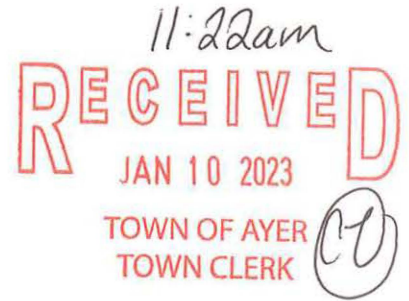


Town of Ayer CONSERVATION COMMISSION

Town Hall ♦ One Main Street ♦ Ayer, MA 01432
Phone 978-772-8220 ext. 143 ♦ Fax 978-772-8208 ♦ concom@ayer.ma.us



MEETING AGENDA (In Person) Thursday, January 12, 2023



7:00 PM GENERAL BUSINESS / OPEN SESSION

- Approval of Meeting Minutes for December 8, 2022
- Public Input

Continued Public Hearing - Request for Abbreviated Notice of Resource Area Delineation (ANRAD) Orion Park Ayer MA DEP File # 100-0481

Discussion – Ayer Solar II, Draft Conservation Restriction

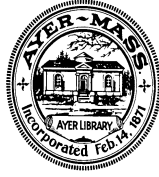
Discussion – Greenway Committee

Discussion – Pond Treatment Request for Quotes for 2023

CONSERVATION OFFICE AND MEMBER UPDATES

9:00 PM ADJOURN

Next Scheduled Meeting: 7 PM, January 26, 2023



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8220, ext. 143
Minutes for **12/8/2022**

Location: Ayer Town Hall, 1st Floor

Present: Jon Schmalenberger (Chair), Mark Phillips (Vice-Chair), George Bacon (Member), Jen Amaya (Member), Jessica Gugino (Member/Clerk), Heather Hampson (Conservation Agent)

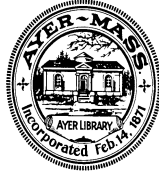
Not Present:

APAC taped: YES

**All Public Hearings are opened under the Wetlands Protection Act (MCL Ch. 131, section 40)
and under the Ayer Wetlands Bylaw (Article XXVI)**

7:00 PM – Open Meeting

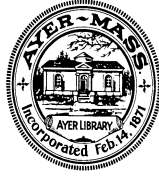
- **Confirmation of Agenda**
 - G. Bacon moved to confirm the agenda as posted; M. Phillips 2nd.
 - Motion approved unanimously 5-0.
- **Approval of Meeting Minutes**
 - G. Bacon moved to accept the minutes for 11/10/2022 as written; M. Phillips 2nd.
 - Motion approved unanimously 5-0.
- **Public Input**
 - None received.
- **Public Hearing: Request for Abbreviated Notice of Resource Area Delineation (ANRAD) – Orion Park, LLC, 1 Orion Park Drive (off Westford Road), MassDEP # 100-0481**
 - Assessor’s Map 7, Parcels 5, 7, 36, 37 & 38
 - Matthew Varrell, of Lucas Environmental, and Paul Campbell, of Chess Engineering, were present on behalf of the applicant.
 - The ANRAD seeks confirmation of the identification and delineation of the wetland resource areas and buffer zones on 18.4 acres of land, the ‘study area’.
 - The wetlands were flagged by a wetland scientist from Lucas Environmental on July 15, 2022.
 - The land within the study area is entirely within the Petapawag ACEC (Area of Critical Environmental Concern), and includes State-identified Rare Species Habitats as well.
 - Two separate wetland areas were identified:
 - Wetland A (flags A1-38) is located in the western portion of the study area and consists of Bordering Vegetated Wetlands/Freshwater Wetland – a red maple swamp – that connects to Long Pond, approximately 1100 ft. away.
 - Wetland B (flags B1-11) is located in an isolated depression within the central portion of the study area and is characterized as an Isolated Vegetated Wetland (IVW) that does not border or connect to any stream or water body.
 - It is also the location of a potential vernal pool but the delineation was done in July, outside of the vernal pool identification period.



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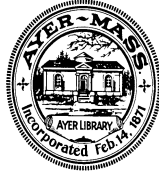
- Wetland B was also investigated as to whether it can be considered an Isolated Land Subject to Flooding (ILSF) by State criteria that include it holding standing water to an average depth of at least 6 inches at least once a year.
 - According to Chess Engineering calculations looking at this area in 2022, it is not ILSF, but previous studies of this area done by Oxbow Associates in 2006 showed that the depression had been capable of holding the required volume of water at one time, at a depth of approximately 5 ft., during the winter.
 - Therefore, Lucas Environmental intends to proceed by assuming the high likelihood that Wetland B is ILSF and that it also contains a vernal pool.
 - The vernal pool status will be confirmed one way or another during the appropriate spring season should any further permitting be sought.
 - H. Hampson checked the file for this site from past work.
 - The current delineation seems in line with previous delineations.
 - The Conservation Restriction for Orion (outside of this ANRAD's study area) was completed and recorded at the Registry, but no baseline documentation exists.
 - A Certificate of Compliance (COC) was never done for a previous project (MassDEP # 100-0292, in 2008), and Mr. Varrell said they will clean that up before proceeding with any future permitting.
 - At present, there is no project planned for this site but the current owner is investigating what might be possible at some future date.
 - Back in 2008, Orion received a subdivision approval for commercial buildings but did not pursue the project at that time.
 - While there is no immediate rush on the ANRAD, Mr. Varrell said they hoped to get the delineation confirmed before snow covers the ground.
 - A site walk was scheduled for 8 a.m. on Saturday, December 17.
 - (ConCom is cancelling its December 22 meeting and won't meet again until January 12, which Mr. Varrell said was fine with them.)
 - G. Bacon moved to continue the Public Hearing to January 12, 2023; M. Phillips 2nd.
 - Motion approved unanimously 5-0.
- **Discussion: Fiscal Year 2024 Budget**
 - Department budgets, for inclusion in the Omnibus Budget voted on at Spring Town Meeting, are due on Friday, December 30.
 - The budget table provided by the Town was reviewed with some questions raised that H. Hampson will check into – e.g. is this where funds for beaver deceiver installations and for beaver deceiver maintenance are located and if so, under what line/s? Is this where the annual contract of \$10,000 with North County Land Trust is located?



