, escrow holder, and escrow depository shall be agreed upon by the Executive Director of the Fish and Game Commission, the Lessor and Tomales Bay Shellfish Growers Association.

It shall be the responsibility of the Lessee to maintain the specified security balance at the level established by the Commission, regardless of the number of lessees who continue in aquaculture operations within the bay.

If Lessee abandons this lease without removing growing structures therefrom, the escrow deposit shall be expended to remove growing structures, or otherwise clean, or in the alternative, the remaining lessees in Tomales Bay and the Tomales Bay Shellfish Growers Association may undertake the clean-up, leaving the secured amount whole.

In order to assure compliance with the escrow provisions of this lease, Lessee shall dedicate to the agreed upon escrow account specified in the "Escrow Agreement For Clean-up of Aquaculture Leases, Tomales Bay, California (Addendum 1), hereby attached to and made part of this agreement, a total of four hundred forty-nine dollars and fifty cents (\$449.50), a sum proportional to Lessee's total lease acreage of sixty-one and nine-tenths (61.9) acres. This amount equals one-half of the amount, eight hundred ninety-nine dollars (\$899.00), deposited in the "Tomales Bay Escrow Account" by the former partnership (Shellfish Unlimited).

E. Lessee shall observe and comply with all rules and regulations now or hereinafter promulgated by any governmental agency having authority by law, including but not limited to, State Water Resources Control Board, U.S. Coast Guard, and U.S. Army Corps of Engineers. Any other permits or licenses required by such agencies will be obtained by Lessee at his own sole cost and expense.

F. Lessee recognizes and understands in accepting this lease, that its interest therein may be subject to a possible possessory interest tax that the county may impose on such interest, and that such tax payment shall not reduce any rent or royalty due to the Lessor hereunder, and any such tax shall be the liability of, and be paid by, Lessee.

G. Any modification of natural or existing features of the real property described in this lease, which is not consistent with the authorized uses under this lease, is expressly prohibited without prior written consent of the Lessor.

H. As evidence of progress in aquaculture, Lessee shall submit each year to the State at the Marine Resources Division Office, 1136 Duer Road, Sebastopol, CA 95473, a written declaration under penalty of perjury, showing the date and amount of each type of aquaculture development and date and amount of designated

species comprising each planting, including a diagram showing area, amounts, and dates planted. Such declaration shall be submitted on or before July 15 of each year for the previous year, July 1 - June 30, inclusive.

I. This lease shall be canceled at any time Lessee fails to possess a valid aquaculture registration issued pursuant to Fish and Game Code Section 15101. Lessee agrees not to commit, suffer or permit any waste on said premises, or any act to be done thereon in violation of any laws or ordinances. This lease shall be subject to termination by Lessee at any time during the term thereof, by giving Lessor notice in writing at least ninety (90) days prior to the date when such termination shall become effective. In the event of such termination by Lessee, any unearned rental shall be forfeited to the Lessor.

J. This lease of State water bottom only grants Lessee the exclusive right to cultivate and harvest the specified species of oysters, mussels, and clams authorized in the original lease agreement.

K. The lease shall be clearly marked with buoys or stakes to prevent interference with boating or fishing activities that may take place in the area. Minimum marking of the lease shall include: One (1) buoy or stake on each of the four corners of the lease. All buoys or stakes used to define the boundaries of the lease shall be marked in conformance with the International Association of Lighthouse Authorities Maritime Buoyage System regulations (33 CFR sections 62.33 and 66.01-10). Lessee shall make application at the U.S. Coast Guard, Aids to Navigation Branch, 400 Ocean Gate, Long Beach, CA 90822, for approval of the buoys and stakes to be established on this lease. Each buoy or stake shall be set and maintained to extend at least three (3) feet above the surface of the water at mean-higher high water. All buoys or stakes shall bear the Aquaculture Lease No. M-430-04.

If buoys or stakes used to mark this lease are lost, displaced or otherwise removed from the lease area, they must be replaced within a two-week period, weather conditions permitting, or the lease may be subject to abandonment proceedings.

L. In compliance with sections 1,2, and 3 of the Policy, Awarding of Tomales Bay Aquaculture Leases, adopted by the Fish and Game Commission at its meeting on January 12, 1989 (Appendix 3), Lessee agrees to cooperate with the Lessor in the monitoring of the health of eel grass beds located on the lease and in conducting a study to gather baseline sedimentation data on eel grass beds lying within the lease boundary. Lessee further agrees to participate with the Lessor in the design, implementation, and operation of a study to collect baseline information on sedimentation occurring within the leasehold during the period



July 1, 1990 and June 30, 1994, and the monitoring of wintering shorebirds during the period November 1 to February 28 each year, adequate to measure any population or use changes due to lease operations.

If any of the environmental monitoring programs discussed above indicate, or any other reliable information leads the Lessor to conclude that Lessee's aquaculture operation is directly associated with a significant adverse change in the Tomales Bay ecosystem, Lessor shall notify the Executive Director of the Fish and Game Commission and the Lessee of such findings. Upon receipt of notice, Lessee shall take all necessary steps to modify, relocate or discontinue the operation in accordance with the Lessor's advice, unless Lessee demonstrates that its aquaculture operations are not a substantial factor, directly or cumulatively, causing the adverse environmental change. Failure to promptly respond shall be grounds for termination of the lease.

M. In addition to the conditions and restrictions herein provided for in this lease, and any right or privilege granted, conveyed or leased hereunder shall be subject to, and Lessee agrees to comply with all applicable provisions of the California Fish and Game Code, and regulations of the Fish and Game Commission, in particular Fish and Game Code sections 15400-15415, inclusive, and expressly recognizes the right of the Legislature and the Fish and Game Commission to enact new laws and regulations. In the event of any conflict between the provisions of this lease and any law or regulation enacted in the future, the latter will control.

N. This lease is personal to the Lessee and shall not be transferred, assigned, hypothecated, or subleased, either voluntarily or by operation of law, without prior approval of the Fish and Game Commission.

O. In the event of any breach by Lessee of any of the provisions hereof, other than the payment of any sum due from Lessee to Lessor hereunder, which breach is not remedied, abated and cured by Lessee within 60 days after notice in writing, shall cause this lease to thereupon cease and terminate.

P. The attached Nondiscrimination Clause (OCP-1) is hereby made a part of this agreement.

Q. All notices herein provided to be given or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States Mail, certified and postage prepaid and addressed as follows:

To the Lessor

DEPARTMENT OF FISH AND GAME  
1416 Ninth Street  
Sacramento, CA 95814

To the Lessee

LISA JANG  
Bay Bottom Beds Inc  
966 Borden Villa Dr. #103  
Santa Rosa, CA 95401

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice given by such party to the other, as hereinbefore provided.

R. Lessee hereby indemnifies and holds harmless the Lessor, its officers, agents, and employees against any and all claims and demands of every kind and nature whatsoever, arising out of, or in any way connected with the use by Lessee of said lease, or the exercise of the privilege herein granted.

IN WITNESS WHEREOF, the parties have caused this amendment to said aquaculture lease to be executed as of the day and year first above written.

APPROVED:

FISH AND GAME COMMISSION

By: Robert R Treman

STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND GAME

By: Dawn Christel  
Lessor

BAY BOTTOM BEDS CO. INC.

By: Lisa Jang  
Lessee

By: \_\_\_\_\_

# ALL-PURPOSE ACKNOWLEDGMENT

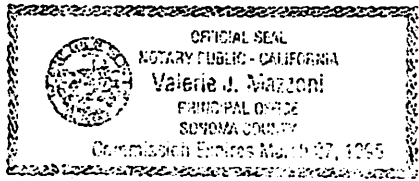
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State of California  
County of Sehema

On 02/18/93 before me, Valerie J. Mazzoni Notary Public  
DATE NAME, TITLE OF OFFICER - E.G., JANE DOE, NOTARY PUBLIC

personally appeared Lisa Jang  
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Witness my hand and official seal.

Valerie J. Mazzoni  
SIGNATURE OF NOTARY

## CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
- ☒ CORPORATE Sec. Treasurer  
OFFICER(S) TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER: \_\_\_\_\_

## SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

THIS CERTIFICATE  
MUST BE ATTACHED  
TO THE DOCUMENT  
DESCRIBED AT RIGHT:

Title or Type of Document Se. Lease of State Under Bottom  
Number of Pages 15 Date of Document 01/01/93  
Signer(s) Other than Named Above None

ADDENDUM TO  
AQUACULTURE LEASE  
BETWEEN  
DEPARTMENT OF FISH AND GAME, LESSOR  
AND

BAY BOTTOM BEDS COMPANY

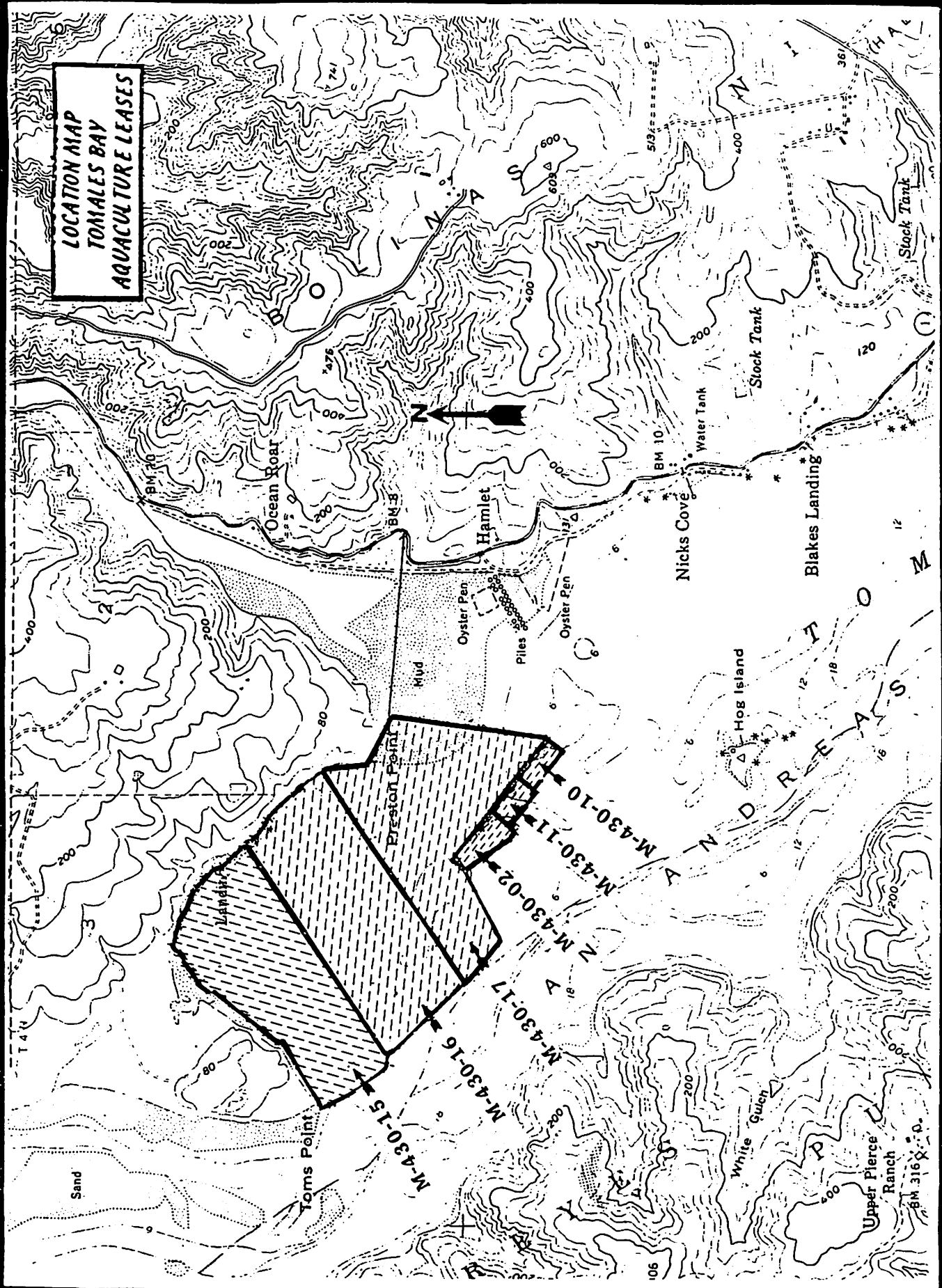
NONDISCRIMINATION CLAUSE

(OCP - 1)

