

Findings and Recommendations Regarding the Issuance of Federal Fish and Wildlife Permit TE136043-0 to Mark III Engineering Contractors to Allow Incidental Take of the Valley Elderberry Longhorn Beetle as a Result of Construction Activities of The Offices at Parkshore, Folsom, Sacramento County, California

I. DESCRIPTION OF THE PROPOSAL

Proposed Action

The U.S. Fish and Wildlife Service (Service) proposes to issue an incidental take permit (Permit) to Mark III Engineering Contractors (Mark III) in Sacramento County, California under the authority of section 10(a)(1)(B) and section 10(a)(2) of the Endangered Species Act of 1973, as amended (Act) for a period of 5 years. Mark III is requesting coverage for one species (Covered Species), the federally threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) (VELB).

Under the Permit, Mark III would receive authorization for take of VELB incidental to the construction of nine commercial office buildings and associated infrastructure at an undeveloped 6.5-acre parcel (APNs 071-0530-17 and 071-0530-18) located on Parkshore Drive, just west of Folsom Boulevard, in the city of Folsom, Sacramento County, California. This project is known as The Offices at Parkshore. The Habitat Conservation Plan (HCP) submitted by Mark III as part of their Permit application, describes the project in detail, together with the conservation measures that would be implemented to avoid, minimize, and mitigate take of VELB expected to occur as a result of the project (Mark III 2005).

In addition, and consistent with the U.S. Department of the Interior's "No Surprises" regulation [50 *Code of Federal Regulations* (CFR) 17.32(b)(5)], Mark III is seeking assurances of no further mitigation requirements for VELB for this project while the permit is in effect.

Documents used in the preparation of these findings and recommendations include: (1) the HCP (Mark III 2005); (2) the Service's Screening Form for Low-effect HCP Determinations and Environmental Action Statement (EAS) (USFWS 2006); (3) the Intra-Service Formal Section 7 Consultation on Issuance of an Endangered Species Act Section 10(a)(1)(B) Incidental Take Permit (Permit) for The Offices at Parkshore Low Effect Habitat Conservation Plan, Sacramento County, California (USFWS 2007); (5) the Valley Elderberry Longhorn Beetle Recovery Plan (USFWS 1984); and (6) Conservation Guidelines for the Valley Elderberry Longhorn Beetle (USFWS 1999). These documents are hereby incorporated by reference, as described in 40 CFR 1502.21.

Project Description

Mark III proposes to construct eight one-story office buildings and a single two-story office building, which would collectively provide 74,435 square-feet of new office space. The eight single-story buildings would range in size from 2,991 to 43,300 square-feet, while the single two-story building would be 48,422 square-feet. Two vehicular driveways would serve the project site from Parkshore Drive, and a 377-space asphalt parking lot would be installed on-

site. Additional site improvements would include sidewalks, pedestrian walkways, underground utilities, and landscaping. The 6.48-acre project site is the last undeveloped portion of an established office park (Lake Forest Technical Center). All resident elderberry shrubs (*Sambucus* spp.) would be removed from the 6.48-acre project site to accommodate the new office buildings, parking lot, and associated site improvements. The project site was formerly mined and remains covered with dredge tailings, but supports degraded remnants of scrub and oak woodland vegetation, including habitat (e.g., elderberry shrubs) for the VELB. Elderberry plants are present in three locations in the project site. At two of these locations the plants grow as clonal clusters with numerous (more than 100), young, solitary stems. The third location is a mature, multi-stemmed solitary plant. Thirty-nine of these elderberry plants exhibit 47 stems with basal diameters equal to or greater than one inch, which is a sufficient size to be considered habitat for the VELB. An inventory of the 47 stems identified a single beetle exit-hole. The 39 resident elderberry plants supporting stems equal or greater than 1-inch diameter would be adversely affected by the proposed project. No critical habitat for any listed species occurs on the project site.

The project applicant has proposed to begin construction of the proposed project prior to the issuance of an incidental take permit. The project applicant has proposed to avoid the elderberry shrubs onsite by implementing buffer areas of 20 feet from the drip lines of the on-site elderberry shrubs until the shrubs have been transplanted from the site. The Service determined at the August 11, 2005, site visit that this would be acceptable. The Service specified avoidance measures for this initial phase of construction in a May 8, 2006, letter to the City of Folsom (1-1-06-CP-1094).

