

MEMORANDUM

TO: Her Excellency, Governor Kelly A. Ayotte

FROM: New Hampshire Department of Justice
New Hampshire Department of Administrative Services, Division of Personnel

DATE: April 23, 2026

RE: Review of Interaction between DNCR, ICE, and ACLU

This document is subject to attorney-client, deliberative process, and executive privileges. Accordingly, it is EXEMPT FROM RELEASE TO THE PUBLIC unless these privileges are waived.

This memorandum is in response to your request that the N.H. Department of Justice and the Division of Personnel at the N.H. Department of Administrative Services review the interactions between New Hampshire's Department of Natural and Cultural Resources' (DNCR) Division of Historical Resources (DHR), U.S. Immigration and Customs Enforcement (ICE), and the New Hampshire chapter of the American Civil Liberties Union (ACLU) in January and February 2026. It presents the factual findings and conclusions of our joint review and concludes with recommendations for best practices DNCR should implement going forward.

I. Scope of Review

At a special meeting of the Governor and Executive Council on February 4, 2026, former DNCR Commissioner Sarah Stewart and Director of DNCR's Division of Historical Resources Benjamin Wilson answered several questions about a press release from the ACLU the previous day. The ACLU press release indicated that ICE had contacted DNCR staff and that DNCR staff had responded to a RSA 91-A request from the ACLU concerning that contact. Former Commissioner Stewart stated that she was unaware of both ICE's contact and the 91-A request until the day prior, and that you had not been made aware of either. Director Wilson provided comments on when he became aware of ICE's contact with DNCR and the ACLU's 91-A request, and his and his Division's role in responding to both. Both former Commissioner Stewart and Director Wilson acknowledged shortcomings in their processes and responses. After questioning, you asked "the Attorney General to review the facts and circumstances of . . . [these] communications" in conjunction with the Division of Personnel "so that we know what happened here, so that we understand the lapse, and so that it doesn't happen again."

To conduct this review, we interviewed 12 people: all nine DHR staff members (identified further herein), plus former Commissioner Stewart, DNCR's Public Information Officer Shelly Angers, and DNCR's General Counsel Nathan Kenison-Marvin. We also reviewed over 10,000 documents (including emails, text and chat messages, meeting notes, news articles, and a wide variety of other documents), State-issued cell phones belonging to former Commissioner Stewart and Director Wilson, and a State-issued laptop belonging to former Commissioner Stewart. Finally, we reviewed publicly available reporting and contacted other State Historic Preservation Offices across the country.

II. Executive Summary

We found no evidence that former Commissioner Stewart was aware of either the submission from ICE or the 91-A request from the ACLU until February 3, 2026, after the publication of a press release by the ACLU. Director Wilson, however, was aware of ICE's submission as multiple staff members raised it to his Deputy, who raised it to him. Director Wilson nonetheless failed to elevate it to former Commissioner Stewart, despite an awareness of media coverage regarding ICE and reporting that ICE was looking to open a facility in Merrimack. Director Wilson was also aware of the ACLU's 91-A request to his Division. He similarly failed to elevate that request to DNCR's internal general counsel, external counsel at DOJ, or former Commissioner Stewart.

While there is no indication that these failures were due to nefarious intent on Director Wilson's part, the failure to elevate occurred despite efforts by former Commissioner Stewart and others at DNCR to regularly seek information from Director-level leaders on sensitive or otherwise important issues. Director Wilson's response to the 91-A request was also deficient in several respects. Director Wilson acknowledged and took responsibility for his failure to make former Commissioner Stewart aware of ICE's and the ACLU's interactions with his office.

We uncovered no evidence to substantiate that any classified staff within DNCR's Division of Historical Resources provided the ACLU with information or attempted to improperly conceal information from superiors. Accordingly, we do not recommend opening a personnel investigation or taking any disciplinary measures under the rules governing personnel administration. We do, however, include several recommendations below to increase awareness within DHR and DNCR more broadly of the need to elevate sensitive matters to the DNCR Commissioner and the Governor's Office and better deploy the agency's general counsel.

III. Factual Findings

a. Background

Because we ultimately conclude that aspects of DNCR's culture more broadly enabled the lapses in communication at issue in this review, we provide significant background on DNCR, DNCR's Division of Historical Resources, and agency practices on several fronts. We then provide a brief background of the ICE proposal to build a processing facility in New Hampshire.

1. DNCR

The General Court formed DNCR on July 1, 2017, and it contains five divisions: DHR, the Division of Forests and Lands, the Division of Parks and Recreation, the State Library, and the State Council on the Arts. DHR and other divisions were formerly housed under the Department of Resources and Economic Development (DRED). The Legislature created DNCR to consolidate State efforts dedicated to promoting and protecting natural, recreational and

cultural resources. Other former DRED divisions devoted to economic development were relocated under the Department of Business and Economic Affairs.

Then-Governor Christopher T. Sununu appointed former Commissioner Stewart to lead DNCR in 2018. Governor Sununu reappointed her to a second four-year term in 2022. In November 2025, she announced her intention to not seek a third term and to leave her position at the expiration of her term in June 2026. DNCR does not have a Deputy Commissioner.

91-A requests to DNCR were previously handled by a program specialist, Torene Tango-Lowy. She received and responded to all 91-A requests on behalf of the agency. Ms. Tango-Lowy retired in June 2025 and was not replaced. Former Commissioner Stewart described that, prior to her retirement, there was an explicit directive to send all 91-A requests to Ms. Tango-Lowy, and everyone in the agency knew to follow it.

In July 2025, DNCR hired its first general counsel, Nathan Kenison-Marvin. One of Attorney Kenison-Marvin's primary job responsibilities is to oversee the coordinating, documenting, and formulating of DNCR's responses to 91-A requests. This responsibility was specifically incorporated into his role because of the retirement of DNCR's former 91-A processor. Attorney Kenison-Marvin immediately noticed several issues with DNCR's responses to 91-A requests and asked to hold a training, which took place in August 2025. As Attorney Kenison-Marvin came on board, however, former Commissioner Stewart did not issue an agency-wide directive to route all 91-A requests through Attorney Kenison-Marvin as she had with Ms. Tango-Lowy. Nor did she require either her own review, or review by a designee, prior to issuance of responses to 91-A requests. Former Commissioner Stewart stated that she thought that with all of the communication going on, from leadership and staff meetings to "going around the horn" on various issues to informal banter, everyone understood to bring formal 91-A requests up to "someone."

