DATE: July 12, 2016

TO: City Council

THROUGH: Greg Nyhoff, City Manager
          Office of the City Manager

FROM: Ashley Golden, Development Services Director

SUBJECT: Memorandum of Understanding (MOU) to Protect, Manage and Restore the Ormond Beach Area.

CONTACT: Ashley Golden, Development Services
          Ashley.Golden@oxnard.org, 385-7882

RECOMMENDATION:

That the City Council: 1) approve and authorize the City Manager to sign a Memorandum of Agreement with The Nature Conservancy and California State Coastal Conservancy regarding Ormond Beach, and 2) authorize the City Manager to take all necessary actions under, and sign amendments to, the Memorandum of Understanding that do not have a fiscal impact requiring City Council approval.

BACKGROUND

Ormond Beach is approximately 1500-acres, spans two-miles of Oxnard’s shoreline from the northwestern boundary of Pt. Mugu Naval Air Station to the Oxnard/Port Hueneme boundary, and extends over a mile inland. The area includes a recreational beach, plant and wildlife habitat, active farmland, industrial operations, and the Halaco Superfund Site.

Although historic habitat has been significantly impacted by agriculture and industrial development, it is one of the few wetland areas in southern California that is not crossed by a highway or major railway. As a result, it provides transitional habitat, uninterrupted, from the ocean to sandy beach, to sand dunes, to wetlands, to upland areas. This is one of the reasons wetland experts have identified Ormond Beach as the most important restoration opportunity in southern California. Over 200 migratory bird species utilize Ormond Beach, including more
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shorebird species than at any other site in Ventura County. The State- and federally endangered California least tern and the State threatened western snowy plover both nest and raise their young at Ormond Beach. The State and federally endangered light-footed Ridgeway rail and the State endangered Belding’s savannah sparrow are also found at Ormond Beach. A total of 25 federally protected fish, wildlife, and plant species are found at Ormond Beach.

Ormond Beach also provides coastal access for Oxnard residents and attracts beach users from surrounding communities. In 2015, 17,000 visitors were counted at the Arnold Road entrance to Ormond Beach.

The California State Coastal Conservancy (“SCC”) and The Nature Conservancy (“TNC”) have each acquired Ormond Beach property to restore as much habitat as possible and facilitate public access. SCC currently owns 260-acres; TNC owns 277-acres. (See Exhibit A to Attachment 1.) TNC and the SCC may acquire additional property from willing sellers. Recently, TNC has applied for Proposition 1 funds to acquire an additional 561-acres in the area. The SCC and TNC are also leading restoration planning efforts. TNC has reconvened a Science Advisory Committee, and the SCC is taking steps to prepare a final restoration and public access plan.

The City owns over 80-acres in Ormond Beach, most of it shoreline property, extending from J-Street to the SCC’s property boundary (this does not include 13-acres owned by the Successor Agency). (See Exhibit A to Attachment A.) Several goals and policies in the 2030 General Plan highlight the City’s role at Ormond Beach with respect to its property and more broadly, including GOAL CD-22 (Environmentally sound Ormond Beach wetlands with appropriate public access) and implementing Policies CD-22.1 (Participation in the Ormond Beach Wetlands Restoration Plan) and CD-22.2 (Develop Ormond Beach Visitor Access). In addition, GOAL CD-21 specifies “An updated Local Coastal Program that includes the restoration of the Ormond Beach wetlands. . . .”

Consistent with the 2030 General Plan, City staff and Council participate on an ad hoc basis with the SCC and TNC, and otherwise take direct action to support Ormond Beach. For example:

- The City facilitates meetings of the Ormond Beach Task Force to share information related to Ormond Beach with Ormond Beach stakeholders;

- The City is currently considering adopting regulations to protect the plants, wildlife and habitat of Ormond Beach while maintaining public access;

- The City sent a letter of support for TNC’s March 2016 Proposition 1 grant application for funding to acquire the Southland Sod property (561-acres);

- The City sent a letter of support to the SCC Board of Directors supporting its staff request of $350,000 to develop a final restoration plan.

