



# City of Rockaway Beach

## Planning Commission Meeting Minutes

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**Date:** Thursday, June 20, 2024  
**Location:** Rockaway Beach City Hall, 276 HWY 101 - Civic Facility

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### 1. CALL TO ORDER

Planning Commission President Hassell called the meeting to order at 5:00 p.m.

### 2. PLEDGE OF ALLEGIANCE

### 3. ROLL CALL

Start time: [05:00:43 PM \(00:00:26\)](#)

[Position #2 - Stephanie Winchester: Present](#)

[Position #3 - Pat Olson: Present](#)

[Position #7 - Georgeanne Zedrick: Present](#)

[Position #5 - Bill Hassell: Present](#)

[Position #1 - Zandra Umholtz: Present](#)

[Position #4 - Sandra Johnson: Present](#)

[Position #6 - Nancy Lanyon: Present](#)

**President:** Bill Hassell

**Commissioners:** Sandra Johnson, Nancy Lanyon, Pat Olson, Zandra Umholtz, Stephanie Winchester and Georgeanne Zedrick

**Council Members Excused:** Charles McNeilly, Mayor; and Mary McGinnis, Planning Commission Liaison

**Staff Present:** Luke Shepard, City Manager; Mary Johnson, City Planner; and Melissa Thompson, City Recorder

### 4. APPROVAL OF MINUTES

Start time: [05:01:27 PM \(00:01:10\)](#)

City Recorder Thompson noted corrections to the minutes.

Johnson made a **motion**, seconded by Olson, to approve the May 16, 2024 minutes as amended.

The **motion carried** by the following vote:

[Position #4 - Sandra Johnson: Motion](#)

[Position #3 - Pat Olson: 2nd](#)

[Position #2 - Stephanie Winchester: Approve](#)

[Position #3 - Pat Olson: Approve](#)

[Position #7 - Georgeanne Zedrick: Approve](#)

[Position #5 - Bill Hassell: Approve](#)  
[Position #1 - Zandra Umholtz: Approve](#)  
[Position #4 - Sandra Johnson: Approve](#)  
[Position #6 - Nancy Lanyon: Approve](#)

## 5. PRESENTATIONS, GUESTS & ANNOUNCEMENTS

## 6. STAFF REPORTS

Start time: [05:02:18 PM \(00:02:00\)](#)

City Planner Johnson provided updates on permits issued by the Planning Department in May, the grand opening of the Anchor Street Park, and public engagement opportunities for the Salmonberry Trail project.

## 7. PUBLIC HEARING

Start time: [05:03:25 PM \(00:03:08\)](#)

- a. **CU #24-1: Consideration of an Application for Conditional Use at 137 South Beacon Street (Tillamook County Assessor's Map # 2N1032CC Lot #6300) for a Single Family Dwelling in the C-1 Commercial Zone.**

Hassell opened the public hearing at 5:04 p.m.

Hassell read opening statements, public hearing disclosure statements and procedures, and testifying instructions. He explained that the Applicants are Shannon and Alex Smith. The property is located at 137 South Beacon Street, Rockaway Beach and is further identified on Tillamook County Assessor's Map # 2N1032CC Lot. The Hearing will be on an application requesting approval for conditional use of 137 South Beacon Street. The Applicants own the property on South Beacon Street which is zoned C1 – Commercial. The Applicants seek to demolish the current residential structure and construct a new, two-story home on the property for residential use. The Rockaway Beach Zoning Ordinance requires single-family dwellings to be permitted conditionally in the C1 zone.

Hassell invited Commissioners to declare any bias or conflicts of interest. None were declared and there were no challenges from the audience on the basis of bias.

Hassell invited Commissioners to declare any ex-parte contact. Zedrick, Lanyon, Olson and Johnson declared site visits.

City Planner Johnson presented the Staff Report, introducing it with a PowerPoint presentation. (A copy of the presentation is included in the hearing record.)

In response to Commissioner questions, City Planner Johnson clarified the following:

- A rectangle on the site plan drawing represented a deck.
- The proposed design could accommodate future potential commercial use.
- The shed shown on the drawing was no longer present.

- There was only one home on the property.
- Two parking spaces would be required for the residence.
- Commercial parking requirements are dependent on the proposed commercial use.
- The existing structure was currently unoccupied.
- A variance is not required to build to the maximum permitted height within a zone, but Commissioners could condition an approval if it was a concern.

Lanyon expressed concerns about commercial shortfalls referenced in the Comprehensive Plan indicating that the City has a shortfall of approximately five commercial acres and land that is currently designated for residential use will need to be re-designated for commercial land.

City Planner Johnson reported that no written correspondence was received.

Applicant’s Presentation: Agent for the Applicants, Ryan Boslin, stated he had no comments.

Testimony in support of the application: None

Testimony in opposition to the application: None

Testimony that is neutral or questions: None

Applicants’ rebuttal: None

Commission questions: None

City Planner Johnson commented that she appreciated Lanyon’s comments regarding the Comprehensive Plan, but she interpreted that portion of the Comprehensive Plan to be in reference primarily to lots that abut Hwy 101. While she appreciated the desire to retain commercial space, Johnson explained that she didn’t expect there to be much commercial traffic on South Beacon.

Lanyon commented that she interpreted the intent of the Comprehensive Plan was to promote and reassign residential to commercial.

Right to Final Written Argument: The Agent for the Applicant retained the right to submit final written arguments.

At 5:33 p.m. Winchester made a **motion**, seconded by Zedrick, to close the Public Hearing and keep the record open until June 27, 2024 for additional written arguments.

Winchester clarified for Commissioner Johnson that the applicant retained the right to submit final written argument.

The **motion carried** by the following vote:

[Position #2 - Stephanie Winchester: Motion](#)

[Position #7 - Georgeanne Zedrick: 2nd](#)

[Position #2 - Stephanie Winchester: Approve](#)

[Position #3 - Pat Olson: Approve](#)  
[Position #7 - Georgeanne Zedrick: Approve](#)  
[Position #5 - Bill Hassell: Approve](#)  
[Position #1 - Zandra Umholtz: Approve](#)  
[Position #4 - Sandra Johnson: Approve](#)  
[Position #6 - Nancy Lanyon: Approve](#)

- b. **PUD #24-1: Consideration of an Application from Nedonna Development LLC, for a modification to the Planned Unit Development that was approved by the City in 2008 for the property identified on Tillamook County Assessor's Map as 2N1020AB Tax Lots 10200, 10400, and 10500.**

Start time: [05:36:46 PM \(00:36:29\)](#)

Hassell opened the public hearing at 5:37 p.m.

Hassell read opening statements, public hearing disclosure statements and procedures, and testifying instructions. He explained that the Applicant is Nedonna Development LLC, and Agent for the Applicant is Dean N. Alterman. The property is located on Kittiwake Drive north of Riley Street and South of Song Street in Nedonna Beach. The property is identified as Tillamook County Assessor's Map #2N1020AB Lots # 10200, 10400, and 10500. The Hearing will be on an application requesting a modification to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008.

The Applicant seeks the following modifications to Phase 2 of the 2008 approval:

1. To develop Phase 2 in two sub-phases, instead of one phase;
2. To create two lots instead of one lot at the north end of Jackson Street (identified as lot 24 on the 2008 approved plan), identified as lots 21 and 22 on the plans submitted with the Application;
3. To create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street (identified as Lots 14, 15, and 16 on the 2008 approved plan), identified as lots 13, 14, 15 and 16 on the plan submitted with the Application; and
4. Provide that when the owner of the land to the south extends Jackson Street south into that property, the City will vacate the east stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.

Hassell invited Commissioners to declare any bias or conflicts of interest. Umholtz stated that does not have any bias, but acknowledged that she is a resident in Nedonna.

Hassell invited Commissioners to declare any ex-parte contact. Zedrick declared a site visit on June 19<sup>th</sup> to Phase 1 and met DSL wetland consultant Christine McDonald and botanist Kurt Hetheroff who were working on an undeveloped area of Jackson Street. They showed her the area of studies and findings. Zedrick declared that while on site, she also met Anna Song, who inquired if she had any questions. Zedrick stated that she responded that she didn't have any questions at that time, and if she did, she would ask them at the hearing. Winchester declared she

had made a site visit since the application was submitted, but not since seeing the application. Commissioner Johnson declared that she made a site visit but didn't see or speak with anyone while in the area.

City Planner Johnson presented the Staff Report, along with a PowerPoint presentation. (A copy of the presentation is included in the hearing record.)

Johnson reviewed agency comments in the presentation. Johnson noted that written public testimony was distributed to the Commission. City Recorder Thompson read aloud additional correspondence received after the hearing commenced from Nancy Webster and Susan Norris. Webster's testimony included a request to hold the record open for additional testimony. (Copies of all correspondence are included in the hearing record.)

In response to Commissioner questions, City Planner Johnson clarified the following:

- The previous 2008 approval still stands, and the modification requests should be considered. The previous approval remains valid regardless of whether the modifications are approved.
- The language provided in the Planned Unit Development (PUD) section of the Zoning Ordinance calls out only the first phase of a development, so the approval remains valid indefinitely. Johnson couldn't speak to whether that was standard throughout the state.
- Tract F is east of Kittiwake Drive and would have 13 lots if approval was granted. Tract G is west of Kittiwake Drive and would be developed second. Tract E was not included in the current request and was reserved for potential future development.
- There was no illustration on the map for the Applicant's request regarding the end of Riley Street.
- The request was to modify the preliminary plat.
- The applicant could address questions regarding lot numbers and the subdivision name.
- The number of homes developed in Phase 1 was not readily available.
- There should be a tsunami evacuation plan for any new development. Whether it was done in partnership with the City was to be determined.
- The request was to vacate the stub of Riley Street previously dedicated to the City so that they could create another building lot. The City Planner's concern at this time is that it is the one evacuation route. The engineer also had concerns regarding state fire code requirements for vehicle turn-around. The City Planner would not recommend approving the request and suggested it be brought back at a later time.
- The city's short-term rental ordinance would apply within the areas of Nedonna Beach that are within city limits. Some portions are outside city limits. The proposed development was within city limits.
- Any previously approved height variances would remain valid for lots that will change in size. Any lots changing in size would require a new application for height variances.
- Frontage requirements referenced in the HBH Consulting Engineer's comments apply to the R1 zone, but are not required due to the PUD overlay. The density requirement is the only one that still exists outside the PUD overlay.
- Staff recommendations include recommendations for traffic study, but does not require a second access outright. There's no trigger for automatically requiring a second egress, but a traffic study could make it apparent and would be seen in final plat approval.
- Open space signage was required the original approval, but the application does not include any sign modification requests.

- Phase 1 tracts A and F were reserved for common space. Roadways are also common open space. Tracts B and E are also dedicated to common space.
- Restrictive covenants for open space could be made a condition of approval.

Lanyon expressed concern about the numerous issues that the Applicant needed to address.

Applicant's Presentation: The Agent for the Applicants, Dean Alterman, gave testimony on the request.

In response to questions regarding the property name and lot numbers, Alterman provided that the entire property is a subdivision called Nedonna Wave Phase 1, consisting of numbered lots, plus tracts A through G. The part that will be subdivided through the application will be called Nedonna Wave Phase 2, and the numbering of the lots will continue where it left off in Phase 1. The entire property is now legally named Phase 1.

Alterman commented that it was a very long-term project and expressed appreciation to City Planner Johnson for explaining the history of the project. Alterman stated the issue today was that this is property that 16 years ago was approved for 28 lots, and Mrs. Song is seeking approval to make 30 lots, still within the density standard as it existed and as exists today. It is not a brand new approval, it is approval to carry out the next step.

In response to written correspondence and Commissioner questions, Alterman provided the following comments:

- Until sometime within the last 10 months, there were no signs identifying an evacuation route. A current sign on Riley Street points into a public street and behind it is Tract E, which was approved for future development. A sign doesn't make it a route. Alterman referred to an evacuation route map that didn't show a route on Riley Street. It wasn't a route and wasn't a condition, and there was no easement for it.
- The decision must be based on criteria. The PUD overlay substitutes for lot-by-lot dimensional standards, and the PUD overlay standard applies to the application.
- With respect to wetlands, all of the fill was done in accordance with permits from 2008, with possible exceptions on a few corners. The area being developed was already filled and mitigated, creating new wetlands. They are not proposing a net loss of wetlands. They have recently learned that a portion of Jackson Street is now a wetland. Mrs. Song would mitigate loss of new wetland in whatever process DSL required.
- Regarding objections to traffic, there are currently roughly 210 homes north of Western Street and they are proposing what might be an additional 8% burden. The number of new lots is not large in relation to the number of houses that are already in place.
- If recommended by a traffic study, Mrs. Song would be willing to install traffic calming devices. People don't come to the beach to drive faster; they come to the beach to relax and slow down.
- A second evacuation route would be nice, but there isn't a place to construct it today. It would require ODOT approval, developer approval, and would require permission from the owner as it is not Mrs. Song's land.

Alterman requested that the record be held open to submit additional testimony on wetlands, and to review the proposed conditions, including the requirement for the force main to connect pump stations.

In response to Commissioner questions, Alterman provided the following:

- The number of lots proposed for development in the area originally identified as lots 14, 15, and 16 was three, and is now four. The number of lots proposed in the area originally identified as lot 24 was one and is now two.
- The Applicant is not asking to vacate the east end of Riley now. They are raising the issue in advance. If the property to the south is developed and extends Jackson Street to the south, and hammerhead is no longer needed, the Applicant requests that the City listen to a request at that time to vacant Riley Street. A decision doesn't have to be made today.
- The tsunami evacuation route will need to be addressed in the period when the record remains open as it was a surprise to landowner. The evacuation sign not there in August.
- Tract E was never granted for an evacuation route. It was identified as land for future development in 2008.
- CC&Rs are in place for Phase 1 homes and the submitted CC&Rs are based closely on existing CC&Rs.
- The height variance applied only to the most eastern tier of lots since they were next to an embankment and the railroad. With the splitting of the two lots on Jackson Street, the lot closer to the railroad track would have the benefit of the variance, and the lot closer to the wetlands would not. The variance would need to be reviewed to determine if a change in lot size would affect the variance.
- The PUD overlay allows proposed lots to be arranged differently as long as they fit within the overall lot cap and approved area.
- The density would be increased, but still below the maximum 32 lots approved.
- White Dove estates is not included in this project or application.
- Common area space is being provided in tract A, tract B, tract D, and some in tract F which is being subdivided. It satisfies the requirement.

Umholtz stated that the Agent for the Applicant said that the City was not required to approve the east stub of Riley Street vacation, but it is part of application request. Alterman concurred, but noted that the vacation would require City Council approval.

Hassell called for recess at 7:20 p.m. Hassell called the meeting back to order at 7:30 p.m.

Testimony in support of the application:

- Bill Howard, contractor for Anna Song, stated that his original contract with Song was for the entire subdivision in a single phase. He stated that subdivisions are done in phases and the first phase is usually the mass grading phase. Grading and 90% of the utility work was completed, including building the wetlands and some of the filling of the wetlands. Howard stated that as far as he knew, Song had completed that portion of her responsibility.

Testimony in opposition to the application:

- Mark Magistrole, Kittiwake Drive resident, challenged the notion that an approval is perpetual, stating there were many changes in 16 years. He shared concerns regarding life and fire safety and evacuation. Magistrole was concerned that excavation appeared to have begun. He expressed concern about noticing. He inquired if any development was planned east of Kittiwake and north of Song.
- Tom Heckenberry, White Dove Ave. resident, referred to provisions of the tsunami hazard overlay. Heckenberry stated that the evacuation route was established by the Nedonna Beach Neighborhood Association (NBNA) in 2009. He noted that signs had been posted a long time. He stated signs do get taken down, and he works with the County to replace them. Heckenberry referred to the DOGAMI map that identified Riley as an evacuation route, and noted the southern route would not provide timely evacuation for older residents. Heckenberry proposed that any additional houses opened the opportunity to consider the sufficiency of tsunami evacuation route. He noted that the east end of Riley Street was the evacuation route.
- Danny Wilhelmi, Chiefton Drive resident, stated the biggest issue is inundation and flooding. He stated a stormwater management plan must be required. He shared concerns erosion and inadequacy of the installed storm drainage. Wilhelmi stated McMillan Creek was not adequate for drainage and that additional houses will reduce natural drainage.
- Ken Bragg, Chiefton Drive resident, stated the biggest concern was evacuation. The two current ways to evacuate are barely adequate, and those with disabilities would not be able to get out in time, especially since there was only one road out at the end of Nedonna. Bragg said the Applicant should be required to add ADA access for tsunami evacuation.
- Gary Corbain, Kittiwake Drive resident, stated there was an evacuation sign 12 years ago on Riley Street pointing to the evacuation route, and signs had been present just about all the time in the past 12 years. Corbain shared additional concerns that excavation had begun, and that new wetlands had developed. He noted that nesting eagles and beaver colonies were present, and deer habitat had been plowed under. Corbain stated he wanted the property to be developed in a good faith manner.
- Nancy Webster, White Dove Ave. resident, expressed concerns about egress from the neighborhood. Webster stated she had attended the 2008 hearings and there were concerns at that time regarding the lack of egress. She said at that time ODOT determined that the only way was an overpass on Hwy 101. Webster shared additional concerns about flooding in area, and concern that additional fill of wetlands will result in more flooding. Webster stated that a 15-foot buffer for McMillan Creek was insufficient.
- Delta Holderness, Song Street resident, expressed concerns about traffic and pedestrian safety. She said the statement that people drive slower at the beach is crazy, and a child was hit in neighborhood last summer. Holderness referred to her written testimony, suggesting roadway pedestrian markings and speed limits. She suggested that the development create more STRs which would create more traffic and cause evacuation issues. Holderness encouraged the Commission to require the subdivision application to be considered from beginning.

- Jerry Lislow, Beach Drive resident, stated he was a founding member of NBNA. He stated that the HBH report suggested that the fire code indicated that more than 30 properties would require another ingress/egress. Lislow stated there was precedent, as there was another 50-unit development that required new ingress/egress to Hwy 101. He stated that the request should be denied if it was not possible.
- Sue Sharp, White Dove Ave. resident, expressed concerns about allowing more house when there were issues with water quantity.
- Frank Imbrie, White Dove Ave. resident, commented on the history of the White Dove development and bankruptcy, when properties were put on the list for auction. Imbrie suggested that Anna Song picked up property for \$30,000 and proceeded with the project. Imbrie stated the Commission was cleaning up the mess and hoped they would do a good job.

Applicant's Rebuttal: Agent for the Applicant stated that a second access would be nice, but was an impossible condition to put on a single project, and wasn't tied to the criteria for the application. Alterman stated they would submit additional information regarding wetlands to demonstrate that they met the criteria. He added that he believed Mrs. Song paid more than \$30,000 for the property.

Commission Questions: Commissioner Johnson inquired whether the ORS 92.040 cited in testimony that required subdivision applications that are more than 10 years old to be considered from the beginning also applied to PUDs. City Planner Johnson stated that after consulting with the city attorneys, and given the case law, there was nothing indicating that a subdivision could be denied after a 10-year period unless it was specifically called out in the code.

Right to Final Written Argument: The Agent for the Applicant reserved the right to submit additional written arguments.

Winchester made a **motion**, seconded by Johnson, to continue the Public Hearing to 5:00 p.m. on June 27, 2024.

The **motion carried** by the following vote:

- [Position #2 - Stephanie Winchester: Motion](#)
- [Position #4 - Sandra Johnson: 2nd](#)
- [Position #2 - Stephanie Winchester: Approve](#)
- [Position #3 - Pat Olson: Approve](#)
- [Position #7 - Georgeanne Zedrick: Approve](#)
- [Position #5 - Bill Hassell: Approve](#)
- [Position #1 - Zandra Umholtz: Approve](#)
- [Position #4 - Sandra Johnson: Approve](#)
- [Position #6 - Nancy Lanyon: Approve](#)

## 8. CITIZEN INPUT ON NON-AGENDA ITEMS

No audience members wished to comment.

## 9. OLD BUSINESS – None Scheduled

## 10. NEW BUSINESS – None Scheduled

## 11. PLANNING COMMISSION COMMENTS & CONCERNS

Start time: [08:05:54 PM \(02:55:27\)](#)

Shepard confirmed for Winchester that Commissioner comments could be made at the next meeting.

Zedrick commented that Anchor Street Park looked fun.

Lanyon commented that she looked forward to next week. Lanyon stated that generally speaking Rockaway Beach should be thoughtful about future actions.

Olson stated he had no joys or concerns.

Hassell said the Anchor Street Playground was an incredible place and was state of the art. He commended Public Works for completing striping and signage.

## 12. ADJOURNMENT

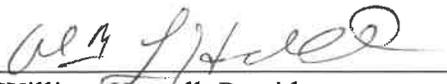
Start time: [08:06:38 PM \(02:56:11\)](#)

Olson made a **motion**, seconded by Zedrick, to adjourn the meeting at 8:08 p.m.

The **motion carried** by the following vote:

[Position #3 - Pat Olson: Motion](#)  
[Position #7 - Georgeanne Zedrick: 2nd](#)  
[Position #2 - Stephanie Winchester: Approve](#)  
[Position #3 - Pat Olson: Approve](#)  
[Position #7 - Georgeanne Zedrick: Approve](#)  
[Position #5 - Bill Hassell: Approve](#)  
[Position #1 - Zandra Umholtz: Approve](#)  
[Position #4 - Sandra Johnson: Approve](#)  
[Position #6 - Nancy Lanyon: Approve](#)

MINUTES APPROVED THE  
18<sup>TH</sup> DAY OF JULY 2024

  
\_\_\_\_\_  
William Hassell, President

ATTEST

  
\_\_\_\_\_  
Melissa Thompson, City Recorder



City of Rockaway Beach, Oregon

276 S. Highway 101, PO Box 5
Rockaway Beach, OR 97136
(503) 374-1752
www.corb.us

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PLANNED UNIT DEVELOPMENT APPLICATION

APPLICANT INFORMATION:

Project Contact Name: Dean N. Alterman Company: Alterman Law Group PC

Mailing Address: 805 SW Broadway, Suite 1580 Portland, Oregon 97205

Phone Number: (503) 517-8201 Email: dean@alterman.law

PROPERTY OWNER INFORMATION:

Name(s): Nedonna Development, LLC (c/o Anna Song)

Mailing Address: 2848 SW Sam Jackson Park Road, Portland, Oregon 97201

Phone Number: (503) 706-1930 Email: kebsinc@yahoo.com

PROPERTY LOCATION:

Tracts E and F, Nedonna Wave Phase 1

Map and Tax Lot(s): TL 10200, 10400, and 10500, Map 2N1020AB

Subdivision Name: Nedonna Wave Phase 1 (10400 and 10500 will be Phase 2; TL 10200 will be Phase 3)

Land Use Zone(s): SA and R1 with PUD overlay

Consisting of 2.56 acres divided into 22 lots, proposed in two\* phases.

\* The application is to split the remainder of the approved plan for the Nedonna Wave PUD into \*\*

Included with this application must be the information required in the Rockaway Beach Zoning Ordinance, Article 10, Planned Unit Development.

DocuSigned by:

Applicant Signature: Dean N. Alterman Date: March 4, 2024

Dean N. Alterman, attorney for applicant

If the Applicant is other than the Property Owner, the Owner hereby grants authority for the Applicant to act on his/her/their behalf.

DocuSigned by:

Property Owner Signature(s): Anna Song Date: March 4, 2024

Anna Song, for Nedonna Development, LLC

\*\* two phases instead of one. The first phase would create the 13 lots east of Kittiwake Drive and a tract for a sewer pump station. The second phase would create the 9 lots west of Kittiwake Drive.

## CITY OF ROCKAWAY BEACH ZONING ORDINANCE

### **Article 10. Planned Unit Development (PUD)**

Section 10.010. Intent. This article is intended to provide for developments incorporating a single type or variety of housing types and related uses which are planned and developed as a unit. Such developments may consist of individual lots as part of a larger holding or as common building sites. Commonly owned land which is an essential and major element of the plan should be related to and preserve the long-term value of the homes and other development. It is the intent of this section to foster a more innovative approach to land development than is possible under the traditional lot by lot methods.

Section 10.020. Purpose. The purpose of this article is to provide a more desirable environment through the application of flexible and diversified land development standards following an overall comprehensive site development plan.

Section 10.030. Permitted Buildings and Uses. The following buildings and uses may be permitted as hereinafter provided. Buildings and uses may be permitted either singly or in combination provided the overall density of the Planned Unit Development does not exceed the density of the parent zone as provided in this ordinance.

1. Single-family dwellings including detached, attached, or semi-detached units, row houses, atrium or patio houses, provided each has its own separate plot.
2. Duplexes and multiple-family dwellings.
3. Accessory buildings and uses.
4. Commercial uses only when supported mainly by the PUD and only when economic feasibility can be shown.
5. Buildings or uses listed as permitted outright or conditionally in the parent zone on which the PUD is located.

### Section 10.040. Development Standards.

1. Minimum Lot Size. Planned Unit Developments shall be established only on parcels of land which are suitable for the proposed development and are determined by the planning commission to be in keeping with the intent of this ordinance. (This says 'site size' in 143, not 'lot size')
2. Open Spaces. In all residential developments, or in combination residential-commercial developments, 50% of the total area should be devoted to open space. Of this area, 25% of said open space may be utilized privately by individual owners or users of the PUD; however, 75% of this area should be common or shared open space. The Planning Commission may increase or decrease the open space requirement depending on the particular site and the needs of the development. In no case should the open space be less than 40% of the site.
3. Density. The density of a planned development shall not exceed the density of the parent zone, except as more restrictive regulations may be prescribed as a condition of the PUD permit. When calculating density, the gross area is used (total area including street dedications). Areas of public uses may be included in calculating allowable density.
4. Subdivision of Lot Sizes. Minimum area, width, depth, and frontage requirements for subdivision lots in a PUD may be less than the minimums set forth elsewhere in City ordinances, provided that the overall density is in conformance, and that lots conform to the approved preliminary development plan.

5. Off-Street Parking. Parking spaces shall conform to all provisions of this ordinance, except that the Planning Commission may authorize exceptions where warranted by unusual circumstances.
6. Signs. All signs of any type within a PUD are subject to design review and approval of the Planning Commission. They shall consider each sign on its merits based on its aesthetic impact on the area, potential traffic hazards, potential violation of property and privacy rights of adjoining property owners, and need for said sign.
7. Height Guidelines. The same restrictions shall prevail as permitted outright in the zone in which such development occurs, except that the Planning Commission may allow a variance of heights where it is determined that surrounding property will not be harmed.
8. Streets and Roads. Necessary streets and roads within the PUD shall be dedicated to the public and constructed to City standards or shall be private roads maintained by an owner's association and constructed to standards as determined by the Planning Commission and City Engineer.
9. Dedication and Maintenance of Facilities. The Planning Commission, or on appeal, the City Council may, as a condition of approval for a PUD require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated to the following uses:
  - a. Recreation Facilities: The Planning Commission may require that suitable area for parks or playgrounds be set aside, improved, or permanently reserved for the owners, residents, employees or patrons of the PUD.
  - b. Common Area: Whenever common area is provided, the Planning Commission or City Council may require that an association of owners or tenants be created into a non-profit corporation under the laws of the State of Oregon, which shall adopt such Articles of Incorporation and By-Laws and adopt and impose such Declaration of Covenants and Restrictions on such common areas that are acceptable to the Planning Commission. Said association, if required, may undertake other functions. It shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessments levied to maintain said common areas for the purposes intended. The period of existence of such association shall not be less than 20 years, and it shall continue thereafter and until a majority vote of the members shall terminate it.
  - c. Easements: Easements necessary to the orderly extension of public utilities may be required as a condition of approval.
10. Approvals. The Planning Commission shall submit the preliminary development plan to the Fire District, City Engineer, County Sanitarian, power company, and other utilities which will serve the PUD and shall consider their recommendations in regard to approval of the proposal.

Section 10.050. Procedure - Preliminary Development Plan.

1. The applicant shall submit four copies of the preliminary development plan to the Planning Commission prior to formal application for rezoning. Applications shall be accompanied by a fee prescribed in Section 11.050 of this ordinance. This plan and any written statements shall contain at least the following information:
  - a. Proposed land uses and densities.
  - b. Location and approximate dimensions and heights of structures.
  - c. Plan of open spaces or common spaces.
  - d. Map showing existing features of site and topography.
  - e. Proposed method of utilities service and drainage.
  - f. Road and circulation plan including off-street parking.
  - g. Relation of the proposed development to the surrounding area and the Comprehensive Plan.
  - h. Lot layout.

- i. A schedule, if it is proposed that the final development plan will be executed in stages.
2. The Planning Commission shall consider the preliminary development plan at a public meeting, at which time they shall determine whether the proposal conforms to City ordinances. In addition, in considering the plan, the Planning Commission shall seek to determine that:
  - a. There are special physical conditions or objectives of development which the proposal will satisfy to warrant a departure from the standard ordinance requirements.
  - b. Resulting development will not be inconsistent with the Comprehensive Plan provisions or zoning objectives of the area.
  - c. The proposed development will be in substantial harmony with the surrounding area, including vegetation and topography and any important natural areas such as marshes or wildlife habitats.
  - d. The plan can be completed within a reasonable period of time.
  - e. Any proposed commercial development can be justified economically.
  - f. The streets are adequate to support the anticipated traffic and the development will not overload the streets outside the planned area.
  - g. Proposed utility and drainage facilities are adequate for the population densities and type of development proposed.
3. The Planning Commission shall notify the applicant whether, in its opinion, the foregoing provisions have been satisfied and, if not, whether they can be satisfied with further plan revision.
4. Following this preliminary meeting, the applicant may proceed with his/her request for approval of the planned development by filing an application for an amendment to this ordinance with the City Recorder.

Section 10.060. Procedure - Final Approval.

1. Within one year after concept approval or modified approval of a preliminary development plan, the applicant shall file a final plan for the entire development or, when submission in stages has been authorized, for the first unit of the PUD, with the Planning Commission. The final plan shall conform in all respects with the approved preliminary development plan. The final plan shall include all information included in the preliminary plan, plus the following:
  - a. Contour map showing at least 2-foot intervals.
  - b. Grading plan showing future contours if existing grade is to be changed more than two feet.
  - c. Existing and proposed utility lines.
  - d. Preliminary subdivision plan if property is to be subdivided.
  - e. Location and dimensions of pedestrian ways, roads, malls, common open space, recreation area and parks.
  - f. Location, dimensions, and arrangement of off-street parking including width of aisles, spaces, and other design criteria.
  - g. Preliminary planting and landscaping plan.
  - h. Preliminary architectural plans and elevations of typical structures.
  - i. The applicant shall also submit drafts of appropriate deed restrictions or protective covenants to provide for the maintenance of common areas and to assure that the objectives of the PUD shall be followed.
2. Upon receipt of the final development plan, the Planning Commission shall examine such plan and determine whether it conforms to all applicable criteria and standards and whether it conforms in all substantial respects to the previously approved preliminary development plan, or require such changes in the proposed development or impose such conditions of approval as are, in its judgment, necessary to insure conformity to the applicable criteria and standards. In so doing, the Planning Commission may permit the applicant to revise the plan and resubmit it as a final development plan within 30 days.

