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Attorneys for the Government of Guam

IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM

UNITED STATES OF AMERICA, Plaintiff, vs. **GOVERNMENT OF GUAM,** Defendant.	CIVIL CASE NO. 02-00022 **DECLARATION OF J. PATRICK MASON IN SUPPORT OF DPW REPORT ON PROGRESS OF ROAD AND BRIDGE PROJECTS (JULY 2009)**

I, **J. PATRICK MASON, ESQ.**, do hereby declare and state as follows:

1. I am the over 18 years of age, that I am competent to testify hereto, and that I have personal knowledge of all matters contained herein.

2. I am the Deputy Attorney General for the Civil Division of the Office of the Attorney General of Guam.

3. Attached hereto and marked as **"EXHIBIT 1"** is a true and correct copy of a letter dated June 4, 2009, from Claudine Camacho of the engineering firm of Duenas Camacho & Associates to Paul C. Bassler, Director of the Department of Agriculture.

4. Attached hereto and marked as **"EXHIBIT 2"** is a true and correct copy of a letter dated July 2, 2009, from Paul C. Bassler, Director of the Department of Agriculture, to the Attorney General of Guam.

5. Attached hereto and marked as **"EXHIBIT 3"** is a true and correct copy of a letter dated July 2, 2009, from Joseph W. Duenas, State Historic Preservation Officer of the Department of Parks, Recreation & Historic Preservation to Sandra L. Yee, Project Manager of International Archaeological Research institute, Inc. ("IRAII").

6. Attached hereto and marked as **"EXHIBIT 4"** is a true and correct copy of a report dated June 11, prepared by IRAII entitled *"IRAII Addendum to Research Design for Ylig Bridge, Project No. GU-NH-0004(104)."*

7. Attached hereto and marked as **"EXHIBIT 5"** is a true and correct copy of a letter dated July 2, 2009, from Paul C. Bassler, Director of the Department of Agriculture, to Claudine Camacho of the engineering firm of Duenas Camacho & Associates. This letter states that the Department of Agriculture has confirmed that the Ylig Bridge project site includes a wetlands delineation.

I DECLARE AND CERTIFY UNDER PENALTY OF PERJURY (26 U.S.C. § 1746) THAT THE FOREGOING IS TRUE AND CORRECT

Executed on July 14th, 2009.

OFFICE OF THE ATTORNEY GENERAL OF GUAM
ALICIA G. LIMTIACO, Attorney General

By: _____
J. PATRICK MASON
Deputy Attorney General

Website: www.dcaguam.com
Email: dca@dcaguam.com

DUEÑAS · CAMACHO

Rec: 6/3/09

June 3, 2009

Mr. Paul Bassler
Director
Department of Agriculture
163 Dairy Road
Mangilao, Guam 96913
Attn: Mr. Celestino Aguon

Subject: **Replacement of Ylig Bridge, Phase I, FHWA Project No. GU-NH-0004(104).**

Dear Mr. Bassler:

The Department of Public Works (DPW) proposes to replace the Ylig Bridge, which is in critical need of repairs and which will serve as an important transportation link for solid waste haulers accessing the new landfill in Layon. Under the Consent Decree, one travel lane on the new bridge must be operational by September 2010. The project is funded through the U.S. Department of Transportation, Federal Highway Administration (FHWA) Federal-Aid highway program. During the environmental surveys of the bridge project site, a colony of the Pacific tree snail (*Partula radiolata*) was found within the Route 4 right-of-way. The colony extends into the adjoining Lot No. 165-1, a privately-owned parcel. A second Pacific tree snail colony was also discovered within Lot No. 167-R1, a privately-owned parcel adjacent to Chalan Aguon. A third colony is reported to exist upstream of the bridge. The Pacific tree snail is a locally-listed endangered species and is a candidate for federal listing under the U.S. Endangered Species Act. The concern over the presence of the tree snail colony within the right-of-way led to discussions with Department of Agriculture, who is the lead agency tasked with protecting endangered species on Guam.

