



Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



William Cass, P.E.
Assistant Commissioner

91

Bureau of Environment
May 23, 2019

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 2020 and FY 2021, 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, 2021.

Funding for this request is contingent upon the availability and continued appropriation of funds in FY 2020 and FY 2021.

EXPLANATION

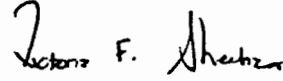
Pursuant to RSA 217-A:7, "*All state agencies, consistent with their authority and responsibilities, shall assist and cooperate with the [DNCR] commissioner to carry out the purpose of this chapter. To the extent possible actions funded or carried out by state agencies shall not jeopardize the continued 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 2019 an informational item will be provided identifying the NHB payments made during FY 2019 and all future years covered under this memorandum.

Your approval of this resolution is respectfully requested.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria F. Sheehan". The signature is written in a cursive style with a large initial "V".

Victoria F. Sheehan
Commissioner

VFS/ktn
Attachments



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

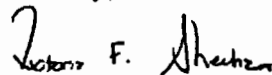
State FY	# of 217-A Project Payments to DNCR	Total Project Payments to DNCR	Data Sharing Agreement Fee	Total
2019 (YTD)	19	\$475.00	\$0.00	\$475.00
2018	69	\$1,725.00	\$532.00	\$2,257.00
2017	54	\$1,350.00	\$528.00	\$1,878.00
Total	142	\$3,550.00	\$1,060.00	\$4,610.00

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

RSA 217-A Payments to DNCR - SFY 2017

Project Name	State Number	Payment Sent	Payment	SFY	Notes
Epping	29608	6/26/2017	\$25.00	2017	217-A
Cornish	40296	6/14/2017	\$25.00	2017	217-A
Lancaster-Shelburne	41204	6/13/2017	\$25.00	2017	217-A
Hampton-Portsmouth	41215	6/9/2017	\$25.00	2017	217-A
Statewide	41214	5/26/2017	\$25.00	2017	217-A
Statewide	40868	5/18/2017	\$25.00	2017	217-A
Pinkham's Grant	41325	4/25/2017	\$25.00	2017	217-A
Misc.	1832J	4/19/2017	\$25.00	2017	217-A
Statewide	29709	4/14/2017	\$25.00	2017	217-A
N/A	N/A	3/29/2017	\$25.00	2017	217-A
Hampton Falls-Hampton	13408B	3/27/2017	\$25.00	2017	217-A
Bedford	13953	3/23/2017	\$25.00	2017	217-A
Loudon	41292	3/20/2017	\$25.00	2017	217-A
N/A	N/A	3/9/2017	\$25.00	2017	217-A
N/A	N/A	3/6/2017	\$25.00	2017	217-A
Lincoln-Franconia	41052	3/6/2017	\$25.00	2017	217-A
Farmington	16146	2/28/2017	\$25.00	2017	217-A
Hart's Location-Carroll	26162	2/24/2017	\$25.00	2017	217-A
Canterbury-Northfield	41057	2/15/2017	\$25.00	2017	217-A
N/A	N/A	2/7/2017	\$25.00	2017	217-A
Statewide	41011	2/2/2017	\$25.00	2017	217-A
Misc.	1832H	2/1/2017	\$25.00	2017	217-A
Lebanon	15880	1/17/2017	\$25.00	2017	217-A
Misc.	1832G	1/16/2017	\$25.00	2017	217-A
N/A	N/A	12/29/2016	\$25.00	2017	217-A
Pelham	29338	12/20/2016	\$25.00	2017	217-A
Manchester-Auburn	40763	12/14/2016	\$25.00	2017	217-A
Statewide	40863	12/12/2016	\$25.00	2017	217-A
Bow-Hopkinton	40766	12/9/2016	\$25.00	2017	217-A
Statewide	27287	11/30/2016	\$25.00	2017	217-A
Enfield	12967B	11/29/2016	\$25.00	2017	217-A
N/A	N/A	11/15/2016	\$25.00	2017	217-A
N/A	N/A	11/4/2016	\$25.00	2017	217-A
N/A	N/A	11/3/2016	\$50.00	2017	217-A, 2 reviews
Nashua-Merrimack	40771	11/3/2016	\$25.00	2017	217-A
Seabrook-North Hampton	40770	11/2/2016	\$25.00	2017	217-A
Piermont-Bradford	29489	10/25/2016	\$25.00	2017	217-A
Statewide	40825	10/18/2016	\$25.00	2017	217-A
N/A	N/A	10/14/2016	\$75.00	2017	217-A, 3 reviews
N/A	N/A	10/10/2016	\$25.00	2017	217-A
Statewide	40871	10/6/2016	\$75.00	2017	217-A, 3 reviews
Grantham-Enfield	40944	10/4/2016	\$25.00	2017	217-A
Durham-Newmarket	13080	9/28/2016	\$25.00	2017	217-A
Northwood	24943	9/16/2016	\$25.00	2017	217-A
Statewide	23790F	9/13/2016	\$25.00	2017	217-A
District 3	41134	8/11/2016	\$25.00	2017	217-A
Statewide	40604	7/14/2016	\$25.00	2017	217-A
Ossipee	13910	7/12/2016	\$25.00	2017	217-A
Statewide	40802	7/7/2016	\$25.00	2017	217-A
Default Environment	10883	7/1/2016	\$528.00	2017	DSA