Although the first requirement in Attorney Kenison-Marvin's supplemental job description is to administer and coordinate all legal activities impacting DNCR, and the rest of that job description signals a clear intent for Attorney Kenison-Marvin to work across all of DNCR, several employees reported that he was not permitted to do so. Rather, multiple people reported that the agency required Attorney Kenison-Marvin to spend most of his time performing work for the Division of Parks and Recreation (Parks). He was not permitted to be readily available to all of DNCR for legal questions and projects. Former Commissioner Stewart endorsed this approach, and in the months after his arrival, developed a system where anyone in the agency outside of Parks who wanted to work with Attorney Kenison-Marvin had to first go through former Commissioner Stewart to determine if Attorney Kenison-Marvin should be permitted to assist. As a result, Director Wilson and others within DHR reported feeling like they were not supposed to "bother" Attorney Kenison-Marvin and did not feel like he was a resource they could consult as needed. Thus, when DHR needed a new mechanism for responding to 91-A requests after Ms. Tango-Lowy's retirement, Director Wilson took on that responsibility and advised all staff in DHR to send all 91-As directly to him.

All State agencies, including DNCR, submit biweekly reports to your office. Those reports document an agency's activities for a two-week period and cover seven categories,

including “federal government interactions” and “other items of importance.” Your office provided a sample report template to all agency heads, including former Commissioner Stewart, on February 12, 2025. The same day, former Commissioner Stewart forwarded that template to her Division heads, including Director Wilson, and asked them to get her responsive information and to share the template “with those in your orbit who participate in this process.”

Director Wilson did not share this message or the template for your biweekly report with his staff in DHR. When asked about this, Director Wilson replied that he did not take the biweekly reports very seriously. He stated that years ago, those reports used to be more rigorous and collection of information was done agency-wide by an office manager. When that person left the agency, information collection for the biweekly reports became more sporadic. Additionally, Director Wilson felt that the biweekly reports became focused solely on good news or ‘fluff’ items, rather than documenting the agency’s actual work. Most DHR staff echoed these sentiments and said they got the impression that over the last several years, no one was interested in the reports of DHR’s work because the reports were only supposed to contain ‘feel good’ items. As such, by 2025 and into 2026, no one in DHR actively considered reporting anything to former Commissioner Stewart to include in the biweekly report.

Former Commissioner Stewart did not fully agree with the above assessment regarding the biweekly reports. She stated she regularly sought important information from her Division heads to include in the report, in regular leadership meetings and at other times. She believed she thought she sent these reports regularly via email to your office. Upon review of her email history, we were not able to confirm this. It appears former Commissioner Stewart sent biweekly reports to your office sporadically, usually approximately 4-6 weeks apart. She typically circulated the report to all DNCR employees first, then forwarded that message to members of your office. She published her final biweekly report on January 29, 2026, to all DNCR employees. But we were unable to confirm this report was sent to your office. Regardless, this final report did not contain any information that would have alerted your office to processing a request from ICE nor the 91-A request from the ACLU. Former Commissioner Stewart said that if she became aware of political or sensitive information, she would elevate it immediately to your office rather than wait until the submission of a biweekly report.

Former Commissioner Stewart also held regular leadership meetings with her Division heads and other agency leaders. However, Attorney Kenison-Marvin was not regularly invited. He was only invited to attend these meetings when there was a specific legal matter the group intended to discuss. At each meeting, the group would review any items to be discussed during the next Governor and Executive Council meeting, any relevant legislation or events, and discuss the work of their respective offices with the Commissioner. Former Commissioner Stewart expected regular attendance from the invitees or a justification as to why they could not attend. But if an invitee could not attend, there was not a formal requirement to send a representative in their place.

Director Wilson’s attendance at these leadership meetings was irregular. Former Commissioner Stewart estimated he attended perhaps 80% of the meetings, and rarely, if ever, sent his Deputy or anyone else if he could not attend. When he did attend, Director Wilson seldom had significant or substantive updates from DHR. Only one of these senior staff meetings

took place in 2026 before the publication of the ACLU's press release. The meeting took place on the morning of January 26; Director Wilson did not attend.

2. DHR

DHR serves as the State's Historic Preservation Office (SHPO) and carries out a wide range of functions related to the preservation of historical resources. DHR maintains the State Register of Historic Places and directs efforts to maintain New Hampshire listings on the National Register of Historic Places. It collects, organizes, and makes available survey information on New Hampshire's historic properties and processes nominations for historical highway markers. DHR also manages preservation easement and grant programs and coordinates archaeological survey research statewide. Finally, DHR completes compliance reviews for federal agencies seeking to develop projects in New Hampshire to determine the effects of any such projects on the State's historical resources. These reviews are known as "106 reviews," named after the section of federal law under which they are mandated. They review only whether any project proposed by a federal agency will have any effect on the State's above-ground or below-ground historical resources. Federal law requires each state to have a SHPO, and each SHPO is required to perform these reviews for every federally funded, permitted, or licensed project proposed in a state. DHR performs over 1,000 of these 106 reviews every year.

DHR has nine full-time staff members. Benjamin Wilson serves as Director of DHR and is the Governor-appointed State Historic Preservation Officer. He has worked for the State in historical resource management for 18 years. He reports directly to the DNCR Commissioner, and his current commission expires in October 2026. Nadine Miller is a classified employee who serves as Deputy State Historic Preservation Officer and reports directly to Director Wilson. The following employees in DHR report to Deputy Miller: Mark Doperalski, State Archaeologist; Tanya Krajcik, Deputy State Archaeologist and GIS Coordinator; Marika Labash, Review and Compliance Archaeologist; Brandee Loughlin, Preservation Planning and Development Coordinator; Megan Rupnik, National Register and State Survey Coordinator; Laura Black, Preservation Compliance Specialist and Easement Program Coordinator; and Liz Schneible, Program Specialist.

The majority of DHR's funding comes from the federal government. In the summer of 2025, uncertainty relating to the federal budget led to the likelihood of significant staff cuts within DHR, to the point that it prepared to layoff half of its staff. The night before this layoff was set to go into effect, DHR received funding and layoffs were avoided. Everyone involved described this experience as incredibly difficult, particularly with multiple colleagues' livelihoods at stake. Several DHR staff members further expressed that this experience made them wary of doing anything to provoke or upset the federal government to avoid the risk of losing funding.

