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THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

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William Cass, P.E.
Commissioner

David Rodrigue, P.E.
Assistant Commissioner

Andre Briere, Colonel, USAF (RET)
Deputy Commissioner

Bureau of Environment
May 1, 2023

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

In accordance with the requirements approved by Governor and Executive Council on April 17, 2019 (Item #39), authorize the Department of Transportation (DOT) to continue to make payments to the Department of Natural and Cultural Resources (DNCR) (Vendor #177887) Natural Heritage Bureau (NHB) for reviews of rare plants and exemplary natural communities, as well as rare wildlife associated with DOT construction projects and maintenance activities for FY 2024 and FY 2025, in compliance with RSA 217-A, and NH Code of Administrative Rules Res 1105.02 Projects by State Agencies, effective upon Governor and Executive Council approval through June 30, 2025.

Funding for this request is contingent upon the availability and continued appropriation of funds in FY 2024 and FY 2025.

EXPLANATION

Pursuant to RSA 217-A:7, "All state agencies, consistent with their authority and responsibilities, shall assist and cooperate with the [DNCR] commissioner to carry out the purpose of this chapter. To the extent possible actions funded or carried out by state agencies shall not jeopardize the continued existence of any protected plant species or exemplary natural community." In addition, RSA 217-A:7-a establishes that the DNCR commissioner may charge a fee for screening NHB records for instances of protected species or environmental reviews. The NHB has established a fee of \$25.00 for access to these records.

Having the flexibility for these payments is crucial to the nature of the work performed and completed by DOT. This reporting system further assists the Governor and Executive Council in understanding this component of the DOT's work.

In addition, and as approved by the Governor and Executive Council on April 17, 2019 (Item #39), at the conclusion of FY 2023 an informational item will be provided identifying the NHB payments made during FY 2023, and the future years approved under this memorandum.

Your approval of this resolution is respectfully requested.

Sincerely,

A handwritten signature in black ink, appearing to read "William Cass". The signature is fluid and cursive, with a prominent loop at the end.

William J. Cass
Commissioner

WJC/ktn
Attachments

1-May-23

RSA 217-A Payments Summary

FY	217-A Project \$	DSA \$	Total
2022	\$850.00	\$1,544.75	\$2,394.75
2021	\$700.00	\$0.00	\$700.00
2020	\$1,370.00	\$730.00	\$2,100.00
2019	\$1,400.00	\$532.00	\$1,932.00
2018	\$1,725.00	\$532.00	\$2,257.00\
2017	\$1,350.00	\$1,060.00	\$2,410.00
Total	\$7,395.00	\$4,398.75	\$11,793.75



Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

G+C #39
Date 4-17-19



William Cass, P.E.
Assistant Commissioner

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

Bureau of Environment
March 4, 2019

REQUESTED ACTION

1. Authorize the Department of Transportation (DOT) to **retroactively** make payments to the Department of Natural and Cultural Resources (DNCR) (Vendor #177887) Natural Heritage Bureau (NHB) for reviews of rare plants and exemplary natural communities, as well as rare wildlife associated with DOT construction projects and maintenance activities for FY 2019, in compliance with RSA 217-A, and NH Code of Administrative Rules Res 1105.02 Projects by State Agencies, effective upon Governor and Council approval through June 30, 2019.

Funding for this request is available for FY 2019 based upon the source of funds for each particular project or activity.

2. Further authorize the Department to enter into a Data Sharing Agreement (DSA) with NHB for \$532.00 for access to NHB data, which enables DOT to self-screen and review certain construction projects and maintenance activities in order to streamline environmental reviews, in compliance with RSA 217-A, and NH Code of Administrative Rules Res 1105.02 Projects by State Agencies, effective upon Governor and Council approval through January 23, 2020. 100% Highway Funds.

Funding for this request is available as follows:

04-96-96-962015-3032	<u>FY 2019</u>
Bureau of Environment	
046-500464	
Gen Consultants Non-Benefit	\$532.00

EXPLANATION

This item is **retroactive** because DOT began making periodic payments to NHB for environmental reviews beginning on July 1, 2018, with DSA data transmitted in September of 2018. It wasn't until after this time that DOT realized the \$10,000.00 interagency transfer threshold had been reached. The NHB is mandated by the Native Plant Protection Act of 1988 (RSA 217-A) to determine protective measures and requirements necessary for the survival of native plant species in the state, to investigate the condition and degree of rarity of plant species, and to distribute information regarding the condition and protection of these species and their habitats. The Nongame & Endangered Wildlife Program of the NH Fish & Game Department coordinates protection efforts for the state's wildlife that are not hunted, fished, or trapped. The Nongame Program works closely with NHB to maintain a database of rare and imperiled wildlife populations throughout the state.

