

2. The purpose of the proposed project is to provide a safer and more efficient multi-lane facility along SR 1/US 27. *Id.*, p. 4.

3. Specifically, the project will increase roadway capacity by correcting levels of service deficiencies and will enhance safety by reducing accident and injury rates. *Id.*

4. The need for this project has been recognized as far back as 1981. *Id.*, at 4-5.

5. In 1975, a comprehensive transportation plan for the city of Rome and Floyd County was adopted by the Transportation Planning Coordinating Committee ("TPCC"), the Citizens Advisory Committee, the Rome City Commission and the Floyd County Board of Commissioners. *Id.*, at 4.

6. This plan was the result of technical reports generated by the Floyd-Rome Urban Transportation Study ("FRUTS") conducted by the TPCC. *Id.*

7. Recognizing the need for increased capacity and improved operational conditions, the TPCC recommended that the project be included in the FRUTS. *Id.*, at 4-5.

8. Its addition was approved by officials of the city of Rome and Floyd County and became an element of the adopted plan in May, 1981. *Id.*, at 5.

9. The project is, therefore, an integral part of the area's transportation network. *Id.*, at 4.

10. The 106 process for the project began in 1982 when an archaeological assessment was conducted by the Georgia Department of Transportation ("GDOT") in compliance with the National Historic Preservation Act ("NHPA"). AR Doc. 1.

11. The assessment concluded that no significant archaeological resources were located within the proposed project corridor and therefore, the project would have no effect upon archaeological resources on or eligible for inclusion in the National Register of Historic Places ("NRHP"). *Id.*

12. A draft Environmental Assessment ("EA") was prepared by GDOT in 1982, *see* AR Docs. 2-3, and the final EA was approved by FHWA on July 20, 1983. AR Doc. 5.

13. On March 21, 1985, a location-design public hearing was held for the project in which a total of nine citizens attended. AR Doc. 7, p. 1.

14. A total of four comment cards were filled out at the hearing, three of which were in support of the project and one being uncommitted. *Id.*

15. An addendum updating the final EA was furnished to FHWA on April 9, 1985, certifying that GDOT had considered the social, economic and

environmental effects of the project. AR Doc. 8.

16. After reviewing the final EA and addendum, FHWA found that the project would have no significant impact on the human environment. AR doc. 9.

17. On April 19, 1985, a Finding of No Significant Impact (“FONSI”) was approved by FHWA. AR Doc. 10.

18. A work authorization for preliminary engineering was signed by FHWA on November 9, 1993, *see* AR Doc. 11, and subsequently, a concept team meeting was held on December 15, 1993 to gather data for the project’s development. AR Doc. 12.

19. On July 10, 1996, a public information meeting was held in order to allow citizens to ask any questions about the project and/or make comments to be included in the record. AR Doc. 13.

20. A total of twenty-eight people attended this meeting and from those attending, six comment forms were received, all of which were in favor of the project. AR Doc. 14.

21. No additional comments were received during the ten day comment period following the meeting. *Id.*

22. A work authorization for right-of-way was subsequently signed by FHWA on June 26, 1997. AR Doc. 15.

23. In June of 1999, the first of four re-evaluations of the project was completed. AR Doc. 17.

24. The re-evaluation was prompted by a change in project design and analyzed new relocation and noise impacts. *Id.*

25. Based on the analysis in the re-evaluation, it was concluded that the changes would not significantly alter the conclusions reached in the previously approved FONSI and FHWA concurred on June 28, 1999. *Id.*

26. A second re-evaluation was done in June of 2000. AR Doc. 19.

27. This re-evaluation analyzed the effect of new underground storage tanks ("USTs") that had been found during a 1999 investigation for USTs and hazardous waste. *Id.*

28. It was again concluded that the changes did not significantly alter the conclusions reached in the previously approved FONSI and FHWA concurred on June 20, 2000. *Id.*, at 3.

29. On May 8, 2001, GDOT re-initiated the 106 process for the project and sent out a Notification letter in an attempt to identify potential consulting parties and invite them to participate in the process. AR Doc. 20.

