



Tim Moya Associates (TMA) Terms and Conditions and Limitations for Appointment of Services  
Tim Moya Associates (TMA) is the trading name of Tim Moya Tree Services Ltd

## **1.0 General**

- 1.1 These terms of appointment and the attached fee quotation and referenced documents with variations, limitations, and specifications, together with the Clients recorded acceptance shall constitute a contract between the Client and Tim Moya Associates.
- 1.2 The contract shall apply in preference to and supersedes any previous terms and conditions referred to, offered, or relied upon by the Client whether in writing or otherwise.
- 1.3. This contract shall be governed by, construed, and interpreted in accordance to English law, and the parties shall submit to the non-exclusive jurisdiction of the English Courts.

## **2.0 Definitions**

The following definitions shall apply to this contract:

“Tim Moya Associates” shall be referred to as TMA throughout this document.

“Client” means the organisation or individual to whom the attached fee letter is addressed or implied through the Clients nominated agent.

“Consultant” means an employee or Sub-Consultants of TMA and is defined as a qualified professional within the required discipline. The Consultant shall act on behalf of the Client as an impartial advisor, investigator or agent in those matters defined in this agreement.

“specialist Sub-Contractor” means an organisation or individual who provide specialist services not offered directly by TMA. TMA will act as an agent to appoint such a Sub-Consultant and charge a management fee for such services. TMA will not be responsible for liability of any work carried out by a specialist Sub-Contractor.

“Additional services” means any services undertaken by the TMA beyond those defined in the attached fee letter.

“Fee” means fees as stated in the attached fee quotation and any Additional Services contracted.

“Works” means the works, project or scope referred to in the fee letter supplied by TMA or contract document supplied by the Client and signed by TMA.

“Report” means the document prepared by the Consultant reporting on the Work or Services.

“Services” means the services described in the attached fee quotation letter.

“Site” means the site stipulated as such on the attached fee quotation subject to clarification at the commencement of work.

“Sub-Consultant” means a Consultant who has been vetted by TMA to provide services within their own capabilities.

## **3.0 Fees and timescales**

- 3.1 The fee quotation is valid for 3 months from the date of issue.
- 3.2 Any additional work that may be required will be charged at the Consultant’s standard daily or hourly rate. Additional works may include any other work that will require amendments to our drawings or reports to facilitate the project conclusion and may include any or all of the following:- changes to the layout, detailed construction drawings, collation and delivery of sample materials, cost estimates, issue of variations and instructions, additional liaison and attendance at meetings or other tasks to be agreed between the parties beyond those detailed.
- 3.3 Unless otherwise stated, travel to and from site is included in the quotation for works.
- 3.4 If additional costs or delay is directly caused by alterations, discrepancies, errors or omissions in information supplied by the Client, or the Client’s Consultant team, the Client shall pay to TMA any such additional costs so incurred and allow a reasonable extension of time for the performance of services.
- 3.7 TMA reserves the right by giving notice to the Client at any time before the commencement of works, to increase the price of the works to reflect any increase at the cost to TMA which is due to any change in the specification for the works which is requested by the Client, or any delay caused by any instruction of the Client or failure of the Client to provide adequate information or instruction.