The purpose of the Ormond Beach Area Memorandum of Understanding (“MOU”) is to 1) formally memorialize the mutual goals and priorities of the SCC, TNC and the City to protect,
manage and restore their properties in the “Ormond Beach Area” (“OBA”) and 2) establish a collaborative working relationship among the MOU Parties to carry out these goals and priorities. The MOU identifies the following goals and priorities:

1. That the OBA should be managed as a single, overall planning area for purposes of protection, restoration, and other activities conducted by the Parties to the MOU

2. That the highest priorities within the next five-years for the OBA include:
   a. planning and providing for the protection and restoration of plants, wildlife, and habitat;
   b. planning and providing for an institutional structure to support long-term management of the area;
   c. planning and providing for security and other measures to protect the public and natural resources;
   d. identifying and developing policies for public access, including recreation, education and recreational activities;
   e. facilitating the remediation of the Halaco Superfund Site; and
   f. planning and evaluation of expansion of the OBA as adjacent properties are acquired.

3. That the Parties develop and execute an annual plan, regularly review the plan to assess progress and make adjustments as deemed necessary, and participate in meetings and perform agreed upon work deemed necessary after any required approvals are obtained.

For purposes of the MOU, the OBA only includes properties currently owned by the SCC, TNC, and the City (see Exhibit A to Attachment A). The MOU has a five-year term and automatically renews for additional three-year terms unless a Party objects by written notice, within sixty-days prior to the expiration any term. Any Party may withdraw from the MOU with written notice at least sixty-days prior to the proposed withdrawal date.

FINANCIAL IMPACT

The MOU is not intended to create any new financial obligations or commitments. The Development Services Department has an existing multi-year contract in the amount of $99,500 with Karen Kraus, Pollinate, who serves as the City’s liaison with TNC and SCC. There is approximately $40,000 remaining in the contract. The FY 16-17, and subsequent years, adopted budgets will impact the amount and speed of progress we make in the Ormond Beach planning efforts. Development Services, Public Works, and Police work-plans include efforts in the Ormond Beach area. Any actions identified by MOU parties with a new fiscal impact will be brought to City Council.
MEMORANDUM OF UNDERSTANDING

ORMOND BEACH AREA

This Memorandum of Understanding ("MOU") is made and entered into as of the latest date signed ("Effective Date") by the following parties:

- CITY OF OXNARD ("City"), a municipal corporation within the County of Ventura, California,
- THE NATURE CONSERVANCY ("TNC"), a District of Columbia nonprofit corporation, and
- CALIFORNIA STATE COASTAL CONSERVANCY ("SCC"), a California state agency;

sometimes referred to herein individually as a "Party" and collectively as "Parties", for the purpose of memorializing the intent of the Parties to work together to undertake a coordinated effort to benefit the public and preserve the Ormond Beach area as depicted on the map, attached as Exhibit A, which is incorporated by reference (hereinafter referred to as "Ormond Beach Area" or "OBA").

This MOU is based on the following representations and statement of purpose:

RECITALS

A. SCC, the City and TNC each own and operate real property within the OBA. The properties are near or adjacent to the Pacific Ocean, as shown on Exhibit A. SCC and the City properties are open to the public and all contain sensitive wildlife species, as documented in the SCC October 2009 Ormond Beach Wetland Restoration Feasibility Study.

B. In June of 2002 the SCC acquired 266 acres within the OBA from the Southern California Edison Company for the purpose of wildlife habitat preservation, open space and public access. The property is currently managed for public access and as wildlife habitat for snowy plovers and least terns.

C. The Halaco Superfund Site, listed on the U.S. Environmental Protection Agency’s National Priorities List in 2007, abuts the Ormond Beach Area. It includes portions of TNC’s property and the City’s property.

D. In August 2005 TNC, with the assistance of SCC, acquired 277 acres within the OBA for purposes of open space and habitat preservation, wetland restoration, and future public access. TNC currently owns and manages its property to preserve and enhance coastal wildlife habitat.
E. The City has land use and planning authority and also provides police, fire and other public safety services to the incorporated areas of the OBA. The City owns properties with the OBA area as depicted in Exhibit A to this agreement. In its 2030 General Plan, the City has designated land uses consistent with protection and restoration of the OBA and is similarly updating its Local Coastal Plan.

F. The OBA is one of the few large-scale coastal wetlands that remain along California's southern coast. Over 200 migratory bird species utilize the OBA and more shorebird species are known to use Ormond Beach than any other site in Ventura County. Six state threatened and endangered species and six species of concern have been identified within the area.

The Parties all agree to participate in this MOU on the terms and conditions set forth herein.

1. PURPOSE

This MOU memorializes the Parties’ intent to actively coordinate and collaborate across the Parties’ respective properties in order to protect, manage, and restore the OBA.