DHR has previously been at the center of a public controversy. In May 2023, the City of Concord approved and erected a State historical highway marker describing the life of Elizabeth Gurley Flynn (Flynn), a Concord-born labor rights activist and later leader of the Communist Party in the United States. DHR's involvement with this highway marker was essentially ministerial. DHR did not create or edit the content of the sign; DHR staff simply confirmed that

the application was complete and historically supported. But significant public controversy arose days after Concord erected the Flynn historical marker. The Governor's Office was caught unaware and former Commissioner Stewart had to manage the unanticipated political backlash. Ultimately, the sign was removed. A lawsuit challenging the removal followed but was dismissed.

When asked about this controversy, Former Commissioner Stewart described feeling caught off-guard and having to quickly respond. Director Wilson similarly described feeling surprised by the backlash on DHR, especially since its role in the program was ministerial. Both described revising DHR policies relating to the marker program in the wake of this incident to ensure potentially sensitive markers were flagged and elevated early on.

3. ICE's Proposed Processing Facilities

Throughout 2025, the federal government's efforts to detain and deport undocumented immigrants increased exponentially nationwide, including in New Hampshire. These efforts included ICE seeking to build a processing facility for detainees in Merrimack. The Washington Post first reported on this potential facility on December 24, 2025. Significant local media coverage followed in the days and weeks thereafter. New Hampshire's state and federal executive and legislative leaders sought additional information from ICE, seemingly to no avail. Between December 24, 2025 and January 12, 2026, it appears that no New Hampshire agency had any information regarding the proposed processing facility.

The Washington Post reporting mentioned other states as potential sites for the development of ICE processing or detention facilities. These included Michigan, Minnesota, New York, Georgia, and several others. We spoke to the SHPOs in Michigan, Minnesota, and New York, all of which reported receiving 106 review requests from ICE for its construction of detention or processing facilities.

b. ICE's Submission of 106 Review Request to DHR

On the morning of Monday, January 12, 2026, an ICE consultant emailed Ms. Schneible, DHR's Program Specialist, stating that ICE "is proposing to purchase, occupy and rehabilitate a 43-acre warehouse property" in Merrimack "in support of ICE operations" and attaching a letter from ICE requesting a 106 review. This letter is dated Friday, January 9, 2026, but there is no evidence that it was sent on that date or received by anyone in DHR until January 12, 2026. Ms. Schneible is listed on DHR's website as the individual to contact with issues regarding initiating 106 reviews.

Ms. Schneible quickly forwarded the message to her supervisor, Deputy Miller, and stated: "Wanted to let you know that I just received this. As I would with any other emailed request I receive, I'm going to respond and tell them they have to submit through [DHR's online processing platform] EMMIT. If [you] think it should be handled differently, please let me know." Ms. Schneible also saw Ms. Loughlin around this time and asked her if she had seen ICE's request; Ms. Loughlin responded that she had.

When asked about her reasoning behind sending her message to Deputy Miller, Ms. Schneible offered several comments. She stated that she had a feeling that ICE's request could be significant, both because she was aware the ICE had been in the news and because of the federal funding that DHR receives. She also described how DHR strives to treat all 106 requests equally, and ICE's submission of a 106 review request via email was unusual because DHR had adopted an online platform called EMMIT+. All applicants for 106 reviews are required to use EMMIT+. She wanted to confirm with Deputy Miller that she should still have ICE submit its request through EMMIT+ rather than email, and to confirm whether it should otherwise be treated the same as other applicants or whether anything should be done differently. In her two years working at DHR, Ms. Schneible could not recall ever elevating a 106 review request to her supervisor before this incident. Ms. Schneible stated that she was never made aware of any policies or directives regarding elevating 106 reviews to a supervisor for any reason. She also noted that within DHR, the typical practice was for staff to elevate questions or issues to Deputy Miller, their direct supervisor. Staff then let Deputy Miller seek Director Wilson's input if needed; staff did not go directly to Director Wilson themselves.

In response to Ms. Schneible's email, Deputy Miller replied: "Yes, please ask them to submit through EMMIT+. Let me know if they have any concerns regarding that process." When asked about this response, Deputy Miller stated that she knew there were heightened public concerns relating to ICE, and that she considered elevating it to her supervisor, Director Wilson. She did not do so at that time. Deputy Miller, who has worked for DHR since 2007, was also unaware of any policies or directives regarding when staff should elevate a 106 review to her, or when she should elevate one to her supervisor, Director Wilson.

Ms. Schneible received Deputy Miller's response and directed ICE's consultant to resubmit the request through EMMIT+. The consultant did so and Ms. Schneible assigned the 106 review out to Ms. Loughlin (for the above-ground portion) and Ms. Kracjik (for the below-ground portion).

Several days later, Ms. Loughlin also spoke to Deputy Miller in person about her concerns with ICE's 106 review request. Ms. Loughlin had been assigned to do the above-ground portion of the 106 review. She was aware that Ms. Schneible had already made Deputy Miller aware of the 106 review, so she (Ms. Loughlin) did not consider elevating it immediately upon seeing her assignment. But when she encountered Deputy Miller in the office several days later, she talked to her about it in person.¹ Ms. Loughlin recalled that she spoke to Deputy Miller because ICE was a "hot topic" and seemed to be a priority for the federal administration. She told Deputy Miller that she wanted to make sure the review did not take too long because she did not want to draw the federal government's attention to New Hampshire. Ms. Loughlin recalled that Deputy Miller told her they treat all 106 reviews the same and to do her work as usual. Similarly to Ms. Schneible, Ms. Loughlin did not consider telling Director Wilson about ICE's

¹ Both Deputy Miller and Ms. Loughlin stated this conversation would have taken place at the next time they were both physically in the office, but they were unsure exactly which day. Both worked remotely certain days of the week pursuant to DNCR's policy at the time.

contact directly, because Director Wilson is generally not deeply involved in staff's "day-to-day" tasks, including the details of 106 reviews.²

At this point, Deputy Miller, having received two employee concerns about ICE's 106 request, decided to raise it with Director Wilson. She described going to his office and "casually" stating that DHR had received a 106 review request from ICE for a processing facility in Merrimack and that they were planning to treat it like they would any other 106 review. She stated that Director Wilson responded to the effect of, "sounds good." Deputy Miller could not recall exactly when this conversation took place. Ms. Loughlin, however, recalled touching base again with Deputy Miller at some point and Deputy Miller relayed that she had spoken to Director Wilson and he was on board with treating the request normally. As a result, Ms. Loughlin conducted her review as usual.