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- 3.8 If agreed work dates have to be altered as a result of delays caused by weather, or by availability of access permissions, or by safety issues or by any other circumstance outside the Consultants control, the next available date will be programmed, taking into account pre-existing bookings. TMA cannot be held accountable for losses caused by such delays. The Consultant makes no guarantee that revised work dates can be arranged to meet the original deadlines. Any cancellations resulting from such delays will be subject to an appropriate charge. Work that is curtailed by a Client or for other reasons beyond the Consultants control part way through a pre-booked day (e.g. supervisory works) or cancelled at less than 24 hours' notice will be charged the full daily or hourly rate. Any work instructed by the Client but subsequently cancelled by the Client will be charged according to the progress made by the Consultant, whether or not a written report had been issued to the Client, time spent will be logged and sent with any invoice issued for such works.
- 3.8 All timescales are estimations based on previous experience carrying out similar scopes of work. TMA will endeavour to carry out all scopes of work in accordance with the timescales stated however they are based on the assumption of no delays out of our control such as severe weather conditions, permit delays or conflicting work scopes and all days are billed as incurred.
- 3.9 Payment of the agreed fee is due in full, within 30 days of the date of invoice unless otherwise specified. Reports and drawings will remain the property of TMA until full payment has been received. No liability is accepted for the contents of the report that is not paid for in full. Fees quoted do not include Value Added Tax which is charged at the current rate. Any queries relating to invoices should be notified to TMA within 7 days of the invoice date. Interest and collection costs shall be added to all amounts remaining unpaid in accordance with the Late Payments of Commercial Debts (interest) Act 1998.
- 3.10 If the Client fails to pay within the time specified in 3.9 then TMA may charge the Client interest on the outstanding fee, both before and after any judgement, at the annual rate of 5% above the HSBC Bank base rate, until payment is made in full. (A part month being treated as a full month for calculation purposes).
- 3.11 The Client shall have a licence to copy and use the drawings only for purposes related to this Project providing that all fees and/or other amounts due are paid in full.

#### **4.0 Mapping, boundaries, and data collection**

- 4.1 For surveys to progress efficiently, a digital base map will be required at a suitable scale and level of detail to allow objects to be accurately located and plotted within our survey software, formats acceptable include DXF, DWG & SHAPE file.
- 4.2 Boundaries must be clearly defined and will be relied upon. TMA cannot be held responsible for omissions where site boundaries are not clearly identified.
- 4.3 Mapping will be supplied to TMA free of charge by the Client, together with copyright permissions needed for their use. If these cannot be supplied, mapping can be purchased by TMA with a 1-year licence. Continued mapping licencing will be the responsibility of the Client.
- 4.4 The survey data will be recorded and stored in MyTrees, a database and GIS (Geographic Information System) software package designed by TMA specifically for tree and ecological surveys. The data will be collected in the field directly into the MyTrees database and GIS software using TMA owned tablet computers.
- 4.5 If the Client's specification is to use other software and Client owned devices to collect data, TMA will take no liability for the limitations or loss of data caused by of such software or the malfunction of the devices provided.

#### **5.0 Delivery of Information**

- 5.1 TMA do not provide paper and other physical copies of our work or communications unless otherwise stated explicitly in our quotation at the outset. All works and communications will be electronic for speed and environmental sensitivity. If paper copies are required these will be charged for at TMA's standard rates.

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- 5.2 Where data is delivered through software such as MyTrees, BIM models or data transfer onto Client systems, no liability for loss or corruption of data will be accepted by TMA after data has been delivered.
- 5.3 Meeting deadlines for planning submission would rely on timely issue of a fixed scheme by others, timely response to queries and requests for comments/information and meetings to fit with program.

**6.0 Obligations of the Consultant.**

- 6.1 Specific details of deliverables will be included within the Fee Quotation and method statement documents.
- 6.2 TMA cannot be held liable for omissions or errors in specifications written by the Client.
- 6.3 The Consultant or Sub-Consultant shall exercise reasonable skill, care and diligence in the performance of the Services and any Additional Services if required. They will show due care and regard for the environment, their Clients and their colleagues.
- 6.4 Subject to conditions beyond their reasonable control the Consultant shall use reasonable endeavours to perform the Services in accordance with the Fee quotation and any subsequent quotations agreed between the two parties. If any delay occurs, the Consultant will advise the Client of a reasonable revised period for completion of Services.
- 6.5 Consultants shall operate within the terms of their Professional Institute's Code of Professional Conduct and within the laws of the country in which they are working.
- 6.6 TMA normal working hours are Monday to Friday 08.00 to 17.00 excluding weekends, bank holidays and Christmas shutdown (the period between Christmas and New Year's Day). Some Services such as bat surveys may require working outside these hours requiring access to site at unsocial hours.
- 6.7 TMA will use all reasonable endeavours to comply with the Clients Health and Safety Policies and any other reasonable security requirements.