On May 28, 2009, a meeting was held between Duenas, Camacho and Associates, Inc. (DCA) (Mr. John Duenas, Principal; Mr. Thomas Camacho, Chief Structural Engineer; and Mr. Ed Salanatin, Chief Civil Engineer; and Ms. Claudine Camacho) and Department of Agriculture representatives (Mr. Celestino Aguon, Chief of Division of Aquatic and Wildlife Resources (DAWR) and Mr. Brent Tibbatts, Fisheries Biologist). The purpose of the meeting was to discuss the main constraints to the reconstruction of the Ylig Bridge in the presence of the snail colony, and to identify possible mitigation measures for addressing the tree snail colony. This letter documents the discussion and memorializes the agreements made at the meeting.

DCA described the following major constraints to reconstruction of the bridge in the presence of the tree snail colony.

1. Without relocation of the colony, there would be a need for a bypass bridge. In addition to the enormous expense involved, a bypass bridge would require the acquisition of additional private lands as a temporary right-of-way until the permanent bridge is complete. Private land acquisition is not a feasible alternative at this time. There is also a potential to impact more wetland area, since much of the riparian vegetation near the existing bridge includes nipa (*Nypa fruticans*) palms and pago (*Hibiscus tiliaceus*) forest.

EXHIBIT 1

2. The proposed alignment would permit the construction of a portion of the new bridge while the existing bridge remains operational. This is an important aspect of the design that avoids the need for a bypass bridge. Maintaining one open lane during construction would not be possible if the colony is maintained in place because of the need for a different alignment and a bypass bridge.

3. In order to avoid the colony, the road alignment will have unnecessary curvature that will render the road impractical and unsafe.

4. DCA explored alternative bridge designs. If a suspension bridge is constructed (a very expensive alternative), the headroom clearance between the bottom of the new bridge and the existing ground surface would be insufficient to avoid the colony. This would eventually kill the vegetation beneath the bridge.

Based on the presentation of the various constraints by DCA, DAWR agreed to allow mitigation of the colony. In return, DCA agreed to make every effort to confine the bridge design within the existing right-of-way. This would be accomplished by using a retaining wall or a sheet pile/tie-back system, which both achieve the same effect of limiting encroachment outside the right-of-way.

DAWR and DCA discussed possible mitigation measures for addressing the tree snail colony, such as relocating to private land. DAWR also suggested that DPW explore a land swap since the main colony appears to occupy wetlands, which are a regulated resource and development constraint. DAWR favors relocation of the snails to one of the three existing colonies within the Ylig Basin, and proposed the following relocation sites in descending order of preference:

1. Relocate the snails to the adjoining Lot 165-1. This is the pago (*Hibiscus tiliaceus*) forest that seems to harbor the main colony. The private landowner will be approached to obtain permission to use this lot as the receiving site.

2. Relocate the snails to Lot 167-R1, a parcel adjacent and north of Chalan Aguon, and northwest of the bridge. There is a small colony below the limestone forest canopy. As with the previous option, the private landowner would need to be approached to obtain permission to use this lot.

3. Relocate the snails to the site of a third colony further upstream of Ylig Bridge. DCA will investigate the specific location of this colony and whether it is still active. If the colony is within a privately-owned parcel, permission would need to be sought for the relocation into this lot.

4. Relocate to the snails to the Hilaan site (also known as Lost Pond), located on the northwest coast of Guam north of Tanguisson. Hilaan has historically supported species of *Partula* for the past 20 years; however a visit in December 2008 revealed the demise of an existing *P. gibba* colony. The cause of this demise remains unknown, but it is a concern since other snails relocated to the site could meet the same fate. Brent Tibbatts volunteered to revisit the Hilaan site to confirm whether Hilaan is still a suitable site for the snail relocation.