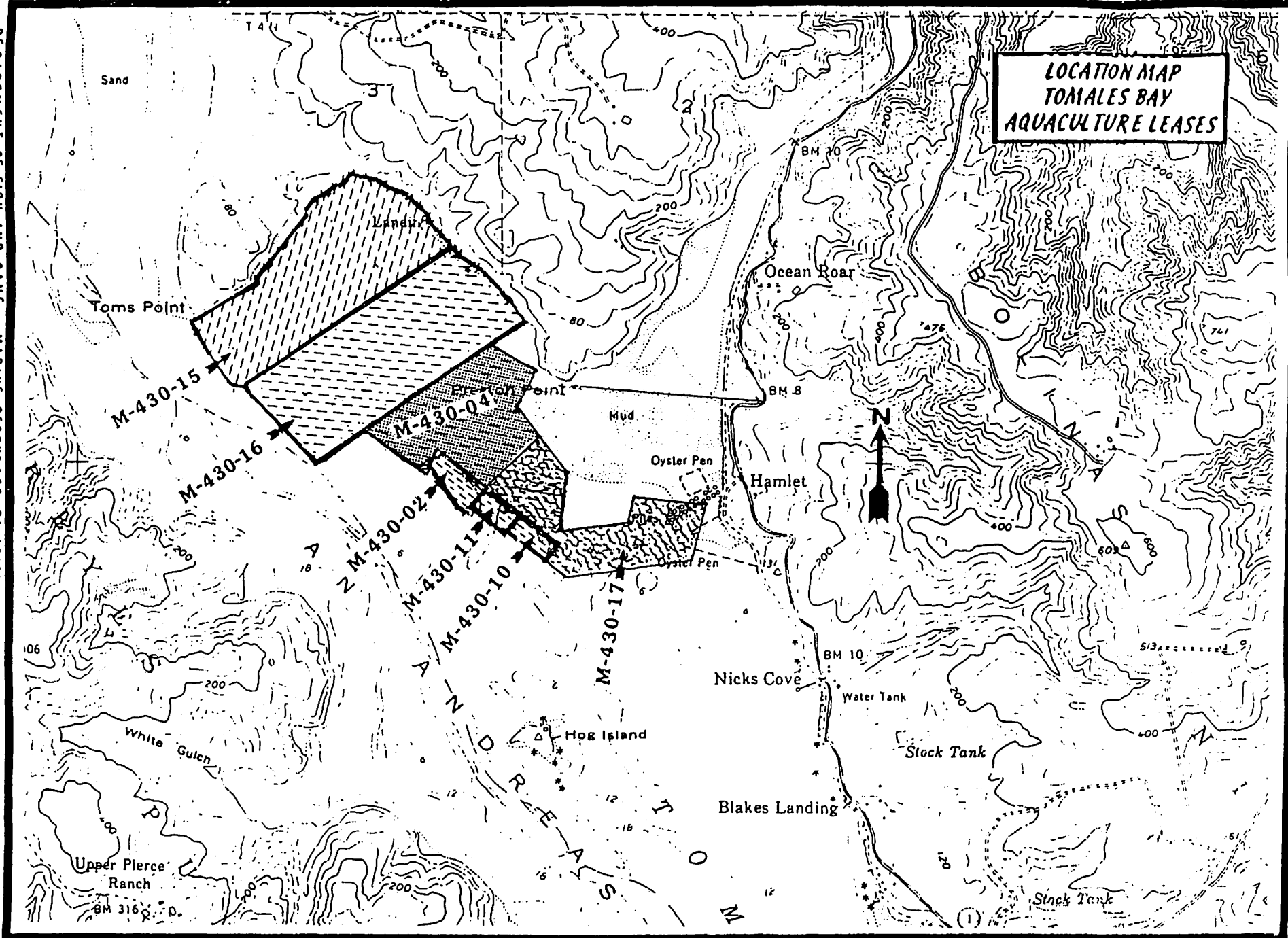
1. During the performance of this contract, contractor\* and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
2. This contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

\* All references to "contractor" shall be deemed to be Lessee.

**LOCATION MAP  
TOMALES BAY  
AQUACULTURE LEASES**







ADDENDUM TO  
AQUACULTURE LEASE  
BETWEEN  
DEPARTMENT OF FISH AND GAME, LESSOR  
AND  
SHELLFISH UNLIMITED  
ESCROW AGREEMENT FOR  
CLEANUP OF AQUACULTURE LEASES  
TOMALES BAY, CALIFORNIA

(Addendum 1)

This Escrow Agreement is being entered into as of the 1st day of March, 1991, between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor", and Shellfish Unlimited, hereinafter referred to as "Lessee", and Tomales Bay shellfish Growers Association, a California Nonprofit Corporation now forming, hereinafter referred to as the "Association."

Lessee has entered into an aquaculture lease this 1st day of March, 1991, for the lease of State water bottoms situated in Tomales Bay, Marin County, State of California, more particularly described as Lease No. M-430-17.

This Escrow Agreement is subject to Lease No. M-430-17 and in accordance with Paragraph D thereof.

As a financial guarantee of growing structure or other lease improvement removal and/or cleanup expense in the event that the aforementioned aquaculture lease is abandoned or otherwise terminated, the parties agree as follows:

1. Lessee will deposit or cause to be deposited in escrow in cash or by certified check, funds totaling \$899.00, which funds will consist of the following:

- (a) \$449.50 deposited upon entering upon the lease;
- (b) \$449.50 deposited upon the first anniversary of such inception date.

In the event that Lessor fails to deposit funds as required by Subparagraphs (a) or (b) herein, Lessor may terminate Lessee's aquaculture lease by giving sixty days notice to Lessee by registered or certified mail.

2. Mr. F. Robert Studdert shall act as Escrow Agent and shall place the escrow deposits in an interest-bearing account in the West America Bank, North Gate Branch, at San Rafael, California, subject to disposition as hereinafter provided. Such deposits shall be retained in a separate account designated "Tomales Bay Cleanup Fund" by Escrow Agent as trustee for Lessor, and shall designate the Association as the beneficial owners.

3. The Association shall be responsible for paying all fees and expenses incurred by Escrow Agent in administering the escrow account. These expenses and payment terms shall be determined by the Association and Escrow Agent.

4. The interest earned on the trust account held in escrow and all interest earned on that interest shall be for the sole account of the Association and may be withdrawn by the Association at any time for distribution to its members without notice to Lessor.

5. Lessees shall make payments to the Escrow Agent on account of the Tomales Bay Cleanup Fund in the manner prescribed in paragraph 1(a) and (b) until the sum of five thousand dollars (\$5,000.00) is reached. Thereafter, the Tomales Bay Cleanup Fund shall be maintained by the Lessees at Five Thousand Dollars (\$5,000.00) as hereinafter provided, regardless of the number of lessees who continue in aquaculture operations in Tomales Bay.

6. When Lessees deposit funds into escrow, Escrow Agent shall notify Lessor in writing within ten days of receipt thereof.

7. Escrow Agent shall notify Lessor and Association in writing when two thousand five hundred dollars (\$2,500.00) has been deposited to the escrow account and provide written verification from the bank of such deposit. Thereafter, on the anniversary date of such initial notification, Escrow Agent shall report and certify the balance of funds on deposit accompanied by the accounting records provided by the banking institution of deposit.

8. The Lessor may increase or decrease the security amount held in escrow upon cause shown therefor and sixty days notice to the Association. Lessee's annual Proof of Use Report shall contain a reasonable estimate of the cost of removal of growing structures from each operation. Any increase required by the Lessor shall be deposited by the Lessees in the same proportion as provided in Paragraph 1; and any decrease shall be returned to the Lessees by the Escrow Agent in the same proportion provided in Paragraph 1.

9. Should Lessee transfer his interest under the lease with the approval of the California Fish and Game Commission, Escrow Agent shall transfer such escrow deposit to the successor in interest, and thereafter notify all parties hereto of such transfer. The successor in interest shall have all of the rights and obligations of Lessee with respect to such escrow deposit.

10. If, on termination of an aquaculture lease, Lessee removes all growing structures and improvements within sixty days, Lessee's escrow deposit shall be returned to Lessee by Escrow Agent no later than two weeks after receipt of written notice by Escrow Agent from Lessor authorizing such return.

11. If at any time during the lease term, any Lessee abandons a lease without removing growing structures and improvements, Lessor and/or Association shall do one of the following acts:

- (a) The Association may undertake the cleanup, within sixty days, of the abandoned lease and Lessor shall not resort to the escrow security;
- (b) Lessor shall appropriate and apply any portion of the escrow security as may be reasonably necessary to fund the cleanup;

(c) Lessor may elect to have growing structures and improvements remain in place and return Lessee's escrow deposit as provided in Paragraph 10.

12. Lessor shall have a right to draw upon the escrow account in the event of default by the Lessees. Upon seven days written notice to the Escrow Agent from the Lessor of the default, Escrow Agent must immediately distribute funds as instructed by Lessor.

13. Should Lessor actually resort to any monies contained within the escrow account under any of the above applicable provisions, Lessees agree to deposit to the escrow account, in the same proportion as provided in Paragraph 1, the amount for which resort to the escrow security was had and necessary to restore the escrow security to the original sum required hereunder in thirty days after written demand by Lessor, except upon disbursement on account of return of escrow security to any Lessee as provided in Paragraph 10.

Restoration of escrow security shall be postponed during any period that Lessor re-advertises for bid and subsequently re-awards any Tomales Bay aquaculture lease. Upon Lessor granting a lease to a successful bidder, the Lessee thereunder shall assume the obligations and rights of his predecessor Lessee, including, but not limited to, the deposit of funds as prescribed in Paragraph 1(a) and (b).

Lessor shall not award or re-award a lease until the notice of deposit required by Paragraph 6 is received.

14. Escrow Agent shall rely on the written notifications from the Lessor and the Association, and the Lessor and the Association shall hold Escrow Agent harmless when Escrow Agent releases and disburses funds and interest pursuant to such a written notification.

15. Any notice required to be given under this Escrow Agreement may be given by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested. Notice shall be deemed communicated as of mailing. Mailed notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this paragraph.

To the Lessor:

DEPARTMENT OF FISH AND GAME  
1416 Ninth Street  
Sacramento, CA 95814

To the Association:

TOMALES BAY SHELLFISH GROWERS  
ASSOCIATION  
P. O. Box 829  
Marshall, CA 94940

To the Escrow Agent:

F. ROBERT STUDDERT  
36 Professional Center Parkway  
San Rafael, CA 94903

To the Lessee:

Lisa Jang  
SHELLFISH UNLIMITED  
966 Borden Villa Drive, #103  
Santa Rosa, CA 95401

16. At the time this Escrow Agreement is executed by all parties, the Lessor shall deliver to the Escrow Agent a fully executed counterpart of this agreement.

In witness whereof, the parties have executed this Agreement by their proper officers on the date first set forth above.

LESSOR: Karyn A. Mayfield  
Acting Asst. Director, Admin.

ASSOCIATION: \_\_\_\_\_

LESSEE: Lisa Jang  
Martin G. G. G.

INDIVIDUAL ACKNOWLEDGMENT

NO. 201

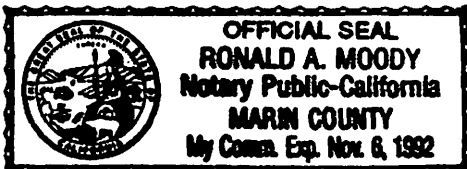
State of Calif.  
County of San Mateo } SS.

On this the 4 day of February 1991, before me,

Ronald A. Moody

the undersigned Notary Public, personally appeared

Martin G. G. G.



☐ personally known to me

☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is subscribed to the within instrument, and acknowledged that he executed it.

WITNESS my hand and official seal.

Ronald A. Moody  
Notary's Signature

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE  
MUST BE ATTACHED  
TO THE DOCUMENT  
DESCRIBED AT RIGHT:

Title or Type of Document Lease of 9th & 10th St. 11-430-17

Number of Pages 13 Date of Document Signed 2-4-91

Signer(s) Other Than Named Above \_\_\_\_\_



**AMENDMENT NO. 1  
TO  
INDENTURE OF LEASE**

This amendment of Aquaculture Lease made and entered into as of the 1st day of April 1996, by and between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor", and Bay Bottom Beds Incorporated, hereinafter referred to as "Lessee".

**WITNESSETH:**

**WHEREAS**, on March 1, 1991, Lessor did enter into Lease Agreement No. M-430-17 with Shellfish Unlimited (a partnership comprised of Point Reyes Oyster Company and Bay Bottom Beds Incorporated) for the purpose of cultivating oysters, mussels and clams, and

**WHEREAS**, on December 4, 1992 The Fish and Game Commission approved dissolution of the partnership and decreed that said leasehold (123.8 acres) be divided equally between the two partners in two, two 61.9-acre parcels and

**WHEREAS**, on February 5, 1993 the Fish and Game Commission of the State of California approved the reconfiguration and redescription of said 61.9 acre parcels to eliminate non-productive areas, and

**WHEREAS**, The Fish and Game Commission at its meeting on October 7, 1994 adopted new administrative procedures to standardize annual proof-of-use reporting and the rental period for aquaculture leaseholds, and approved revision of the Escrow Agreement for Cleanup of Aquaculture Leases in Tomales Bay (Addendum 1), and determined that the amendment of this aquaculture agreement would be in the best interest of the State.

**NOW THEREFORE, THIS AMENDMENT WITNESSETH:**

That, in accordance with actions taken by the Fish and Game Commission of the State of California, pursuant to Fish and Game Code Section 15400, Lessor does hereby amend said lease for such consideration, specific purposes and subject to covenants, terms, conditions, reservations, restrictions and limitations as are set forth herein.

This amended lease falls within the authorized term of the initial lease, twenty-five (25) years, which commenced on the 1st day of March 1991, and ends on February 29, 2016, for a total rental of two thousand one hundred and sixty-six dollars and fifty cents (\$2,166.50) per year, and a privilege tax on all products harvested as provided by Fish and Game Code sections 8051, 18406.5, and 15406.7. Beginning January 1, 1997, said annual rental fee will be payable to Lessor on a calendar year basis, January 1 -- December 31. The next annual rental fee will be due July 1, 1996, and will cover the period July 1, 1996 to December 31,

1996 in the amount of one thousand eighty-three dollars and twenty five cents (\$1,083.25). If said annual rental fee is not paid within sixty (60) days after the close of the month in which it is due, an additional 10 percent penalty shall be paid. Lessor, at its option, may declare the lease abandoned for failure to pay such rental fees within 90 days from the beginning of the rental period; although such abandonment shall not relieve Lessee of its obligation to pay such rental and penalty which are due and owing. Lessee agrees to pay Lessor reasonable attorney fees and costs incurred in collecting any amounts and/or penalties due and owing from Lessee under the provisions of this lease. Lessee agrees to pay said fee(s) to Lessor at its office in the City of Sacramento, State of California, or at such other place as Lessor may, from time to time, designate.

This lease is made upon the following additional terms, conditions, and covenants, to wit:

H. As evidence of progress in aquaculture, Lessee shall submit each year to the State at the Marine Resources Division office, P. O. Box 1560, Bodega Bay, California 94923, a written declaration under penalty of perjury, showing the date and amount of each type of aquaculture development and date and amount of designated species comprising each planting, including a diagram (map) showing area, amounts, and dates planted. Such annual proof-of-use shall be submitted on or before February 1 of each year for the previous year, January 1 -- December 31, inclusive.

P. All notices herein provided to be given or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States Mail, certified and postage prepaid and addressed as follows:

To the Lessor

DEPARTMENT OF FISH AND GAME  
1416 NINTH STREET  
SACRAMENTO, CALIFORNIA 95814

To the Lessee

LISA JANG  
BAY BOTTOM BEDS COMPANY  
966 BORDEN VILLA DRIVE, SUITE 103  
SANTA ROSA, CALIFORNIA 95401

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice given by such party to the other, as hereinbefore provided.

Except as herein amended, all other terms of said lease agreement shall remain unchanged and in full force and effect.

