

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL AVIATION ADMINISTRATION,
METROPOLITAN WASHINGTON AIRPORTS AUTHORITY, AND
THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES,
REGARDING THE
NEW RUNWAYS, TERMINAL FACILITIES AND RELATED FACILITIES AT
WASHINGTON DULLES INTERNATIONAL AIRPORT PROJECT**

WHEREAS, the Federal Aviation Administration (FAA), in cooperation with the Metropolitan Washington Airports Authority (Authority), is proposing to construct a new parallel north-south runway to the west of the airport, approximately 9,473 feet long by 150 feet wide, and a new parallel east-west runway to the south of the airport, approximately 10,500 feet long by 150 feet wide. The proposed project also includes associated taxiways, navigational aids, and construction of a Tier 3 Concourse in accordance with the FAA's 1985 Master Plan Study for Washington Dulles International Airport and the Authority's 2004 updated Airport Layout Plan, also known as the "Project;" and

WHEREAS, the *Draft Environmental Impact Statement for New Runways, Terminal Facilities, and Related Facilities at Washington Dulles International Airport* (issued January 2005) (DEIS) and supporting technical reports provide background information for this Memorandum of Agreement (MOA); and

WHEREAS, the Authority, the State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (Council) are parties to a 1987 Programmatic Memorandum of Agreement (PMOA) executed in connection with the FAA's lease of Washington National and Washington Dulles International Airports to the Authority; and

WHEREAS, the PMOA governs the handling of undertakings at the airports that may have an effect on properties eligible for inclusion in the National Register of Historic Places (National Register) and provides that such projects will be handled in accordance with 36 CFR Part 800 with respect to review by the SHPO and the Council; and

WHEREAS, the proposed Project constitutes a Federal undertaking by FAA, as defined in 36 CFR 800.16(y) *Protection of Historic Properties*; and

WHEREAS, the FAA and the Authority have completed Phase I investigations of archeological resources, Phase II National Register evaluation studies of archaeological resources, as well as identification surveys and National Register evaluations of above-ground historic resources, to meet their responsibilities under 36 CFR Part 800 associated with the development of the DEIS; and

WHEREAS, the Project may have an effect on the National Register of Historic Places (National Register) listed Dulles Airport Historic District; and

WHEREAS, the Project will have an adverse effect on one or more archeological resources, including site 44FX2840, that are eligible for inclusion in the National Register, as a result of activities related to implementation of the Project, including, but not limited to, construction staging, ground disturbance, and construction; and

WHEREAS, the FAA and the Authority have consulted with the Virginia Department of Historic Resources (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act, as amended, (16 USC 470f); and

WHEREAS, the Council has been provided an opportunity to comment on this MOA, and in a July 19, 2005 letter, has declined to participate in ongoing Section 106 consultation or as a signatory of this MOA; and

WHEREAS, the Loudoun County, Virginia, Planning Department (Loudoun County) has requested to serve as a consulting party to this MOA pursuant to 36 CFR 800.2(c)(3). Because Loudoun County does not have legal authority or jurisdiction over the Authority's activities at the airport, the FAA and the Authority have determined that the county will instead be provided with the opportunity to sign this MOA as a concurring party; and

WHEREAS, it is understood that this MOA is based upon review of conceptual designs as shown in the DEIS; and

WHEREAS, the FAA and the Authority, in carrying out the stipulations of this MOA, will coordinate with the SHPO and Loudoun County as necessary; and

WHEREAS, any rights and responsibilities assigned to a specific party herein shall be voided if that party does not sign the MOA;

NOW, THEREFORE the FAA, the Authority, SHPO, and Loudoun County agree that the Project will be implemented in accordance with the following stipulations in order to take into account the effect of the Project on historic properties.

