

**PUBLIC TESTIMONY
SUBMITTED FOR
NOVEMBER 20, 2024
CITY COUNCIL HEARING
Land Use Appeal # 24-1
Nedonna Wave Planned Unit
Development - Phase 2**

(Received as of 12:00 pm on 11/13/2024)

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OCT 16 '24 11:25AM

October 2, 2024

Rockaway Beach Planning Department
P.O. Box 5
Rockaway Beach, OR 97136

RE: August 1, 2024 decision on Planned Unit Development Application #24-1

I am writing in response to the Rockaway Beach Planning Department's August 1, 2024 decision to revive a 16 year old approval, conditioned on the basis that "the developer shall complete the improvements within one year of tentative plan approval unless an extension is granted by the City to complete improvements." The deadline passed in 2009 without improvements.

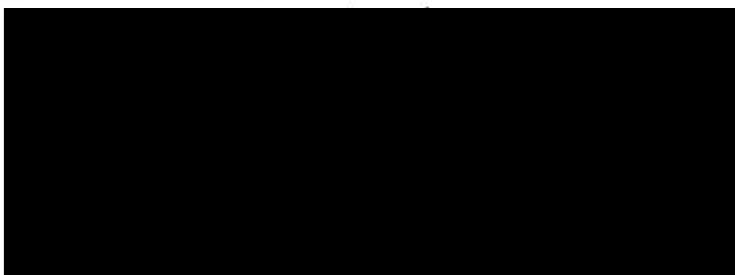
Since 2009, I have walked in the neighborhood on numerous occasions with muck boots on. As the planning department notes, "wetlands are not stagnant." This location has not just special wetlands zoning, it is in the tsunami zone, 100 year floodplain, and is in close proximity to the holey jetty. The wetlands operate as the lungs of an area. Paving will just create more flooding and more risk to people trying to get out in an emergency.

Yet in case of flood or other emergency, there is only one vehicle exit. Locals are aware of these hazards and take precautions, but VRBO visitors have no idea what they are in for, and most of these homes will end up being vacation rentals, filled like the others on holidays, but empty much of the remaining time. Some of us have practiced evacuations hiking up the trail at the north end of the development, but surprisingly it sounds like that exit route might be lost with this Phase 2 plan new special variance request to vacate the east stub of Riley Street.

These wetlands are also home to many species meant to be protected by the city's Special Area Wetlands Zone (SA), the purpose of which is to "conserve significant freshwater wetlands and the shoreland and aquatic environment of Rockaway Beach's lakes." Nedonna Marsh and McMillian Creek provide habitat for over 93 identified species of birds and a range of other wildlife. The creek flows right past the proposed development.

While I live in Garibaldi, work for Oregon Shores, and don't have standing as a Rockaway resident, I speak up when I hear a safety issue that will impact my neighbors. The applicant wants to revive a plan, create additional lots, vacate land, and ignore lapsed deadlines by creating more "phases" of a project. There are plenty of reasons to deny the requests of Nedonna Development LLC and it is the right thing to do. Thank you for your consideration of these concerns.

Denise Harrington
PO Box [REDACTED]
Garibaldi, OR 97118
[REDACTED]



Kathie Raisler

██████ White Dove Ave

Rockaway Beach Or 97136

Rockaway Beach City Council

Dear Members of the City Council,

I am writing to formally express my opposition to the proposed Nedonna Wave development project. While I understand the importance of new housing initiatives, I am deeply concerned that this development will have adverse impacts on public safety, neighborhood livability, and environmental sustainability, especially given the context of recent regulatory requirements and community needs. I also am concerned that this development falls outside of the applicant's argument regarding ORS 92.040(3). By my math this development proposal is now 16 years outside of the original LUBA approval process.

Public Safety and Secondary Egress

As highlighted in Land Use Board of Appeals (LUBA) case 2008-064, there are critical safety concerns related to the absence of a secondary egress point for public safety purposes. This omission is particularly troubling given the reliance of local emergency services on prompt access, which will further be strained by increased residential density. Without this critical secondary access, there is a heightened risk of compromised emergency response times during incidents, such as fires, floods, or other emergencies. Enforcement of these regulations by the State Fire Marshall is essential to avoid potential loss of life or property.

Strain on Local Emergency Services

The increased residential density that the Nedonna Wave development would bring is likely to further strain local volunteer emergency services. As we know, our community's emergency services are already under pressure, and the addition of many new residences in a concentrated area will only exacerbate the problem. Local infrastructure and emergency response capacities should be carefully evaluated before approval of such developments.