Conservation Measures

Mark III's HCP for the proposed project incorporates measures to avoid, minimize and mitigate for the effects of anticipated taking of VELB during project activities (Mark III 2005). The project applicant has proposed the following conservation measures:

1. Contractors would install protective fencing to maintain a 20-foot buffer from the drip lines of all elderberry shrubs onsite. Signs warning construction personnel about these restricted areas would be placed around the perimeter of the protective fencing.
2. Work crews and contractors would be given environmental awareness training that would emphasize the identification of elderberry shrubs and the need to avoid damaging the elderberry shrubs and the possible penalties of non-compliance prior to the start of construction.
3. Dust control measures will be employed during all construction activities.
4. A qualified biologist will inspect the fencing and condition of the elderberry shrubs at least once a week during all grading and construction activities, until all elderberry shrubs have been transplanted from the project site.
5. Under the HCP, compensation and avoidance measures for adverse effects to the VELB will

conform to the Service's Conservation Guidelines for Valley Elderberry Longhorn Beetle, dated July 9, 1999 (Conservation Guidelines):

- each elderberry stem with a basal diameter of 1.0 inch or greater that is directly or indirectly impacted shall be transplanted;
 - each elderberry stem with a basal diameter of 1.0 inch or greater that is impacted will be replaced with seedling elderberry plants using a minimal replacement ratio between 2:1 to 8:1, and this ratio depends upon the type of habitat, basal stem diameters of affected elderberries, and the presence of beetle exit holes in the affected plants;
 - representative native tree and shrub species that grow in association with the elderberries will be planted at a ratio of one or two specimens for every replacement elderberry seedling (1:1 or 2:1 ratios);
 - 1800 square feet should be provided for every five replacement elderberry seedlings and five associated natives;
 - a mitigation site, which will serve as habitat for the VELB in perpetuity, must be secured for the transplants and replacement plantings, and the size of the site is determined by the total planting square footage required for all transplanted and replacement elderberries.
6. The 39 elderberry shrubs (including the 47 stems greater than one-inch basal diameter) would be transplanted to Wildlands, Inc.'s River Ranch Conservation Bank (Conservation Bank), which provides for long-term protection of VELB habitat, as well as habitat for other federally listed species. The 39 adversely affected elderberry shrubs will be transplanted to a 0.45-acre site in the Conservation Bank (Table 1). The bank's operator, Wildlands, Inc., will transplant these shrubs. Prior to transplanting, Wildlands, Inc. will advise the USFWS in writing of the transplant methods and duration of transport to the mitigation site.
 7. An additional 53 elderberry seedlings and 57 native riparian plant seedlings (tree/shrub species associated with elderberry habitat) would be planted along with the transplanted elderberry shrubs on the conservation site. The required mitigation acreage for the replacement plantings is 19,800 ft.², or 0.45 acres. Mark III would also purchase 11 credits at the Conservation Bank. Each credit includes an established ratio of elderberry seedlings and native riparian plant seedlings
 8. The Conservation Guidelines state that transplanting of elderberry shrubs should occur when shrubs are dormant, between November 15th and February 15th. In the unlikely event that the project's impacted elderberry shrubs must be transplanted outside of their dormant period, Mark III agrees to increase the mitigation. If transplanting occurs between February 16th and November 14th, Mark III will increase the number of plantings from 53 elderberry

seedlings and 57 native plant seedlings to 106 elderberry seedlings and 114 native plant seedlings (23 habitat conservation credits), unless otherwise approved by the USFWS.

Table 1: Compensation for the Offices at Parkshore Project.