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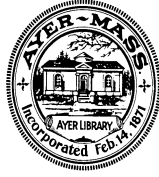
- Since the ConCom budget needs to be submitted to the Town Manager's office before ConCom next meets, M. Phillips moved that the Commission authorize J. Schmalenberger and H. Hampson to resolve outstanding questions with the Town Manager and then submit an approved budget for FY2024 based on that; G. Bacon 2nd.
 - Motion approved unanimously 5-0
- **Discussion:** Ayer Ponds Annual Weed Management, Water & Wetlands, LLC., Year End Report
 - At ConCom's next meeting in January, it will review the Request for Proposals (RFP) to issue for the 2023 pond management program.
- **Discussion:** Conservation Tree Policy
 - H. Hampson and J. Gugino will edit the current draft before posting it on the website.
 - Commission members were appreciative of the hard work H. Hampson has put into this.
 - It is hoped to eventually incorporate the policy as a regulation, which holds more weight.
- **Conservation Commission Office and Member Updates**
 - Spectacle Pond Treatment Plant, Ayer Department of Public Works (DPW)
 - With the Commission's approval, H. Hampson will issue an Emergency Certification to approve work to repair the culvert under which the water main carries water from the plant into the Ayer distribution system.
 - This is the only water main running from the plant and is therefore of critical importance.
 - The culvert had recently partially collapsed, but then totally collapsed the day before (12/7).
 - The filing of a new Notice of Intent (NOI) After-the-Fact will be required.
 - Replacement of a 700-750 ft. portion of the water main had previously been permitted by ConCom in the fall (MassDEP # 100-0480).
 - At that time, however, the culvert had not been identified by the DPW as in need of replacement.
 - J. Gugino moved to approve issuance of an Emergency Certification, with the requirement of an NOI to be filed After-the-Fact; G. Bacon 2nd.
 - Motion approved unanimously 5-0.
 - Ayer Solar II (MassDEP # 100-0444)
 - H. Hampson visits the site weekly and said it has been sufficiently prepped for winter as far as ConCom's jurisdiction goes.
 - The Planning Board, however, has been asked to issue an Enforcement Order for stormwater compliance.
 - Rohit Garg has asked that the required weekly inspections by an Environmental Monitor be reduced to once a month in January and February unless there is a half-inch or more rain event.
 - No earth disturbance work is planned over the next several months.



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- H. Hampson said she intends to continue to visit the site weekly regardless.
- Come March, Mr. Garg will have to touch base with ConCom if he has good reason to seek permission to extend this reduction in the frequency of Environmental Monitor inspections.
- It was also noted that H. Hampson has yet to receive written confirmation of any sort showing that NHESP (Natural Heritage & Endangered Species Program) approved of previous changes to the project's plans.
 - In addition, the Conservation Restriction (CR) required by NHESP has not been completed although Mr. Garg told H. Hampson that it is now in the State's hands.
 - Mr. Garg has previously been told by former Conservation Administrator Crystoff as well as current Agent H. Hampson that the CR has to be reviewed and approved by the Town before being submitted to the State.
 - ConCom has yet to be given a draft of the CR document Mr. Garg is currently working with.
- At M. Phillips' suggestion, Mr. Garg will be told that ConCom will approve the reduction in Environmental Monitor inspections over the winter **IF** Mr. Garg provides the Commission with the current CR draft as well as written confirmation of NHESP approvals of changes previously requested numerous times.
- Ayer/Devens Pocket Forest Planting Project
 - Site visits led by Alan Manoian (Director, Community & Economic Development) to a number of potential forest planting locations will take place starting at 10 a.m. on Saturday, Dec. 17, meeting at the parking lot near St. Mary's.
- Pine Meadow Conservation Land
 - J. Schmalenberger said that the signage on the conservation land/trails badly needs to be upgraded.
 - Having decent signage installed should be a ConCom goal for next year.
 - In addition, it was noted that the trailhead sign on Groton Harvard Road needs to be redone.
 - G. Bacon also suggested providing some benches at a number of locations.
 - H. Hampson will reach out to some other towns, including the Groton Trail Committee, to see different options for trail blazing systems.
 - G. Bacon said this might be a good Eagle Scout project.
 - This might also be a good project for a revitalized Greenway Committee, if there was a way to get that up and running again.
 - In addition, H. Hampson will contact the Tree Warden as J. Schmalenberger said a number of trees are down and blocking some of the trails.