5. Relocate the colony to Masso Reservoir, a GovGuam parcel under the control of the Department of Agriculture. The main drawback to using this site is that it would require enhancement. This

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SAIPAN Caller Box PPP, Suite 164, Saipan, MP 96950 / Chalan Pale Arnold, Ada's Building South Garapan, Saipan 96950 / Tel: (670) 234-9017 / Fax: (670) 234-3842

involves erecting shade cloth and planting native trees to serve as host species, windbreaks, and canopy cover. In light of this, DAWR suggested that perhaps a local tree snail expert, Mr. Barry Smith of the University of Guam Marine Laboratory, might be willing hold the colony in temporary captivity until Masso is ready to receive the snails. In his research, Mr. Smith has become well acquainted with the captive breeding requirements of *Partula*.

DCA will conduct research into the landowners of the respective parcels and discuss the mitigation with DPW. On a side note, DCA and DAWR also discussed the existing small boat ramp on the southern bank of the Ylig River. DAWR agreed to provide input on the relocation of the boat ramp, which will be unavoidably demolished during the bridge reconstruction.

Since the meeting, Mr. Tibbatts has reported that during his site visit on June 1 he did not find any *P. gibba* and saw only a few *P. radiolata*. He does not recommend that Hilaan be used as a receiving site. Also, DCA has corresponded with Mr. Barry Smith regarding the last option involving temporary captivity. DCA will follow up with Mr. Smith to confirm whether this remains a feasible option.

We thank your staff for their time in meeting with the bridge designers and their efforts in helping move this important project forward while preserving Guam's precious natural resources.

Please do not hesitate to call (477-7991) or e-mail (cmcamacho@dcaguam.com) for any questions.

Respectfully,

Claudine Camacho

Claudine Camacho

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Department of Agriculture
Dipåttamenton Agrikottura

163 Dairy Road, Mangilao, Guam 96913

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Animal Health	734-3940
Aquatic & Wildlife Resources	735-3955/56; Fax 734-6570
Forestry & Soil Resources	735-3949/50; Fax 734-0111
Plant Nursery	734-3949
Plant Protection & Quarantine	472-1651; 475-1426 Fax 477-9487

Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lt. Governor

Paul C. Bassler
Director

Joseph D. Torres
Deputy Director

July 02, 2009

Memorandum

To: Attorney General of Guam
Attention: Tom Keeler, Assistant Attorney General

From: Director, Department of Agriculture

Subject: **Status of the Guam Tree Snail, *Partula radiolata*, and the Ylig Bridge Project**

Partula radiolata, the Guam Tree Snail, is an endangered species of tree snail endemic to Guam. These snails live in protected limestone forests, feeding on rotting leaf material. These snails live only in vegetation, primarily between 2 and 10 meters above ground. This behavior offers some protection from the introduced snail predator, the flatworm, *Platydemus manokwari*. Snails dislodged from trees must return to their habitat in a relatively short time or risk either predation by the flatworm or desiccation by exposure to sun and wind.

Partula radiolata has been locally listed as an endangered species since 1995 and has been a candidate for federal listing since 1994. In June 2007, a large colony of *P. radiolata* was destroyed by illegal clearing at a Gun Beach construction site. This was probably the largest single colony left on Guam.

The Division of Aquatic and Wildlife Resources (DAWR) desires relocating the colony of *Partula radiolata* within the right of way of the Ylig Bridge expansion because the construction will destroy the snail's habitat, and the snails, being relatively immobile; will be destroyed along with the vegetation/habitat.

EXHIBIT 2

The preferred action for this endangered species' habitat loss is relocation of the snails to a suitable receiver site to a nearby existing colony. Relocation of a colony requires follow up monitoring to ensure the relocation was successful. Monitoring generally should continue for at least 6 months to a year to ensure an acceptable survival rate of the relocated snails.

Please feel free to contact me at your convenience at 735-3960.