Location	Stems (maximum diameter at ground level)	Exit Hole on Shrub (Yes or No)	Elderberry Seedling Ratio	Associated Native Plant Ratio	Number of Stems Observed	Required Elderberry Plantings	Required Associated Native Plant Plantings
Non-riparian	stems ≥ 1 " & ≤ 3 "	No	1:1	1:1	42	42	42
		Yes	2:1	2:1	2	4	8
Non-riparian	stems > 3 " & < 5 "	No	2:1	1:1	2	4	4
		Yes	4:1	2:1	0	0	0
Non-riparian	stems ≥ 5 "	No	3:1	1:1	1	3	3
		Yes	6:1	2:1	0	0	0
Riparian	stems ≥ 1 " & ≤ 3 "	No	2:1	1:1	0	0	0
		Yes	4:1	2:1	0	0	0
Riparian	stems > 3 " & < 5 "	No	3:1	1:1	0	0	0
		Yes	6:1	2:1	0	0	0
Riparian	stems ≥ 5 "	No	4:1	1:1	0	0	0
		Yes	8:1	2:1	0	0	0
Total replacement plantings						53	57
Total Elderberry shrubs to be transplanted						39	
57/5 = 11.4 = 11 valley elderberry longhorn units (if elderberry shrubs are transplanted November 15 to February 15).							

II. PUBLIC COMMENT

To announce the availability of Mark III's HCP for The Offices at Parkshore, the Service published a Notice of Availability (Notice) and Receipt of Permit Application in the *Federal Register* on September 25, 2006 (71 FR 55800). The Notice explained that the Permit would allow incidental take of the threatened VELB, contingent upon implementation of the HCP by the applicant. Publication of the Notice initiated a 30-day public comment period. Two interested persons requested and were mailed copies of Mark III's HCP and the Service's EAS document. The public comment period for the Notice ended on October 26, 2006. No public comments were received during or after the 30-day comment period.

III INCIDENTAL TAKE PERMIT ISSUANCE CRITERIA – ANALYSIS AND FINDINGS

Analysis of Effects

Surveys were conducted on the proposed project site on September 7, 2005 (Mark III 2005), to determine whether federally listed species or other biological resources were present on the sites that could be affected by the projects and based on these surveys, the Service concluded that one federally listed species, the threatened VELB, may be incidentally taken by the proposed project activities

Based on the results of the 2005 survey, the completed Offices at Parkshore project would result in the removal of 39 elderberry shrubs. The 39 elderberry shrubs contain a total of 47 stems greater than 1-inch in diameter at ground height; habitat for VELB (*Valley Elderberry Longhorn Beetle Conservation Guidelines*; USFWS 1999). Evidence of use by VELB has been detected on one of the 39 shrubs on the project sites (Mark III 2005). The project site and elderberry shrubs are surrounded by urban development. The transplantation of these 39 elderberry shrubs could result in the take of VELB larvae that may be residing in the stems of these shrubs. Individual beetles within stems and roots of the affected elderberry shrubs may be harassed, harmed and/or killed by the transplantation and potential death from stress of the transplanted shrubs. Mortality, harm, and/or harassment could occur if:

1. Transplanted elderberry shrubs experience stress or become unhealthy due to changes in soil, hydrology, microclimate, or associated vegetation. This may reduce their quality as VELB habitat or impair the shrub's production of habitat-quality stems in the future.
2. Elderberry shrubs may die as a result of transplantation.
3. Branches containing larvae may be cut, broken, or crushed as a result of the transplantation process.

Temporal loss of habitat could temporarily reduce the amount of habitat available to the VELB. Temporal loss of habitat reasonably could occur due to: (1) the potential loss of transplanted, mature elderberry shrubs at the Conservation Bank; and (2) the amount of time for seedlings at the Conservation Bank to grow to a size usable by the VELB. Although compensation for effects to the VELB involve creation or restoration of habitat, it generally takes five or more years for elderberry plants to become large enough to support beetles, and it generally takes 25 years or longer for riparian habitats to reach their full value.