Section 10.080. Adherence to Approved Plan and Modification Thereof.

1. Building permits in a PUD shall be issued only on the basis of the approved plan. Any changes in the approved plan shall be submitted to the Planning Commission for processing as an amendment to this ordinance.

2. A performance bond may be required, in an amount to be determined by the Planning Commission, to insure that a development proposal is completed as approved and within the time limits agreed to.
3. The developer shall show to the satisfaction of the Planning Commission that the proposal will be carried out in such a way that no significant damage will be done to the lakes, streams, beaches or wetlands in the City. Special attention will be paid to the impact of the PUD on slide-prone hillsides to insure that the damage will not be caused to surrounding property.



## MEMORANDUM

To: City of Rockaway Beach

From: Dean N. Alterman  
Alterman Law Group PC

Date: February 20, 2024

Re: Nedonna Wave Planned Unit Development – Phase 2 application  
City file no. #SPUD 07-19  
Our file no. 5701.001

I'm writing this memorandum to accompany the application of Nedonna Development LLC and its principal Anna Song to subdivide Tract F (Tax Lot 10400) and Tax Lot 10500 of Nedonna Wave Phase 1 to be Phase 2 of the planned unit development that the city approved in 2008 in City File No. #SPUD 07-19. Nedonna Development requests a modification of the prior approval to allow the applicant to develop Phase 2 in two sub-phases instead of in one phase.

Phase 2 will be a subdivision of Tract F, Nedonna Wave, and will include eleven lots east of Kittiwake Drive.

The applicant also owns Tract G of Nedonna Wave Phase 1. Tract G is not part of this application and will continue to be reserved for future development. The future Phase 3 will be a subdivision of Tract G, and will include nine lots west of Kittiwake Drive and south of the wetland and drainage area (Tract B) next to Lot 4 of Phase 1.

### **I. History**

On May 27, 2008 the city issued a final plan approval for the application of Nedonna Development, LLC and its principal Anna Song to build a 28-lot phased planned unit development (PUD) that extended Kittiwake Drive south to Riley Street. The staff report indicates that the maximum allowed density at the time was 33 lots.

By final order dated September 15, 2008 and signed by Mayor Lisa M. Phipps on September 19, 2008, the city applied the PUD designation to the entire site, and approved Nedonna Development's request to develop the PUD in two stages with up to 28 lots. The first stage had 8 lots and three parcels. The eight lots were numbered 1 to 8 on the plat. They

corresponded to the lots numbered 1, 2, 3, 4, 20, 21, 22, and 23 on the plans submitted for the final plan approval.

Section 10.060 of the zoning code requires the applicant to file a “final plan for the entire development or, when submission in stages has been authorized, for the first unit of the PUD” within one year after the city approves a preliminary development plan. The code does not set any time limit on when the applicant must apply for subsequent units or stages of the PUD.

In this case, the city approved the preliminary development plan in early 2008. Nedonna Development applied for and received final approval for the first unit of the PUD within one year after it received final approval of the preliminary plan.

The applicant recorded the plat of Nedonna Wave Phase 1 on February 2, 2009 as Plat C-573, Tillamook County Plat Records. The plat included dedications of Kittiwake Drive, Song Street, Duke Street, Riley Street, and Jackson Street. In addition to the eight numbered lots, the plat included common area as Tracts A, B, and D, and areas for potential future development as Tracts C, E, F, and G.

Nedonna Development built Kittiwake Drive, Song Street, Duke Street, and the portion of Riley Street from Kittiwake Drive west to Chieftain Drive. Only Song Street, Duke Street, and the north 150 feet of Kittiwake Drive were required to provide public street access to the eight lots in Phase 1. Riley Drive and the south 450 feet of Kittiwake Drive were to provide street access to the lots in Phase 2 when subdivided and platted.

Nedonna Development suspended the project during the recession, before Nedonna Development was ready to build Phase 2, though it had constructed most of the public improvements for Phase 2 in accordance with plans that the city engineer approved on July 22, 2008.

## **II. Application to plat Phase 2 with three modifications**

Nedonna Development is now ready to plat Phase 2. Nedonna Development asks for one modification to the approved final plan, which is to plat Phase 2 in two separate pieces. Phase 2 would be the eleven lots east of Kittiwake Drive, which would be numbered from 9 to 19 and would be taken from what is now Tract F. Phase 3 would be the nine lots west of Kittiwake Drive, which would be numbered from 20 to 28. The number and location of the lots would conform to the final plan approval that the city issued in 2008.

The applicant requests three modifications to the PUD approval as part of the Phase 2 request:

1. Create two lots instead of one lot at the north end of Jackson Street, out of the lot that was numbered as Lot 24 on the approved plan. The two proposed lots are numbered as 21 and 22 on the plan submitted with this application.

2. Create four lots instead of three lots out of the lots numbered as 14, 15, and 16 on the approved plan, at the northeast corner of Kittiwake Drive and Riley Street. The four proposed lots are numbered as 13, 14, 15, and 16 on the plan submitted with this application.

3. Provide that when the owner of the land to the south extends Jackson Street south into that property, the city will vacate the east stub of Riley Street so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.

If the city grants all three modifications then the total number of lots in Nedonna Wave would increase beyond the 28 lots originally approved, but not beyond the limit of 33 that the city identified as applicable in the original PUD approval.

Rockaway Beach regulates PUDs through Article 10 of the zoning code. Because the city has already issued its final approval of the final development plan under Section 10.060 and has approved the entire project as a 28-lot PUD, the only current questions are whether the city will allow Nedonna Development, LLC to plat the remaining lots in two phases instead of in one phase, and whether the city will allow a small increase in the number of lots in Nedonna Wave.

### **III. General Standards for Subdivisions**

The following general standards in the Rockaway Beach Subdivision Ordinance apply:

#### **SECTION 5 Procedure For Review**

(1) Prior to the filing of a tentative plan, a subdivider shall submit to the City Recorder plans and other information concerning a proposed or contemplated development. The City Recorder shall then, within thirty-five (35) days, schedule a conference with the subdivider, City Engineer, and City Planner on such plans and other data, and make recommendations to the subdivider as shall seem proper regarding such plans or other data, and shall recommend consultation by the subdivider with other public or private agencies as may be disclosed by the plans to be interested. This subdivision conference is an optional procedure which may be elected by the subdivider and is not required by this ordinance.

(2) The applicant shall submit ten (10) copies of a tentative plan, a completed application form and a fee as required by Section 49. The tentative plan shall follow the format outlined in Sections 6 and 7.

(3) The City shall review the submitted tentative plan to determine whether the application is complete. If the application is complete, a public hearing before the Planning Commission shall be scheduled. If the application is incomplete, the applicant

will be informed of the additional information that is required. Upon submission of that information, a public hearing will be scheduled.

(4) Public notice shall be mailed to property owners within 200 feet of the boundary of the proposed subdivision. The content of the public notice shall be in accordance with Section 11.040(1) of the Zoning Ordinance.

(5) The City Recorder shall transmit one (1) copy of the tentative subdivision plan to the City Engineer, all affected special districts and any county, state or federal agency that may have an interest in the proposed subdivision. Written comments will be incorporated into the record of the public hearing.

(6) The City Recorder shall notify the subdivider of the requirement to file a statement of water rights and if a water rights is appurtenant, a copy of the acknowledgment from the Water Resources Department must be attached before the county recording officer may accept the plat of the subdivision for recording pursuant to ORS 92.120.

(7) The Planning Commission shall hold a public hearing on the tentative subdivision plan in accordance with Section 11.060 of the Zoning Ordinance.

(8) The Planning Commission shall make a decision on the tentative subdivision plan in accordance with Section 11.060 of the Zoning Ordinance.

**Response:** As Rockaway Beach has already approved the overall plan for Nedonna Wave, the applicant is submitting 10 copies of the plan for the proposed Phase 2 of the subdivision that reflect the first two requested modifications. The applicant is also submitting the application form and the application fee. The applicant acknowledges being informed of the requirement to file a statement of water rights. No water rights are known to be appurtenant to the property.

## SECTION 9 Information Statement

The statement to accompany the tentative plan shall contain the following information:

- A general explanation of the improvements and public utilities, including water supply and sewage disposal proposed to be installed.
- Deviations from subdivision ordinance, if any.
- Public areas proposed, if any.
- A preliminary draft of restrictive covenants proposed, if any.

**Improvements and public utilities:** The applicant has already dedicated and constructed most of the public streets and public utilities for the subdivision in accordance with the approval of the Nedonna Wave PUD. The applicant will extend public water and sewer lines to the property to serve each of the lots. As part of the approval, the applicant will construct the remaining portion of Riley Street and the stub of Jackson Court.

**Deviations from the subdivision ordinance:** Except for the deviations that the city approved in 2008 to allow Nedonna Wave to develop the property as a PUD, the applicant proposes no deviations from the subdivision ordinance.

**Public areas proposed:** As part of Phase 1 of the PUD, Nedonna Development imposed covenants on Tracts A, B, and D to reserve them as common area and open space for the Nedonna Wave subdivision. The proposed subdivision of Tract F in accordance with the prior approval will allocate about half of Tract F to the individual lots and the other half as common area and open space for the subdivision. Nedonna Development has already dedicated all public streets required for all phases of the PUD and has built all streets except for Jackson Street and the east portion of Riley Street.

**Restrictive covenants proposed:** The applicant proposes to apply substantially the same covenants to Phases 2 and 3 as the applicant applied to Phase 1.

#### **SECTION 10 Supplemental Proposals with Tentative Plan**

Any of the following may be required to [sic] the Planning Commission to supplement the plan of a subdivision.

- (1) Approximate center line profiles with extensions for a reasonable distance beyond the limits of the proposed subdivision showing the finished grade of streets and the nature and extent of street construction.
- (2) A plan for domestic water supply lines and related water service facilities.
- (3) Proposals for sewage disposal, storm water drainage and flood control, including profiles of proposed drainageways.
- (4) If lot areas are to be graded, a plan showing the nature of the cuts and fills and information on the character of the soil.
- (5) Proposals for other improvements such as electric utilities and sidewalks.
- (6) Site investigations as required by the Hazards Overlay Zone provisions of the Zoning Ordinance. Where such an investigation indicates the potential for erosion, an erosion control plan shall also be submitted.
- (7) If an area is to be graded, a plan showing the nature of the cuts and fills and evidence provided in a site investigation that such a grading will be stable.

**Response:** The finished grades of the streets were approved as part of the initial PUD, including the extension of Riley Street beyond the limits of the subdivision to connect to the west. The applicant built that extension in 2008 or 2009 and the city accepted it as a public street. No other streets extend to connect to any other property. Domestic water lines have been installed. Sewage disposal has been provided in accordance with the construction plan that the

City Engineer approved on July 22, 2008. No substantial grading is proposed.

## **SECTION 11 Procedure For Review**

(1) Within one (1) year after approval of the preliminary plat, or such extension as may have been granted by the City, the subdivider shall cause the proposed subdivision, or any part thereof to be surveyed and a plat thereof prepared in conformance with the preliminary plat as approved or conditionally approved.

An original reproducible drawing and five (5) blueline or blackline prints of the plat shall be submitted to the City. The tracing and prints are in addition to those required by Oregon Statutes.

The final plat shall conform to the requirements of Section 12 - 15.

No subdivider shall submit a plat of a subdivision for record, until all the requirements of ORS 209.250 and the plat requirements of the subdivision have been met.

(2) The City Recorder shall forward a copy of the plat and other data submitted to the City Engineer who shall examine it to determine that the subdivision as shown is substantially the same as it appeared on the tentative plan, as approved; that all provisions of the law and this ordinance applicable at the time of approval of the tentative plan have been complied with; and that the plan is technically correct.

The City Engineer may make checks in the field as he may desire to verify that the map is sufficiently correct on the ground and he may enter the property for this purpose.

If the City Engineer determines that full conformity has not been made, the City shall advise the subdivider of the changes or additions that must be made for these purposes, and shall afford the subdivider an opportunity to make the changes or additions. If the City Engineer determines that full conformity has been made, he shall so certify on the plat and shall transmit the plat to the City for further review.

(3) The Planning Commission shall review the final plat to determine that it conforms with the preliminary plat and with changes permitted and all requirements imposed as a condition of its acceptance.

If the Planning Commission determines that the plat submitted does not conform to the tentative plan or applicable conditions, the subdivider shall be afforded an opportunity to make corrections.

(4) Prior to the approval of the final plat by the Planning Commission, the subdivider shall complete improvements as proposed or enter into an agreement for improvements together with a bond, pursuant to the provisions of Sections 21 & 22.

(5) If the final plat conforms to the preliminary plat and applicable conditions have been met, the Chairman of the Planning Commission shall sign and date the final plat.

(6) The applicant shall deliver the final plat to the County Surveyor for review according to the requirements of ORS 92. Approval of the plat shall be null and void if the plat is not recorded within 90 days after the date the last required approving signature has been obtained.

**Response:** Nedonna Development will construct the few remaining improvements in conformance to the approved PUD plan and the tentative subdivision plan when approved, prepare and submit a final plat, and provide a bond or other assurance upon approval that the improvements will be constructed.

(7) The subdivision is considered complete after the final plat is recorded by the County Clerk.

**Response:** The applicant will record the final plat with the County Clerk in conformance to this standard.

### **SECTION 32 Principles of Acceptability**

A land division whether by a subdivision, creation of a street, or a partitioning, shall conform to any development plans, shall take into consideration any preliminary plans made in anticipation thereof, and shall conform to the design standards established by this ordinance. The City Engineer shall prepare and submit to the City Council specifications to supplement the standards of this ordinance, based on standard engineering practices, concerning streets, drainage facilities, sidewalks, sewer and water systems.

**Response:** The proposed subdivision conforms to all design standards in the land division ordinance. The tract to be subdivided, now known as Tract F of Nedonna Wave, was laid out with the intention that eleven lots would eventually be created by further subdividing it. The proposal conforms to the plans that the city has already approved.

### **SECTION 33 Streets**

(1) The location, width and grade of streets shall be considered in their relation to existing and planned streets, to topographical conditions, to public convenience and safety, and to the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system with intersection angles, grades, tangents and curves appropriate for the traffic to be carried considering the

terrain. Where location is not shown in a development plan, the arrangement of streets shall either:

- a. Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
- b. Conform to a plan for the neighborhood approved or adopted by the Planning Commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.

**Response:** The applicant provided for the continuation of Kittiwake Drive from its prior terminus south to Riley Street, and for the connection of Riley Street to the land to the west. The applicant has built Kittiwake Drive and Riley Street west from Kittiwake Drive. The streets have already been dedicated in conformance to the plan that the City approved before the applicant developed Phase 1. The proposal complies with this standard.

(2) **Street Widths.** Street widths shall conform with City standards, except where it can be shown by the land divider, to the satisfaction of the Planning Commission, that the topography or the small number of lots or parcels served and the probable future traffic development are such as to unquestionably justify a narrower width. Increased widths may be required where streets are to serve commercial property, or where probable traffic conditions warrant. Approval or determination of street and area classification shall be made by the Planning Commission taking into consideration the zoning designations imposed by the Comprehensive Plan and the Development Code, the present use and development of the property in the area, the logical and reasonable prospective development of the area based upon public needs and trends, and the public safety and welfare.

**Response:** The applicant has built Kittiwake Drive and the west portion of Riley Street to City standards. The application will construct Jackson Street and the east portion of Riley Street to City standards.

(3) **Alignment.** As far as is practical, streets other than minor streets shall be in alignment with existing streets by continuations of the center lines thereof. Staggered street alignment resulting in "T" intersections shall, wherever practical, leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction, and in no case, shall be less than 150 feet.

**Response:** The applicant proposes no change to the existing and approved street pattern.

(4) Future Street Extension. Where necessary to give access to, or permit a satisfactory future division of adjoining land, streets shall extend to the boundary of the subdivision or partition, and the resulting dead-end streets may be approved without a turn-around. Reserve strips including street plugs may be required to preserve the objectives of street extensions.

**Response:** All adjoining land has already been subdivided. The railroad blocks any potential extension of Riley Street to the east of Phase 2. No adjoining land requires a street extension through this subdivision. The proposal complies with this standard.

(5) Intersection Angles. Streets shall intersect at angles as practical except where topography requires a lesser angle,<sup>1</sup> but in no case shall the acute angle be less than 60 degrees unless there is a special intersection design. An arterial or collector street intersecting with another street shall have at least 100 feet of tangent adjacent to the intersection unless topography requires a lesser distance. Other streets, except alleys, shall have at least 50 feet of tangent adjacent to the intersection unless topography requires a lesser distance. Intersections which contain an acute angle of less than 80 degrees or which include an arterial street shall have a minimum corner radius sufficient to allow for a roadway radius of 20 feet and maintain a uniform width between the roadway and the right-of-way line. Ordinarily, the intersection of more than two streets at any one point will not be approved.

**Response:** The existing streets conform to this standard. The applicant does not propose any new streets.

(6) Existing Streets. Whenever existing streets adjacent to or within a tract are of adequate width, additional right-of-way shall be provided at the time of the land division.

**Response:** The existing streets are all of the width that the city approved for this PUD. The applicant previously dedicated land to widen Riley Street to city standards.

(7) Reserved Strips. No reserved strips controlling the access to public ways will be approved unless the strips are necessary for the protection of the public welfare, and in these cases they may be required. The control and disposal of the land comprising the strips shall be placed within the jurisdiction of the City under conditions approved by the Planning Commission.

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<sup>1</sup> This text is from the city's website. It was likely intended to read "Streets shall intersect at angles as near to right angles as practical except where topography requires a lesser angle ...."

**Response:** The proposed subdivision will not extend any public streets to undeveloped adjoining parcels and no reserved strips are necessary.

(8) **Half Streets.** Half streets shall be prohibited except they may be approved where essential to the reasonable development of the subdivision or partitions when in conformity with the other requirements of these regulations, and when the Planning Commission finds it will be practical to require the dedication of the other half when the adjoining property is divided. Whenever a half street is adjacent to a tract to be divided, the other half of the street shall be platted within the tract. Reserve strips may be required to preserve the objectives of half streets.

**Response:** No half-street is necessary or proposed. No half-street is adjacent to the property.

(9) **Cul-de-Sac.** A cul-de-sac shall be as short as possible and shall have a maximum length of four hundred feet (400') and serve building sites for not more than eighteen (18) dwelling units. A cul-de-sac shall terminate with a circular turnaround.

**Response:** Riley Street and Jackson Street are essentially a cul-de-sac to serve six lots. They do not terminate in a circular turnaround. They do serve as a hammerhead turnaround and were approved by the city as part of the PUD. When the Nedonna Estates property to the south is developed, a second connection to Riley Street can be provided on that property to reduce the cul-de-sac and the stub of Riley Street in front of Tract E will no longer be needed as a turnaround.

(10) **Alleys.** When any lots or parcels are proposed for commercial or industrial usage, alleys at least 20 feet in width may be required at the rear thereof with adequate ingress and egress for truck traffic unless alternative commitments for off-street service truck facilities without alleys are approved. Intersecting alleys shall not be permitted.

**Response:** No commercial or industrial usage is proposed. No alleys are proposed. This standard does not apply to this subdivision.

(11) **Grades and Curves.** Grades shall not exceed 6% on arterials, 10% on collector streets, or 12% on other streets. Center line radii of curves shall not be less than 300 feet on major arterials, 200 feet on secondary arterials, or 100 feet on other streets, and shall be to an even 10 feet. Where existing conditions, particularly the topography, make it otherwise impractical to provide buildable sites, the Planning Commission may

accept steeper grades and sharper curves. In flat areas, allowance shall be made for finished street grades having a minimum slope, preferably, of at least .5%.

**Response:** The platted streets are essentially flat. No grade exceeds 6% . No road curve has a radius of less than 100 feet.

(12) **Marginal Access Streets.** Where a land division abuts or contains an existing or proposed arterial street, the Planning Commission may require marginal access streets, reverse frontage lots with suitable depth, screen planting contained in a nonaccess reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic.

**Response:** The property does not abut or contain an existing or proposed arterial street. This standard does not apply to this proposal.

(13) **Street Names.** All street names shall be approved by the Planning Commission for conformance with established pattern and to avoid duplication and confusion.

**Response:** The city has already approved the existing street names. No new streets or street names are proposed.

(14) **Private Streets.** The design and improvement of any private street shall be subject to all requirements prescribed by this ordinance for public streets. The land divider shall provide for the permanent maintenance of any street required for access to property in a private street subdivision or major partition.

**Response:** The applicant has already dedicated all required streets as public streets. The applicant does not propose to build any private streets and this standard does not apply to this application.

### **SECTION 34 Utility Easements**

Easements for sewer, drainage, water mains, public utility installations, including overhead or underground systems, and other like public purposes, shall be dedicated, reserved or granted by the land divider in widths not less than five feet (5') on each side of the rear lot or parcel lines, alongside lot or parcel lines and in planting strips wherever

necessary, provided that easements of [lesser]<sup>2</sup> width, such as for anchorage, may be allowed when the purposes of easements may be accomplished by easements of lesser width as approved by the City.

**Response:** Nedonna Development dedicated 5-foot easements along the public streets when it platted Phase 1. The plat of Phase 1 does not indicate any easements along the side and rear lot lines of the individual lots, possibly because the open space (including wetlands) is at the rear of most of the lots. In this instance Nedonna Development suggests that utility easements along the side and rear lot lines would serve no purpose and the requirement should be waived.

### SECTION 35 Building Sites

(1) Size and Shape. The size, width, shape and orientation of building sites shall be consistent with the residential lot size provisions of the Development Code with the following exceptions:

(a) In areas that will not be served by a public sewer, minimum lot and parcel sized shall permit compliance with the requirements of the Department of Environmental Quality and shall take into consideration problems of sewage disposal, particularly problems of soil structure and water table as related to sewage disposal by septic tank.

**Response:** The lots will be served by a public sewer. This standard applies only to lots that will not be served by a public sewer and does not apply to the plat.

(b) Where property is zoned and planned for business or industrial use, other widths and areas may be permitted at the discretion of the Planning Commission. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.

**Response:** The property is zoned for residential use, not for business or industrial use. This standard does not apply to the plat.

(2) Access. Each lot and parcel shall abut upon a street other than an alley for a width of at least 25 feet.

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<sup>2</sup> This word appears to have been inadvertently omitted from the code.

**Response:** Each lot and parcel abuts on a street other than an alley for a width of at least 25 feet. The plat complies with this standard.

(3) **Through Lots and Parcels.** Through lots and parcels shall be avoided except where they are essential to provide separation of residential development from major traffic arteries or adjacent non-residential activities or to overcome specific disadvantages or topography orientation. A planting screen easement at least ten (10) feet wide and across which there shall be no right of access may be required along the line of building sites abutting such a traffic artery or other incompatible use.

**Response:** The plat has no through lots and no through parcels. The plat complies with this standard.

(4) **Lot and Parcel Side Lines.** The lines of lots and parcels, as far as is practicable, shall run at right angles to the street upon which they face, except that on curved streets they shall be radial to the curve.

**Response:** Ten of the eleven lots in Phase 2 as originally approved comply with this standard. The exception is the lot at the north end of Jackson Street, which in the approved plan fronts on the end of Jackson Street and runs east to the railroad track. It has no other practicable layout.

Twelve of the fourteen lots in Phase 2 as modified comply with this standard. The applicant requests to modify the approved plan to make two lots out of the one lot at the north end of Jackson Street, each of which will front on the end of Jackson Street. Those two lots have no other reasonable layout that would not impinge on the wetlands. The plat complies with this standard as far as practicable.

### **SECTION 36**

#### **Blocks**

(1) **General.** The length, width and shape of blocks shall take into account the need for adequate building site size and street width and shall recognize the limitations of the topography.

**Response:** Tract F includes some wetlands areas that restricted how Nedonna Development could lay out the PUD. The location of the wetlands made it impracticable to lay out short cul-de-sacs east of Kittiwake Drive similar to how Song Street was laid out in Phase 1. The eleven building lots in Phase 2 as originally approved, and the fourteen lots in Phase 2 as proposed to be modified, were laid out to minimize disturbance of the wetlands. The plat complies with this standard.

(2) Size. No block shall be more than 1,000 feet in length between street corner lines unless it is adjacent to an arterial street or unless the topography or the location of adjoining streets justifies an exception. The recommended minimum length of blocks along an arterial street is 1,800 feet. A block shall have sufficient width to provide for two tiers of building sites unless topography or the location of adjoining streets justifies an exception.

**Response:** No new streets are proposed. Kittiwake Drive is approximately 600 feet long from Song Street to Riley Street. The area that would ordinarily provide a second tier of lots between Kittiwake Drive and Jackson Street is wide enough to provide for two tiers of lots, but it includes a substantial wetland that will remain as open space. The plat complies with this standard.

(3) Walkways. The subdivider may be required to dedicate and improve ten (10) foot walkways across blocks over 600 feet in length or to provide access to school, park, or other public areas.

**Response:** Kittiwake Drive is about 600 feet long from Song Street to Riley Street. Jackson Street is less than 200 feet long. A walkway from the north end of Jackson Street to the midpoint of the Kittiwake Drive block would have to cross the protected wetlands and would not shorten the walking distance from Phase 2 to the beach. The City should not require a walkway through the wetlands.

### **SECTION 37 Large Building Sites**

In dividing tracts into large lots or parcels which at some future time are likely to be redivided, the Planning Commission may require that the blocks be of such size and shape, be so divided into building sites and contain such site restrictions as will provide for extension and opening of streets at intervals which will permit a subsequent division of any tract into parcels of smaller size.

**Response:** The only large parcel proposed is the wetland in the center of what is now Tract F. The wetland area will serve as the required permanent open space for Phase 2 of the PUD and is not intended to be redivided.

### **SECTION 38 Water Courses**

The land divider shall, subject to riparian rights, dedicate a right-of-way for storm drainage purposes, conforming substantially with the lines of any natural water course or channel, stream or creek that traverses the subdivision or partitions, or, at the option of the land divider, provide, by dedication, further and sufficient easements or construction, or both to dispose of the surface and storm waters.

**Response:** In Phase 1, Nedonna Development declared an easement for storm drainage over Tracts A, B, and D. Nedonna Development will declare a similar easement for storm drainage over the common area wetland that is now part of Tract F. The plat complies with this standard.

### **SECTION 39 Land For Public Purposes**

(1) The Planning Commission may require the reservation for public acquisition, at a cost not to exceed acreage values in the area prior to subdivision, or appropriate areas within the subdivision for a period not to exceed one year providing the City has an interest or has been advised of interest on the part of the State Highway Commission, school district or other public agency to acquire a portion of the area within the proposed subdivision for a public purpose, including substantial assurance that positive steps will be taken in the reasonable future for acquisition.

**Response:** The applicant is not aware of any public body that wishes to acquire land in the subdivision for a public purpose.

(2) The Planning Commission may require the dedication of suitable areas for the parks and playgrounds that will be required for the use of the population which is intended to occupy the subdivision.

**Response:** The property in Phase 2 is a five-minute walk from the public beach, which is akin to “the parks and playgrounds” required for the use of the residents of Phase 2. The property is adequately served by land for outdoor recreation, and complies with this standard without any dedication of additional parkland.

### **SECTION 40 Unsuitable Land**

The Planning Commission may refuse to approve a subdivision or partition when the only practical use which can be made of the property proposed to be subdivided or partitioned

is a use prohibited by this code or law, or, if the property is deemed unhealthful or unfit for human habitation or occupancy by the county or state health authorities.

**Response:** The property can practicably be put to residential use, which this code allows and which Rockaway Beach has approved. No county or state authority has declared the property or the general area unfit for human habitation, and in fact many of the nearby parcels are in residential use. The plat complies with this standard.

#### **SECTION 41 Land Subject to Inundation**

If any portion of land proposed for development is subject to overflow, inundation or flood hazard by, or collection of, storm waters, an adequate system of storm drains, levees, dikes and pumping systems shall be provided.

**Response:** As part of developing Phase 1, the applicant installed storm drain culverts from the wetland area under Kittiwake Drive to Tract B and thence to McMillan Creek to provide storm drainage from Tract F. The applicant believes the existing wetland and drainage facility to be adequate. The plat complies with this standard.

#### **SECTION 42 Proposed Name of Subdivision**

No tentative subdivision plat or subdivision plan or subdivision shall be approved which bears a name approved by the County Surveyor or County Assessor, which is the same as [or] similar to or pronounced the same as the name of any other subdivision in Tillamook County unless the land platted is contiguous to and platted by the same party that platted the subdivision bearing that name, or unless the party files and records the consent of the party that platted the contiguous subdivision bearing that name. All subdivision plats must continue the lot numbers and, if used, the block numbers of the subdivision plat of the same name last filed.

**Response:** The property is already part of the Nedonna Wave subdivision and is being platted by the same party that platted Phase 1. The final plat of Phase 2 will continue the lot numbers from Phase 1, starting with Lot 10.<sup>3</sup>

#### **IV. Specific standards for planned unit developments**

Rockaway Beach regulates planned unit developments (PUDs) in Article 10 of the city zoning ordinance. Here are the relevant standards and the applicant's response.

---

<sup>3</sup> The proposed plat submitted with this application numbers the lots from 1 upward. The lots will be renumbered on the final plat to conform to this standard.

Section 10.030. Permitted Buildings and Uses. The following buildings and uses may be permitted as hereinafter provided. Buildings and uses may be permitted either singly or in combination provided the overall density of the Planned Unit Development does not exceed the density of the parent zone as provided in this ordinance.

1. Single-family dwellings including detached, attached, or semi-detached units, row houses, atrium or patio houses, provided each has its own separate plot.
2. Duplexes and multiple-family dwellings.
3. Accessory buildings and uses.
4. Commercial uses only when supported mainly by the PUD and only when economic feasibility can be shown.
5. Buildings or uses listed as permitted outright or conditionally in the parent zone on which the PUD is located.

**Response:** The proposed lots will be for detached single-family dwellings, and related accessory buildings such as garages and storage sheds. Subsections 1 and 3 permit these uses. The application complies with this standard.

Section 10.040. Development Standards.

(1) Minimum Lot Size. Planned Unit Developments shall be established only on parcels of land which are suitable for the proposed development and are determined by the planning commission to be in keeping with the intent of this ordinance. (This says 'site size' in 143, not 'lot size')

**Response:** Rockaway Beach has already approved this parcel of land as suitable for the proposed development of a residential PUD in keeping with the intent of the zoning ordinance. The proposed modifications do not substantially change the nature and character of Nedonna Wave. The parcel is suitable for the proposed development, and the application complies with this standard.

(2) Open Spaces. In all residential developments, or in combination residential-commercial developments, 50% of the total area should be devoted to open space. Of this area, 25% of said open space may be utilized privately by individual owners or users of the PUD; however, 75% of this area should be common or shared open space. The Planning Commission may increase or decrease the open space requirement depending on the particular site and the needs of the development. In no case should the open space be less than 40% of the site.

**Response:** Nedonna Wave Phase 1 included common area as Tract A, Tract B, and Tract D, all of which is open space. The eight numbered lots and Tract C in Phase 1 totaled 35,028

square feet according to the plat. The three common area tracts totaled 65,528 square feet, which is 65.16% of the total area of 100,556 square feet in Phase 1. Phase 1 provided a surplus of common open space.