**IN WITNESS WHEREOF**, the parties have caused this amendment to said aquaculture lease to be executed as of the day and year first above written.

**APPROVED:**

FISH AND GAME COMMISSION

STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND GAME

By: \_\_\_\_\_

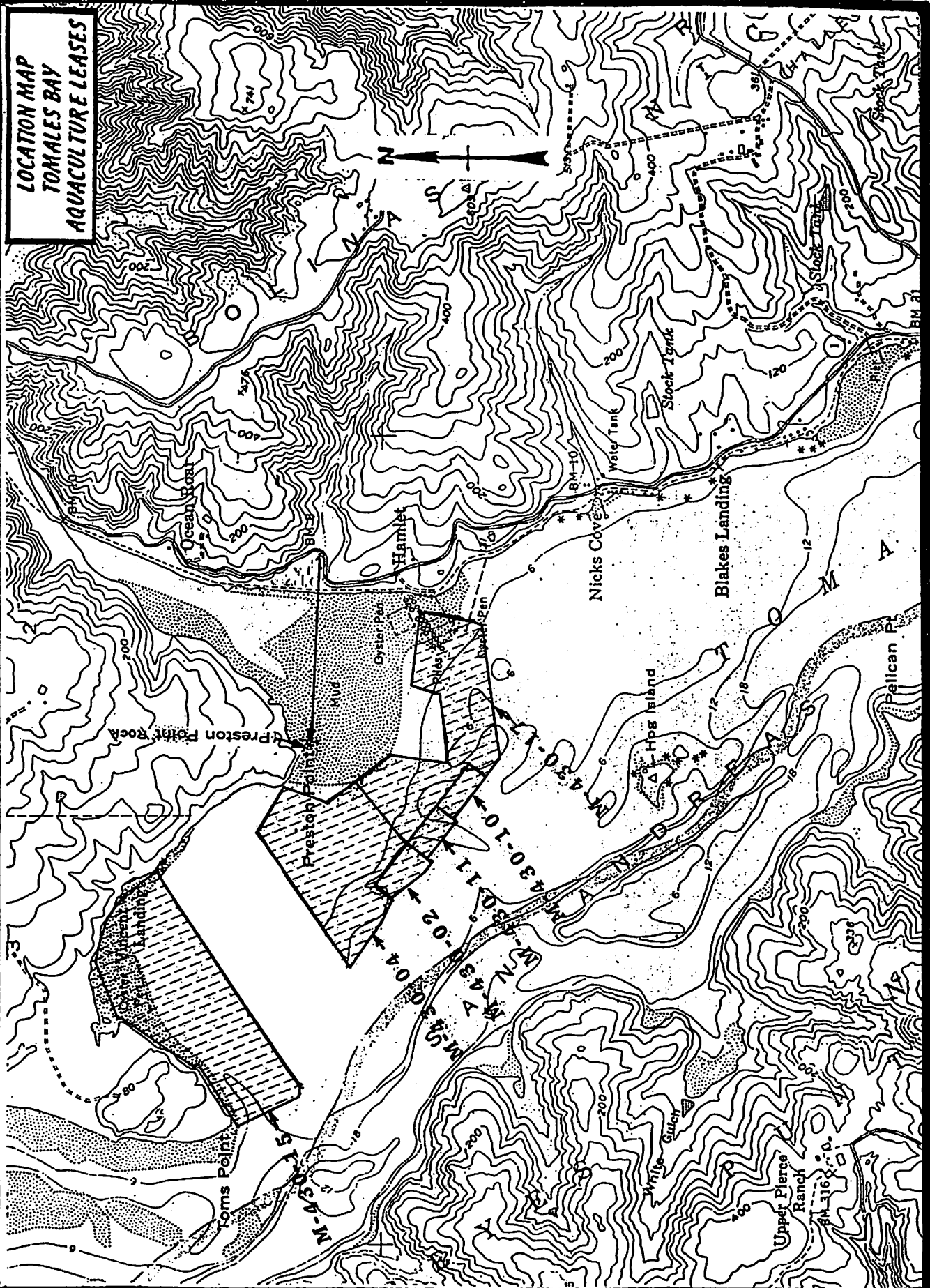
By: \_\_\_\_\_

BAY BOTTOM BEDS INCORPORATED

By: \_\_\_\_\_

By: \_\_\_\_\_

**LOCATION MAP  
TOMALES BAY  
AQUACULTURE LEASES**



ADDENDUM TO  
AQUACULTURE LEASE  
BETWEEN  
DEPARTMENT OF FISH AND GAME, LESSOR  
AND  
BAY BOTTOM BEDS COMPANY  
ESCROW AGREEMENT FOR  
CLEANUP OF AQUACULTURE LEASES  
TOMALES BAY, CALIFORNIA

(Addendum 1)

This Escrow Agreement is being entered into as of the 1st day of April 1996, between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor", and Bay Bottom Beds Company hereinafter referred to as "Lessee", and California Aquaculture Association a California Nonprofit Corporation, hereinafter referred to as the "Association."

Lessee has entered into an agreement for the lease of State water bottoms for aquaculture situated in Tomales Bay, Marin County, State of California, more particularly described as Lease No. M-430-04.

This Escrow Agreement is subject to Lease No. M-430-04 and in accordance with Paragraph D thereof.

As a financial guarantee of growing structure or other lease improvement removal and/or cleanup expense in the event that the aforementioned aquaculture lease is abandoned or otherwise terminated, the parties agree as follows:

1. Lessee will deposit or cause to be deposited in escrow in cash or by certified check, funds totaling \$450.00, which funds will consist of the following:

- (a) \$225.00 deposited upon entering upon the lease;
- (b) \$225.00 deposited upon the first anniversary of such inception date.

In the event that Lessee fails to deposit funds as required by Subparagraphs (a) or (b) herein, Lessor may terminate Lessee's aquaculture lease by giving sixty days notice to Lessee by registered or certified mail.

2. The Treasurer of the California Aquaculture Association shall act as Escrow Agent for Lessees who are association members in good standing and shall place the escrow deposits in an interest-bearing account in the Union Bank Branch, at Brawley, California, subject to disposition as hereinafter provided. Such deposits shall be retained in a separate



account designated "Tomales Bay Cleanup Fund" by Escrow Agent as trustee for Lessor, and shall designate the Association as the beneficial owners.

3. The Tomales Bay Lessees contributing to the "Tomales Bay Cleanup Fund" shall be responsible for paying all fees and expenses incurred by Escrow Agent in administering the escrow account. These expenses and payment terms shall be determined by the Tomales Bay Lessees and Escrow Agent.

4. The interest earned on the trust account held in escrow and all interest earned on that interest shall be for the sole account of the Tomales Bay Lessees and may be withdrawn by the Escrow Agent at any time for distribution to Association members, who are Tomales Bay Lessees, without notice to Lessor.

5. Lessees shall make payments to the Escrow Agent on account of the Tomales Bay Cleanup Fund in the manner prescribed in paragraph 1(a) and (b) until the sum of five thousand dollars (\$5,000.00) is reached. Thereafter, the Tomales Bay Cleanup Fund shall be maintained by the Lessees at Five Thousand Dollars (\$5,000.00) as hereinafter provided, regardless of the number of lessees who continue in aquaculture operations in Tomales Bay.

6. When Lessees deposit funds into escrow, Escrow Agent shall notify Lessor in writing within ten days of receipt thereof.

7. Escrow Agent shall notify Lessor and Association in writing when two thousand five hundred dollars (\$2,500.00) has been deposited to the escrow account and provide written verification from the bank of such deposit. Thereafter, on the anniversary date of such initial notification, Escrow Agent shall report and certify the balance of funds on deposit accompanied by the accounting records provided by the banking institution of deposit.

8. The Lessor may increase or decrease the security amount held in escrow upon cause shown therefor and sixty days notice to the Tomales Bay Lessees. Lessee's annual Proof of Use Report shall contain a reasonable estimate of the cost of removal of growing structures from each operation. Any increase required by the Lessor shall be deposited by the Lessees in the same proportion as provided in Paragraph 1; and any decrease shall be returned to the Lessees by the Escrow Agent in the same proportion provided in Paragraph 1.

9. Should Lessee transfer his interest under the lease with the approval of the California Fish and Game Commission, Escrow Agent shall transfer such escrow deposit to the successor in interest, and thereafter notify all parties hereto of such transfer. The successor in interest shall have all of the rights and obligations of Lessee with respect to such escrow deposit.

10. If, on termination of an aquaculture lease, Lessee removes all growing structures and improvements within sixty days, Lessee's escrow deposit shall be returned to Lessee by

Escrow Agent no later than two weeks after receipt of written notice by Escrow Agent from Lessor authorizing such return.

11. If at any time during the lease term, any Lessee abandons a lease without removing growing structures and improvements, Lessor and/or Association shall do one of the following acts:

- (a) The Association may undertake the cleanup, within sixty days of written notification from Lessor that said lease is abandoned, and Lessor shall not resort to the escrow security account.
- (b) Lessor, after sixty days have elapsed, as defined in paragraph 11(a), may appropriate and apply any portion of the escrow security account as may be reasonably necessary to fund the cleanup;
- (c) Lessor may elect to have growing structures and improvements remain in place and return Lessee's escrow deposit as provided in Paragraph 10.

12. Lessor shall have a right to draw upon the escrow account in the event of default by the Lessees. Upon seven days written notice to the Escrow Agent from the Lessor of the default, Escrow Agent must immediately distribute funds as instructed by Lessor.

13. Should Lessor actually resort to any monies contained within the escrow account under any of the above applicable provisions, Lessees agree to deposit to the escrow account, in the same proportion as provided in Paragraph 1, the amount for which resort to the escrow security was had and necessary to restore the escrow security to the original sum required hereunder in thirty days after written demand by Lessor, except upon disbursement on account of return of escrow security to any Lessee as provided in Paragraph 10.

Restoration of escrow security shall be postponed during any period that Lessor re-advertises for bid and subsequently re-awards any Tomales Bay aquaculture lease. Upon Lessor granting a lease to a successful bidder, the Lessee thereunder shall assume the obligations and rights of his predecessor Lessee, including, but not limited to, the deposit of funds as prescribed in Paragraph 1(a) and (b).

Lessor shall not award or re-award a lease until the notice of deposit required by Paragraph 6 is received.

14. Escrow Agent shall rely on the written notifications from the Lessor and the Association, and the Lessor and the Tomales Bay Lessees shall hold Escrow Agent and Association harmless when Escrow Agent releases and disburses funds and interest pursuant to such a written notification.

15. In the event that any legal action is pursued in relation to this Escrow Agreement, the parties hereby agree to pay their own attorney's fees and legal costs regardless of who prevails.

16. Any notice required to be given under this Escrow Agreement may be given by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested. Notice shall be deemed communicated as of mailing. Mailed notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this paragraph.

To the Lessor:	DEPARTMENT OF FISH AND GAME 1416 Ninth Street Sacramento, California 95814
To the Association:	CALIFORNIA AQUACULTURE ASSOCIATION P. O. Box 1004 Niland, California 92257
To the Escrow Agent:	THE TREASURER CALIFORNIA AQUACULTURE ASSOCIATION P. O. Box 1004 Niland, California 92257
To the Lessee:	BAY BOTTOM BEDS, INC. 966 Borden Villa Drive, #103 Santa Rosa, California 95401-4401

17. At the time this Escrow Agreement is executed by all parties, the Lessor shall deliver to the Escrow Agent a fully executed counterpart of this agreement.

In witness whereof, the parties have executed this Agreement by their proper officers on the date first set forth above.

LESSOR: \_\_\_\_\_

\_\_\_\_\_

ASSOCIATION: \_\_\_\_\_

\_\_\_\_\_

LESSEE: \_\_\_\_\_

\_\_\_\_\_

**COMMISSIONERS**  
Richard T. Thleriot, President  
San Francisco  
Michael Chrisman, Vice President  
Visalia  
Douglas B. McGeoghegan  
Maxwell

**GRAY DAVIS**  
Governor



**ROBERT R. TREANOR**  
EXECUTIVE DIRECTOR  
1416 Ninth Street  
Box 944209  
Sacramento, CA 94244-2090  
(916) 653-4899  
(916) 653-5040 Fax

STATE OF CALIFORNIA

## Fish and Game Commission

October 14, 1999

Mr. Charles Friend  
180 Montecito Avenue, #104  
Oakland, California 94610

Dear Mr. Friend:

The Commission, at its October 8, 1999, meeting in Redding, approved the request of Bay Bottom Beds for authorization to transfer title of its State Water Bottom Lease (M-430-04), Tomales Bay, to you. The Department of Fish and Game will be completing the new lease agreement and sending it to you for your signature in the near future.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Robert R. Treanor".

Robert R. Treanor  
Executive Director

cc: LB Boydstun, Intergovernmental Affairs Office  
Marine Region - Monterey  
Bob Hulbrook, Aquaculture Coordinator  
Fred Wendell, Marine Region - Morro Bay  
Lisa Jang, Bay Bottom Beds

AMENDMENT NO. 2  
TO  
INDENTURE OF LEASE

This amendment of Aquaculture Lease is made and entered into as of the 8<sup>th</sup> day of October 1999, by and between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor", and Charles Friend, hereinafter referred to as "Lessee".