Pursuant to RSA 217-A:7, "All state agencies, consistent with their authority and responsibilities, shall assist and cooperate with the [DNCR] commissioner to carry out the purpose of this chapter. To the extent possible actions funded or carried out by state agencies shall not jeopardize the continued existence of any protected plant species

or exemplary natural community." In addition, RSA 217-A:7-a establishes that the DNCR commissioner may charge a fee for screening NHB records for instances of protected species or environmental reviews. The NHB has established a fee of \$25.00 for access to these records.

The DSA further streamlines DOT's review of construction projects and maintenance activities by allowing DOT Bureau of Environment staff to access a subset of data for self-screening of projects/activities where:

- Construction is located within 15 feet of a paved roadway on paved/gravel or mowed areas; and
- All work is within the existing right-of-way; and
- Permits pursuant to RSA 482-A are not required; and
- Drainage work is conducted in-kind; and
- Coverage under the US Environmental Protection Agency's Construction General Permit is not required; and
- There is no change in the footprint of paved areas.

Having the flexibility for these payments is crucial to the nature of the work performed and completed by DOT.

Below is a summary of the payments made by the DOT to DNCR pursuant to RSA 217-A, and NH Code of Administrative Rules Res 1105.02 for the past two (2) fiscal years:

RSA 217-A Payments Made to the Department of Natural and Cultural Resources

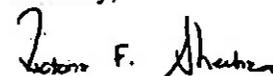
State FY	# of 217-A Project Payments to DNCR	Total Project Payments to DNCR	Data Sharing Agreement Fee	Total
2019 (YTD)	19	\$475.00	\$0.00	\$475.00
2018	69	\$1,725.00	\$532.00	\$2,257.00
2017	54	\$1,350.00	\$528.00	\$1,878.00
Total	142	\$3,550.00	\$1,060.00	\$4,610.00

Similar to the Governor and Executive Council-approved process for payments to the Department of Environmental Services for permitting and mitigation fees (G&C Item #28, November 18, 2016), at the conclusion of FY 2019 an informational item will be provided identifying the NHB payments made during FY 2019. In addition, a request will be made for continued approval for payments in the next fiscal year.

FY 2019 YTD vendor is over the Governor and Council threshold.

Your approval of this resolution is respectfully requested.

Sincerely,



Victoria F. Sheehan
Commissioner

VFS/ktn
Attachments

Note: All Natural Heritage Bureau data provided through this Agreement are **CONFIDENTIAL – FOR INTERNAL USE ONLY**

Name of recipient (contact person):	Kevin Nyhan, Administrator, Bureau of Environment
Affiliation:	New Hampshire - Department of Transportation
Project name:	New Hampshire - Natural Heritage Bureau - Data Layer for Non-Permit Projects - 2018
Contact information (e-mail, phone):	Kevin.Nyhan@dot.nh.gov, (603) 271-3226 Amy.Rook@dot.nh.gov, Rebecca.Martin@dot.nh.gov
Project description, including proposed use of NHHNB data:	
<p>1) A screening layer indicating NHDOT roadway segments that require review, and whether to contact NH-NHB, NH Fish & Game, or both agencies, for a review</p> <p>2) For plant species and exemplary natural communities: a shapefile including precise mapped location of rare plants and exemplary natural communities that are within the screening layer buffer</p> <p>3) Animal species: a shapefile including precise mapped location; element name and listing status; occurrence mapping precision and year last observed</p> <p>4) Sensitive plant or animal species will only be identified to taxonomic group.</p> <p><u>Only projects that meet the following criteria can be reviewed using the NHB-provided GIS Screening Layer:</u></p> <ul style="list-style-type: none"> • All construction and staging activities are either located within 15 feet of the edge of pavement, located only on paved or gravel surfaces, or in mowed areas. • All work is within the existing State right-of-way • Neither a wetlands permit nor a notification is required • Only drainage work that is in-kind/replacement with no wetland permitting is included in project • Coverage under the CGP is not required • There is no change in footprint of the pavement <p>The cost of the license under this agreement (based on fees described in section b and most current available NHDOT Roads shapefile & NHB database) is \$532. This total includes a 50% discount.</p>	

The following NH Natural Heritage Bureau (NHHNB) data will be provided to the recipients, subject to the following Terms and Conditions. The NH Fish & Game (NHFG) Non-Game and Endangered Species Program has authority over animal species.

Geographic area:	New Hampshire - Department of Transportation Maintained State & Federal Roads, Buffered on all sides by 60 feet
Dates:	<input checked="" type="checkbox"/> Last seen within 20 years (species) or 40 years (communities and systems) <input type="checkbox"/> All dates
Elements ¹ :	<input checked="" type="checkbox"/> Plants <input checked="" type="checkbox"/> Natural Communities <input checked="" type="checkbox"/> Animals <input checked="" type="checkbox"/> Ecological Systems
Element-level attributes ¹ :	<input checked="" type="checkbox"/> Taxonomic Group; T or E status (US, NH); Global and State rarity <input checked="" type="checkbox"/> Element name
Occurrence-level attributes ² :	<input type="checkbox"/> Year last observed; Mapping precision; Viability rank <input type="checkbox"/> Survey site name; Habitat type; Sensitive flag <input type="checkbox"/> Directions; Size and condition; Habitat description

Notes:	nhb_notify_Oct2018_Revised shows all roadway segments that would need review. If the roadway segment is not shown in this layer, no records exist that would be of concern for the types of projects included in the data sharing agreement. nhb_rep_notify_Oct2018_PEC_Revised shows NHB data records. nhb_rep_notify_Oct2018_A_Revised shows NHF&G records NLEB_1320.shp - roads within 0.25 miles of a NLEB hibernacula / roost tree. NLEB_2640.shp - roads within 0.5 miles of a NLEB hibernacula / roost tree.
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¹ 'Elements' refers to elements of biodiversity, including species, natural communities, and ecological systems.