The 22 lots in Phase 2 and the proposed Phase 3 total 69,840 square feet. The common open space in Phases 2 and 3 consists of the remainder of Tract F (75,358 SF) and Tract G (71,859 SF) minus the portion allocated to the 22 proposed building lots (71,859 SF) and Tract E (2,019 SF), which yields 37,476 SF. Phases 1, 2, and 3 together contain 106,887 square feet in numbered lots plus Tracts C and E, and 103,004 SF of common open space. The common open space is 49.1% of the total project.

In addition to the common open space, the setback requirements on each lot will provide approximately 35,000 SF of additional open area, bringing the total open area for the project when complete to about 138,000 SF in a total area of about 209,891 SF, well above the 50% requirement. With or without the requested modifications, the plat will comply with this standard.

(3) Density. The density of a planned development shall not exceed the density of the parent zone, except as more restrictive regulations may be prescribed as a condition of the PUD permit. When calculating density, the gross area is used (total area including street dedications). Areas of public uses may be included in calculating allowable density.

**Response:** The findings of fact in the city's approval of February 11, 2008 indicate that the R-1 portion of the overall site was 3.9 acres, which is about 169,884 SF. The minimum lot size in the R-1 zone is 5,000 SF. Property approved for a PUD may be subdivided into lots smaller than 5,000 SF as long as the overall density does not exceed the density of the parent zone. Streets and common areas count toward the land area for this purpose.

A tract of 169,884 square feet divided by 5,000 square feet will allow 33 lots. The proposed density with the requested modifications will not exceed the density of the parent zone. The application and the modifications comply with this standard.

(4) Subdivision of Lot Sizes. Minimum area, width, depth, and frontage requirements for subdivision lots in a PUD may be less than the minimums set forth elsewhere in City ordinances, provided that the overall density is in conformance, and that lots conform to the approved preliminary development plan.

**Response:** The overall density of Nedonna Wave is in conformance to the zoning. If the City does not grant the requested modifications, the proposal will conform exactly to the approved development plan. If the City does grant the requested modifications, the proposed density, street layout, open space, and circulation will still conform to the approved plan.

(5) Off-Street Parking. Parking spaces shall conform to all provisions of this ordinance, except that the Planning Commission may authorize exceptions where warranted by unusual circumstances.

**Response:** Each lot will provide parking to conform to code requirements.

(6) Signs. All signs of any type within a PUD are subject to design review and approval of the Planning Commission. They shall consider each sign on its merits based on its aesthetic impact on the area, potential traffic hazards, potential violation of property and privacy rights of adjoining property owners, and need for said sign.

**Response:** No permanent signs are proposed except for street signs and any no-parking signs that the City may require.

(7) Height Guidelines. The same restrictions shall prevail as permitted outright in the zone in which such development occurs, except that the Planning Commission may allow a variance of heights where it is determined that surrounding property will not be harmed.

**Response:** On February 11, 2008 in File No. #VAR 2007-21 the planning commission approved a height variance for building heights of 36 feet for Lots 25, 26, 27, and 28 as they were then numbered, which are Lots 17, 18, 19, and 20 on the plans submitted with this application. In File No. #VAR 2007-20 the planning commission approved a height variance for building heights of 29 feet on all other lots in Nedonna Wave. No other height variance is requested.

(8) Streets and Roads. Necessary streets and roads within the PUD shall be dedicated to the public and constructed to City standards or shall be private roads maintained by an owner's association and constructed to standards as determined by the Planning Commission and City Engineer.

**Response:** The applicant has dedicated all of the streets and constructed most of the streets within the PUD already. As part of Phase 2 the applicant will construct Jackson Street and the east portion of Riley Street in accordance with the engineering plans that the City approved in 2008.

(9) Dedication and Maintenance of Facilities. The Planning Commission, or on appeal, the City Council may, as a condition of approval for a PUD require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated to the following uses:

(a) Recreation Facilities: The Planning Commission may require that suitable area for parks or playgrounds be set aside, improved, or permanently reserved for the owners, residents, employees or patrons of the PUD.

(b) Common Area: Whenever common area is provided, the Planning Commission or City Council may require that an association of owners or tenants be created into a non-profit corporation under the laws of the State of Oregon, which shall adopt such Articles of Incorporation and By-Laws and adopt and impose such Declaration of Covenants and Restrictions on such common areas that are acceptable to the Planning Commission. Said association, if required, may undertake other functions. It shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessments levied to maintain said common areas for the purposes intended. The period of existence of such association shall not be less than 20 years, and it shall continue thereafter and until a majority vote of the members shall terminate it.

(c) Easements: Easements necessary to the orderly extension of public utilities may be required as a condition of approval.

**Response:** The PUD enjoys excellent pedestrian access to the beach and will include 49% common open space. No further recreation facilities are required. The common area will be under the control of an owners' association pursuant to covenants. Because the railroad blocks extension to the east and all adjoining properties are either already developed or have direct access to improved public streets with utilities, no further easements for extensions of public utilities are required. A portion of the open area has been set aside for a sewer pump facility.

## V. Conclusion

The applicant is ready to continue the development of the Nedonna Wave PUD and requests your approval of the preliminary plat, including the ability to separate Phase 2 into Phases 2 and 3, and to add two lots as described. If the city should turn down the request to modify the PUD by adding the two lots, then the applicant requests that you simply approve Phase 2.

**NEDONNA DEVELOPMENT, LLC**  
**NEDONNA WAVE PHASE 2**  
**TENTATIVE PLAN**  
**MAP 2N 10W 20AB**

OWNER:  
 NEDONNA DEVELOPMENT LLC  
 ATTN: ANNA SONG  
 2832 SW SAM JACKSON PARK ROAD  
 PORTLAND, OR 97201

ENGINEER:  
 MORGAN CIVIL ENGINEERING, INC.  
 ATTN: JASON MORGAN, PE  
 PO BOX 258  
 MANZANITA, OR 97130  
 503-801-6016

**SHEET INDEX:**

1. COVER SHEET
2. LOT LAYOUT
3. LOT DIMENSIONS
4. UTILITY LAYOUT
5. EST. BUILDING SIZES
6. ROAD PROFILES

**NOTES:**

NO NEW STREETS ARE PROPOSED.  
 ALL STREETS SHOWN ON THE PLAN ARE EXISTING.

**DIVIDING PROPERTIES:**  
 TAX LOTS 10200, 10300, 10400  
 MAP 2N 10W 20BA  
 TRACTS F & G OF NEDONNA WAVE PHASE 1

**EXISTING LAYOUT**  
 SCALE: 1"=40'

**VICINITY MAP**  
 SCALE: 1"=±500'

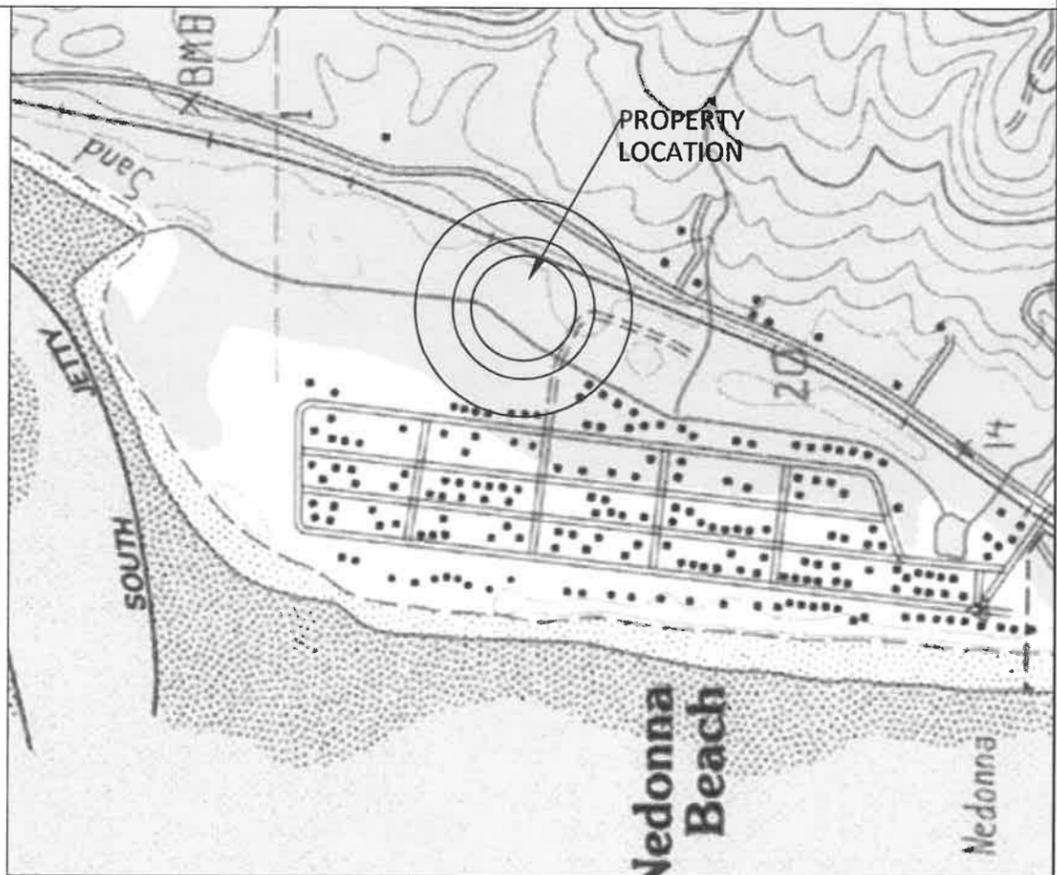
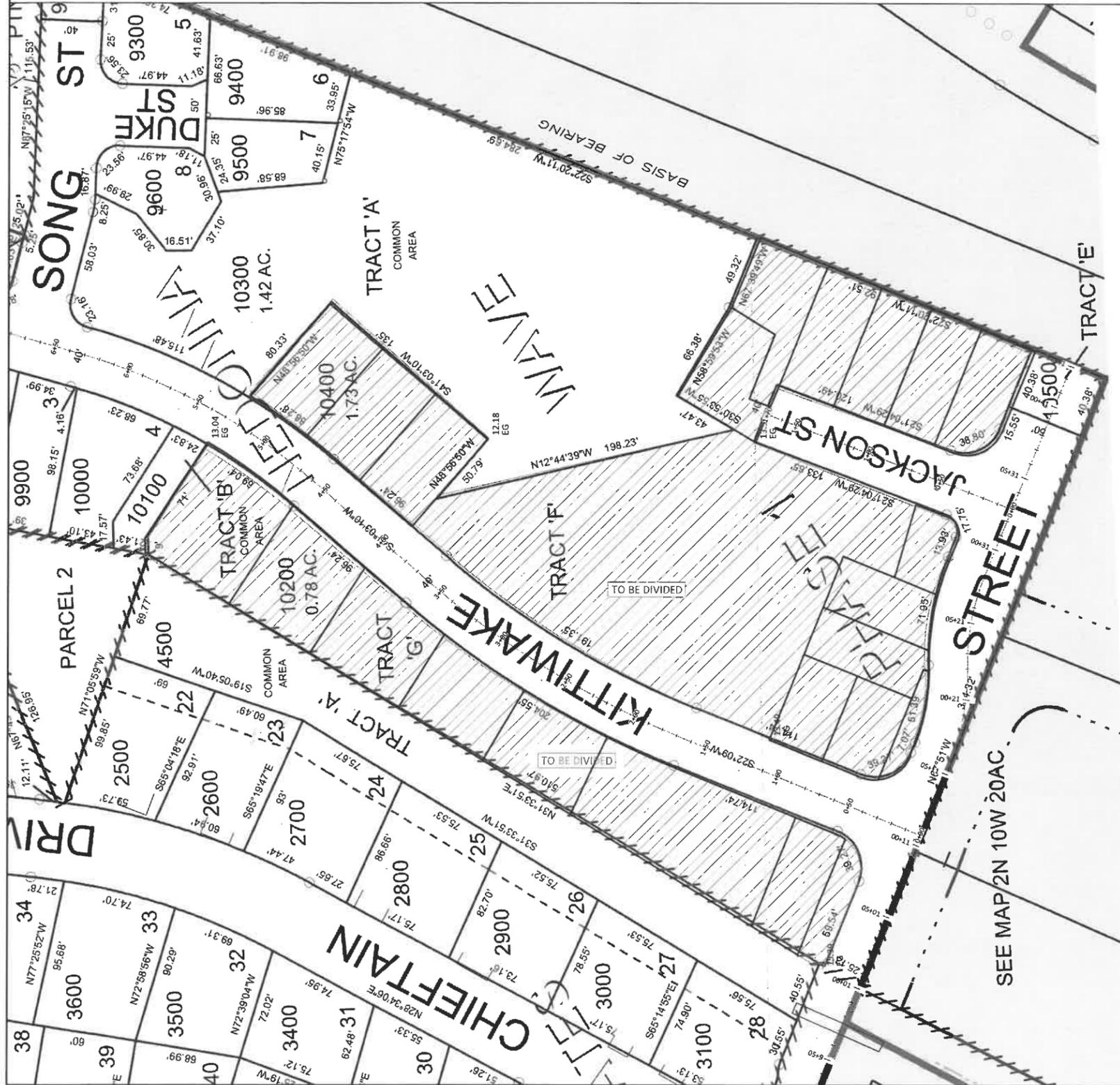


**MORGAN CIVIL ENGINEERING, INC.**  
 CIVIL ENGINEERING  
 INSPECTION  
 PLANNING  
 PO BOX 358  
 MANZANITA, OR 97130  
 (503) 801-6016  
 www.morgancivil.com

JOB NO. 2005-050  
 DATE NOV. 8, 2020  
 REGISTERED PROFESSIONAL ENGINEER  
 ENGINEER 63055  
 OREGON  
 JANUARY 18, 2005  
 JASON R. MORGAN  
 RENEWAL DATE: DECEMBER 31, 2020

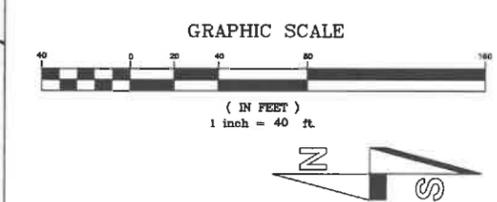
**NEDONNA DEVELOPMENT, LLC**  
**NEDONNA WAVE - PHASE 2**  
**COVER SHEET**

SHEET  
**1**  
 OF SIX



**LEGEND:**

	EXISTING PROPERTY LINE
	PROPOSED PROPERTY LINE
	PROPOSED SETBACK LINE
	PROPOSED BUILDING LINE
	EXISTING 5' CONTOUR
	EXISTING 1' CONTOUR
	EXISTING EDGE OF ASPHALT
	EXISTING EDGE OF GRAVEL
	EXISTING DITCHLINE
	EXISTING WATER LINE
	EXISTING WATER VALVE
	EXISTING WATER SERVICE
	EXISTING SEWER LINE
	EXISTING SEWER MANHOLE
	EXISTING SEWER SERVICE

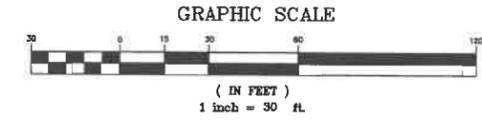


**NEDONNA DEVELOPMENT, LLC  
NEDONNA WAVE PHASE 2  
TENTATIVE PLAN  
MAP 2N 10W 20AB**

**DIVIDING PROPERTIES:**  
TAX LOTS 10200 & 10400  
MAP 2N 10W 20AB  
TRACTS F & G OF NEDONNA WAVE PHASE 1

**NOTES:**  
NO NEW STREETS ARE PROPOSED.  
ALL STREETS SHOWN ON THE PLAN ARE EXISTING.  
ELEVATIONS BASED ON 2008 DOGAMI LIDAR PROGRAM. NAVD88 DATUM.

**1**  
**2** **PROPOSED LOT LAYOUT**  
SCALE: 1"=30"



**MORGAN CIVIL  
ENGINEERING, INC.**  
• CIVIL ENGINEERING  
• INSPECTION  
• PLANNING  
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REGISTERED PROFESSIONAL  
ENGINEER  
63055  
OREGON  
JASON R. MORGAN  
RENEWAL DATE: DECEMBER 31, 2020

**NEDONNA DEVELOPMENT, LLC  
NEDONNA WAVE - PHASE 2  
LOT LAYOUT**

SHEET  
**2**  
OF SIX

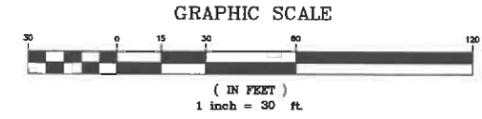


**LEGEND:**

- EXISTING PROPERTY LINE
- - - PROPOSED PROPERTY LINE
- - - PROPOSED SETBACK LINE
- - - PROPOSED BUILDING
- EXISTING 5' CONTOUR
- - - EXISTING 1' CONTOUR
- - - EXISTING EDGE OF ASPHALT
- - - EXISTING EDGE OF GRAVEL
- - - EXISTING DITCHLINE
- - - EXISTING WATER LINE
- - - EXISTING WATER VALVE
- - - EXISTING WATER SERVICE
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- - - EXISTING SEWER MANHOLE
- - - EXISTING SEWER SERVICE

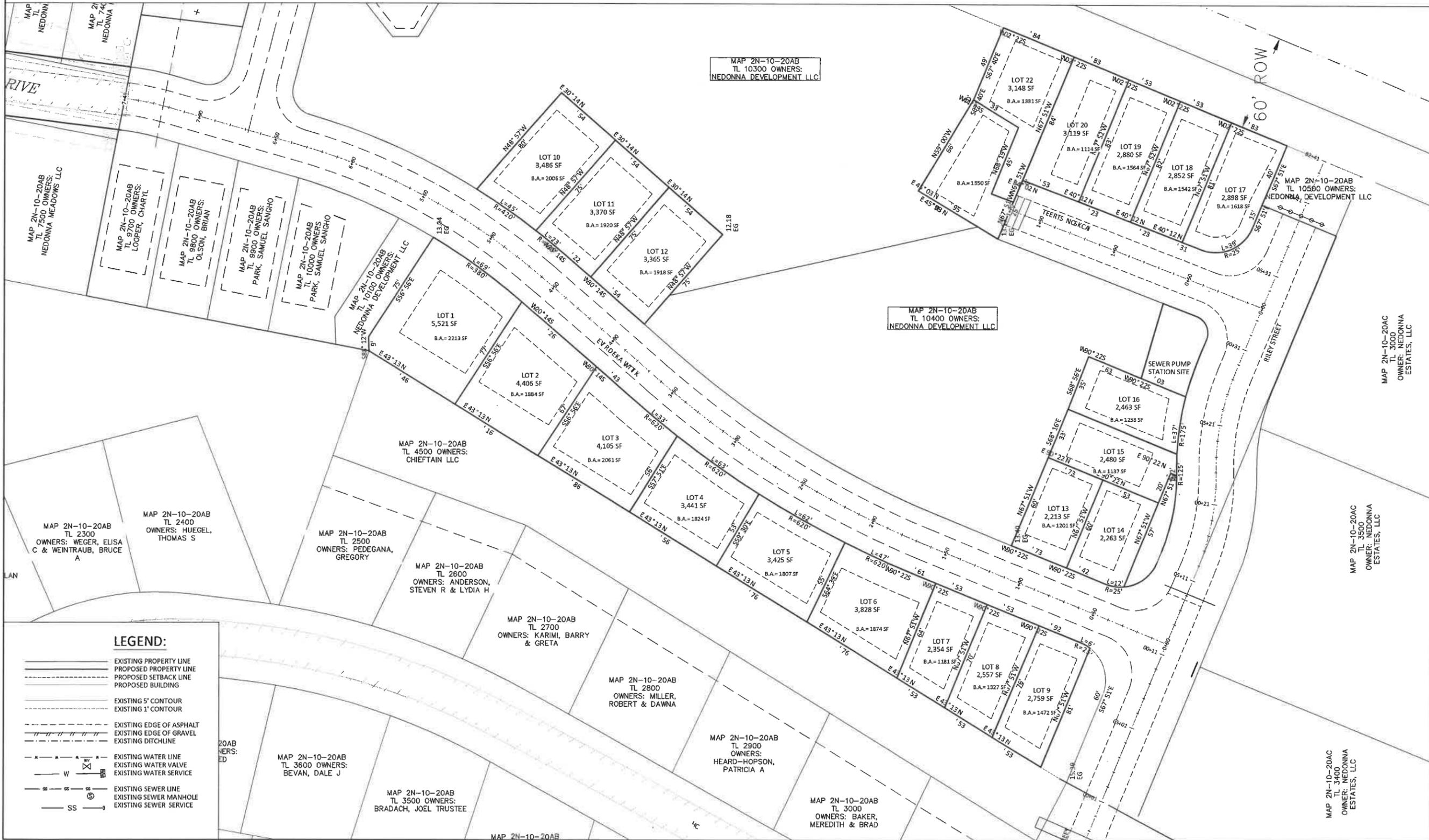
**NEDONNA DEVELOPMENT, LLC  
NEDONNA WAVE PHASE 2  
TENTATIVE PLAN  
MAP 2N 10W 20AB**

**1**  
**3** **PROPOSED LOT DIMENSIONS**  
SCALE: 1"=30'



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INSPECTION  
PLANNING  
PO BOX 358  
MANZANITA, OR 97130  
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JOB NO. 2020-0035CN  
DATE: NOV. 8, 2020  
**REGISTERED PROFESSIONAL  
ENGINEER  
63055**  
OREGON  
JANUARY 13, 2005  
JASON R. MORGAN  
RENEWAL DATE: DECEMBER 31, 2020



**LEGEND:**

	EXISTING PROPERTY LINE
	PROPOSED PROPERTY LINE
	PROPOSED SETBACK LINE
	PROPOSED BUILDING
	EXISTING 5' CONTOUR
	EXISTING 1' CONTOUR
	EXISTING EDGE OF ASPHALT
	EXISTING EDGE OF GRAVEL
	EXISTING DITCHLINE
	EXISTING WATER LINE
	EXISTING WATER VALVE
	EXISTING WATER SERVICE
	EXISTING SEWER LINE
	EXISTING SEWER MANHOLE
	EXISTING SEWER SERVICE

**NEDONNA DEVELOPMENT, LLC  
NEDONNA WAVE - PHASE 2  
LOT DIMENSIONS**

SHEET  
**3**  
OF SIX

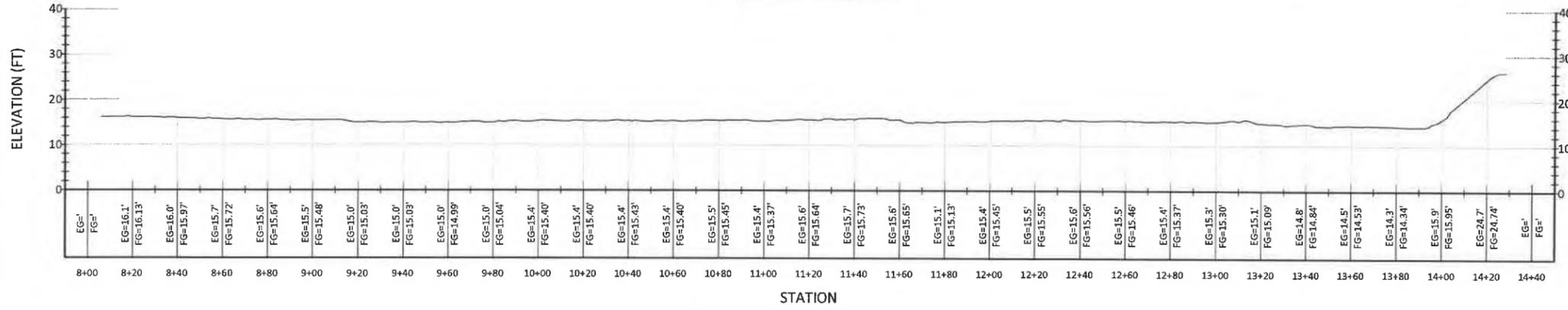




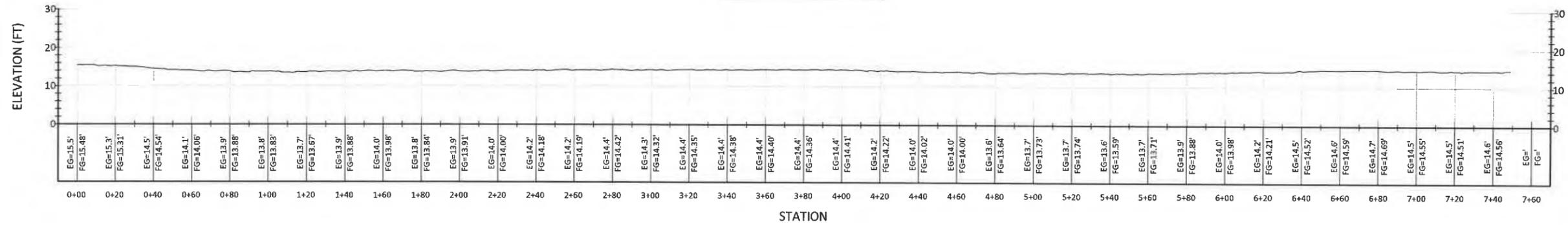
NEDONNA DEVELOPMENT, LLC  
 NEDONNA WAVE PHASE 2  
 TENTATIVE PLAN  
 MAP 2N 10W 20AB

1  
6 ROAD PROFILES  
 SCALE: 1"=30" VERT: 1"=15'

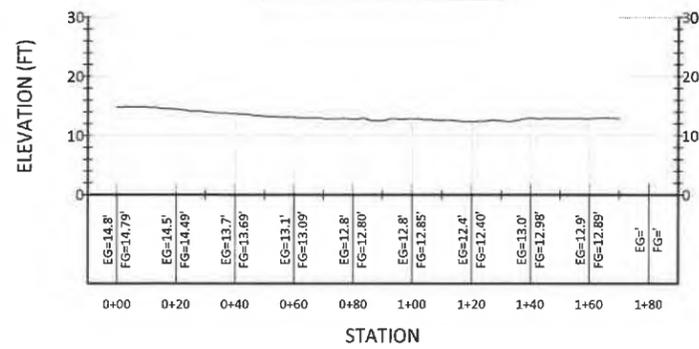
RILEY STREET



KITTIWAKE DRIVE



JACKSON STREET



**MORGAN CIVIL ENGINEERING, INC.**  
 PO BOX 358  
 MANZANITA, OR 97130  
 (503) 801-6016  
 www.morgancivil.com



**NEDONNA DEVELOPMENT, LLC**  
 NEDONNA WAVE - PHASE 2  
 ROAD PROFILES

AFTER RECORDING RETURN TO:

Dean N. Alterman  
Alterman Law Group PC  
805 SW Broadway, Suite 1580  
Portland, Oregon 97205

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**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR NEDONNA WAVE SUBDIVISION PHASE 2**

**City of Rockaway Beach  
Tillamook County, Oregon**

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**DECLARATIONS OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**NEDONNA WAVE SUBDIVISION PHASE 2**

THIS DECLARATION is made this \_\_\_\_ day of \_\_\_\_\_, 2024, by NEDONNA DEVELOPMENT, LLC, an Oregon limited liability company ("Declarant").

**RECITALS**

A. In 2006 Declarant owned a tract of 6.23 acres, more or less, in the City of Rockaway Beach, Tillamook County, Oregon for which Declarant obtained land use approvals from the City of Rockaway Beach to create thereon a two-phase, 28-lot residential PUD under applicable City of Rockaway Beach ordinance and a Class III Planned Community under the provisions of the Oregon Planned Community Act, ORS 94.550 et seq. (the "Act") to be known as the "Nedonna Wave Subdivision."

B. By plat recorded on February 2, 2009 as Instrument No. 2009-000738, Slide C-573 in Plat Cabinet B-1095, Declarant platted the tract into a residential subdivision consisting of eight lots numbered from 1 to 8, four tracts identified as Tract C, Tract E, Tract F, and Tract G to be available for future subdivision and development, and three tracts identified as Tract A, Tract B, and Tract D to be held as open space, drainageways, and similar common purposes. The eight-lot residential subdivision and Tracts B and C were together Phase One of the Nedonna Wave Subdivision. Tracts E, F, and G were created and planned for development of an approximate additional 20 lot residential subdivision, to be Phase Two of the Nedonna Wave Subdivision.

C. Declarant has received approval from the City of Rockaway Beach to develop Tracts E, F, and G in two separate phases, identified as Phase Two and Phase Three, and to record a plat of Phase Two. Declarant wishes to impose design and use covenants on Phase Two, including the common open space in Phase Two, in order to preserve and enhance the property values, amenities and enjoyment of Phase Two of the Nedonna Wave Subdivision and is therefore subjecting Phase Two of the Nedonna Wave Subdivision to the covenants, conditions, restrictions, reservations, easements, charges and liens set forth in this Declaration.

D. Declarant has recorded the plat of Phase Two as the Nedonna Wave Subdivision Phase 2 in the plat records of Tillamook County, Oregon, which plat was recorded on \_\_\_\_\_, 2024 as Instrument No. 2024-\_\_\_\_\_ in Plat Cabinet \_\_\_\_\_, Slide \_\_\_\_\_, Tillamook County Plat Records, Tillamook County, Oregon.

NOW, THEREFORE, Declarant hereby declares that the Subdivision shall be subject to the provisions of the Oregon Planned Community Act as a Class III planned community and further that the Lots in the Subdivision shall be held, sold and conveyed subject to the conditions, easements, covenants, liens, and restrictions set forth in this Declaration, which shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the

Subdivision or any Lot thereof and shall inure to the benefit of each owner thereof.

## **ARTICLE 1 DEFINITIONS**

As used in this Declaration, the terms set forth below shall have the following meanings:

1.1 **“Articles”** shall mean the Articles of Incorporation for the non-profit corporation, Nedonna Wave Subdivision Homeowners' Association, Inc., to be filed with the State of Oregon.

1.2 **“Assessments”** shall mean all assessments and other charges, fines and fees imposed on an Owner by the Association in accordance with this Declaration.

1.3 **“Association”** shall mean the Nedonna Wave Subdivision Homeowners' Association, which shall be incorporated in the State of Oregon as an Oregon mutual benefit nonprofit corporation. If the owners of lots in the Phase 1 Plat form an owners' association then the Owners of a majority of the Lots in the Phase 2 Plat may elect to join the association for the Phase 1 Plat in lieu of forming a separate association for the Phase 2 Plat, or may invite the owners of the Lots in the Phase 1 Plat to become members of the Association, in either case so that one owners' association may serve all of the Nedonna Wave Subdivision.

1.4 **“Board”** shall mean the Board of Directors of the Association.

1.5 **“Bylaws”** shall mean the Bylaws of the Association, which shall be adopted by the Association and recorded in Tillamook County.

1.6 **“Canal”** shall mean that certain water course known as McMillan Creek located immediately to the West of and abutting Lots 1, 2, 3, and 4 and Tracts B and G of the Phase 1 Plat.

