

**MEMORANDUM OF AGREEMENT  
BETWEEN THE NATIONAL PARK SERVICE,  
DENALI NATIONAL PARK AND PRESERVE  
AND  
THE ALASKA STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE POLYCHROME AREA IMPROVEMENTS PROJECT  
AND THE EAST FORK AREA IMPROVMENTS AND USE PROJECT, DENALI  
NATIONAL PARK**

WHEREAS, Denali National Park and Preserve (DNPP), plans to undertake a number of engineered solutions to address unstable slopes from Mile 44 to 46 along the Denali Park Road, including the hazard posed by the acceleration of the Pretty Rocks Landslide (the Polychrome Area Improvements Project); and

WHEREAS, DNPP plans to turn traffic around at the East fork of the Toklat Bridge at Mile 43 of the Denali Park Road and to use the East Fork Cabin Site for interpretation (the East Fork Area Improvements and Use Project) while the unstable slopes are addressed; and

WHEREAS, DNPP has defined the Area of Potential Effect (APE) for the East Fork Area Improvements and Use Project as including 150' on either side from the center of the Denali Park Road and the East Fork Cabin access road and site which includes 25.45 acres where physical effects are likely to occur (Attachment A); and

WHEREAS, DNPP has defined the APE for the Polychrome Area Improvements Project as between Mile 44 and 46 of the Denali Park Road including 70.16 acres where potential physical effects are likely to occur and also includes a 1-mile perimeter that surrounds the boundary of the Mount McKinley National Park Road Historic District (Park Road) from Mile 43 to 46 where visual, noise, and/or atmospheric effects from the undertaking may potentially occur and includes 5,562.90 acres; and

WHEREAS, the Park Road (Alaska Heritage Resources Survey (AHRS) site numbers HEA-00517, HEA-00429, and MMK-00171) is listed on the National Register of Historic Places and is also a recognized Cultural Landscape; and

WHEREAS, DNPP determined in consultation with the SHPO that the Polychrome Area Improvements Project would result in adverse effects to the Park Road and to Site HEA-00323; and

WHEREAS, DNPP determined in consultation with the Alaska State Historic Preservation Officer (SHPO) that the East Fork Area Improvements and Use Project would result in an adverse effect to the Park Road; and

WHEREAS, DNPP has initiated consultation with: the Native Village of Cantwell, Native Village of Minto, Manly Hot Spring Village, Nenana Native Association, Nikolai Village, Native Village of Tanana, Telida Village, Tanana Chiefs Conference, Ahtna Incorporated., Doyon Limited, Cook Inlet Region Inc., Seth-De-Ya Corporation, Tozitna Limited, Toghotthele Corporation, and MTNT Limited (letters sent July 7, 2021; August 4, 2021; November 19<sup>th</sup>, 2021; and December 1<sup>st</sup> 2021), inviting consultation on this agreement document, and has invited them to sign this Memorandum of Agreement (MOA) as Concurring Parties, and DNPP received a response from Tanana Chiefs Conference, Ahtna Incorporated, and Doyon Limited indicating their desire to continue consultation and no other responses; and

WHEREAS, DNPP has initiated consultation with: the Denali Citizens Council, Matanuska-Susitna Borough, Denali Borough, Talkeetna Community Council, the Talkeetna Historical Society, and the public (letters sent November 19, 2021; November 22, 2021; December 1, 2021, and December 2, 2021), inviting consultation on this agreement document regarding the effects of undertakings on historic properties, and DNPP received a response from the Denali Borough and Denali Citizens Council indicating their desire to continue consultation and no other responses; and

WHEREAS, the Tanana Chiefs Conference, Ahtna Incorporated, Doyon Limited, and the Denali Borough are concurring parties on this agreement; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1)(b), DNPP has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect findings with specified documentation (November 19, 2021; December 21, 2021), and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, DNPP and the SHPO agree that the following stipulations shall be implemented in order to take into account the effect of the undertakings on historic properties:

## **STIPULATIONS**

### **I. ADMINISTRATIVE STIPULATIONS**

- A. In the event that another federal agency, not initially a party to this MOA, receives an application for funding/license/permit for the Undertaking, as it is described in this MOA, that agency may fulfill its Section 106 responsibilities by stating in writing that it concurs with the terms of this MOA and by notifying the signatories that it intends to do so. Such agreement shall be evidenced by the execution of a signature page and filing it with the ACHP, and implementation of the terms of this MOA.
- B. This MOA may be executed in counterparts, with a separate page for each Signatory, Invited Signatory, and Concurring Party.
- C. Email will be an acceptable form of communication between the Consulting Parties and is an appropriate method of “notification” or “in writing” where it is called for in this MOA,

unless otherwise described. If a Consulting Party does not have access to email or consistently available internet service, then the DNPP will ensure that other forms of communication are made available. All the Consulting Parties should immediately notify the DNPP if a point of contact within their organization changes and provide updated information.

## II. MITIGATION

- A. Conduct oral history interviews that include no fewer than 10 interviews with current/former tour Park Road bus drivers, park employees, Kantishna inholders, and others with a history of traversing the park road over Polychrome.
  - 1. Submittals:
    - a. A participant list and a copy of the questions to be used in the interviews will be prepared within three years of the signing of this MOA and will be submitted to SHPO and other signatories for a 30-day review.
    - b. Transcriptions of interviews will be prepared within five years of the signing of this MOA and will be submitted to SHPO and other signatories.
    - c. Accessible (508 compliant) copies of the interviews and transcriptions will be placed on the DNPP website within six years of the signing of this MOA.
      - 1. PDF/ images of the webpage in development will be sent to the SHPO for a 60-day review no later than three months before the six-year deadline.
    - d. Deliverables (audio recordings, transcripts) will be curated at DNPP and at the University of Alaska Fairbanks Oral History Collection.
- B. Preparation of an approximately 40-minute video based on the DNPP's *Snapshots of the Past* publication.
  - 1. Submittals:
    - a. A draft outline of the video text and format will be prepared within five years of the signing of this MOA and will be submitted to the SHPO and other signatories for a 60-day review.
    - b. Two years after receiving SHPO comments on the outline, DNPP will submit a copy of the final video to SHPO and other signatories.
    - c. The video will be curated at DNPP and will be available to the public for download on the DNPP website within eight years of the signing of this MOA.
- C. All surface artifacts associated with site HEA-00323 will be recovered prior to construction and in coordination with the SHPO and will be curated in the DNPP collections.
  - 1. Submittals:
    - a. A Summary report and condition assessment of HEA-00323 be prepared within five years of the signing of this MOA and will be submitted to SHPO and other signatories for a 60-day review.
    - b. The AHRs card for HEA-00323 will be updated within five years of the signing of this MOA.

- D. To address adverse effects from the proposed projects, digital photographs (with associated field data) will be taken of the project areas prior to implementation, during project activities (at least once per calendar year), and upon project completion.
1. Submittals:
    - a. Copies of photographs and all field data will be submitted to SHPO within five years of the signing of this MOA.
    - b. Updates to AHRS cards will be completed within one year of the completion of the projects.
    - c. Photographs and any field data will be curated at DNPP and will be retained in park files.
- E. An amendment to the Park Road National Register Nomination to note the new non-contributing features will be submitted to the SHPO within 8 years of execution of the MOA for 60-day review and comment.

### **III. DURATION**

This MOA will expire ten years from the date of its execution. Prior to such time, DNPP may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below.

### **IV. POST-REVIEW DISCOVERIES**

In the event that historic properties are discovered during project implementation or unanticipated effects on historic properties occur, DNPP shall consult with SHPO and other consulting parties under 36 CFR §800 in order to make reasonable efforts to avoid, minimize, or mitigate adverse effects to such properties. The Native American Graves Protection and Repatriation Act (NAGPRA), requires that if the inadvertent discovery of Native American Remains or Objects occurs, activity must cease in the area of discovery, a reasonable effort made to protect the item(s) discovered, and immediate notice made to the Superintendent, as well as the appropriate Native American group(s) and State Historic Preservation Officer (SHPO). Further actions also require compliance under the provisions of NHPA and the Archaeological Resource Protection Act.