Total: \$1,878.00

RSA 217-A Payments to DNCR - SFY 2018

Project Name	State Number	Payment Sent	Payment	SFY	Notes
Statewide	41805	7/3/2018	\$25.00	2018	217-A
District 5	M514	6/19/2018	\$25.00	2018	217-A
District 5	M515	6/19/2018	\$25.00	2018	217-A
District 5	M516	6/19/2018	\$25.00	2018	217-A
Derry	24861	5/23/2018	\$25.00	2018	217-A
Sanbomton-Meredith	41673	5/14/2018	\$25.00	2018	217-A
Statewide	41805	5/2/2018	\$25.00	2018	217-A
Carroll-Jefferson-Whitefield	41781	5/1/2018	\$25.00	2018	217-A
District 5	M505	4/27/2018	\$25.00	2018	217-A
Ellsworth	40874	4/25/2018	\$25.00	2018	217-A
Statewide	41805	4/17/2018	\$25.00	2018	217-A
Statewide	41614	4/10/2018	\$25.00	2018	217-A
Statewide	41604	4/4/2018	\$25.00	2018	217-A
Brentwood	41892	3/30/2018	\$25.00	2018	217-A
Statewide	41612	3/27/2018	\$25.00	2018	217-A
Statewide	41783	3/8/2018	\$25.00	2018	217-A
Carroll-Jefferson-Whitefield	41781	3/6/2018	\$25.00	2018	217-A
Warren	40512	3/1/2018	\$25.00	2018	217-A
Hampton	40603	2/23/2018	\$25.00	2018	217-A
Hopkinton	41303	2/22/2018	\$25.00	2018	217-A
Dixville-Colebrook	40518	2/14/2018	\$25.00	2018	217-A
Hopkinton Warner	11216	2/13/2018	\$25.00	2018	217-A
Orford	41757	2/12/2018	\$25.00	2018	217-A
Merrimack-Manch.-Hooks	41097	1/29/2018	\$25.00	2018	217-A
Bartlett	41439	1/29/2018	\$25.00	2018	217-A
Rumney	41759	1/29/2018	\$25.00	2018	217-A
Antrim	41760	1/29/2018	\$25.00	2018	217-A
Epsom	41761	1/29/2018	\$25.00	2018	217-A
District 1 Resurfacing	16164G	1/26/2018	\$25.00	2018	217-A
Amherst	10136C	1/17/2018	\$25.00	2018	217-A
Hampton-North Hampton	41098	1/10/2018	\$25.00	2018	217-A
Ossipee	14749	12/29/2017	\$25.00	2018	217-A
District 1 Resurfacing	16164G	12/29/2017	\$25.00	2018	217-A
Allenstown	40362	12/29/2017	\$25.00	2018	217-A
Roxbury-Sullivan	10439	12/28/2017	\$25.00	2018	217-A
Statewide	41732	12/13/2017	\$25.00	2018	217-A
Statewide	41732	12/6/2017	\$25.00	2018	217-A
Statewide	41733	12/6/2017	\$25.00	2018	217-A
Statewide	40825	11/16/2017	\$25.00	2018	217-A
Swanzey	40485	11/15/2017	\$25.00	2018	217-A
District 1 Resurfacing	16161G	11/7/2017	\$25.00	2018	217-A
Hopkinton-Warner	41216	11/3/2017	\$25.00	2018	217-A
District 1 Resurfacing	16161G	11/2/2017	\$75.00	2018	217-A, 3 reviews
District 1 Resurfacing	16161G	10/20/2017	\$25.00	2018	217-A
Statewide	41652	10/20/2017	\$25.00	2018	217-A
Statewide	41527	10/12/2017	\$25.00	2018	217-A
Statewide	41279	10/6/2017	\$25.00	2018	217-A
Cornish	40296	9/29/2017	\$25.00	2018	217-A
Statewide	41611	9/29/2017	\$25.00	2018	217-A
District 1 Resurfacing	16161G	9/21/2017	\$50.00	2018	217-A, 2 reviews
Merrimack-Manch.-Hooks	41097	9/20/2017	\$25.00	2018	217-A
Hampton-North Hampton	41098	9/20/2017	\$25.00	2018	217-A
Bennington	29486	9/12/2017	\$25.00	2018	217-A
District 1 Resurfacing	16161G	9/7/2017	\$75.00	2018	217-A, 3 reviews
Statewide	41535	8/10/2017	\$25.00	2018	217-A
Statewide	41536	8/10/2017	\$25.00	2018	217-A
Statewide	41294	8/7/2017	\$25.00	2018	217-A
Statewide	41295	8/7/2017	\$25.00	2018	217-A
Lancaster-Shelburne	41204	8/1/2017	\$25.00	2018	217-A
Statewide	41535	7/26/2017	\$25.00	2018	217-A
Statewide	41536	7/26/2017	\$50.00	2018	217-A, 2 reviews
Concord-Pembroke	41267	7/19/2017	\$25.00	2018	217-A
Portsmouth	13455	7/5/2017	\$25.00	2018	217-A
Default Environment	10883	6/26/2017	\$532.00	2018	DSA