PAUL C. BASSLER

Attachment(s):

cc: Guam Environmental Protection Agency
US Fish & Wildlife Service, Honolulu
Bureau of Statistics and Plans

Department of Parks, Recreation & Historic Preservation
Government of Guam
490 Chalan Palasyo
Agana Heights, Guam 96910
Director's Office: (671) 475-6296/97
Facsimile: (671) 477-0997
Parks Division: (671) 475-6288/89
Guam Historic Preservation Office: (671) 475-6295 / 6272
Facsimile: (671) 477-2822

Felix P. Camacho
Governor

Michael W. Cruz, MD
Lt. Governor

Joseph W. Dueñas
Director

Jose M. Quinata, Jr.
Deputy Director

In reply refer to:
RC2009-5081

June 29, 2009

Sandra L. Yee
Project Manager
International Archaeological Research Institute, Inc.
P.O. Box 22621
Barrigada, Guam 96921

Subject: Research Design for Ylig Bridge Project No.: GU-NH-004 (104) and its addendum

Dear Ms. Yee,

As per your previous conversation with our archaeologist regarding the above subject, this is a formal approval of the Research Design and its addendum.

Due to other environmental concerns such as identification of endangered snails in the project area, the original plan that was going to conduct test excavations ahead of the construction will not be feasible since the testing may affect the endangered snails. Therefore, monitoring in conjunction with excavations associated with the reconstruction of the bridge will be an acceptable alternative.

If you have further questions, please call our office at 475-6295 / 6272.

Sincerely,

Joseph W. Dueñas
State Historic Preservation Officer

EXHIBIT 3

International Archaeological Research Institute, Inc.
PREHISTORIC & HISTORIC INVESTIGATIONS • CULTURAL RESOURCES ASSESSMENTS & PLANNING • PALEOENVIRONMENTAL STUDIES

June 11, 2009

IARII Addendum to Research Design for
Ylig Bridge, Project No. GU-NH-0004(104)

This addendum to the archaeological research design (Yee, 2009) required for Section 106 of the National Historic Preservation Act (NHPA) compliance is necessitated by a change in tasks as a result of the discovery on the project area by environmentalists at Duenas Camacho and Associates (DCA) of an endangered species of land snail, as well as wetlands. This discovery prohibited IARII from obtaining permits to perform backhoe test trenching as part of the archaeological inventory survey. Therefore, in consultation June 4, 2009 with Vic April, the Territorial Archaeologist for Guam at the Guam Historic Preservation Office (GHPO), this addendum was requested. It is designed to compensate for the inability to carry out archaeological testing. Instead, archaeological monitoring will be conducted for all construction related clearing, grubbing, trenching, and excavation (any ground disturbance) related to bridge and road construction work.

Previously, the following phases and tasks were specified in the Research Design. These tasks were apportioned between Phases I and II of the project, and involved the following tasks:

PHASE I
1. Documentation/Record Search of Historical Data
2. Field Survey
3. Interim Letter Report Summarizing Findings of Field Survey
4. Draft Archaeological Inventory Survey Report

PHASE II
1. Collection and Analysis of Paleosediment Samples
2. Final Archaeological Technical Report (including Analytical Report)

The first 3 tasks of Phase I have been completed (Figure 1), as has the first task of Phase II. The draft and final versions of the Technical Report will now include the results of the archaeological monitoring of construction activities.

ADDENDUM TO RESEARCH DESIGN

The potential is high for encountering burials and other sensitive cultural materials during excavation required for the bridge and road construction work. The latest construction plans call for footing and retaining wall excavation to a depth of 1.5 meters. The footprint of the construction (Figure 2) will encroach upon the Ylig Bay Archaeological Site (66-09-1872) (Yee, report in preparation). IARII archaeologists will monitor all ground disturbing activities related to construction, including clearing, grubbing, trenching, and excavation. They will record all cultural materials encountered, stopping the backhoe or bulldozer operators as needed. It is necessary that the bulldozers and backhoes or excavators use only straight edge buckets/blades, rather than the toothed buckets/blades. Sand or other sediment overlying the delicate cultural materials will be scraped off, rather than gouged out. The archaeological monitors will stop the machinery as necessary to protect,

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EXHIBIT 4

observe, record, recover cultural materials as appropriate. When cultural materials are excavated, the material will be screened through 6 millimeter or 3 millimeter (mm) screen (1/4 or 1/8 inch). All burial materials will be screened through 3 mm screen.