² Additional attributes for occurrences may be available. Consult with NHHNB staff for more information.

The recipient agrees to abide by the terms specified below:

1. The data provided in this release will be available only to the following named users:

NHDOT Bureau of Environment Staff

All of these data are CONFIDENTIAL - FOR INTERNAL USE ONLY.

The provided digital data will **not** be copied, distributed, or made accessible in any form to **other parties**. By signing this agreement, the user affirms the ability to maintain the data in a secure environment. Any requests to the recipient by other parties for these data will be referred directly to NHHNB.

2. Temporary in-house copies of the data (e.g. to a flash drive or e-mail attachment) must be limited to the users named in term 1 above. They must be deleted from temporary storage locations as soon as the transfer is completed.

3. Any products derived from the data provided in this release (e.g., publications, reports or maps) *that are made available to anyone other than staff of the signatories to this agreement* will not show, describe or otherwise depict the location of NHHNB element occurrences.

The mapped locations (GIS polygons) that NHHNB is providing under this Agreement shall not be made public. However, elements can be listed or mapped as 'present' in a defined area as long as that area is at least two square miles in size (e.g., town, HUC10 watershed, etc.).

4. The data provided in this release will not be modified in any way except as needed to make them compatible with the recipients' geographic information systems.
5. The recipient agrees to provide NHHNB with documentation of any rare species or exemplary natural communities found during the course of this Data Sharing Agreement, unless prohibited from doing so by other agreements. The recipient will use reporting forms as provided by NHHNB.
6. The digital data provided is to be used **only** for the purposes specified above. Access and use for other purposes, including by the named user, will be made only with prior expressed, written consent of the NHHNB and in accordance with NH RSA 217-A.
7. The recipients agree to **delete all copies** of NHHNB digital data provided under this Agreement **on or before one year from the date** the Agreement is fully signed.

The recipient also acknowledges that:

- a) This agreement takes effect and is valid for one year from the date of signature.

- b) NHNHB has data use license fees to help support the maintenance of the database. Rates for one year of access to the data are \$0.50 per record for "fuzzed" data (only approximate location provided). Best-available location data are \$10.00 per record for federally listed species, \$2.00 for all others. Processing time is charged at \$60/hour. NHNHB may apply a discount to non-profit and federal agency requests.
- c) Access to NHNHB digital data as described under this Agreement does not eliminate the need to consult with the US Fish & Wildlife Service and/or to submit an Environmental Review request through the NHNHB when state and federal permitting requires such documentation.
- d) Comprehensive surveys for rare species and exemplary natural communities have **not** been conducted for most of NH, and most NHNHB records have not been visited recently. On-site surveys are the only way to definitively determine whether rare species or exemplary natural communities are currently present at a site.
- e) The NHNHB data are continually being revised and expanded. The data provided in this release will, therefore, become outdated. Should a discrepancy develop between the data provided to the recipients and the data in the NHNHB databases, the data in the NHNHB databases are the correct data.
- f) Accurately interpreting NHNHB data requires a good understanding of Natural Heritage protocols. Users must read the metadata provided. Any questions should be directed to staff at NHNHB (plants and natural communities) and/or NHFG (animals).
- g) **Non-compliance with any provision of the agreement by any recipient may result in the immediate withdrawal of authority to use the digital data provided by NHNHB, and may result in the denial of all future data release requests by the recipient.**

Questions regarding NHNHB data or the terms of this data release should be directed to: Data Manager, Natural Heritage Bureau, DNCR - Forests & Lands, 172 Pembroke Rd, Concord, NH 03301, (603) 271-2823.

- 1) I understand that these data are only for internal use. I verify that none of these data will be displayed to or shared with any person not named in term #1 of this Agreement.
- 2) I understand that this agreement expires one year from date of signature.
- 3) I have read and agree to the Terms and Conditions of this Agreement.

Signature: 

Date: 3/28/19

Name: Victoria Simon

Address to send invoice to:

Company/Organization Name: NHDOT, Bureau of Environment
ATTN: Kevin Nyhan, Administrator
Street address: 7 Hazen Drive, PO Box 483
Town, State, Zip: Concord, NH 03302-0483
Phone #: 603-271-3226
E-mail address: Kevin.nyhan@dot.nh.gov