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- “Ayer Commons,” Fitchburg Road Chapter 40B Project
 - J. Gugino said that the Zoning Board of Appeals (ZBA) has received its third-party review of the project, and that a number of items had been flagged by the reviewer as items to be deferred for review later by the Conservation Commission.
 - After the project receives a Comprehensive Permit from the ZBA, it will still need permitting from ConCom under the Wetlands Protection Act.
- Waterways Sign Project
 - M. Phillips is working on finalizing the order for new Flannagan Pond signs (correcting for the misspelling identified by a resident at ConCom’s November meeting).
- Shaker Mill Pond
 - An Ayer resident contacted H. Hampson the day before (12/7) to report that the water level is very high, putting some nearby residences at risk of basements flooding.
 - H. Hampson checked the area out.
 - The problem is not at the inlet to the pond, where ConCom has had a beaver deceiver installed, but at the outlet.
 - The outlet is on private property owned by developer Dan Aho, and this has been under previous discussion for consideration of the Town installing a beaver deceiver.
 - Mr. Aho has previously said he has no objections to the Town doing this, but to do this on private property may require a Memo of Understanding between the Town and the property owner.
 - Meanwhile, H. Hampson will let the DPW know that they can clear the beaver damming on top of the manmade outlet dam to alleviate the current water backup.
- ConCom’s next meeting
 - Members confirmed that the Dec. 22 meeting will be cancelled due to the holidays, and ConCom’s next meeting will therefore be on Thursday, January 12.
- **8:42 PM – Adjourn Meeting**
 - G. Bacon moved to adjourn; M. Phillips 2nd.
 - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date / Signature of Approval: _____

GRANTOR: Cowfield Realty Trust II; Triple AE Group, LLC
GRANTEE: Town of Ayer, acting by and through its Conservation Commission
ADDRESS OF PREMISES: 0 Washington Street, Ayer, Massachusetts, a.k.a. Assessor's Map 12, Parcel 12-1; Assessor's Map 13, Parcels 13-1 and 13-2
FOR GRANTOR'S TITLE SEE: Middlesex South District Registry of Deeds at Book 64527, Page 249, and Book 71755, Page 416

Commented [JG1]: The Manager's Certificate provided with the materials that were submitted is for Ayer Solar II – how do they fit in? Should they be a Grantor?

CONSERVATION RESTRICTION

Cowfield Realty Trust II, with a mailing address of 39 Main Street, Ayer, Massachusetts 01432, u/d/t dated October 26, 2014, recorded with the Middlesex South District Registry of Deeds in Book 64526, Page 571, and Triple AE Group, LLC, with a mailing address of 2690 Heather Way, Ann Arbor, Michigan 48104, constituting all of the owners, for their respective successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant, with QUITCLAIM COVENANTS, to the Town of Ayer, acting by and through its Conservation Commission, ~~and~~ by authority of Section 8C of Chapter 40 of the Massachusetts General Laws, with a mailing address of 1 Main Street, Ayer, Massachusetts 01432, and its permitted successors and assigns ("Grantee"), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in Ayer, Middlesex County, Massachusetts, containing +-39.09 acres ("Premises"), which Premises is more particularly described in Exhibit A and shown as the "Conservation Restriction Area" on the reduced copy of a survey plan of land in Exhibit B, both of which are incorporated herein and attached hereto.

Commented [JG2]: Is the plan final yet? The PDF I have appears to be in draft format.

I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purpose of this Conservation Restriction is to ensure that the Premises will be maintained in perpetuity for conservation

purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would impair or interfere with its conservation and preservation values (“conservation values”).

~~This~~ The conveyance of this Conservation Restriction is ~~required by or was offered as a~~ precondition to issuance of the following permits:

- That certain Site Plan Approval issued to Ayer Solar II, LLC, by the Planning Board of the Town of Ayer, Massachusetts, originally dated November 9, 2017 and recorded with the Middlesex South District Registry of Deeds at Book ~~_____~~, 70434 Page ~~_____~~, 266, as subsequently modified by a certain Amended Site Plan Approval issued by said Board, dated November 24, 2020 and recorded with the aforesaid Registry of Deeds at Book ~~_____~~, 76887, Page ~~_____~~, 240.
- That certain Order of Conditions issued to Ayer Solar II, LLC, by the Conservation Commission of the Town of Ayer, Massachusetts on November 23, 2020, under MassDEP File Number 100-0444, recorded with the Middlesex South District Registry of Deeds at Book ~~_____~~, 76887, Page ~~_____~~, 248.

This Conservation Restriction is also referenced as forthcoming, and is required by, a so-called letter of no take from the Natural Heritage and Endangered Species Program of the Commonwealth of Massachusetts Division of Fisheries & Wildlife, NHESP Tracking No. 19-38891, dated October 12, 2020.

The conservation values include the following:

- Open Space Protection. The Premises contributes to the protection of the scenic and natural character of land presently comprised of a mix of Upland Mixed forest, Upland early successional habitat, Palustrine Forest, Shrub Swamp, Emergent Marsh, open water, Forested Swamp, and Paths, and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises is within the Petapawag Area of Critical Environmental Concern (ACEC).
- Protection of Wildlife Habitat. The Premises consists of +-39.09 acres designated as “Priority Habitats of Rare Species” as defined by the Massachusetts Natural Heritage Program, namely Habitat of the Blanding’s Turtle (*Emydoidea blandingii*), a species state-listed as Threatened, the protection of which aligns with NHESP’s wildlife and habitat protection objectives.
- Public Access. Public access to the Premises will be allowed for passive outdoor recreation, wildlife observation and nature study. The Premises, which is comprised primarily of forest, swamp and marsh all as aforesaid, is proximate to the Nashua River Rail Trail, an approximately 11-mile trail open to walking, bicycling, rollerblading and horseback riding. The Premises will provide additional undeveloped open space for exploration and education.