Director Wilson could not recall that this conversation with Deputy Miller occurred. At both the special Governor and Executive Council meeting and during his interview, he stated that the first he recalled learning about ICE's 106 review request was when the ACLU submitted its 91-A request later that January. He did state in his interview, however, that he had no reason to doubt Deputy Miller's and Ms. Loughlin's recollections that Deputy Miller had consulted him. We found no documentary evidence contradicting his statements that he did not have any role in the 106 review and was unaware of it at the time—or, at most, aware of it only via a casual in-person conversation with Deputy Miller.

DHR staff finalized their response to ICE's 106 review request in the days that followed. Ms. Loughlin and Ms. Krajcik completed their above-ground and below-ground reviews, respectively, with conclusions that no historic resources would be affected. Deputy Miller is the final reviewer and signatory on all 106 reviews that pass through DHR. She did her final review, which she estimates likely took about 15 minutes. These final reviews generally consist of a quick review of the documents and plans submitted with the request and the reviewers' findings. Seeing nothing concerning about the review itself, Deputy Miller approved it and on January 21, 2026, the EMMIT+ system sent an automatically generated letter to ICE's consultant indicating that no historic properties would be affected by the project.

No interviews or documentary evidence indicated that anyone within DHR, or within DNCR more broadly, had any contact with ICE or its consultant(s) aside from ICE's initial inquiry to Ms. Schneible, Ms. Schneible's response to submit through EMMIT+, and Deputy Miller's final, automatic approval letter.

² Ms. Krajcik, the below-ground archaeological reviewer for ICE's 106 review, did not raise any concerns to anyone regarding this review. For Ms. Krajcik, this was a quick assignment because the property had just had a comprehensive archaeological review when it was built in 2023, and there was little else for her to review. She stated it did not raise any concerns in her mind because prior to and during her review, she had no awareness of news reports describing ICE looking to open a New Hampshire facility. She was also unaware of any policies or directives on elevating or flagging 106 reviews to a supervisor for any reason.

c. ACLU's Right-to-Know Request to DHR³

On Monday, January 26, 2026, Gilles Bissonnette, the ACLU's Legal Director, emailed a 91-A request directly and solely to Ms. Schneible. The request sought "[a]ll records and communications concerning the planning/development, any Requests for Project Review (RPR), and/or any consultation process under Section 106 of the National Historic Preservation Act of 1966 and/or RSA 227-C:9 with respect to the property located at 50 Robert Milligan Parkway, Merrimack NH 03054." It further noted that "[t]his address is potentially a proposed [s]ite of an immigration detention facility (<https://www.bostonglobe.com/2026/01/19/metro/nh-merrimack-ice-detention-warehouse/>), and was developed in 2023 as a distribution/warehouse facility by the Trammell Crow Company and Diamond Realty Investments. See <https://www.nhbr.com/new-merrimack-distribution-center-on-target-for-end-of-year-completion/>."

Ms. Schneible was on leave that day; thus, no one at DNCR saw the ACLU's 91-A request until Tuesday, January 27, when Ms. Schneible returned. At 7:48 A.M. on January 27, Ms. Schneible forwarded the ACLU's message to Director Wilson and Deputy Miller, stating: "This is for the Homeland Security Project that came in earlier this month." Forwarding this 91-A request to her supervisor and Director Wilson was in keeping with DHR's practices for 91-A requests. As described above, this became the practice following the retirement of DNCR's program specialist who previously handled all of the agency's 91-A requests.

When asked, no one in DHR could definitively state that it was odd for Ms. Schneible to receive a 91-A request via an email addressed solely to her. Staff stated that DHR only received perhaps two 91-A requests per year, and that they came in in various ways. In Ms. Schneible's two years at DHR, she reported never previously receiving a 91-A request via email. Other DHR staff reported that 91-A requests were received via email, mailed letter, or in-person.

Approximately four hours after Ms. Schneible's message, Director Wilson responded to her and Deputy Miller asking Ms. Schneible to print out the 106 review packet (including ICE's submission and DHR's response) and stating he would "send [the ACLU] the receipt letter today."⁴ Deputy Miller stated that she believed Director Wilson also asked her in-person to gather anything in her possession responsive to the ACLU's request, including emails. Deputy Miller stated she would have saved any relevant emails as PDFs and emailed them to Director

³ New Hampshire was not the only target of outreach concerning potential ICE facilities by the ACLU. Throughout 2025 and into 2026, the national ACLU and its state affiliates engaged in "a series of lawsuits . . . seeking details about ICE's plans to expand detention capacity nationwide." *ACLU FOIA litigation reveals ICE actively considering opening six new immigration detention centers*, Jan. 29, 2026, available at <https://www.acluva.org/press-releases/aclu-foia-litigation-reveals-ice-actively-considering-opening-six-new-immigration-detention-centers/> (last visited Mar. 30, 2026). In Colorado, for example, ACLU documents received as the result of FOIA litigation revealed a possible expansion of an ICE detention facility; this was widely reported on the week before the ACLU of New Hampshire filed its 91-A request with DHR. Elizabeth Hernandez, *Protesters decry ICE's new immigration detention facility planned for northern Colorado*, THE DENVER POST, Jan. 21, 2026, available at <https://www.denverpost.com/2026/01/21/udson-correctional-facility-colorado-ice-detention/> (last visited Mar. 31, 2026).

⁴ Notably, Director Wilson did not respond to Ms. Schneible asking her what the "Homeland Security Project that came in earlier this month" referred to. This lends credence to Deputy Miller and Ms. Loughlin's recollections that Deputy Miller had consulted Director Wilson about the project before she completed the 106 review; thus, he did not need to inquire about which project Ms. Schneible was referencing.

Wilson; there was no such email from her to Director Wilson. Her recollection was that this was a very straightforward request and she believed everything was in EMMIT+. As a result, she thought there likely weren't any relevant emails.

Later that day, Director Wilson compiled a physical packet which included: a short cover letter he drafted; the ACLU's email and attached letter; Ms. Schneible's email forwarding the 91-A request to Director Wilson and Deputy Miller; the ICE consultant's email to Ms. Schneible with Ms. Schneible's response to resubmit via EMMIT+; and the EMMIT+ file for the project, including Deputy Miller's final letter. Director Wilson placed this packet in the mail before leaving work on the evening of January 27, the same day DHR had learned of the request.

