



**BEFORE THE CITY COUNCIL
OF THE CITY OF ROCKAWAY BEACH**

Appellant: Oregon Shores Conservation Coalition)	FINDINGS, CONCLUSION AND FINAL ORDER
)	Case File: Appeal #24-1
Applicant: Nedonna Development, LLC)	Hearing Date: November 20, 2024

NATURE OF THE APPLICATION:

In 2008, the City of Rockaway Beach approved Nedonna Development LLC’s application #SPUD-07-19 for the creation of a phased, 28-lot development, with Planned Unit Development overlay. The City approved the preliminary development plan in early 2008. The Applicant applied for and received final approval for the first phase of the Planned Unit Development within one-year after receiving final approval of the preliminary plan. The Applicant recorded the plat of Nedonna Wave Phase 1 on February 2, 2009 (Plat C-573, Tillamook County Plat Records).

In 2024, the Applicant submitted application #PUD-24-1 to plat Nedonna Wave Phase 2 and requesting modifications to the approved final plan, as follows:

1. To plat Phase 2 as two separate sub-phases – Phase 2 and Phase 3. 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 20 to 28.
2. To create two lots instead of one lot at the north end of Jackson Street, 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 13, 14, 15, and 16 on the plans submitted with the application.
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 Riely 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 public hearing was held before the Planning Commission on June 20, 2024 to consider the application. During the public hearing, the Applicant withdrew the request regarding the vacation of the East stub of Riley Street. Following the public hearing, the Planning Commission denied the request to plat Phase 2 as two separate sub-phases and approved the Applicant's request for the creation of the additional lots. Notice of the Planning Commission Decision was issued on August 1, 2024 and provided to all parties of record. The Planning Commission's August 1, 2024 Notice of Decision is attached hereto as **Exhibit A**.

On August 14, 2024, the City of Rockaway Beach received an appeal of the Planning Commission decision filed by Oregon Shore Conservation Coalition. The Appellant challenged the Planning Commission's decision on the following issues:

1. The original 2008 approval of the plan for this development has expired.
2. ORS 92.040 requires the Applicant to resubmit its initial application for this development.
3. RBZO 3.080 prohibits residential development in a Special Area Wetlands Zone.
4. RBZO 3.142 requires the Applicant develop evacuation measures and improvements.
5. RBZO 4.150 requires the City to enforce its riparian setback for McMillan Creek preapproval.
6. The Planning Commission failed to adequately address each of these legal concerns.

The appeal filed by Oregon Shores Conservation Coalition is attached hereto as **Exhibit B**.

REPORT OF FACTS:

The following is a summary of the facts and testimony found to be relevant to this decision:

1. City staff received an appeal filed by Oregon Shores Conservation Coalition on August 14, 2024, challenging the Planning Commission's decision on land use application #PUD-24-1, on the following items:
 - The original 2008 approval of the plan for this development has expired.



- ORS 92.040 requires the Applicant to resubmit its initial application for this development.
 - RBZO 3.080 prohibits residential development in a Special Area Wetlands Zone.
 - RBZO 3.142 requires the Applicant develop evacuation measures and improvements.
 - RBZO 4.150 requires the City to enforce its riparian setback for McMillan Creek preapproval.
 - The Planning Commission failed to adequately address each of these legal concerns.
2. On September 11, 2024, the City Council determined that the scope of the review on the appeal would be limited to the presentation of additional evidence regarding the issues and criteria raised in the appeal.
 3. A public hearing was held before the Rockaway Beach City Council on November 20, 2024 and notice was provided to the public. All interested parties were given an opportunity to attend the public hearing and to present written and oral testimony.
 4. At the public hearing:
 - Staff presented their written report summarizing background of application #PUD-24-1, Planning Commission decision, scope of review, appeal criteria, staff findings and staff recommendations on the appeal. The Staff report and presentations are attached hereto as **Exhibit C** and **Exhibit D**.
 - Dean Alterman, agent for the Applicant, concurred with the staff presentation and requested the appeal be denied. Mr. Alterman explained the 10-year rule that is an issue of the appeal, has been misinterpreted by the Appellant and that the 2008 approval is still valid. Mr. Alterman presented additional testimony regarding proposed evacuation measures to be made to lands owned by Nedonna Development, LLC. The Applicant's additional testimony regarding evacuation measures and improvements is attached hereto as **Exhibit E**.