**7.0 Obligations of the Client**

- 7.1 The Client shall provide the Consultant in sufficient time so as to not delay or disrupt the performance of the work by the Consultant all the necessary and relevant data in possession of the Client, his agents, or other Consultants or contractors.
- 7.2 The Client acknowledges that the Consultant will not undertake the Service in respect of, and that the report will not cover, any of the following:
- (a) Areas which the Consultant cannot access (including inability to access due to undergrowth)
  - (b) Material which is hidden from view
  - (c) Underground structures
  - (d) Area where hazardous waste is present
  - (e) Places covered by Government restrictions on movement (e.g. Covid19)
- 7.3 It shall be the Client's responsibility to inform TMA of any specific site-related health and safety issues which the Consultant may need to consider. All work will be subject to an appropriate on-site risk assessment prior to the commencement of work. If the Consultant considers their personal safety is at risk, or that they would breach the conditions of the Health and Safety at Work Act (1974), then they are entitled to abandon the investigation and advise the Client accordingly.
- 7.4 The Client shall arrange for or grant the Consultant access at all reasonable times to such premises as may be necessary for the provision of the Service. No site work can commence until permissions are confirmed. Any delays or cancellations caused by an inability to access the specified site may incur additional charges.
- 7.5 Recommendations made by TMA may be subject to obtaining licences or statutory permissions. It is the Clients responsibly to investigate if this is the case and to apply for such permission before proceeding with works unless it is detailed in the quotation that TMA will provide this service.
- 7.6 When employing a contractor to carry out recommendations made by TMA it is the Client's responsibility to ensure sufficient insurance, qualifications, licences, and experience is held by the contractor.

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## **8.0 Insurance Cover**

- 8.1 TMA is (at the time of issuing this document) covered by £10,000,000 Third Party, Public Liability insurance and £5,000,000 (in aggregate) Professional Indemnity insurance plus £10,000,000 Employers Liability insurance.
- 8.2 TMA shall maintain professional indemnity insurance to cover the Consultants liabilities hereafter for claims arising out of this contract for a period of six years after substantial completion of the primary Services, provided always that such insurance is available at commercially reasonable rates.
- 8.3 The Consultant shall maintain professional indemnity insurance sufficient to cover the Consultant's liabilities hereafter for claims arising out of this Contract, (save for claims in relation to pollution, contamination, asbestos and date recognition, for which such insurance shall have a limit of indemnity of such sum in the aggregate) and for the period of six years after substantial completion of the primary Services, provided always that such insurance is available at commercially reasonable rates.

## **9.0 Appointment of other Consultants/Sub-contractors**

- 9.1 Specialist Sub-Consultants or Sub-Contractors may be appointed by TMA to support the specialisms of the work specified and required.
- 9.2 Sub-Consultants or Sub-Contractors employed by TMA will be required to demonstrate insurance of a minimum of 1 million of professional indemnity insurance is held in line with the services provided.
- 9.3 TMA may act as an agent to appoint a suitable specialist Sub-Contractors or Client preferred Sub-Contractors on behalf of the Client. In this case TMA cannot be held responsible for work undertaken by the Sub-Contractor.
- 9.4 TMA will not accept liability for any works undertaken by any other companies, or contractors employed by the Client.
- 9.5 TMA reserves the right to allocate project managers and other personnel to contracts. Names of staff, qualifications and relevant experience can be provided on request. However, personnel may be changed if circumstances require. TMA also reserves the right to Sub-Contract work where additional specialist expertise is needed for the satisfactory completion of a contract.

## **10.0 Copyright**

- 10.1 Copyright on all documents and data including survey information, text, photographs, drawings, prepared by the Consultant shall, unless otherwise agreed, remain the property of TMA. The Client shall be entitled to use documents prepared by TMA in the execution of this agreement provided that:
- (a) All fees due to TMA at that stage have been paid
  - (b) The use relates only to the project for which the material was prepared
  - (c) TMA shall not be liable for the use of the documents described in this clause for purposes other than which they were prepared and provided.
- 10.2 Scientific Data collected during the course of the work will be made available to appropriate biodiversity record centres and Government initiatives against pest and diseases. If the Client has any objection to this they must inform the Consultant in advance in writing.