Stipulations

The FAA and the Authority will ensure that the following measures are carried out:

I. Design Review

- A. All design elements related to the Tier 3 Concourse Improvements at Dulles will conform to the existing Dulles Airport Architectural Design Guidelines, which are included in this MOA as Appendix 1, and the current airport Master Plan, which includes general planning guidelines taken from the original 1964 Saarinen Master Plan.
- B. The design of the Tier 3 Concourse Improvements will take into account the historic and architectural qualities of the original Dulles International Airport Historic District and incorporate the recommended approaches to new construction set forth in the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*.
- C. FAA and the Authority will submit to the SHPO the preliminary design plans for the Tier 3 Concourse Improvements to demonstrate that the design of the proposed building is sensitive to the historic architectural character of the Dulles Airport Historic District. Concurrently, the FAA and the Authority will provide notification to Loudoun County of this transmittal to the SHPO.
- D. FAA and the Authority shall further ensure that the Project Architect will submit to the SHPO for its review and comment complete project plans and specifications for the Tier 3 Concourse Improvements including its exterior elements and all site improvements surrounding the building. The Architect will submit such plans to the SHPO at the completion of the 30%, 60%, and 90% design development levels. For each submission, the FAA and the Authority will provide notification to Loudoun County regarding each transmittal to the SHPO.
- E. When design and project plans are submitted to the SHPO, the SHPO shall be afforded an opportunity to comment, not to exceed 30 calendar days. If no response is received within 30 calendar days of confirmed receipt, concurrence may be assumed.

II. Dulles Airport Historic District

- A. During the final design phase, FAA and the Authority will consult with the SHPO to assess the Tier 3 Concourse Improvements design's effects on the Dulles Airport Historic District. Consultation shall include the completion of a viewshed analysis in order to study the potential visual impacts of the Tier 3 Concourse Improvements on the main concourse of the Main Terminal and the South Finger.
- B. If FAA and the Authority, in consultation with the above parties, agree that the Tier 3 Concourse Improvements design will have an adverse visual effect on the historic district, FAA and the Authority shall develop and implement a treatment plan to avoid, minimize, or mitigate visual impacts. The treatment plan shall be prepared and implemented in accordance with the appropriate standards and guidelines listed in Section V.B. of this MOA.
- C. FAA and the Authority shall ensure that the SHPO is afforded an opportunity to comment, not to exceed 30 calendar days, to review and approve a treatment plan for this property. If no response is received within 30 calendar days of confirmed receipt, concurrence may be assumed.

III. Archaeology

A. Phase II Site Evaluation

- 1. FAA and the Authority have completed Phase II Site Evaluation Studies for the following sites, all of which were jointly recommended for further evaluation by FAA, the Authority, and SHPO in 2004:
 - a) North-South Runway: 44LD538, 44LD539, 44LD543, 44LD1029, 44LD1034, 44LD1037, 44LD1041, and 44LD1042.
 - b) Crosswind Runway: 44LD1077, 44LD1081, 44FX2540, 44FX2541, and 44FX2839.
- 2. Following the completion of the Phase II investigations, each site listed in Stipulation III.A.1. of this MOA was evaluated for National Register eligibility using the criteria outlined in National Register Bulletin 15, *Guidelines for Applying the National Register Criteria for Evaluation*, published by the National Park Service. Evaluation efforts were conducted in a manner consistent with the standards and guidelines listed in Stipulation VI.B. of this MOA.
- 3. FAA and the Authority provided the SHPO with an opportunity to comment, not to exceed 30 calendar days, to review and approve the Phase II reports. The SHPO concurred that site 44FX2840, as well as

sites [to be determined – 44LD538 (Historic Component), 44LD539 (Prehistoric and Historic Components), and 44LD1042 (Eligible)] are eligible for listing in the National Register.

4. Upon determining if a site is eligible for the National Register, FAA, the Authority, and the SHPO, after considering the views of Loudoun County, shall jointly determine if an eligible site adversely affected by the Project will be preserved in place or will require Phase III Data Recovery.