- Alexandria Dolezal, attorney representing Appellant, Oregon Shores Conservation Coalition, presented arguments to support the appeal criteria. The Appellant's presentation is attached hereto as **Exhibit F**. Ms. Dolezal explained that Appellant believes that the original approval from 2008 has lapsed, and the developer must resubmit the application for reconsideration under ORS 92.040. Ms. Dolezal stated that the Planning Commission failed to find that the proposal is consistent with the Rockaway Beach Zoning Ordinance regarding Special Area Wetlands, Tsunami Hazard Overlay and riparian setbacks to McMillan Creek. Ms. Dolezal urged the City Council to approve the appeal and overturn the Planning Commission's decision.

- Written public testimony in support of the appeal was received from Denise Harrington, Kathie Raisler, Mike Kinne and Selma Annala, Albert LePage, Karen LeGrave Small, Jane Anderson, Kate and Justin Crump, Delta Holderness, Joel Bradach, Riley Bradach, J. Hooker, Ernie Niemi, Elaine Thompson, Mark Overmeyer-Velazquez, Rebecca Overmyer-Velazquez, Jeff Yandle, Molly Moran-Yandle, Lucile W. Brook, Danny J. Wilhelmi, Daniel Howlett, Jeff Johns, Bonita Lane, Cody Newton, Amanda Newton, Jordanna Hertz, Seth Thompson, Suzanne Thompson, Matthew Caldwell, Susan Norris, Kate Sterry, Jeff and Bonita Lane, Carolyn Kinsley, April Clark, Amanda Newton, and John Morris.

- Oral public testimony in support of the appeal was received as follows:
 - Nancy Webster testified that the development is illegal. Ms. Webster stated she saw manholes at the Nedonna Wave Phase 2 property, but not significant utilities. She expressed concerns about open utility holes. Ms. Webster stated that plants in the wetland were mowed down. She expressed concerns about increased flooding in wetlands and risks to salmon.

 - Delta Holderness expressed concerns that over 10 years had passed and stated the Developer should be held to current standards and should submit a new application. Ms. Holderness expressed concerns about increased traffic, water safety, fire and tsunami evacuation, and flooding. She commented that the pump station was not completed and that streets are now wetlands. Ms. Holderness requested information as to why the new FEMA regulations did not apply in the area.



- Gary Corbin testified that the original application expired 6 years ago, 10 years after the original approval. Mr. Corbin stated that the case law does not establish precedent to give exception to that 10-year rule. Mr. Corbin expressed concerns that Jackson Street is a wetland. He further stated that Federal law prohibits disturbing the three pairs of nesting eagles that reside in the wetlands.
 - Jeff Yandle commented that it has been 16 years since approval for the development was given, and it reflects poorly on city staff. Mr. Yandle stated that Kittiwake Street was on the FEMA map, and it is wetlands. He expressed concern that approving the project was risky.
 - Arianna Staruch concurred with previous statements. Ms. Staruch expressed concerns about when the wetland assessment was completed, commenting that the wetland had changed, and that McMillan Creek had expanded. She cautioned that the development would increase flooding risk.
 - Valerie Campbell commented that it was clearly an expired approval, clearly wetlands area, and that McMillan Creek has expanded. Ms. Campbell expressed interest in seeing the wetlands overlay.
 - Janet Tashima stated she had reviewed county and national wetlands maps, and the area is a wetland. Ms. Tashima commented that adding fill doesn't change it from being a wetland. She referred the Council to her submitted written testimony and asked them to review the maps she provided.
 - Lyndsey Matteson stated that Nedonna Beach lies on top of an aquifer, and that aquifer provides the backup water system for the city of Rockway Beach. Ms. Matteson expressed concerns that the aquifer is very susceptible to pollution and saltwater intrusion, and the development could pollute the aquifer and would tax the water system.
5. No oral or written testimony was received that was neutral to or in opposition to the appeal.
6. After receiving public comments, the City Council asked questions of Staff, the Applicant and the Appellant as follows:



- Councilor Franken inquired if a new wetland delineation was required as a condition of approval before development proceeds. Planner Johnson confirmed that it was a condition. She further added that she spoke with the Department of State Lands, and the Applicant has been working with them on a new wetland study, which she believed was complete and in conformance with the original approval.
- Councilor Franken inquired about meeting requirements regarding fire apparatus access. Planner Johnson explained that there are alternatives allowed by the State Fire Code, such as fire suppression measures. Planner Johnson stated that the City required that the state Fire Marshal sign off on the plans as a condition of approval.
- Councilor McGinnis inquired whether the 15-foot setback for McMillan Creek had been clearly delineated. Planner Johnson explained that the maps provided by the Applicant appear to show the building footprint outside of the riparian zone and building within the setback would not be permitted. Planner Johnson stated that this would be further reviewed at the time of building application submission and that the Applicant would be required to submit a survey showing the high-water mark and setback from McMillan Creek.
- Councilor Martine questioned if the new FEMA requirements would impact this development. Planner Johnson explained that FEMA's requirements only impact the Special Flood Hazard Overlay area and none of these developable areas are located within the Special Flood Hazard Overlay.
- Councilor McGinnis inquired about how the City interpreted the 10-year time limit. Armand Resto-Spotts, attorney for the City, explained that he interpreted it effectively as a vested rights statute. For any subsequent construction that occurs on an approved subdivision property only the laws in place at the time of application apply, and that applies for 10 years. He explained that the property owner, if they come in for subsequent development, can choose to apply the laws that were in place at the time of application, or they can choose to apply the laws that are currently in place. Mayor McNeilly noted, and staff confirmed, that the City has applied the laws in place today.



- Councilor McGinnis inquired about the expiration question. Mr. Resto-Spotts stated that the improvement question is a factual evidentiary question. He stated that the Council needs to decide on what the 2008 approval did or did not require, and whether that affects expiration of the Planned Unit Development. Mr. Resto-Spotts explained that ORS 92.040 is not an expiration statute, so it does not terminate or expire the Planned Unit Development approval from 2008.
- Councilor Franken inquired about references to the one-year improvement timeline in the 2008 approval. She questioned what takes precedence, the 2008 decision or the lack of deadline in the code. Mr. Resto-Spotts stated that it was an interpretive question. He explained that based on the code, if the Applicant had not submitted Phase 1 within one year, then the Planned Unit Development would have been terminated, but otherwise it does not expire. He further explained that the City's code did not specify whether it expired or not.
- Councilor McGinnis inquired about the term "reasonable amount of time" in the code, and Planner Johnson confirmed that it was not defined in the code. Mr. Resto-Spotts encouraged the Council to employ reasonable interpretation given the language before them and the applicable law at hand.
- Councilor McGinnis inquired about definitions or descriptions of improvements. Planner Johnson and the Appellant noted that Exhibit D to the Findings of Fact from July 29, 2008, included descriptions of the improvements in Phase 2.
- In response to a question from Councilor McGinnis, Planner Johnson explained the process for reviewing building applications properties with potential wetlands, which includes submission of a Wetland Use Notification to the Department of State Lands. Planner Johnson further explained that wetland determination was a condition of approval for the Applicant and that the Department of State Lands advised they had already completed the wetland work. Per the wetland delineation the development has no building lots in wetlands. Planner Johnson further noted that there are wetlands set aside in this development as open space areas, which would



be reserved for wetlands and that these open space areas fall under the special area wetlands designation.

