



**CITY COUNCIL
AGENDA REPORT**

**TYPE OF ITEM: Info/Consent
AGENDA ITEM NO.: 2**

DATE: June 7, 2016

TO: City Council

FROM: Stephen Fischer, City Attorney

SUBJECT: Adoption of Ordinance 2906 Regulating Activities at Ormond Beach.

CONTACT: Stephen Fischer, City Attorney
Stephen.Fischer@oxnard.org, 385-7483

RECOMMENDATION:

That City Council Waive the Second Reading and Adopt Ordinance 2906 Regulating Activities at Ormond Beach.

ATTACHMENTS:

Attachment A - Ordinance No. 2906

CITY COUNCIL OF THE CITY OF OXNARD

ORDINANCE NO. 2906

ORDINANCE OF THE CITY OF OXNARD, CALIFORNIA, ADDING ARTICLE
XVIII TO CHAPTER 7 OF THE CITY CODE PERTAINING TO REGULATIONS
AT ORMOND BEACH

.....

WHEREAS, the City of Oxnard recognizes the importance of Ormond Beach as a unique and sensitive habitat, supporting numerous plant and wildlife species and enjoyed by the public; and

WHEREAS, the California State Coastal Conservancy has long recognized Ormond Beach as an area of biological significance and high habitat restoration potential and has secured 266-acres in the area for purposes of habitat restoration; and

WHEREAS, The Nature Conservancy has acquired 277-acres in the area to conserve and restore habitat and facilitate public access; and

WHEREAS, Ormond Beach contains a diverse set of habitats including sandy beaches, coastal lagoons and estuaries, foredune and backdune areas, brackish and seasonal freshwater marshes, freshwater drainages, grasslands and transitional uplands; and

WHEREAS, Ormond Beach is considered by wetland experts to be the most important wetland restoration opportunity in southern California as it is one of the few areas with an intact dune to transition zone to marsh system; and

WHEREAS, Ormond Beach hosts over 200 migratory bird species and more shorebird species are known to use Ormond Beach than any other site in Ventura County; and

WHEREAS, Ormond Beach encompasses a federally designated critical habitat for the western snowy plover, a federally listed threatened species; and

WHEREAS, Ormond Beach is also home to multiple other special status wildlife and plant species including the California least tern, Belding's savannah sparrow, light-footed clapper rail, tidewater goby and salt marsh bird's beak; and

WHEREAS, Ormond Beach is a designated Audubon Important Bird Area or "IBA" which is indicative of its global importance to wildlife conservation efforts as a unique and essential bird habitat; and

WHEREAS, the City Council considered the 2009 California Coastal Conservancy's Ormond Beach Wetlands Restoration Feasibility Study and adopted GOAL CD-22 (Environmentally sound Ormond Beach wetlands with appropriate public access) and

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implementing Policy CD-22.2 (Develop an Ormond Beach Visitor Access) within the 2030 General Plan; and

WHEREAS, the 2030 General Plan includes GOAL ER-4 (Protected, restored, and enhanced sensitive habitat areas) and six implementing policies that are relevant to the proposed ordinance; and

WHEREAS, the Oxnard Local Coastal Program (LCP) is a certified LCP that requires and enables the City of Oxnard to enforce the Coastal Act, LCP, Land Use Plan (LUP), and Chapter 17, Coastal Zoning, of the City Code in the designated Coastal Zone that includes a significant portion of the Ormond Beach area; and

WHEREAS, the Coastal Act Section 30240(a) states, “Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas”; and

WHEREAS, the Oxnard Coastal LUP identifies the Ormond Beach wetlands as an environmentally sensitive habitat area (ESHA) with nesting and feeding areas for a variety of birds and mammals, and that Ormond Beach has low dunes that provide nesting sites for a number of species; and

WHEREAS, LUP Policy 6 notes that a resource protection ordinance was created for the LUP-designated Resource Protection areas providing that “Scientific, educational and light recreational uses shall be conditionally permitted uses in all sensitive habitat areas...Permitted uses shall not be allowed to significantly disrupt habitat values;” and