### **V. MONITORING AND REPORTING**

Each year following the execution of this MOA until it expires or is terminated, DNPP shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in DNPP's efforts to carry out the terms of this MOA.

### **VI. DISPUTE RESOLUTION**

Should any signatory party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, DNPP shall consult with such party to

resolve the objection. If DNPP determines that such objection cannot be resolved, DNPP will follow the process outlined in 36 CFR §800.7:

- A. Forward all documentation relevant to the dispute, including the DNPP and proposed resolution, to the ACHP. The ACHP shall provide DNPP and with its advice on the resolution of the objection within forty-five (45) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, DNPP shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and concurring parties and provide them with a copy of this written response. DNPP will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the forty-five (45) day-time period, DNPP may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, DNPP shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA and provide them and the ACHP with a copy of such written response.
- C. It is the responsibility of DNPP to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

Concurring Parties and Consulting Parties (which includes members of the public) may bring objections or concerns to any of the Signatories who may then utilize the objections process outlined in Stipulation VI.

## **VII. AMENDMENTS**

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

- A. MOA Attachments may be amended with a streamlined process as follows. Any MOA Signatory may propose an amendment to an Attachment by submitting a request in writing to DENA. If DENA concurs that the amendment improves or updates the Attachment(s), DENA will share the proposed amendment with the Consulting Parties for a 30-day review and comment period. If no comments are received at the end of the review period, DENA will move forward with the proposed amendment and will provide Consulting Parties with a revised version of the Attachment(s).

## **VIII. TERMINATION**

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VII, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on any covered undertaking, DNPP must either (a) execute another agreement pursuant to 36 CFR § 800.14(b) or (b) comply with 36 CFR 800 with regard to each undertaking pursuant to 36 CFR 800.14(b)(2)(v). DNPP shall notify the signatories and concurring parties as to the course of action it will pursue.

## **IX. ANTI-DEFICIENCY ACT**

All requirements set forth in this MOA requiring the expenditure of DNPP funds are expressly subject to the availability of appropriations and the requirements of the Anti-Deficiency Act (31 U.S.C. Section 1341). No obligation undertaken by DNPP under the terms of this MOA will require or be interpreted to require a commitment to expend funds not obligated for a particular purpose.

- A. If DNPP cannot perform any obligations set forth in the MOA due to the unavailability of funds, the signatories to this MOA intend the remainder of the agreement to be executed.
- B. In the event that any obligation under the MOA cannot be performed due to the unavailability of funds, DNPP agrees to utilize its best efforts to renegotiate the provision and may require that the parties initiate consultation to develop an amendment to this MOA when appropriate.

Execution of this MOA by the DNPP and SHPO and implementation of its terms evidence that DNPP has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

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AND THE EAST FORK AREA IMPROVMENTS AND USE PROJECT, DENALI  
NATIONAL PARK**

Signatory

**DENALI NATIONAL PARK AND PRESERVE**

BROOKE MERRELL  Digitally signed by BROOKE  
MERRELL  
Date: 2022.02.22 09:27:36 -09'00'

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**Brooke Merrell, Acting Superintendent**

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Date

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NATIONAL PARK**

Signatory

**ALASKA STATE HISTORIC PRESERVATION OFFICER**

  
\_\_\_\_\_  
Judith E. Bittner, State Historic Preservation Officer

  
\_\_\_\_\_  
Date



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Concurring Party

**AHTNA INCORPORATED**

A handwritten signature in cursive script that reads "Michelle Anderson".

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**Michelle Anderson, President**