However, because of extensive disturbance at the project site and the surrounding urban development, the removal and transplantation of these shrubs to a Service-approved Conservation Bank is likely to improve the status of these 39 shrubs as habitat for the VELB, since they will be planted into a protected riparian area. Thus, the short term adverse effects of this project will be minor to negligible, and the long term effects are expected to be beneficial

because: (1) it is unlikely that individual beetles will actually be killed or injured as shrubs are transplanted; (2) shrubs at the project site are isolated and surrounded by commercial and industrial developments; (3) the project site was previously disturbed and does not represent critical habitat, essential habitat, or prime habitat; (4) 39 elderberry shrubs removed will be transplanted to a protected riparian habitat area, a Service-approved Conservation Bank, where they will be more likely to support VELB individuals; (4) additional elderberry seedlings/cuttings and native vegetation seedlings will be planted at the conservation site along with the transplanted elderberry shrubs; (5) the percentage of VELB habitat on the project site relative to the species' entire range is very small; and (6) the relative importance of the project site to the species, both regionally and range-wide, is thought to be minor.

Critical habitat for VELB has been designated along the lower American River at Goethe and Ancil Hoffman parks (American River Parkway Zone) and at the Sacramento Zone, an area about a half mile from the American River downstream from the American River Parkway Zone (USFWS 1984); however, this proposed project does not occur in designated Critical Habitat. Therefore, no destruction or adverse modification of critical habitat is anticipated.

After reviewing the current status of the VELB; the environmental baseline for the action area; the effects of the proposed action, including all measures to minimize and mitigate adverse effects; and the cumulative effects; it is the Service's biological opinion that the issuance of an incidental take permit pursuant to Section 10(a)(1)(B) of the Act is not likely to jeopardize the continued existence of the VELB, and does not destroy or adversely modify designated critical habitat (USFWS 2007).

In light of these and other considerations, the Service has determined that the HCP qualifies as a "low-effect" HCP as defined by the Habitat Conservation Planning Handbook (USFWS and NMFS 1996). Determination of a low-effect HCP is based on the following three criteria:

- (1) implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;
- (2) implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and
- (3) impacts of the HCP, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant.

As explained above, the first criterion has been met. The basis for satisfying the second criterion is explained in Section II.B of the EAS (USFWS 2006), which, in summary, states that effects on other environmental values and resources are expected to be minor to negligible because: (1) the size of the impact area is relatively small, 6.5 acres, and will not result in a significant impact to air quality, water quality, or other resources; and (2) the project will not impact any biologically, culturally, or environmentally sensitive areas or resources.

The basis for meeting the third criterion is explained in Section II.C of the EAS (USFWS 2006), which states that no significant cumulative effects are expected to occur under the proposed project given that elderberry shrubs are common throughout the greater Folsom-Sacramento area and elsewhere throughout the range of this species, and the limited extent and nature of the ground disturbing activities at the project site. All future projects within and adjacent to the City of Folsom that could affect VELB would include surveys for VELB and, where necessary, also include appropriate mitigation. Therefore, future construction, development, or improvement projects near the project site would assure that VELB impacts would be appropriately addressed. It is not anticipated that future projects would individually or cumulatively have a significant effect on the human environment. Other projects not immediately adjacent to the project site but within the range of VELB would typically be submitted to the Service for review and would be appropriately mitigated. As explained above, these project mitigation actions may, in the long-term, benefit VELB by moving the affected elderberry shrubs to the protected riparian environment.

The take allowed under this HCP, considered with the impacts of other past, present, and reasonably foreseeable similarly situated projects would not result in a significant cumulative effect to environmental values or resources. Elderberry shrubs, the host plant for the valley elderberry longhorn beetle, are common throughout the greater Folsom-Sacramento area and elsewhere throughout the range of this species.

There will be no effects to any other federally listed, proposed, or candidate species or their habitats from these projects.

Findings

1. The taking will be incidental.

The taking of VELB will be incidental to the otherwise lawful activity of construction and development of the Offices at Parkshore within the City of Folsom, and the proposed construction complies with all the appropriate local, state, and federal permits (Mark III 2005).

2. The Applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking.

The Service has determined that VELB impacts likely to result from the of issuance of the proposed incidental take permit would be adequately minimized and mitigated by the measures described in the HCP (Mark III 2005, USFWS 2007). The HCP would minimize and mitigate the impact of the proposed taking of VELB through Mark III's implementation of the measures described below.