- Water Quality Protection. Perseveration of land in an undeveloped state is critical for the preservation of water quality. Undeveloped open space allows water to filter naturally into the ground, recharging ground water resources with clean water. The ~~premises~~-Premises contain a large percentage of shrub swamp, a type of wetland resource.- Wetlands provide an important mechanism for filtering pollution and excess nutrients from water that flow through them, thus contributing to water quality protection.
- Water Supply Protection. Protection of water supply is accomplished by protecting wetland resources and their buffer zones. -The ~~premises~~-Premises contain a large percentage of wetlands resource areas that are hydrologically connected to streams, rivers, and groundwater. Protecting land containing wetland resources assures that the water supply for these vital shared resources will also be protected.

These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

A. Prohibited Acts and Uses

Subject to the exceptions set forth herein, the Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, solar panel, solar array, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;
- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;

- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
- (6) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired, except for the personal vehicles of the Grantor or its agent(s) as may be necessary in conjunction with the use and maintenance of the remainder of its property as shown on Exhibit B and except for utility vehicles required in connection with the utility easement hereinafter referenced
- (7) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
- (8) The use of the Premises for business, residential or industrial use, or for more than *de minimis* commercial recreation;
- ~~(9) Except with prior approval of the Grantee, the creation of additional man-made trails or the construction of additional walkways or bridges by the Grantor;~~
- ~~(10)~~(9) Camping ~~or outside~~ and fires;
- ~~(11)~~(10) Signage advertising public access;
- ~~(12)~~(11) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values.

Commented [JG3]: The creation of trails is described in the next paragraph. It would otherwise be prohibited given the various prohibitions in this paragraph

Commented [JG4]: Why not? If "Public Access" is being described as a conservation value, why can't signs be put up referencing public access?

B. Reserved Rights and Exceptions

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not impair the conservation values or purposes of this Conservation Restriction.

- (1) Vegetation Management. The selective minimal removing of brush, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including vistas as documented in the Baseline Report, woods roads, fence lines and trails and meadows;

- (2) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
- (3) Composting. The stockpiling and composting of stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not impair the conservation values (including scenic values) of this Conservation Restriction. No such activities will take place closer than one hundred (100) feet from any wetland, waterbody or stream. All exercise of this reserved right shall take into account sensitive areas and avoid harm to nesting species during nesting season;
- (4) Wildlife Habitat Improvement. With the prior written approval of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species;
- (5) Trails. The marking, clearing and maintenance of existing trails as shown in the Baseline Report. With prior approval of the Grantee, the ~~Grantor's~~ construction of new trails or the ~~Grantor's~~ relocation or alteration of existing trails, provided that any construction, relocation, or alteration results in trails that are no wider than ~~—8—~~eight (8) feet;
- (6) Signs. The erection, maintenance and replacement of signs with respect to trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, any gift, grant, or other applicable source of support for the conservation of the Premises, the Reserved Rights, and the protected conservation values;
- (7) Outdoor Passive Recreational Activities. Fishing, hunting by or with the express permission of the Grantor, hiking, horseback riding, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape, do not degrade environmental quality, and do not involve more than minimal use for commercial recreational activities;
- (8) Forestry and Cutting. Conducting or permitting others to conduct sound silvicultural uses of the Premises, including the right to commercially harvest forest products (as such term may be defined from time to time in Section 1 of Chapter 61 of the Massachusetts General Laws, or successor law) and the establishment of new woods roads in accordance with prudent and sound silvicultural practices that conform at least to the minimum standards set forth in the Massachusetts Forest Cutting Practices Act (Chapter 132 of the Massachusetts General Laws, or its successor) and carried out pursuant to a Forest Management or Stewardship Plan.

Before any harvest of forest products occurs on the Premises, Grantor shall submit a Forest Management or Stewardship Plan to the Grantee, the Massachusetts Department of Conservation and Recreation (or appropriate successor agency) and to any other required state agencies for their approval. The Forest Management or Stewardship Plan shall be

Commented [JG5]: There are all rights reserved to the Grantor

prepared by a forester licensed through the Massachusetts Department of Conservation and Recreation in conformance with the “Directions for the Preparation of the Chapter 61 Forest Management Plans and Forest Stewardship Plans” and such statutes, regulations and directions in effect at the time of the approval of said Forest Management or Stewardship Plan. The Forest Management or Stewardship Plan shall include provisions designed to minimize soil erosion, conserve surface and groundwater quality, scenic views, wildlife habitat, and to protect the conservation values of this Conservation Restriction.

The Forest Management or Stewardship Plan shall be effective for a ten (10) year period and shall be resubmitted once every ten (10) years as necessary if additional timber harvests occur. All cutting plans and designated access routes shall avoid any stone structures or historical and cultural resources and shall be reasonably required to prevent any damage thereto. All cutting operations shall be supervised by a licensed forester;

- (9) Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph II(B) shall seek to minimize disturbance to the Conservation Values and other natural features within the Premises that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph II(B), any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Report.
- (10) Permits, Regulations, Laws. The exercise of any right reserved by Grantor under this Paragraph II(B) shall be in compliance with zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.
- (11) Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph II(B) shall follow, when available and if applicable, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).
- (12) ~~Utility Easement. Expressly reserved through the Grantor and exempt from the restrictions imposed hereunder are such rights as benefit the New England Power Construction Company, its successors and assigns within the “250’ Wide New England Power Company Easement” shown on Exhibit B, under a certain utility easement dated July 3, 1928 and recorded with the Middlesex South District Registry of Deeds at Book 5629, Page 267.~~

Commented [JG6]: See Miscellaneous Para. XIV for relocated Utility Easement paragraph

C. Notice and Approval.

Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.

Subject to any applicable law or regulation, failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, and the activity will not impair the conservation values or purposes of this Conservation Restriction.

