Appendix D

Technical Assistance on the Proposed Construction of the Genome Launch Facility
August 14, 2001

Dr. A. Sidney England
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University of California, Davis
One Shields Avenue
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Subject: Technical Assistance on the Proposed Construction of the Genome Launch Facility on the University of California, Davis, Campus in Yolo County, California

Dear Mr. England:

The U.S. Fish and Wildlife Service (Service) is in receipt of your July 9, 2001, correspondence and attachments, including the Genome Launch Facility Tiered Initial Study Sch. No. 2001/032/15, a July 6, 2001 letter from Edward Whisler of May and Associates, Inc., site plans, current and historic photographs of the area, and other pertinent biological and land use information. Information was also gathered during a July 18, 2001, telephone conversation and a July 27, 2001 exchange of electronic mail between yourself and Jason Douglas of the Service. You have requested that the Service review the Genome Launch Facility project for potential effects on Federally-listed species, specifically the threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*). This letter is provided as technical assistance in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act).

The proposed action is the construction of an approximately 21,000 gross square foot laboratory building that will serve as the Genome Launch Facility (GLF). It will be located on the central portion of the University of California, Davis (UCD) campus near Hutchison Drive. Nine blue elderberry shrubs (*Stlandus mexicanus*) are located in the vicinity of the project site. All posses at least one stem over 1 inch in diameter at ground level, but none exhibit use by the valley elderberry longhorn beetle (i.e., exit holes are not evident). Regardless, the shrubs are considered habitat for the species. The Service's July 9, 1999, *Conservation Guidelines for the Valley Elderberry Longhorn Beetle* (Conservation Guidelines) indicate that any shrub within 100 feet of
an action may be considered adversely affected, but that exception may be granted by the Service on a case-by-case basis.

Shrubs 1 through 4 are approximately 100 feet or more from the proposed buildings. The Service thus considers them avoided. Shrubs 5 through 9 are within 100 feet of proposed GLF construction activities and/or associated, existing utilities. Shrubs 5 through 8 are located immediately adjacent to the south side of Extension Center Drive, a well-traveled campus thoroughfare. Shrub 8 is situated immediately north and west of a paved parking lot. Shrubs 7 and 8 are presently separated by a paved facility access road. Shrubs 5 through 7 are located north of an existing utility well, and shrub 9 is located west of the well. A lath house located approximately 30 feet south of shrubs 6 and 7. Shrub 8 is situated approximately 40 feet northwest of the existing Transportation and Parking Services (TAPS) building.

The specific actions associated with the proposed action are as follows:

1. Construction of the GLF building southward from the site of the existing lath house;
2. Extension of utilities along existing utility corridors between shrubs 5 and 6 and shrubs 7 and 8;
3. Removal of the parking area south of shrub 8 and replacement with landscaping;
4. Removal of the gravel drive area south of shrubs 5, 6, and 7 and replacement with landscaping; and
5. Replacement of the paved road between shrubs 7 and 8 with a sidewalk and landscaping.

UCD has proposed to avoid adverse effects on elderberry shrubs and the valley elderberry longhorn beetle by placing chain-link, immovable fencing approximately 5 to 7 feet from the dripline on: (1) the south and east sides of shrub 5; (2) the west and south sides of shrub 6; (3) the east and south sides of shrub 7; (4) the west, south, and east sides of shrub 8; and (5) the east side of shrub 9. This proposed measure will prevent construction damage to the shrubs and constitutes a higher level of protection than exists under normal pre-project operations. Fencing would not be placed on the north side of shrubs 5, 6 and 7, which are immediately adjacent to Extension Center Drive. It has been proposed that the fencing be installed prior to construction in mid-August, 2001, and not removed until construction is complete. A biological monitor will instruct work crews on the biology of the valley elderberry longhorn beetle and the need to avoid elderberry shrubs. The monitor will also be present on-site during construction to ensure shrubs are avoided.