Parking and Neighborhood Livability

Another issue associated with this development is parking. With small lot sizes, the availability of adequate parking spaces is in question, and this will only impact day-to-day livability of the neighborhood but could also impede emergency vehicle access. If residents and visitors are forced to park on narrow streets, it could create a hazardous situation in which fire trucks or ambulances are unable to navigate effectively. This poses an additional treat to public safety.

Environmental Concerns and Stormwater Management

Significant environmental changes have evolved over time, and they necessitate updated considerations for stormwater management and flood hazards. According to Article, Section 41 of the Rockaway Beach Zoning Ordinance (RBZO), developments in areas susceptible to flooding must meet stringent requirements. As storm patterns become more severe and unpredictable, it is essential that the potential impact of this development on stormwater management and the surrounding environment be re-evaluated with the most current data and guidelines. The current proposal does not appear to fully address these evolving challenges, which could lead to increased flood risks for nearby properties.

Conclusion

In conclusion, I urge the City Council to reconsider the approval of the Nedonna Wave development. The absence of a secondary egress point, the increased strain on emergency services, parking challenges, and significant environmental concerns make this development untenable in its current form. I ask that you prioritize the safety, livability, and sustainability of our community by either requiring major modifications to the proposal or denying the project all together.

Sincerely,

Kathie Raisler

From: Selma Annala <[REDACTED]>
Sent: Monday, October 7, 2024 5:57 PM
To: Melissa Thompson
Subject: Nedonna Beach Development

My husband and I have owned a home in Nedonna Beach for over 30 years. We were present when White Dove Estates was built and were shocked at the complete disregard for the environmental protections which were in place at the time. Macmillan Creek was negatively impacted by the construction at the time and hasn't recovered to this day.

The current planned development is once again impacting a wetland area which should be protected not mitigated as was done with White Dove.

We also have the issue of one point of entry and exit to our neighborhood off of 101 which will be negatively impacted by additional housing.

Living on Nedonna Ave we are subject daily to drivers speeding making our neighborhood a dangerous environment for the many walkers, bikers and children who are on the streets.

The number of rental homes which we were assured by the county would be limited has appeared to increase impacting the livability of our neighborhood.

We don't deserve another influx of homes which will negatively impact our community and environment.

Sincerely,

Mike Kinne and Selma Annala

Sent from my iPhone



"Every species is a masterpiece, exquisitely adapted to the particular environment in which it has survived. Who are we to destroy or even diminish biodiversity?" E.O. Wilson, Biologist

Albert LePage, [REDACTED] Eugene, OR 97405

October 10th, 2024

Rockaway Beach Planning Department
P.O. Box 5
Rockaway Beach, OR 97136

RE: Opposition to Nedonna Wave Planned Unit Development #Appeal-24-1

Respectfully:

I am writing to express my opposition to the proposed Nedonna Wave Planned Unit Development (PUD) and to support the appeal filed by the Oregon Shores Conservation Coalition.

The proposed development poses apparent risks to the community and environment, particularly in relation to wetlands preservation and groundwater protection.

1. Violation of Wetlands Protection Regulations

- The proposed PUD is located within a Special Area Wetlands Zone as defined by the Rockaway Beach Zoning Ordinance (RBZO) 3.080, which explicitly prohibits residential development in these sensitive areas. This regulation is crucial for conserving significant freshwater wetlands and protecting the shoreland and aquatic environments that are vital for local wildlife, including resident beavers and other species dependent on these habitats.

2. Groundwater Protection Concerns

- The entire Nedonna Beach neighborhood is designated as a groundwater drinking water protected area. The groundwater wells used by the City as a secondary drinking water source are situated directly beneath this neighborhood. Any additional development could lead to contamination of these wells, jeopardizing public health and safety. The potential for increased impervious surfaces will exacerbate flooding risks and further threaten our already vulnerable water supply.



Riparian setbacks protect the natural areas along rivers, streams, and wetlands, from construction and other damaging activities.

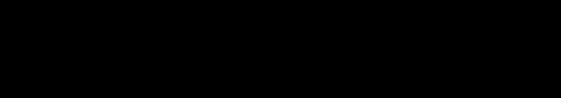
3. Inadequate Consideration of Legal Issues by Planning Commission

- The Planning Commission's approval of this development did not adequately address critical legal concerns raised in the appeal. Specifically, RBZO 4.150 mandates that the City enforce its riparian setback for McMillan Creek pre-approval. The failure to uphold these regulations undermines community trust in local governance and sets a dangerous precedent for future developments.