B. Phase III Data Recovery

1. FAA and the Authority shall ensure that an Archeological Data Recovery Plan (DRP) is developed in consultation with the SHPO for any site recommended for data recovery through the steps outlined in Stipulation III.A. of this MOA.
2. The DRP shall be consistent with the performance standards outlined in Stipulation VI. below and shall specify, at a minimum:
 - a) The sites where data recovery is to be carried out;
 - b) The research questions to be addressed through data recovery, with an explanation of their relevance and importance;
 - c) The research and field methods to be used, with an explanation of their relevance to the research questions;
 - d) The methods to be used in analysis, data management, and data dissemination;
 - e) The disposition of recovered materials and records; and
 - f) Proposed methods for involving the interested public in the data recovery process, as well as methods for disseminating the results of the work to the interested public.
3. FAA and the Authority shall ensure that the SHPO is afforded an opportunity to review and comment on the DRP, not to exceed 30 calendar days. If no response is received within 30 calendar days of confirmed receipt, concurrence may be assumed.
4. FAA and the Authority shall ensure that the DRP is implemented and that all Data Recovery activities are concluded, and concurrence received from the SHPO, before the site is disturbed by construction activities.

C. In-Situ Preservation

1. FAA and the Authority shall ensure that any site recommended for In-Situ Preservation through the steps outlined in Stipulation III.A. of this MOA shall remain undisturbed during construction activities. Temporary fencing (e.g., orange construction fencing) shall be placed around the perimeter of sites during construction activities to help ensure that the area remains undisturbed.
2. The site shall be monitored during adjacent construction activities and shall be included in progress reports as outlined in Stipulation VII.B.

IV. Discovery

A. During the course of this undertaking, FAA and the Authority shall ensure that the SHPO is informed of unanticipated finds within the project's Area of Potential Effects (APE) during construction activities. Potential historic properties are herein considered any building, structure, object, or archaeological site to which the National Register Criteria of Eligibility (36 CFR 60.4) has not already been applied. FAA and the Authority shall not take any actions that would adversely affect such properties until such time as it has taken the following actions and resolved or mitigated all Section 106 responsibilities regarding such unanticipated finds:

1. Upon notification of an unanticipated find within the undertaking's APE, FAA and the Authority will undertake the following steps outlined in 36 CFR 800.13(b through d) in order to ensure compliance with Section 106 of the National Historic Preservation Act:
 - a) In the event that unanticipated finds are discovered within the APE, FAA and the Authority will immediately halt all construction work involving subsurface disturbance in the immediate area of the resource and in the surrounding area where further subsurface resources can reasonably be expected to occur and immediately notify the SHPO of the discovery.
 - b) FAA, the Authority, SHPO or an archaeologist approved by them, will immediately inspect the work site and determine the area and nature of the affected archaeological resource. Construction work may then continue in the area outside the archaeological resource as defined by FAA, the Authority, and the SHPO, or their designated representative.
 - c) Within five (5) working days of the original notification of discovery, FAA and the Authority, in consultation with the SHPO, will determine the National Register eligibility of the resource.

- d) If the unanticipated find is determined eligible for listing in the National Register, the applicant shall prepare a plan for its avoidance, protection, or recovery of information. FAA, the Authority, and the SHPO, shall approve such plan, prior to implementation.
 - e) Work in the affected area shall not proceed until either:
 - (1) the development and implementation of appropriate data recovery or other recommended mitigation procedures, or
 - (2) the determination is made that the unanticipated find is not eligible for inclusion in the National Register. Any disputes over the evaluation or treatment of previously unanticipated finds will be resolved as provided in the Stipulation VIII of this Memorandum.
2. In accordance with 36 CFR 800.13(b), the identification of unanticipated finds during the implementation of the undertaking does not require FAA and the Authority to stop work on the overall undertaking, but to make reasonable efforts to avoid or minimize harm to the resource until the requirements of 36 CFR 800.13 are met.
 3. Any disputes over the evaluation or treatment of unanticipated finds will be resolved as provided in Stipulation VIII of this MOA.

V. Human Remains

FAA and the Authority shall ensure that human skeletal remains and associated funerary objects encountered during the course of actions taken as a result of this agreement shall be treated in accordance with the Regulations Governing Permits for the Archaeological Removal of Human Remains (Virginia Register 390-01-02) found in the Code of Virginia (10.1-2305, et seq., Virginia Antiquities Act). If necessary, the applicant will obtain a permit from the SHPO for the removal of human remains in accordance with the regulations stated above.