2. SCOPE

This MOU is intended to pertain to the OBA, including lands owned by TNC, SCC and the City. The inclusion of any additional land to be covered by this MOU will require an amendment to this MOU in accordance with Section 5.

3. AGREEMENT

3.1. Voluntary Equal Participants. Each Party is a voluntary and equal participant under this MOU. Any action performed under this MOU may be undertaken only with the unanimous consent of all the Parties.

3.2. Coordinate and Collaborate. The Parties agree to:

3.2.1. The following goals and priorities –

3.2.1.1 That the OBA should be managed as a single, overall planning area for purposes of protection, restoration, and other activities conducted by the Parties;

3.2.1.2 That the Parties will work collaboratively with each other to manage the OBA;

3.2.1.3 That within the next 5 years, priorities for the OBA include:

a) planning and providing for the protection and restoration of plants, wildlife, and habitat;
b) planning and providing for an institutional structure to support long-term management of the area;

c) planning and providing for security and other measures to protect the public and natural resources;

d) identifying and developing policies for public access, including education and recreational activities;

e) facilitating the remediation of the Halaco Superfund Site; and

f) planning and evaluation of expansion of the OBA as adjacent properties are acquired.

3.2.2. SCC, TNC and City will work together to develop and execute an annual plan which may include, without limitation, a plan to carry out the priorities identified in Section 3.2.1.3, an action item list, roles and responsibilities and a timeline for implementation. The Parties will regularly review the plan to assess progress and make adjustments as deemed necessary.

3.2.3. SCC, TNC, and City will attend and actively participate in meetings and perform agreed upon work deemed necessary after any required approvals are obtained.

4. Term; Termination; Withdrawal.

4.1. This MOU shall have a term of five (5) years beginning on the Effective Date, and thereafter shall automatically renew for additional three (3) year terms unless a Party objects to such automatic renewal by written notice within sixty (60) days prior to the expiration of the first 5-year term or any subsequent 3-year term.

4.2. Any Party may withdraw from this MOU by delivering written notice at least sixty (60) days prior to the proposed withdrawal date. Upon the withdrawal of any Party, the remaining Parties will convene either to modify or terminate this MOU.

5. Amendment

5.1. Amendment. In order to be effective, any amendment to this MOU must be agreed to in writing and by the unanimous consent of all Parties.

5.2. Additional Lands; Additional Parties. This MOU may be amended with the unanimous consent of the Parties to include additional lands and/or additional entities as Parties.
6. **No Legal Partnership.** This MOU is not intended to and does not create a legal partnership, joint venture, employment relationship, or agency relationship between or among the Parties. Each Party acknowledges that it will be responsible for its own acts and will not be responsible for the acts of any other Party. Each Party agrees that, it assumes all risk and liability for any and all losses, claims, damages, penalties, liabilities, demands, costs and expenses, including litigation costs and attorneys’ fees, arising out of or connected with that Party’s performance under this MOU.

7. **Non-Funding or Obligating Document.** This MOU is neither a fiscal nor a funding-obligating document. This MOU in no way restricts any Party from participating in similar activities or any other activities with other public or private agencies, entities, organizations, or individuals.

8. **Confidential Information.** In the course of implementing these cooperative efforts, the Parties might come into contact with certain confidential information. Each Party will notify the other Parties in writing when information provided is confidential information. No Party will disclose, without prior written consent of the affected Party, any such identified confidential information to any person, agency, organization, or party, for any reason or purpose whatsoever, except as may be required by law, including the California Public Records Act, or pursuant to court order.

9. **Miscellaneous**

   9.1 **Signatories.** Each person signing this MOU represents and warrants that he or she is duly authorized to sign and deliver this MOU.

   9.2 **Counterparts.** This MOU may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

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**CITY OF OXNARD**

By: 

GREG NYHOFF  
City Manager  

Date ______________, 2016

**APPROVED AS TO FORM:**

Stephen M. Fischer, City Attorney

**APPROVED AS TO CONTENT:**

Ashley Golden, Development Services Dir.
Ormond Beach Area
Memorandum of Understanding

THE NATURE CONSERVANCY
By: LILY VERDONE
    Project Director

CALIFORNIA STATE COASTAL CONSERVANCY
By: SAM SCHUCHAT
    Executive Officer

Date May 18, 2016

Date 5/16/16, 2016
Exhibit A
Ormond Beach Area Map