- Councilor McGinnis commented on tsunami evacuation routes and that it seemed that the Planning Commission expected them to be upgraded. Planner Johnson referred the Council to additional materials submitted by the Applicant dated November 20, 2024 for the Council's consideration regarding the requirements of the tsunami hazard overlay zone.
 - Mayor McNeilly asked the Appellant if they were aware of any case law where the Courts have weighed in on defining a “reasonable amount of time”. Ms. Dolezal stated that she had not researched this. Eric Wriston, co-counsel for the Appellant, stated that reasonable amount of time lends credence to a timeline for development one-year from approval unless the timeline is specifically amended for one-year from tentative plan approval for all improvements.
 - Additional questions were raised regarding the conditions of approval imposed by the Planning Commission and administrative approval processes.
7. Mr. Alterman provided the Applicant’s final rebuttal. Mr. Alterman stated in 2008 there were two applications, both approved with conditions. The first was an application to approve the “overall” Planned Unit Development plan for the entire property; the second application process was a subdivision application for Phase 1 of that overall project. Mr. Alterman said the City approved both the overall plan and the subdivision, and that two different time standards applied to those applications. For the Planned Unit Development, the Applicant was required to build at least part of the Planned Unit Development within one year. For the subdivision, the Applicant was required to build the improvements in the subdivision and file a final plat within one year.

Mr. Alterman said the Planned Unit Development approval was still valid, and neither State Law nor City code caused them to expire. Mr. Alterman said the Appellant's position that everything expired in one year simply doesn't make sense because nobody would apply to do a phased Planned Unit Development or subdivision if they had to build it all in one year.

Mr. Alterman addressed Appellant’s arguments that the Applicant was seeking to apply 2008 standards. Mr. Alterman stated the Planner’s Staff Report included all of the



standards that applied, which are in the current code, and that the Applicant had met the current code criteria.

Mr. Alterman stated that the Applicant had previously obtained permission from the Department of State Lands to fill parts of the wetland area and to mitigate that fill by creating other wetland areas all within the zone. He explained that that couldn't have been done if the entire area was a special area wetland in the City code, and the whole point of a wetland delineation was to determine which areas were wetland.

8. Following the Applicant's rebuttal, the City Council closed the record and public hearing. Final deliberations were set to be held at a public meeting on December 11, 2024.
9. As scheduled, the City Council met on December 11, 2024 at a public meeting and deliberated on the appeal. Councilor Franken and Councilor McGinnis both stated while they had concerns regarding the application, they understood that they were bound to apply the City's current code in reviewing the appeal and to apply the law.

Mayor McNeilly asked the Council if any had heard testimony or reviewed evidence in the record that persuaded them to disagree with the Staff recommendation to deny the appeal. The Councilor concurred that they had not received evidence or heard testimony that persuaded them to approve the appeal.

REVIEW CRITERIA:

RBZO 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:
 - i. A schedule, if it is proposed that the final development plan will be executed in stages.



Finding: The Appellant noted that in the original 2008 approval, the Applicant did not provide a schedule as required when seeking to develop a Planned Unit Development in phases. Regardless, as noted in the Applicant's arguments at the hearing on the appeal, the City did approve the application in 2008, in two phases. The 2008 approval is still valid, as neither the City's code nor State Law cause the application to expire.

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:
 - i. The plan can be completed within a reasonable period of time.

Finding: The City's development code should provide clear and objective standards. Without a timeframe specifically set by the RBZO or by the Planning Commission in their 2008 approval, no clear and objective timeframe was set for when the 2008 approval was required to be completed.

ORS 92.040. Application for approval of subdivision or partition.

1. Before a plat of any subdivision or partition subject to review under ORS 92.044 (Adoption of standards and procedures governing approval of plats and plans) may be made and recorded, the person proposing the subdivision or partition or authorized agent or representative of the person shall make an application in writing to the county or city having jurisdiction under ORS 92.042 (Governing body having jurisdiction to approve plans, maps or plats) for approval of the proposed subdivision or partition in accordance with procedures established by the applicable ordinance or regulation adopted under ORS 92.044 (Adoption of standards and procedures governing approval of plats and plans). Each such application shall be accompanied by a tentative plan showing the general design of the proposed subdivision or partition. No plat for any proposed subdivision or partition may be considered for approval by a city or county until the tentative plan for the proposed subdivision or partition has been approved by the city or county. Approval of the tentative plan shall not constitute final acceptance of the plat of the proposed subdivision or partition for recording. However, approval by a city or county of such tentative plan shall be binding upon the city or county for the purposes of the preparation of the subdivision or partition plat, and the city or county may require only such changes in the subdivision or partition plat as are necessary for compliance with the terms of its approval of the tentative plan for the proposed subdivision or partition.