30. The re-initiation of the 106 process was prompted because the previous 106 determination was based on a 1973 Department of Natural Resources (“DNR”) Floyd county survey. *Id.*, at 2-3.

31. Because of the age of the survey, GDOT planned to field survey the project for both historic properties and archaeological sites and attempt to identify, in consultation with the Georgia State Historic Preservation Office (“SHPO”) and other consulting parties, any potential properties eligible for listing on the NRHP. *Id.*, at 3.

32. A survey was subsequently conducted by GDOT in which a total of three properties 50 years of age or older, not previously identified in the 1973 DNR survey, were identified within the project’s area of potential effect (“APE”). AR Doc. 22.

33. These properties were documented in a survey report and property information forms were prepared for each. *Id.*

34. Of the three new properties identified, only one was recommended eligible for listing on the NRHP; namely, the former Selma, Rome & Dalton Railroad and associated railroad bridge. *Id.*

35. The survey report was forwarded by GDOT to the SHPO and on July 20, 2001, the SHPO concurred with GDOT’s findings. AR Doc. 23.

36. It was during this time that GDOT was notified via e-mail by the Coosa Valley Regional Development Center ("RDC"), one of the parties to whom the 106 Notification letter was sent, that reputed remains of Fort Attaway existed in the vicinity of the project. *See* June 13, 2001 e-mail, AR Doc. 26, Appendices.

37. On August 13, 2001, an Assessment of Effects ("AOE") was prepared for the former Selma, Rome & Dalton Railroad and associated railroad bridge in compliance with Section 106 of the NHPA. AR Doc. 26.

38. The AOE concluded that there would be an adverse effect to the property and therefore analyzed alternatives to avoid the adverse effect including the no-build, the roll-in place alternative and replacing the bridge to the north of the existing structure, while also including planning to minimize harm and proposed mitigation. *Id.*, at 4-5.

39. A Memorandum of Agreement ("MOA") was prepared in order to address the adverse effects associated with the project.² AR Doc. 27.

² This MOA was not included in the Administrative Record because it was later retracted and revised once the existence of Fort Attaway was discovered. The revised MOA includes and builds upon the original stipulation for the adverse effect to the railroad and associated bridge. *See* AR Doc. 61.

40. On August 21, 2001, the SHPO concurred with GDOT's findings in the AOE and signed the MOA, agreeing that its stipulations were appropriate in order to address the adverse effects associated with the project. *Id.*

41. Section 106 was re-opened again when an Addendum was subsequently prepared by GDOT for Fort Attaway, assessing it as an archeological site. AR Doc. 29.

42. Included in the Addendum was a Request for Determination of Eligibility ("DOE") in which GDOT documented its findings, including the boundaries, of the Fort. *Id.*

43. Also within the documentation were construction plan sheets designating what GDOT considered to be the environmentally sensitive area boundaries of the resource. *Id.*

44. A finding of no adverse effect was anticipated for the archeological site because the NRHP-eligible boundary was found to be located outside of the project's proposed right-of-way and no physical destruction of the site would occur as a result of the project. *Id.*, at 3.

45. However, the project limits were found to come close to the boundary of the Fort in three areas and therefore GDOT prepared special provisions to be included in the construction contract to ensure protection of the Fort and thus comply with Section 106. *Id.*, Appendix B.

46. On January 11, 2002, GDOT forwarded the 106 Addendum, along with the special contract provisions, to the SHPO recommending that Fort Attaway be considered eligible for listing on the NRHP. AR Doc. 30.

47. On February 14, 2002, the SHPO concurred with GDOT's findings, agreed that the Fort was eligible for listing on the NRHP and also agreed that the special contract provisions would result in a finding of no adverse effect to the property. AR Doc. 31.

48. Plaintiffs' first contact with FHWA came in June of 2002 when Mr. Fowler wrote the Georgia Division Administrator requesting that no federal funds be released for the project. AR Doc. 33.