- a. Mark III will transplant the 39 elderberry shrubs (including the 47 stems greater than one-inch basal diameter) to River Ranch Conservation Bank (Conservation

Bank), which provides for long-term protection of VELB habitat. River Ranch Conservation Bank is owned by Wildlands, Inc. and is located northwest of Sacramento in Yolo County. The required mitigation acreage for these replacement plantings is 19,800 square-feet, or 0.45 acres.

- b. An additional 53 elderberry seedlings and 57 native riparian plant seedlings (tree/shrub species associated with elderberry habitat) will be planted along with the transplanted elderberry shrubs in the 0.45-area site. Mark III would also purchase a minimum of 11 credits at the Conservation Bank. Each credit includes an established ratio of elderberry seedlings and native riparian plant seedlings
- c. The transplanted elderberry shrubs and supplemental plantings would be monitored by Wildlands, Inc. for 10 years consistent with the Service's *Conservation Guidelines for the Valley Elderberry Longhorn Beetle* (USFWS 1999). Pursuant to those guidelines, 60% of the original number of replacement planting must be maintained throughout the 10 year maintenance period. Therefore, a minimum of 32 elderberry plants and 34 associated native plants must be alive at the end of the 10 year period (Monitoring Section, page 26; Mark III 2005).
- d. The mitigation site containing the transplanted elderberry shrubs and seedlings at the River Ranch Conservation Bank will be managed and protected in perpetuity due to an existing conservation easement on the land. Planting, protection, and maintenance of elderberry shrubs and seedlings, and native riparian plant seedlings at the River Ranch Conservation Bank mitigation site would assure the biological value and viability of VELB habitat at the bank.

Based on the avoidance, minimization and mitigation measures described above, we conclude that Mark III has minimized and mitigated the impacts of VELB take to the maximum extent practicable. The mitigation for VELB meets that or other previously approved, similarity situated projects in Sacramento County.

Alternatives Considered. Mark III considered two alternatives that would have reduced impacts to VELB to a greater degree than the proposed HCP action; however, these alternatives did not meet Mark III's needs, did not meet the VELB conservation goals and objectives described in the HCP, and/or were impracticable. These alternatives are described below.

No Action. Under the No-Action Alternative, development of the Offices at Parkshore would not occur and Mark III would not implement the HCP or receive a Section 10(a)(1)(B) incidental take permit from the USFWS. The project site would remain undeveloped and the existing elderberry plants would not be disturbed.

However, potential impacts to the covered species may be greater in the absence of the HCP. VELB habitat conditions at the 6.5-acre project site are degraded due to disturbance and abundance of various non-native plants. Without the HCP, habitat quality would probably continue to decline. Therefore, the No-Action Alternative was determined to be of lesser conservation value to VELB than the proposed action HCP. The No-Action Alternative would also result in unnecessary economic burden on the applicant. For these reasons, the No-Action Alternative was rejected.

Reduced Take. The Reduced Take Alternative would reduce the size of the proposed office building and parking lots at the project site, thereby allowing some undetermined number of elderberry plants to remain. Construction impacts at the project site, including loss of VELB habitat, would still result with this alternative, but would be somewhat reduced in magnitude. Due to the relatively small project site dimensions and the location of the elderberry plants on the site, however, it would be impossible to implement this reduced size project alternative consistent with The City of Folsom's requirements for street setback, parking and landscaping, and still preserve a 100-foot construction buffer around elderberry shrubs at the site.

While some elderberries therefore might remain on site under this alternative, the likelihood of VELB occupancy in the remaining elderberries would become reduced over time from continued disturbance and as the adjacent area becomes more urbanized. The project site is already largely surrounded by developed properties and major city streets. Even though this alternative would avoid impacts to some of the resident elderberry plants, the gains in reduction of take of the covered species and reduced modification of the habitat for the VELB would not be biologically significant; furthermore, this alternative would also result in unnecessary economic burdens to the applicant. For these reasons, the Reduced Take Alternative was rejected.

In summary, in light of the biological adequacy of the VELB conservation measures in the proposed action HCP and the impracticability of the alternatives to the proposed HCP, the Service concludes the proposed action HCP will allow the applicant to minimize and mitigate the impacts of taking to the maximum extent practicable, as described in detail within the HCP.