WHEREAS, most of the area within the Ormond Beach coastal zone is designated Resource Protection, the remaining areas are intended to be reclassified in the current update of the LCP, consistent with policies and designations enacted in the 2030 General Plan; and

WHEREAS, City Code Section 17-23(B), Conditional Uses, in the Resource Protection (RP) Sub-Zone allows “(2) Formal ongoing light recreation activities” and that development within the RP Sub-Zone shall be consistent with LUP Policy 6 and Section 30240 of the Coastal Act; and

WHEREAS, the City interprets the LUP and Section 17-23(B) as to allow informal passive recreation, such as walking on the beach within the RP-designated Coastal Zone areas, so long as the activity is consistent with LUP Policy 6 and Section 30240(a) of the Coastal Act; and

WHEREAS, a significant number of people visit Ormond Beach throughout the year and some activities of beach visitors may cause unintentional negative affects to the unique and special wildlife, plants and habitat at Ormond Beach; and

WHEREAS, the Unites States Fish and Wildlife Service “USFWS” has found, for example, that the disturbance of nesting or brooding snowy plovers or “flushing” by humans and domestic

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animals is a major factor affecting nesting success and is one of the factors affecting the continued existence of the species; and

WHEREAS, numerous studies document how disturbance of nesting snowy plovers affects nesting success, including:

- Lafferty 2001. Birds at a Southern California beach: seasonality, habitat use and disturbance by human activity. BIODIVERSITY AND CONSERVATION 10: 1949-1962, 2001.
- Lafferty 2001. Disturbance to wintering western snowy plovers. BIOLOGICAL CONSERVATION 101 (2001) 315-325.
- Studies discussed in U.S. Fish and Wildlife Service 12 Month Finding on Petition to Delist Pacific Coast Population of Western Snowy Plover (71 Fed. Reg. 20607, April 21, 2006); and

WHEREAS, repeated flushing of incubating snowy plovers may result in reductions to nesting success and in reduced survivorship during winter; and

WHEREAS, campfires and camping near nests may also result in long-term disturbance and ultimately nest abandonment; and

WHEREAS, nests may also be lost directly to human activities such as stepping on nests and the use of motorized vehicles; and

WHEREAS, persons with dogs elicit stronger chances of nest flushing and dogs may deliberately chase plovers and trample nests; and

WHEREAS, a higher proportion of dogs than humans disturb snowy plovers, both leashed and unleashed; and

WHEREAS, every annual report detailing snowy plover nesting prepared by Ventura Audubon Society since 2003 has identified off-leash dogs as a problem at Ormond Beach; and

WHEREAS, more than 1,700 dogs visited Ormond Beach in 2015 and, despite laws and regulations to the contrary, many are allowed to run off leash; and

WHEREAS, despite signs and notifications of the leash law at Ormond Beach and public outreach and occasional citations, dog owners persist in disregarding the leash law and loose dogs have resulted in both nest and chick loss; and

WHEREAS, reducing the frequency of activities known to negatively affect snowy plovers, such as unleashed pets, can substantially reduce nest disturbance; and

WHEREAS, USFWS has documented other activities that can negatively impact snowy plovers, including pet interactions, motorized vehicles, horseback riding and falcon flying; and

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WHEREAS, USFWS has also found that aerial activities such as kite flying, hang gliding and model airplanes can negatively impact snowy plovers; and

WHEREAS, Ormond Beach is located within the jurisdiction limits of the City of Oxnard; and

WHEREAS, the City of Oxnard wishes to enact nuisance regulations pursuant to Article XI, Section 7 of the California Constitution to protect the unique and sensitive plants, wildlife and habitat of Ormond Beach and promote the successful restoration of the Ormond Beach area while maintaining public access; and

WHEREAS, the City finds that enacting a nuisance regulation within Chapter 7 of the City Code is consistent with the Coastal Act and LUP and does not inhibit or significantly impact existing informal passive recreation, public access and use within the Coastal Zone.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OXNARD DOES ORDAIN AS FOLLOWS:

Part 1. Article XVIII is hereby added to Chapter 7 of the Oxnard City Code to read as follows:

“ARTICLE XVIII. ORMOND BEACH REGULATIONS

SEC. 7-300. PURPOSE AND SCOPE.