WITNESSETH:

**WHEREAS**, on February 5, 1993, Bay Bottom Beds, Incorporated did gain the exclusive privilege of cultivating specified shellfish on Lease M-430-04 created through the partition, reconfiguration and redescription of one-half of lease M-430-17, and

**WHEREAS**, Bay Bottom Beds, Incorporated applied to the Fish and Game Commission for authority to transfer title of Bay Bottom Bed's State Water Bottom Lease (M-430-04), Tomales Bay, to Charles Friend, and

**WHEREAS**, the Fish and Game Commission at its meeting on October 8, 1999, authorized the transfer of title from Bay Bottom Bed, Incorporated to Charles Friend;

**NOW, THEREFORE**, in accordance with actions taken by the Fish and Game Commission of the State of California, pursuant to Fish and Game Code Section 15400, Lessor does hereby amend said lease for such consideration, specific purposes, and subject to the additional covenants, terms, conditions, reservations, restrictions, and limitations as are set forth herein, and does hereby grant to Lessee the exclusive privilege to cultivate shellfish thereon, and in those certain lands of the State of California, described as follows:

All that certain real property situated in the County of Marin, State of California, described as follows:

In Tomales Bay, Marin County, State of California, starting from Bench Mark 8 located at approximately 38°12'38.7" North latitude, 122°55'22" West Longitude on the Tomales Bay Quadrangle, Marin County, California, U.S. Dept. of the Interior Geological Survey 7.5 minute series topographical map; thence North 83°31' West for a distance of 2749.30 feet to the top of Preston Point Rock lying off the northeast end of Preston Point; thence South 65°57'51" West 2128.40 feet to the true point of beginning; thence South 50°27'48" East 807.00 feet; thence North 46°50'24" East 1028.82 feet; thence North 35°53'07" West 539.10



feet; thence North 29°23'42" East 655.05 feet; thence North 59°41'17" West 670.79; thence South 58°38'08" West 2190.75 feet; thence South 51°18'13" East 1078.38 feet; thence North 39°32'12" East 357.16 feet; to the true point of beginning

This parcel of water bottoms, containing an area of 61.9 acres more or less, comprises Aquaculture Lease No. M-430-04

This lease, in accordance with provisions of Fish and Game Code Section 15400, as may from time to time be amended or changed by the State Legislature, is for the sole purpose of cultivating Pacific oyster (*Crassostrea gigas*), Sumino oyster (*C. rivularis*), Eastern oyster (*C. virginica*), flat oyster (*Ostrea edulis*), Native oyster (*O. lurida*), Manila clam (*Tapes japonica*), California sea mussel (*Mytilus californianus*), and bay mussel, (*Mytilus edulis*) in the previously designated area.

The cultivation of additional species of aquatic plants and animals requires the approval of the Fish and Game Commission. Seed stocks must be certified before planting in compliance with Fish and Game Code Section 15201, and must be planted by Lessee in a manner and at a size approved by Lessor to assure that harvested animals are a product of the lease. A request for certification of planting stock will be submitted by Lessee to the Lessor at least ten (10) days prior to the proposed date of inspection.

Shellfish cultivation methods approved for the lease shall be longlines, rafts, stakes, rack and bag, rack and tray, floats, and bottom culture within the area approved by the Commission. No other mode of operation or culture method is authorized, unless Lessee shall first obtain approval from the Fish and Game Commission.

This lease is made upon the following additional terms, conditions, and covenants, to wit:

D. If, at any time subsequent to the beginning date of this lease, the use of culture devices authorized herein shall fall into a state of disrepair, or otherwise become an environmental or aesthetic degradation, as determined by Lessor, then upon written notice by Lessor, Lessee shall have sixty (60) days to repair and correct conditions cited by Lessor. Failure to comply with written notice shall be grounds for termination of this lease and Lessee shall, at the option of Lessor, remove all improvements located on lands covered by this lease.

As a financial guarantee of growing structure removal and/or clean-up expense in the event a lease is abandoned or otherwise terminated, Lessee shall place on deposit, pursuant to the "Escrow Agreement For Cleanup of Aquaculture Leases, Tomales Bay, California", a sum in a proportion that the Lessee's individual acreage

bears to the total acreage of specified leased parcels of State water bottoms in Tomales Bay, Marin County, California, until the sum of five thousand dollars (\$5,000.00) is reached. This escrow deposit is established in compliance with Section 7 of the Fish and Game Commission Policy, Awarding of Tomales Bay Aquaculture Leases, adopted January 7, 1989. Such money shall be deposited over a two-year period payable one-half upon entering upon the lease and one-half upon the first anniversary of such inception date. The escrow deposit shall be increased if the Fish and Game Commission determines, that, if abandoned, any particular culture operation is likely to be more expensive to remove. The escrow deposit may be reduced by the Commission upon demonstration that the probable cost of removal of all improvements would be less than the deposit previously required. In its annual proof of use report, the Lessor shall advise the Commission of its best estimate of the probable cost of removal of each lease operation. The escrow agreement, escrow holder, and escrow depository shall be agreed upon by the Executive Director of the Fish and Game Commission, the Lessor and Tomales Bay Shellfish Growers Association.

It shall be the responsibility of the Lessee to maintain the specified security balance at the level established by the Commission, regardless of the number of lessees who continue in aquaculture operations within the bay. Since Bay Bottom Beds, Incorporated transferred their interest under the lease with the approval of the California Fish and Game Commission, the Escrow Agent shall transfer such escrow deposit to the successor in interest, Charles Friend, and thereafter notify all parties hereto of such transfer. The successor in interest shall have all of the rights and obligations of Lessee with respect to such escrow deposit.

If Lessee abandons this lease without removing growing structures therefrom, the escrow deposit shall be expended to remove the growing structures, or otherwise clean up the lease, or in the alternative, the remaining lessees in Tomales Bay and the Tomales Bay Shellfish Growers Association may undertake the clean-up leaving the secured amount whole.

P. All notices herein provided to be given or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States Mail, certified and postage prepaid and addressed as follows:

To the Lessor

DEPARTMENT OF FISH AND GAME  
1416 NINTH STREET  
SACRAMENTO, CALIFORNIA 95814

To the Lessee

CHARLES FRIEND  
180 MONTECITO AVE. #104  
OAKLAND, CALIFORNIA 94610

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice given by such party to the other, as hereinbefore provided.

Q. Lessee hereby indemnifies and holds harmless the Lessor, its officers, agents, and employees against any and all claims and demands of every kind and nature whatsoever, arising out of, or in any way connected with the use by Lessee of said lease, or the exercise of the privilege herein granted.

R. The lease does not imply that any guarantee is given that shellfish may be grown and harvested for human consumption. The Lessor only has the statutory authority to enter into aquaculture leases (Fish and Game Code Section 15400 et. seq.). The California Department of Health Services has the authority (Health and Safety Code Section 28500 et. seq.) to certify and regulate sanitary procedures followed in the harvesting, handling, processing, storage, and distribution of bivalve mollusk shellfish intended for human consumption.

Lessee must recognize that compliance by certified shellfish harvesters with the conditions and procedures set forth in the Department of Health Service's current "Management Plan for Commercial Shellfishing in Tomales Bay, California and in the current "Contingency Plan for Marine Biotoxins in California Shellfish" is mandatory. These conditions and procedures establish classifications for certification to harvest shellfish (oyster, mussels and clams) and establish rainfall closure rules which may delay or prevent harvesting of cultured organisms from this lease and are a condition of the Shellfish Growing Area Certificate .

S. The Nondiscrimination Clause (OCP-1) identified as item P in the original terms, conditions, and covenants is hereby relocated as item S for clarity between amendments.

:

Except as herein amended, all other terms of said lease agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have caused this amendment to said aquaculture lease to be executed as of the day and year first above written

**APPROVED:**

FISH AND GAME COMMISSION

By: \_\_\_\_\_

STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND GAME

By: \_\_\_\_\_  
Lessor

CHARLES FRIEND

By: \_\_\_\_\_  
Lessee

AMENDMENT NO. 3  
TO 2012 AUG -3 PM 1:50  
INDENTURE OF LEASE

This amendment to aquaculture lease is made and entered into as of the 30th day of June, 2011 at Stockton, California by and between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor" and Charles Friend Oyster Company, Inc hereinafter referred to as "Lessee."

**WITNESSETH:**

**WHEREAS**, the parties hereto did on October 8, 1999, enter into Lease Agreement No. M-430-04 which transferred said lease from Bay Bottom Beds, Incorporated to Charles Friend Oyster Company, Inc. for the exclusive purpose of cultivating Pacific oysters, Suminoe oysters, eastern oysters, European flat oysters, native oysters, Manila clams, California sea mussels, and bay mussels and

**WHEREAS**, on June 30, 2011, Charles Friend Oyster Company, Inc., requested and received the Fish and Game Commission's authority to also cultivate kumamoto oysters, *Crassostrea sikamea*, on Lease M-430-04;

**NOW, THEREFORE**, in accordance with actions taken by the Fish and Game Commission of the State of California, pursuant to Fish and Game Code Section 15400, Lessor does hereby amend said lease for such consideration, specific purposes, and subject to the covenants, terms, conditions, reservations, restrictions, and limitations as are set forth herein, and does hereby grant to Lessee the exclusive privilege to cultivate shellfish thereon, and in those certain lands of the State of California, as described as follows:

All that certain real property situated in the County of Marin, State of California, described as follows:

In Tomales Bay, Marin County, State of California, starting from Bench Mark 8 located at approximately 38°12'38.7" North latitude, 122°55'22" West Longitude on the Tomales Bay Quadrangle, Marin County, California, U.S. Dept. of the Interior Geological Survey 7.5 minute series topographical map; thence North 83°31' West for a distance of 2749.30 feet to the top of Preston Point Rock lying off the northeast end of Preston Point; thence South 65°57'51" West 2128.40 feet to the true point of beginning; thence South 50°27'48" East 807.00 feet; thence North 46°50'24" East 1028.82 feet; thence North 35°53'07" West 539.10 feet; thence North 29°23'42" East 655.05 feet; thence North 59°41'17" West 670.79; thence South 58°38'08" West 2190.75 feet; thence South 51°18'13" East 1078.38 feet; thence North 39°32'12" East 357.16 feet; to the true point of beginning.

This parcel of water bottoms, containing an area of 61.9 acres more or less, comprises Aquaculture Lease No. M-430-04.

This lease, in accordance with provisions of Section 15400 of the Fish and Game Code, as may from time to time be amended or changed by the State Legislature, is for the sole purpose of cultivating Pacific oysters (*Crassostrea gigas*), Suminoe oysters (*C. rivularis*), eastern oysters (*C. virginica*), European flat oysters (*Ostrea edulis*), native oysters (*O. lurida*), kumamoto oysters (*C. sikamea*), Manila clams (*Venerupis philippinarum*), California sea mussels (*Mytilus californianus*), and bay mussels (*Mytilus edulis*) in the previously designated area.

The cultivation of additional species of aquatic plants or animals must have approval of the Fish and Game Commission. Seed stock must be certified before planting in compliance with Section 15201 of the Fish and Game Code, and must be planted by Lessee in a manner and at a size approved by the Lessor to assure that harvested animals are a product of the lease. A request for certification of planting stock will be submitted by Lessee to the Lessor at least ten (10) days prior to the proposed date of inspection.

All oyster cultivation on the lease shall be confined to longlines, rafts, stakes, rack and bag, racks and tray, floats and bottom culture within the area approved by the Commission. No other mode of operation or culture method is authorized unless Lessee shall first obtain approval thereof from the Fish and Game Commission.

The notice of intent to plant shellfish on the lease shall be given to the Department of Fish and Game's, Marine Region Aquaculture Coordinator, 619 Second Street, Eureka, CA 95501, (707) 445-5365, or at such other place as Lessor may from time to time designate. In addition to the required ten (10) day notice, at least a 24-hour notice shall be given to the aquaculture coordinator or their designee, giving the details on where the shellfish seed can be inspected.

This amended lease falls within the authorized term of the initial lease, twenty-five (25) years, which commenced on the 1st day of March 1991, and ends on February 29, 2016, for a total rental of two thousand one hundred and sixty-six dollars and fifty cents (\$2,166.50) per year, and a privilege tax on all products harvested as provided by Fish and Game Code sections 8051, 18406.5, and 15406.7. Beginning January 1, 1997, said annual rental fee will be payable to Lessor on a calendar year basis, January 1 – December 31. If said annual rental fee is not paid within sixty (60) days after the close of the month in which it is due, an additional 10 percent penalty shall be paid. Lessor, at its option, may declare the lease abandoned for failure to pay such rental fees within 90 days from the beginning of the rental period; although such abandonment shall not relieve Lessee of its obligation to pay such rental and penalty which are due and owing. Lessee agrees to pay Lessor reasonable attorney fees and costs incurred in collecting any amounts and/or penalties due and owing from Lessee under the

provisions of this lease. Lessee agrees to pay said rent to Lessor at its office in the City of Sacramento, or at such other place as Lessor may, from time to time, designate.

All notices herein provided to be given or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified, and postage prepaid and addressed as follows:

To the Lessor

DEPARTMENT OF FISH AND GAME  
1416 Ninth Street  
Sacramento, CA 95814

To the Lessee

MR. CHARLES FRIEND  
CHARLES FRIEND OYSTER COMPANY, INC  
180 Montecito Avenue #104  
Oakland, CA 94610

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice given by such party to the other, as hereinbefore provided.

Lessee hereby indemnifies and holds harmless the Lessor, its officers, agents, and employees against any and all claims and demands of every kind and nature whatsoever, arising out of, or in any way connected with the use by Lessee of said lease, or the exercise of the privilege herein granted.

This lease is made upon the following additional terms, conditions, and covenants to wit:

- A. This lease may, at the option of the Lessee, be renewed for additional periods not to exceed 25 years each. If Lessee desires to enter into a new lease for a period commencing after expiration of the initial 25-year term, Lessee shall give notice to Lessor one (1) year prior to termination of the lease. The lease may be renewed if, during the notification period, terms for a new lease are agreed upon by Lessee and the Commission.
- B. Lessee shall keep records as required in accordance with Fish and Game Code Section 15414 on forms to be supplied by Lessor, and shall maintain adequate accounting records sufficient to determine monies due to Lessor by the 10<sup>th</sup> day of each month for all shellfish harvested during the preceding calendar month. Lessor reserves the right to inspect Lessee's premises, equipment and all books at any time, and Lessee's records pertaining to its cultivation on the leased premises and all shellfish taken from the leased premises.



- C. The lease shall be improved at no less than the minimum rate established by Commission regulations (Section 237(i)(A) - (C), Title 14, CCR). A minimum rate of planting shall be negotiated for option periods. Lessor may declare this lease terminated if Lessee fails to meet these requirements, and if Lessee, at any time, is proven to be failing in good faith, to pursue the purpose of this lease.
- D. If, at any time subsequent to the beginning date of this lease the use of cultural devices authorized herein shall fall into a state of disrepair or otherwise become an environmental or aesthetic degradation, as determined by Lessor, then upon written notice by Lessor, Lessee shall have sixty (60) days to repair and correct conditions cited by Lessor. Failure to comply with the written notice shall be grounds for termination of this lease and Lessee shall, at the option of Lessor, remove all improvements located on lands covered by this lease.