1.7 **“City”** shall mean the City of Rockaway Beach.

1.8 **“Common Open Space”** or "Common Property" shall mean the tract(s) designated as such in this Declaration or on the Plat, or in any subsequent amendment or restatement of declaration or subsequent Plat, including any Improvements thereon, which Common Open Spaces are primarily set aside because they contain wetlands or are buffer zones for the wetlands. Tracts B and D as shown on the Phase 1 Plat were designated as Common Open Spaces. The portion of Tract F of the Phase 1 Plat that Phase 2 Plat does not subdivide into building lots, designated as Tract \_\_\_\_\_ on the Phase 2 Plat, is designated as Common Open Space. Tract E and Tract G of the Phase 1 Plat are **not** Common Open Space, but are intended for future development by the Declarant or the Declarant's successor, vendee, or designee.

1.9 **“Common Easement Areas”** shall mean any areas designated as such in this Declaration or on the Plat, or in any declaration or amended Plat annexing property hereto including any Improvements thereon.

1.10 **“Declarant”** shall mean Nedonna Development, LLC, and its successors and assigns if such successor or assign should acquire: (i) Declarant's interest in the Property or (ii) all of Declarant's rights under this Declaration pursuant to a recorded instrument executed by Declarant.

1.11 **“Declaration”** means this document and all of the easements, covenants, conditions, restrictions, liens, charges and other provisions set forth herein, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

1.12 **“Final Development Plan”** shall mean a planned unit development Final Development Plan, as approved by the City of Rockaway Beach.

1.13 **“Improvement”** shall mean every structure or improvement of any kind, including, but not limited to a House (as defined herein), garage, accessory building, a fence, wall, driveway, storage shelter, or other product of construction efforts on or in respect to the Property.

1.14 **“Lot”** shall mean a platted lot or lawfully partitioned parcel within the Phase 2 Plat, with the exception of any tract designated in this Declaration or in any plat of the Property as being a Common Open Space.

1.15 **“Maintenance”** shall mean any and all work required to keep the Improvements in compliance with all of the terms of this Declaration including cleaning, repairs, reconstruction and replacement.

1.16 **“Mortgage”** means a mortgage or a trust deed; "mortgagee" means a mortgagee or a beneficiary of a trust deed; and "mortgagor" means a mortgagor or a grantor of a trust deed.

1.17 **“Owner”** means the person or persons, including Declarant, owning a fee or equitable interest in any Lot, but does not include a tenant or holder of a leasehold interest or a person holding only a collateral or security interest in a Lot, or a vendor under a recorded contract who has surrendered possession. The rights, obligations and other status of being an Owner shall commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.18 **“Phase 1 Plat”** means the plat that created Nedonna Wave Subdivision Phase 1, recorded on February 2, 2008 in Plat Cabinet B-1095.

1.19 **“Phase 2 Plat”** means the recorded plat of Nedonna Wave Subdivision Phase 2, which is being recorded at or about the time that the Declarant is recording this Declaration. Where the context requires or implies it, “Plat” by itself means only the Plat of Nedonna Wave Subdivision Phase 2.

1.20 **[The] “Property”** means the entire property that the City approved as the Nedonna Wave Subdivision Planned Unit Development, as defined by the legal description set forth in the Surveyor's Certificate on the Phase 1 Plat. The “Property” includes the numbered

lots in the Phase 1 Plat, the lettered tracts A, B, C, D, E, F, and G in the Phase 1 Plat, and the streets dedicated to the public in the Phase 1 Plat. The Phase 2 Plat is a subdivision of Tracts E and F of the Phase 1 Plat.

1.21 **“Residence”** or **“House”** shall mean that portion or part of any structure intended to be occupied by one family as a dwelling, together with any attached or detached garage, as the case may be, and any patios, porches, or steps attached or adjacent thereto, and shall also include any accessory living unit.

1.22 **“Sold”** means that legal title has been conveyed or that a contract of sale has been executed and recorded under which the purchaser has obtained the right of possession.

1.23 **“Special Declarant Rights”** shall have the meaning set forth in the Act and are rights specific to the Declarant.

1.24 **“Subdivision”** means the land within the Phase 2 Plat, excluding, however, the portion of the Plat west of Kittiwake Drive and identified as Tract G on the Phase 1 Plat, which is reserved for future development as Phase 3 of Nedonna Wave.

1.25 **“Tracts Reserved for Future Development”** means tracts identified as such on the Phase 2 Plat. Tracts C, E, F, and G as shown on the Phase 1 Plat were reserved for future development by the Declarant or its successors and assigns, potentially as a 20 lot Phase Two. Tract C has since been developed in conjunction with Phase 1. Tracts E and F are being developed as part of the Plat. Tract G is reserved for future development into single-dwelling lots and is currently intended to become Phase 3 of the Nedonna Wave Subdivision.

1.26 **“Wetland Area”** means an area of the Property defined to contain a wetland under ordinances of the City, Tillamook County and/or the Oregon Department of State Lands and set aside by Declarant for protection as a wetland.

Any terms not defined herein shall have the meaning given under the Act.

## **ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION**

2.1 **Initial Development.** The real property described below (the "Property" or the "Initial Development") is hereby made subject to this Declaration and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration: All that certain property located in Tillamook County, Oregon, described in the Phase 2 Plat, which is the plat of Nedonna Wave Subdivision Phase 2 filed on \_\_\_\_\_, 2024 as Instrument No. 2024-\_\_\_\_\_ in Plat Cabinet \_\_\_\_\_, Slide \_\_-\_\_\_\_\_, Plat Records of Tillamook County, Oregon.

2.2 **Development of Tracts Designated as Reserved for Future Development.** Declarant shall have the right, but not the obligation, from time to time within ten (10) years of the effective date hereof, and in its sole discretion, to add and plat additional lots to this Declaration and make a part of the Subdivision any or all of the tracts reserved for future

development so long as the same is a residential subdivision. Declarant reserves the right to transfer such development right to others. The future development may consist of additional residential lots and additional Common Open Spaces, and shall comply with the Final Development Plan for Nedonna Wave Phase 1, as approved by the City of Rockaway Beach, including any amendments thereto that the City may approve.

2.2.1 Absolute Right to Plat Additional Phases Procedure. Declarant shall evidence such additional platting by recording an amendment to this Declaration and a subsequent subdivision or partition plat, which amendments may be made by the Declarant or its successor with City approval, but without the involvement or approval of the Association.

2.2.2 Requirements for Common Open Space. Declarant does not anticipate that the additional Common Open Space as required by the approved Final Development Plan for Nedonna Wave Phase 1, contained in a future phase of development will impose any significant financial burden on the Owners of the Initial Property.

2.2.3 Change in Vote. The creation of additional lots within the Subdivision shall necessarily affect the percentage of the total vote held by each Owner of a Lot in the Initial Development. Any additional Lots created within the Subdivision shall be given the same voting rights as existing Lots, which will dilute each Owner's vote.

2.2.4 Change in Common Profits and Expenses. If additional Lots are created or platted within the Subdivision, the method used to calculate the distribution of common profits and liability for common expenses shall be the same, with the additional Units being factored into the calculation.

### **ARTICLE 3 NO ARCHITECTURAL CONTROL COMMITTEE**

3.1 No Architectural Control Committee. Development on the Lots within the Subdivision are subject to the architectural and design restrictions contained in this Declaration, but are not subject to any architectural or design review by the Association.

### **ARTICLE 4 USE OF PROPERTY/DEVELOPMENT CONTROLS**

4.1 General Residential Use. Lots shall be used for residential purposes only. Nothing in this paragraph shall be deemed to prohibit: (a) activities relating to the rental or sale of Houses, (b) the right of Declarant or any contractor or homebuilder to construct houses on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any House as a sales or rental office or model home for purposes of sales or rental in the Phase 2 Plat, and (c) the right of an Owner to maintain the Owner's professional personal library, keep the Owner's personal business or professional records or accounts, handle his personal business or professional telephone calls or confer with business or professional associates, clients, or customers, in the Owner's House; provided, however, that no Owner can run a retail business where customers visit routinely to purchase products or services.

4.1.1 Structures Permitted. Except to the extent expressly provided or contemplated in this Declaration, and in conformity with the other provisions herein, no Improvements shall be erected or permitted to remain on any Lot, except for one (1) single family House and Improvements normally accessory thereto. However, if in the future the zoning code of the City of Rockaway Beach should allow on any Lot as a permitted or conditional use the development of middle housing, as defined in ORS 197.758, or of an accessory dwelling unit under ORS 197.312, then a Lot may also be developed with middle housing or an accessory dwelling unit in addition to the single-family House and Improvements.

4.1.2 Resource Extraction. No oil or gas drilling, mineral exploration, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

4.1.3 Maintenance of Structures and Grounds. Each Owner shall maintain such Owner's Lot and all Improvements thereon in a clean and attractive condition and so as not to create a fire hazard or nuisance. Such maintenance shall include, without limitation, painting, repair, replacement and other normal care of roofs, gutters, downspouts, decks, siding and other exterior building surfaces, driveways, sidewalks, walks and other exterior improvements and glass surfaces, and landscaping. Damage to an Owner's Lot or its improvements caused by windstorms, fire, flood, earthquake, landslides, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

4.1.4 Storage. Storage of any kind of personal goods, chattels, merchandise or material shall be within the House, garage or a storage shed so as to be out of sight of adjoining Lots and streets. Open carports shall not be used for storage other than that enclosed by walls of the structure. Equipment and material being used by a builder in the course of construction of Improvements may be stored on the Lot during the allowable eight (8) month construction period.

4.1.5 Parking. All then current parking requirements of the City of Rockaway Beach Zoning Ordinance shall be met and adhered to by each Owner. Parking of oversize vehicles, excluding cars, small and standard sized pickup trucks (to one half ton capacity), SUV's and other passenger vehicles, but including commercial trucks, 3/4-ton and larger pickup campers, horse trailers, camp trailers, boats, boat trailers, motor homes and other types of recreational vehicles ("RVs") outside of a permitted and City-approved garage structure will not be allowed on any Lot, for any period in excess of seven (7) days and only on an occasional basis. Parking of oversize vehicles and RVs on the Owner's Lot must be at least twenty (20) feet back from the front lot line of the Owner's Lot and in such a way as to be inconspicuous and not offensive to other Owners.

4.1.6 Vehicles in Disrepair. No Owner shall permit any vehicle which is in a state of disrepair to be abandoned or to remain parked upon any Lot, in a street, or on the Common Open Spaces for a period in excess of seven (7) days. A vehicle shall be deemed in a "state of disrepair" if inoperable or partially disassembled.

4.1.7 Animals. No animals, livestock or fowl of any kind shall be raised, bred, kept on any Lot except a reasonable number of household pets (e.g. dogs or cats) may be kept on a Lot. No such dogs, cats or other pets will be permitted to run at large, to enter a Wetland Area, or to incessantly bark, etc., but shall be reasonably controlled so as not to be a nuisance. Neither shall animals be kept, bred or raised for commercial purposes. Any inconvenience, damage or unpleasantness caused by such pets will be the responsibility of the respective Owners thereof, and Owners will be responsible for removal and proper disposal of wastes of their animals. No pet will be permitted to cause or create a nuisance or unreasonable disturbance or irritating noise (e.g. incessant barking).

4.1.8 Rubbish and Trash. No Lot or part of the Common Open Spaces shall be used as a dumping ground for trash or rubbish of any kind. All garbage, recycling, debris, yard rakings, and construction waste shall be kept in appropriate sanitary containers for proper disposal and out of public view.

4.1.9 Temporary Structures. No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently, except that construction trailers serving as an on-site office only may be placed on the Lot while a House is being built.

4.1.10 Antennas. In compliance with the Over The Air Reception Device rule of the Federal Communications Commission, one (1) exterior antenna and one (1) satellite dish of a typical size, one meter or less in diameter, shall be allowed on a Lot, so long as placed in as inconspicuous a location as can reasonably be used.

4.1.11 Signs. Except for the signs listed below to which no restrictions shall apply, no signs shall be erected or maintained on any Lot. The following signs shall not be restricted:

(a) Political Signs. The temporary placement of political signs on any Lot by the Owner thereof;

(b) “For Sale” Signs. “For Sale,” “For Lease,” “For Rent” or “Available” signs on a Lot placed by the Owner, by Declarant or by a licensed real estate agent on behalf of its Owner may be temporarily displayed;

(c) Declarant’s or Builder’s Signs. The placement of the Declarant’s, its contractor’s, and its lender’s project sign(s) on any Lot for the duration of the Declarant’s Lot sales or the placement of a builder’s or its lender’s project sign(s) during the construction and sales period on any Lot on which the builder is working; and

(d) Security System Signs. Security system signs not exceeding one square foot in **size** and mounted on a wall, fence or structure.

4.1.12 Private Entry Signs. Declarant and/or the Association may erect, install, maintain, repair and replace monumentation and related landscaping, lighting and other improvements thereon.

4.1.13 Vacant Lots. Any vacant Lot shall be maintained by its Owner in a reasonable, clean, and presentable condition.

4.1.14 Utility Services. All purchasers of Lots shall use underground service wires to connect their Houses to the underground electric, telephone, cable television or other utility facilities. No overhead electric or telecommunication services shall be erected on the Property.

4.1.15 Offensive or Unlawful Activities. No unlawful, noxious or offensive activities shall be carried on upon any Lot or in Common Open Spaces, nor shall anything be done or placed on any Lot or Common Open Spaces which interferes with or jeopardizes the enjoyment of other Lots or the Common Open Spaces. No unlawful use shall be made of a Lot nor any part thereof, and all laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed.

4.1.16 Service Facilities. Garbage and recycling receptacles, fuel tanks, clotheslines, etc. shall be screened such that the elements screened are not visible at any time from the street or a neighboring Lot. The Owner and any builder shall be held strictly liable for any violations of this section.

## **ARTICLE 5 COMMON OPEN SPACES**

5.1 **Obligation of the Association.** Subject to the rights of Owners set forth in this Declaration, from and after the time that the Declarant conveys the Common Open Spaces to the Association, the Association shall be the owner of and responsible for the exclusive management and control of the Common Open Spaces and any improvements thereon, and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The Association shall maintain the Common Open Spaces in their natural state in a safe condition to at least City of Rockaway Beach standards, (Section 4.150, Riparian Vegetation) and in a good and workmanlike manner such that the areas may be used for the purposes for which they are intended. Maintenance of the Common Open Spaces shall include, but not be limited to:

5.1.1 The removal of debris, leaves, ice and snow from any pedestrian ways, and maintenance of the Common Open Spaces above and adjoining them;

5.1.2 The removal of any trash or other unsightly or dangerous materials;

5.1.3 The removal of dead, diseased or dying trees, invasive or non-native vegetation and replanting of replacement materials; provided, however, that if a Wetland Area, no planting shall be done but of prescribed native vegetation consistent with the approved wetland mitigation plan;

5.1.4 The trimming of trees and vegetation along street right-of-way areas;

5.1.5 The replanting of any areas having exposed soil due to an earth slide or

the removal of vegetation; provided that the soil in any Wetland Area shall not be disturbed;

5.1.6 The maintenance of the improvements, including of the visual barrier delineating and identifying the wetlands, in a useable condition and in good repair; and

5.1.7 The maintenance, repair and restoration of the Common Open Spaces, including Wetland Areas damaged by the acts or omissions of third parties (i.e. not Owners) or by natural causes (e.g. flood, wind storm, earthquake, tsunami, tire, etc.), the same to be funded by insurance and to the extent not covered by insurance, by assessments upon the Owners by the Association.

5.2 **Owners' Easement of Enjoyment; Public Agencies.** Subject to the provisions of this Declaration and the Bylaws, every Owner shall have a nonexclusive right and easement of access to and enjoyment in and to the Common Open spaces, which shall be appurtenant to and shall pass with the title to every Lot. No private use may be made of the Common Open Spaces that excludes the other Owners (e.g., no Owner may hold a private party in the Common Open Spaces or fence or mark off any portion of the Common Open Spaces for that Owner's use), and no vehicles, including off-road vehicles and ATV's may be operated in any Wetland Area. The Association will allow public agencies reasonable access to the Wetland Areas to monitor their condition.

5.3 **Extent of Owners' Easement.** The Owners' easements of enjoyment created hereby shall be subject to the following:

5.3.1 **Association Rules and Fees.** The right of the Association to establish reasonable rules and regulations and to charge reasonable assessments and fees for maintenance and upkeep of the Common Open Spaces and payment of all Association expenses, initially \$50.00 as a reserve on purchase of a Lot and thereafter \$50.00 a year per Lot, subject to increase by a supermajority (75% or greater) vote of all Lot Owners.

5.3.2 **No Sale of Common Open Spaces.** Subject to the provisions of the Act, the Association may, without approval of the members of the Association, grant easements to public agencies and to private utility providers, in any portion of the Common Open Spaces, for public utilities, telecommunication utilities and for all other public purposes consistent with the intended use of the Common Open Spaces. The Declarant or the Association may convey the Common Open Spaces to the City or to a responsible public agency that is willing to accept the Common Open Spaces, which shall take the Common Open Spaces without the power of assessment against the Owners of Lots. The Association may not otherwise sell, convey or subject to a security interest any portion of the Common Open Spaces.

5.4 **Damage or Destruction of Common Open Spaces by Owner.** Should any Common Open Spaces incur damage or destruction by an Owner or any of its guests, tenants, licensees, or agents in a manner that would subject such Owner to liability for such damage under Oregon law, such Owner does hereby authorize the Association to repair such damage. The Association shall repair damage in a good and workmanlike manner as originally constituted or as the area may be modified or altered subsequently by the Association in the sole discretion of the Association. The reasonable cost necessary for such repairs shall be immediately

reimbursed or otherwise shall become a special assessment upon the Lot of the Owner who caused or is otherwise responsible for such damage.

5.5 **Contemplated Improvements.** Except for sanitary sewer and storm sewer facilities, Declarant does not intend and is not obligated to build any Improvements other than the visual barrier and signage delineating and identifying the wetlands (consisting of wood posts and rope as a visual barrier); however, Declarant shall have the right, but not the obligation, to add Improvements not described in the Declaration. All such Improvements shall not damage or adversely affect any wetlands or wetland mitigation areas.

## ARTICLE 6 EASEMENTS AND MAINTENANCE

6.1 **Utility Easements.** Easements for installation and maintenance of utilities and drainage facilities and other public purposes are reserved, as shown on the Plat. No permanent or temporary surface or underground structures, private or public utility lines, or Improvements shall be constructed or located in easement strips shown on the Plat, which have been granted to the utilities holding franchises or to the public, without the written consent of the City Engineer. Within the easement strips, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction, obstruct or retard of flow of any drainage channel in the easements. An Owner shall be responsible for repair or restoration of landscaping damaged or disturbed in the course of construction, operation, maintenance, or repair of such service facilities if the franchise utilities fail to perform such repair or restoration.

6.2 **Easements Reserved.** In addition to any utility and drainage easements shown on the Plat, Declarant hereby reserves the following easements for the benefit of Declarant and the Association:

6.2.1 **Common Open Spaces.** The Owner of any Lot which is adjacent to any Common Open Spaces shall permit the Association and its agents to enter upon the Lot to perform the maintenance of such Common Open Spaces.

6.2.2 **Wetland Areas.** Owners shall not disturb the soils in areas of the Subdivision which are designated as Wetland Areas. The sensitive trimming of vegetation and the removal of non-native or non-wetlands vegetation is permitted. The Wetland Areas shall be open to pedestrians, but only as permitted by applicable local, state and federal law and shall not be open to domestic animals or to pets.

**ARTICLE 7**  
**ARCHITECTURAL DESIGN STANDARDS**

7.1 **Quality and Compatibility.** Houses will be constructed and maintained using quality materials and workmanship and shall be of such character, quality and design as to be in harmony and compatible with the other surrounding Houses in the Subdivision. All Houses shall be constructed in strict accordance with the terms and provisions of this Declaration, these Design Standards, and all applicable laws, regulations, ordinances and codes.

7.2 **Specific Standards.**

7.2.1 **House Size.** No house shall be constructed in the Subdivision having fewer than eight hundred (800) square feet for a one-story house. The total floor area of multi-level House shall not be less than one thousand two hundred (1,200) square feet based on finished floor area, excluding porches, decks, and garages.

7.2.2 **House Height.** All Houses shall comply with the building height requirements of the Nedonna Wave PUD Final Development Plan as approved by the City of Rockaway Beach Planning Commission.

7.2.3 **Setbacks and Development Footprint.** No Improvement shall be constructed or maintained in violation of any setback, maximum height or minimum yard requirement, except with the prior approval of the City pursuant to a variance or adjustment land use process.

7.2.4 **Landscaping Theme.** All landscaping shall maintain the natural coast environment by using indigenous (native) plantings as the theme for landscaping.

7.2.5 **View Preservation.** In order to insure the existing views westward are protected against future intrusion of trees or tall shrubs, Owners generally shall not plant, or allow to grow from seed, any trees or shrubs that in the mature height will exceed 20 feet, excepting only eastward of the building envelopes of the Lots on the east side of Jackson Street.

7.2.6 **View Restoration.** In the event any tree, shrub or other vegetation exceeds 20 feet in height above ground level and blocks or obscures a significant view from any House, the Owner of such Lot on which the affected House is situated may request the Owner of the Lot on which the tree, shrub, or other vegetation is located to trim, top, or remove the tree, shrub or other vegetation to be no more than 20 feet in height. If the second Owner declines to so trim, top, or remove the tree, shrub, or other vegetation, then the affected Owner may specifically enforce the obligation of the second Owner by an action in the Circuit Court of Tillamook County. In any event, the entire cost of trimming, topping or removal shall be the responsibility of the Owner of the Lot on which the offending tree, shrub or other vegetation is located.

7.2.7 **Fences and Hedges.** No fence or hedge taller than three (3) feet above ground shall be erected, placed or permitted to remain in the front yard of any Lot (the portion of

the Lot abutting the adjacent street), nor shall any fence or hedge more than 60 inches in height be erected, placed or permitted to remain in the back or side yard on any Lot except along the Lot lines that abut the railroad right-of-way. Fences shall be constructed of wood or of materials with the appearance of wood, and their Owners will paint or stain them and maintain them in good condition and attractive appearance.

7.2.8 Siding and Roof Building Exterior Siding and Roof Materials. All buildings shall be sided with naturally colored cedar shingles or natural wood siding material, however, a small amount of decorative rock near the base of the building is acceptable. Roofing materials shall be black or brown composition shingles or natural cedar shakes.

7.3 Building Permits. Each Lot Owner shall be responsible for investigating and complying with the requirements for securing a building permit to build the Improvements for its Lot. This requirement includes, but is not limited to, site investigations and requirements of the City of Rockaway Beach zoning ordinance for properties in a Flood Hazard Area and a Beaches and Dunes Area.

7.4 Completion of Construction. The construction of an Owner's House or any other Improvement, including painting and all exterior finish, shall be completed within ten (10) months from the beginning of construction. The construction area shall be kept clean and in workmanlike order during the construction period. All debris shall be picked up daily at all construction areas as to not create a nuisance for surrounding Lot Owners.

7.5 Construction Activity. During construction of any Lot, the Owner and any builder shall be responsible for complying with all City of Rockaway Beach erosion control requirements and the relevant conditions of approval for the Property. The Owner and any builder of an improvement on a Lot shall be liable for any costs incurred by the Declarant or the Association due to violations of this section.

## ARTICLE 8 PROPERTY MAINTENANCE COVENANTS

8.1 Personal Obligation of and Lien for Assessments and Fines. The Association may levy, and each Owner of any Lot by acceptance of a deed transferring the Lot to such Owner, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association: (i) regular, annual or quarterly assessments or charges for common expenses of the Association of \$40.00 a year per lot, or such larger amount as a supermajority of all Lot Owners (75% or more) may determine to make, (ii) reserve assessments or charges for any major capital improvements a Supermajority of all Lot Owners may determine to make, and (iii) any special assessments and or fines required to repair damage or destruction of any Common Open Spaces or as provided in this Declaration. All such assessments, together with interest thereon at the rate of nine percent (9%) per annum and together with all other charges allowed by law, including reasonable attorneys' fees, shall be a lien and charge on the respective Owner's Lot and shall be a continuing lien upon the Lot against which each such assessment is made until paid. Such lien shall exist and be executed, recorded and foreclosed in the manner provided by law.

**ARTICLE 9  
AMENDMENT AND REPEAL**

9.1 **Term.** The covenants, conditions and restrictions of this Declaration shall run until March 31, 2036, unless amended as herein provided. On and after March 31, 2036, such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed and voted upon by the Board and approved by at least seventy-five percent (75%) of the Owners within six (6) months prior to such expiration date. If this Declaration and as a consequence the common ownership of the Common Open Spaces shall expire by the terms of this subsection, then the Common Open Spaces including the Wetland Areas shall be promptly transferred to an appropriate public agency acceptable to the City and capable and willing to manage the Common Open Spaces for the public benefit.

9.2 **Amendment and Repeal.**

9.2.1 This Declaration, or any provision thereof, as from time to time shall be in effect with respect to all or any part of the Property, may be amended or repealed by majority vote of the Board and, in turn, approved by the affirmative vote of not less than seventy-five percent (75%) of the Owners based on one vote per Lot and, so long as Declarant owns any lots, by the written consent of Declarant.

9.2.2 Any such amendment or repeal shall become effective only upon recordation in the deed records of Tillamook County of an acknowledged certificate of the Declarant, or if one hundred percent (100%) of the Lots have been conveyed to Owners other than the Declarant, an acknowledged certificate of a representative of the Board setting forth in full the amendment(s) or repeal so approved and certifying that said amendment(s) or repeal have been approved in the manner required by this Declaration.

9.2.3 In no event shall an amendment under this section create, limit or diminish Declarant's Special Rights (as delineated in Article 10) without Declarant's written consent. No amendment may change the boundaries or limit the uses of any Lot owned by Declarant unless Declarant consents to the amendment. No amendment may change the boundaries or limit the uses of any Lot not owned by Declarant unless the Owners of the affected Lot and of all the adjacent Lots unanimously consent to the amendment.

9.3 **Regulatory Amendments.** Notwithstanding the provisions of Article 12, until one hundred percent (100%) of the Lots have been conveyed to Owners other than Declarant, Declarant shall have the right to amend this Declaration in order to comply with the requirements of any applicable statute, ordinance, regulation or guideline of the City of Rockaway Beach, Tillamook County, the Oregon Department of State Lands, the Oregon Real Estate Agency, the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that

insures, guarantees or provides financing for a planned community or for Houses or lots in a planned community.

## **ARTICLE 10 DECLARANT'S SPECIAL RIGHTS**

As long as Declarant owns any Lot on the Property, with respect to the Common Open Spaces and each Lot on the Property, the Declarant shall have the following special rights, as long as they are not inconsistent with City of Rockaway Beach ordinance or regulation:

10.1 **Sales Office and Model.** Upon approval of Declarant, a builder shall have the right to maintain a sales office and model on one (1) or more of the Lots which the Declarant owns. The Declarant, each builder and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

10.2 **"For Sale" Signs.** The Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property, including, without limitation, the Common Open Spaces, but not in any Wetland Area.

10.3 **Declarant Easements.** Declarant reserves an easement over, under and across the Common Open Spaces in order to carry out development, construction, sales, marketing and rental activities related to the development of the Property or the sale or rental of Lots and for such other purposes as may be necessary or convenient for discharging Declarant's obligations or for exercising any of Declarant's rights hereunder.

10.4 **Period of Declarant Control.** Declarant hereby reserves control of the Association until such time as Declarant no longer owns any Lot on the Property, unless Declarant voluntarily relinquishes the rights reserved herein at an earlier time. In particular, the Declarant, in its sole discretion, shall have the right to appoint and remove members of a Board, which shall manage the affairs of the Association.

10.5 **Transitional Advisory Committee.** Pursuant to the Act, Declarant shall form a Transitional Advisory Committee to provide for the transition of administrative control of the Association from the Declarant to the Association within sixty (60) days of the sale of fifty percent (50%) of the Lots of the Subdivision.

10.6 **Turnover.** No later than ninety (90) days after the expiration of the Period of Declarant Control provided in Section 10.4 above, the Declarant shall call a meeting for the purpose of turning over administrative control of the Association from the Declarant to the Owners. The Declarant shall give notice of the meeting to each Owner as provided in the Bylaws. If the Declarant does not call the meeting required under this subsection, any Owner may do so.

10.7 **Future Development.** Declarant shall have the right to create additional lots within Tracts E and G of the Phase 1 Plat (identified as Tracts \_\_\_ and \_\_\_ on the Phase 2 Plat) in general accordance with the PUD Final Development Plan for Nedonna Wave, including future revisions thereto, as may be approved by the City of Rockaway Beach. Tentatively the future

development would be subdividing Tract G into approximately 9 additional residential Lots as Phase 3 of the Nedonna Wave Subdivision.

## ARTICLE 11 ASSOCIATION

11.1 **Association.** Prior to the first conveyance of a Lot to an Owner, Declarant shall organize the Association as a mutual benefit nonprofit corporation under the laws of the State of Oregon. The Association shall be governed by the Articles of Incorporation and Bylaws of the Association.

11.2 **Membership.** Every Owner of one or more Lots within the Phase 2 Plat shall automatically be a member of the Association. Such membership shall commence, exist and continue by virtue of such ownership, shall expire automatically upon termination of such ownership without additional confirmation.

11.3 **Voting Rights.** The Owners of each Lot shall be entitled to one vote on all matters submitted to a vote of the Owners. If a Lot has more than one Owner then the Owners of that Lot shall decide among themselves which of them will cast the vote for that Lot. If the Owners of a Lot cast separate conflicting votes, then the Association may disregard all votes cast by those Owners, but the Lot shall nevertheless count toward the presence of a quorum or other required minimum level of participants.

11.4 **General Powers and Obligations.** The Association shall have, exercise and perform all of the powers, duties and obligations as may be granted to the Association by this Declaration, the Bylaws and the Act. Such powers, duties and obligations may from time to time be amended by changes to this Declaration made in accordance with the provisions herein, accompanied by changes in the Articles or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Oregon.

11.5 **Non-liability.** No member of the Board shall be liable to the Association or any member thereof for any damage or loss claimed on account of any action or failure to act in the performance of his or her duties, so long as acting in good faith, except for acts of gross negligence or intentional acts in violation of the terms of this Declaration, the Bylaws or applicable law. In the event any member of the Board or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify, defend and hold such individual harmless against liability and expenses incurred to the maximum extent permitted by law.

11.6 **Contracts Entered into by Declarant or Prior to Turnover Meeting.** Notwithstanding any other provision of this Declaration, any leases or contracts (including management contracts, service contracts and employment contracts) entered into by the Declarant or the Board on behalf of the Association prior to the Turnover Meeting shall provide that it may be terminated without cause or penalty by the Association or Board upon not less than thirty (30) nor more than ninety (90) days' written notice to the other party.