The purposes of this article are to protect and preserve the unique natural wildlife and other attributes of Ormond Beach for the public enjoyment of current and future generations.

SEC. 7-301. PROHIBITED ACTIVITIES.

The following activities are prohibited at Ormond Beach:

(A) To bring, walk (whether leashed or unleashed), ride or release any domesticated animal including but not limited to cats, dogs, horses and pigs. This limitation shall not apply to a leashed dog being used as a service animal under the Americans with Disabilities Act.

(B) To bring or release any non-domesticated or exotic animal. This prohibition shall not apply to the legally permitted release of rehabilitated wildlife, subject to the permission of the property owners.

(C) To go within or interfere with any protected habitat area as designated by fencing, signage, or other method.

(D) To alter or remove any sand dune, plants or vegetation unless the activity is carried out pursuant to a validly issued permit and applicable legal requirements.

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(E) To camp as defined below:

(1) “Camp” means one or more of the following activities: pitching or occupying camp facilities; or the use of camp paraphernalia. These activities constitute camping when it reasonably appears, in considering all the circumstances, that the individual, in conducting these activities, is in fact using the area as a living accommodation, regardless of the intent of the individual or the nature of any other activities in which they may be engaging.

(2) “Camp facilities” include, but are not limited to, tents, huts, temporary shelters, or other similar facilities.

(3) “Camp paraphernalia” includes, but is not limited to, tarpaulins, cots, beds, mattresses, sleeping bags, hammocks, cookware, cooking equipment, kitchen utensils, or other similar equipment.

(F) To make or kindle a fire for any purpose.

(G) To operate any motorized vehicle. This prohibition shall include and apply to remotely operated vehicles such as airplanes, helicopters, cars and drones. This prohibition shall not apply to public safety vehicles (including Coast Guard vehicles), military aerial vehicles, or vehicles used as part of a permitted program or operation to protect natural resources.

(H) To launch or fly a kite, kite board, or glider.

SEC. 7-302. VIOLATIONS.

(A) A violation of this article is designated an infraction and may be enforced according to the provisions of section 1.10 of the city code.

(B) A violation of any section of this article and any use or condition caused, or permitted to exist, in violation of any provision of this article shall be, and hereby is declared to be, a public nuisance.

SEC. 7-303. OTHER APPLICABLE LAWS.

This article shall not be interpreted or construed to permit any activities otherwise restricted by other applicable state or federal laws or regulations.”

Part 2. For purposes of this article “Ormond Beach” is defined as the area designated in Exhibit A attached hereto. Ormond Beach is located within the jurisdictional boundaries of the City of Oxnard.

Part 3. If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence,

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clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

Part 4. The City Council determines and finds that this ordinance is exempt from the California Environmental Quality Act under section 15061(b)(3) because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Part 5. Pursuant to Government Code Section 36933(c)(1), the City Attorney was designated to prepare, and the City Clerk published, a summary of this ordinance, and a certified copy of the ordinance was posted in the Office of the City Clerk a minimum of five days before the City Council's adoption of the ordinance.

Part 6. The City Clerk shall certify as to the adoption of this ordinance and shall cause the summary thereof to be published within fifteen calendar (15) days of the adoption and shall post a certified copy of this ordinance, including the vote for and against the same, in the office of the City Clerk, in accordance with Government Code Section 36933. Ordinance No. 2906 was first read on May 17, 2016, and finally adopted on June 7, 2016, to become effective thirty days thereafter.