49. Plaintiffs disagreed with the boundary determinations made by GDOT and thought that the project would adversely impact the Fort. *Id.*

50. Throughout the months of July and August, 2002, meetings were held among personnel from GDOT, FHWA, SHPO and the Civil War Commission ("CWC") to discuss the boundary issue brought up by Plaintiffs. *See* AR docs. 35-37.

51. A site visit was set for the week of August 19, 2002 with the CWC to receive their input on the Fort's boundaries in an attempt to address Plaintiffs' concerns. AR Doc. 37.

52. On August 13, 2002, the Advisory Council on Historic Preservation (“ACHP”) made first contact with FHWA regarding the project and asked that the issue of the Fort’s boundaries be further examined based on Plaintiffs’ concerns. AR Doc. 38.

53. In the meantime, GDOT contacted Norfolk Southern Corporation (“NSC”) to try to determine whether replacing the Railroad Bridge in its existing location and thus, taking the track out of service, would be a viable option. AR Doc. 39.

54. NSC responded by saying that taking the track out of service would not be an option as it would essentially take two of their lines out of service, which was found by them to be unacceptable. *Id.*

55. On August 29, 2002, FHWA wrote Plaintiffs acknowledging receipt of their concerns and assuring no federal-aid funds would be released pending resolution of the boundary dispute. AR Doc. 40.

56. On the same day, FHWA also wrote the ACHP acknowledging their concerns and providing an update on the status of the project. AR Doc. 41.

57. On December 11, 2002, another site visit to Fort Attaway was undertaken by members of the SHPO, GDOT and FHWA. AR Doc. 44.

58. Based on that site visit, it was again concluded that the SHPO agreed with their original concurrence with GDOT's boundary determinations. *Id.*

59. Because Fort Attaway had been determined eligible for the NRHP as an historic structure as well as an archeological site, GDOT subsequently prepared an AOE, Addendum #2, to take into consideration the potential visual effects of the project on the Fort. AR Doc. 46.

60. Addendum #2 found that the only adverse effect would be visual effects to Fort Attaway and accordingly, analyzed alternatives to avoid the adverse effect including the no-build, construction of a new bridge on existing location, relocation of the railroad line and bridge north of the existing location and construction of a temporary railroad detour south of the existing alignment while reconstructing the railroad bridge on existing alignment, while also including planning to minimize harm and proposed mitigation. *Id.*, at 2-7.

61. On December 17, 2002, GDOT submitted the 106 documentation to the SHPO in accordance with the NHPA. AR Doc. 45.

62. During the months of January, February and March, 2003, Plaintiffs submitted several letters to FHWA, SHPO and GDOT again stating their concerns with the project's effects upon Fort Attaway. *See* AR docs. 47-51.

63. On March 27, 2003, SHPO concurred with the findings in the Addendum #2, again concurring with GDOT's determination of the Fort's boundaries, and signed off on the revised MOA acknowledging that its stipulations were appropriate in addressing the adverse visual effects to the Fort. AR Doc. 53.

64. GDOT forwarded the revised MOA, with SHPO's concurrence letter, to FHWA on April 3, 2003. AR Doc. 55.

65. The ACHP had written FHWA asking for an update on the project and on April 14, 2003, FHWA wrote the ACHP forwarding copies of the AOE, Addendum #1 and Addendum #2 for their review and acceptance and asked whether they wanted to participate in the 106 consultation process. AR Doc. 56.

66. FHWA had asked GDOT to address Plaintiffs' concerns about the project and on April 16, 2003, GDOT sent their response to the SHPO. AR Doc. 57.

67. FHWA forwarded both Plaintiffs' concerns and GDOT's response to those concerns to the ACHP on April 28, 2003, and again asked whether they wanted to participate in the 106 consultation process. AR Doc. 58.

68. On May 9, 2003, the ACHP sent a letter to FHWA declining to participate in the 106 consultation process. AR Doc. 59.

69. The SHPO concurred with GDOT's responses to Plaintiffs' concerns on June 5, 2003. AR Doc. 60.

70. The revised MOA was subsequently signed by FHWA on June 11, 2003, AR Doc. 61, and forwarded to the ACHP for filing, thus concluding the 106 process for the project. AR Doc. 63.

