

**MEMORANDUM OF AGREEMENT  
AMONG THE FEDERAL AVIATION ADMINISTRATION,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, and  
THE UTAH STATE HISTORIC PRESERVATION OFFICER,  
REGARDING THE WENDOVER AIRPORT in ELKO COUNTY, NEVADA and TOOELE COUNTY, UTAH**

**WHEREAS**, the Federal Aviation Administration (FAA) may fund the Wendover Airport (Airport) proposed improvements to runway 12/30 pursuant to the Airport and Airway Improvement Act of 1982 (Public Law 97-248), thereby making the project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108 and its implementing regulations, 36 C.F.R. Part 800; and

**WHEREAS**, the undertaking consists of rehabilitating Runway 12/30, drainage improvements, grading of safety areas, electrical system upgrades (including new runway lighting and signage), and the replacement of Runway 30 precision approach path indicators (PAPIs); and

**WHEREAS**, a haul road constructed as part of a previous project that was funded by the FAA resulted in effects to Site 26EK16689 and the FAA issued a waiver for Motion Picture and TV Filming that lead to further damage of Site 26EK16689; and

**WHEREAS**, the FAA, in consultation with the Nevada and Utah State Historic Preservation Offices (NV SHPO and UT SHPO), has defined the undertaking's area of potential effects (APE) to include areas of disturbance and previous disturbance areas as depicted in Attachment A; and

**WHEREAS**, the FAA has determined that the undertaking will have an adverse effect on Site 26EK16689, which is eligible for listing in the National Register of Historic Places (NRHP) under the Secretary of Interior's Significance Criterion D, and has consulted with the NV SHPO and UT SHPO pursuant to 36 C.F.R. Part 800; and

**WHEREAS**, the UT SHPO has delegated lead responsibility for this Memorandum of Agreement (MOA) to the NV SHPO pursuant to 36 C.F.R. § 800.3(c)(2), given that the adverse effects are occurring in the State of Nevada; and

**WHEREAS**, the FAA invited the Confederated Tribes of the Goshute Reservation, Confederated Tribes of Warm Springs, Eastern Shoshone Tribe of the Wind River Reservation, Elko Band of the Te-Moak Tribe of Western Shoshone, Shoshone-Bannock Tribes of the Fort Hall Reservation, Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, Skull Valley Band of Goshute Indians of Utah, South Fork Band of the Te-Moak Tribe of Western Shoshone, Te-Moak Tribe of Western Shoshone, the Ute Indian Tribe, Wells Band of the Te-Moak Tribe of Western Shoshone, and the Yomba Shoshone Tribe of the Yomba Reservation to consult in recognition of the unique government-to-government relationship between the federal government and federally-recognized American Indian tribes and no response was received; and

**WHEREAS**, the FAA has consulted with Tooele County regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as an invited signatory party; and

**WHEREAS**, the FAA invited the Elko County Chapter of the Nevada Archaeological Association, Nevada Archaeological Association, Northeastern Nevada Museum, Tooele County Historic Preservation Commission, and the Utah Military History Group to participate as consulting parties and no responses were received; and

**WHEREAS**, in accordance with 36 C.F.R. § 800.6(a)(1), the FAA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP declined to participate in a letter dated February 19, 2020; and

**NOW, THEREFORE**, the FAA, the NV SHPO, and the UT SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

#### **STIPULATIONS**

The FAA shall ensure that the following measures are carried out:

- I. All archaeological investigations must be performed by or under the direct supervision of an archaeologist(s) who qualifies under the Secretary of the Interior's Professional Qualifications Standards.
  
- II. Historic Properties Treatment Plan (Treatment Plan) Development  
The FAA shall develop a Treatment Plan consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-37), and the ACHP Section 106 Archaeology Guidance available online at [https://www.achp.gov/protecting-historic-properties/Section\\_106\\_Archaeology\\_Guidance](https://www.achp.gov/protecting-historic-properties/Section_106_Archaeology_Guidance). The Treatment Plan will provide the information on the field data recovery methods, monitoring requirements, mitigation, curation agreements, and all other pertinent details.
  - a. The Treatment Plan will also include a section on public outreach efforts such as, but not limited to, interpretive panels and brochures, digital exhibits, volunteers assisting excavation, publicly accessible article, etc.
  - b. The FAA shall submit the draft Treatment Plan to the NV SHPO and UT SHPO for a thirty (30) day review and comment period from their receipt in both electronic and hard copy. If the NV SHPO and/or the UT SHPO does not respond within thirty (30) calendar days of receipt, the FAA may finalize the Treatment Plan.
  - c. The FAA will review and address any NV SHPO and/or the UT SHPO comments on the Treatment Plan received during the review period. The FAA will direct Tooele County, through its Cultural Resource Management (CRM) consultant, to make any necessary changes to the Treatment Plan.
  - d. The FAA will submit the updated and approved final Treatment Plan to the NV SHPO and UT SHPO.