When asked why he responded to the ACLU's 91-A request in less than a day, Director Wilson stated that it was his birthday and he was trying to clear off his desk and leave the office to make it to a family dinner celebration. He admitted that because of this motivation, he did not carefully analyze the 91-A request and that he thought it seemed very simple. He further admitted that his haste to process the 91-A request led to a deficient response. For example, although the request sought all documents and communications relating to any 106 review for the Merrimack property, Director Wilson did not include Ms. Schneible's first email to Deputy Miller, or Deputy Miller's response to Ms. Schneible to have ICE resubmit their request through EMMIT+. Director Wilson also failed to understand that the request sought all records and communications relating to any 106 review for the Merrimack property. DHR had previously conducted a 106 review for the property when the warehouse thereon was initially built in 2023. The ACLU's 91-A request letter specifically mentions this development. Still, Director Wilson failed to search for, or produce to the ACLU, anything related to the 106 review that took place in 2023.

We also asked Director Wilson about a separate question he answered six days before his response to the ACLU. On January 20, the N.H. Land and Community Heritage Investment Program (LCHIP) emailed Director Wilson seeking assistance on a 91-A request. The official at LCHIP was a friend of Director Wilson and was hoping he could share guidance. Director Wilson replied the following day with a detailed message outlining the basics of the 91-A process. He advised LCHIP that they need to first send a so-called 'receipt' letter, and they then have 30 days after that letter to send responsive materials. He stated LCHIP could request more time if needed to respond. He advised to "stick to exactly what the request is asking for and nothing else." He noted the breadth of the scope of 91-A, and advised LCHIP that they should "probably notify [their counsel] that you have received the request and that [counsel] will need to review the materials before you send it all out."

This guidance is remarkable in that just six days later, Director Wilson failed to follow virtually every aspect of his advice to LCHIP. He did not send a 'receipt' letter or take 30 days to locate all responsive records. He did not "stick to what the request was asking for," because he did not include anything relating to the 2023 106 review falling within the scope of the request. He did not locate all responsive records and communications or search for any other responsive materials. Finally, and most notably, he did not advise his internal or external agency counsel that he had received the request. Director Wilson admitted he failed to follow his own advice to LCHIP and should have done so.

We further asked Director Wilson about another subsequent inquiry from the federal government received at DHR on Monday, February 2, 2026. Late the Friday night before, an employee of the U.S. Customs and Border Protection, Office of Facilities and Asset Management (CBP) emailed Ms. Labash, DHR's Review and Compliance Archaeologist, a template email asking if CBP could "obtain an annual license/subscription/agreement to access state cultural resource databases" for purposes of "allow[ing CBP] to efficiently conduct background research and delineate the area of potential effects for various projects/federal undertakings."⁵ When she saw this message on the morning of February 2, Ms. Labash immediately forwarded the message to her supervisor, Deputy Miller, and stated "I believe this would be for you." Deputy Miller then forwarded the message to Ms. Krajcik, copying Director Wilson, and asked her to respond to CBP with information about how to access EMMIT+.

Before Ms. Krajcik could do so, however, Director Wilson intervened and responded to the group: "Please forward to Nate [DNCR's general counsel] before answering [CBP]. We may have to follow up with the Governor's Office." Director Wilson sent this response on Monday, February 2 at approximately 10:15 A.M., before anything relating to ICE became public the following morning. When asked why he told his staff to forward CBP's request to Attorney Kenison-Marvin and potentially involve the Governor's Office before responding, but did not do so for ICE's 106 review request or the ACLU's 91-A request, Director Wilson stated that his main concern was for DHR's EMMIT+ software, because he was not sure if they had the ability to grant full access to that program to anyone or if any information on it was proprietary or something similar. Since he thought Attorney Kenison-Marvin "handled" contracts, including the EMMIT+ software contract, Director Wilson wanted him to weigh in before responding. Director Wilson did not consider elevating CBP's inquiry on the basis of any political sensitivity at the time. He stated in retrospect, he should have elevated this on that basis.

d. Aftermath.

On February 3, 2026 at 9:30 A.M., the ACLU published a news release attaching the full packet Director Wilson had mailed them in response to their 91-A request. Your chief of staff quickly texted former Commissioner Stewart, asking if she was aware of anything related to the press release. She responded, "No." She spoke to your office later that day, and spoke further the next day together with Director Wilson at a 2:00 P.M. special meeting of the Governor and Executive Council.⁶ By that time, multiple news outlets had published articles relating to the information in the packet from Director Wilson, and both the public and State officials were expressing significant concern about what your administration knew or did not know relating to an ICE facility in New Hampshire. Former Commissioner Stewart resigned at your request on the morning of February 9. You subsequently appointed Deputy Commissioner of Environmental Services Adam Crepeau to serve as DNCR's interim Commissioner.

⁵ It appears this message was sent to all SHPOs nationwide.

⁶ See audio recording of February 4, 2026 special meeting, available at: <https://www.sos.nh.gov/administration/governor-executive-council/meetings>. The portion concerning this incident begins at 55:00.

IV. Opinions

- a. Director Wilson should have elevated ICE's submission of a 106 review request to former Commissioner Stewart.

With respect to ICE's submission of a 106 review request to DHR and DHR's subsequent response, we found no evidence warranting further investigation or disciplinary measures against any of DHR's classified employees. We further conclude that DHR's determination that no historical properties would be affected by ICE's proposed facility was strictly confined to its effect on historical resources, and had no effect on any other federal, state, or municipal approvals for the facility or anything to do with the nature of the facility itself. However, a lack of awareness of, and sensitivity to, important issues led to Director Wilson's⁷ incorrect decision not to elevate this specific 106 review request to the Commissioner prior to DHR issuing a response. We found nothing to substantiate that this failure was based on any nefarious intent on Director Wilson's part, but several facts support the conclusion that he should have elevated the request.

