



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner

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August 15, 2024

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

REQUESTED ACTION

Authorize the New Hampshire Department of Environmental Services (NHDES) to enter into a Memorandum of Understanding (MOU) with the Natural Heritage Bureau of the Department of Natural and Cultural Resources (NH DNCR), (VC 314716-B001), Concord, NH in the amount of \$236,000 to replace the citizen service application Data Check Tool, effective upon Governor and Council approval through June 30, 2028. 100% Federal Funds.

Funds are available in the following account.

03-44-44-440010-2695-085-588535	<u>FY 2025</u>
DEPT Envir Services ARPA DES SWEEP, Transfer to Other Agencies Out of Fed Funds	\$236,000
Activity #: 00FRF602PH4404A	

EXPLANATION

As a result of unprecedented pressure on its existing workforce, staff shortages across agencies, and increased wage competition with the private sector during the COVID-19 pandemic, the state developed the State Workforce Efficiency Enhancement Program (SWEEP), an initiative focused on one-time investments in technology, systems, or other tools that will make it easier for state agencies to perform required functions over the long term as they adjust their roles and needs to the realities brought on by the pandemic and move toward a more sustainable staffing model that helps avoid burnout and encourages retention. This request is part of the overarching SWEEP effort.

NHDES is requesting this authorization to enter into an MOA to allocate \$236,000 of ARPA funds to NH DNCR to replace the existing custom-coded Data Check Tool with the new Data Check Tool Software as a Service (SaaS) from NatureServe.

Pursuant to RSA 217-A, the Native Plant Protection Act and RSA 212-A, the Endangered Species Conservation Act, NH DNCR Natural Heritage Bureau (NHB) and NH Fish and Game (NH F&G) Nongame Program, respectively, are statutorily obligated to identify, track, and protect threatened and endangered (T&E) species. The Data Check Tool is an online data screening tool provided by NHDES and the NH Natural Heritage Bureau. It allows the public to screen for known locations of rare species and exemplary natural communities. NHDES receives outputs from this tool, which helps identify potential project impacts

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related to threatened and endangered species for projects requiring specific NHDES permits. Using ARPA funds to support the modernization of the DataCheck Tool will enhance its functionality and accessibility.

The NatureServe Environmental Review Tool will compare data compiled by governmental and non-governmental programs and provide species impact information to the NH DNCR, NH F&G Nongame Program and NHDES. The impact information, available through a common portal, will promote early project planning, avoid, and minimize environmental impacts, and increase the efficiency of environmental reviews for the public.

The highly customizable, off-the-shelf web application framework from NatureServe has been implemented in 14 states. NH DNCR and NH F&G Nongame Program are ensured of ongoing system improvements, support and secure hosting and the public will have a modern tool, capable of producing the appropriate documentation for the NHDES permit applications.

Total project costs are budgeted at \$236,000. A budget breakdown is provided in Appendix B of the Memorandum of Understanding.

In the event federal funds become no longer available, general funds will not be requested to support this program. This agreement has been approved by the Office of the Attorney General as to form, execution, and content.

We respectfully request your approval of this item.



Robert R. Scott, Commissioner

State of New Hampshire

Interagency Memorandum of Understanding

(For use between an executive branch agency and another agency or branch of government of the State of New Hampshire)

Whereas, the NH Department of Environmental Services (NHDES) is a duly constituted agency or branch of government of the State of New Hampshire;

Whereas, the NH Department of Natural and Cultural Resources (NH DNCR) is a duly constituted agency or branch of government of the State of New Hampshire;

Whereas, pursuant to RSA 212-A:9, III and RSA 217-A:7 NHDES, consistent with its authorities and responsibilities, shall:

take such action as is reasonable and prudent to ensure that actions authorized, funded, or carried out do not appreciably jeopardize the continued existence of threatened and endangered species and to the extent possible not jeopardize the continued existence of any protected plant species or exemplary natural community.

Whereas, NHDES desires to:

increase the efficiency of environmental review determinations, promote early project planning to avoid and minimize environmental impacts and reduce cumulative impacts on regulated resources.

Whereas, pursuant to the Endangered Species Conservation Act NHDNCR is responsible for:

tracking threatened, endangered and protected plant species under the New Hampshire Native Plant Protection Act and coordination with the Nongame & Endangered Wildlife Program.

Whereas, NHDNCR desires to:

improve efficacy and effectiveness of information available online and allow applicants to submit projects electronically, replacing a cumbersome process that often requires paper submissions.

NOW, THEREFORE, the parties enter into this Memorandum of Understanding to their mutual benefit, the benefit of the State and in furtherance of constitutional or statutory authority and objectives.

1. The NH Department of Environmental Services agrees to:

- A. Pay *NH Department of Natural and Cultural Resources* the amount of \$ 236,000 for the services described in the attached MOU Exhibit A, which is hereby incorporated

by reference.

Payment shall be provided from:

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- B. Perform the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

2. The NH Department of Natural & Cultural Resources agrees to:

- A. Pay *AGENCY I* the amount of \$_____ for the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

Execute the following if Box 2. A is checked: Payment shall be provided from [*IDENTIFY FUND*]:

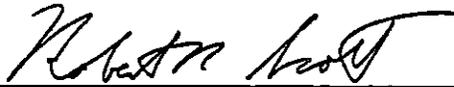
- B. Perform the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

3. The method of payment and payment amount for the above-referenced services, if any is required, is described in the attached MOU Exhibit B, such exhibit being hereby incorporated by reference.
4. All obligations hereunder are contingent upon the availability and continued appropriation of funds. The agencies shall not be required to transfer funds from any other account in the event that funds are reduced or unavailable.
5. The Memorandum of Understanding is effective until June 30, 2028.
6. This Memorandum of Understanding may be amended by an instrument in writing signed by both parties. Either party may terminate this agreement by providing written notice to the other party at least 30 days prior to termination.
7. The Parties agree that the obligations, agreements, and promises made under this Memorandum of Understanding are not intended to be legally binding on the Parties and are not legally enforceable.
8. Disputes arising under this Memorandum of Understanding which cannot be resolved between the agencies shall be referred to the New Hampshire Department of Justice for review and resolution.
9. This Agreement shall be construed in accordance with the laws of the State of New Hampshire.
10. The parties hereto do not intend to benefit any third parties and this Memorandum of

Understanding shall not be construed to confer any such benefit.