## ARTICLE 12

## ENFORCEMENT

In the event any Owner shall violate any provision of this Declaration, the Association, the Board or Declarant, if Declarant is still the holder of more than fifty percent (50%) of the Lots, may notify the Owner in writing that the violations exist and that such Owner is responsible for them, and may do any or all of the following: (a) suspend the Owner's voting rights for the period that the violations remain unabated, (b) impose fines upon the Owner, in the manner and amount that the Association, Board or Declarant deems appropriate in relation to the violation, which fines shall be paid into an account for the expenses of the Association, (c) bring suit or action against such Owner to enforce this Declaration, the Bylaws or Rules and Regulations, (d) levy a special assessment against the Owner to fund the correction of the violation, and/or (e) correct the violation by appropriate curative action. All costs of such actions incurred by the Association, the Board, or Declarant, including reasonable attorney's fees and all disbursements, shall be immediately paid by the Owner in question upon demand, together with interest thereon at an interest rate, if allowable by law, of eighteen percent (18%) per annum or as established from time to time by resolution of the Board, from the date of expenditure until fully paid.

## ARTICLE 13 MISCELLANEOUS

13.1 **Right to Seek Injunction.** In the event of any violation or threatened violation by any person of any of the restrictions contained in this Declaration, the Association or any of the Owners shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

13.2 **Breach; Protection of Mortgagees.** It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies, which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or trust deed made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale, or otherwise.

13.3 **Default by Owner.** In the event the Association or another Owner believes that an Owner is in default of this Declaration, the Association or Owner shall give to such Owner, and if appropriate the Board, written notice of the default (or alleged default if given by another Owner), setting forth with particularity the nature of the default. The Owner receiving such notice from the Association shall have fifteen (15) days from the date of such notice to correct the default. If such notice is from another Owner, it shall be deemed to be given by Association effective ten (10) days later, unless the Association within such period gives notice to both Owners that it does not agree that a default has occurred. In such event Owner in deemed violation shall have a full (15) days from the expiration of the 10-day period. If not able to be corrected within fifteen (15) days, the Owner shall commence correction of the default to within said fifteen (15) day period, and shall pursue those measures diligently to completion. If an Owner fails to comply with the provisions of this Section 13.3 after receipt of a notice of default,

the Association or another Owner shall be entitled to all remedies provided for in this Declaration, at law or in equity.

13.4 **Notice.** Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by US Mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the U.S. Mail within the State of Oregon, postage prepaid as certified or registered mail, addressed to any person at the address given by such person for the purpose of service of such notice, or to the residence of such person if no address has been given. Such address may be changed from time to time by notice in writing. Notices shall be delivered to Declarant at: 2848 SW Sam Jackson Park Road, Portland, Oregon 97201. A copy of notices to Declarant shall be simultaneously sent, by first class U.S. Mail, to Alterman Law Group PC, 805 SW Broadway, Suite 1580, Portland, Oregon 97205.

13.5 **Right of Enforcement.** Except as otherwise provided herein, any Owner of any Lot of this Subdivision shall have the right to enforce any or all of the provisions hereof against any Lot or other Property covered by this Declaration and against the Owners thereof.

13.6 **Remedies Cumulative.** Each remedy provided herein is cumulative and not exclusive.

13.7 **Joint Owners.** In any case in which two or more persons share the ownership of a Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be joint and several and the act or consent of any one (1) or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

13.8 **Non-Waiver.** The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the rights to enforce any such provision or any other provision of said restrictions.

13.9 **Restrictions Construed Together.** All of the provisions hereof shall be liberally construed together to promote and effectuate the general plan and scheme of the Subdivision.

13.10 **Restrictions Severable.** Each of the provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

13.11 **Singular Includes Plural.** Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

13.12 **Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

13.13 **Limitation on Claims Against Declarant.** Each Owner and the Association shall be deemed to have agreed that the limitation on claims in this Section 13.13 shall be comprehensive and final and binding on all parties. In the event that it is determined that any claim against the Declarant, the Declarant's principals, members, owners, agents, employees, successors and assigns, under any legal theory or equitable ground, is not time barred by the applicable statutory time limitation for any reason, then the parties agree that such claim, if with respect to a Lot or Lots, shall be brought no later than: the latest of: (a) the first (1st) anniversary of the date of closing on the sale of the first Lot involved in such claim or action or (b) two years after the recording of this Declaration. In any case and notwithstanding the above time \*\*\*

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 2024.

NEDONNA DEVELOPMENT, LLC:

\_\_\_\_\_  
Anna Song, Manager/Member

State of Oregon )  
County of Multnomah )

This Declaration was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2024 by Anna Song, also known as Khiem Song, as the manager and member of Nedonna Development, LLC, an Oregon limited liability company, as her voluntary act on behalf of the Company.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires \_\_\_\_\_

**"FINAL ORDER (3)"**

Property Owner: Nedonna Development, LLC; Representative Member: "Anna" Song  
Applicant: Mark Dane, Blue Sky Planning, Inc.  
Engineer / Surveyor: HLB Otak, Inc., Ron Larson, PE, PLS  
Location Description: South of Section Line Rd., North of Riley St., East of McMillan Canal  
Legal Description: Parcel 1 of Partition Plat 1997-20 and Parcel 3 of Partition Plat 1997-57; a portion of vacated Evergreen Street Rockaway Beach Ordinance #98-353  
Assessor's Plat Map: 2N 10W 20AB TL 4600, 4900, 9000  
Property Size: 6.23 acres  
Development Zones: R-1 Zone: 3.9 acres; SA Special Area Wetlands 2.33 acres

**APPLICATION REQUEST:**

Final Approval of Application #SPUD 07-19 Nedonna Wave, a twenty-eight (28) residential lot Planned Unit Development (PUD) Subdivision, which adds the overlay zone designation P.U.D. to the City of Rockaway Beach Zoning Map and limits site development to that consistent with Final Orders (1), (2), and (3) and Findings of Fact Exhibits A, B, C, D, and E:

**CITY COUNCIL DECISION:** Approval with Conditions 5-0 Approval  
The City Council held a public hearing on August 13, 2008. City Planner Sabrina Pearson presented the findings of fact referenced herein as Exhibit E and explained that final approval of Application #SPUD 07-19 adds the overlay zone designation and limits development to that consistent with Final Orders (1), (2), and (3) and Findings of Fact Exhibits A, B, C, D, and E. A letter of correspondence from Richard and Evelyn Huston was declared by Mayor Phipps to not be applicable to the Council decision. No testimony was received in opposition or support of the application. Councilor Watts made a motion seconded by May to approve the application of P.U.D. to the zoning map for this site. The motion carried with a yes vote from Watts, May, Daugherty, McFarlane, and Swanson.

**FINDINGS OF FACT:**

The City Council relied upon Final Orders (1), (2) and (3) and Findings of Facts attached as Exhibit A, Exhibit B, Exhibit C, Exhibit D, and Exhibit E.

Exhibit A: Preliminary Plan Approval with Conditions on January 29, 2008;  
Exhibit B: Preliminary Plan Approval Conditions of Approval on January 29, 2008;  
Exhibit C: Final Plan Approval on May 27, 2008, and  
Exhibit D: Preliminary Plan and Final Plan Approval for a modification to permit the Subdivision to be developed in two stages, Phase One an eight (8) lot subdivision final plat and Phase Two a twenty (20) lot subdivision final plat.  
Exhibit E: August 13, 2008 City Council Final Approval to add P.U.D. to the Zoning Map

Final Order (1) Exhibits A and B  
Final Order (2) Exhibits C and D  
Final Order (3) Exhibit E

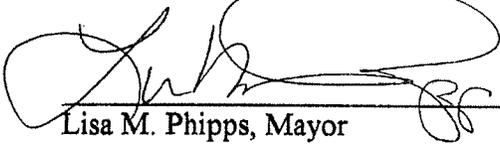
**CASE RECORD:**

The complete case record including the findings of fact and the official minutes of the meeting is available for review at City Hall by filing a written request during regular business hours.

**"FINAL ORDER (3)"**

**APPEAL PERIOD:**

The decision of the City Council to issue final approval for application #SPUD 07-19 to add the overlay zone designation P.U.D. may be appealed to the Land Use Board of Appeals (LUBA) by filing a notice of intent to appeal consistent with the provisions of Oregon Revised Statutes (ORS) 197.805 to ~~ORS 197.860~~ within 21 days of the date the final order is signed.

  
\_\_\_\_\_  
Lisa M. Phipps, Mayor

9.19.08  
\_\_\_\_\_  
Date

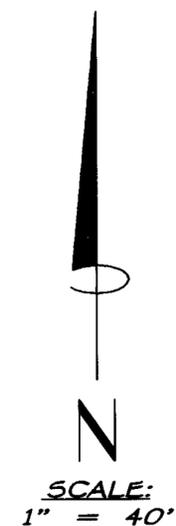


# NEDONNA WAVE PHASE 1

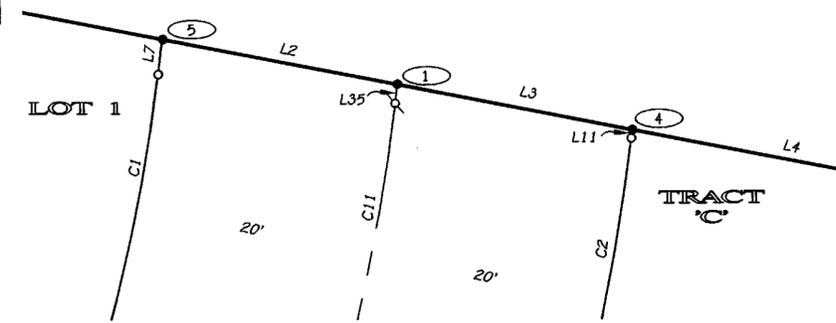
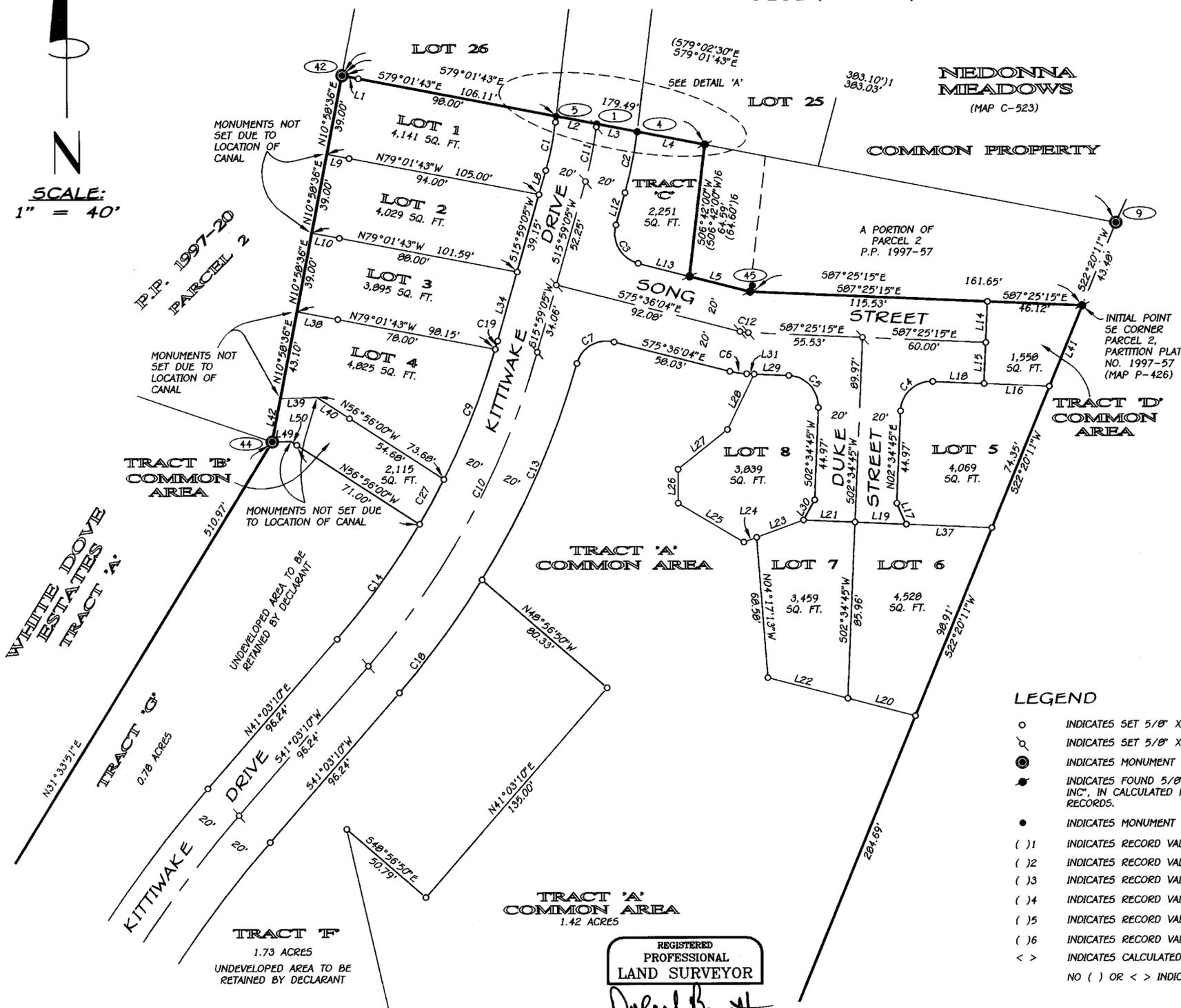
NW 1/4, NE 1/4, SECTION 20, T2N, R10W, W.M.  
TILLAMOOK COUNTY, OREGON

DECEMBER 31, 2008

SHEET 2 of 6



SCALE:  
1" = 40'



DETAIL 'A'  
1" = 10'

CURVE TABLE					
CURVE	RADIUS	LENGTH	DELTA	CH. BEARING	CH. LENGTH
C1	155.00'	23.97'	8°51'38"	S11°33'16"W	23.95'
C2	195.00'	30.16'	8°51'38"	N11°33'18"E	30.13'
C3	15.00'	23.98'	91°35'09"	N29°48'30"W	21.50'
C4	15.00'	23.56'	90°00'00"	N47°34'45"E	21.21'
C5	15.00'	23.56'	90°00'00"	S42°25'15"E	21.21'
C6	40.00'	8.25'	11°49'11"	S81°30'40"E	8.24'
C7	15.01'	23.16'	88°24'51"	N60°11'32"E	20.93'
C8	600.00'	197.95'	18°54'10"	S31°36'05"W	197.05'
C9	380.00'	68.23'	10°17'15"	S21°45'20"W	68.14'
C10	400.00'	175.01'	25°04'05"	S28°31'08"W	173.62'
C11	175.00'	27.06'	8°51'38"	S11°33'16"W	27.04'
C12	20.00'	4.13'	11°49'11"	S81°30'40"E	4.12'
C13	420.00'	115.48'	15°45'11"	N23°51'40"E	115.11'
C14	380.00'	69.04'	10°24'37"	S35°50'52"W	68.95'
C15	620.00'	204.55'	18°54'10"	N31°36'05"E	203.62'
C16	25.00'	39.27'	90°00'00"	N67°09'00"E	35.36'
C17	580.00'	191.35'	18°54'10"	S31°36'05"W	190.49'
C18	420.00'	68.28'	9°18'55"	S36°23'43"W	68.21'
C19	380.00'	4.16'	0°37'38"	S16°17'54"W	4.16'
C20	25.00'	39.27'	90°00'00"	S22°51'00"E	35.36'
C21	125.00'	51.39'	23°33'23"	S79°37'42"E	51.03'
C22	175.00'	71.95'	23°33'23"	S79°37'42"E	71.44'
C23	11.17'	17.75'	91°04'32"	N66°36'44"E	15.94'
C24	25.00'	38.80'	88°55'29"	S23°23'18"E	35.02'
C25	150.00'	61.67'	23°33'23"	S79°37'42"E	61.24'
C26	150.00'	61.67'	23°33'23"	S79°37'42"E	61.24'
C27	380.00'	24.83'	3°44'36"	S28°46'18"W	24.82'

LINE TABLE		
LINE	BEARING	LENGTH
L1	S79°01'43"E	8.11'
L2	S79°01'43"E	20.05'
(L2)1	S79°02'30"E	20.05'
L3	S79°01'43"E	20.05'
(L3)1	S79°02'30"E	20.05'
L4	S79°01'43"E	33.30'
(L4)6	S79°01'43"E	33.30'
L5	S75°36'04"E	30.27'
(L5)6	S75°36'04"E	30.27'
L6	N28°03'00"E	25.13'
L7	S07°07'27"W	2.94'
L8	S15°59'05"W	12.17'
L9	S79°01'43"E	11.00'
L10	S79°01'43"E	13.59'
L11	N07°07'27"E	0.25'
L12	N15°59'05"E	16.27'
L13	N75°36'04"W	25.83'
L14	N02°34'45"E	20.00'
L15	N02°34'45"E	20.00'
L16	S87°25'15"E	31.76'
L17	N23°59'09"W	11.18'
L18	S87°25'15"E	25.00'
L19	S87°25'15"E	25.00'
L20	N75°17'54"W	33.95'
L21	S87°25'15"E	25.00'
L22	N75°17'54"W	40.15'
L23	N69°46'31"E	24.35'
L24	S69°46'31"W	6.61'
L25	N99°05'58"W	37.10'
L26	N00°00'00"E	16.51'
L27	N51°17'52"E	30.85'
L28	N25°56'26"E	29.99'
L29	S87°25'15"E	16.87'
L30	S29°08'39"W	11.18'
L31	S87°25'15"E	3.66'
L32	N28°03'00"E	5.03'
L33	S67°51'00"E	7.07'
L34	S15°59'05"W	34.99'
L35	S07°07'27"W	1.60'
L36	S67°51'00"E	59.54'
L37	S87°25'15"E	41.63'
L38	N79°01'43"W	20.15'
L39	S88°12'04"W	17.57'
L40	N56°56'00"W	19.00'
L41	S22°20'11"W	42.50'
L42	N10°58'36"E	21.43'
L43	S67°51'00"E	13.93'
L44	S67°51'00"E	20.00'
L45	S67°51'00"E	20.00'
L46	S67°51'00"E	15.55'
L47	N22°20'11"E	25.00'
L48	N22°20'11"E	25.00'
L49	S88°12'04"W	9.00'
L50	N56°56'00"W	3.51'

**LEGEND**

- INDICATES SET 5/8" X 40" REBAR WITH PLASTIC CAP STAMPED "HLB OTAK INC".
- ⊙ INDICATES SET 5/8" X 20" REBAR WITH PLASTIC CAP STAMPED "HLB OTAK INC".
- INDICATES MONUMENT FOUND AS NOTED HEREON, HELD FOR CONTROL.
- INDICATES FOUND 5/8" REBAR WITH PLASTIC CAP STAMPED "HLB & ASSOC INC", IN CALCULATED POSITION. SEE MAP B-3002, TILLAMOOK COUNTY SURVEY RECORDS.
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REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
*Dale N. Barrett*  
OREGON  
July 16, 1982  
DALE N. BARRETT  
1979  
RENEWAL DATE: DECEMBER 31, 2009



"SONG" #A2005  
5403Y132.DWG



**PACIFIC COUNTY**  
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**CLATSOP COUNTY**  
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GRESHAM, OR 97130  
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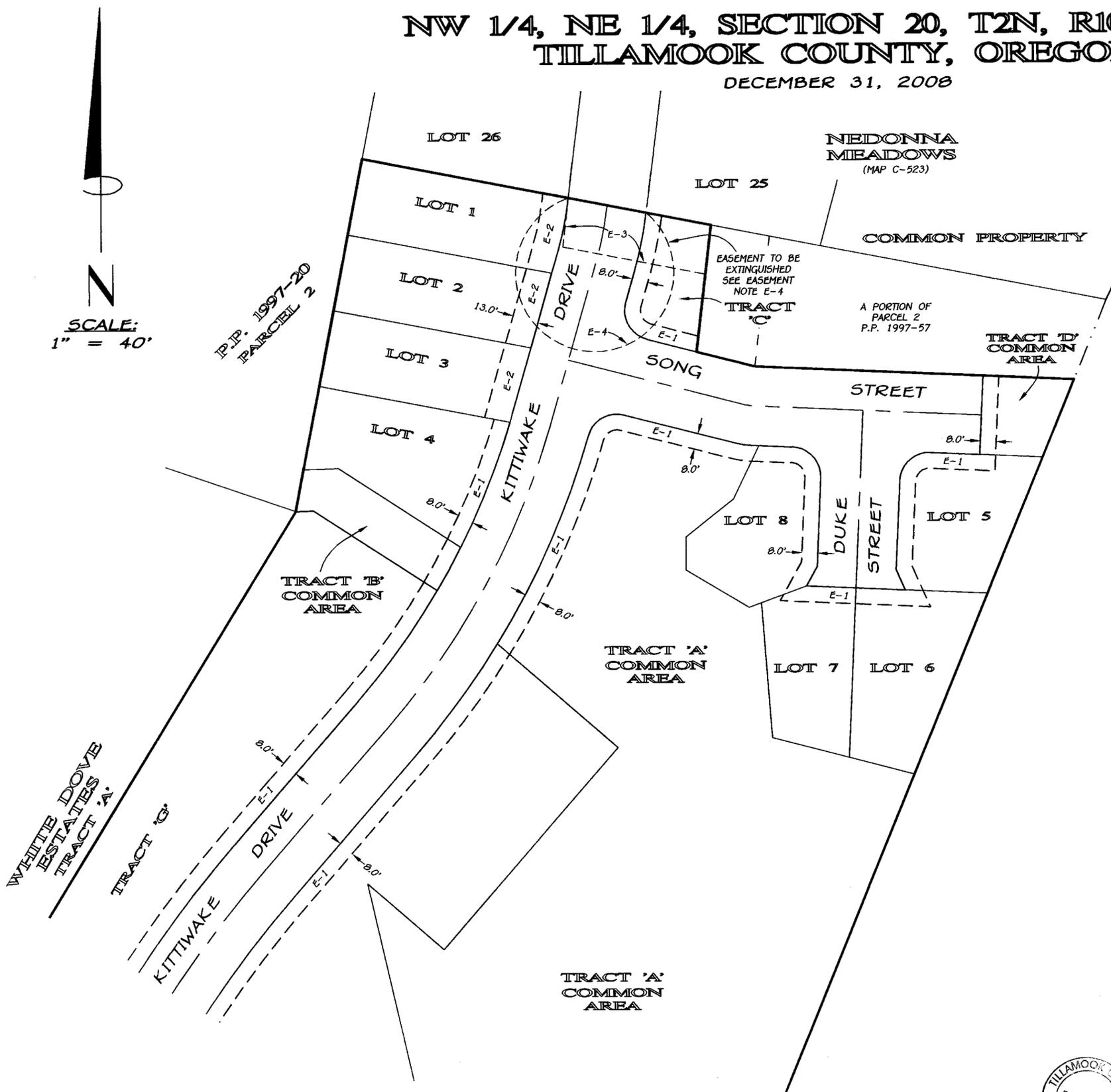


# NEDONNA WAVE PHASE 1

NW 1/4, NE 1/4, SECTION 20, T2N, R10W, W.M.  
TILLAMOOK COUNTY, OREGON

DECEMBER 31, 2008

SHEET 4 of 6



### EASEMENTS CREATED BY THIS PLAT

- E-1 - 8.0 FOOT WIDE NON-EXCLUSIVE UTILITY EASEMENT INCLUDING, BUT NOT LIMITED TO POWER, CABLE TV, TELEPHONE, SEWER, STORM DRAINAGE, AND WATER SERVICES.
- E-2 - 13.0 FOOT WIDE NON-EXCLUSIVE UTILITY EASEMENT INCLUDING, BUT NOT LIMITED TO POWER, CABLE TV, TELEPHONE, SEWER, STORM DRAINAGE, AND WATER SERVICES.
- E-5 - A DRAINAGE EASEMENT IS HEREBY CREAED OVER ALL OF TRACTS A, B, AND D.

### EASEMENTS OF RECORD

- E-3 - EXISTING ACCESS AND UTILITY EASEMENT, SEE INSTRUMENT #2004-010912, TILLAMOOK COUNTY DEED RECORDS.
- E-4 - EXISTING ACCESS AND UTILITY EASEMENT, SEE INSTRUMENT #2004-007454, TILLAMOOK COUNTY DEED RECORDS.

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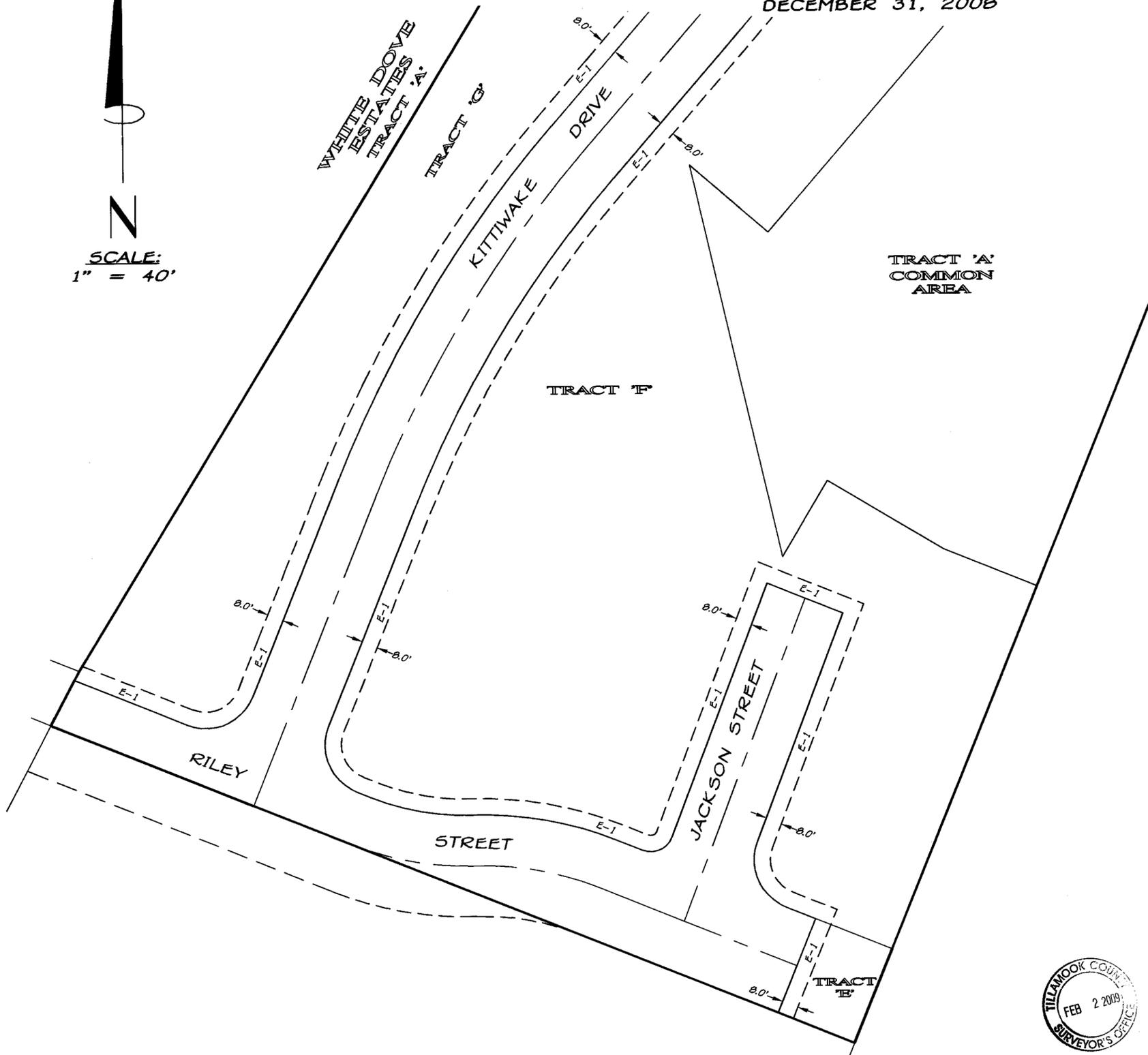
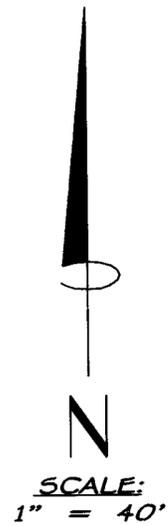
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# NEDONNA WAVE PHASE 1

NW 1/4, NE 1/4, SECTION 20, T2N, R10W, W.M.  
TILLAMOOK COUNTY, OREGON

SHEET 5 of 6

DECEMBER 31, 2008



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# NEDONNA WAVE PHASE 1

NW 1/4, NE 1/4, SECTION 20, T2N, R10W, W.M.  
TILLAMOOK COUNTY, OREGON  
DECEMBER 31, 2008

SHEET 6 of 6

### SURVEYOR'S CERTIFICATE

I, DALE N. BARRETT, CERTIFY THAT:

I HAVE CORRECTLY SURVEYED AND MARKED WITH PROPER MONUMENTS, THE LANDS REPRESENTED ON THE ATTACHED MAP, THE BOUNDARIES OF WHICH ARE DESCRIBED AS FOLLOWS:

A TRACT OF LAND LOCATED IN THE NORTHWEST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SECTION 20, TOWNSHIP 2 NORTH, RANGE 10 WEST, OF THE WILLAMETTE MERIDIAN, TILLAMOOK COUNTY, OREGON, FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE INITIAL POINT LOCATED AT NORTHEAST CORNER OF THE SUBJECT PROPERTY, SAID POINT BEING THE SOUTHEAST CORNER OF PARCEL 2 OF PARTITION PLAT NO. 1997-57, TILLAMOOK COUNTY, OREGON, SAID CORNER BEING MARKED BY A 5/8" REBAR WITH PLASTIC CAP STAMPED "HLB & ASSOC INC", SAID POINT BEING ON THE WEST RIGHT-OF-WAY LINE OF THE PORT OF TILLAMOOK BAY RAILROAD;  
THENCE SOUTH 22°20'11" WEST 742.96 FEET ALONG SAID RIGHT-OF-WAY LINE, TO A 5/8" REBAR WITH PLASTIC CAP STAMPED "DON MARX PLS 332";  
THENCE LEAVING SAID RIGHT-OF-WAY LINE, NORTH 67°51'00" WEST 424.70 FEET TO A 5/8" REBAR WITH PLASTIC CAP STAMPED "HLB & ASSOC INC";  
THENCE NORTH 28°03'00" EAST 30.16 FEET TO THE SOUTHEAST CORNER OF TRACT 'A', WHITE DOVE ESTATES, SAID POINT BEING MARKED BY A 5/8" REBAR WITH PLASTIC CAP STAMPED "HLB & ASSOC INC";  
THENCE NORTH 31°33'51" EAST 510.97 FEET ALONG THE EAST LINE OF SAID TRACT 'A' TO THE SOUTHEAST CORNER OF PARCEL 2, PARTITION PLAT 1997-20, SAID POINT BEING MARKED BY A 5/8" REBAR WITH PLASTIC CAP STAMPED "DON MARX PLS 332";  
THENCE NORTH 10°58'36" EAST 181.53 FEET ALONG THE EAST LINE OF SAID PARCEL 2 TO A 5/8" REBAR WITH UNREADABLE PLASTIC CAP AT THE SOUTHWEST CORNER OF NEDONNA MEADOWS;  
THENCE SOUTH 79°01'43" EAST 179.49 FEET ALONG THE SOUTH LINE OF NEDONNA MEADOWS TO A 5/8" REBAR WITH PLASTIC CAP STAMPED "HLB & ASSOC INC";  
THENCE SOUTH 06°42'00" WEST 64.59 FEET TO A 5/8" REBAR WITH PLASTIC CAP STAMPED "HLB & ASSOC INC";  
THENCE SOUTH 75°36'04" EAST 30.27 FEET TO A 5/8" REBAR WITH PLASTIC CAP STAMPED "HLB & ASSOC INC";  
THENCE SOUTH 87°25'15" EAST 161.65 FEET TO THE WEST RIGHT-OF-WAY LINE OF THE PORT OF TILLAMOOK BAY RAILROAD, SAID POINT BEING THE INITIAL POINT.