2. After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise.
3. A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, in no event shall the time period exceed 10 years, whether or not a time period is established by the local government. [Amended by 1955 c.756 §7; 1973 c.696 §7; 1983 c.826 §8; 1989 c.772 §5; 1995 c.812 §9; 2005 c.22 §71]

Finding: The Applicant argued that ORS 92.040(3) does not make land use decisions expire; rather, it states that a City can allow an Applicant whose application was approved to choose between the old rules and the new rules for up to 10 years after the application is approved.

This interpretation was supported by the ruling in Claus v. City of Sherwood (LUBA No. 2022-080, filed on March 9, 2023) and in Athletic Club of Bend, Inc. v. City of Bend, 239 Or App 89 (2010).

Rockaway Beach Zoning Ordinance Section 3.080. Special Wetlands Area (SA).

In the SA zone the following regulations shall apply:

4. Standards. In the SA zone, the following standards 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.

Finding: The Application has been provided to DSL for review. The DSL response is included with the record, outlining additional reporting and permitting necessary for this Application. The Planning Commission conditioned its approval, requiring the Applicant to submit evidence that all necessary permits and approvals from the U.S. Army Corps of Engineers and Oregon Department of States Lands have been obtained for impacts to wetlands, in accordance with the approved plan.



5. 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.

Finding: The Application has been provided to DSL for review. The DSL response is included in the record, outlining the requirement for an updated site investigation to be conducted by a qualified agent to determine the exact location of the zone boundary.

The Planning Commission conditioned its approval, requiring the Applicant to 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 the Department of States Lands must be current (no more than 2 years old).

Rockaway Beach Zoning Ordinance Section 3.140 (6), Tsunami Hazard Overlay Zone (TH).

In the TH zone the following regulations shall apply:

6. 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.
 - 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.



- 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

Finding: The Applicant's additional materials submitted on November 20, 2024 detail additional evacuation measures and improvements to be made on-site at the development to meet this requirement, including the paving and graveling sections of the tsunami evacuation route, which are currently unimproved and the addition of signage in conformance with the Tsunami Evacuation Facilities Improvement Plan.

Additionally, the Planning Commission conditioned its approval, requiring the Applicant to submit evidence that tsunami evacuation routes are sufficient to meet the proportional evacuation needs created by the proposed development.

Section 4.150. Riparian Vegetation.

Riparian vegetation adjacent to the lakes and streams in Rockaway Beach shall be protected in accordance with the following provisions:

1. The following areas of riparian vegetation are defined:
 - a. Fifteen feet on either side of McMillan, Steinhilber, Finney, Rock, Heitmiller, Saltair, and Spring Creeks and any other known stream bed.

Finding: No development is proposed within 15 feet of McMillan Creek, as reflected in the maps provided by the Applicant.

The Planning Commission conditioned its approval as follows: 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.



This condition is consistent -with RBZO 4.150 (5), -which states: The City may approve the removal of riparian vegetation when vegetation removal and a plan to re-vegetate the riparian area has been reviewed and approved by the Oregon department of Fish and Wildlife.

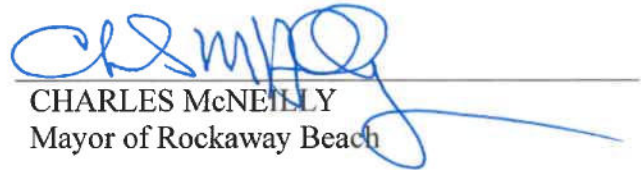
CONCLUSION:

The record and findings support the conclusion to deny Appeal #24-1 on all grounds and affirm the Planning Commission's July 18, 2024 decision on application #PUD-24-1.

ORDER:

It is hereby ORDERED by the Rockaway Beach City Council that Case File #Appeal-24-1 is DENIED on all grounds and the Planning Commission's July 18, 2024 decision on application #PUD-24-1 is affirmed.