Federal law requires DHR to respond to all 106 review requests within 30 days. All of DHR's staff members confirmed this responsibility and noted DHR's desire to comply with this deadline. This was partially based on DHR staff's experiences in the office decades ago, when its responses to 106 requests routinely exceeded this timeframe. Since then, DHR staff have undertaken significant efforts to improve their response times and treat all requests expeditiously. They also strive to treat all federal agencies they process requests for equally. These efforts are understandable in light of DHR's apolitical role intended solely to protect historical resources in processing 106 requests. It is also understandable to a large extent that DHR staff did not routinely report 106 review requests on the biweekly report to you, since they receive dozens of 106 review requests per month from various federal agencies, virtually all of which are routine and inconsequential. As discussed above, DHR's other motivation to quickly process 106 review requests was to avoid drawing scrutiny from the federal government and risk any potentially negative consequences related to their funding.

When multiple staff members elevated their concerns with ICE's 106 request to Deputy Miller, she correctly decided to bring those concerns to Director Wilson. Deputy Miller should have brought them to him in more than a casual conversation, and should have done so in writing to memorialize the encounter. But she made the correct decision to elevate the issue to Director Wilson. When Deputy Miller flagged ICE's 106 review request to Director Wilson, he erred in not raising it to former Commissioner Stewart or Attorney Kenison-Marvin at any time before February 3. Despite admitting he was aware of the potential ICE facility being discussed in the news, and despite advising staff that CBP's late arriving request concerning access to EMMIT+ should go to Attorney Kenison-Marvin and/or your office before any response, he failed to apply that same reasoning to ICE's request. Deputy Miller also stated in her interview that she may well have raised the 106 review request to the Commissioner had she been Director, given its sensitivity.

⁷ As noted above in this Memorandum, Director Wilson is an *unclassified* employee.

This lack of awareness of sensitive issues is all the more serious because DHR and DNCR had dealt with a similarly fraught situation just a few years prior, with the proposed State highway marker relating to Elizabeth Gurley Flynn. As noted above, that incident originated within DHR when DHR staff performed administrative functions to process the marker application. Although DHR has no control over the content of proposed historical markers that communities submit to them, it received significant backlash and press attention after it processed the application for the Flynn marker. Former Commissioner Stewart described this experience as a lesson that routine or neutral DHR and DNCR functions can still cause significant controversy. Yet both former Commissioner Stewart and Director Wilson admitted the Flynn incident did not cause them to consider, or make, Division- or Department-wide process improvements concerning the identification of or communication about potentially sensitive issues. Rather, both of them described improving procedures related solely to the State historical marker program. No staff in DHR recalled ever receiving any training or directives to elevate potentially important 106 review requests or any other DHR processes concerning sensitive topics to a supervisor.

Similarly, Director Wilson's response when asked about why he recommended elevating CBP's inquiry to Attorney Kenison-Marvin on February 2, but did not do so for ICE's, evidenced a lack of appropriate attention to potentially sensitive matters. Director Wilson confirmed in his interview that he asked staff to elevate this request not because of its potential sensitivity, but because he was concerned about software licenses for EMMIT+. In light of DHR's previous experiences with the Flynn marker controversy, Director Wilson should have recognized the potential implications of CBP's or ICE's inquiries for stakeholders beyond DHR and forwarded them appropriately.

- b. Director Wilson's response to the ACLU's right-to-know request was inappropriate for several reasons, but he did not intentionally conceal it.

We conclude that no one outside DHR and no one inside DHR aside from Director Wilson, Deputy Miller, and Ms. Schneible was aware of the ACLU's 91-A request until February 3. As with the above, Director Wilson's lack of sensitivity to potentially important issues similarly led to his incorrect decision not to make anyone outside of DHR aware of the ACLU's 91-A request for a full week until the ACLU publicized it. Director Wilson's decision to respond to the 91-A request the same day it was received, without carefully analyzing it and without ensuring he had located all responsive documents within DHR, was similarly misguided.

Ms. Schneible followed the directive she had been given to immediately elevate all 91-A requests to Director Wilson. Ms. Schneible and Deputy Miller then collected documents as requested from them by Director Wilson. It is unclear whether either of them performed adequate searches. While some responsive emails in the possession of Deputy Miller and Ms. Schneible were produced, others were not, and it is unclear if they did not retrieve them or if Director Wilson did not include them in his packet of responsive documents. It appears that none of these three individuals thought to search for records relating to all 106 reviews performed for the property in question, as sought in the 91-A request. However, as the designated individual within DHR responsible for handling 91-A requests, we view Director Wilson as responsible for this incomplete response. Additionally, while our research confirmed that other ACLU offices

nationwide sought similar information from various state and federal officials, we could not find a similar instance where another SHPO was responsible for the provision of records in the first instance before a state administration knew.

Director Wilson's admission that he responded to the 91-A request the same day it was received because he wanted to clear his desk to get to a birthday dinner was equally, if not more, concerning, particularly given his advice the week prior to LCHIP concerning timeframes and substance of responses as well as the suggestion to elevate the request to agency counsel. Had Director Wilson followed his own advice, it is likely that your office would have been timely advised of both the 106 review request and the 91-A request. Though the inquiry from CBP came only a day before ACLU's press release went out, Director Wilson's directive to involve Attorney Kenison-Marvin and potentially your office on that contact further reflects the lack of attention and reasoning that underlined Director Wilson's response to the ACLU.

Other DHR staff members also thought Director Wilson handled his response to the ACLU inappropriately when asked in their interviews. Ms. Labash thought Director Wilson's response to the ACLU was "lightning fast" and she did not know how it could have been handled thoroughly in less than one day. She stated that she thought many employees in DHR were surprised at how Director Wilson had handled the request and had not informed former Commissioner Stewart. PIO Angers also thought a one-day turnaround on the ACLU's 91-A request seemed odd and thought it seemed to have been done without much thought or consideration. Attorney Kenison-Marvin recalled feeling frustrated that Director Wilson did not think to consult him or former Commissioner Stewart before responding and believed he would have elevated it to her if he had been made aware.

Throughout the review, a central question was whether Director Wilson intentionally hid the fact that 1) the ACLU had inquired about the ICE facility and 2) he responded immediately. The review also uncovered a rumor that Director Wilson was either neighbors or good friends with an employee of the ACLU, which allegedly prompted his quick response time to their 91-A request. The perception in the days after the story broke on February 3 was that Director Wilson could have invited the ACLU's request and clandestinely responded to it to decrease the chance that an ICE facility would actually open and/or to harm your administration.