## **11.0 Termination by the Client: grounds**

- 11.1 The length of notice for the termination or suspension of all or part of this agreement shall be 30 days. If after 30 days following notification of suspension of this agreement, TMA has not received instructions from the Client, TMA shall make a final written application for instruction. In the event of no instructions being received TMA within a further 30 days of the final application, this agreement shall be deemed to have terminated. Fees outstanding with interest will be due to TMA. (See 3.10)

## **12.0 Termination by the Consultant: grounds**

- 12.1 The length of notice for the termination of all or part of this agreement by TMA shall be 7 days. TMA shall give full detail as of reasons leading to the termination and suitable course of action for the closure of the project shall be agreed in writing.

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### **13.0 Death or incapacity**

13.1 In the event of death or serious incapacity of a sole practitioner preventing the continuation of this agreement it shall be deemed to have terminated. Outstanding fees will be payable, and the data will be transferred as appropriate.

### **14.0 Disputes**

- (a) By agreement – differences or disputes arising out of the appointment in relation to professional, ethical or any other matter may be settled by agreement between the parties.
- (b) By mediation – If agreement cannot be reached, the Client or TMA are free to propose a third party to act as mediator.
- (c) By arbitration – Any difference or dispute arising out of the appointment which cannot be resolved in accordance with either (a) or (b) shall be referred to arbitration by the person agreed between the parties. If agreement cannot be reached after 14 days, the matter shall be referred by either party to the Chartered Institute of Arbitrators.

### **15.0 Claims**

15.1 No action or proceeding for any breach of the Contract will be commenced against the Consultant after the expiry of 6 years from the substantial completion of the summary Services

15.2 Further and notwithstanding anything to the contrary contained in this Contract and without prejudice to any provision in this Contract whereby liability is excluded or limited to a lesser amount, the liability of the Consultant under or in connection with this Contract whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim shall not exceed the amount, if any, recoverable by the Consultant by way of indemnity against the claim in question under Professional Indemnity Insurance taken out by the Consultant and in force at the time that the claims or (if earlier) circumstances that may give rise to the claim is or are reported to the insurers in question.

15.3 TMA's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to 100% of the total charges payable by the client for the Contract.

15.4 Clause 15 and 9.3 shall survive termination of the Contract.

15.5 The Client agrees not to pursue any claims in contract, tort or statute (including negligence) against any individual as a result of carrying out its obligations under or in connection with this Agreement at any time whether named expressly in this agreement or not.

### **16.0 Jurisdiction**

16.1 TMA undertake to work in accordance with the code of ethics and conduct of the professional body relevant to the nature of the contract. The law of country where the work is undertaken shall govern contracts and any disputes arising from them unless otherwise agreed.

### **17.0 Confidentiality**

17.1 Unless specifically expressed to be confidential by the Client when providing the relevant information to TMA, all information supplied by the Client for the purposes of the contract will be treated as within the public domain. Where any such information is expressed by the Client to be confidential, TMA will take all practical steps to ensure that the information is communicated only to persons engaged on the preparation and supervision of the contract and that those persons treat the information as confidential.

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- 17.2 The foregoing restrictions do not apply to any information that is already in the public domain or becomes so after it has been disclosed to TMA.
- 17.3 Confidentiality will not apply where legal or such other obligations necessitate the provision and/or dissemination of information, such as, but not limited to: the requirement to submit licence returns in respect of activities carried out under protected species licences or other such agreements; as a result of any investigation by or enquiry from a licensing body, enforcement agency, etc.
- 17.4 TMA does not accept liability for any loss or damage incurred by the Client because of disclosure of information regarding a site unless advised in writing that information is reported as confidential.

#### **18.0 Data Protection**

- 18.1 TMA will use the information you supply primarily to provide you with our services and for related purposes including: updating and enhancing Client records; management and analysis of our company and its performance; statutory returns; legal and regulatory compliance. Our use of this information is subject to your instructions, the Data Protection Act 1998, GDPR and our duty of confidentiality. We may sometimes have to give our information to third parties such as your other professional advisors and local authorities and public bodies. You have the right of access to the data we hold about you.
- 18.2 TMA reserve the right to share species data with the relevant ecological record centres and pest and disease research organisations.