The Service considers the avoidance measure to be sufficient to avoid adverse effects of construction activities on the valley elderberry longhorn beetle because: (1) the shrubs exhibit no current evidence of beetle use in the form of exit holes; (2) the shrubs are not located in recently-native habitat (an areal photograph indicates the site was developed, but shrubs absent, in 1967
and has been in agricultural production since at least 1937); (3) the nearest known elderberry shrubs are approximately 2,000 feet distant; and (4) dust raised by construction will not coat ripe elderberries nor clog the tracheae of adult beetles, as the plant and insect’s reproductive season has passed.

The Service, however, remains concerned with the activities that follow the aforementioned construction. UCD’s July 9, 2001, letter included descriptions of two alternatives. The first alternative would allow the elderberry shrubs to remain in place, with surrounding post-construction landscape designed to incorporate native species referenced in the Conservation Guidelines. The second alternative involves the relocation of the shrubs during the winter of 2001-2002 to the existing UCD Russell Ranch conservation site, itself a conservation measure for the Low Effect Habitat Conservation Plan for the Valley Elderberry Longhorn Beetle at the La Rue Student Housing Project and Bowley Center Project. Implementation of the first alternative would not result in the take of valley elderberry longhorn beetle. Implementation of the second alternative would.

Section 9(a)(1) of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened fish and wildlife species without special exemption. Take means “...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.” Harm” has been further defined to include habitat destruction when it kills or injures a listed species by interfering with essential behavioral patterns such as breeding, foraging, or resting. Thus, not only is a listed animal protected from activities such as hunting or collecting, but also likely from actions that damage or destroy its habitat.

Take incidental to an otherwise lawful activity may be authorized by one of two procedures. If a Federal agency is involved with the permitting, funding, or carrying out of the project, then initiation of formal consultation pursuant to section 7 of the Act is required if it is determined that the proposed project may affect a federally listed species. Such consultation would result in a biological opinion that addresses the anticipated effects of the project to the listed species and may authorize a limited level of incidental take. If a Federal agency is not involved with the project, and federally listed species may be taken as part of the project, then an incidental take permit pursuant to section 10(a) of the Act would need to be obtained. The Service may issue such a permit upon completion of a satisfactory conservation plan for the listed species that would be affected by the project.

The GLF project involves no Federal funding and has no discretionary involvement by a Federal agency. There is thus no present opportunity to authorize incidental take of the valley elderberry longhorn beetle through formal section 7 consultation. The required public comment period for the section 10 incidental take permit process will prevent the Service’s issuance of a permit prior to the desired start-date of the proposed action.

The Service has determined that implementation of the first, landscape-only alternative, along with the avoidance measures indicated above, will not result in take of valley elderberry longhorn beetle. A similar determination cannot be made for the second alternative. Though the Service supports the relocation of the elderberry shrubs, the relocation itself would involve take of the valley elderberry longhorn beetle. UCD has not proposed measures sufficient to minimize the
effects of such take, and this technical assistance letter does not grant exemption to the prohibition of take. UCD should be aware of the narrow scope of approval granted in this technical assistance letter.

The Service is supportive of UCD’s desire to transplant shrubs to an established, well-protected conservation site and would be supportive of measures (i.e. the preparation of a Habitat Conservation Plan) that would allow for this. A possible nexus for Federal involvement, and thus section 7 consultation, is through UCD’s pursuit of a Nationwide Permit (NWP) under section 404 of the Clean Water Act. Various NWPs exist which may consider the excavation of elderberry shrub transplant sites to be a discharge of fill into a jurisdictional wetland (i.e. Putah Creek) and thus, provide UCD with a nexus. It is recommended that UCD first contact the Sacramento District of the U.S. Army Corps of Engineers for recommendations on this matter. Additional information regarding the regulatory program may be obtained by calling the Sacramento District at 916-557-5250.

As an aside, the Service commends UCD on the thoroughness of the information provided with the July 9, 2001, letter, and on your responsiveness to requests for additional information. If you have any questions or concerns about this technical assistance letter, please contact Jason Douglas or Chris Nagan of my staff at (916) 414-6645.

Sincerely,

[Signature]

Jan C. Knight
Chief, Endangered Species Division