We asked Director Wilson directly about these allegations, including whether he lived near or was friendly with anyone who works at the ACLU. Director Wilson denied living near or knowing anyone who works for the ACLU beyond a brief work-related interaction with its executive director during the Flynn incident. He further denied inviting the 91-A request in any way, or any malintent in responding to it immediately without telling anyone else at DNCR. We researched but found nothing to substantiate the allegation that he lived near anyone who worked at the ACLU. We found nothing in Director Wilson's emails and other computer-based documents or State-issued work cell phone to substantiate a connection between him and anyone else who works at the ACLU (though we were not able to examine the contents of those devices until several weeks after February 3). This was somewhat significant because it appears that Director Wilson conducts several aspects of his personal life through his work email/computer and cell phone. We found nothing on either device to indicate a relationship with the ACLU. Director Wilson's demeanor during his interview and the intense regret he expressed over his

actions leading to former Commissioner Stewart's resignation also appeared genuine. Thus, we conclude that Director Wilson did not intentionally fail to elevate the 106 review request or the 91-A request.

- c. DNCR did not adequately foster a culture of elevating sensitive issues to leadership in a timely manner.

Both within DHR and DNCR more broadly, we found that leadership did not adequately foster a culture of encouraging or requiring staff to elevate potentially sensitive issues in a timely manner. Within DHR, the vast majority of staff felt that they should only raise any potential issue with Deputy Miller, and never with Director Wilson directly unless it concerned a 91-A request. This rigid hierarchy contributed significantly to DHR's disjointed efforts to internally elevate ICE's 106 review request. Though at least two staff members had pointed concerns about the request, they did not feel they could bring them to Director Wilson and had to go through Deputy Miller. Deputy Miller, in turn, did not receive any instruction about when and how to elevate potential issues to Director Wilson. Nor did any staff report consideration of potentially sensitive issues or encouragement to ask questions or flag concerns during DHR's regular staff meetings with Director Wilson. Considering the outcome of the Flynn incident less than three years prior, the lack of direction on this front is especially concerning.

Staff within DHR also reported a practice of not timely communicating with each other about questions that arose with their work based on in-person versus remote availability. For example, several staff members reported that if they had a question for Deputy Miller on a Monday, but, due to their different remote day schedules, they would not see Deputy Miller in the office until Thursday, they would wait until Thursday to ask Deputy Miller their question. Our understanding is that all of DHR's employees are full-time, so it is unclear why this practice persisted. Deputy Miller was aware this would frequently occur, and she herself would often wait until she saw someone in the office to have any extended conversations. It is unclear whether Director Wilson knew the extent of this issue, but, as his second in command, Deputy Miller should have made him aware and both of them should have ensured that all DHR staff members maintained open lines of communication on questions and potential issues regardless of in-person versus remote work.

Finally, Director Wilson did not adequately promote awareness of DNCR's biweekly report to your office within DHR. He reported feeling like he did not need to take it seriously, and he did not advise staff to report anything that could go into it at regular DHR staff meetings or otherwise. The vast majority of DHR staff reported that it was not something they ever thought about. This does not accurately reflect either the purpose or the substance of the report, which intentionally seeks regular updates from all agencies about their work. Director Wilson should have regularly collected information responsive to the categories of the biweekly report from his staff and reported it to the Commissioner and should have clarified with the Commissioner if he had any questions about what to report.

More broadly, we find that former Commissioner Stewart also did not adequately promote awareness of the biweekly report or the internal reporting of potentially sensitive issues throughout DNCR. Though former Commissioner Stewart thought she sent DNCR's reports to

your office regularly, her records reflect that throughout 2025 and into 2026, she sent them sporadically at best, usually 4-6 weeks apart and sometimes as much as two months apart. Of the 25 biweekly reports she should have sent between your first request to do so in February 2025 and former Commissioner Stewart's departure one year later, we found that former Commissioner Stewart only sent eight. Sending these reports more regularly likely would have fostered a greater culture of internal information sharing.

Former Commissioner Stewart also held regular leadership meetings with Division directors and other high-ranking members of DNCR. However, while attendance at these meetings was expected, it does not appear it was required, and she further did not require any absent attendees to send a replacement. It appears that Director Wilson missed several of these meetings in the latter half of 2025 and into 2026 and never sent a substitute. Furthermore, although there was an expectation that each Division director would provide an update on their Division at these meetings, it does not appear that Director Wilson provided substantive updates on DHR's work at each meeting he attended. Former Commissioner Stewart reported that she ended each of these meetings by reminding her team to keep her informed about the goings-on in their Divisions, but it is unclear whether this was phrased as a requirement of their positions.

DHR staff and others also reported some concerns about former Commissioner Stewart's availability and presence in the office. DHR staff reported that they rarely, if ever, saw her, and Director Wilson did not believe she was often in the office or available for questions. Former Commissioner Stewart reported that she was constantly present for any situations which required her in-office presence, such as legislative efforts, but that it was also her responsibility as Commissioner to visit DNCR's field offices and conduct other out-of-office work, so she was not always physically present. She reiterated that she thought she had made it clear to her reports to always come to her with any questions or issues, but a more frequent presence in DNCR's offices could have facilitated more communication.

Finally, former Commissioner Stewart's hands-off approach to leadership did not foster an environment in which her staff had clear expectations of what to report to her. She described herself as "not a micromanager" and expressed preferring to lean on her leadership team and let them utilize their expertise in their various work areas to run their Divisions. She thought she had still made it clear enough to staff to come to her with important issues. While her desire to highlight her staff's strengths and avoid micromanaging is commendable in some respects, it ultimately created an impression among staff of passivity and disconnectedness. Many interviewees described feeling a lack of strong leadership at the helm of DNCR, which was concerning considering that DNCR is still a relatively new agency formed from previously unconnected Divisions, which were sometimes in tension with each other as discussed further below.

- d. DNCR did not align the duties of its general counsel with his official job description, leading to inconsistencies and poor practices with respect to 91-A requests.

DNCR's implementation of its first in-house general counsel beginning in July 2025 was poorly executed on several fronts. We conclude that better rollout and integration of the general counsel role very well could have prevented all of events giving rise to this review, and we

further conclude that former Commissioner Stewart is responsible for DNCR's failed addition of this new role.