III. LEGAL REMEDIES OF THE GRANTEE

A. Legal and Injunctive Relief.

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

B. Non-Waiver.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

C. Disclaimer of Liability

By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

D. Acts Beyond the Grantor’s Control

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor’s control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

IV. ACCESS

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

The Grantor grants access to the Premises to the general public and agrees to take no action to prohibit or discourage access to and use of the Premises by the general public, but only for daytime use and only as described in Section-Paragraph II(B)(7), provided that such agreement by Grantor is subject to the Grantor’s reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the protection of the purposes and conservation values of this Conservation Restriction. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in Section-Paragraph II(B)(7). The Grantor’s right to grant public access across the Premises is subject to the restrictions described in this Conservation Restriction. Any public use which is permitted by the terms of this Conservation Restriction constitutes permission to use the Premises for purposes described in ~~the~~ Section 17C of Chapter 21 of the Massachusetts General Laws and the Grantor and Grantee hereto benefit from exculpation from liability to the extent provided in such section. The Grantee may require the Grantor to post the Premises against any nonpermitted use that may result in rutting or erosion or other damage to the natural resources of the Premises.

Commented [JG7]: Even a permitted use may result in such impacts that would require posting against it until the issue is rectified.

V. EXTINGUISHMENT

A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this ~~Conservation restriction~~ Restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph V(B), subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

B. Proceeds. Grantor and Grantee agree that the ~~donation-conveyance~~ of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction bears to the value of the unrestricted Premises. Such proportionate value of the Grantee's property right shall remain constant.

C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph V(B), after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. DURATION & ASSIGNABILITY

A. Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the ~~Assignee~~ assignee is not an owner of the fee in the Property, and the ~~Assignee~~ assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) days prior to the execution of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within sixty (60) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

IX. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section

170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art-~~icle~~ 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the ~~enter County~~ Middlesex South District Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded in a timely manner in the Middlesex South District Registry of Deeds.

XII. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor:

Cowfield Realty Trust II
39 Main Street
Ayer, Massachusetts 01432

and

Triple AE Group, LLC
2690 Heather Way
Ann Arbor, Michigan 48104

To Grantee:

Conservation Commission
Town of Ayer
Town Hall
1 Main Street
Ayer, Massachusetts 01432

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

XIII. GENERAL PROVISIONS

- A. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.
- D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

XIV. MISCELLANEOUS

- A. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.
- B. Homestead. The Grantor attests that there is no residence on or abutting the Premises (including exclusions) that is occupied or intended to be occupied as a principal residence by a spouse, former spouse, or children of the grantor, or a spouse, former spouse, or children of a beneficiary of the trust, if Premises is owned by a trust.
- C. Subordination. The Grantor shall record at the appropriate Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.
- D. At the time of this Conservation Restriction's Effective Date, the Premises was subject to a utility easement benefitting the New England Power Construction Company, its successors and assigns within the "250' Wide New England Power Company Easement?" shown on Exhibit B.

EEA-DCS Model CR May 2018

dated July 3, 1928 and recorded with the Middlesex South District Registry of Deeds at Book 5629, Page 267.

Commented [JG8]: Are you sure this is the correct Book/Page reference? Can you send a PDF of the recorded easement please?

E. Attached hereto and incorporated herein by reference are the following:

Signature pages:

- Grantor
- Grantee Acceptance
- Approval by Select Board
- Approval of the Secretary of Energy and Environmental Affairs

Exhibits:

- Exhibit A: Legal Description of Premises
- Exhibit B: Reduced Copy of Plan of Premises

WITNESS my hand and seal this ____ day of _____, 2021,

Cowfield Realty Trust, II

By: _____
_____ Calvin E. Moore, Trustee

COMMONWEALTH OF MASSACHUSETTS

[Enter County], ss:

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On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

EEA-DCS Model CR May 2018

WITNESS my hand and seal this ____ day of _____, 2021,

Triple AE Group, LLC

By: _____

COMMONWEALTH OF MASSACHUSETTS

| **[Enter County], ss:**

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On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

ACCEPTANCE OF GRANT BY ~~TOWN OF AYER~~ TOWN OF AYER CONSERVATION COMMISSION

We, the undersigned, being a majority of the Conservation Commission of the Town of Ayer, Massachusetts, hereby certify that at a public meeting duly held on _____, 2021, the Conservation Commission voted to approve and accept the foregoing Conservation Restriction from Cowfield Realty Trust, II, and Triple AE Group, LLC, pursuant to Section 32 of Chapter 184 and Section 8C of Chapter 40 of the Massachusetts General Laws and do hereby accept the foregoing Conservation Restriction.

TOWN OF AYER CONSERVATION COMMISSION:

[Type in names beneath liens]

COMMONWEALTH OF MASSACHUSETTS

[Enter County], ss:

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On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

APPROVAL OF SELECT BOARD OF TOWN OF AYER

We, the undersigned, being a majority of the Select Board of the Town of Ayer, Massachusetts, hereby certify that at a public meeting duly held on _____, 2021, the Select Board voted to approve the foregoing Conservation Restriction from Cowfield Realty Trust, II, and Triple AE Group, LLC, to the Town of Ayer, acting by and through its Conservation Commission, in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

SELECT BOARD:

[Type in names beneath lines]

COMMONWEALTH OF MASSACHUSETTS

[Enter County], ss:

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On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from Cowfield Realty Trust II, and Triple AE Group, LLC, to the Town of Ayer, acting by and through its Conservation Commission, has been approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: _____, 2021

Kathleen A. Theoharides
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared Kathleen A. Theoharides, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

EXHIBIT A

Description of the Premises

The Premises subject to this Conservation Restriction is the land located in Ayer, Middlesex County, Commonwealth of Massachusetts, containing a total of 39.09 acres, more or less, shown as the "Conservation Restriction Area" on a plan of land entitled "Conservation Restriction Plan of Land (Exhibit) in Ayer, Mass.," dated October 29, 2020, prepared by Goldsmith, Prest & Ringwall, Inc., said plan recorded at the Middlesex South District Registry of Deeds at Plan Book _____, Page _____, ~~a reduced copy of which is attached hereto as Exhibit B.~~

Commented [JG9]: Do you have the final version of this plan yet?