VI. Administration

A. Professional Qualifications

FAA and the Authority shall ensure that in completing the necessary provisions of this Agreement that it will employ or contract with appropriate qualified professionals who meet *The Secretary of Interior's Professional Qualification Standards* (48 FR 44716, Sept. 1983).

B. Standards and Guidelines

FAA and the Authority shall ensure that all cultural resource work carried out pursuant to this Agreement shall be carried out in accordance with the following standards and guidelines, as applicable:

1. *Archeological Resources Protection Act of 1979*, as amended (16 USC 470aa-470ll);
2. *Curation of Federally-Owned and Administered Archeological Collections* (36 CFR Part 79);
3. *National Historic Preservation Act of 1966*, as amended (16 USC 470 et seq.);
4. *Native American Graves Protection and Repatriation Act of 1990* (25 USC 3001 et. seq);
5. *Protection of Historic Properties* (36 CFR Part 800);
6. Advisory Council on Historic Preservation: *Treatment of Archeological Properties: A Handbook* (1980);
7. National Park Service: National Register Bulletin 15- *Guidelines for Applying the National Register Criteria for Evaluation*;
8. National Park Service: National Park Service Guideline No. 28- *Cultural Resource Management Guideline*;
9. The Secretary of the Interior: *Standards and Guidelines for Archeology and Historic Preservation* (1983) (48 FR 44716-44742);
10. The Secretary of the Interior: *Standards and Guidelines for Curation* (36 CFR Part 79);
11. The Secretary of the Interior: *Standards for the Treatment of Historic Properties* (36 CFR Part 68);
12. The Secretary of the Interior: *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (36 CFR Part 68);
13. Virginia Department of Historic Resources: *Guidelines for Conducting Cultural Resource Survey in Virginia*, revised (2003); and
14. Virginia Department of Historic Resources: *State Curation Standards*.

C. Curation

The FAA and the Authority shall ensure that all archeological materials resulting from actions carried out under this Agreement, including appropriate field and research notes, maps, drawing and photographic records and excepting human skeletal remains, are curated in accordance with 36 CFR Part 79 and the SHPO's *State Curation Standards*. All materials will be cared for in a repository approved by the SHPO and will be made available to educational institutions and individual scholars for appropriate exhibit and/or research under the operating policies of the selected repository.

D. Distribution of Reports

The FAA and the Authority shall prepare sufficient copies of all reports completed pursuant to this Agreement for dissemination to the SHPO, Loudoun County, appropriate public libraries, educational institutions, and other repositories.

VII. Monitoring and Reporting

- A. Upon request, the SHPO, Loudoun County and the Council may review any activities carried out pursuant to this Agreement. The FAA and the Authority will cooperate with the SHPO, Loudoun County, and the Council should they request to review project files or visit the project site to view activities at specific project locations.
- B. FAA and the Authority shall provide the SHPO and Loudoun County with a progress report that summarizes activities carried out under the terms of this Agreement every six (6) months beginning from the date of the Agreement's execution. Progress reports shall include information regarding preservation activities, information on any public objections and their status, any other activities undertaken pursuant to this Agreement, and information on construction activities.

VIII. Dispute Resolution

- A. Should the SHPO or Loudoun County object in writing within 30 days to any plans and documents required pursuant to the terms of this Agreement, FAA and the Authority shall consult with the SHPO and Loudoun County to resolve the objection. If FAA and the Authority determine that the objection cannot be resolved through consultation, FAA and the Authority shall forward all documentation relevant to the dispute to the Council. Within 30 days after receipt of pertinent documentation, the Council will either:

1. Provide FAA and the Authority with recommendations, which FAA and the Authority shall take into account in reaching a final decision regarding the dispute; or
2. Notify FAA and the Authority that it will comment pursuant to 36 CFR Part 800.6(b), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by FAA and the Authority in accordance with 36 CFR Part 800.6(b)(2) with reference to the subject of the dispute.
3. Should the Council not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the FAA and the Authority may assume the Council's concurrence in its proposed response to the objection.
4. Any recommendations or comment provided by the Council will be understood to pertain only to the subject of the dispute; FAA and the Authority responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