AYES:

NOES:

ABSENT:

Tim Flynn, Mayor

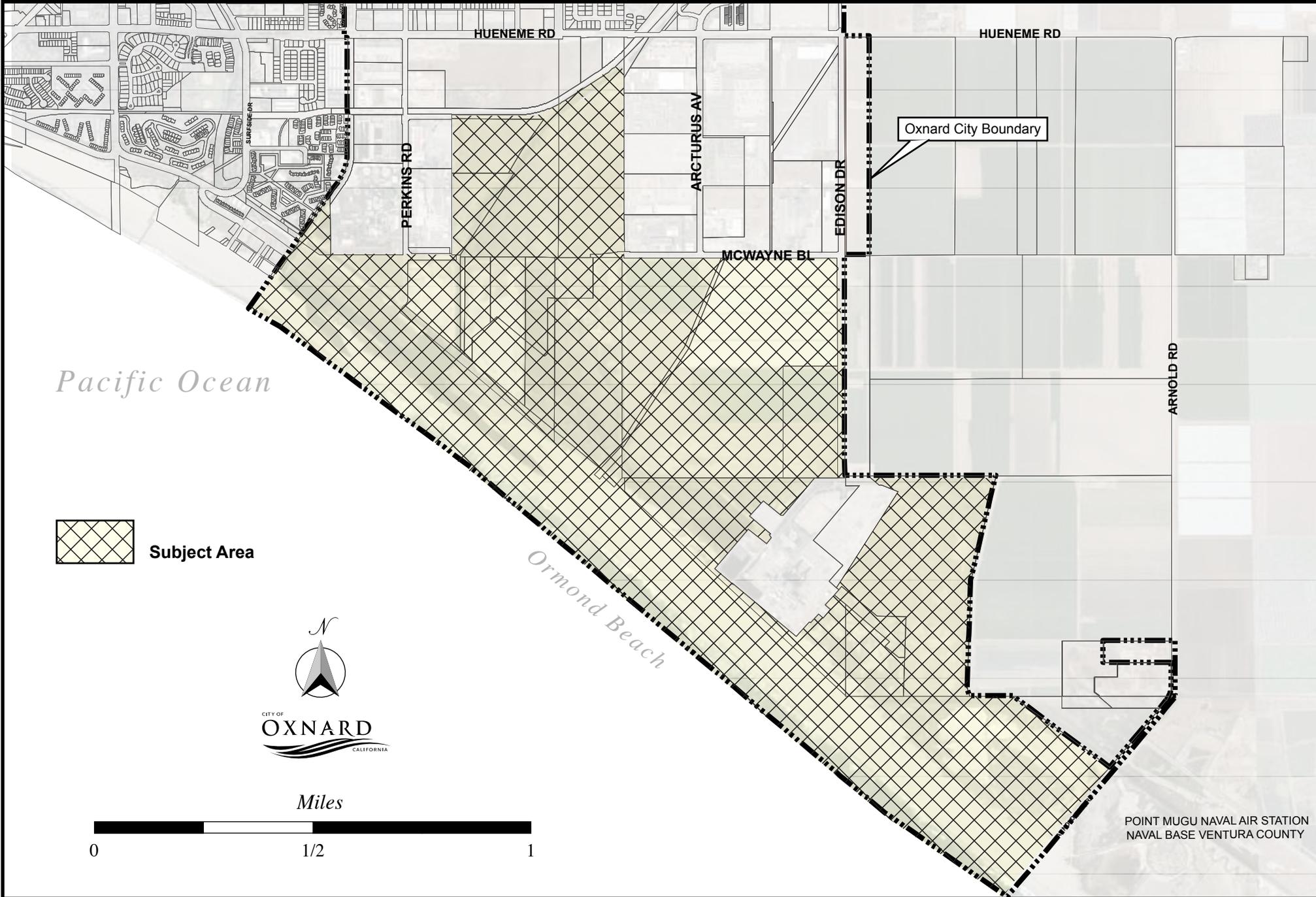
ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:

Stephen M. Fischer, City Attorney

EXHIBIT A



Pacific Ocean

 **Subject Area**



Miles



POINT MUGU NAVAL AIR STATION
NAVAL BASE VENTURA COUNTY