Street Address: 0 Washington Street, Ayer, Massachusetts 01432

EEA-DCS Model CR May 2018

EXHIBIT B

Plan of Premises

For official full size plan see Middlesex South District Registry of Deeds Plan Book _____ Page

TOWN OF AYER REQUEST FOR QUOTE 2023

The Town of Ayer, acting through its Conservation Commission, is seeking services from lake management consulting/contracting firms (hereafter known as the Consultant) for Aquatic Plant Management projects at Sandy Pond, Flannagan Pond, and Pine Meadow Pond, in spring/early summer of 2022.

Three (3) copies of the technical (non-cost) quote, one copy of the price (cost) quote, and an electronic copy of both, should be submitted to the Ayer Conservation Commission c/o Office of the Town Manager, Town Hall, One Main Street, Ayer, MA 01432. Quotes must be received at the above location prior to **12 noon, Monday March 6, 2023**. Postmarks are not acceptable.

Objective Statement

The goal of pond treatment in Ayer is for the reduction, control, and management of the growth of aquatic invasive plants, as well as the control and maintenance of optimal reduced density levels of floating leaf plants and select stands of invasive phragmites, for the purpose of restoring and maintaining habitat, public enjoyment, and recreation. All management plans and strategies should reference and address the findings of the "Biological Survey, Assessment and Management Recommendations for Ayer's Ponds" prepared by Geosyntec Consultants (Final Report May 2016) as well as the Year End Report and recommendations from the previous treatment season (2021), both of which will found on the Commission's Town webpage.

Project Description

The Consultant shall provide all materials, labor, and equipment to perform the required herbicide treatment(s) during the spring/summer of 2023, to meet the performance objective of 90% eradication of fanwort (*Cabomba caroliniana*), variable leaf milfoil (*M. heterophyllum*), and curly-leaf pondweed (*Potamogeton crispus*) in Sandy, Flannagan and Pine Meadow ponds. Herbicide treatment for phragmites (*Phragmites australis*) in select areas on Sandy Pond is also requested, as well as density reduction of water lilies and other floating leaf plants in Flannagan and Pine Meadow ponds. The performance objective for phragmites treatment is 50% reduction of select nuisance stands. The Consultant shall perform all required pre-treatment notifications and postings of printed signs prior to each herbicide application. A minimum notice of seven (7) calendar days is required for Town offices and must be confirmed by same. All work shall be performed by properly licensed personnel in accordance with all local, state, and federal requirements.

Because the optimal time for treatment of fanwort is usually in May (weather depending), prior to significant visible vegetation growth, the initial treatment of fanwort should be based on the

post-treatment survey results, recommendations, and mapping from the previous year's treatment (see 2022 Year End Report). A pre-treatment survey of all three ponds, based largely on visual observation and standard throw-rake samples, should be scheduled in early June. The optimal time for the initial treatment of milfoil and curly-leaf pondweed is usually mid-to-late June. All treatments should be accompanied by standard water quality information recording such as surface temperature, dissolved oxygen, and secchi disc.

The Consultant shall perform and provide written documentation of pre-treatment and post-treatment inspections as well as a project completion/year-end report that includes the calculated pre- and post- area (sf) of targeted species and the total percentage of area (sf) where the invasive plants were targeted for eradication. Pre-treatment inspection shall include photographic documentation and a GPS-generated plot of the region(s) to be treated. Data points taken with GPS should be spaced at 10' or less and provide an accurate plot of the area to be treated. A plot of pre-treatment data points is to be submitted to the Commission a minimum of seven (7) days prior to the first treatment. **Payment is contingent upon submission of the pre-treatment survey prior to initial treatment.** Post-treatment inspection shall also include a photographic survey and GPS-generated plot of the final distribution of the targeted species. The total surface area of water being treated is to be calculated and specified in the reports.

The project completion report must be submitted by the end of November and shall include the pre- and post-treatment inspection data, an overlay of the GPS-generated pre- and post-treatment plots, a calculation of the pre- and post-treatment areas, and a notarized statement by the Consultant that the eradication goal of 90% for fanwort and milfoil and 50% for phragmites was met in the specified ponds at the time of the final post-treatment inspection later in 2023.

The Consultant shall secure a Massachusetts Department of Environmental Protection (MassDEP) license to apply chemicals and comply with any applicable Orders of Conditions issued by the Ayer Conservation Commission.

[Please note that the use of the herbicide Clipper (flumioxazin) is prohibited in Sandy, Flannagan, and Pine Meadow ponds. Per the MDAR/MassDEP "Clipper Herbicide Product Evaluation and Recommendations (June 2013) report, the use of Clipper is "excluded from use in State-listed aquatic species habitats" without written authorization from MA Division of Fisheries and Wildlife, issued on a case-by-case basis. Because these Ayer ponds are located within the Petapawag ACEC (Area of Critical Environmental Concern), the Natural Heritage & Endangered Species Program (NHESP) has indicated verbally that a MESA filing would be required, but that they would also be unlikely to issue an approval for the use of Clipper at this location.]