Total: \$2,257.00

RSA 217-A Payments to DNCR - SFY 2019 (YTD)

Project Name	State Number	Payment Sent	Payment	SFY	Notes
Litchfield	29733	8/20/2018	\$75.00	2019	217-A, 3 reviews
Rail & Transit	41624A	8/22/2018	\$25.00	2019	217-A
Bartlett	41439	8/22/2018	\$25.00	2019	217-A
Statewide	28134	9/6/2018	\$25.00	2019	217-A
Gilford	42249	9/13/2018	\$25.00	2019	217-A
Lebanon	15717	9/18/2018	\$25.00	2019	217-A
Campton-Thornton	41903	9/26/2018	\$25.00	2019	217-A
Statewide	28139	9/28/2018	\$25.00	2019	217-A
Lyme-Thetford	14460	10/5/2018	\$25.00	2019	217-A
New Hampton-Ashland	41674	10/19/2018	\$25.00	2019	217-A
Barrington	41660	10/26/2018	\$25.00	2019	217-A
Ossipee	10431	11/5/2018	\$25.00	2019	217-A
Bow	42300	11/20/2018	\$25.00	2019	217-A
Bennington	29486	11/20/2018	\$25.00	2019	217-A
Statewide	41327	11/21/2018	\$25.00	2019	217-A
District 5	16165H	12/6/2018	\$25.00	2019	217-A
District 6	16166H	12/6/2018	\$25.00	2019	217-A

Total: \$475.00

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:

- 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
- 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
- 3) Animal species: a shapefile including precise mapped location; element name and listing status; occurrence mapping precision and year last observed
- 4) Sensitive plant or animal species will only be identified to taxonomic group.

Only projects that meet the following criteria can be reviewed using the NHB-provided GIS Screening Layer:

- 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

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.

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:	<p>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.</p> <p>nhb_rep_notify_Oct2018_PEC_Revised shows NHB data records.</p> <p>nhb_rep_notify_Oct2018_A_Revised shows NHF&G records</p> <p>NLEB_1320.shp - roads within 0.25 miles of a NLEB hibernacula / roost tree.</p> <p>NLEB_2640.shp - roads within 0.5 miles of a NLEB hibernacula / roost tree.</p>
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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) NHHNB 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. NHHNB may apply a discount to non-profit and federal agency requests.
- c) Access to NHHNB 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 NHHNB 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 NHHNB 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 NHHNB 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 NHHNB databases, the data in the NHHNB databases are the correct data.
- f) Accurately interpreting NHHNB data requires a good understanding of Natural Heritage protocols. Users must read the metadata provided. Any questions should be directed to staff at NHHNB (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 NHHNB, and may result in the denial of all future data release requests by the recipient.**

Questions regarding NHHNB 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 SHEDDEN

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