If no cultural materials are encountered in some areas, a representative profile (scaled drawing and photos) will be prepared, to record the natural soil and sediment layers. All trench or excavation walls with cultural materials and strata will be photographed, sketched as appropriate, and diagnostic or sensitive items recovered, logged in a sequential field catalog, and bagged for laboratory analysis and recording. Burials and significant cultural materials require notification of GHPO within 24 hours. All excavation/construction activity must cease upon burial encounter until GHPO has determined a method of mitigation (i.e. retrieval, avoidance). Burial treatment will proceed as described in the original research design.

Significant items or features, as well as all burials will be recorded using survey grade Global Positioning System (GPS).

A Draft Archaeological Inventory Survey and Monitoring Report will be submitted within four (4) months of the completion of field monitoring. Collection of paleosediment samples has been performed. Analysis of the samples is anticipated to require six to eight months since the samples must be sent to an off-island laboratory. The Analytical Report of the paleosediment samples will be an addendum to the Final Archaeological Inventory Survey and Monitoring Report.

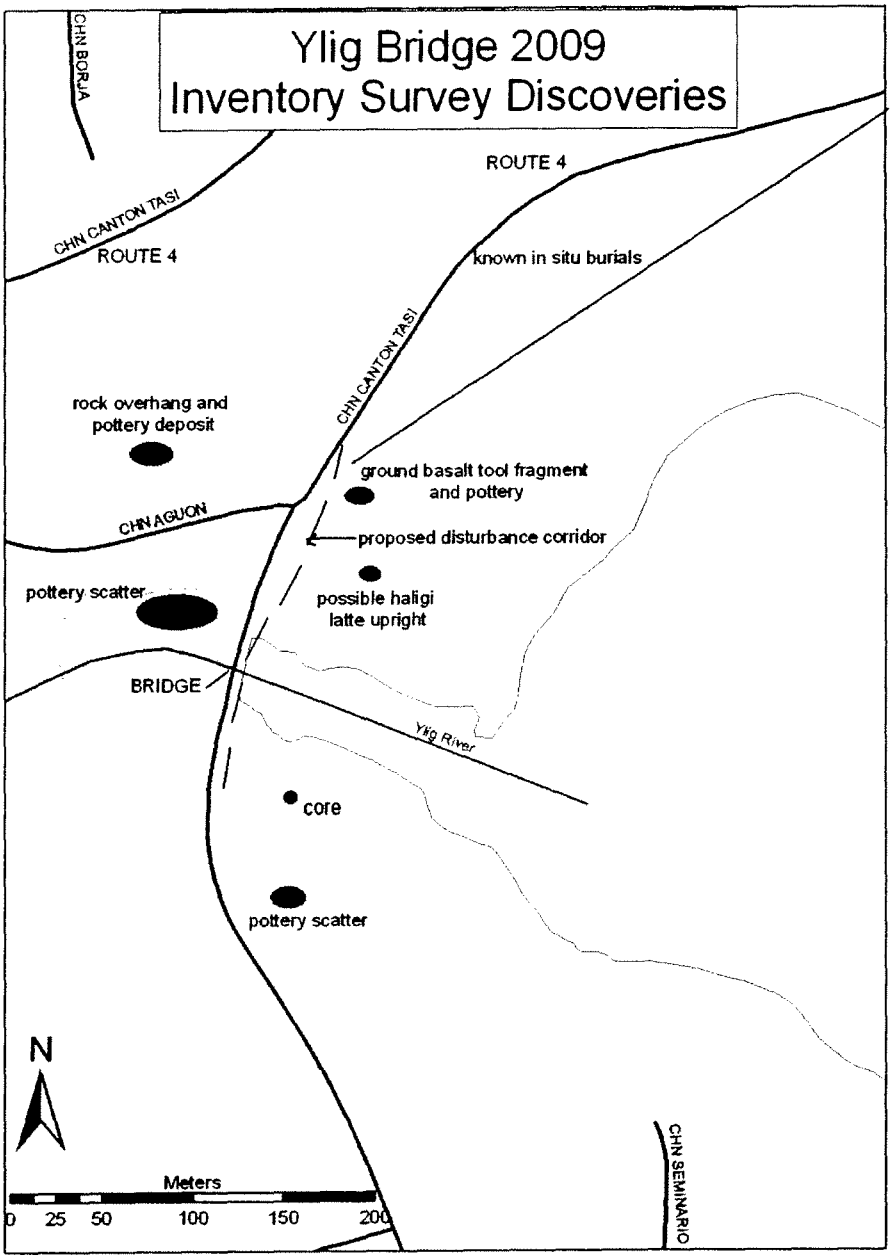

Figure 1. Cultural materials discovered during inventory survey.