I FURTHER CERTIFY THAT THIS MAP WAS PREPARED USING HP PRODUCT #51640A INK ON WMF ARCHIVAL PLAT FILM.

*Dale N. Barrett*  
DALE N. BARRETT, PLS 1979

### DECLARATION

KNOW ALL PERSONS BY THESE PRESENTS THAT NEDONNA DEVELOPMENT, LLC, A LIMITED LIABILITY COMPANY, BEING THE OWNER OF THE LAND HEREIN DESCRIBED, DOES HEREBY MAKE, ESTABLISH AND DECLARE THE ANNEXED MAP OF "NEDONNA WAVE PHASE 1", AS DESCRIBED IN THE ACCOMPANYING SURVEYOR'S CERTIFICATE, TO BE A TRUE AND CORRECT MAP AND PLAT THEREOF, ALL LOTS AND TRACTS BEING DIMENSIONS SHOWN ON SAID MAP, AND THAT ALL STREETS WITHIN THIS PLAT ARE HEREBY DEDICATED TO THE PUBLIC FOREVER.  
EASEMENTS E-1, E-2 AND E-5 ARE CREATED FOR THE PURPOSES STATED HEREON. TRACTS A, B AND D ARE HEREBY DEDICATED AS COMMON OPEN SPACES AS DEFINED IN THE COVENANTS, CONDITIONS AND RESTRICTIONS FOR NEDONNA WAVE SUBDIVISION.

*Kahm N. Song*  
KAHM N. ("ANNA") SONG  
MANAGER, NEDONNA DEVELOPMENT, LLC

### ACKNOWLEDGMENT

STATE OF OREGON > > 5.5.  
COUNTY OF TILLAMOOK > > 5.5.

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON January 27, 2009, BY KAHM N. ("ANNA") SONG AS MANAGER OF NEDONNA DEVELOPMENT, LLC

*Debbie Carr* 1-27-09  
NOTARY'S SIGNATURE DATE

*Debbie Carr*  
PRINTED NAME OF NOTARY PUBLIC

NOTARY PUBLIC - OREGON COMMISSION NO.: 402614  
MY COMMISSION EXPIRES ON THE 9 DAY OF March, 2010

### APPROVALS

STATE OF OREGON > > 5.5.  
COUNTY OF TILLAMOOK > > 5.5.

EXAMINED AND APPROVED BY THE FOLLOWING:

*Danny R. Mc Natt* 01-30-2009  
TILLAMOOK COUNTY SURVEYOR DATE

TAXES HAVE BEEN PAID IN FULL TO JUNE 30, 2009.

*Rose Harris Deputy* 1-30-09  
TILLAMOOK COUNTY TAX COLLECTOR DATE

*Wm. J. ...* 2-2-09  
TILLAMOOK COUNTY COMMISSIONER DATE

*Pat ...* 01-20-09  
CITY PLANNING COMMISSION CHAIRPERSON, DATE  
CITY OF ROCKAWAY BEACH

*Twin Lutz* 1-30-2009  
TILLAMOOK COUNTY ASSESSOR DATE

*Steve ...* 2-2-2009  
TILLAMOOK COUNTY COMMISSIONER DATE

*Charles D. ...* 2-2-2009  
TILLAMOOK COUNTY COMMISSIONER DATE

*M. ...* 1-20-09  
CITY ENGINEER, DATE  
CITY OF ROCKAWAY BEACH

*CT Jensen* 1-27-09  
CITY MANAGER, DATE  
CITY OF ROCKAWAY BEACH

### CERTIFICATE OF COUNTY CLERK

STATE OF OREGON > > 5.5.  
COUNTY OF TILLAMOOK > > 5.5.

I HEREBY CERTIFY THAT THIS PLAT WAS RECEIVED FOR RECORD ON THE 2nd DAY OF February, 2009 AND RECORDED IN PLAT CABINET B-1045 TILLAMOOK COUNTY RECORDS, AS INSTRUMENT NO. 2009-000738.

BY: *Tassi O'Neil*  
TASSI O'NEIL, COUNTY CLERK

STATE OF OREGON > > 5.5.  
COUNTY OF TILLAMOOK > > 5.5.

I, TASSI O'NEIL, DO HEREBY CERTIFY THAT I AM THE QUALIFIED CLERK OF TILLAMOOK COUNTY, OREGON AND THAT THIS COPY IS THE FULL, COMPLETE AND TRUE COPY OF THE ORIGINAL PLAT OF SAME, AS RECORDED IN PLAT CABINET B-1045 OF PLAT RECORDS OF TILLAMOOK COUNTY, OREGON, RECORDED February 2, 2008, AS INSTRUMENT NO. 2009-000738.

*Tassi O'Neil*  
TASSI O'NEIL, COUNTY CLERK

I, DALE N. BARRETT, DO HEREBY CERTIFY THAT THIS IS A FULL, COMPLETE AND TRUE COPY OF THE ORIGINAL PLAT AS REFERENCED ABOVE.

*Dale N. Barrett*  
DALE N. BARRETT, PLS 1979

### COVENANTS, CONDITIONS & RESTRICTIONS

SEE INSTRUMENT #2009-000592 TILLAMOOK COUNTY DEED RECORDS FOR DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NEDONNA WAVE SUBDIVISION.

SEE INSTRUMENT #2009-000593 TILLAMOOK COUNTY DEED RECORDS FOR DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RELATING TO WETLAND AREAS FOR NEDONNA WAVE SUBDIVISION.

SEE INSTRUMENT #2009-000160 TILLAMOOK COUNTY DEED RECORDS FOR DECLARATION DEED RESTRICTIONS/RESTRICTIVE COVENANT (AGREEMENT FOR IMPROVEMENTS).



"SONG" #A2005  
5403Y132.DWG



• SURVEYING  
• CIVIL ENGINEERING  
• PLANNING  
• WATER RIGHTS  
• WETLAND CONSULTING

PACIFIC COUNTY  
1715-B N. PACIFIC AVE.  
LONG BEACH, WA 98631  
(360) 642-4454  
FAX: (360) 642-4054

CLATSOP COUNTY  
4253-A HWY 101 N.  
GEARHART, OR 97130  
(503) 738-3425  
FAX: (503) 368-5394

TILLAMOOK COUNTY  
10445 NEAH-KAH-NE COK RD.  
MANZANITA, OR 97130  
(503) 368-5394  
FAX: (503) 368-5847

WWW.HLB-OTAK.COM



**WRITTEN TESTIMONY  
SUBMITTED FOR  
JUNE 20, 2024  
PLANNING COMMISSION  
HEARING**

Planned Unit Development (PUD #24-01)

Received as 6/13/2024

To: City of Rockaway Beach  
City of Rockaway Beach Planning Commission  
City of Rockaway Beach City Planner Mary Johnson

From: Danny J. Wilhelmi  
████████ Chieftain Dr  
Rockaway Beach, OR 97136  
503-████████0

Date: 6/10/2024

Subject: Written public comments regarding PUD-24-1

Dear City of Rockaway Beach,

I have been a homeowner in Rockaway Beach since the Fall of 2016, my home is located directly West of tax lot 10200. I am writing to communicate multiple issues about the PUD application which was submitted by Nedonna Development LLC (case PUD-24-1) which I respectfully ask to be resolved before moving forward with approval of the PUD. I emailed a copy of this to the city planner, mailed a paper copy to the planning department, and will be physically present at the Jun 20, 2024 hearing.

Issue #1:

A majority of the lots proposed in PUD-24-1 appear to be in violation of Rockaway Beach Zoning Ordinance (RBZO) 3.010, section 3, subsection a.

“The minimum lot size shall be 3,500 square feet for lots existing at the time of the adoption of Ordinance 235. Lots platted after the adoption of Ordinance 235 shall have a minimum lot size of 5,000 square feet. [Amended by Ordinance #235, June 25, 1985]”

Tax lots 10200/10400/10500 were established per Tillamook County Real Legal Description on Mar 06, 2009. As such, my interpretation is that lots subdivided on this property should adhere to the 5000 sq ft requirement. Only lot #1 of the PUD adheres to this requirement. Even if the pre-1985 minimum size of 3500 sq ft applied, only lots # 1, 2, 3, 6 of the PUD adhere to that requirement.

What is apparent to me is that the local density of this PUD is extremely high, and to make matters worse this request intends to increase the number of lots beyond the originally approved qty, creating many ~2500 sq ft lots and is phrased in the memorandum to the city as “**a small increase in the number of lots in Nedonna Wave**”. I do not view this as a small increase in what I believe was already too dense of a PUD.

While Article10 Planned Unit Development section 10.040 subsection 4 “Subdivision of Lot sizes” states that minimum area for subdivision lots can be less than minimums set elsewhere in City ordinances as long as the density is in conformance, I don’t believe the density requirements are met or at least the spirit is not met. At a minimum, the request for increased lot qty should be rejected.

Issue #2:

I believe that this development will be in violation of RBZO 3.092, section 2. The entire White Dove neighborhood is already under substantial flood pressure from McMillan creek which runs between my lot and tax lot 10200. Homes on lots #1-16 will reduce direct rainwater absorption into the ground, which will result in more rain runoff into McMillan creek, worsening the existing flooding risk. Additionally, lots #10-12 are routinely in or directly near standing water due to the inadequate drainage of this area into the already stressed McMillan creek.

The applicant is in denial of or is ignorant to the severity of this ongoing situation as evidenced by their response in the memorandum to Section 41, "Land Subject to Inundation":

"If any portion of land proposed for development is subject to overflow, inundation or flood hazard by, or collection of, storm waters, an adequate system of storm drains, levees, dikes and pumping systems shall be provided.

Response: As part of developing Phase 1, the applicant installed storm drain culverts from the wetland area under Kittiwake Drive to Tract B and thence to McMillan Creek to provide storm drainage from Tract F. **The applicant believes the existing wetland and drainage facility to be adequate.** The plat complies with this standard."

I can unequivocally say that the previously installed storm drain culvert to Tract B does not remotely provide adequate drainage that the applicant claims. Please see below pictures taken on Jun9, 2024 showing extremely high water on the East and West sides of said drainage, while keeping in mind that we are already at a lower rainfall portion of the year and there is still this much water present. Additionally, the City of Rockaway Beach Public Works is fully aware of this flooding situation and has crews out nearly every week attempting to mitigate the problem to no avail. The bottom line is McMillan Creek isn't draining its existing load of storm water, let alone more.

East of Tract B & Kittiwake, just north of Lot #10, picture taken Jun9, 2024



West of Kittiwake, on tax lot 10100 / Tract B, just north of lot #1



As I mentioned, McMillan creek itself is ill suited to take on any further storm water runoff. Please see below picture taken on Jun9, 2024 directly east of my lot showing the unprecedented height of this creek during this lower rainfall portion of the year. The water has nearly eclipsed the road culvert and is starting to heavily erode the bank.



I fundamentally believe that development of this PUD will lead to increased risk of a catastrophic flood event affecting many homes near this PUD, including mine, devaluing my property and putting lives at risk. At a minimum, the previously installed/planned drainage plan must be reworked for the PUD to proceed.

Issue#3:

Egress & Safety is a major problem in my neighborhood. We are heavily populated with STRs which dramatically increases, beyond a normal person's perception, the quantity of people & cars in Nedonna. STRs frequently have an overload of people and cars beyond a normal full or part time residence.

There is only one way in/out of this heavily used neighborhood, this places us already at an elevated safety risk in an event of an obstruction of the entrance (which happened just recently this year with a significant car accident at the corner of Beach St & Hwy 101 that closed the entrance for multiple hours). An ambulance or fire truck would be blocked from entering the neighborhood in such cases, delaying life-saving aid to someone who may need it. Increasing the amount of residents/lots will only further stress what is already a bad situation that needs remedied already.

Issue#4:

We have an established Tsunami evacuation path directly in the area where Riley St is to be extended, see the below picture taken on Jun9, 2024.



Given the intense local density of the homes proposed near Jackson St, I believe there will be many cars parked on the street, which will impede evacuation in the event of a natural disaster such as a Tsunami. The Nedonna neighborhood area lacks basic infrastructure for managing on street parking such as painted curbs or signs directing where cars can or cannot be parked, and I envision this area as being very unregulated.

Moreover, in the memorandum to the city, the applicant's modification #3 intends to form an additional lot directly on tax lot 10500/Trace E and overlapping onto the evacuated stub of Riley street. This is directly impeding the existing Tsunami evacuation path leading up the hill, with no remediation planned.

“Provide that when the owner of the land to the south extends Jackson Street south into that property, the city will vacate the east stub of Riley Street so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.”

In closing, I dearly love my home and my neighborhood in Rockaway Beach. I wish for people to be able to experience living in a community like I do. However, I believe this PUD is:

- 1) not compliant with applicable zoning requirements for lot sizes or the spirit thereof.
- 2) is stressing neighborhood accessibility in the event of public/personal emergencies and is impeding and eventually removing an established Tsunami escape route with no remediation plan.
- 3) Is ignoring the existing serious flooding situation on this property and will have a severely detrimental effect to an already stressed creek / rainwater drainage system by removing significant acreage of natural rainwater absorption.

I respectfully ask for these concerns to be resolved before moving forward with approval of the PUD-24-1.

Sincerely,  
Danny J. Wilhelmi

## City Planner

---

**From:** [REDACTED]  
**Sent:** Monday, June 10, 2024 9:32 PM  
**To:** City Planner  
**Subject:** LIMITED ACCESS AND EGRESS TO OUR COMMUNITY

We live @ 26105 Nedonna Ave, in Nedonna, 24' from the road. We listen to the constant sound of cars rushing to their destinations. Drivers rarely look right or left at our pathetic signs, beseeching them to drive slow. I have seen happily released workmen in their pickups, racing one another, at very high speeds.

Nedonna Ave is nicely paved encouraging drivers to drive well over the suggested 25 miles speed limit.

I worry about the 20 additional homes that will bring excavating equipment, trucks and more workers speeding constantly up and down our street. Not to mention the traffic once the additional 20 homes come to be. We sincerely hope that you will consider an access road for the safety of our community.

Thank you, Darrell & Diane DeJong  
Thank you, Darrell & Diane DeJong

**From:** [Delta Holderness](#)  
**To:** [City Planner](#)  
**Subject:** Concerns about the proposed development in Nedonna Beach  
**Date:** Friday, May 17, 2024 4:26:08 PM  
**Attachments:** [Proposed development for Nedonna Beach.pdf](#)

---

Good afternoon, Mary

My name is Delta Holderness. My husband, Tom, and I have lived in Nedonna Beach since 2016, and before purchasing our home, we lived in Rockaway for almost a year.

I am aware that many issues are being considered for this proposed development, including flood concerns, wetlands, access and egress, traffic, parking, drinking water, and waste management.

As a registered nurse, one of my concerns is the safety of our residents, especially our aging citizens who have chosen to retire here or have summer homes while wintering in Arizona. However, I am also concerned about the well-being of all residents and the tourists who vacation here, often year after year. Additionally, I greatly value the wildlife with which we coexist harmoniously.

I appreciate the opportunity to provide you and the City with my thoughts, ideas, and opinions.

Sincerely,  
Delta Holderness

**From:** [Delta Holderness](#)  
**To:** [City Planner](#)  
**Subject:** Concerns about the proposed development in Nedonna Beach  
**Date:** Friday, May 17, 2024 4:26:08 PM  
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As a registered nurse, one of my concerns is the safety of our residents, especially our aging citizens who have chosen to retire here or have summer homes while wintering in Arizona. However, I am also concerned about the well-being of all residents and the tourists who vacation here, often year after year. Additionally, I greatly value the wildlife with which we coexist harmoniously.

I appreciate the opportunity to provide you and the City with my thoughts, ideas, and opinions.

Sincerely,  
Delta Holderness

**From:** [Donna Locke](#)  
**To:** [City Planner](#)  
**Subject:** Proposed Development in Nedonna Beach  
**Date:** Tuesday, May 21, 2024 3:00:45 PM

---

Hello, Mary.

My name is Donna Locke, and I live at 8760 Beach St. in NB, which is the third house in from Hwy. 101 on the north side of Beach St. I am concerned about further development in NB.

I have owned my home since March 2015 and have lived here full time since October 2018. In that time the traffic has increased by an incredible amount, and I'm no longer living in a quiet little residential community that I thought I would be. I was attracted to NB because it is a lovely fully residential beach community yet close to commercial areas.

My biggest concern with further development of NB is the fact that although it has remained residential my guess is at least 60%, if not more, of the homes are full-time vacation rentals. This small community doesn't appear to have been developed to handle the constant traffic flow that occurs due to a stream of vehicles from so many vacationers. I don't know if the City of RB is responsible for issuing permits for the rentals in that northeast corner of NB that is on public sewer or if it is Tillamook County like the rest of NB, but regardless I believe that the requirements for turning homes into full-time vacation rentals are pretty lax throughout NB.

Traffic is pretty much constant and the drivers have no regard for the 25 mph signage. I walk a lot not only on the beach but on the streets and drivers really do speed through here, and the roads—especially the main roads—have no shoulders to make it safe for pedestrians, bicyclists, and animals alike. Trash is an issue as well as irresponsible pet owners who do not clean up after their dogs, especially on the beach. I'm tired of cleaning up after dogs on and off the beach, which I do when I'm walking my dog and have her poop bags with me. I'm tired of cleaning up trash (especially bottles and cans) on the beach, and some on the street, which I do almost daily. I'm tired of trash cans being filled beyond capacity and left on the streets—sometimes for days—only to be blown over by wind in stormy weather and trash strewn, which attracts crows especially that spread garbage. I do my best to clean up those messes. I'm concerned not only of the appearance and sanitation issues but also animals getting into trash. Although fireworks don't appear to be allowed, people set them off on the beach and more likely than not leave behind the mess, which I'm also tired of cleaning up. I'm tired of people building fires on the beach and just leave them burning (I actually burned my foot once by walking into an unattended still-burning log). I'm tired of seeing dog owners watch their dogs defecate on the beach or the street and just walk on leaving the mess or not paying enough to their off-leash dogs to notice that the dog has defecated. Believe me I'm not shy about speaking to those inconsiderate folks. I'm tired of drivers speeding along on our narrow streets and that includes residents. During the summer season by August each year I'm counting the days to Labor Day when the number of vacationers begins to dwindle.

Upon entering NB there is a "one-way" sign at Railroad St. which turns into Lake St. but there is no "do not enter" sign at Lake St. and Nedonna Ave. I can assure you that drivers enter Lake St. from Nedonna Ave. going the wrong direction and that's an accident waiting to happen. Just last week I saw two vehicles heading the opposite direction at the same time on Lake St. twice in two days. The first day the vehicles continued on passing each other on that narrow one-way street. The second day I was walking on Lake St. with my dog at the very same time the vehicles were heading toward each other. My dog and I were between the two vehicles. Luckily the wrong-way driver noticed the other vehicle and I'm assuming me and was able to back up off Lake St. and onto Nedonna Ave. without incident. One day there will be a collision at the curve (about the point where Railroad turns into Lake), but hopefully involving two slow drivers.

With ever increasing traffic, especially with drivers constantly ignoring the posted speed limit, we cannot continue with just one entrance into NB since the City is seriously considering allowing the development of 22 additional homes. Also, I imagine that many, if not most, of those new homes will become vacation rentals, and as far as I can tell the county—and maybe city in that northeast corner—has no incentive to impose stricter requirements for the

vacation rentals.

I would love for NB to continue to be a safe and quiet community in which to live.

Donna L. Locke  
8760 Beach St.  
Nedonna Beach  
(503) [REDACTED]  
[REDACTED]

Sent from my iPad

## City Planner

---

**From:** Gary Corbin <[REDACTED]>  
**Sent:** Wednesday, June 12, 2024 8:08 AM  
**To:** City Planner  
**Subject:** Nedonna Development plan

As property owners in the Nedonna Beach area (26642 Kittiwake Drive), we are writing to express our concerns regarding the planned development on Tax Lots 10200, 10400, and 10500.

First, the proposed development would displace the current designated Tsunami Evacuation Route. The planned development would add 22 new housing units in a compact area, nearly doubling the number of houses currently in place (31) on the Kittiwake and Song Street corridor. Does the City have a plan for expanding Tsunami Evacuation capacity to accommodate the additional numbers of families and vehicles that would crowd this corridor? If so, please provide that information.

A second area of concern is utility capacity. While I understand a sewer pumping station would be installed, we do not see plans for expansion of pipe capacity. Do the existing water and sewer lines have the capacity to accommodate the 22 new units in addition to the existing units with no diminution of service quality or availability? What analysis has been performed to ensure this? What plans have been made to expand capacity to ensure adequate service to all 53 homes?

Are system development charges planned for these units? If so, what assurances will Nedonna Beach residents have that the SDC funds collected will be used to improve service and capacity in our area?

A third area of concern is use. What use type designations are planned for these units? Will they be short-term vacation rentals (STVRs), full-time single family homes, or long-term rentals? Will the current temporary cap on short-term vacation rentals be made permanent to ensure the area is not further flooded with this type of use?

Already at the many current STVRs in the area, flagrant violations and abuses of city rules and regulations abound with little thought to enforcement. On two rentals on property abutting ours, occupancy and parking limits are routinely ignored, and renters' children have often resorted to playing in the street itself on Section Line - a rather busy collector street. If new STVRs are added, what steps will the city take to increase enforcement?

Fourth, traffic and road conditions. Those of us who live in the City portion of Rockaway depend on county roads such as Nedonna, Beach, and Section Line for access. Those streets get heavy use and frequently fall quickly into states of disrepair. Drivers, particularly tourists, regularly drive well above the speed limit, and just last year a child was hit by a speeding car and sent to the hospital with severe injuries. In an area with no sidewalks, residents need assurances that our streets will remain safe and in good condition. But the increased traffic of this large development will inevitably raise the risk of diminished safety and increased violations. What steps will the city take to ensure that our roads will remain safe and in good condition with this drastic increase in use?

The Nedonna Beach area currently has only one point of entry/exit for vehicles, as it has since the development first broke ground in the early 2000s. Since then the area has grown significantly in terms of people and residences. This new development would significantly increase the number of vehicles and persons attempting to use that single entry/exit point, and would exacerbate potential dangers during an emergency. Has any thought been given to adding a second entry/exit point? If so, where? If not, why not?

Fifth, the properties being developed are adjacent to wetland areas that provide greenspace, a noise buffer from the highway, and breeding grounds for wildlife. A pair of nesting eagles has made their home in the buffer zone and a colony of beavers has settled in the creek behind us and our neighbors. Many of us chose this area for the beauty and quiet afforded by our natural surroundings. What protections will the builder and the city put in place to preserve the natural habitats and greenspace in the Nedonna Beach area, particularly in the areas adjacent to the development?

We understand that this area has been approved for development for some time and that the addition of new units is inevitable. We would prefer, however, that development proceed in a measured pace so that concerns of this type can be addressed thoughtfully and more affordably in advance and not emerge later as problems that could have, and should have, been addressed...but become, at that point, matters for which available remedies are too little, too late, and too expensive.

Respectfully,

Gary Corbin and Renee Faddis

██████ Kittiwake Dr.

Rockaway Beach, OR

503-██████

**From:** [Pat](#)  
**To:** [City Planner](#)  
**Subject:** Proposed new development in Nedonna  
**Date:** Thursday, May 16, 2024 7:54:47 PM

---

Hi Mary,

Relative to the proposed new 22 lot development in Nedonna, I am opposed to it.

The traffic already on Riley st is not controlled. It is the best road in the area and people that currently live or visit White Dove and the other development adjacent to the proposed, treat Riley as a freeway.

People speed regularly and we don't need additional uncontrolled traffic. Riley is also a main corridor to the beach with heavy foot traffic and kids on bicycles traversing it.

Another concern, is that Nedonna has turned into a busy residential rental market. It has changed the complexion to the environment. For many that come it is a party place and to some, there is disregard to people that own homes. We can't stop this, but additional requirements for rentals could be imposed. I know this is a separate issue.

I'm not against growth and the tax dollars directed to the community.

However, in the past, it was discussed aggressively for consideration to add another entrance & exit to Nedonna, but as with wetland mitigation it fell on to deaf ears to make these a requirement for new development.

We also talk about wildfire and potential tsunami issues, but we want to add more housing to an already congested area. Hopefully we don't face those issues, but in such an occurrence many may not make it out of the area.

Should this new development be approved and go forward, there should be a minimum of speed bumps or other speed deterrents on Riley. It has become a safety issue and needs that mitigation.

Please consider me as a no to this new 22 lot development.

Karl Nulton  
████ Riley st.

[Sent from AOL on Android](#)

**From:** [maerwert@aol.com](mailto:maerwert@aol.com)  
**To:** [City Planner](#)  
**Subject:** Nedonna beach development  
**Date:** Thursday, May 16, 2024 7:53:29 PM

---

Hello,

We are opposed to the Nedonna Beach development due to concerns about egress from our neighborhood . If there were to be an emergency we feel it would be difficult for vehicles to leave the neighborhood. We are retirees and running to a tsunami trail is not something we would be able to do. Therefore the only egress is at Manhattahan Beach. In addition the railroad crossing poses a problem if a train were to be stopped at the crossing there would be no other point of egress. We feel this should be addressed before new development occurs.

Thank you for hearing our concerns.

Mary and Dan Erwert

██████ White Dove Avenue

Rockaway Beach, Or

[Sent from the all new AOL app for iOS](#)

**From:** [Thompson, Paul](#)  
**To:** [City Planner](#)  
**Subject:** Nedonna Beach issues  
**Date:** Friday, May 10, 2024 9:33:50 AM

---

Hello Mary,

Elaine and I have owned property in Nedonna Beach since 2000. In that time we have seen the little burg clean up and grow a bit. We really love it, and may move there permanently soon.

I have spent time on the City Council, Urban Renewal, and Planning Commission in Hood River over the years, so I understand the difficulty in handling all the wants and needs of the developers, while at the same time honoring the views of those already living there. I rather like the new stuff at the northeast part of town, and wish we had city sewer where our house is across from Nedonna Lake - I would vote for it. But the biggest issue in my mind is access. The whole community is served by one skinny road off the highway. And since Beach Street is in such crummy shape, everybody uses Nedonna Avenue - and the construction workers and trucks roar by all day long. Coupled with the possible need for evacuation, it just seems like an irresponsible decision to allow further development until there is better access. I know it will be difficult, but there needs to be a way in and out on the north end where all the new development is.

Thank you for your work and consideration,

Paul Thompson

photo



**Paul Thompson**

Principal Broker licensed OR/WA, [Copper West Real Estate](#)

**A** 14 Oak Street, Hood River, OR 97031  
**O** 541-386-2330 X 409    **M** 541-490-1044  
**E** [paul@copperwest.com](mailto:paul@copperwest.com)    **W** [copperwest.com](http://copperwest.com)



**From:** [Tom Heckenberg](#)  
**To:** [City Planner](#)  
**Cc:** [activewhere@yahoo.com](mailto:activewhere@yahoo.com)  
**Subject:** Citizen Concerns regarding the Nedonna Wave Phase 2 development proposal  
**Date:** Sunday, May 19, 2024 5:01:44 PM

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To: Mary Johnson  
Re: Concerns regarding the Nedonna Wave Phase 2 development proposal dated Feb 20, 2024.

From: Thomas Heckenberg  
██████ White Dove Ave  
Rockaway Beach  
ph: 503-██████  
email: ██████████

I respectfully request your consideration of the following concerns regarding the Nedonna Wave Phase 2 development proposal.

As a person who has explored the proposed construction area many times and, in all seasons, I know that land and the land around it pretty well. Many times in the winter I have unplugged the culverts around that area, and I've seen the upstream flooding when they are plugged. As the board member on the Nedonna Beach Neighborhood Association who is responsible for Emergency planning and evacuation route maintenance I am painfully aware of what we have, and what we need. For many years I have worked with county and state officials regarding the Nedonna Beach evacuation routes and Emergency plans. As you will see below my concerns mainly deal with impacts to the surrounding neighborhood and environment which may be outside the standard city building permit requirements, but are still important. Although the city of Rockaway Beach may not to directly require Emergency Evacuation routes to be part of a building approval, I believe it should be considered as part of the public welfare, especially if the proposed development would negatively impact existing public welfare. I would also like the city to determine if the proposed development and houses are going to cause issues downstream on the ecosystem, and with increased flooding.

#### Emergency Evacuation:

The Tsunami evacuation route for the phase 2 homes would be through a steep single file trail that already services over a hundred homes and families. Today that route is barely adequate. Adding 22 more homes will only exacerbate an already poor situation. In a major earthquake/Tsunami event people will be desperately trying to get to high ground before the wave hits. Computer models indicate that the addition of the 22 houses of people would cause a an additional ~90 second delay to those fleeing up hill. With the earthquake already having caused massive damage, and the Tsunami coming soon these scared people will not wait patiently, any delay will cause more panic, and a panicked crowd will cause unnecessary death. I believe it to be irresponsible to allow these houses to be built without a clear path for the people to evacuate. Approval of this proposal should include an evacuation route which provides an unrestricted evacuation flow of all residents who rely on this path. This is a public welfare, public safety problem.

Also, the Phase 2 Memorandum dated Feb 20 2024, Section II under modifications to the PUD approval, item number 3 states:

“Provide that when the owner of the land to the south extends Jackson Street south into that property, the city will vacate the east stub of Riley Street so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot”

Currently the east stub of Riley Street is exactly where the city, county, and state recognized emergency evacuation route is located. The well distributed DOGAMI “beat the wave” maps direct people to that trail. Turning that into a building lot will mean a third of Nedonna will lose their fastest way out of Nedonna. Most of the Nedonna Beach full time residents are older retired people, many already question if they could make it out in time, without this path they won't have a chance. Item 3 should not be approved without consideration of the public welfare. Again, we need a guaranteed route out of the Tsumani inundation zone, and a route that will handle the full capacity requirements.

#### Water Flow Impact:

The proposed houses east of Kittiwake are all going to be built either in an area that floods or on a hillside. Much of

the land east of Kittiwake is designated as Special Wetland. Two McMillian Creek tributaries run through the proposed construction area, and when the culverts under Kittiwake plug up in the winter, as they always do, this area becomes a swamp. On a site inspection you will see many of the Alder trees are not healthy, and the reason is that they are drowned in the winter. House and road construction on the hillsides cannot help but have an adverse effect on these wetland, debris and dirt will flow downhill into the wetlands, changing the water flow, adding fill, and increasing the material which clogs the culverts in the winter. This last winter with only minor culvert blockage on McMillian and Nedonna Creeks flood waters were within a few feet of houses on Central Court. Nedonna Beach is at the bottom of a large hill, and in the winter the rain water fills our creeks, and if there is a blockage somewhere it fills the streets, add in a high tide and flood waters threaten houses.

