



HAMILTON BIOLOGICAL

June 17, 2012

Dr. Jonna Engel
California Coastal Commission
200 Oceangate
Long Beach, CA 90802-4316

**SUBJECT: POTENTIAL COASTAL ACT VIOLATIONS
SUNSET RIDGE PROJECT, CITY OF NEWPORT BEACH
APPLICATION 5-11-302, W11C**

Dear Dr. Engel,

On behalf of the Banning Ranch Conservancy, Hamilton Biological, Inc. is reviewing and evaluating biological issues related to the proposed Sunset Ridge park project in the City of Newport Beach (City). In preparation for the June hearing in Huntington Beach, I read the staff report for this proposed project, dated June 1, 2012. I also attended the hearing in Huntington Beach on June 13, when this item was originally scheduled to be heard by the Commission (before it was postponed by the City). I am taking this opportunity to express support for the notion that enforcement action should be taken on any potential violations of the Coastal Act before the Commission further considers the City's application for a park development on this site.

APPARENT REMOVAL OF ESHA MUST BE ADDRESSED

I commend staff for providing a coherent and thorough discussion of issues related to the City's repeated disturbances of 3.3 acres of scrub dominated by *Encelia californica* (i.e., "Disturbed Encelia Scrub"). The City and its consultants have attempted to explain why the City is justified in mowing and applying herbicide to this native scrub community as far as 570 feet from any structure. Despite these ongoing disturbances, the 3.3 acres of Disturbed Encelia Scrub remains a sensitive biological resource to this day. Obviously, the habitat values of this vegetation would be greater for California gnatcatchers and most other native species were the City to refrain from mowing and spraying it, but the simple fact is that this native scrub community *exists* and should not be treated as a non-entity.

The same basic point is made on Page 2 of the staff report:

... staff finds that the Disturbed Encelia Scrub provides valuable ecological services for the California gnatcatcher during the period of time that the vegetation is present, including foraging and potentially nesting habitat. Therefore, although the site has been subject to disturbance, staff finds that the vegetation constitutes 'Major Vegetation' due to its special ecological role in supporting the federally threatened California gnatcatcher. Section 30106 of the Coastal Act defines 'development', in part, as '...removal or harvesting of major vegetation...'. Thus, the mowing of the Disturbed Encelia Scrub requires a coastal development permit and is subject to the requirements of the Coastal Act. In this case, no coastal development permit has been granted for the mowing of the Disturbed Encelia Scrub.

...

The proposed project would rely on the elimination of ESHA for the construction of active sports fields, a non-resource dependent use, and therefore will be entirely degraded by the proposed development and the eventual human activities on the subject site. The proposed project is therefore inconsistent with Coastal Act Section 30240 and must be denied.

Near the bottom of Page 26, the staff report states:

As noted above, the Commission's staff ecologist has found that in the absence of mowing of vegetation, the Disturbed Encelia Scrub would provide foraging and potentially nesting habitat for the California gnatcatcher and would qualify as ESHA.

At the June 13 hearing, Executive Director Charles Lester noted that, since a determination had been made confirming ESHA and that the appropriate findings had been provided, staff may now commence with enforcing the Coastal Act with regard to the City's unpermitted development activities. I support the staff in this course of action, and trust that the Commission will not be rendering any decision on the City's application for the Sunset Ridge project until this enforcement issue is resolved. It is also apparent that Commissioners are concerned about this issue of enforcement action preceding consideration of the application, as expressed in their discussions of both the Shea and Sunset Ridge applications. Along with other members of the public, I look forward to Executive Director Lester's report to the Commission on this issue at the July hearing in Chula Vista.

PROPOSED PLANTING OF ENCELIA AT SUNSET RIDGE

It should not escape anyone's attention that the City is now proposing to **plant** *Encelia californica* in those parts of the Sunset Ridge project site closest to existing residences. This is appropriate, given that the City Fire Department regards *Encelia californica* as a "fire-resistive species," but it demonstrates bad faith on the part of City representatives, who consistently claim that this same plant species must be mowed and sprayed — both on Sunset Ridge and on Newport Banning Ranch — in the name of fuel modification.

CONCLUSION

Thank you for the opportunity to provide these comments. If you have questions, please call me at (562) 477-2181 or send e-mail to robb@hamiltonbiological.com.

Sincerely,

A handwritten signature in blue ink that reads "Robert A. Hamilton". The signature is written in a cursive style with a large initial 'R'.

Robert A. Hamilton
President, Hamilton Biological, Inc.
<http://hamiltonbiological.com>

cc: Charles Lester, Lisa Haage, Andrew Willis, Pat Veasart, Sherilyn Sarb, John DelArroz, Karl Schwing, and Teresa Henry