

MEMORANDUM OF AGREEMENT
BETWEEN
THE NORTH CAROLINA DEPARTMENT OF NATURAL AND CULTURAL
RESOURCES, NATURAL HERITAGE PROGRAM
AND
THE NORTH CAROLINA BIODIVERSITY PROJECT
CONCERNING DATA SHARING

This Memorandum of Agreement Concerning Data Sharing (herein after, the "Agreement") is made effective on the date of the last signature (the Effective Date") by and between The **North Carolina Biodiversity Project** (the "NCBP"), and the **North Carolina Department of Natural and Cultural Resources** (the "Department") on behalf of the **Natural Heritage Program** ("NHP"). NCBP, the Department and NHP may collectively be referred to herein as the "Parties."

WITNESSETH:

WHEREAS, the Department is an agency of the State of North Carolina created under N.C.G.S. §143B-49; the NHP was created pursuant to legislative authority and is a division of the Department, pursuant to the provisions of (N.C.G.S. §143B-135.250 through §1438-135.272); and

WHEREAS, important components of the mission of NHP are to provide assistance in the selection and nomination for registration and dedication of natural areas and nature preserves, and to develop a classification, inventory, and database of natural heritage resources; and

WHEREAS, accurate and comprehensive information on the presence, distribution, habitat and life histories of all taxa in North Carolina, and the opportunity for the public to participate in the collection of species data, contribute significantly to NHP's ability to fulfill its mission; and

WHEREAS, NCBP is a private, nonprofit unincorporated association of taxonomic experts, conservation biologists and other knowledgeable scientists whose mission is to promote public interest in the State's native species and ecosystems and in their conservation; and

WHEREAS, NCBP maintains a series of interactive websites that collect and manage data on North Carolina's biodiversity, with special emphasis on taxonomic groups that usually do not have much public visibility or appreciation, that can mutually benefit the Parties and also serve as a public educational and scientific resource of statewide significance (the "NCBP Websites"); and

WHEREAS, the Parties agree to voluntarily share information about species occurring in North Carolina to contribute to each Parties' websites and databases to catalog and describe the biodiversity of North Carolina.

NOW THEREFORE, the Parties hereto, in consideration of the mutual agreements and promises contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, do hereby agree as follows:

1. Within the constraints of applicable State and federal regulations regarding public records, confidential information, and the like, the Parties will share with each other species records, species accounts, and other species habitat information in order to further develop a more accurate accounting of native species and to facilitate the conservation of those species and the surrounding ecosystem. Furthermore, as time and workload permit, the Parties will contribute their expertise to evaluate and verify records submitted by third-party scientists, Department employees and the general public to ensure the accuracy, integrity and reliability of database records.
2. Site-specific locational information shared with NCBP by NHP under this agreement shall not be provided to third parties, published, or otherwise distributed in any way without written permission from NHP, except sharing information on a county-level occurrence basis is permitted. If individuals outside of the NCBP organization request data on a more specific level than permitted herein, NCBP will refer them to appropriate NHP staff.
3. Both Parties agree to comply with all applicable federal, State, and local statutes, regulations, rules, and policies, including, but not limited to, all information technology security policies and protocols as dictated by the Department's Office of Information Technology or the NC Department of Information Technology, in the fulfillment of their respective obligations under this Agreement.
4. The Parties acknowledge that NHP websites and the data associated therewith may be considered public records under State law and may be released to the general public following State of North Carolina standard protocols. Notwithstanding the foregoing, U.S. copyright and intellectual property law may apply to the NCBP Websites and said data, species accounts, and other records and information provided by NCBP contained within the Websites. Unless otherwise noted, the authors of the NCBP Websites hold all rights to the NCBP Website data and text, and the photographers hold the rights to the images that they submit (under the agreements spelled out in the NCBP Terms of Use). This Agreement shall not be interpreted and is not intended to make NCBP's records, other than as noted herein, subject to the State's Public Records Act or the State's Inspection of Public Records Act.
5. Use of the either party's intellectual property content shall be with the owning party's consent and shall not be construed as a conveyance or surrender of copyright, trademark, or any other right, based in intellectual property or otherwise, that is or may be vested in ownership of the intellectual property. Publications, re-print or any other uses of intellectual property must be in compliance with any applicable usage manuals, if provided.
6. There will be no exchange of funds for data or work performed on the Websites without further written agreement.