#### **19.0 Acceptance of Terms and Conditions**

- 19.1 No work will be booked or undertaken until the quoted Fees and all terms and conditions have been accepted in writing by the person or organisation responsible for ensuring that TMA's reasonable agreed fees are paid.

#### **20.0 Liability and limitations for all services**

- 20.1 TMA cannot be held responsible for errors or omissions in specifications supplied by the Client.
- 20.2 No liability is accepted for advice given made because of unverified information supplied by the Client or a third party.
- 20.3 Investigation of Private Covenants is to be the responsibility of the Client/landowner or agent. The Customer will ensure TMA personnel are granted access and permission to operate on the specified site on the agreed date(s). Any delays or cancellations caused by an inability to access the specified site may incur additional charges.
- 20.4 Information provided to TMA by the Client or third parties will be relied upon and will not be verified or checked for accuracy by TMA. We cannot guarantee the accuracy of survey data where there is no easy access to the subject or in the event we are supplied with inadequate documentation or information on which to base our work.
- 20.5 If any part of TMA's reports or surveys are altered without specific written consent from TMA, they will become invalid.
- 20.6 The report / survey is prepared for the assistance of the Client(s) and no liability is accepted to any other parties.
- 20.7 The report/survey will purport not to express any opinion or comment as the condition or structural integrity of any buildings or structure and no reliance should be made on any such comments.
- 20.8 The report/survey does not represent legal advice and no reliance should be placed on any such comments.
- 20.9 Sketched plans and non-scaled plans that form part of reports should not be relied upon as technical drawings.
- 20.10 Trees, vegetation, and landscape are dynamic living organisms and constantly change. Similarly, habitats are dynamic, for example grassland may be grazed in one year and subject to relaxed management the next. The observations and advice given in reports for development purposes should be considered valid for a period of no more than three years (or less if so advised by TMA or guidance, law or standards change which impact on the service provided).

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- 20.11 Inspections cover the existing conditions, landscapes, and structures at the time of inspection but cannot take into account structural defects or any health condition that develops subsequently or as a result of the inspection being undertaken.
- 20.12 Observations are taken from ground level only, within the curtilage of the site and public accessible areas, where this can be done safely and without undue difficulty
- 20.13 TMA cannot be held responsible for the consequences of recommendations not carried out by the Client.
- 20.14 TMA shall have the right to photograph the project and to use the photographs in the promotion of their professional service through publication, advertising, public relations, brochures, websites, or other marketing media unless specifically agreed otherwise with the Client.

### **21.0 Limitations of Service (Tree Surveys – Risk & Condition)**

- 21.1 Typically, a survey will be a ‘walk over’ of a population of trees to identify features clearly visible from ground level with no further investigation. TMA may, at the surveyor’s discretion, use a probe and mallet where indicators to do so are visible and we will record the result of this further investigation.
- 21.2 Site investigations are undertaken by experienced and suitably qualified arboriculturists. Observations are taken from ground level only, within the curtilage of the site and public accessible areas where this can be done safely and without undue difficulty. Binoculars may be used, at the surveyor’s discretion, to support visual surveys. Tree heights, age range and future growth are approximate. Unless stated otherwise, the inspection is limited to visual examination of the subject trees from ground level only. There is no warranty or guarantee, expressed or implied, that problems or deficiencies of the subject trees may not arise in the future.
- 21.3 In line with TMA’s health & safety policy, no undergrowth will be removed or disturbed by Consultants when undertaking tree surveys. It is the Client’s responsibility to ensure that the trees to be surveyed are assessable and visible.
- 21.4 Tree positions will be visually estimated and reasonably accurate for the purpose of identification. Trees will be plotted with reference to base map information.
- 21.5 This survey is a visual inspection only (with binoculars where appropriate) recording tree details and making recommendations, as necessary.
- 21.6 The survey will not include inspection of tree features which are obscured by vegetation or not visible from ground level because of obstruction (e.g. rubbish / spoil / debris etc.)

### **22.0 Limitations of Service (Specialist Tree investigations and tests)**

- 22.1 Typically, this survey will be carried out from ground level on a single tree or a small selection of trees, it may include;
  - Recording features using a camera
  - Tap testing with a mallet
  - Hand probing with a screwdriver (or similar)
  - Removal of loose or damaged bark to investigate trunk condition
  - Cutting sections of fungal fruiting bodies for identification
  - Testing with specialist equipment
- 22.2 Identification of fungi, insects, or tree disorders is based on field observations and does not include a laboratory analysis (unless specifically requested by the Client).