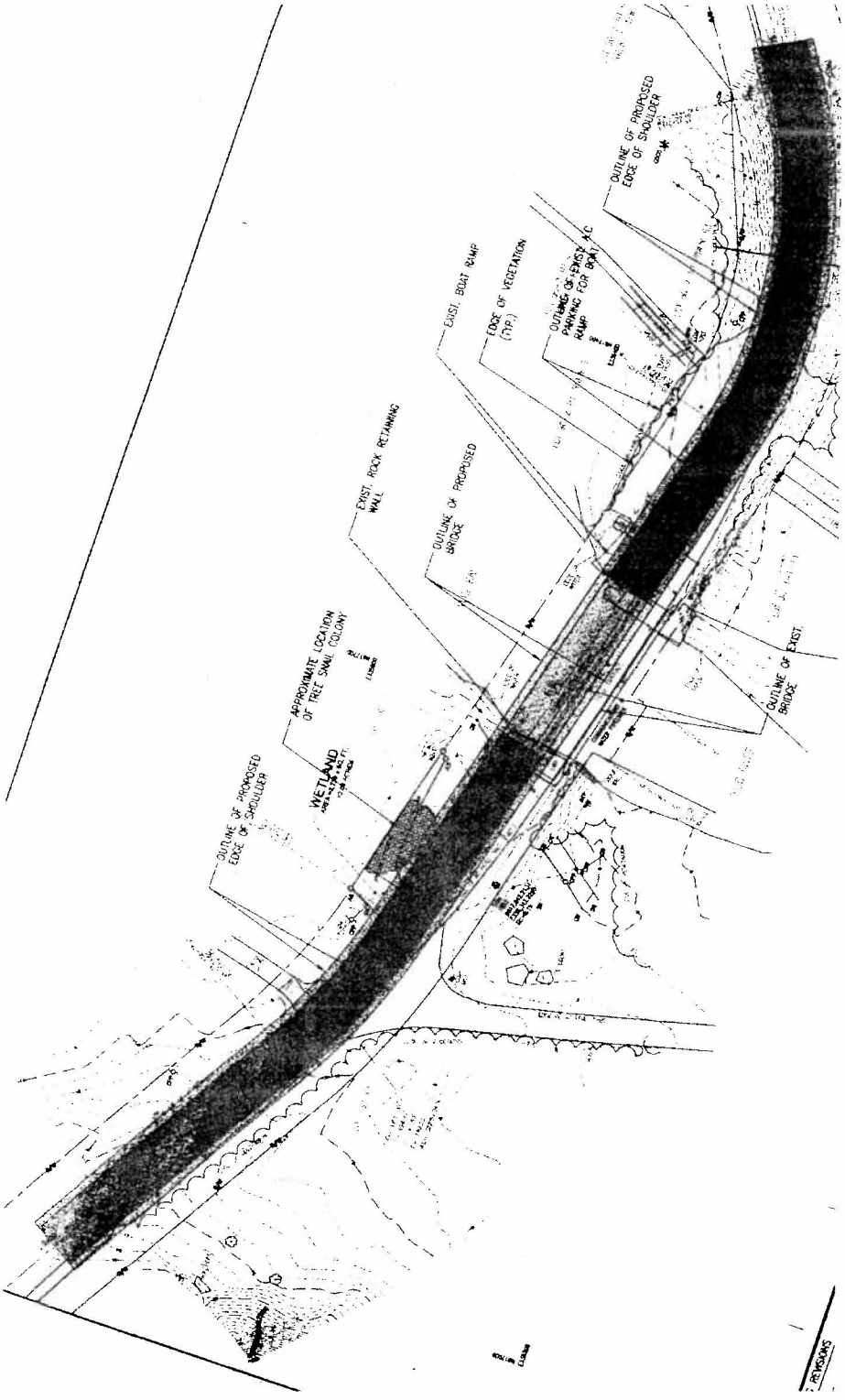

Figure 2. Corridor proposed by Duenas Camacho and Associates, June 4. 2009.

Yee, Sandra Lee
2009 *Research Design, Archaeological Survey, Testing, and Coring, Ylig Bridge Reconstruction,* prepared for Parsons Transportation Group, Tamuning, Guam by International Archaeological Research Institute, Inc., Honolulu, Hawai'i.

(in preparation) *Archaeological Salvage, Data Recovery, Burial Recovery, Monitoring, and Mitigation of the Ylig Bay Archaeological Site 66-09-1872, Yona, Guam* prepared for International Bridge Corporation and Federal Highways Administration, Guam and Honolulu, by International Archaeological Research Institute, Inc., Honolulu, Hawai'i.

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Paul C. Bassler
Director

Joseph D. Torres
Deputy Director

July 02, 2009

Ms. Claudine Camacho
Environmental Service Division
Duenas Camacho Associates
PO Box 8900
Tamuning, Guam 96931

Re: Replacement of Ylig Bridge, Phase I, FHWA Project No. GU-NH-0004 (104)

Dear Ms. Camacho:

The Department of Agriculture received a letter dated June 16, 2009 requesting for our review and approval for the Ylig Bridge Phase I Final Wetland Map.

The Department's biologist have conducted a site visit and confirmed the boundaries depicted on the map, including the adjusted Point WLDA-8. Based on the biologist's findings, we concur with the wetland delineation of the Ylig Bridge project site.