- III.** The FAA shall ensure that all field data recovery measures for Site 26EK16689 in the Treatment Plan will be completed prior to the initiation of any undertaking related construction and wetland mitigation. Monitoring, data recovery, and mitigation activities outlined in the Treatment Plan will be conducted by archaeological staff with the appropriate state and federal permits. The following process will be carried out:
- a. Tooele County, through its CRM firm, will begin implementation of the Treatment Plan.
  - b. Tooele County, through its CRM firm, will complete the field data recovery activities described in the Treatment Plan. Tooele County will submit a summary report of the results of the data recovery activities to the FAA within fourteen (14) calendar days of the completion of the fieldwork as outlined in the Treatment Plan.
  - c. The FAA shall review the summary report within thirty (30) calendar days and notify Tooele County that the FAA either accepts or rejects the summary report.
  - d. Tooele County, through its CRM firm, will revise the draft summary report to address FAA comments. Upon FAA approval of the draft summary report, the FAA shall provide a copy of the report to the NV SHPO and UT SHPO for review and comment.
  - e. The NV SHPO and UT SHPO will have fifteen (15) working days to provide concurrence or comments on the draft summary report. If the NV SHPO and/or the UT SHPO does not respond within fifteen (15) working days of receipt, the FAA may finalize the report.
  - f. The FAA will review and address any NV SHPO and UT SHPO comments on the draft summary report or on the field data recovery activities. The FAA will direct Tooele County, through its CRM consultant, to make any necessary changes to the draft summary report or the field data recovery activities.
  - g. The FAA will submit the updated and approved final summary report to the NV SHPO and UT SHPO.
  - h. The FAA will issue a notice-to-proceed for construction once the final summary report has been accepted by the NV SHPO and UT SHPO.
- IV.** Tooele County, through their CRM consultant, shall submit a draft data recovery report to the FAA, NV SHPO, and UT SHPO for review within six (6) months of completion of fieldwork.
- a. The NV SHPO and UT SHPO will have thirty (30) calendar days to review and provide comments on the draft data recovery report to the FAA. If the NV SHPO and/or the UT SHPO does not respond within thirty (30) calendar days of receipt, the FAA may finalize the report.
  - b. The FAA shall review and address any NV SHPO and UT SHPO comments on the draft data recovery report. The FAA will direct Tooele County, through its CRM consultant, to make any necessary changes to the report.
  - c. The FAA shall submit the revised data recovery report to the NV SHPO and UT SHPO for a thirty (30) calendar day review and comment period. If the NV SHPO and/or the UT SHPO does not respond within thirty (30) calendar days of receipt, the FAA may finalize the report.

- V. The FAA and Tooele County will complete all public archaeological components of the Treatment Plan within one (1) year after completion of fieldwork.
- a. Tooele County, through its CRM firm, will submit a draft public archaeological component document to the FAA.
  - b. The FAA shall review the draft public archaeological component within thirty (30) calendar days and notify Tooele County that the FAA either accepts or rejects the draft public archaeological component.
  - c. Tooele County, through its CRM firm, will revise the draft public archaeological component to address FAA comments. Upon FAA approval of the draft public archaeological component, the FAA shall provide a copy of the draft public archaeological component to the NV SHPO and UT SHPO for review and comment.
  - d. The NV SHPO and UT SHPO will have thirty (30) calendar days to review and comment on the draft public archaeological component. If the NV SHPO and/or the UT SHPO do not respond within thirty (30) working days of receipt, the FAA may finalize the public archaeological component.
  - e. The FAA will review and address all NV SHPO and/or UT SHPO comments on the draft public archaeological component. The FAA will direct Tooele County, through its CRM consultant, to make any necessary changes to the draft public archaeological component.
  - f. The FAA will submit the revised public archaeological component to the NV SHPO and/or UT SHPO for a thirty (30) calendar day review and comment period. If the NV SHPO and/or UT SHPO does not respond within thirty (30) calendar days of receipt, the FAA may finalize the public archaeological component.

#### **VI. Duration**

This MOA will terminate either after the completion of all stipulations or five (5) years, whichever comes first. If its terms are not carried out within five (5) years from the date of its execution, this MOA will expire. Prior to such time, and prior to work continuing on the undertaking, the FAA shall either:

- a. Execute a new MOA pursuant to 36 C.F.R. § 800.6; or
- b. Request, take into account, and respond to comments of the ACHP under 36 C.F.R. § 800.7. Prior to such time, the FAA may consult with the other signatories and invited signatory to reconsider the terms of the MOA and amend it in accordance with Stipulation X.