Scope of Work for Sandy Pond

Sandy Pond encompasses an area of approximately 75 acres and is a deep kettle-hole pond (maximum and average depth of about 29 and 15 feet, respectively). It is also located within the Petapawag ACEC. The objective of the project at Sandy Pond is to monitor early and late season vegetation growth; and to provide spot treatments to control the growth of invasive and nuisance aquatic plants, specifically to maintain an eradication level of 90% of fanwort, variable leaf milfoil, and curly-leaf pondweed, as well as a 50% reduction of nuisance stands of phragmites in select areas on Sandy Pond, for the purpose of maintaining habitat and facilitating the recreational use of this Great Pond for swimming, boating, and fishing. The application of USEPA/MA registered aquatic herbicides has been identified as the most cost-effective and only feasible method of plant control at this time, given the environmental and budgetary constraints for utilizing other potential pond management techniques. The primary focus in 2022 should be for the control of fanwort, which the pond was not treated for in 2021. Three areas in particular should be noted: by the bridge between Sandy and Flannagan ponds; the northwest corner; and the southwestern corner. The use of herbicides for the control of variable milfoil and curly-leaf pondweed should be continued where applicable. In addition, the density reduction of invasive phragmites along the shoreline should be continued. During the 2022 season Sandy Pond experienced a toxic blue-green algae bloom, treatment for such a bloom should be included in the scope of work.

Lowering of Sandy Pond water levels is accomplished through the dam that controls Flannagan Pond, by means of the removal of two boards from the East Main Street Spillway (aka Balch Dam), subject to all restrictions of the East Main Street Spillway guidelines, dated August 22, 2001 and revised October 24, 2005.

The Town reserves the right to modify the scope due to budgetary constraints.

Scope of Work for Flannagan Pond

Flannagan Pond encompasses an area of approximately 85 acres and is a shallow impoundment type pond (maximum and average depth of 5 and 3 feet, respectively). It is also located within the Petapawag ACEC. The objective of the project at Flannagan Pond is to monitor early and late season vegetation growth; to provide spot treatments to control the growth of invasive and nuisance aquatic plants, specifically to maintain an eradication level of 90% of fanwort and variable leaf milfoil and to maintain limited levels of floating leaf plants (e.g. water lilies, water shield), for the purpose of sustaining habitat and facilitating the recreational uses of boating and fishing. The application of USEPA/MA registered aquatic herbicides has been identified as the most cost-effective and only feasible method of plant control at this time, given the environmental and budgetary constraints for utilizing other potential pond management techniques. For 2022, the goals should include continuation of the control of excessive waterlily growth, herbicide treatments for the control of curly leaf pondweed, and spot treatments, especially at the inlet, for continued fanwort control.

As with Sandy Pond, the lowering of Flannagan Pond water levels is accomplished through the board removal at the East Main Street Spillway, subject to all restrictions of the East Main Street Spillway guidelines, dated August 22, 2001 and revised October 24, 2005.

The Town reserves the right to modify the scope due to budgetary constraints.

Scope of Work for Pine Meadow Pond (aka Erskines Pond)

Pine Meadow Pond is a 23 acre pond located north of Flannagan Pond, with an average depth of 6-7 feet. It is also located within the Petapawag ACEC. The objective of the project at Pine Meadow Pond is to monitor early and late season vegetation growth; to provide spot treatments to control the growth of invasive and nuisance aquatic plants, specifically to maintain an eradication level of 90% of variable leaf milfoil and curly-leaf pondweed as well as fanwort if observed; and to continue to thin out, to a reasonable level, floating leaf plants as well as the invasive form of Phragmites, for the purpose of maintaining habitat and facilitating the recreational uses of boating and fishing. The water level of Pine Meadow Pond is set through a fixed-height dam and cannot be lowered.

The Town reserves the right to modify the scope due to budgetary constraints.

Price Quote (to be submitted separate from the technical quote)

The Consultant shall provide a clearly comprehensible price quote. The quote must provide a total sum for the cost of the project in its entirety, as well as a breakdown of costs and activities per pond.

Minimum Qualifications

The Consultant shall be licensed for Aquatic Pesticide Application by the Commonwealth of Massachusetts and shall be fully insured. The Consultant shall have a minimum of five (5) years experience in the field of Aquatic Plant Management.

All quotes submitted in accordance with the requirements of this RFQ will be reviewed for completeness and responsiveness. Quotes from firms that do not meet the minimum qualifications above may be deemed non-responsive by the Town at its sole discretion.

Quotes shall be evaluated by the Town and ranked for each of the following comparative evaluation criteria as follows:

- Highly Advantageous
- Advantageous
- Not Advantageous

- Unacceptable

Any quote receiving an unacceptable rating for any single criterion listed below will be considered unacceptable in all respects. Technical quotes will be ranked and evaluated on the following criteria:

Utilizing Sonar, diquat herbicides, or other appropriate herbicides to provide fanwort, variable leaf milfoil, and curly-leaf pondweed control of at least 90%, to be documented at the time of the final post-treatment inspection in 2023.

1. Utilizing glyphosate herbicide for thinning and/or management of optimal reduced density levels of floating leaf plants.
2. Demonstrated regional experience with Sonar, diquat herbicides, or other appropriate herbicides for fanwort control and control of variable leaf milfoil, and reported success of those projects. Two examples of project completion reports for similar, previously completed projects shall be submitted with the Quote.
3. Experience and qualifications of key project personnel to perform chemical treatments, aquatic plant surveys/mapping, chemical residue testing and reporting tasks required for this project. Specific college or graduate degrees held, and discipline, shall be provided for all key project personnel.
4. Technical approach for the project, thoroughness of the quote, and probable success of the proposed treatment program. Provide examples of pre- and post-treatment inspection methodology, including forms and photographs. Pre- and post-treatment photographs must be taken per the Photography Plan.
5. Demonstrated knowledge and understanding of the scope of work as relates to Sandy, Flannagan, and Pine Meadow ponds.
6. Demonstrated satisfaction with previous work performed for other municipalities.