As a financial guarantee of growing structure removal and/or clean-up expense in the event the lease is abandoned or otherwise terminated, Lessee shall place on deposit, pursuant to the "Escrow Agreement for Clean-up of Aquaculture Leased, Tomales Bay, California", a sum in a proportion that the Lessee's individual acreage bears to the total acreage of specified leased parcels of State water bottoms in Tomales Bay, Marin County, California, until the sum of five thousand dollars (\$5000.00) is reached. This escrow deposit is established in compliance with Section 7 of the Fish and Game Commission Policy, Awarding of Tomales Bay Aquaculture Leases, adopted January 12, 1989 (Appendix 4). Such money shall be deposited over a two-year-period, payable one-half upon entering upon the lease, and one-half upon the first anniversary of such inception date. The escrow account shall be increased if the Fish and Game Commission determines that, if abandoned, the culture operation is likely to be more expensive to remove. The escrow account may be reduced by the Commission upon demonstration that the probable cost of removal of all improvements would be less than the deposit previously required. In its annual Proof-of Use Report, the Lessor shall advise the Commission of its best estimate of the probable cost of removal the lease operation. The escrow agreement, escrow holder, and escrow depository shall be agreed upon by the Executive Director of the Fish and Game Commission, the Lessor, and Tomales Bay Growers Association.

It shall be the responsibility of the Lessee to maintain the specified security balance at the level established by the Commission, regardless of the number of lessees who continue in aquaculture operations within the bay.

If Lessee abandons this lease without removing growing structures therefrom, the escrow deposit shall be expended to remove growing structures, or otherwise clean, or in the alternative, the remaining lessees in Tomales Bay

and the Tomales Bay Growers Association may undertake the clean-up, leaving the secured amount whole.

In order to assure compliance with the escrow provisions of this lease, Lessee shall dedicate to the agreed upon escrow account specified in the "Escrow Agreement for Clean-up of Aquaculture Leases, Tomales Bay, California (Addendum 1)", hereby attached to and made part of this agreement, a total of four hundred forty-nine dollars and fifty cents (\$449.50), a sum proportional to Lessee's total lease acreage of sixty-one and nine-tenths (61.9) acres. This amount equals one-half of the amount, eight hundred ninety-nine dollars (\$899.00), deposited in the "Tomales Bay Escrow Account" by the former partnership (Shellfish Unlimited).

- E. Lessee shall observe and comply with all rules and regulations now or hereinafter promulgated by any governmental agency having authority by law, including but not limited to State Water Resources Control Board, State Coastal Commission, State Lands Commission, and U.S. Army Corps of Engineers. Any other permits or licenses required by such agencies will be obtained by Lessee at his own sole cost and expense.
- F. Lessee recognizes and understands in accepting this lease that his interest therein may be subject to a possible possessory interest tax that the county may impose on such interest, and that such tax payment shall not reduce any rent or royalty due the Lessor hereunder and any such tax shall be the liability of and be paid by Lessee.
- G. Any modification of natural or existing features of the real property described in this lease, which are not consistent with the authorized uses under this lease are expressly prohibited without prior written consent of the Lessor.
- H. As evidence of progress in aquaculture, Lessee shall submit each year to the Marine Region Aquaculture Coordinator, 619 Second Street, Eureka, CA 95501, a written declaration under penalty of perjury, showing the date and amount of each type of aquaculture development and date and amount of designated species comprising each planting, including a diagram (map) showing area, amounts, and date planted. Such annual proof-of-use shall be submitted on or before February 1 of each year for the previous year, January 1 - December 31, inclusive.
- I. This lease shall be canceled at any time Lessee fails to possess a valid aquaculture registration issued pursuant to Section 15101 of the Fish and Game Code. Lessee agrees not to commit, suffer, or permit any waste on said premises or any act to be done thereon in violation of any laws or ordinances. This lease shall be subject to termination by Lessee at any time during the term hereof, by giving Lessor notice in writing at least ninety (90)

days prior to the date when such termination shall become effective. In the event of such termination by Lessee, any unearned rental shall be forfeited to the Lessor.

- J. This lease of State water bottoms only grants Lessee the exclusive right to cultivate marine life as described in the lease. The lease does not imply that any guarantee is given that shellfish may be grown or harvested for human consumption. The Lessor only has the statutory authority to enter into aquaculture leases (Fish and Game Code Section 15400 et. seq.). The California Department of Health Services has the authority (Health and Safety Code Section 28500 et. seq.) to certify and regulate sanitary procedures followed in the harvesting, handling, processing, storage, and distribution of bivalve mollusk shellfish intended for human consumption.

Lessee must recognize that compliance by certified shellfish harvesters with the conditions and procedures set forth in the Department of Health Service's current "Management Plan for Commercial Shellfishing in Tomales Bay, California" and in the current "Contingency Plan for Marine Biotoxins in California Shellfish" is mandatory. These conditions and procedures establish classifications for certification to harvest shellfish (oysters, mussels and clams) and establish rainfall closures which may delay or prevent harvesting of cultured organisms from this lease and are a condition of the Shellfish Growing Area Certificate.

- K. In addition to the conditions and restrictions herein provided for in this lease, and any right or privilege granted, conveyed or leased hereunder, shall be subject to, and Lessee agrees to comply with all applicable provisions of the California Fish and Game Code, and regulation of the Fish and Game Commission, in particular Sections 15400 - 15415, inclusive, of the Fish and Game Code, and expressly recognizes the right of the Legislature and the Fish and Game Commission to enact new laws and regulations. In the event of any conflict between the provisions of this lease and any law or regulation, the latter will control. This lease shall be deemed amended automatically upon the effective date of such conflicting law or regulation.
- L. This lease is personal to the Lessee and shall not be transferred, assigned, hypothecated or subleased, either voluntarily or by operation of law, without prior approval of the Fish and Game Commission. Such written approval of the assignment or transfer of lease shall be subject to any and all conditions required by the Fish and Game Commission including, without limitation by reason of the specifications herein, the altering, changing or amending of this agreement as deemed by the Commission to be in the best interest of the State

Except as herein amended, all other terms of said lease agreement shall remain unchanged and in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have caused this amendment to said aquaculture lease to be executed as of the day and year first above written.

**APPROVED:**

**FISH AND GAME COMMISSION**

By:   
Sonke Mastrup, Executive Director

**STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND GAME**

By:   
Helen Carriker, Deputy Director of Administration

**CHARLES FRIEND OYSTER COMPANY, INC**

By:   
Charles Friend, Owner

**STAFF SUMMARY FOR FEBRUARY 6, 2019****27. CHARLES FRIEND OYSTER COMPANY STATE WATER BOTTOM LEASE****Today's Item**Information ☐Action ☒

Consider approving DFW's request to extend Charles Friend Oyster Company's State Water Bottom Lease No. M-430-04 for a period of one year.

**Summary of Previous/Future Actions**

- Received request to renew lease Aug 4-5, 2015; Fortuna
- Approved request to extend lease one year Feb 10-11, 2016; Sacramento
- Approved request to extend lease one year Feb 8-9, 2017; Rohnert Park
- Approved request to extend lease one year Feb 7-8, 2018; Sacramento
- **Today approve request to extend lease one year Feb 6, 2019; Sacramento**

**Background**

FGC has the authority to lease state water bottoms to any person for aquaculture for an initial lease term not to exceed 25 years (sections 15400 and 15405, Fish and Game Code). A lessee shall have a prior right to renew the lease on terms agreed upon between FGC and the lessee (Section 15406, Fish and Game Code).

Charles Friend Oyster Company, Inc. has held FGC-issued State Water Bottom Lease No. M-430-04 since 1999 for the purposes of culturing shellfish in Tomales Bay (Exhibit 1). The lessee, Charles Friend, requested to renew the lease prior to its expiration on Feb 29, 2016. However, in lieu of renewal, FGC granted a limited-term lease extension while specific non-compliance issues were addressed by the company. To date, three one-year lease extensions have been granted; full details on the lease approval requests and extensions are documented in a previous staff summary (Exhibit 2).

The most recent extension was granted due to the untimely passing of Mr. Friend in 2017, which left the company operations to his daughter, Heidi Gregory. The extension of the lease until Feb 11, 2019 was intended to provide Ms. Gregory time to familiarize herself with operations and fulfill remaining requirements for lease clean-up and permitting with the appropriate regulatory agencies.

DFW has reviewed progress made towards compliance in the last year; however, not all requirements have been fulfilled to date. DFW has outlined five specific measures that must be taken by the company before it will recommend lease renewal (Exhibit 3).

DFW recommends a one-year extension for Charles Friend Oyster Company to reach full compliance with outstanding regulatory permitting requirements and lease site conditions.

**Significant Public Comments (N/A)**

**STAFF SUMMARY FOR FEBRUARY 6, 2019****Recommendation**

**FGC staff:** Approve a one-year extension of the existing lease, as recommended by DFW, through a lease amendment that also includes the five actions identified by DFW as conditions of the lease.

**DFW:** Extend existing lease for a period of one year, and consider renewal once lessee demonstrates compliance with five actions specified for permitting and lease site conditions (Exhibit 3).

**Exhibits**

1. State Water Bottom Lease No. M-430-04 and amendments
2. Staff summary from Feb 7-8, 2018 meeting, Agenda Item 9
3. DFW memo, received Jan 23, 2019

**Motion/Direction**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission approves an amendment of State Water Bottom Lease No. M-430-04 granting a one-year extension under existing terms and additional conditions to specify the conditions for lease site clean-up and compliance with other permitting agencies.

## Memorandum

Date: November 19, 2019

Received Nov 22, 2019; signed copy on file

To: Melissa Miller-Henson  
Executive Director  
Fish and Game Commission

From: Charlton H. Bonham  
Director

Subject: **Agenda Item for the December 11-12, 2019, Fish and Game Commission Meeting Regarding Proposed Renewal of State Water Bottom Lease, M-430-04, Charles Friend Oyster Company, Tomales Bay, Marin County**

The Department of Fish and Wildlife (Department) is providing the following comments in regard to a request by Ms. Heidi Gregory, owner of Charles Friend Oyster Company (CFOC), for Fish and Game Commission (Commission) approval to renew the state water bottom lease, M-430-04, for a period of 15 years.

On February 6, 2019, the Commission granted a one-year extension for state water bottom lease, M-430-04, to CFOC to allow Ms. Gregory time to work toward full permitting compliance with the appropriate regulatory agencies and to address lease compliance issues. The one-year lease extension will expire on February 6, 2020.

The Department conducted a lease inspection of M-430-04 on September 26, 2019 after communications with Ms. Gregory that outstanding site issues had been resolved. The Department confirmed the operations are in good working order and that the previously noted areas of disrepair and incompliance, including marking of lease corners, shellfish bags placed in existing eelgrass beds, and abandoned equipment, were adequately corrected.

Additionally, CFOC has made notable progress towards coming into full permit compliance. CFOC has secured approval from the California Coastal Commission for operations on lease M-430-04 and is working in good faith with the San Francisco Regional Water Quality Control Board, the Gulf of Farallones National Marine Sanctuary, and the U.S. Army Corps of Engineers to secure additional required permits.

The proposed project is subject to the "Class 1" or "Existing Facilities" categorical exemption pursuant to CEQA Guidelines section 15301 (Cal. Code Regs., tit. 14, § 15301). In general, the Class 1 exemption consists of the leasing of existing facilities, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. This lease does not increase, decrease, or change existing operations in any way or allow for any new activities by the lessee.

Melissa Miller-Henson, Executive Director  
Fish and Game Commission  
November 19, 2019  
Page 2

The Department recommends approval of the request to renew state water bottom lease M-430-04, to Ms. Heidi Gregory (CFOC) for a period of 15 years.

If you have any questions regarding this item, please contact Randy Lovell, State Aquaculture Coordinator at (916) 445-2008 or by email at [randy.lovell@wildlife.ca.gov](mailto:randy.lovell@wildlife.ca.gov).

cc: Department of Fish and Wildlife

Stafford Lehr, Deputy Director  
Wildlife and Fisheries Division  
[Stafford.Lehr@Wildlife.ca.gov](mailto:Stafford.Lehr@Wildlife.ca.gov)

Craig Shuman, D. Env., Regional Manager  
Marine Region  
[Craig.Shuman@wildlife.ca.gov](mailto:Craig.Shuman@wildlife.ca.gov)

Kirsten Ramey, Environmental Program Manager  
Marine Region  
[Kirsten.Ramey@wildlife.ca.gov](mailto:Kirsten.Ramey@wildlife.ca.gov)

Randy Lovell, State Aquaculture Coordinator  
Wildlife and Fisheries Division  
[Randy.Lovell@wildlife.ca.gov](mailto:Randy.Lovell@wildlife.ca.gov)



**Notice of Exemption****Appendix E**

**To:** Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

County Clerk

County of: Marin

**From:** (Public Agency): D R A F T

California Fish and Game Commission

1416 Ninth St., Room 1320, Sacramento, CA 95814

(Address)

Project Title: Renewal of State Water Bottom Lease M-430-04, Charles Friend Oyster Company, Marin

Project Applicant: Charles Friend Oyster Company

Project Location - Specific:

See attached map and legal description

Project Location - City: Tomales Bay Project Location - County: Marin

Description of Nature, Purpose and Beneficiaries of Project:

Pursuant to Fish & Game Code Section 15406, the Commission is renewing lease M-430-04, Charles Friend Oyster Co. under existing terms & conditions. Renewing the lease provides stable revenue to the State through taxes, fees & rent and fulfills the State's mandate in support of environmentally sustainable aquaculture.