In conclusion, I urge you to consider these critical points as you deliberate on this matter. The **potential environmental impacts and risks to the community drinking water supply must take precedence over development interests.**

Thank you for your attention to this urgent issue.

Respectfully,


Albert J LePage, M. Ed. Science, B.S. Biology
Member, *Society for Conservation Biology*

From: Karen Small <[REDACTED]>

Sent: Tuesday, October 8, 2024 6:24 PM

To: City Hall <cityhall@corb.us>

Subject: appeal 24-1

Time to build up the hill.

The beautiful habitat that is now part of the song (Development Nedonna Wave PUD-24) filters water as it flows down the hill and feeds Mc Millan creek. Septic systems and wells dot the area. The pacific ocean is right there.

We didn't know when the current houses were built that in a few decades the sea level will be higher and land will begin where the hill begins. If we were intelligent creatures we would be dismantling the current structures or moving them up the hill. As the water rises pollution from sea level structures will become part of the ocean.

At the very least we should do no more development in this area. Let's establish it as the sacred natural habitat which it is.

Karen LaGrave Small

Mother, grandmother

PO Box [REDACTED]

Manzanita, OR

[REDACTED]

Appeal-24-1

Dear Rockaway Beach City Council:

As a concerned community member and visitor, I support the appeal of the Nedonna Wave Planned Unit Development (PUD-24-1) for the following reasons:

- The aquifer at Nedonna Beach, is part of a groundwater system that supplies fresh water to the city. It is vital for the community's water supply, and its management is key to ensuring a reliable and safe source of water for residents. Development could lead to pollution and over extraction of wells needed for the city's water system.
- These wells are particularly susceptible to adverse effects from nearby septic systems of varying ages, as well as surface activities such as fertilizing and pesticide application for yard maintenance. Moreover, their proximity to the ocean has resulted in noticeable saltwater intrusion, as indicated by elevated sodium levels in water samples from the wells. Any further development is likely to intensify these negative impacts.
- Much of the proposed development is now in the city's Special Area Wetlands Zone (SA), the purpose of which is to "conserve significant freshwater wetlands and the shoreland and aquatic environment of Rockaway Beach's lakes."
- At risk are wetlands and the health of McMillan Creek, which flows past the area to be developed, and provides habitat for a range of wildlife including river otters, coyotes, beavers, deer and many species of birds.
- There are also risks to the community. Emergency evacuation via the one road outlet for the area is currently questionable as to effectiveness and safety. Adding more homes to the area, increasing the number of people needing to evacuate in the case of an emergency, would be highly irresponsible.
- The area is already at risk of flooding, and adding more impervious surface would make this worse. For comparison, the ongoing filling and development in the south Rockaway Beach area of Washington Street has resulted in significant flooding issues. The existing neighborhood in Nedonna Beach relies on the flood mitigation properties of the wetlands, which must be preserved and not filled or developed, as was done in the Washington Street area.
- This neighborhood is bordered both by the ocean and the Nehalem River Bay and Jetty and has flooded from high tides and high river levels. McMillan Creek has flooded the banks numerous times in the last ten years. This creek has sometimes flooded a parallel street David, over 100 feet from banks.
- State law requires the project to be reviewed under current regulatory standards. ORS 92.040 provides a temporary safe harbor for developers, while also making clear that all subsequent stages of subdivision development must be reviewed for compliance with current local regulations when more than 10 years has passed since the initial land use decision. The statute sets a ten-year time limit before approval of a Planned Unit Development (PUD) expires, after which any further development must be approved under a new application, based on contemporary

please see note on reverse →

OCT 22 '24 10:07AM

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NA

standards and regulations. Thus, the original 2008 approval of the plan for this development has expired.



- This neighborhood faces several significant fire hazards, such as inadequately maintained fire pits, beach fires positioned too close to driftwood, highly combustible dune grass, the wooded area south of the jetty, and the use of illegal fireworks on the Fourth of July. In the event of a major fire, the limited access points—only one entrance and exit—would severely hinder evacuation efforts. Adding more dense housing in this area would be highly irresponsible.
- This is about developers making money at the expense of residents, who are already concerned about water and wetlands.

Considering all of this, I sincerely hope you will choose to reject the proposed Planned Unit Development in order to protect these vital wetlands. This decision will help safeguard our community's safety, fresh water supply, and natural resources, for ourselves and future generations.