71. The project was re-evaluated for a third time in June, 2003. AR docs. 65 & 81.

72. This re-evaluation took into account added construction easements and concluded that the changes would not significantly alter the conclusions reached in the previously approved environmental documents³. AR Doc. 81.

73. To comply with ACHP's previously submitted recommendations regarding addressing Plaintiffs' concerns about Fort Attaway, GDOT submitted proposed erosion control measures and environmental commitments to FHWA on July 18, 2003.⁴ AR Doc. 66.

³ FHWA approved this re-evaluation on October 10, 2003. AR Doc. 81.

⁴ In their letter of May 9, 2003, although declining to participate in the 106 consultation process, the ACHP had recommended that all parties involved in developing the revised MOA address several issues raised by Plaintiffs. AR Doc. 59. Two of the three recommendations were addressed in the revised MOA and supporting 106 documentation however the third recommendation dealt with a long-term plan to prevent damage to Fort Attaway caused by slope erosion. AR Doc. 62. Because this recommendation was more properly dealt with when

74. During the months of July, August and September, 2003, various attempts were made to schedule a meeting with the Plaintiffs by GDOT and FHWA to discuss their concerns with the project. *See* AR docs. 67, 68, 71-74.

75. On September 15, 2003, a meeting was held with representatives from GDOT, SHPO, FHWA and Plaintiffs⁵. AR Doc. 75.

76. Plaintiffs expressed their concerns which were taken into consideration by all parties.⁶ *Id.*

77. Plaintiffs subsequently expressed their desire to initiate legal action on the project. AR Doc. 79.

78. In another attempt to address Plaintiffs' concerns, a meeting with representatives from NSC, GDOT and FHWA was scheduled for October 9, 2003 to discuss alternatives to the project design to lessen the adverse visual impact to Fort Attaway. AR Doc. 80.

design for the project became more available and finalized, FHWA approved the revised MOA subject to the inclusion of an environmental commitment exploring the development of this long term plan. *Id.*

⁵ A representative from the CWC was also invited to attend this meeting however was unable to participate. AR Doc. 74.

⁶ Plaintiffs were also having concurrent meetings with GDOT concerning their issues with right-of-way and condemnation of their property. *See* AR Docs. 77 & 78.

79. On November 21, 2003, a written narrative documenting the significance of Fort Attaway was prepared by GDOT in compliance with stipulation #4 of the revised MOA.⁷ AR doc. 82

80. The narrative was forwarded on December 3, 2003 to the SHPO. AR doc. 83.

81. ACHP wrote to FHWA asking for an update on the status of the project.⁸ AR Doc. 85.

82. In light of the controversy generated by the narrative, GDOT addressed concerns that the narrative should be rewritten in an e-mail to the SHPO. AR Doc. 87.

83. Upon consideration of the narrative, Plaintiffs' response and GDOT's rebuttal to their response, the SHPO deemed that all the documentation, taken together, satisfied stipulation #4 of the revised MOA. AR Doc. 88.

84. A fourth and final re-evaluation was done on the project in September, 2004. AR Doc. 96.

85. The re-evaluation addressed additional right-of-way and a temporary easement needed for the project and concluded that the changes would

⁷ Plaintiffs responded to the narrative on January 2, 2004. AR Doc. 84.

⁸ FHWA responded by saying a formal response on the written narrative was being awaited by SHPO. AR Doc. 86.

not significantly alter the conclusions reached in the previously approved environmental documentation and FHWA concurred. *Id.*

86. The project was certified to be let on September 29, 2004. AR Doc. 97.

87. Plaintiffs filed suit against the FHWA and Robert M. Callan, the current Georgia Division Administrator, on January 14, 2005 in the United States District Court for the Northern District of Georgia, Rome Division. *See Plaintiffs' Complaint.*

Respectfully submitted this 5th day of December, 2005.

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