Name of Public Agency Approving Project: California Fish and Game Commission

Name of Person or Agency Carrying Out Project: California Department of Fish and Wildlife

Exempt Status: **(check one):**

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption. State type and section number: CCR, Title 14, Section 15301, Class 1
- ☐ Statutory Exemptions. State code number: \_\_\_\_\_

Reasons why project is exempt:

See attachment

Lead Agency  
Contact Person: Melissa Miller-Henson Area Code/Telephone/Extension: 916-653-4899

**If filed by applicant:**

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: D R A F T Date: \_\_\_\_\_ Title: Executive Director

☒ Signed by Lead Agency ☐ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.  
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: \_\_\_\_\_

# **D R A F T**

## **Attachment to Notice of Exemption**

**Renewal of State Water Bottom Lease No. M-430-04, Charles Friend Oyster Company,  
Tomales Bay, Marin County**

**(California Fish and Game Code Section 15406)**

The California Fish and Game Commission (Commission) has taken final action to renew State Water Bottom Lease No. M-430-04, held by Charles Friend Oyster Company. In taking its final agency action for the purposes of the California Environmental Quality Act (CEQA), the Commission approved this lease renewal relying on the categorical exemption for “Existing Facilities” contained in CEQA Guidelines Section 15302 (California Code of Regulations, Title 14, Section 15301).

### **Class 1 Categorical Exemption**

The Commission finds that the lease renewal is subject to the “Class 1” or “Existing Facilities” categorical exemption pursuant to CEQA Guidelines Section 15301. In general, the Class 1 exemption consists of the leasing of existing facilities, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. This lease renewal falls within the Class 1 exemption because it is renewing an already existing lease agreement for a period of 15 years. All provisions of the lease are identical to the original lease, with the only exception being the 15-year renewal. This lease does not increase, decrease, or change existing operations in any way or allow for any new activities by the lessee.

# DRAFT LEASE

RECORDING REQUESTED BY AND )  
WHEN RECORDED MAIL TO: )  
 )  
State of California )  
Fish and Game Commission )  
1416 Ninth Street, Rm 1320 )  
Sacramento, CA 95811 )  
P.O. Box 944209 )  
Sacramento, CA 94244-2090 )

Space Above Line for Recorder's Use Only

## LEASE GRANTING THE EXCLUSIVE PRIVILEGE OF CONDUCTING AQUACULTURE AT STATE WATER BOTTOM NO. M-000-00

THIS LEASE GRANTING THE EXCLUSIVE PRIVILEGE OF CONDUCTING AQUACULTURE AT STATE WATER BOTTOM NO. M-430-04 ("Lease") is made and entered into as of [DATE], by and between Charles Friend Oyster Company, ("Tenant") and the California Fish and Game Commission ("State") with reference to the following facts:

### RECITALS

**Whereas**, Fish and Game Code Section 15400 authorizes the State to lease to any person the exclusive privilege to conduct aquaculture in any designated State Water Bottom if it determines that such lease is in the public interest; and

**Whereas**, on March 1, 1991, the State did enter into Lease Agreement M-430-17 with Shellfish Unlimited (a partnership comprised of Point Reyes Oyster Company and Bay Bottom Beds Incorporated) for the purpose of cultivating oysters, mussels, and clams; and

**Whereas**, on December 4, 1992, the State recognized the dissolution of the partnership and approved the equal split of the original 123.8-acre lease between the two partners in two 61.9-acre parcels; and

**Whereas**, on February 5, 1993, Bay Bottom Beds Incorporated did gain the exclusive privilege of cultivating specified shellfish on Lease M-430-04 created through the partition, reconfiguration, and re-description of Lease M-430-17 under the same 25-year lease term (expiring February 29, 2016); and

**Whereas**, on October 8, 1999, the State authorized the assignment of Lease M-430-04 from Bay Bottom Beds Incorporated to Charles Friend Oyster Company (hereinafter referred to as "Tenant"); and

**Whereas**, on June 30, 2011, Tenant requested and received the State's authority to also cultivate kumamoto oysters (*Crassostrea sikamea*) on Lease M-430-04; and

# DRAFT LEASE

**Whereas**, the State did approve a series of successive one-year extensions between February 2016 and February 2019 to the lease in order to allow Tenant to come into full permitting compliance with the appropriate regulatory agencies and to address lease compliance issues; and

**Whereas**, the Department of Fish and Wildlife (Department), after conducting a lease inspection on September 26, 2019, confirmed the Tenant's operations to be in good working order, that previously noted areas of disrepair and noncompliance were adequately corrected, and that Tenant has made notable progress toward coming into full permit compliance; and

**Whereas**, Tenant wishes to continue leasing a State Water Bottom for the purpose of propagating, cultivating, maintaining and harvesting aquatic plants and/or animals in marine waters of the state.

**Whereas**, on [DATE(s)] the State authorized renewal of the Lease for State Water Bottom No. M-430-04 to Tenant;

**Now, Therefore**, State and Tenant agree as follows:

## TERMS AND CONDITIONS

- 1. LEASE.** The State hereby grants to Tenant the exclusive privilege to conduct aquaculture upon State Water Bottom No. M-430-04, subject to the terms and conditions of this Lease.
- 2. DESCRIPTION.** This Lease covers that area comprising approximately 61.9 acres designated as State Water Bottom No. M-430-04 and shown on the Map and Description attached as **Exhibit A**, which is made a part of this Lease by this reference.
- 3. TERM.** This Lease is for a period of FIFTEEN (15) years commencing on [START DATE] and ending on [END DATE], unless renewed or sooner terminated in accordance with its terms.
- 4. ANNUAL RENT.** The base rent for the Lease area is \$50.00 per acre, calculated to recover Tenant's share of the State's operational costs of the aquaculture bottom leasing program attributable to shellfish cultivation. The base rent shall be annually adjusted in the following manner:

The Department of Fish and Wildlife shall determine the change in the "Implicit Price Deflator for State and Local government Purchases of Goods and Services," as published by the U.S. Department of Commerce, for the quarter ending March 31 of the current year compared to the quarter ending March 31 of the previous year. The relative amount of the change shall be multiplied by the amount of the annual rent.

No more frequently than at five-year intervals, the State, in its sole discretion, may recalculate the productivity classification by which the annual rent is calculated for Tenant to reflect changes in the State's operational costs of the aquaculture bottom leasing

program attributable to shellfish cultivation. The 10-year average oyster production values fall into three productivity classifications:

- High productivity = >100,000 oysters/acre = \$150.00 per acre/year
- Moderate productivity = >20,000-99,000 oysters/acre = \$100.00 per acre/year
- Low productivity = >2,000-19,999 oysters/acre = \$50.00 per acre/year

Whenever such formula is updated, the annual rent first charged Tenant thereafter shall become the new base rent, subject to the foregoing adjustments for inflation thereafter.

Notice of the annual adjusted rent for the upcoming calendar year shall be given to Tenant by December 1. Until the notice of the annual adjustment is provided, Tenant remains obligated to pay rent at the previous rate. Pursuant to Fish and Game Code section 15407, the annual rent shall be paid within 30 days of the commencement date in Section 3, and within 30 days of each anniversary. Tenant shall remit such rent to: Department of Fish and Wildlife, Fiscal and Administrative Services Branch, 1416 Ninth Street, 12<sup>th</sup> Floor, Sacramento, California 95814 RE: State Water Bottom Lease No. M-430-04.

Payment shall be made to the State in lawful money of the United States, provided that, if any payment made by a check, draft or money order is returned to The State due to insufficient funds or otherwise, the State shall have the right, upon written notice to Tenant, to require Tenant to make all subsequent payments in cash, or by cashier's or certified check.

**5. LATE PAYMENT.** Annual payment of rent is due and payable on the commencement date of this Lease or any anniversary thereafter, and is timely if received by the State within thirty (30) days of such commencement date or anniversary. Any annual payment not received by the State within thirty (30) days of the Lease commencement date or anniversary thereof, regardless of whether the 30th day falls on a Saturday, Sunday or holiday, will be subject to a late penalty consisting of an administrative charge on the late amount, calculated at the rate of five percent (5%) of the amount of the late payment. The parties agree that the late charge represents a fair and reasonable estimate of the costs the State will incur because of late payment. Acceptance of the late charge by the State shall not constitute a waiver of Tenant's default for the overdue amount, nor prevent the State from exercising other rights and remedies granted under this Lease. Tenant shall pay the late charge as additional rent within 30 days of the due date of the original payment.

Any annual payment not received by the State within ninety (90) days of the commencement date of the Lease or within ninety (90) days of any anniversary thereof shall constitute a breach of Lease, giving rise to the State's remedies as set forth herein.

Annual rent due to the State, if not received by the State within ninety (90) days following the due date, will bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate legally permitted. Interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that legally permitted. Payment of interest shall not

excuse nor cure any default by Tenant.

Upon written request by Tenant to the State, demonstrating unusual or extenuating circumstances causing the late payment, the State, in its sole discretion, may waive the late charge.

**6. INSURANCE.** Tenant shall furnish to the State certificate(s) of insurance stating that Public Liability Insurance is presently in effect for the Tenant and will be in effect throughout the period of this Lease with a combined single liability limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, and shall insure against all liability of Tenant and its employees and agents arising out of or in connection with Tenant's use and occupancy of the leased Lease area. The certificate(s) of insurance shall:

(a) Be furnished to the State by the insurance companies, and no such policy shall be cancelable or subject to reduction of coverage or other modification except after 30 days prior written notice to the State.

(b) Include the State of California, its officers, agents, employees and servants are included as additional insured but only insofar as the operations under the Lease are concerned.

(c) Provide that the State shall not be responsible for any premiums or assessments on any policy of insurance hereunder.

(d) Comply with those standards as determined by the State of California, Department of General Services, Office of Risk and Insurance Management.

Tenant agrees that the insurance required herein shall be in effect at all times during the term of this Lease, at the cost of Tenant. In the event said insurance, or any of it, expires or lapses at any time during the term of this Lease, the Tenant agrees to provide, no later than fifteen (15) days after said expiration or lapse, written evidence of required insurance coverage from the date of loss of the earlier insurance and continuing for not less than the remainder of the term of the Lease. Tenant's failure to keep in effect at all times all insurance required by this Lease shall be grounds for termination of the Lease, in addition to any other remedies available to the State.

Where Tenant has any employees, a program of workers' compensation insurance, in an amount and form to meet all applicable requirements of the Labor Code of California, shall be in place throughout the term of this Lease. Such insurance shall include employer's liability coverage of One Million Dollars (\$1,000,000.00) and shall specifically cover all persons providing services by or on behalf of Tenant and shall cover all risks to such persons under this Lease.

**7. INDEMNITY AND WAIVER.** (For purposes of this Section 7, the term, "State", shall include the Department of Fish and Wildlife as well as the Fish and Game Commission.) Tenant hereby waives all claims and recourse against the State, including the right to contribution for loss or damage to persons or property arising from, or in any way connected with or incident to this Lease, except claims arising from, and only to the extent of the gross negligence or willful misconduct of the State, its officers, agents or

employees. Tenant shall notify the Department of Fish and Wildlife Aquaculture Coordinator immediately in case of any serious accident, injury, or casualty on, or potentially related to, the Lease area.

Tenant shall protect, indemnify, hold harmless, and defend the State, its officers, agents or employees, against any and all claims, demands, damages, costs, expenses or liability costs arising out of the use by Tenant, including its employees and agents, of the Lease area, except for liability arising out of, and to the extent of, the gross negligence or willful misconduct of the State, its officers, agents or employees for which the State is found liable by a court of competent jurisdiction.

Should the State be named as a defendant in any claim or legal action arising out of the use by Tenant, including its employees and agents, of the Lease area, upon tender of the claim or action by the State to Tenant, the Tenant shall assume the State's defense and represent the State in such legal action at Tenant's expense, subject to the provisions herein.

In lieu of tender to Tenant of the claim or action against the State, the State may elect to represent itself, in which event, the State shall bear its own litigation costs, expenses and attorney fees. Notwithstanding the foregoing, in the event the State is required to represent itself because of a conflict of interest by counsel representing Tenant, then Tenant, upon demand by the State, shall reimburse the State for the State's litigation costs, expenses and attorney fees. Costs shall include, without limitation, all attorney fees and costs, court costs, if any, costs of mediators or arbitrators, experts and consultants, and any other costs reasonably incurred in response to any claim.

In the event the State is found to be concurrently liable with Tenant by a court of competent jurisdiction for loss or damage to persons or property arising out of the use by Tenant, its employees and agents, of the Lease area, the State and Tenant shall cooperate and use their best efforts to seek and obtain an apportionment of liability from the court and neither party shall request a jury apportionment.

In the event the State is found to be liable for any other wrongful act, for which liability to another is determined by a court of competent jurisdiction for loss or damage to persons or property arising out of the use by Tenant, its employees and agents, of the Lease area, the State shall bear its own litigation costs, expenses and attorney fees. If Tenant has paid for any such costs which are the responsibility of the State under this provision, the State shall reimburse Tenant at Tenant's request. The State, in its sole discretion, may provide any reimbursement required in the form of a credit against any other money due the State under this Lease.

**8. RENEWAL.** Tenant may provide written notice to the Department of Fish and Wildlife Aquaculture Coordinator that it is exercising its right to seek renewal of this lease at least 120 days and not more than 364 days (one year) prior to the expiration date in Section 3 pursuant to Fish and Game Code section 15406. So long as Tenant, during the period specified herein, is still actively engaged in aquaculture, as determined by the State, Tenant shall have a prior right to renew for a period of TEN (10) years on terms to be agreed upon between the State, in consultation with the Department of Fish and Wildlife Aquaculture Coordinator, and Tenant. If Tenant fails to give such notice of its



right to seek renewal during the period specified herein, the Lease, including any remaining right to seek renewal, shall terminate upon expiration of the then-current term. Moreover, if Tenant is in default on the date of giving such notice, the notice shall be ineffective; if Tenant cures the default and provides a new notice thereafter all within the period specified herein for giving notice, that new notice shall be sufficient to exercise Tenant's prior right to renew. Provided, further, that if on the date a renewal term is to commence Tenant is in default, the renewal term shall not commence and this Lease shall expire at the end of the current term. However, if the State continues negotiating renewal terms after the prior term expires, then the holdover provisions of Section 9 may apply. In no event shall the term of this Lease, or the term of any renewal thereof, extend beyond 25 years each.