Thank you,

Jane Anderson

Name

P.O. Box [REDACTED]

Caribaldi, OR

City, Or

[REDACTED]
Email address [REDACTED]

Wetlands are one of our best defenses against the threat of wild fires.

I'm not a resident of Rockaway Beach, but I am here often to visit friends and participate in tourist-related events and eateries. I sincerely hope that the city will see this proposed development as a serious mistake and an unnecessary burden on the city's current residents. Thank you, [REDACTED]

From: Kate Crump! <[REDACTED]>
Sent: Tuesday, November 5, 2024 10:07 AM
To: Melissa Thompson
Cc: Nancy Webster
Subject: file number #Appeal-24-1 and Nedonna Wave PUD Application

Dear City Recorder Melissa Thompson,
My email is in regards to file number #Appeal-24-1 and Nedonna Wave PUD Application. As a landowner in the Nedonna Beach neighborhood I highly disagree with the Rockaway Beach Planning Commission approving the Nedonna Beach Development LLC's proposed second phase of a planned unit development (PUD).

This development, as proposed, would not be allowed under Rockaway Beach's current regulations. Much of the proposed development is now in the city's Special Area Wetlands Zone (SA), the purpose of which is to "conserve significant freshwater wetlands and the shoreland and aquatic environment of Rockaway Beach's lakes." Residential development is not allowed in the SA zone in the city's current plan. At risk are wetlands and the health of McMillan Creek, which flows past the area to be developed and provides habitat for a range of wildlife.

As a resident, I have used this area consistently and witnessed salmon, and much wildlife utilizing the area. In a coastal environment where estuaries are more and more important it is a disservice to our future to allow this development. I support the appeal of this approval done by the Commission and believe the Commission has done so without regards to the opinions of the public.

Sincerely,
Kate and Justin Crump
[REDACTED] Geneva Ave Rockaway Beach, OR 97136
[REDACTED]
[REDACTED]@m

Kate Crump, she/her



To: Rockaway Beach Mayor and City Council,

Re: PUD-24-1

While the Planning Commission was tasked with determining the outcome of the modification to this subdivision, my neighbors and I assert that the modification should not have been approved, as the original subdivision application is over 10 years old, outdated, and non-compliant with the requirements of ORS 92.040.

In a recent Planning Commission Staff Report, it was stated: “After consultation with the City’s legal counsel, no direct case law or authority could be found to support the claim that a PUD/subdivision approval cannot exceed 10 years. Instead, the case law suggests that ORS 92.040(3) pertains to the standards applicable to a PUD/subdivision approval, not the approval itself.”

This interpretation, however, underscores the very issue at hand. Any subsequent building cannot proceed under outdated 2008 local standards, which have undoubtedly evolved since then. While ORS 92.040(2) permits developers to apply more current regulations if they choose, this option is likely to be exercised only when favorable to the developer. Furthermore, this advantage is limited to a 10-year period as prescribed by ORS 92.040(3) and local governments retain the discretion to shorten this period.

To provide some historical context, prior to 1995, developers in Oregon did not have protections from local government rule changes that occurred during the course of their developments. These mid-stream regulatory changes often led to significant delays, loss of land, and substantial financial losses. Furthermore, land developers advocated for these changes. In response, subsections (2) and (3) of ORS 92.040 were added to address these concerns.

While the law provides protections to developers from being subjected to new regulations enacted after the initial approval of a subdivision, the legislature clearly recognized the need for a reasonable limitation on this protection. Accordingly, this safeguard is not indefinite but is clearly capped at a 10-year period under state law, ensuring that developers do not have carte blanche to develop under outdated regulations indefinitely.

It is reasonable to assert that most residential projects are completed within a 10-year timeframe. If a project extends beyond that period, the developer assumes the inherent risks associated with prolonged timelines.

Given that more than 10 years have passed since the initial approval of this subdivision, it is essential to ensure that the developer is held to the most current standards and regulations. The public must have confidence that the developer will comply with all laws currently in effect. Reliance on the developer’s assurances or the city planning staff’s oversight is insufficient to guarantee full compliance with the law.

Therefore, the only appropriate and legally sound course of action is for the developer to submit a new application, duly authorized by the City, which conforms to the latest standards and regulations, including but not limited to those governing water safety, wetland protection, wildlife, street safety, and fire and tsunami evacuation measures. A new, authorized application is the only means to ensure full compliance with all applicable laws and to provide a solid legal foundation for addressing any potential violations by the developer if challenged in court.

Thank you for your time,

Delta Holderness

[REDACTED]

Rockaway Beach, OR 97136