The FAA shall notify the signatories and invited signatory as to the course of action they will pursue.

## **VII. Post Review Discoveries**

- a. If potential historic properties are discovered or unanticipated effects on historic properties are discovered, the FAA shall implement the discovery plan included in the Treatment Plan.
- b. If human remains are discovered on non-Federal state or private lands in Nevada, the FAA will immediately notify the NV SHPO and law enforcement officials. The property owner shall adhere to the requirements of Nevada Revised Statutes (NRS), Title 33, Chapter 383, Section 170.
  1. Every effort will be made to ensure the remains are not removed from the discovery location. If the Coroner determines that such removal is necessary, the NV SHPO will be notified immediately and provided with a 24-hour opportunity to visit the discovery and inspect the location prior to the removal of the remains.
  2. If the Coroner determines that the human remains are not from a crime scene or are Native American in origin, the property owner shall immediately contact the NV SHPO. Following notification, the SHPO will administer the requirements of NRS 383.170 for remains determined by the Coroner to be Native American in origin. For all other remains, the Coroner shall ensure appropriate reinternment.
- c. If human remains are discovered on non-Federal lands in Utah, the FAA will adhere to Utah Codes 9-8-309, 76-9-704, and 9-9-403. In accordance with 9-8-309 and 76-9-704, all activity in the area shall cease and local law enforcement, the landowner, and the Antiquities Section of the Division of State History should be notified immediately. If law enforcement determines that the remains are ancient, then the Antiquities Section may advise on retrieval or retrieve the remains with the landowner's permission. The Antiquities Section may also advise on the determination of ownership and disposition of Native American remains in accordance with UCA 9-9-403. Work will resume at the discretion of the FAA in consultation with Antiquities Section once all requirements are met under applicable State and local laws.

## **VIII. Monitoring and Reporting**

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

## **IX. Dispute Resolution**

Should any signatory party or invited signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the FAA shall consult with such party to resolve the objection. If the FAA determines that such objection cannot be resolved:

- a. The FAA will forward all documentation relevant to the dispute, including the FAA's proposed resolution, to the ACHP. The ACHP shall provide the FAA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the FAA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and invited signatory, and provide them with a copy of this written response. The FAA will then proceed according to its final decision.
- b. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the FAA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the FAA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and the invited signatory, and provide them and the ACHP with a copy of such written response.
- c. The FAA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

#### **X. 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.

#### **XI. Termination**

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

Once the MOA is terminated, and prior to work continuing on the undertaking, the FAA must either (a) execute an MOA pursuant to 36 C.F.R. § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The FAA shall notify the signatories and invited signatory as to the course of action it will pursue.

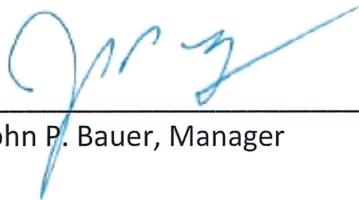
**EXECUTION** of this MOA by the FAA, the NV SHPO, and the UT SHPO and implementation of its terms evidence that the FAA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

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**SIGNATORIES:**

**Federal Aviation Administration**

  
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John P. Bauer, Manager

Date: July 2, 2020 \_\_\_\_\_

**Nevada Historic Preservation Officer**

  
\_\_\_\_\_  
Rebecca L. Palmer, Nevada State Historic Preservation Officer

Date  \_\_\_\_\_

**Utah Historic Preservation Officer**

\_\_\_\_\_  
Christopher Merritt, Utah State Historic Preservation Officer

Date \_\_\_\_\_

**INVITED SIGNATORY:**

**Tooele County**

\_\_\_\_\_  
Lisa Dunn, Director of Wendover Airport

Date \_\_\_\_\_

**SIGNATORIES:**

**Federal Aviation Administration**

  
\_\_\_\_\_

Date: July 2, 2020

John P. Bauer, Manager

**Nevada Historic Preservation Officer**

\_\_\_\_\_  
Date \_\_\_\_\_  
Rebecca L. Palmer, Nevada State Historic Preservation Officer

**Utah Historic Preservation Officer**

Christopher W. Merritt, Ph.D. Digitally signed by Christopher W. Merritt, Ph.D.  
Date: 2020.07.02 10:05:01 Date \_\_\_\_\_  
Christopher Merritt, Utah State Historic Preservation Officer

**INVITED SIGNATORY:**

**Tooele County**

\_\_\_\_\_  
Date \_\_\_\_\_  
Lisa Dunn, Director of Wendover Airport