One lesson we humans have learned is that wetlands such as this provide a valuable service during a flood. They act as a sponge to soak up water, and then slowly release that water, they effectively slow down the water. When we take out wetlands the downstream flooding gets worse. In this case the reduction or loss of this wetland could cause more winter flooding on the houses on Kittiwake Ave, Chieftain Ave, Section Line Rd, and White Dove Ave. We already see houses in this area with water in their crawlspaces during high tides when combined with heavy winter rains. Loss of this wetland sponge may very well increase flooding downstream, how much more flooding is hard to say, but it could be the difference between pumping a crawlspace and replacing everything on the first floor. Before approval of this planned development the city should be able to state with confidence that it will not harm existing houses. We already have a winter flooding problem, please don't make it worse.

McMillian Creek appears to be a temporary habitat for young Salmon before they enter the ocean. Every year the pond behind my house comes alive with small salmon fry. We suspect they come in from the Nehalem River. That pond is fed by McMillian Creek and is downhill from the proposed construction. Construction is a messy operation, especially when it rains hard, there is no way to prevent soil from entering the waterway. Increased turbidity into McMillian Creek will disrupt this fish flow, disrupting important temporary habitat, and could negatively impact the Nehalem River Salmon runs. I would like a state biologist to approve the impact to this unique ecosystem.

Feel free to contact me with any questions regarding these concerns. I look forward to your response.

Thank you for your consideration.  
Thomas Heckenberg



**CITY OF ROCKAWAY BEACH  
PLANNING COMMISSION ACTION**

**STAFF REPORT**

Case File #PUD-24-1

Hearing Date: June 20, 2024

**APPLICANT:** Nedonna Development LLC

**AGENT FOR APPLICANT:** Dean N. Alterman

**REQUEST:** The Applicant is requesting a modification to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008. The Applicant seeks the following modifications to Phase 2 of the 2008 approval:

1. To develop Phase 2 in two sub-phases, instead of one phase;
2. To create two lots instead of one lot at the north end of Jackson Street (identified as lot 24 on the 2008 approved plan), identified as lots 21 and 22 on the plans submitted with the Application;
3. To create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street (identified as Lots 14, 15, and 16 on the 2008 approved plan), identified as lots 13, 14, 15 and 16 on the plan submitted with the Application; and
4. Provide that when the owner of the land to the south extends Jackson Street south into that property, the City will vacate the east stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.

**A. REPORT OF FACTS**

1. Property Location: The subject property is located on Kittiwake Drive north of Riley Street and South of Song Street in Nedonna Beach. The property is identified as Tillamook County Assessor's Map #2N1020AB Lots # 10200, 10400, and 10500.
2. Lot Size: approximately 2.56 acres.
3. Zoning Designation: R-1 (Single Family Residential Zone), SA (Special Area Wetlands Zone), and PUD (Planned Unit Development) Overlay.
4. Surrounding Land Use: Adjacent to the north is the existing Nedonna Wave Planned Unit Development Phase 1. To the east is undeveloped private land zoned R-1 (Single Family Residential Zone) and Highway 101. To the south is undeveloped private land zoned R-1 (Single Family Residential) and SA (Special Area Wetlands). To the west is White Dove Estates neighborhood, which is zoned R-1 (Single Family Residential).



5. Existing Structures: None, except for utilities installed by the Applicant during the construction of Phase 1, for Phase 2.
6. Utilities: The following utilities serve the subject property:
  - a. Sewer: City of Rockaway Beach
  - b. Water: City of Rockaway Beach
  - c. Electricity: Tillamook P.U.D.
7. Development Constraints: The property contains wetlands that were delineated by a professional wetlands consultant prior to the 2008 approval. As wetlands are not stagnant, according to the Department of State Lands (DSL), the former delineation is no longer valid and expire after a period of five years. At the time of the 2008 approval, the Applicant provided a joint permit from the DSL and the U.S. Army Corps of Engineers. These permits have now expired and will need to be renewed before any disturbance or impacts to the wetlands takes place. If the request is approved, the Applicant will be required to obtain and provide copies of necessary permits from these agencies prior to initiating construction.

In addition, a portion of the subject property is located within the 100-year floodplain as identified on the Flood Insurance Rate Map Panel Number 41057C0218F.

## **B. EVALUATION OF THE REQUEST**

1. General Description of the Proposal: The Applicant is requesting a modification to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008. The Applicant seeks the following modifications to Phase 2 of the 2008 approval: (1) To develop Phase 2 in two sub-phases, instead of one phase; (2) To create two lots instead of one lot at the north end of Jackson Street (identified as lot 24 on the 2008 approved plan), identified as lots 21 and 22 on the plans submitted with the Application; (3) To create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street (identified as Lots 14, 15, and 16 on the 2008 approved plan), identified as lots 13, 14, 15 and 16 on the plan submitted with the Application; and (4) Provide that when the owner of the land to the south extends Jackson Street south into that property, the City will vacate the east stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.
2. Agency Comments:
  - a. City of Rockaway Beach Engineer: See attached letter from HBH Engineering which identifies issues that will need to be addressed through the more formal engineering review if the request is approved.
  - b. Department of State Lands: See attached Wet Land Use Notice Response which identifies additional reporting and permitting that will need to be completed and obtained prior to any disturbance of the wetland areas.



3. Ordinance Standards: The following substantive criteria apply to this request. To facilitate review, staff comments are in *italicized font*.

Rockaway Beach Zoning Ordinance Section 3.010, Single Family Residential Zone (R-1). In the R-1 zone the following regulations shall apply:

- a. The minimum lot size shall be 3,500 square feet for lots existing at the time of the adoption of Ordinance 235. Lots platted after the adoption of Ordinance 235 shall have a minimum lot size of 5,000 square feet.

*The Applicant was approved for a PUD overlay in 2008, allowing for the development of lots lesser than the minimum lot size requirement for the R-1 zone. The Applicant is currently seeking to create two lots instead of one lot at the north end of Jackson Street (identified as lot 24 on the 2008 approved plan), identified as lots 21 and 22 on the plans submitted with the Application, and to create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street (identified as Lots 14, 15, and 16 on the 2008 approved plan), identified as lots 13, 14, 15 and 16 on the plan submitted with the Application. These additional lots the Applicant seeks to include, which were not included in the original PUD approval, do not meet the minimum lot size requirements for the R-1 zone. It should also be noted that the lots the Applicant seeks to amend which are identified as Lots 14, 15, and 16 on the 2008 approved plan, are also below the minimum lot size requirement. Lot 24 on the 2008 approved plan did meet the minimum lot size requirement for the R-1 zone.*

- b. The density of duplexes shall be: for lots existing prior to the adoption of Ordinance 235, a duplex is permitted on a lot with a minimum size of 3,500 square feet, for lots platted after the adoption of Ordinance 235, a duplex is permitted on a lot with a minimum size of 5,000 square feet.

*The Applicant indents to construct single-family dwellings, therefore this standard is not applicable.*

- c. Minimum lot width is 50 feet, except for lots between 3,500 and 4,999 square feet, the minimum lot width shall be 35 feet.

*The Applicant was approved for a PUD overlay in 2008, allowing for the development of lots lesser than the minimum depth requirement for the R-1 zone. The additional lots the Applicant seeks to add to through this modification are also lesser than the minimum width requirement.*

- d. Minimum lot depth is 70 feet, except for lots between 3,500 and 4,999 square feet, the minimum lot depth shall be 60 feet.

*The Applicant was approved for a PUD overlay in 2008, allowing for the development of lots lesser than the minimum depth requirement for the R-1 zone. The additional lots the Applicant seeks to add to through this modification are also lesser than the minimum depth requirement.*

- e. The minimum front yard shall be 15 feet, unless subsection 3.010(3)(h) applies.



*This standard is typically reviewed for conformance and applied at the time a building permit is required.*

- f. The minimum side yard shall be 5 feet, except that on the street side of a corner lot it shall be 15 feet.

*This standard is typically reviewed for conformance and applied at the time a building permit is required.*

- g. The minimum rear yard shall be 20 feet, except that on a corner lot it may be a minimum of 5 feet unless subsection 3.010(3)(h) applies. Oceanfront structures shall conform to Section 5.060(1)(b).

*This standard is typically reviewed for conformance and applied at the time a building permit is required.*

- h. For lots of less than 5,000 square feet in size, but more than 3,500 square feet, the minimum front yard shall be 15 feet and the minimum rear yard shall be 10 feet, except that on a corner lot the rear yard may be a minimum of 5 feet. For lots of 3,500 square feet in size or less, the minimum front yard and rear yard shall be ten feet, except that on a corner lot the rear yard may be a minimum of 5 feet. Notwithstanding the above, oceanfront structures shall conform to Section 5.060(1)(b).

*This standard is typically reviewed for conformance and applied at the time a building permit is required. However, it should be noted that the Applicant was approved for a PUD overlay in 2008, allowing for the development of lots lesser than the minimum lot size outlined for the R-1 zone.*

- i. The maximum building height shall be 20 feet on the oceanfront and 24 feet elsewhere except east of Highway 101 it shall be 29 feet.

*This standard is typically reviewed for conformance and applied at the time a building permit is required.*

- j. A minimum of 30% of the lot will be maintained in natural vegetation or landscaping.

*This standard is typically reviewed for conformance and applied at the time a building permit is required.*

Rockaway Beach Zoning Ordinance Section 3.080, Special Wetlands Area (SA). In the SA zone the following regulations shall apply:

- a. All activities involving construction or alteration in wetlands or aquatic areas shall be reviewed by the Oregon Division of State Lands and the US Army Corps of Engineers to determine permit applicability.

*The Application has been provided to DSL for review. The DSL response is attached to this application, outlining additional reporting and permitting necessary for this Application.*



- b. The Shorelands Siting Criteria in Section 4.041 shall be applicable to all activities in the SA zone. Nothing in the Shorelands Siting Criteria shall be interpreted to permit uses which are not otherwise allowed in (2) or (3) above.

*The Shoreland Siting Criteria applies to developments taking place within 50 feet of the shore of any lake, therefore this criteria does not apply.*

- c. Every effort shall be made to use common or community docking facilities prior to construction of an individual, single- purpose dock. Generally, there should be a maximum of one dock every 250 feet. Docks shall not include covered structures or boathouses.

*No docks are proposed in this Application, therefore this criteria does not apply.*

- d. Access to the water area through wetlands may be constructed in the form of raised walkways on pilings, posts or piers. Where the affected resource agencies (e.g. Oregon Department of Fish & Wildlife) determine the activity to have minimal environmental impacts, trails or paths consisting of clean gravel, bark chips, or other material may be placed through wetlands. Such walkways shall not be wider than eight (8) feet. Wherever possible, trails or walkways shall be constructed for the common usage of a development or group of structures.

*The Application does not propose any access to the water areas, therefore this criteria is not applicable.*

- e. Removal or control of aquatic vegetation may be permitted, where allowed by the Oregon Department of Fish and Wildlife, in order to provide angler access, or other valid purpose.

*The subject property does not provide angler access, therefore this criteria is not applicable.*

- f. Dredging shall be allowed only: (i) If a need (i.e., a substantial public benefit) is demonstrated, and; (ii) If the use or alteration does not unreasonably interfere with public trust rights, and; (iii) If no feasible alternative upland locations exist, and; (iv) If adverse impacts are minimized.

*Dredging is not proposed as part of this Application, therefore this criteria is not applicable.*

- g. When dredging is permitted, the dredging shall be the minimum necessary to accomplish the proposed use.

*Dredging is not proposed as part of this Application, therefore this criteria is not applicable.*

- h. The timing of dredging operations shall be coordinated with state and federal resource agencies, to protect aquatic and shoreland resources, and minimize interference with recreational fishing.

*Dredging is not proposed as part of this Application, therefore this criteria is not applicable.*



- i. Piling installation may be allowed only if all of the following criteria are met: (i) A substantial public benefit is demonstrated, and; (ii) The proposed use does not unreasonably interfere with public trust rights, and; (iii) Feasible alternative upland locations do not exist, and; (iv) Potential adverse impacts are minimized.

*Piling installation is not proposed as part of this Application, therefore this criteria is not applicable.*

- j. Shoreline stabilization measures shall meet the criteria of Section 4.120.

*Shoreline stabilization is not proposed as part of this Application, therefore this criteria is not applicable.*

- k. Fill may be permitted only if all of the following criteria are met: (i) If required for a water-dependent use requiring an aquatic location, or if specifically allowed in the SA zone, and; (ii) A substantial public benefit is demonstrated, and; (iii) The proposed fill does not unreasonably interfere with public trust rights, and; (iv) Feasible upland alternative locations do not exist, and; (v) Adverse impacts are minimized.

*Fill is not proposed as part of this Application, therefore this criteria is not applicable.*

- l. Fill shall cover no more area than the minimum necessary to accomplish the proposed use.

*Fill is not proposed as part of this Application, therefore this criteria is not applicable.*

- m. Projects involving fill may be approved only if the following alternatives are examined and found to be infeasible: (i) Construct some or all of the project on piling; (ii) Conduct some or all of the proposed activity on existing upland areas; (iii) Approve the project at a feasible alternative site where adverse impacts are less significant.

*Fill is not proposed as part of this Application, therefore this criteria is not applicable.*

- n. Zone Boundary Determination. At such time that a development is proposed in the vicinity of an area designated Special Area Wetlands, the City may require a site investigation to determine the exact location of the zone boundary. The site investigation shall be performed by a qualified agent such as a biologist from the U.S. Army Corps of Engineers or the Division of State Lands.

*The Application has been provided to DSL for review. The DSL response is attached to this report, outlining the requirement for an updated site investigation to be conducted by a qualified agent to determine the exact location of the zone boundary.*



Rockaway Beach Zoning Ordinance Section 3.092, Flood Hazard Overlay Zone (FHO). In the FHO zone the following regulations shall apply:

- a. All subdivision proposals shall provide engineered plans consistent with the need to minimize flood damage.

*The Application has been provided to the City Engineers for review. Comments from the City Engineers are attached this report, outlining all public improvements be constructed within the public right of way. The public right of way is located outside of the flood zone and therefore are consistent with the requirements of minimizing flood damage.*

- b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

*The Application has been provided to the City Engineers for review. Comments from the City Engineers are attached this report, outlining all public improvements be constructed within the public right of way. The public right of way is located outside of the flood zone and therefore are consistent with the requirements of minimizing flood damage.*

- c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

*The Application has been provided to the City Engineers for review. Comments from the City Engineers are attached this report, directing the Applicant to submit an acceptable storm drainage report prior to the final design of the storm drainage system.*

- d. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

*The Application is less than 50 lots and 5 acres, therefore this criteria is not applicable.*

Rockaway Beach Zoning Ordinance Section 3.132, Wetland Notification Overlay Zone. In the Wetland Notification Overlay zone the following regulations shall apply:

1. No person shall do any site preparation work in conjunction with a use permitted in the underlying zoning district in which the property is located, without first notifying the City of the proposed action. Site preparation work is defined as any grading, filling, drainage, excavation or tree removal on the subject property.

*The Applicant has not taken any site preparation action, with the exception of the approved site preparation completed during Phase 1.*



2. The required notification shall take the form of a description of the location of the property and a sketch describing the site preparation work to be undertaken.

*The Applicant has not yet applied for any site preparation work with this Application.*

3. Upon receipt of the notification, the City shall meet with the applicant and inform him/her that the subject property and proposed site preparation activities may be subject to the jurisdiction of the Department of State Lands and the US Army Corps of Engineers.

*As noted in the response from the DSL, additional permitting and review are necessary prior to site preparation work.*

4. The applicant shall contact the Department of State Lands and the US Army Corps of Engineers and seek a determination of whether the subject property and proposed site preparation activities are subject to their jurisdiction.

*The DSL has noted in their response that permitting from DSL is required and permitting from the U.S. Army Corps of Engineers may be required before site preparation work may begin.*

5. If the US Army Corps of Engineers and/or the Department of State Lands determines that it has jurisdiction, the applicant shall receive a permit from these agencies before site preparation work may begin.

*The DSL has noted in their response that permitting from DSL is required and permitting from the U.S. Army Corps of Engineers may be required before site preparation work may begin.*

6. If the Department of State Lands and/or the US Army Corps of Engineers determines that it does not have jurisdiction, the applicant may begin site preparation work upon presenting the City with a written confirmation of such a determination, and subject to applicable City requirements.

*Based upon the response received from DSL on the initial review of the Application, the DSL has determined that it does have jurisdiction, therefore this standard does not apply.*

Rockaway Beach Zoning Ordinance Section 3.140 (6), Tsunami Hazard Overlay Zone (TH). In the TH zone the following regulations shall apply:

**Evacuation Route Improvement Requirements.** Except single family dwellings on existing lots and parcels, all new development, substantial improvements and land divisions in the Tsunami Hazard Overlay Zone shall incorporate evacuation measures and improvements, including necessary vegetation management, which are consistent with and conform to the adopted Tsunami Evacuation Facilities Improvement Plan. Such measures may include:

- a. On-site improvements: (i) Improvements necessary to ensure adequate pedestrian access from the development site to evacuation routes designated in the Evacuation Route Plan in all



weather and lighting conditions. (ii) Frontage improvements to designated evacuation routes that are located on or contiguous to the proposed development site, where such improvements are identified in the Tsunami Evacuation Facilities Improvement Plan. Such improvements shall be proportional to the evacuation needs created by the proposed development.

*The Application does not address on-site evacuation route improvements. The current tsunami evacuation route is located at the termination of Riley Street, past Jackson Street. The Applicant has request the City vacate the eastern portion of Riley Street to allow for the future development of an additional lot, which would block the current evacuation route.*

- b. Off-site improvements: Improvements to portions of designated evacuation routes that are needed to serve, but are not contiguous to, the proposed development site, where such improvements are identified in the Tsunami Evacuation Facilities Improvement Plan. Such improvements shall be proportional to the evacuation needs created by the proposed development.

*The Application does not address off-site evacuation route improvements. The current tsunami evacuation route is located at the termination of Riley Street, past Jackson Street. The Applicant has request the City vacate the eastern portion of Riley Street to allow for the future development of an additional lot, which would block the current evacuation route.*

- c. Evacuation route signage consistent with the standards set forth in the Tsunami Evacuation Facilities Improvement Plan. Such signage shall be adequate to provide necessary evacuation information consistent with the proposed use of the site.

*The Application does not address tsunami evacuation route signage.*

- d. Evacuation route improvements and measures required by this subsection may include the following: (i) Improved streets and/or all-weather surface paths of sufficient width and grade to ensure pedestrian access to designated evacuation routes in all lighting conditions; (ii) Improved streets and paths shall provide and maintain horizontal clearances sufficient to prevent the obstruction of such paths from downed trees and structure failures likely to occur during a Cascadia earthquake; and (iii) Such other improvements and measures identified in the Evacuation Route Plan.

*The Application does not provide for evacuation route improvements.*

Rockaway Beach Zoning Ordinance Article 10, Planned Unit Development (PUD). The following regulations apply for PUDs:

- 1. Minimum Lot Size. Planned Unit Developments shall be established only on parcels of land which are suitable for the proposed development and are determined by the planning commission to be in keeping with the intent of this ordinance.



*In the 2008 approval of the Nedonna Wave Planned Unit Development, the Planning Commission allowed for the creation of minimum lot sizes which were lesser than the parent R-1 zone.*

2. Open Spaces. In all residential developments, or in combination residential-commercial developments, 50% of the total area should be devoted to open space. Of this area, 25% of said open space may be utilized privately by individual owners or users of the PUD; however, 75% of this area should be common or shared open space. The Planning Commission may increase or decrease the open space requirement depending on the particular site and the needs of the development. In no case should the open space be less than 40% of the site.

*The Application provides for the required open space, most of which is maintained wetlands and public roadways.*

3. Density. The density of a planned development shall not exceed the density of the parent zone, except as more restrictive regulations may be prescribed as a condition of the PUD permit. When calculating density, the gross area is used (total area including street dedications). Areas of public uses may be included in calculating allowable density.

*As noted in the Applicant's Memorandum, the with the addition of the proposed two additional lots, the density requirement is still met.*

4. Subdivision of Lot Sizes. Minimum area, width, depth, and frontage requirements for subdivision lots in a PUD may be less than the minimums set forth elsewhere in City ordinances, provided that the overall density is in conformance, and that lots conform to the approved preliminary development plan.

*As noted previously in this report, the minimum area, width, depth and frontage requirements are lesser than the parent R-1 zone. Density is in conformance with the R-1 zone.*

5. Off-Street Parking. Parking spaces shall conform to all provisions of this ordinance, except that the Planning Commission may authorize exceptions where warranted by unusual circumstances.

*This standard is typically reviewed for conformance and applied at the time a building permit is required.*

6. Signs. All signs of any type within a PUD are subject to design review and approval of the Planning Commission. They shall consider each sign on its merits based on its aesthetic impact on the area, potential traffic hazards, potential violation of property and privacy rights of adjoining property owners, and need for said sign.

*The Applicant submitted sign approval with the original PUD application. The Applicant is not seeking modification to these signs.*



7. Height Guidelines. The same restrictions shall prevail as permitted outright in the zone in which such development occurs, except that the Planning Commission may allow a variance of heights where it is determined that surrounding property will not be harmed.

*The Applicant had previously sought and been approved for variances for height for the PUD. Copies of the Variance request are included in the original application materials.*

8. Streets and Roads. Necessary streets and roads within the PUD shall be dedicated to the public and constructed to City standards or shall be private roads maintained by an owner's association and constructed to standards as determined by the Planning Commission and City Engineer.

*The City Engineer comments attached to this application direct the Applicant to construct all streets to meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications.*

9. Dedication and Maintenance of Facilities. The Planning Commission, or on appeal, the City Council may, as a condition of approval for a PUD require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated to the following uses:

- a. Recreation Facilities: The Planning Commission may require that suitable area for parks or playgrounds be set aside, improved, or permanently reserved for the owners, residents, employees or patrons of the PUD.

*No recreation facilities are proposed in the Application.*

- b. Common Area: Whenever common area is provided, the Planning Commission or City Council may require that an association of owners or tenants be created into a non-profit corporation under the laws of the State of Oregon, which shall adopt such Articles of Incorporation and By-Laws and adopt and impose such Declaration of Covenants and Restrictions on such common areas that are acceptable to the Planning Commission. Said association, if required, may undertake other functions. It shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessments levied to maintain said common areas for the purposes intended. The period of existence of such association shall not be less than 20 years, and it shall continue thereafter and until a majority vote of the members shall terminate it.

*The Applicant has provided common open space and CC&Rs included in the Application for the Planning Commission to consider.*

- c. Easements: Easements necessary to the orderly extension of public utilities may be required as a condition of approval.



*The comments provided by the City Engineer direct all public improvements to be constructed within the existing public right of way or right of way to be dedicated to the City as part of the development.*

### **C. STAFF SUMMARY**

The Applicant has requested approval of modifications to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008. The requested modifications would allow the Applicant to develop Phase 2 in two sub-phases and to create two additional lots. In addition to these modifications, the Applicant has also requested the City vacate the east stub of Riley Street to form an additional future building lot.

The Memorandum provided with the Application materials contains history of the previously approved application, reasons for the requested modifications, and responses to some of the criteria of the Rockaway Beach Zoning Ordinance.

Staff have solicited comments from other affected agencies and stakeholders, and those comments have been included in the record. Most notably, the City Engineer has identified necessary permitting and improvements to existing City sewer facilities.

In general, necessary public infrastructure improvements that are triggered by a proposed development must be provided by the developer of the project. If approved, conditions of approval related to infrastructure improvements can be attached, which must be met prior to final plat approval.

Staff have identified the substantive criteria for review of the request by the Planning Commission, and included the criteria in this report, along with comments where appropriate. However, at the public hearing any party may provide testimony addressing these criteria or other criteria the party believes is applicable to the request.

### **D. CONCLUSION**

The Planning Commission should carefully consider the request, including all oral and written testimony on record and presented at the public hearing, including comments from the City Engineer, government agencies, and other interested parties. After considering testimony as it relates to this applicable criteria, the Planning Commission will need to make a decision on the request.

If the Commission determines that the modifications to the Nedonna Wave Planned Unit Development meet the standards of the Rockaway Beach Zoning Ordinances, it can make a motion to approve the request, including a statement that generally reflects the facts and rationale relied upon to reach the decision. The motion should also direct staff to prepare findings, conclusions, and a final order to implement the decision.

A motion to deny the request should set forth the general facts and rationale for the decision and direct staff to prepare the final order.

A decision to approve or deny the request will be subject to a 15-day appeal period that will begin after written findings to support the decision have been signed by the Planning Commission Chair.



501 E First Street  
Newberg, Oregon 97132  
phone 503-554-9553  
fax 503-537-9554

June 12, 2024

Mary Johnson  
City Planner  
PO Box 5  
276 S Hwy 101  
Rockaway Beach, OR 97136

Re: Nedonna Wave PUD Phase II – City Engineer Conditions of Approval

Dear Mary,

The following conditions of approval should be included as part of the staff report for Nedonna Wave PUD Phase II.

- 1) All public improvements, not limited to sewer, water, storm and street design, and construction shall meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications.
- 2) The applicant shall submit an acceptable storm drainage report prior to the final design of the storm drainage system.
- 3) The applicant shall obtain a 1200-C permit from Oregon DEQ for the erosion control plans.
- 4) All sanitary sewer design shall obtain written approval by DEQ, including a pre-design report for the new regional pump station to serve the development.
- 5) All public underground utilities including, but not limited to, water, gravity sanitary sewer, sanitary sewer force main, and storm drainage, installed on Phase 2 or for future use by Phase 2 or have not been in use since constructed, shall be tested at the expense of the owner and accepted by the City Engineer of Record.
- 6) The following off-site improvements shall be provided by the applicant/owner:
  - a) Regional sanitary sewer pump station and related infrastructure including but not limited to the following: three-phase submersible duplex pump station with controls, davit crane, on-site generator, telemetry, lighting, and fencing. It is not clear if the proposed sanitary sewer pump station site at the corner of Riley Street and Jackson Street will be sufficient to house the necessary infrastructure improvements. Finally, the tract on which the pump station will be located is to be dedicated to City.
  - b) Sanitary sewer force main from the regional pump station to the existing White Dove pump station.
  - c) Extend the White Dove sanitary sewer force main from NW 23<sup>rd</sup> Ave to the pump station at NW 17<sup>th</sup> Ave.
  - d) All public improvements shall be constructed within existing public ROW or ROW that will be dedicated to the City as part of this development. It is our understanding the southern half of Riley Street was constructed on the neighboring property without ROW dedication or a public easement.

Additional comments are as follows, while not necessarily conditions of approval, are in regard to the proposed modification request:

- A. Per Section D103.4 of the Oregon Fire Code, a fire truck turnaround is required when access roads exceed 150-feet in length. The fire truck turnaround at the intersection of Riley Street and Jackson Street shall remain as previously approved and the ROW is not to be vacated as requested by the applicant as part of the modification request to add an additional lot. If Jackson Street is extended south in the future, ROW vacation can be looked into at that time, if a fire truck turnaround is no longer necessary depending on the future road layout.
- B. Per Section D107.1 of the Oregon Fire Code, “Developments of one- or two-family dwellings where the number of dwelling units exceeds 30 shall be provided with two separate and approved fire apparatus access roads. Exceptions:
  - a. Where there are more than 30 dwelling units on a single public or private fire apparatus access road and all dwelling units are equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1, 903.3.1.2, 903.3.1.3, access from two directions shall not be required.
  - b. The number of dwelling units on a single fire apparatus access road shall not be increased unless fire apparatus access roads will connect with future development, as determined by the fire code official.”

It appears that Beach Street is the only fire apparatus access road serving the entire Nedonna Beach area, which far exceeds 30 dwelling units. Therefore, unless all dwelling units in the Nedonna Beach area are equipped with an approved automatic sprinkler system, no additional dwelling units could be allowed per the Oregon Fire Code.

- C. Based on civil engineering drawings prepared by Morgan Civil Engineering dated 11/8/2020, proposed lot #22 and #15 do not have the minimum required 25-foot of ROW frontage required per City of Rockaway Beach subdivision ordinance Section 35(2), as only approximately 15-feet of frontage is provided at the north end of Jackson Street for lot #22 and approximately 14-feet for lot #15 along Riley Street.

Should you have any questions, please contact me.

Sincerely,  
HBH Consulting Engineers, Inc.

Andrey Chernishov, PE, CWRE  
Assistant City Engineer



## Response Page

Department of State Lands (DSL) WN# \*

WN2024-0351

## Responsible Jurisdiction

**Staff Contact**

Mary Johnson

**Jurisdiction Type**

City

**Municipality**

Rockaway Beach

**Local case file #**

PUD-24-01

**County**

Tillamook

## Activity Location

Township	Range	Section	QQ section	Tax Lot(s)
02N	10W	20	AB	10200,10400,10500

Street Address

Address Line 2

City

State / Province / Region

Postal / Zip Code

Country

Tillamook

**Latitude**

45.649567

**Longitude**

-123.934048

## Wetland/Waterway/Other Water Features



- There are/may be wetlands, waterways or other water features on the property that are subject to the State Removal-Fill Law based upon a review of wetland maps, the county soil survey and other available information.
- The county soil survey shows hydric (wet) soils on the property. Hydric soils indicate that there may be wetlands.
- This property includes a compensatory mitigation.

## Your Activity



- It appears that the proposed project **will** impact wetlands and **requires** a State Permit.

- An onsite inspection by a qualified wetland consultant is recommended prior to site development to determine if the site has wetlands or other waters that may be regulated. The determination or delineation report should be submitted to DSL for review and approval. Approved maps will have a DSL stamp with approval date and expiration date.

## Applicable Oregon Removal-Fill Permit Requirement(s)

- A state permit is required for 50 cubic yards or more of fill removal or other ground alteration in wetlands, below ordinary high water of waterways, within other waters of the state, or below highest measured tide.

## DSL Review

### Wetland Ecologist Comments

There is an expired wetland delineation WD2004-0008 for the Phase 2-3 Nedonna Wave PUD site. That delineation supported the permit for wetland fill, APP36702, approved for Phases 1-3, but is now expired, . The accompanying Compensatory Wetland Mitigation for that permit, RGL 2928, was approved as completed.

A review of best available information, including aerial imagery and LiDAR does not appear to show fill in all of the locations authorized in APP36702. APP36702 was annually renewed, which is typical for an application that has not completed its fill, until the year that the Compensatory Wetland Mitigation was approved, in 2012-2013.

A new wetland delineation, reviewed and approved by DSL, is required in order to determine if there is a change in wetland boundaries and if a wetland removal-fill permit is required. DSL recommends that this delineation be sufficiently sized to include both Phases 2 and 3. It may be renewed for another 5 years if there are no changes before it expires in 5 years after approval.