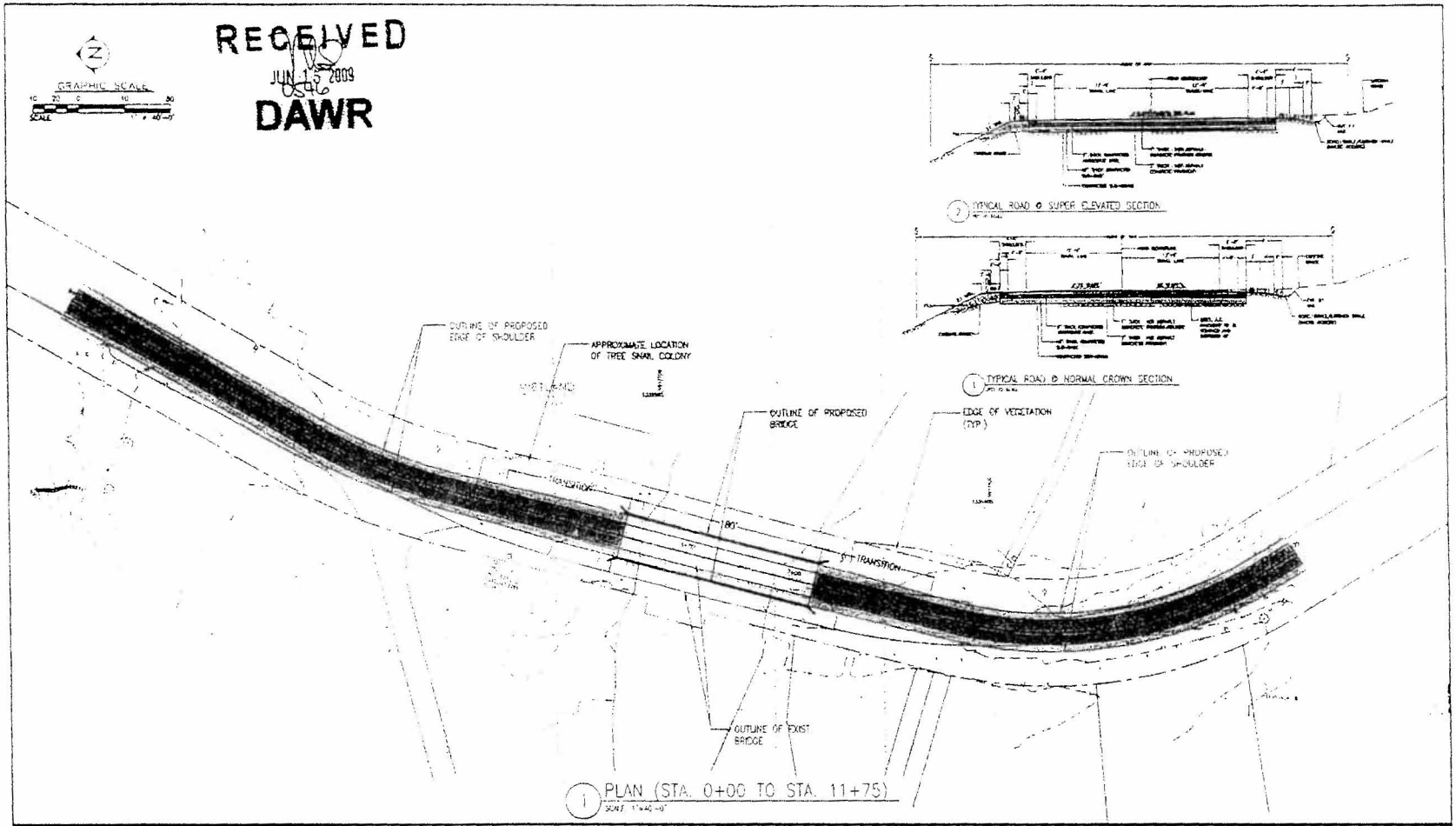
The Department would like to acknowledge your cooperation and involvement of this project, and look forward to future correspondence. Please feel free to contact us at 735-3960.

Paul C. Bassler

PAUL C. BASSLER

Attachment(s):

EXHIBIT 5



DRAWING REVISIONS			
REVISION	DATE	BY	DESCRIPTION

DESIGNED
DRAWN BY
CHECKED BY
FMS
DATE

DCA
DARRAS CHAMBERS ASSOCIATES
• ENGINEERING & CONSTRUCTION MANAGEMENT
• ENVIRONMENTAL SERVICES
• DEVELOPMENT CONSULTATION
• GEOGRAPHIC INFORMATION SYSTEMS

CONCEPT BRIDGE LAYOUT FOR REPLACEMENT OF YLIG BRIDGE
(PROJECT NO.: GU-NH-0004(104)

PLAN

GUAM
DEPARTMENT OF PUBLIC WORKS

VILLAGE	TERRITORY	PROJECT	DRAWING	SHEET NO.	TOTAL NO.
	GUAM		X	X	