3. The Applicant will ensure that adequate funding for the Habitat Conservation Plan and provide procedures to deal with unforeseen circumstances.

Mark III will ensure funding for implementation of all take avoidance, minimization, and mitigation measures and changed circumstances as specified in the HCP (Funding Section, page 28; Mark III 2005). As stated in the HCP, the cost for transplanting the 39 elderberry shrubs, purchasing 11 VELB credits, and costs of avoidance and minimization during project construction are estimated to be \$66,500. Mark III will

provide the Service a copy of the sales agreement for the purchase of all mitigation credits prior to the Service's issuance of the Permit. Wildlands Inc. will assume all responsibilities for funding of annual maintenance, replacement plantings (if needed), and the fulfillment of all monitoring and reporting activities for the 10-year monitoring period.

In the unlikely event that the 39 elderberry shrubs must be transplanted outside of the elderberry's winter dormant period (November 15 to February 15), Mark III would ensure \$100,000 for funding implementation of the HCP's conservation measures (Funding Section, page 28; Mark III 2005).

Funding related to Changed and Unforeseen Circumstances is not necessary for this low-effect HCP due to the conservation strategy that will be implemented under the HCP (Changed Circumstance Section, page 29; Mark III 2005). Mark III has begun the process for purchasing credits at the River Ranch Conservation Bank and will finalize purchase of credits within three months after a permit decision. Mark III understands that failure to provide adequate funding, and a consequent failure to implement the terms of the HCP in full, could result in temporary permit suspension or permit revocation (Revisions and Amendments Section, page 31; Mark III 2005).

Pursuant to the Service's "No Surprises" regulations [50 CFR 17.32(b)(5)], in the event that a changed or unforeseen circumstances affecting VELB and the HCP is being properly implemented, Mark III would not be required to provide the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon in the HCP without their consent. Mark III's HCP addresses only VELB; therefore, no incidental take coverage is provided for other species. In the event that other currently listed species, or a currently unlisted species is listed in the future, is impacted by the proposed project, Mark III would be responsible for consulting with the Service and taking appropriate action, as necessary, to comply with the Act (Unforeseen/Changed Circumstances/No Surprises Section, page 29 and the Revisions and Amendments Section, page 31; Mark III 2005).

4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

The Act's legislative history establishes the intent of Congress that this issuance criterion be identical to a regulatory finding of "no jeopardy" under section 7(a)(2) [see 50 CFR 402.03]. As a result, issuance of this section 10(a)(1)(B) permit was reviewed by the Service under section 7 of the Act.

In the biological opinion prepared for the proposed project (USFWS 2007), the Service concluded that issuance of an incidental take permit to Mark III is not likely to jeopardize the continued existence of VELB or adversely effect designated critical habitat. The Service reached this conclusion for the following reasons: (1) the amount of VELB larvae and/or adults killed or injured is likely to be low; (2) the amount of the land involved in the construction and improvement projects do not represent a large proportion of the lands within the ranges of VELB; (3) the proposed project site is disturbed, existing elderberry plants are isolated at the site, and VELB habitat values are low; (4) measures will be implemented to avoid damage to VELB habitat during construction; (5) the destruction of a limited amount of VELB habitat will be compensated for by the restoration of high quality VELB habitat within a Service approved conservation bank, through transplanting mature elderberry shrubs and planting elderberry seedlings and native riparian plant seedlings; (6) measures will be taken to minimize harm to remaining VELB habitat on the project site through use of buffer zones; and (7) designated critical habitat is not present in the project site.

5. Other measures, as required by Mark III of the Service, have been met.

Mark III's HCP has incorporated all elements necessary for issuance of a section 10(a)(1)(B) permit and otherwise required by the Service.

6. The Service has received assurances that the HCP will be implemented.

Mark III will provide the Service a copy of the sales agreement for the purchase of all required mitigation credits prior to the Service's issuance of the Permit.

IV SPECIES ASSURANCES – ANALYSIS AND RECOMMENDATIONS

In addition to obtaining authorization for incidental take of VELB, Mark III is seeking assurances from the Service of no further mitigation for these species in the event of unforeseen circumstances in the future.