The Commission will first evaluate and rank submissions based on the technical quotes, after which it will then open and review the price proposals before making its selection. The Town of Ayer will then negotiate a contract with the selected Consultant. Should the Town and selected Consultant not be able to reach an agreement, the Town would then negotiate with the remaining firms in order of their ranking until a suitable agreement is reached.

All required information requested in the RFQ will be utilized to evaluate each Consultant. The contract will be awarded within sixty (60) calendar days from opening of quotes.

Required Information

In addition to an electronic copy, three (3) copies of the proposed quote must be submitted and the following specific information is required in each consultant's qualifications and quote package:

1. Name, address, and telephone number of the consultant and the principal contract person.
2. Name, address, telephone number, and qualifications of all personnel to be associated with this project, if applicable.
3. Type of organization (i.e. individual, corporation, partnership, joint venture, etc.). Include a list of the principals.
4. List of Municipal clients in Massachusetts over the past three years. Please include the following information:
 - a. Location
 - b. Scope of involvement
 - c. References (name, title, and current telephone numbers)
5. Certifications that all personnel associated with this project are properly licensed to undertake and successfully complete their task.
6. Insurance certificate showing coverage for General Liability, Automobile and Workman's Compensation (statutory). It is the vendor's responsibility to purchase and maintain adequate insurance to protect the vendor and the Town for all claims.

The following minimum insurance is required:

a. Workman's Compensation	Statutory
Employer's Liability	
BI Each Accident	\$100,000
BI – Aggregate	\$500,000
BI – Each Employee	\$100,000
b. Comprehensive General Liability:	
Owner's Protective Liability	\$1,000,000
Comprehensive Public Liability	\$1,000,000
Bodily Injury	Any one person \$1,000,000 Aggregate \$2,000,000
Property Damage:	\$1,000,000

General liability of at least \$1,000,000 Bodily Injury and Property Damage Liability, Combined Single Limit with a \$2,000,000 Annual Aggregate Limit. The Town should be named as "Additional Insured."

c. Professional Liability	Per occurrence \$1,000,000 Aggregate \$2,000,000
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Contractors Pollution Liability Per occurrence \$1,000,000
Aggregate \$2,000,000

Motor Vehicle Pollution Liability Per occurrence \$1,000,000

The Liability Policy shall be Broad Form and include coverage for Premises and Operations and Product Liability.

d. Comprehensive Automobile Liability:

Bodily Injury Any One person/Aggregate
\$1,000,000

Property Damage Per Occurrence/Aggregate
\$500,000

The Comprehensive Automobile Liability Insurance should be written to include owned, hired and non-owned vehicles and it shall provide Extra-Territorial Coverage.

e. Umbrella Liability At least \$500,000/occurrence,
\$1,000,000 Aggregate

f. The Town of Ayer, MA shall be named as an additional insured on the vendor's policy. No insurance shall be subject to cancellation without at least thirty (30) days prior written notice forwarded by registered or certified mail to the Town of Ayer. All parties shall also be notified of the attachment of any restrictive amendments to the policies.

- Quotes must be sent to and received on or before to: Ayer Conservation Commission, c/o Office of the Town Manager, Town Hall, One Main Street, Ayer MA 01432 by **Monday March 6**, no later than noon (12:00 p.m.).
- Three (3) copies of the Technical Quote must be submitted in a sealed and clearly marked envelope, along with an electronic copy submitted to concom@ayer.ma.us.
- One (1) copy of the Price Quote (outlining the project costs) must be submitted in a separate, sealed envelope, along with an electronic copy submitted to concom@ayer.ma.us
- Questions regarding this bid may be directed to: Heather Hampson, Conservation Agent at the Ayer Conservation Office 978-772-8220 ext. 143 or via email at concom@ayer.ma.us.

The Town of Ayer is an EEO/AA employer and reserves the right to accept or reject any or all quotes as deemed to be in the best interest of the Town.

Jon Schmalenberger, Chair
Ayer Conservation Commission

Available on the Conservation Commission's Town webpage, www@ayer.ma.us:

"Ayer Ponds – 2021 Year End Report," prepared by Water & Wetland (November 29, 2021)

"Biological Survey, Assessment and Management Recommendations for Ayer's Ponds," prepared by Geosyntec Consultants (Final Report, May 2016)

TAX ATTESTATION AND NON-COLLUSION STATEMENT

Pursuant to MGL Chapter 62C Section 49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I have filed all state tax returns and paid all state taxes required under law.

The undersigned certifies under penalties of perjury that this quote is in all respects bona fide, fair, and made without collusion or fraud with any other person. As used in this section, the word "person" shall mean any natural person, joint venture, partnership, corporation, or other business or legal entity.

The undersigned declares that the only parties interested in this quote as principals are named herein; that this quote is made without collusion with any other person, firm, or corporation; that he/she has carefully examined the specifications therein referred to; and he/she proposes and agrees that, if this quote is accepted, he/she will contract the Owner, in accordance with the specifications, to provide all necessary work to be done and also furnish all the materials specified in the manner and time prescribed and according to the requirements as set forth; and that he/she will take in full payment the following sum(s) to wit:

Social Security Number or
Federal Identification Number

By: _____

Print Name: _____

Date: _____