IX. Review of Public Objections

- A. At any time during implementation of the measures stipulated in this Agreement, should any objection to any such measure or its manner of implementation be raised by a member of the public, FAA and the Authority shall take the objection into account, notify the SHPO and Loudoun County of the objection, and consult as needed with the objecting party, Loudoun County, and the SHPO, to resolve the objection. If the objection cannot be resolved, FAA and the Authority shall follow the steps outlined in Stipulation VII.A. above to obtain Council comment.

X. Record Keeping

- A. FAA and the Authority shall maintain records of all activities undertaken pursuant to this Agreement which shall become part of the Environmental Review Record for the project including:
 1. All records related to the selection of Professionals who perform the work stipulated in the provisions of this agreement, which clearly documents adherence to the *Secretary of the Interior's Professional Qualification Standards* (48 FR 44716, Sept. 1983);
 2. All records of correspondence and finding letters provided by the SHPO to FAA and the Authority;
 3. All records indicating all mitigation measures taken in accordance with the provisions of this Agreement;

4. All records related to consultations FAA and the Authority has with Loudoun County, the SHPO, and/or the Council following the ratification of this Agreement;
5. All records of public comments received during public hearings and written or telephonic comments received from the public at all other times;
6. All of the above records shall be maintained for a minimum of three (3) years after completion of the project and shall be made available to the general public and additional parties with a demonstrated interest in the undertaking upon request during this time frame.

XI. Amendments

- A. Any party to this Agreement may request that it be amended or modified, whereupon FAA, the Authority, the SHPO, and Loudoun County shall consult in accordance with 36 CFR Part 800.13 to consider such revisions.
- B. Any resulting amendments or addenda shall be developed and executed among FAA, the Authority, and the SHPO in the same manner as the original Agreement.

XII. Termination

- A. Any party to this Agreement may terminate the Agreement by providing thirty (30) days notice to the other parties and in accordance with the procedures described in 36 CFR 800.6(c)(8), provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.
- B. Termination shall include the submission of a technical report by FAA and the Authority on any work done up to and including the date of termination.

XIII. Failure to Comply

- A. In the event that FAA and the Authority do not carry out the terms of this Agreement, FAA and the Authority will comply with 36 CFR Parts 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

XIV. Sunset

- A. The provisions of this Agreement will be carried out from the date of execution of this Agreement through completion of construction of the Dulles Runway Expansion Project, or December 31, 2015, whichever occurs first

- B. At any time in the six-month period prior to such date, FAA and the Authority may request the signatory parties to consider an extension or modification of this agreement. No extension or modification will be effective unless all parties to the agreement have agreed with it in writing.

Execution of this Agreement by FAA, the Authority, and the SHPO, with concurrence of Loudoun County, and implementation of its terms by FAA and the Authority, is evidence that FAA and the Authority have afforded the Council an opportunity to comment on the proposed New Runways, Terminal Facilities and Related Facilities at Washington Dulles International Airport Project in Chantilly, Virginia, and that FAA and the Authority has taken into account the effects of the proposed project on historic properties.

SIGNATORY:

FEDERAL AVIATION ADMINISTRATION

Terry Page

Date

Manager, Washington Airports District Office

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SIGNATORY:

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

James E. Bennett

Date

President and Chief Executive Officer

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SIGNATORY:

VIRGINIA STATE HISTORIC PRESERVATION OFFICER

Kathleen S. Kilpatrick

Date

State Historic Preservation Officer and Director,
Virginia Department of Historic Resources

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CONCURRING PARTY:

LOUDOUN COUNTY, VIRGINIA PLANNING DEPARTMENT

Julie Pastor

Date

Director_____

Appendix 1

Dulles Airport Architectural Design Guidelines

*Because of the size of this document, please see
<http://www.mwaa.com/authority/dm/index.htm> for most recent copy of this set of
MCAA guidelines*