The purpose of the Department of the Interior's "No Surprises" regulations [50 CFR 17.32(b)(5)] is to provide assurances to non-Federal landowners participating in habitat conservation planning that no additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources will be required from an HCP permittee for species adequately covered by a properly implemented HCP without the consent of the permittee. Species are adequately covered if the HCP addresses the conservation of the species and its habitat and if all section 10 issuance criteria have been met. All section 10 issuance criteria have been met for VELB as described under the "Findings" section above.

The HCP adequately addresses conservation of VELB and its habitat as described in Section III above and the Service's biological opinion (USFWS 2007). Due to the existing isolation of VELB at the project site, the impacts to the species resulting from the proposed project are

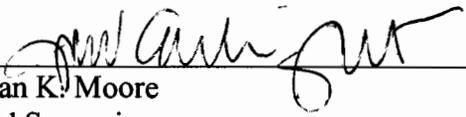
minor and the proposed conservation strategy is consistent with the Valley Elderberry Longhorn Beetle Recovery Plan (Service 1999).

V GENERAL CRITERIA AND DISQUALIFYING FACTORS

The Service has no evidence that the permit should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21(b) and (c). Mark III has met the criteria for the issuance of the permit and does not have any disqualifying factor that would prevent the permit from being issued under current regulations.

VI RECOMMENDATION ON PERMIT ISSUANCE

Based on our findings with respect to the proposed action, the Service recommends issuance of section 10(a)(1)(B) incidental take permit number TE136043-0 to Mark III Engineering Contractors for incidental take of valley elderberry longhorn beetle in accordance with the HCP for The Offices at Parkshore. Further, we recommend assurances of no further mitigation requirements from Mark III Engineering Contractors pursuant to the "No Surprises" regulations [50 CFR 17.32(b)(5)].


Susan K. Moore
Field Supervisor
Sacramento Fish and Wildlife Office

March 7, 2007
Date

REFERENCES CITED

- Mark III Engineering Contractors (Mark III). 2005. Low-effect Habitat Conservation Plan for the Valley Elderberry Longhorn Beetle for the Offices at Parkshore (APNs 071-0539-17 and 071-0539018) in Folsom, Sacramento County, California; Draft, November 2005. Prepared by Richard A. Arnold, Ph.D., Entomological Consulting Services, Ltd., Pleasant Hill, California.
- U.S. Fish and Wildlife Service (USFWS). 1980. Listing the Valley Elderberry Longhorn Beetle as a Threatened Species with Critical Habitat. Federal Register 45(155): 52803-52806. August 8, 1980.
- _____. 1984. Valley Elderberry Longhorn Beetle Recovery Plan. Portland, Oregon. 62 pp.
- _____. 1996. Mitigation Guidelines for the Valley Elderberry Longhorn Beetle, 19 September, 1996. Sacramento Fish and Wildlife Office, Sacramento, California. 11pp.
- _____. 1999. Conservation Guidelines for the Valley Elderberry Longhorn Beetle, 9 July 1999. Sacramento Fish and Wildlife Office, Sacramento, California. 13pp.
- _____. 2006. Screening Form for Low-effect HCP Determinations and Environmental Action Statement (1-1-06-PA-1818), Sacramento Fish and Wildlife Office, Sacramento, California. 6 pp.
- _____. 2007. The Intra-Service Formal Section 7 Consultation on Issuance of an Endangered Species Act Section 10(a)(1)(B) Incidental Take Permit (Permit) for The Offices at Parkshore Low Effect Habitat Conservation Plan, Sacramento County, California (1-1-07-F-0117), Sacramento Fish and Wildlife Office, Sacramento, California. 18 pp.
- U.S. Fish and Wildlife Service and National Marine Fisheries Service (USFWS and NMFS). 1996. Endangered Species Habitat Conservation Planning Handbook, November 1996. U.S. Department of the Interior Fish and Wildlife Service and U.S. Department of Commerce National Oceanic and Atmospheric Administration National Marine Fisheries Service. 130 pp.