The applicant/consultant should coordinate with the DSL permitting specialist for Tillamook County prior to submitting a permit application due to the complexity of the permitting record. If incomplete fill from APP36702 is proposed for completion for Phases 2-3, Compensatory Wetland Mitigation may not be required.

**This is a preliminary jurisdictional determination and is advisory only.**

This report is for the State Removal-Fill law only. City or County permits may be required for the proposed activity.

- A Federal permit may be required by The Army Corps of Engineers: (503)808-4373

### Contact Information

- For information on permitting, use of a state-owned water, wetland determination or delineation report requirements please contact the respective DSL Aquatic Resource, Proprietary or Jurisdiction Coordinator for the site county. The current list is found at: <http://www.oregon.gov/dsl/ww/pages/wwstaff.aspx>
- The current Removal-Fill permit and/or Wetland Delineation report fee schedule is found at: <https://www.oregon.gov/dsl/WW/Documents/Removal-FillFees.pdf>

### Response Date

6/13/2024

### Response by:

Daniel Evans

### Response Phone:

503-428-8188



**CITY OF ROCKAWAY BEACH  
PLANNING COMMISSION ACTION**

**STAFF REPORT  
SUPPLEMENTAL NO. 1**

Case File #PUD-24-1  
Hearing Date: June 20, 2024

**STAFF RECOMMENDATION**

Approval of the Applicants requests to (1) develop Phase 2 in two sub-phases, instead of one phase, (2) create two lots instead of one lot at the north end of Jackson Street, numbered as lots 21 and 22 on the plans submitted with this application, and to (3) create four lots instead of three lots out of the lots numbered as 13, 14, 15, and 16 on the plans submitted with this application, with conditions as identified below; and

Denial of the Applicants request to vacate the east stub of Riley Street at Jackson Street.

In the event of an approval, staff offer the following conditions for the Commissioner's consideration:

1. Approval is based upon the submitted plan. Any substantial change in the approved plan shall be submitted to the City of Rockaway Beach as a new application for a PUD amendment.
2. The Applicant shall submit drafts of appropriate deed restrictions or protective covenants to provide for the maintenance of common areas and to assure that the objectives of the PUD shall be followed.
3. The Applicant shall record a deed restriction or other covenant applicable to each lot in the subdivision, in a form acceptable to the State of Oregon Fish and Wildlife Department, that indemnifies ODFW for any damage or inconvenience to persons, real property, or personal property caused by big game and furbearing animals.
4. The Applicant shall submit evidence that all required improvements of Section 44 of the Rockaway Beach Subdivision Ordinance have been met.
5. The Applicant shall submit evidence that the requirements for monuments and survey as identified in Section 45 and 46 of the Rockaway Beach Subdivision Ordinance have been met.
6. Within one year the Applicant shall submit a final portion plat in conformance with the approved plan and Sections 30 and 31 of the Rockaway Beach Subdivision Ordinance. The Planning Commission, upon written request by the Applicant, may grant an extension of the tentative plan approval for a period of one year. Failure to obtain a time extension or final plat approval prior to expiration of the tentative plan shall render the tentative plan approval void. Such yearly time extensions will be necessary until all phases of the development have been granted final plat approval.
7. Any utilities serving the development shall be installed underground.
8. All public underground utilities including, but not limited to, water, gravity sanitary sewer, sanitary sewer force main, and storm drainage, installed on Phase 2 or for future use by Phase 2 or have not been used since constructed, shall be tested at the expense of the Applicant and accepted by the City Engineer.



9. All stream crossings, including utilities, are to comply with fish passage requirements. The Oregon Department of Fish and Wildlife shall approve in advance any stream crossing.
10. The development shall avoid entering City designated riparian setback of 15' for McMillan Creek. If site constrains will not allow for this, the Applicant coordinate with Oregon Department of Fish and Wildlife to develop a plan to mitigate for these impacts and shall provide evidence of approval. Any development within these areas which could result in a loss of fish and wildlife habitat would require that the impact be mitigated consist with current habitat mitigation standards.
11. The Applicant shall construct all public improvements, not limited to sewer, water, storm and street design, and construction shall meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications. The cost for plan review by the City Engineer shall be the responsibility of the Applicant/Developer.
12. The Applicant shall submit an acceptable storm drainage report prior to final design of the storm drainage system, including basin map and flow rates, for review by the City Engineer.
13. The Applicant shall provide evidence that a 1200C Permit has been obtained from the Oregon Department of Environmental Quality for erosion control prior to grading and construction of the development.
14. The Applicant shall provide evidence that all sanitary sewer designs have received written approval from the Department of Environmental Quality, including a pre-design report for the new regional pump station to serve the development.
15. The Applicant shall provide the following off-site improvements:
  - a. Regional sanitary sewer pump station and related infrastructure including, but not limited to the following: three-phase submersible duplex pump station with controls, davit crane, on-site generator, telemetry, lighting, and fencing. The tract on which the pump station is to be located is to be dedicated to the City.
  - b. Sanitary sewer force main from the regional pump station to the existing White Dove pump station.
  - c. Extend the White Dove sanitary sewer force main from NW 23<sup>rd</sup> Avenue to the pump station at NW 17<sup>th</sup> Avenue.
  - d. All public improvements shall be constructed within the existing public right-of-way or right-of-way that will be dedicated to the City as part of this development.
16. The Applicant shall provide a traffic study for the development, including peak season and emergency evacuation needs, as well as the intersection of US Highway 101 and Beach Street.
17. The Applicant shall complete a wetland delineation to be reviewed and approve by the Department of State Lands to determine if there is a change in the wetland boundaries and if a wetland removal-fill permit is



required. This delineation shall be sufficiently sized to include both Phases 2 and 3. The approval from Department of States Lands must be current (no more than 2 years old).

18. The Applicant shall submit evidence that all necessary permits and approval from the U.S. Army Corps of Engineers and Oregon Department of State Lands have been obtained for impacts to wetlands in accordance with the approval plan.
19. The Applicant shall submit evidence of approval from the State Fire Marshall for all fire hydrant locations, street widths, and applicable Fire Code requirements.
20. Prior to final plat approval, the Applicant shall be responsible for providing and installing all improvements including sewer, water, street, stormwater management facilities, street lights, street name signs, and street trees in accordance with Subdivision Ordinance Section 44 entitled Improvements Required, and in accordance with the City Engineer approved plans.
21. The Applicant shall be responsible for all costs necessary for off-site public infrastructure improvements that are triggered by the proposed development.
22. The Applicant shall establish a homeowner's association for the development, and all open space within the development shall be owned and maintained by the homeowner's association. The required homeowner's association shall be responsible for any and all necessary stormwater maintenance facilities that serve the development. The required homeowner's association shall be responsible for maintaining the storm water quality tracts.



**NEDONNA WAVE  
PLANNED UNIT DEVELOPMENT  
PHASE 2**

# WHY ARE WE HERE?

In 2008, the Rockaway Beach City Council approved the Nedonna Wave Planned Unit Development (PUD), a 28-lot, phased development. The Applicant is now seeking to make modifications to previously approved PUD, and is seeking tentative plan approval for these modifications.

The City's role is to ensure that both public and private development are aligned with the standards set out in the City's guiding documents, such as the Comprehensive Plan, Zoning Ordinance and Subdivision Ordinance. The City provides a forum for public hearings and guidance to property owners to ensure compliance with City standards.



## PLANNING COMMISSION'S ROLE

The City of Rockaway Beach Planning Commission plays the role of the state-required committee for citizen involvement. As a committee, they are tasked with monitoring and encouraging public participation in planning. This committee conducts quasi-judicial and legislative public hearings on certain land use applications, such as this one.

As the decision-making body, the Planning Commission, must base its review and decision of the criteria established within the City's Ordinances. They may not ignore applicable criteria or make decisions based on factors or arguments not related to the applicable criteria.

# CASE FILE #PUD-24-1

APPLICANT:  
Nedonna Development LLC (c/o Anna Song)

AGENT FOR APPLICANT:  
Dean N. Alterman



**PROPERTY LOCATION:** The subject property is located on Kittiwake Drive north of Riley Street and south Song Street in Nedonna Beach. The property is identified as on Tillamook County Assessor's Map 2N1020AB as Tax Lots 10200, 10400, and 10500.

**LOT SIZE:** approximately 2.56 acres

**ZONING DESIGNATION:** R1 (Single Family Residential) and SA (Special Area Wetlands)

**SURROUNDING LAND USE:** Adjacent to the north is the existing Nedonna Wave Planned Unit Development Phase 1. To the east is undeveloped private land zoned R-1 (Single Family Residential Zone) and Highway 101. To the south is undeveloped private land zoned R-1 (Single Family Residential) and SA (Special Area Wetlands). To the west is White Dove Estates neighborhood, which is zoned R-1 (Single Family Residential).

**EXISTING STRUCTURES:** 1. None, except for utilities installed by the Applicant during the construction of Phase 1, for Phase 2.

**UTILITIES:** The following utilities are proposed to serve the subject property:

- Sewer: City of Rockaway Beach
- Water: City of Rockaway Beach
- Electricity: Tillamook P.U.D.

**DEVELOPMENT CONSTRAINTS:** The property contains wetlands that were delineated by a professional wetlands consultant prior to the 2008 approval. As wetlands are not stagnant, according to the Department of State Lands (DSL), the former delineation is no longer valid and expired after a period of five years. At the time of the 2008 approval, the Applicant provided a joint permit from the DSL and the U.S. Army Corps of Engineers. These permits have now expired and will need to be renewed before any disturbance or impacts to the wetlands takes place. If the request is approved, the Applicant will be required to obtain and provide copies of necessary permits from these agencies prior to initiating construction.

In addition, a portion of the subject property is located within the 100-year floodplain as identified on the Flood Insurance Rate Map Panel Number 41057C0218F.

**GENERAL DESCRIPTION OF THE PROPOSAL:** The Applicant is requesting a modification to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008. The Applicant seeks the following modifications to Phase 2 of the 2008 approval:

- (1) To develop Phase 2 in two sub-phases, instead of one phase;
- (2) To create two lots instead of one lot at the north end of Jackson Street (identified as lot 24 on the 2008 approved plan), identified as lots 21 and 22 on the plans submitted with the Application;
- (3) To create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street (identified as Lots 14, 15, and 16 on the 2008 approved plan), identified as lots 13, 14, 15 and 16 on the plan submitted with the Application; and
- (4) Provide that when the owner of the land to the south extends Jackson Street south into that property, the City will vacate the east stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.

**BACKGROUND:** In 2008, the Applicant submitted Planned Unit Development Application #SPUD-07-19 for the creation of a phased, 28-lot development, with PUD overlay.

In addition to the PUD approval, the Applicant was also granted variances, allowing for some of the homes within the PUD to be constructed over the height maximum for this area and to allow the development to be constructed without sidewalks.



Section 10.060 of the RBZO requires the applicant to file a “final plan for the entire development or, when submission in stages has been authorized, for the first unit of the PUD” within one year after the city approves a preliminary development plan. The code does not set any time limit on when the applicant must apply for subsequent units or stages of the PUD.

In this case, the city approved the preliminary development plan in early 2008. The Applicant applied for and received final approval for the first unit of the PUD within one year after it received final approval of the preliminary plan.

The Applicant recorded the plat of Nedonna Wave Phase 1 on February 2, 2009 as Plat C-573, Tillamook County Plat Records. The plat included dedications of Kittiwake Drive, Song Street, Duke Street, Riley Street, and Jackson Street. In addition to the eight numbered lots, the plat included common area as Tracts A, B, and D, and areas for potential future development as Tracts C, E, F, and G.

The Applicant suspended the project during the recession, before Nedonna Development was ready to build Phase 2, though it had constructed many of the public improvements for Phase 2 in accordance with plans that the city engineer approved on July 22, 2008.

The Applicant is now ready to plat Phase 2.

The Applicant is requesting to modify the approved final plan - to plat Phase 2 in two separate pieces.

Phase 2 would consist of the 11-lots east of Kittiwake Drive, numbered from 9 to 19 and would be taken from what is now Tract F.

Phase 3 would be the 9-lots west of Kittiwake Drive, numbered from 20 to 28. The number and location of the lots would conform to the final plan approval that the city issued in 2008.

The Applicant requests three modifications to the PUD approval as part of the Phase 2 request:

- To create two lots instead of one lot at the north end of Jackson Street (identified as lot 24 on the 2008 approved plan), identified as lots 21 and 22 on the plans submitted with the Application;
- To create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street (identified as Lots 14, 15, and 16 on the 2008 approved plan), identified as lots 13, 14, 15 and 16 on the plan submitted with the Application; and
- Provide that when the owner of the land to the south extends Jackson Street south into that property, the City will vacate the east stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.

If the City grants the three modification requests, then the total number of lots in Nedonna Wave would increase above the 28-lots originally approved, but not above the 33-lot density limit that the City identified as applicable in the 2008 PUD approval.

Since the city already issued its final approval of the final development plan under Section 10.060 and has approved the entire project as a 28-lot PUD , the only current questions are:

- Will the City allow the Applicant to plat the remaining lots in two phases instead of in one?
- Will the City allow an increase in the number of lots in Nedonna Wave from 28-lots, to 30-lots?



## AGENCY COMMENTS:

- Department of Fish and Wildlife: ODFW provided comments on the application that all stream crossings are to comply with fish passage requirements and ODFW approval. Additional comments were received supporting the City's requirement for a 15' riparian setback for McMillan Creek and offered coordinating support to develop a plan to mitigate impacts.
- Oregon Department of Transportation: ODOT was contacted for comment on the application concerning the potential need for a second connection to Highway 101. ODOT was unable to provide comment without a traffic study.

## PUBLIC TESTIMONY:

- Paul Thompson
- Karl Nulton
- Mary and Dan Enwert
- Tom Heckenberg
- Delta Holderness
- Donna Locke
- Gary Corbin
- Darrel & Diane Delong
- Danny Wihelmi
- Josh Parkinson
- Charyl Looper
- Catherine & Frank Imbrie
- Susan Sharpe
- Nedonna Beach Neighborhood Association
- Kathy Tysinger
- Lydia Anderson



# ORDINANCE STANDARDS

- Rockaway Beach Zoning Ordinance - Section 3.010 - Single Family Residential Zone (R1)
- Rockaway Beach Zoning Ordinance - Section 3.080 - Special Area Wetlands (SA)
- Rockaway Beach Zoning Ordinance - Section 3.092 - Flood Hazard Overlay Zone (FHO)
- Rockaway Beach Zoning Ordinance - Section 3.132 - Wetland Notification Overlay Zone (WO)
- Rockaway Beach Zoning Ordinance - Section 3.140(6) - Tsunami Hazard Overlay Zone (TH)
- Rockaway Beach Zoning Ordinance - Article 10 - Planned Unit Development (PUD)
- Rockaway Beach Subdivision Ordinance - Article 13



# ROCKAWAY BEACH ZONING ORDINANCE - SECTION 3.010 - SINGLE FAMILY RESIDENTIAL ZONE (R1)

*Section 3.010 outlines the standards for the R1 Zone*

- a. MINIMUM LOTS SIZE - The Applicant was approved for a PUD overlay in 2008, allowing for a development of lots lesser than the minimum lot size requirement for the R1 zone. The Applicant is seeking to create two additional lots not included in the 2008 approved plan, which are lesser than the minimum lot size requirement of the R1 zone.
- b. DENSITY - The Applicant intends to construct single-family dwellings, therefore this standard is not applicable, as it applies only to duplexes.
- c. MINIMUM LOT WIDTH - The Applicant was approved for a PUD overlay in 2008, allowing for the development of lots lesser than the minimum depth requirement for the R-1 zone. The additional lots the Applicant seeks to add to through this modification are also lesser than the minimum width requirement.

# ROCKAWAY BEACH ZONING ORDINANCE - SECTION 3.010 - SINGLE FAMILY RESIDENTIAL ZONE (R1)

*Section 3.010 outlines the standards for the R1 Zone*

- d. MINIMUM LOT DEPTH - The Applicant was approved for a PUD overlay in 2008, allowing for the development of lots lesser than the minimum depth requirement for the R-1 zone. The additional lots the Applicant seeks to add to through this modification are also lesser than the minimum depth requirement.
- e. MINIMUM FRONT YARD SETBACK - This standard is typically reviewed for conformance and applied at the time a building permit is requested. (not applicable at this time)
- f. MINIMUM SIDE YARD SETBACK - This standard is typically reviewed for conformance and applied at the time a building permit is requested (not applicable at this time)
- g. MINIMUM SIDE REAR SETBACK - This standard is typically reviewed for conformance and applied at the time a building permit is requested (not applicable at this time)
- h. LOT SETBACK EXCEPTIONS - This standard is typically reviewed for conformance and applied at the time a building permit is requested (not applicable at this time).

# ROCKAWAY BEACH ZONING ORDINANCE - SECTION 3.010 - SINGLE FAMILY RESIDENTIAL ZONE (R1)

*Section 3.010 outlines the standards for the R1 Zone*

- i. MAXIMUM BUILDING HEIGHT - This standard is typically reviewed for conformance and applied at the time a building permit is requested (not applicable at this time). **However, it should be noted that the Applicant was granted height variances in 2008, which carry with the PUD approval.**
- j. MINIMUM LOT VEGETATION - This standard is typically reviewed for conformance and applied at the time a building permit is requested (not applicable at this time)

# ROCKAWAY BEACH ZONING ORDINANCE - SECTION 3.080 - SPECIAL AREA WETLANDS (SA)

*Section 3.080 outlines the purpose and permitted uses in the SA zone*

- a. DSL & COE PERMITS - The Application was been provided to DSL for review. The DSL responded, outlining additional reporting and permitting necessary for this Application.
- b. SHORELAND SITTING CRITERIA - The Shoreland Siting Criteria applies to developments taking place within 50 feet of the shore of any lake, therefore this criteria does not apply.
- c. DOCKS - No docks are proposed in this Application, therefore this criteria does not apply.
- d. ACCESS THROUGH WETLANDS - The Application does not propose any access to the water areas, therefore this criteria is not applicable.
- e. AQUATIC VEGETATION REMOVAL - The subject property does not provide angler access, therefore this criteria is not applicable.

# ROCKAWAY BEACH ZONING ORDINANCE - SECTION 3.080 - SPECIAL AREA WETLANDS (SA)

*Section 3.080 outlines the purpose and permitted uses in the SA zone*

- f - h. DREDGING - Dredging is not proposed as part of this Application, therefore this criteria is not applicable.
- i. PILING INSTALLATION - Piling installation is not proposed as part of this Application, therefore this criteria is not applicable.
- j. SHORELINE STABILIZATION - Shoreline stabilization is not proposed as part of this Application, therefore this criteria is not applicable.
- k - m. FILL - Fill is not proposed as part of this Application, therefore this criteria is not applicable.
- n. ZONE BOUNDARY DETERMINATION - The Application has been provided to DSL for review. The DSL responded, outlining the requirement for an updated site investigation to be conducted by a qualified agent to determine the exact location of the zone boundary.

# ROCKAWAY BEACH ZONING ORDINANCE - SECTION 3.092 - FLOOD HAZARD OVERLAY ZONE (FHO)

*Section 3.092 outlines the purpose and objectives of the FHO zone*

- a. ENGINEERED PLANS TO MINIMIZE FLOOD DAMAGE - The City Engineers have outlined all public improvements be constructed within the public right of way. The public right of way is located outside of the flood zone and therefore are consistent with the requirements of minimizing flood damage.
- b. UTILITIES CONSTRUCTED TO MINIMIZE FLOOD DAMAGE - The City Engineers outlined all public improvements be constructed within the public right of way. The public right of way is located outside of the flood zone and therefore are consistent with the requirements of minimizing flood damage.
- c. DRAINAGE TO REDUCE FLOOD DAMAGE - The City Engineers recommend directing the Applicant to submit an acceptable storm drainage report prior to the final design of the storm drainage system.
- d. BASE FLOOD ELEVATION - The Application is less than 50 lots and 5 acres, therefore this criteria is not applicable.

# ROCKAWAY BEACH ZONING ORDINANCE - SECTION 3.132 - WETLAND NOTIFICATION ZONE (WO)

*Section 3.132 outlines the purpose and objectives of the WO zone*

1. SITE PREPARATION - The Applicant has not taken any site preparation action, with the exception of the approved site preparation completed during Phase 1.
2. NOTIFICATION - The Applicant has not yet applied for any site preparation work with this Application.
- 3 - 5. DSL & COE REVIEW & PERMITTING - *As noted in the response from the DSL, additional permitting and review are necessary prior to site preparation work.*
6. DSL & COE JURISDICTION - Based upon the response received from DSL on the initial review of the Application, the DSL has determined that it does have jurisdiction, therefore this standard does not apply.

# ROCKAWAY BEACH ZONING ORDINANCE - SECTION 3.140(6) - TSUNAMI HAZARD OVERLAY ZONE (TH)

*Section 3.140(6) outlines the purpose and objectives of the TH zone*

Evacuation Route Improvement Requirements. Except single family dwellings on existing lots and parcels, all new development, substantial improvements and land divisions in the Tsunami Hazard Overlay Zone shall incorporate evacuation measures and improvements, including necessary vegetation management, which are consistent with and conform to the adopted Tsunami Evacuation Facilities Improvement Plan. Such measures may include:

a. ON-SITE IMPROVEMENTS - The Application does not address on-site evacuation route improvements. The current tsunami evacuation route is located at the termination of Riley Street, past Jackson Street. The Applicant has request the City vacate the eastern portion of Riley Street to allow for the future development of an additional lot, which would block the current evacuation route.

# ROCKAWAY BEACH ZONING ORDINANCE - SECTION 3.140(6) - TSUNAMI HAZARD OVERLAY ZONE (TH)

*Section 3.140(6) outlines the purpose and objectives of the TH zone*

- b. OFF-SITE IMPROVEMENTS - The Application does not address off-site evacuation route improvements. The current tsunami evacuation route is located at the termination of Riley Street, past Jackson Street. The Applicant has request the City vacate the eastern portion of Riley Street to allow for the future development of an additional lot, which would block the current evacuation route.
- c. EVACUATION ROUTE SIGNAGE - The Application does not address tsunami evacuation route signage.
- d. EVACUATION ROUTE IMPROVEMENTS - The Application does not provide for evacuation route improvements.

# ROCKAWAY BEACH ZONING ORDINANCE - ARTICLE 10 PLANNED UNIT DEVELOPMENT (PUD)

1. MINIMUM LOT SIZE - In the 2008 approval of the Nedonna Wave Planned Unit Development, the Planning Commission allowed for the creation of minimum lot sizes which were lesser than the parent R-1 zone.
2. OPEN SPACE - The Application provides for the required open space, most of which is maintained wetlands and public roadways.
3. DENSITY - As noted in the Applicant's Memorandum, the with the addition of the proposed two additional lots, the density requirement is still met.
4. SUBDIVISION LOT SIZES - The minimum area, width, depth and frontage requirements are lesser than the parent R-1 zone. Density is in conformance with the R-1 zone.

# ROCKAWAY BEACH ZONING ORDINANCE - ARTICLE 10 PLANNED UNIT DEVELOPMENT (PUD)

5. OFF-STREET PARKING - This standard is typically reviewed for conformance and applied at the time a building permit is required.
6. SIGNS - The Applicant submitted sign approval with the original PUD application. The Applicant is not seeking modification to these signs.
7. HEIGHT GUIDELINES - The Applicant had previously sought and been approved for variances for height for the PUD. Copies of the Variance request are included in the original application materials.
8. STREETS & ROADS - The City Engineer comments attached to this application direct the Applicant to construct all streets to meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications.
- 9a. RECREATION FACILITIES - No recreation facilities are proposed in the Application.

# ROCKAWAY BEACH ZONING ORDINANCE - ARTICLE 10 PLANNED UNIT DEVELOPMENT (PUD)

9b. COMMON AREA - The Applicant has provided common open space and CC&Rs included in the Application for the Planning Commission to consider.

9c. EASEMENTS - The comments provided by the City Engineer direct all public improvements to be constructed within the existing public right of way or right of way to be dedicated to the City as part of the development.

# STAFF SUMMARY

The Applicant has requested approval of modifications to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008. The requested modifications would allow the Applicant to develop Phase 2 in two sub-phases and to create two additional lots. In addition to these modifications, the Applicant has also requested the City vacate the east stub of Riley Street to form an additional future building lot.

Staff have solicited comments from other affected agencies and stakeholders, and those comments have been included in the record. Most notably, the City Engineer has identified several necessary improvements to existing City facilities including water and sewer services, stressing the importance of providing adequate water supply to meet fire flow requirements.

In general, necessary public infrastructure improvements that are triggered by a proposed development must be provided by the developer of the project. If approved, conditions of approval related to infrastructure improvements can be attached, which must be met prior to final plat approval.

Staff have identified the substantive criteria for review of the request by the Planning Commission, and included the criteria in this report, along with comments where appropriate. However, at the public hearing any party may provide testimony addressing these criteria or other criteria the party believes is applicable to the request.

# CONCLUSION

The Planning Commission should carefully consider the request, including all oral and written testimony on record and presented at the public hearing, including comments from the City Engineer, government agencies, and other interested parties. After considering testimony as it relates to this applicable criteria, the Planning Commission will need to make a decision on the request.

If the Commission determines that the modifications to the Nedonna Wave Planned Unit Development meet the standards of the Rockaway Beach Zoning Ordinances, it can make a motion to approve the request, including a statement that generally reflects the facts and rationale relied upon to reach the decision. The motion should also direct staff to prepare findings, conclusions, and a final order to implement the decision.

A motion to deny the request should set forth the general facts and rationale for the decision and direct staff to prepare the final order.

A decision to approve or deny the request will be subject to a 15-day appeal period that will begin after written findings to support the decision have been signed by the Planning Commission Chair.

## STAFF RECOMMENDATION

Approval of the Applicants requests to (1) develop Phase 2 in two sub-phases, instead of one phase, (2) create two lots instead of one lot at the north end of Jackson Street, numbered as lots 21 and 22 on the plans submitted with this application, and to (3) create four lots instead of three lots out of the lots numbered as 13, 14, 15, and 16 on the plans submitted with this application, with conditions as identified below; and

Denial of the Applicants request to vacate the east stub of Riley Street at Jackson Street.

In the event of an approval, staff offer the following conditions for the Commissioner's consideration:

- Approval is based upon the submitted plan. Any substantial change in the approved plan shall be submitted to the City of Rockaway Beach as a new application for a PUD amendment.
- The Applicant shall submit drafts of appropriate deed restrictions or protective covenants to provide for the maintenance of common areas and to assure that the objectives of the PUD shall be followed.
- The Applicant shall record a deed restriction or other covenant applicable to each lot in the subdivision, in a form acceptable to the State of Oregon Fish and Wildlife Department, that indemnifies ODFW for any damage or inconvenience to persons, real property, or personal property caused by big game and furbearing animals.

## STAFF RECOMMENDATION

- The Applicant shall submit evidence that all required improvements of Section 44 of the Rockaway Beach Subdivision Ordinance have been met.
- The Applicant shall submit evidence that the requirements for monuments and survey as identified in Section 45 and 46 of the Rockaway Beach Subdivision Ordinance have been met.
- Within one year the Applicant shall submit a final portion plat in conformance with the approved plan and Sections 30 and 31 of the Rockaway Beach Subdivision Ordinance. The Planning Commission, upon written request by the Applicant, may grant an extension of the tentative plan approval for a period of one year. Failure to obtain a time extension or final plat approval prior to expiration of the tentative plan shall render the tentative plan approval void. Such yearly time extensions will be necessary until all phases of the development have been granted final plat approval.
- Any utilities serving the development shall be installed underground.
- All public underground utilities including, but not limited to, water, gravity sanitary sewer, sanitary sewer force main, and storm drainage, installed on Phase 2 or for future use by Phase 2 or have not been used since constructed, shall be tested at the expense of the Applicant and accepted by the City Engineer.

## STAFF RECOMMENDATION

- All stream crossings, including utilities, are to comply with fish passage requirements. The Oregon Department of Fish and Wildlife shall approve in advance any stream crossing.
- The development shall avoid entering City designated riparian setback of 15' for McMillan Creek. If site constrains will not allow for this, the Applicant coordinate with Oregon Department of Fish and Wildlife to develop a plan to mitigate for these impacts and shall provide evidence of approval. Any development within these areas which could result in a loss of fish and wildlife habitat would require that the impact be mitigated consist with current habitat mitigation standards.
- The Applicant shall construct all public improvements, not limited to sewer, water, storm and street design, and construction shall meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications. The cost for plan review by the City Engineer shall be the responsibility of the Applicant/Developer.
- The Applicant shall submit an acceptable storm drainage report prior to final design of the storm drainage system, including basin map and flow rates, for review by the City Engineer.
- The Applicant shall provide evidence that a 1200C Permit has been obtained from the Oregon Department of Environmental Quality for erosion control prior to grading and construction of the development.

## STAFF RECOMMENDATION

- The Applicant shall provide evidence that all sanitary sewer designs have received written approval from the Department of Environmental Quality, including a pre-design report for the new regional pump station to serve the development.
- The Applicant shall provide the following off-site improvements:
  - Regional sanitary sewer pump station and related infrastructure including, but not limited to the following: three-phase submersible duplex pump station with controls, davit crane, on-site generator, telemetry, lighting, and fencing. The tract on which the pump station is to be located is to be dedicated to the City.
  - Sanitary sewer force main from the regional pump station to the existing White Dove pump station.
  - Extend the White Dove sanitary sewer force main from NW 23rd Avenue to the pump station at NW 17th Avenue.
  - All public improvements shall be constructed within the existing public right-of-way or right-of-way that will be dedicated to the City as part of this development

## STAFF RECOMMENDATION

- The Applicant shall provide a traffic study for the development, including peak season and emergency evacuation needs, as well as the intersection of US Highway 101 and Beach Street.
- The Applicant shall complete a wetland delineation to be reviewed and approved by the Department of State Lands to determine if there is a change in the wetland boundaries and if a wetland removal-fill permit is required. This delineation shall be sufficiently sized to include both Phases 2 and 3. The approval from Department of States Lands must be current (no more than 2 years old).
- The Applicant shall submit evidence that all necessary permits and approval from the U.S. Army Corps of Engineers and Oregon Department of State Lands have been obtained for impacts to wetlands in accordance with the approval plan.
- The Applicant shall submit evidence of approval from the State Fire Marshall for all fire hydrant locations, street widths, and applicable Fire Code requirements.
- Prior to final plat approval, the Applicant shall be responsible for providing and installing all improvements including sewer, water, street, stormwater management facilities, street lights, street name signs, and street trees in accordance with Subdivision Ordinance Section 44 entitled Improvements Required, and in accordance with the City Engineer approved plans.

## STAFF RECOMMENDATION

- The Applicant shall be responsible for all costs necessary for off-site public infrastructure improvements that are triggered by the proposed development.
- The Applicant shall establish a homeowner's association for the development, and all open space within the development shall be owned and maintained by the homeowner's association. The required homeowner's association shall be responsible for any and all necessary stormwater maintenance facilities that serve the development. The required homeowner's association shall be responsible for maintaining the storm water quality tracts.