11. In the event any of the provisions of this Memorandum of Understanding are held to be contrary to any state or federal law, the remaining provisions of this Memorandum of Understanding will remain in full force and effect.
12. This Memorandum of Understanding, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Memorandum of Understanding and understandings between the parties, and supersedes all prior Memoranda of Understanding and understandings relating hereto.
13. Nothing herein shall be construed as a waiver of sovereign immunity, such immunity being hereby specifically preserved.

14. NH Department of Environmental Services



[Agency Head or Commissioner signature]

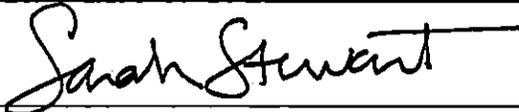
8/14/2024

Date

Robert R. Scott

[Agency Head or Commissioner name in print]

15. NH Department of Natural & Cultural Resources



[Agency Head or Commissioner signature]

8/14/2024

Date

Sarah L. Stewart, DNCR Commissioner

[Agency Head or Commissioner name in print]

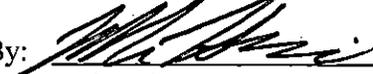
PLEASE NOTE

1. **MOU Exhibit A** (*MOU Terms*) and, if applicable, **MOU Exhibit B** (*Payment Terms*) must be attached to this form.
2. This form is intended only for use with Interagency Memoranda of Understanding ("MOUs"). Please refer to the MOU 1 checklist and instructions when executing this document. For Interagency MOUs, Department of Justice review and execution is only required if the MOU involves an expenditure of funds in an amount which is equal to or greater than the approval threshold established by the Governor and Executive Council

in Chapter MOP 161 of the Department of Administrative Services Manual of Procedures.

3. *If more than two agencies or branches are involved in the agreement, please include all information listed above for each agency or branch, identifying them as, for example, "Agency 3," "Agency 4," and so forth.*
4. *No changes may be made to the preprinted terms of this form without the approval of the Department of Justice.*
5. **The Department of Justice and Governor and Council approvals appearing below are only required if this MOU is submitted to the Governor and Council for approval.**

Approved by the New Hampshire Department of Justice for form, substance, and execution:

By:  On: 8/15/2024
[Name of Assistant Attorney General] Date

Approved by the Governor and Executive Council

By: _____ On: _____
Date

Interagency Memorandum of Understanding Exhibit A

For the purposes of the Memorandum of Understanding (MOU), the New Hampshire Department of Environmental Services (NHDES) and the New Hampshire Department of Natural & Cultural Resources (NH DNCR) agree to cooperate as follows:

I. NHDES agrees to:

1. Provide funding as described in Exhibit B.
2. Keep the existing Data Check Tool in operation until January 15, 2026, at which time it will be removed from service.

II. NH DNCR agrees to:

1. Implement the new Data Check Tool by January 15, 2026.
2. Develop the new Data Check Tool to replace the Data Check Tool and be accountable for its ongoing technological function, maintenance, and use.
3. Prioritize and answer questions from NatureServe, attend working sessions, develop needed documentation, and provide an up-to-date flow of information to ensure the satisfactory completion of the new Data Check Tool.
4. Design the new Data Check Tool to allow applicants to submit project information and the applicants to receive review letters from NH DNCR with assessments of potential impacts to protected species and exemplary natural communities through the Tool.
5. Complete the development of the payment processing portion of the new Data Check Tool by August 1, 2026.
6. Fund continued maintenance and operation of the new Data Check Tool starting upon its launch to the public.

III. Mutual agreements of the parties

It is further understood and agreed between NHDES and NH DNCR that:

1. This MOU may be modified in writing at any time by mutual consent of both parties and approval by the Governor and Council.
2. In the event that changes in either State or Federal laws or regulations occur which render the performance of portions of this MOU illegal, void, impractical or impossible, those responsibilities shall be removed from this MOU but such removal shall not affect the other provisions contained within the remainder of this MOU.

Interagency Memorandum of Understanding Exhibit B
Payment Terms

Funding to NH DNCR for this project is available via this MOU from federal grant funds awarded to NHDES as part of the State Efficiency Enhancement Program.

All applicable requirements, regulations, provisions, terms, and conditions of this grant award will be adopted in full force and effect for the purpose of the work performed under this MOU in any subsequent agreement between the parties.

NH DNCR will review supporting documentation and will pay invoices and will pay NatureServe for the costs it incurs.

In accordance with the project workplan approved by NHDES and NH DNCR, the following funding is made available to NH DNCR through September 1, 2026:

Milestones:

New Data Check Tool	Total
1. Develop and Deploy Development Site	
2. Configure Project Review Tool	
3. Environmental Review Report and Review Workflow	\$197,000
4. Production Launch	
5. Bank of America Online Payment Module	\$ 39,000
Total	\$236,000

INVOICING

NH DNCR will submit quarterly invoices to NHDES for project costs up to the total amount.