7. The Parties agree to coordinate closely and to meet as needed to discuss matters of mutual concern affecting the obligations and activities outlined herein.
8. Each party agrees that it will be responsible for any and all risk of damages, loss, or injuries, including death, to persons and/or property attributable to the acts or omissions of itself and its officers, employees, and agents acting within the scope of their employment or authority, to the extent provided by law. Each party agrees that it will not be responsible for the acts or omissions of the other party, and its officers, employees, and agents, and the results thereof. Nothing in this Agreement shall be construed as an indemnification by one party of the other for liabilities to third persons for damages, loss, or injuries, including death, to persons and/or property arising out of the performance of this Agreement.
9. This Agreement shall remain in effect from the Effective Date, until terminated in accordance with Paragraph 10.
10. Either NHP or NCBP shall have the right to terminate this Agreement, with or without cause, upon ninety (90) days written notice to the other party or at any time, by mutual written agreement. If either party fails to observe any of the terms and conditions of this Agreement, the other party may give the defaulting party written notice to cure such default. The defaulting party shall have thirty (30) days after receipt of such written notice to cure any such default or if the cure requires a period longer than thirty (30) days, the defaulting party shall notify the other party of its need for a cure period longer than thirty (30) days, commence the cure within the initial thirty (30) day period, and continue diligently thereafter to complete compliance in a reasonable period of time. The filing of a petition in bankruptcy or insolvency by or against NCBP or the loss of 501(c)(3) tax-exempt status, if applicable, shall immediately terminate this Agreement at the option of NHP. NHP may also terminate this Agreement at any time if it can be shown that NCBP has knowingly engaged in fraud, embezzlement, or corrupt practices in its management or operation of any of the responsibilities outlined in this Agreement. Upon failure of a party to abide by the foregoing requirements, the non-defaulting party may terminate this Agreement for default without any legal process whatsoever by giving thirty (30) days written notice of termination, effective at the end of the thirty (30) day period.
11. The Parties are not, and nothing in this Agreement may be construed to constitute them as, partners, joint venturers, agents, representatives or employees of the other, nor entitles them to the benefits therefrom, including but not limited to, compensation or associated benefits of employment. Neither party has any responsibility or liability for the actions of the other party except as specifically provided in this Agreement. Neither party has any right or authority to bind or obligate the other party in any manner or make any representation or warranty on behalf of the other party.
12. To the extent required by law, the State Auditor and the Department's Internal Auditors shall have access to persons and records as a result of all agreements, contracts or grants entered into by State Agencies or political subdivisions in accordance with N.C.G.S. § 147-64.7.
13. This Agreement shall not be amended orally or by performance. This Agreement may only

be amended by mutual written agreement signed by the Parties.

14. A failure of either party to insist upon or enforce any term or provision or to exercise any right, option or remedy of this Agreement, or to require at any time performance of any provision thereof, shall not be construed as waiver of any such term or provision. No waiver by either party of any term or provision hereof shall be binding unless made in writing and signed by both Parties.
15. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
16. This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The Parties agree that the proper venue of this Agreement, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement of this Agreement shall be determined. The Parties agree and submit, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina.
17. This Agreement, any exhibits and attachments affixed hereto, and any documents, leases or agreements specifically incorporated by reference represent the entire agreement between the Parties as to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained in this Agreement, and this Agreement shall supersede all previous oral or written communications, representations, or agreements between the Parties as to the subject matter hereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date of the last signature written below.

By: Stephen V. Hall
NORTH CAROLINA BIODIVERSITY PROJECT

Date 12/18/18

By: Misty Buchanan
NATURAL HERITAGE PROGRAM

Date 1/4/2019

By: S. Reid Voth
NORTH CAROLINA DEPARTMENT OF NATURAL AND CULTURAL RESOURCES

Date 1/9/19