First, former Commissioner Stewart stated that prior to Attorney Kenison-Marvin filling the role in July 2025, there was clear directive within DNCR to go to Ms. Tango-Lowy with all 91-As. Inexplicably, former Commissioner Stewart did not continue this directive with Attorney Kenison-Marvin, despite him being the natural successor for this function both timing-wise (because he had joined DNCR just after Ms. Tango-Lowy's retirement) and role-wise as DNCR's first in-house attorney. She also did not provide clear guidance to Division heads or other staff about what to do with 91-A requests following Ms. Tango-Lowy's retirement. Each Division apparently developed its own 91-A response mechanism, and within DHR, Director Wilson assumed responsibility for responding to 91-As himself.

Additionally, Attorney Kenison-Marvin recalled that he immediately noticed 91-A responses as an area in need of significant development across the agency after he started in July 2025. He asked to hold an agency-wide 91-A training, and agency leadership agreed. However, he recalled that agency leadership rapidly scheduled this training without his involvement and scheduled it for only one hour. Attorney Kenison-Marvin lacked sufficient time to prepare or fully address the 91-A issues in only one hour. Additionally, the training was not mandatory for all DNCR staff. From DHR, only Deputy Miller attended the entire training; Director Wilson attended approximately the first half. No other DHR staff attended. Director Wilson reflected that he felt the portion he did attend was "extremely boring," but reflected that he did not take it as seriously as he should have. The fact that DNCR leadership did not make the training mandatory further reflects a lack of using Attorney Kenison-Marvin as a "general counsel" in keeping with his official job description as the in-house attorney for the entire agency.

This failure on the 91-A front was demonstrative of DNCR's wider failure to properly integrate Attorney Kenison-Marvin into the agency as a whole. Attorney Kenison-Marvin's understanding when he took the role was that he would serve as counsel to the entire agency, a scope clearly reflected in his job description. However, after he started, he recalled that it quickly became clear that individuals in Parks believed he should only do work for Parks because his salary was partially or wholly paid from a revenue stream generated in Parks. Parks staff prevented Attorney Kenison-Marvin from working with other divisions, and made Attorney Kenison-Marvin relocate his office to a space closer to Parks within DNCR. Former Commissioner Stewart permitted Parks staff to treat Attorney Kenison-Marvin as their own attorney and further agreed with their demand to not permit Attorney Kenison-Marvin to be widely available to other DNCR divisions without going through her first. She reiterated that the reasoning behind this approach derived from his funding originating in Parks. She did not recall seeking guidance from DOJ or anyone else about the scope of Attorney Kenison-Marvin's role or how best to integrate him.

Attorney Kenison-Marvin's use did not align with his position title nor his official supplemental job description. Attorney Kenison-Marvin's job description was, and remains, to serve as counsel to the entire agency. He was hired specifically to serve in an agency-wide role. But Attorney Kenison-Marvin was not considered a member of the agency's leadership team and was generally excluded from regular senior staff meetings. The failure to ensure the general

counsel position served the agency as an institution is indicative of a larger failure to fully integrate into a single agency since its formation in 2017. We view these as preventable symptoms of former Commissioner Stewart’s self-described “hands-off” management style. Attorney Kenison-Marvin spent his first six months at DNCR largely siloed and working only for Parks, with projects for other divisions coming in sporadically and only with the permission of former Commissioner Stewart.

As a result of this setup, Director Wilson described feeling like Attorney Kenison-Marvin was not accessible to him. He recalled being informed that Attorney Kenison-Marvin was only going to be working for Parks and not to approach him for assistance independently. In the weeks and months before the ICE/ACLU incident, Director Wilson also recalled having to seek former Commissioner Stewart’s approval to consult Attorney Kenison-Marvin regarding updates needed to DHR’s administrative rules—a routine function clearly specified in Attorney Kenison-Marvin’s job description. As a result, Director Wilson did not think to consult Attorney Kenison-Marvin when he received what he thought to be a simple 91-A request from the ACLU in January 2026, a thought process we understand to some extent given former Commissioner Stewart’s failure to make Attorney Kenison-Marvin available to the whole agency. We conclude that DNCR’s inadequate utilization of Attorney Kenison-Marvin led to a disjointed and improper mechanism for responding to 91-A requests across the agency. A better integration of Attorney Kenison-Marvin may have prevented Director Wilson’s immediate and incomplete response to the 91-A request. Involvement of Attorney Kenison-Marvin likely would have resulted in the elevation of the issue to the Commissioner-level and, possibly, resulted in informing your office prior to any response.

V. Recommendations

a. DNCR should centralize its 91-A response process.

DNCR should develop a policy for handling routine and non-routine requests for information. We recommend all non-routine or significant requests be provided to DNCR’s general counsel, Attorney Kenison-Marvin.⁸ DNCR should also develop a centralized method of responding to 91-A requests, and at the very least for non-routine requests.

b. DNCR should formalize reporting requirements and foster a culture of communication.

DNCR leadership should immediately formalize written communications to all Division heads and other leaders, if not to all employees, concerning employees’ responsibility to make their supervisors aware of potentially sensitive topics or issues in their work, and leaders’ responsibility to share those communications with others, including the Commissioner. This message should encourage overreporting, rather than underreporting, of anything that gives rise to potential politically sensitive or otherwise sensitive matters in the day-to-day work of employees. The DNCR Commissioner should explicitly check in with his or her leadership team

⁸ It is our understanding that this recommendation has already been implemented.

This document is subject to attorney-client, deliberative process, and executive privileges. Accordingly, it is EXEMPT FROM RELEASE TO THE PUBLIC unless these privileges are waived.

about the topic of potentially sensitive issues in day-to-day work and not simply remind staff to report goings-on.⁹

c. DNCR should strengthen its processes relating to the Governor's biweekly report.

DNCR should immediately circulate the template of your biweekly report to all DNCR staff, remind them to be cognizant of the items requested, and require them to proactively report anything the report asks for to their supervisor. DNCR leadership should work together, in conjunction with your office if needed, to develop best practices for encapsulating all of DNCR's work in each category of information requested—including, for example, how to best report 106 review requests DHR receives.¹⁰

d. DNCR should retrain all staff on 91-A.

DNCR should retrain agency staff on RSA chapter 91-A. This training should be mandatory for all employees and should be delivered or overseen by Attorney Kenison-Marvin.

⁹ It is our understanding that this recommendation is already being implemented, and senior staff members reported several improvements on this front since Interim Commissioner Crepeau's confirmation.

¹⁰ It is our understanding that this recommendation is already being implemented.