### **23.0 Limitations of Service (Tree Surveys and reports – Development)**

- 23.1 Tree surveys carried out for development purposes will follow the methodology in the current iteration of British Standard 5837 and will not include a comprehensive health and safety survey of trees on and/or surrounding the site.
- 23.2 Tree locations will rely on the accuracy of topographical information supplied by or commissioned by the Client. In the absence of a topographical survey, tree locations will be visually estimated in relation to land features.
- 23.3 Off-site trees which may be of relevance to the proposed development will be assessed from within the Site unless access is available to inspect the trees more closely. Dimensions may, therefore, be

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either visual estimations or estimations using laser technology will be used. Currently omits laser technology

**24.0 Limitations of Service (Tree related subsidence investigation / subsidence risk assessment/ pre-property purchase report)**

- 24.1 The report will purport not to express any opinion or comment as the condition or structural integrity of any buildings or structure and no reliance should be made on any such comments.
- 24.2 TMA's investigation of the Site will not include the investigation of underground or covered features.
- 24.3 Subsidence risk assessments will be carried out on the assumption that the building is not currently damaged.
- 24.4 TMA's assessment of subsidence risk will relate only to the main building and not to light structures (walls, patios, driveways etc.)
- 25.0 TMA's survey of vegetation will be confined to those trees and other vegetation considered to be within influencing distance of the main property. Our survey will not include trees or other vegetation not thought to be relevant to the investigation.

**26.0 Limitations of Service (Landscape)**

- 26.1 TMA shall have no liability for any defects in the Contractor's work or goods supplied or be in anyway liable in the event of a dispute between Client and Contractor.
- 26.2 Where detailed structural work is involved such as retaining walls, foundations and buildings including matters covered by the Party Walls Act it is the Clients responsibility to seek professional advice from a building surveyor and/or structural engineer.
- 26.3 The Client shall be responsible for obtaining any necessary planning permission for the works and for fulfilling statutory requirements.
- 26.4 The appointed contractor shall be responsible for the proper implementation and completion of construction works and for maintaining a safe working environment on the site. It is expected that contractors/builders appointed will be competent members of their profession.
- 26.5 The Client will only have a licence to use drawings provided by TMA for their intended purpose, ie drawings prepared for a Planning Application would only be valid for that purpose and should not be used for construction, as it will be necessary to add additional information to the drawings for the purposes of Building Regulation Approval, other Regulatory Approvals and Construction information.

**27.0 Limitations of Service (Ecology)**

- 27.1 For bat surveys, access is required to all loft spaces and other areas as detailed in the Fee quote. If access is not possible to all areas, the assessment may be incomplete, and the local authority may require further surveys to be undertaken. If the Consultant must visit the site a second time because full access was not available on the first visit, an additional charge will be made.
- 27.2 If the Consultant considers that a potential wildlife crime has been committed or believes a crime may be about to be committed, this will be brought to the Clients attention immediately. There are certain circumstances in which the Consultant will be constrained to notify the relevant authorities if a crime has been committed or is about to be committed. The Consultant reserves the right to communicate with the relevant authorities directly at any stage should it be considered that this is necessary to prevent the commission or continued commission of a crime.
- 27.3 Occasional access to third party land may be required, for instance to assess off-site ponds for the presence of great crested newts where this is relevant to the development site. Where such access is required, access must be formally arranged by the client with the relevant landowner. TMA may require evidence of formal access permission having been granted. TMA reserve the right not to enter third-party land where clear access permission cannot be demonstrated. TMA cannot be held liable for any delays to surveys, or limitations to the conclusions of surveys, due to lack of access.
- 27.4 Where stated within the fee quotation, TMA will record evidence of invasive plant species within or adjacent to the site. Although invasive plant species will be recorded if observed, TMA cannot guarantee that all occurrences will be found. TMA cannot be held liable for later discovery of invasive plant species, nor any financial implications of their presence.

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