**9. HOLDOVER.** If the Term in Section 3 expires and the Lease has not been renewed pursuant to Section 8, and Tenant remains in possession of the Lease area with State's express or implied permission, Tenant shall become a tenant from month to month only, subject to all the provisions of this Lease except Sections 3, 4 and 5. During this holdover tenancy, a monthly rent representing one-twelfth of the current adjusted annual rent shall be payable on or before the first day of each month. It is expressly understood that a holdover tenancy does not create any right of renewal beyond that provided by Fish and Game Code section 15406 as set forth in Section 8, and that the only purpose of a holdover tenancy is to allow continuity of use of the property while the State continues to negotiate renewal terms or undertakes to issue a new lease to the highest responsible bidder pursuant to Fish and Game Code section 15406, or to allow the holdover tenant time to terminate and remove the aquaculture operation consistent with Fish and Game Code section 15409(a). If either party desires to terminate such holdover tenancy, it shall give the other party not less than thirty days advance written notice of the date of termination.

**10. POSSESSORY INTEREST.** Tenant understands and acknowledges that, pursuant to Revenue and Taxation Code section 107.6(a), any possessory interest created by this Lease may be subject to the payment of property taxes levied on that possessory interest.

Tenant agrees to pay, before delinquency, all lawful taxes, assessments, license fees and any other charges of any type whatsoever which at any time may be levied by the State, County, City or any tax or assessment-levying body upon any interest in or created by this Lease, or any possessory right which Tenant may have in or to the Lease area covered hereby.

**11. USE.** Tenant shall use the Lease area only for the purpose stated in this Lease, and such use shall be continuous from commencement of the Lease term until its expiration or termination. Pursuant to Fish and Game Code section 15414, the State may require the Tenant to submit any periodic reports it deems necessary for the proper administration of State Water Bottom M-430-04.

The Lease area shall be continuously used by Tenant to conduct aquaculture operations, as aquaculture is defined in Fish and Game Code section 17. Tenant shall not use or permit the Lease area to be used in whole or in part during the term of this Lease for any purpose, other than as set forth herein, without the prior written consent of the State.



The possessory interest herein given to the Tenant does not exclude the general public from the Lease area, and Tenant may not unreasonably impede public access to state waters for purpose of fishing, navigation, commerce or recreation or other public trust values. However, Tenant may limit public access to the extent necessary to avoid damage to the Lease area and the aquatic life culture therein. This Lease is not intended to confer third party beneficiary status to anyone benefiting from the terms of this Lease. The possessory interest is further subject to all valid and existing contracts, leases, licenses, encumbrances, and claims of title which may affect the Lease area.

This Lease provides a tenancy of a temporary nature. The parties to this Lease agree that no Relocation Payment or Relocation Advisory Assistance will be sought or provided in any form as a consequence of this tenancy.

This Lease is of no force or effect until signed by both parties and all approvals are secured. Tenant may not commence performance until such approval has been obtained. Any commencement of performance prior to Lease approval shall be done at the Tenant's own risk. Nothing in this Lease may be waived, modified, amended or discharged except by a writing signed by the State and Tenant and approved by the State in a public meeting.

## **12. SHELLFISH PRODUCTION IMPROVEMENTS.**

Oyster Cultivation.

(A) Bottom culture: leases must be improved at an average rate of at least two cases of seed-bearing shell (160 pounds of seed-bearing shell) or 30 bushels of shellfish one or more years of age per acre over the allotted acreage per year. Improvements by unattached, single seed (less than one year old) shall consist of planting an average rate of 10,000 single seed per acre per year over the allotted acreage. Term of improvement shall be four years for seed-bearing shell and three years for oysters one or more years of age.

(B) Off-bottom culture: leases must be improved at an average rate of at least one case of seed-bearing shell (80 pounds of seed-bearing shell), or 15 bushels of oysters one or more years of age per acre over the allotted acreage per year. Improvement by unattached single seed (less than one year old) shall consist of planting an average rate of 5,000 single seed per acre per year over the allotted acreage. Term of improvement shall be four years for seed-bearing shell and three years for oysters one or more years of age.

(C) Production requirements: the annual harvest rate shall be an average of 2,000 oysters per acre (over one year of age) over the allotted acreage effective three years after the effective date of the lease. Harvest reports shall be recorded in the form of a receipt in quadruplicate furnished by the Department of Fish and Wildlife. The triplicate copy shall be delivered to the Department of Fish and Wildlife on or before the first and sixteenth day of each month.

**13. NO WARRANTY.** This Lease is made without warranty of title, condition or fitness of State Water Bottom M-430-04 for the Tenant's intended purpose or use.

Tenant agrees to accept the Lease area in its presently existing condition, "As Is", and that the State shall not be obligated to make any alterations, additions or betterments thereto except as otherwise provided in the Lease.

**14. COMPLIANCE.** As a necessary condition for this Lease, Tenant must obtain and maintain all necessary registrations, permits and any other entitlements. Tenant shall comply with all applicable federal, state and local laws, including laws relating to public health and safety, zoning, resource conservation and environmental protection including, but not limited to, the Coastal Zone Act, the Porter-Cologne Water Quality Act, and the California Environmental Quality Act.

Tenant shall comply with all applicable resource management and preservation mandates in the conduct of all activities that impact cultural, natural, or scenic resources. These mandates include, but are not limited to, those found in Public Resources Code sections 5024 and 5097 and the United States Secretary of the Interior's Guidelines for Historic Preservation. Tenant's operations under this Lease shall ensure that the State's goals of ensuring historical preservation and proper cultural, scenic and natural resource management are continually achieved in a manner consistent with applicable law.

**15. RECORD KEEPING.** The State may require periodic reports from Tenant as the State deems necessary for the proper administration of the State's water bottoms.

Tenant agrees that the Fish and Game Commission, Department of Fish and Wildlife, and the Bureau of State Audits, or their designated representative, shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Lease. Tenant agrees to maintain such records for possible audit for a minimum of three years after final payment. Tenant agrees to allow the auditor(s) prompt access to such records during normal business hours and similarly to allow interviews of any employees who might reasonably have information related to such records. Tenant agrees to include a similar right of the State to audit records and to interview staff in any sublease or contract related to performance of this Lease.

**16. WAIVER AND CONSENT.** Unless expressly acknowledged by the State in writing, no term, covenant, or condition of this Lease and no default or breach is waived by the acceptance of a late or nonconforming performance. The State's consent for one transaction or event under this Lease is not consent to any subsequent occurrence of the same or any other transaction or event.

**17. BREACH.** The occurrence of any one of the following shall constitute a breach of this Lease by Tenant: (1) Failure of Tenant to make any annual Lease payment within ninety (90) days of the commencement date of the Lease or within ninety (90) days of any anniversary thereof; (2) Failure of Tenant to make any other payment more than thirty (30) days after such payment is due; (3) abandonment of the Lease area determined after the State has followed the procedures set forth in Civil Code section 1951.3; or (4) any failure by Tenant to comply with laws applicable to the conduct of aquaculture.

Should a threat to public health or safety or to the environment be created or exist on the Lease area, the State may declare an emergency event and, unless an alternative

arrangement is preferable in the State's discretion, may enter upon and take possession of the Lease area to remedy the emergency without prior notice and/or demand an assignment of the right to operate the Lease area. Upon entering the Lease area under this Section, the State shall provide immediate notice of such action by hand delivery or fax of its declaration to Tenant. The State may retain possession of the Lease area until the emergency event has been completely and adequately addressed to the State's satisfaction. Where a breach of this Lease has caused or exacerbated the emergency event, or where the Tenant is non-cooperative in allowing or addressing any remedial action necessary because of the emergency event, the State may terminate the Lease. The State shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of the State's entry in the Lease area as provided herein, except damage resulting from the active negligence or willful misconduct of the State or its authorized representatives.

Any failure by Tenant to observe or perform another provision of this Lease where such failure continues for twenty (20) days after written notice thereof by the State to Tenant; any such notice shall be deemed to be the notice required under Code of Civil Procedure section 1161. However, if the nature of Tenant's breach is such that it cannot reasonably be cured within the twenty (20) day period, Tenant shall not be deemed to be in breach if Tenant shall commence such cure within the twenty (20) day period and thereafter diligently prosecutes such cure to completion.

Neither this Lease nor any interest of Tenant hereunder in the Lease area shall be subject to involuntary assignment or transfer by operation of law in any manner whatsoever, including, without limitation, the following: (a) transfer by testacy or intestacy; (b) assignments or arrangements for the benefit of creditors; (c) levy of a writ of attachment or execution on this Lease; (d) the appointment of a receiver with the authority to take possession of the Lease area in any proceeding or action in which the Tenant is a party; or (e) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or of a petition for reorganization or arrangement under any law relating to bankruptcy. Any such involuntary assignment or transfer by operation of law shall constitute a breach by Tenant and the State shall have the right to elect to take immediate possession of the Lease area, to terminate this Lease and/or invoke other appropriate remedies, in which case this Lease shall not be treated as an asset of Tenant.

Notices of breach shall specify the alleged breach and the applicable Lease provision and shall demand that Tenant perform the provisions of this Lease within the applicable time period or quit the Lease area. No such notice shall be deemed a forfeiture or a termination of this Lease unless the State specifically so states in the notice.

**18. REMEDIES.** In the event of breach by Tenant, the State shall have the following remedies. These remedies are not exclusive; they are cumulative and are in addition to any other right or remedy of the State at law or in equity.

Collection of Rent: In any case where the State has a cause of action for damages, the State shall have the privilege of splitting the cause to permit the institution of a separate suit for rent due hereunder, and neither institution of any suit, nor the subsequent entry of judgment shall bar the State from bringing another suit for rent; it being the purpose of this provision to provide that the forbearance on the part of the State in any suit or entry

of judgment for any part of the rent reserved under this Lease, to sue for, or to include in, any suit and judgment the rent then due, shall not serve as defense against, nor prejudice a subsequent action for, rent or other obligations due under the Lease. The claims for rent may be regarded by the State, if it so elects, as separate claims capable of being assigned separately.

Continued Performance: At the State's option, Tenant shall continue with its responsibilities under this Lease during any dispute.

Termination of Tenant's Right to Possession: Upon an event of breach of this Lease by Tenant, in addition to any other rights or remedies it may have, the State may give Tenant a three-day notice to cure the breach or quit the Lease area. If Tenant fails to do either, the State may bring a statutory proceeding in unlawful detainer to regain possession of the Lease area. Any notice given by the State pursuant to this Section does not constitute a termination of this Lease unless expressly so declared by the State in the notice. In the absence of written notice from the State, no act by the State, including, but not limited to, acts of maintenance, efforts to re-let and/or assign rights to possession of the Lease area, or the appointment of a receiver on the State's initiative to protect the State's interest under this Lease shall constitute an acceptance of Tenant's surrender of the Lease area, or constitute a termination of this Lease or of Tenant's right to possession of the Lease area. Upon such termination, the State has the right to recover from Tenant: (a) the worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease; (b) the worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of loss of rent that Tenant proves could have reasonably been avoided; (c) the worth, at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of the award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and (d) any other amount necessary to compensate the State for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease, and costs of clearing the State's title of any interest of Tenant, commissions, attorneys' fees, and any other costs necessary or appropriate to make the Lease area operational by a new Tenant.

"The worth, at the time of the award," as used herein above shall be computed by allowing interest at the lesser of a rate of ten percent (10%) per annum or the maximum legal rate.

Receiver: If Tenant is in breach of this Lease, the State shall have the right to have a receiver appointed to collect rent and conduct Tenant's business or to avail itself of any other pre-judgment remedy. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by the State to terminate this Lease.

Right to Cure Tenant's Breach: At any time after Tenant commits a breach, the State can cure the breach at Tenant's cost. If the State, at any time by reason of Tenant's breach, pays any sum or does any act that requires the payment of any sum, the sum paid by the State shall be due immediately from Tenant to the State, and if paid at a later date shall bear interest at the rate of ten percent (10%) per annum from the date the sum is paid by

the State until the State is reimbursed by Tenant.

Personal Property of Tenant: In the event any personal property or trade fixtures of Tenant remain at the Lease area after the State has regained possession, that property or those fixtures shall be dealt with in accordance with the provisions for Surrender of the Lease area provided below.

State's Obligations After Breach: The State shall be under no obligation to observe or perform any covenant of this Lease on its part to be observed or performed that accrues after the date of any breach by Tenant. Such nonperformance by the State shall not constitute a termination of Tenant's right to possession nor a constructive eviction.

No Right of Redemption: Tenant hereby waives its rights under California Code of Civil Procedure sections 1174 and 1179 or any present or future law that allows Tenant any right of redemption or relief from forfeiture in the event the State takes possession of the Lease area by reason of any breach by Tenant.

Other Relief: The State shall have such rights and remedies for failure to pay any and all monetary obligations under this Lease as the State would have if Tenant failed to pay rent due. The remedies provided in this Lease are in addition to any other remedies available to the State at law, in equity, by statute, or otherwise.

Attorney's Fees and Costs: Tenant shall reimburse the State on demand for all reasonable attorney fees and expenses incurred by the State as a result of a breach under this Lease, provided that, in any litigation between the parties to this Lease concerning it, the prevailing party shall be entitled to recover court costs, reasonable attorney fees, and other costs reasonably incurred to secure the remedy obtained in the action.

The State shall not be in breach of the performance of any obligation required of it under this Lease unless and until it has failed to perform such obligation for more than thirty (30) days after written notice by Tenant to the State specifying the alleged breach and the applicable Lease provision giving rise to the obligation. However, if the nature of the State's obligation is such that more than thirty (30) days is required for its performance, then the State shall not be deemed in breach if it shall commence performance within such 30-day period and thereafter diligently prosecute the same to completion.

**19. ASSIGNMENT AND SUBLEASES.** Pursuant to Fish and Game Code section 15412, this Lease may not be assigned, in whole or in part, by Tenant, either voluntarily or by operation of law, and no subleases or other rights may be granted under it by Tenant without the prior written approval of the State, subject to the conditions that it prescribes. At the election of the State, any attempted assignment or subletting without such prior approval of the State shall terminate this Lease.

**20. TERMINATION.** In the event the Lease area becomes unsuitable for the practical cultivation or harvest of shellfish, or in the event the Tenant becomes unable to continue operating the Lease for aquaculture for reasons beyond Tenant's ability to control, Tenant may terminate the Lease after thirty (30) days written notice to the State. Tenant may terminate the Lease for any other reason through a written request presented to and approved by the State at a public hearing held for purposes of consideration of Tenant's termination request. Such termination shall be effective thirty (30) days after State

approval.