**February 22, 2022**

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**Date**

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Concurring Party

**TANANA CHIEFS CONFERENCE**



**Brian Ridley, President**




**Date**

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Concurring Party

**DENALI BOROUGH**

  
\_\_\_\_\_  
Clay Walker, Mayor

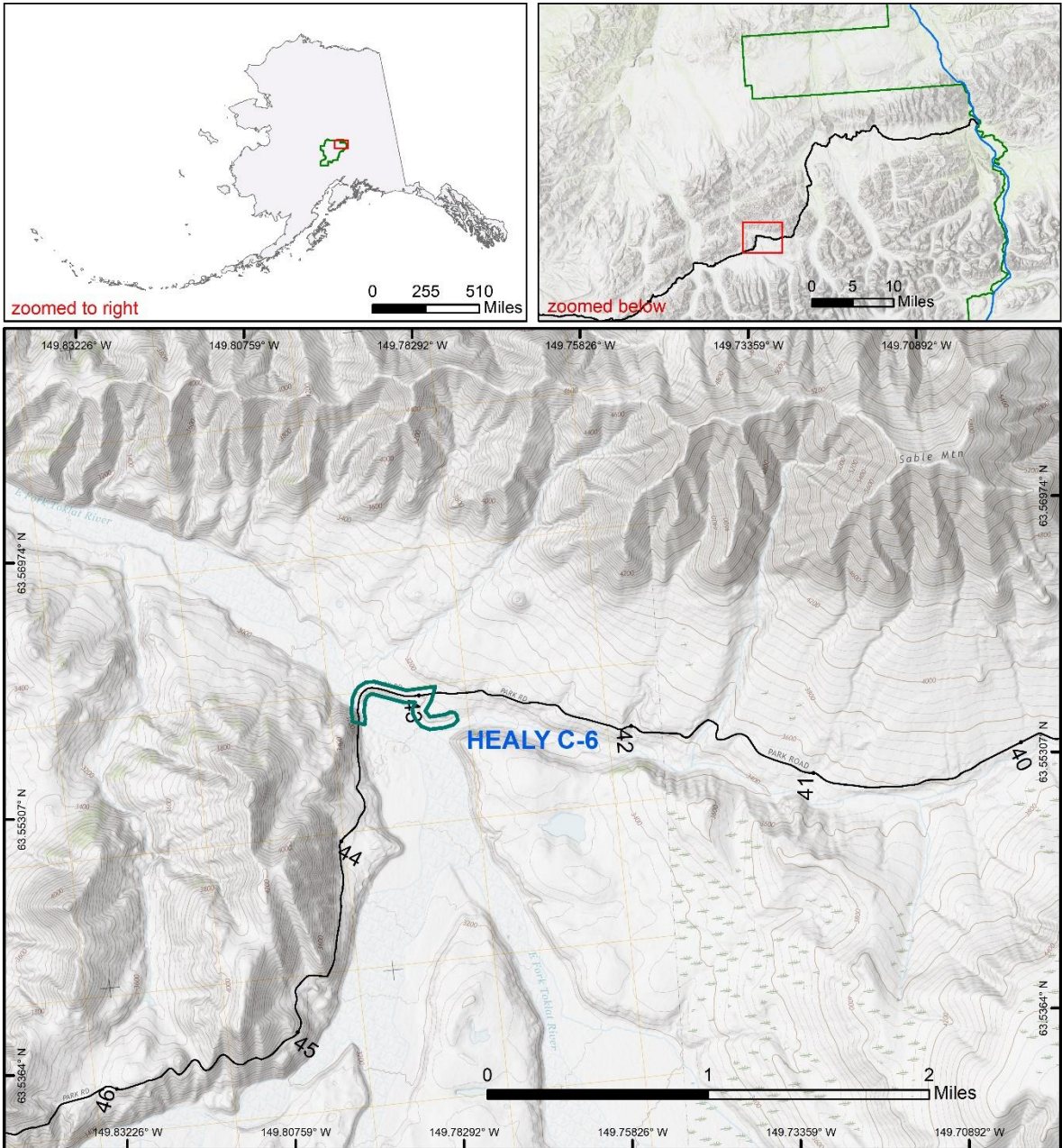
  
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# ATTACHMENT A- DENALI PARK ROAD AREA OF POTENTIAL EFFECT

(Additional Cultural Resources Not Displayed)

## East Fork Area Improvements and Use- APE

Denali National Park and Preserve  
National Park Service  
U.S. Department of the Interior



### Legend

- DENA Unit Outline
- East Fork APE (26.45 Acres)
- George Parks Highway
- Park Road



Source: Denali National Park & Preserve  
Datum: NAD83 (Albers)



# Area of Potential Effects