On expiration of or within thirty (30) days after earlier termination of the Lease, Tenant shall surrender the Lease area to the State. Tenant shall remove all of its personal property as well as all man-made material deposited during Tenant's occupancy within the above stated time unless otherwise agreed to in writing.

If Tenant fails to surrender the Lease area to the State on the expiration, or within thirty (30) days after earlier termination of the term as provided by this Section, Tenant shall hold the State harmless for all damages resulting from Tenant's failure to surrender the Lease area.

**21. QUITCLAIM.** Tenant shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute, acknowledge and deliver to the State in a recordable form provided by the State a release of all rights under this Lease. Should Tenant fail or refuse to deliver such a release, a written notice by the State reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Tenant of the expiration or termination of this Lease.

**22. TIME OF THE ESSENCE.** Time is of the essence of this Lease and any term, covenant or condition in which performance is a factor.

**23. CHANGES.** Nothing in this Lease may be waived, modified, amended, or discharged except by an instrument in writing signed by Tenant and the State, in consultation with the Department of Fish and Wildlife Aquaculture Coordinator. At its discretion, the Department of Fish and Wildlife may charge Tenant for any and all costs it incurs in any lease amendment requested by Tenant.

**24. SEVERABILITY.** If a court of competent jurisdiction determines that a Lease provision is legally invalid, illegal or unenforceable, and such decision becomes final, the provision shall be severed and deleted from the Lease and the remainder reasonably interpreted to achieve its intent. Tenant and the State agree to replace such void or unenforceable provision with a valid and enforceable provision that will achieve, to the extent possible, the purpose of the original provision.

**25. SITE CLEANUP.** Tenant shall provide to the State financial assurance sufficient to ensure that, upon termination or abandonment of this Lease, the Lease area is surrendered in a condition that is in accordance with Section 20, to the satisfaction of the State.

The financial assurance amount shall be calculated based on an analysis of the physical activities and materials necessary to surrender the site in the required condition; the unit costs or costs for third party contracting, for each of the identified activities as applicable; the number of units of these activities; and a contingency amount not to exceed ten percent (10%) of the costs of the activities.

Financial assurances may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of section 995.120 of the Code of Civil Procedure, irrevocable letters of credit, trust funds, or other forms of financial assurances specified



by the State which it reasonably determines to be adequate to perform restoration of the site. Personal surety bonds cannot provide financial assurance under this requirement. The financial assurance shall be payable to the State and shall remain in effect throughout the duration of the tenancy under the Lease, and until the State accepts surrender of the Lease area or until replaced by an equivalent financial assurance.

The financial assurance shall be applied by the State to place the Lease area in the condition required for surrender under Section 20, whenever the Tenant fails or refuses to accomplish such activities, and to reimburse the State for all its costs of achieving that condition of the Lease area. Any assets remaining from the financial assurance after all costs to the State, including administrative costs to secure the funds, have been reimbursed therefrom, shall be returned to the Tenant.

**26. NON-DISCRIMINATION.** In its use of the Lease area, Tenant shall not discriminate against, harass, or allow harassment against any person or class of persons on the basis of race, color, creed, religion, national origin, ancestry, sex, sexual orientation, age, marital status, medical condition or disability. Tenant shall ensure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment.

Tenant shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285.0 et seq.). Tenant shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Tenant shall include the non-discrimination and compliance provisions of this clause in all contracts to perform work under and/or in connection with this Lease.

Tenant shall be solely responsible for complying with the requirements of the Americans With Disabilities Act of 1990 (P.L. 101-336, commencing at section 12101 of Title 42, United States Code and including Titles I, II and III), the Rehabilitation Act of 1973, and all related regulations, guidelines and amendments to both laws.

**27. DRUG-FREE WORKPLACE.** Tenant will comply with the requirements of the Drug-Free Workplace Act of 1990, as amended, and will provide a drug-free workplace by taking the following actions:

(a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

(b) Establish a Drug-Free Awareness Program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the Tenant's policy of maintaining a drug-free workplace; (3) any available counseling, rehabilitation and employee assistance programs; and, (4) penalties that may be imposed upon employees for drug abuse violations.

(c) Provide that every employee who works on the Lease area will: (1) receive a copy of the Tenant's drug-free policy statement; and, (2) agree to abide by the terms of the Tenant's statement as a condition of employment on the Lease area.



Failure to comply with these requirements may result in suspension or termination of this Lease, and Tenant may be ineligible for award of any future State Water Bottom Leases if the State determines that any of the following has occurred: (1) the Tenant has made false certification, or (2) violated the certification by failing to carry out the requirements as noted above.

**28. ENTIRE AGREEMENT.** This Lease contains the entire agreement between the parties, and an agreement hereafter shall be ineffective to change, modify or discharge it in whole or in part, unless such agreement is in writing and contains the authorized signature of the party against whom enforcement of the change, modification or discharge is sought.

**29. CONSTRUCTION.** This Lease shall be governed by and construed in accordance with the laws of the State of California. The Section titles in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of this Lease or in any way affect this Lease.

Tenant shall maintain annual registration of its aquaculture facility in accordance with Fish and Game Code sections 15101 and 15103 and shall keep current with all fees and surcharges, including any penalties for late payment of same, required by those statutes.

**30. INCORPORATION BY REFERENCE.** The provisions of Chapters 1 through 8 of Division 12 of the Fish and Game Code (commencing with section 15000) and the provisions of Chapter 9 of Division 1 of Title 14, California Code of Regulations (commencing with section 235), as may be amended from time to time, are made part of this Lease by this reference. If there is a conflict between any term or condition of this Lease and any of the provisions incorporated by reference in it, the incorporated provisions shall control.

**31. CONFLICTS OF INTEREST.** Tenant warrants that no official, employee in the state civil service or other appointed state official, or any person associated with same by blood, adoption, marriage, cohabitation, and/or business relationship: (a) has been employed or retained to solicit or aid in the procuring of this Lease; or (b) will be employed in the performance of this Lease without the immediate divulgence of such fact to the State. In the event the State determines that the employment of any such official, employee, associated person, or business entity is not compatible, Tenant shall terminate such employment immediately. For breaches or violations of this Section, the State shall have the right to annul this Lease without liability.

**32. EXPATRIATE CORPORATION.** Tenant hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation, within the meaning of Public Contract Code sections 10286 and 10286.1 and is eligible to contract with the State.

**33. NO AGENCY.** The Tenant, and the agents and employees of the Tenant in the performance of the Lease, shall act in an independent capacity and not as officers or agents of the State of California.

**34. CLOSURE.** Neither the State nor the Department of Fish and Wildlife shall have

any liability arising from a closure of waters by the Department of Fish and Wildlife Director pursuant to Fish and Game Code section 5654, where aquaculture operations are taking place.

**35. NOTICES.** Notices to the parties to this Lease shall be made in writing and may be given by delivery in person, by U.S. Mail with postage prepaid, or by receipt-confirmed facsimile to:

FISH AND GAME COMMISSION Executive Director P.O. Box 944209 Sacramento, CA 94244 Telephone: (916) 653-4899 Facsimile: (916) 653-5040	Charles Friend Oyster Company Heidi Gregory, Farm Manager PO Box 847 Marshall, CA 94940 Telephone: 415-663-1242 / 415-439-9516 Email: <a href="mailto:missheidigregory@gmail.com">missheidigregory@gmail.com</a>
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Notices shall be deemed given upon delivery to the addressee. Any notice given by facsimile shall also be given to the addressee by U.S. Mail, with postage prepaid. If a notice given by facsimile is delivered to the addressee after 5:00 p.m. Pacific time, or on a Saturday, Sunday or State of California or national holiday, the notice shall be deemed given on the next business day. Either party may change its address for notice purposes by giving written notice to the other party in the manner provided in this Section.

**36. SPECIAL CONDITIONS.**

(a) This lease, in accordance with the provisions of Fish and Game Code Section 15400, as may from time to time be amended or changed by the State Legislature, is for the sole purpose of cultivating the following species in the previously designated area:

- Pacific oyster (*Crassostrea gigas*)
- Suminoe oysters (*C. rivularis*)
- Eastern oysters (*C. virginica*)
- European flat oysters (*Ostrea edulis*)
- Native oysters (*O. lurida*)
- Kumamoto oysters (*C. sikamea*)
- Manila clams (*Venerupis philippinarum*)
- California sea mussels (*Mytilus californianus*)
- Bay mussels (*Mytilus edulis* complex)

The cultivation of additional species of aquatic plants and animals requires the approval of the Fish and Game Commission. In compliance with Section 15200 et seq. of the Fish and Game Code, and Section 237 of Title 14, California Code of Regulations, and to assure that only healthy shellfish seed will be planted, seed stock must be inspected and certified before planting. A request for certification of seed stock will be submitted by the Tenant to the State at least ten (10) days prior of the proposed date of inspection.

All shellfish cultivation on the lease shall be confined to longlines, rafts, stakes, rack and bag, racks and tray, floats, and bottom culture within the area approved by the Commission. No other mode of operation or culture method is authorized unless Tenant shall first obtain approval thereof from the Fish and Game Commission.

(b) The notice of intent to plant shellfish on the lease shall be given to the Department of Fish and Wildlife's, Marine Region aquaculture project, whose current contact information is 4665 Lampson Ave, Suite C, Los Alamitos, CA 90720, telephone: 562-342-7161. This contact information will be maintained online at [www.wildlife.ca.gov/aquaculture](http://www.wildlife.ca.gov/aquaculture), or at such other place as the State may from time to time designate. In addition to the required ten (10) day notice, at least a 24-hour notice shall be given to the aquaculture supervisor or their designee, giving the details on where the shellfish can be inspected.

(c) In addition to annual rent, shellfish harvested from the lease is subject to the privilege taxes, and procedures for their payment, as established in Fish and Game Code, sections 15003 and, if applicable, 8051, as well as the applicable Title 14 regulations, including Section 237.

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## EXHIBITS:

Exhibit A Description of State Water Bottom Lease No. M-430-04

Exhibit B Map of State Water Bottom Lease No. M-430-04

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## SIGNATURE PAGE

This Lease and any amendment(s) may be executed in counterparts, each of which, when executed and delivered by the State and Tenant, shall be an original and together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

Each signatory attests he or she is duly authorized to execute this Lease on behalf of the principal he or she represents.

Where Tenant is a corporation, the signature of the Tenant on this Lease will be verifying that Tenant is currently qualified to do business in the State of California, as defined in Revenue and Taxation Code section 23101, in order to ensure that all obligations to the State are fulfilled. Both domestic and foreign corporations (those incorporated outside the State of California) must be in good standing in order to be qualified to do business in California.

### STATE OF CALIFORNIA:

### TENANT:

FISH AND GAME COMMISSION

CHARLES FRIEND OYSTER COMPANY

By: \_\_\_\_\_  
**MELISSA MILLER-HENSON**  
Executive Director

By: \_\_\_\_\_  
**HEIDI GREGORY**  
Farm Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### Description of State Water Bottom M-430-04

All that certain real property situated in the County of Marin, State of California, described as follows:

In Tomales Bay, Marin County, State of California, starting from Bench Mark 8 located at approximately 38°12'38.7" North latitude, 122°55'22" West Longitude on the Tomales Bay Quadrangle, Marin County, California, U.S. Dept. of the Interior Geological Survey 7.5 minute series topographical map; thence North 83°31' West for a distance of 2749.30 feet to the top of Preston Point Rock lying off the northeast end of Preston Point; thence South 65°57'51" West 2128.40 feet to the true point of beginning; thence South 50°27'48" East 807.00 feet; thence North 46°50'24" East 1028.82 feet; thence North 35°53'07" West 539.10 feet; thence North 29°23'42" East 655.05 feet; thence North 59°41'17" West 670.79; thence South 58°38'08" West 2190.75 feet; thence South 51°18'13" East 1078.38 feet; thence North 39°32'12" East 357.16 feet; to the true point of beginning.

This parcel of water bottoms, containing an area of 61.9 acres more or less, comprises Aquaculture Lease No. M-430-04.

**EXHIBIT B**

**State Water Bottom Lease M-430-04  
Tomaes Bay, Marin County, CA**







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November 26, 2019

California Fish and Game Commission  
P.O. Box 944209  
Sacramento, CA 94244-2090  
*Via electronic delivery to: [fgc@fgc.ca.gov](mailto:fgc@fgc.ca.gov)*

Re: Comments on FGC Agenda Item 34  
Charles Friend Oyster Company State Water Bottom Lease  
No. M-430-04

Dear Commissioners,

The Environmental Action Committee of West Marin (EAC) is based in Point Reyes Station and has been working to protect the unique lands, waters, and biodiversity of West Marin since 1971. Since our inception, we have been committed to the health of West Marin's estuaries, bays, and watersheds including our strong focus on Tomales Bay.

We submit brief generally supportive comments, which we may supplement, regarding Agenda Item 34, Charles Friend Oyster Company State Water Bottom Lease No. M-430-04. We remind the Fish and Game Commission (Commission) that we have been advocating to the Commission for aquaculture best management practices since 2015. Many of the goals supported by a best management practices rulemaking have been accomplished through the California Coastal Commission's (CCC) coastal development permit (CDP) amendments, in which the CCC is including enforceable permit conditions around marine debris and other environmental considerations. We continue to support the CCC's efforts and your Commission's consistency with these efforts.

November 26, 2019  
EAC Comments re. Agenda Item 34

While many improvements have been made on Tomales Bay related to the loss of aquaculture marine debris, the Bay continues to depend on all of the state agencies' close attention to any and all industrial practices on the Bay.

We appreciate the Commission's careful consideration regarding compliance before the extension of a lengthy lease term. That being said, we understand that Charles Friend Oyster Company has made significant progress towards compliance, and we are supportive of the 15-year extension.

We thank Charles Friend Oyster Company for their willingness to come into compliance and work with local stakeholders, as well as the state agencies. In sum, we appreciate your consideration of our comments; and without a chance to review the binder, we are in general support of Agenda Item 34.

Respectfully,



Morgan Patton  
Executive Director



Ashley Eagle-Gibbs  
Conservation Director

cc: Susan Ashcraft, California Fish and Game Commission  
Elizabeth Pope, California Fish and Game Commission  
Heidi Gregory, Tomales Bay Oyster Company