December 12, 2024


CHARLES McNEILLY
Mayor of Rockaway Beach

ROCKAWAY BEACH PLANNING COMMISSION

NOTICE OF DECISION

August 1, 2024

IN THE MATTER OF:

CASE FILE: # PUD-24-1

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

Agent: Dean N. Alterman

Location: Unimproved real property in Rockaway Beach (Tillamook County Assessor's Map 2N1020AB as Tax Lots 10200, 10400, and 10500)

REQUEST: The Applicant is requesting a modification to the Planned Unit Development that was approved by the City in 2008 to be named Nedonna Wave Phase 2, on land zoned R1 (single-family residential) and SA (special area wetlands). Details of the request are included on the submitted application materials and are available for inspection at Rockaway Beach City Hall.

DECISION: The record and findings support the conclusion that substantive evidence in the record demonstrates that the Applicant's request to (1) create two lots instead of one lot at the north end of Jackson Street, identified as lots 21 and 22 on the plans submitted with the application and (2) to create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street, identified as lots 13, 14, 15, and 16 on the plans submitted with the application, can be developed in accordance with the applicable standards of the Rockaway Beach Zoning Ordinance.

Insufficient evidence exists to support the Applicant's request to plat Phase 2 as two separate sub-phases – Phase 2 and Phase 3.

Future review and necessary approval of the Applicant's detailed engineering plans for streets and utilities by the City Engineer is necessary. Such review and approval, prior to development, will ensure that the required improvements are in accordance with applicable City of Rockaway Beach Technical Specifications and Design Standards.

The Nedonna Wave PUD #24-1 request to develop Phase 2 in two sub-phases, instead of one phase, is **DENIED**.

The Nedonna Wave PUD #24-1 request to create two lots instead of one lot at the north end of Jackson Street, identified as lots 21 and 22 on the plans submitted with the Application; and create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street, identified as lots 13, 14, 15 and 16 on the plans submitted with the Application, is **APPROVED WITH CONDITIONS**, subject to the application as submitted and findings.

FINDINGS: The Planning Commission finds:

1. In 2008, the Applicant submitted Planned Unit Development Application #SPUD-07-19 for the creation of a phased, 28-lot development, with PUD overlay. The City approved the preliminary development plan in early 2008. The Applicant applied for and received final approval for the first phase of the PUD within one year after receiving final approval of the preliminary plan. The Applicant recorded the plat of Nedonna Wave Phase 1 on February 2, 2009 (Plat C-573, Tillamook County Plat Records).
2. The Applicant constructed 8-lots during Phase 1 and completed many of the improvements for Phase 2 during the construction phase. Appropriate conditions of approval will ensure that the infrastructure improvements completed during the Phase 1 construction for Phase 2 are tested and accepted by the City Engineer.
3. In 2010, Baumgart Construction LLC requested an amendment to the Nedonna Wave PUD and Minor Partition (Case File #PUD-10-05, #MP-10-06) and the request was approved by the Planning Commission to allow for the creation of the additional building lot.
4. The Applicant is now ready to plat Phase 2 and requests modifications to the approved final plan, (1) to plat Phase 2 as two separate sub-phases – Phase 2 and Phase 3, (2) to create two lots instead of one lot at the north end of Jackson Street, 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 13, 14, 15, and 16 on the plans submitted with the application, and (4) to 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 (Case File #PUD-24-1).
5. The property consists of approximately 2.56 acres of land zoned R1 (single-family residential) and SA (special area wetlands).
6. The property contains wetlands that were delineated by a professional wetlands consultant prior to the 2008 approval. 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 form the Department of State Lands 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.
7. The 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.
8. The overall density of the PUD does not exceed the 33-lot density of the provision of the R-1 (single-family residential) zone.
9. More than 50% of the total area has been devoted to open space. Common open spaces withing the development include wetlands and other natural vegetation, and other areas below the 100-year

floodplain elevation. A homeowner's association is necessary to take responsibility of the ownership and management of these natural open space areas.

10. Public hearings were held on June 20, 2024 and June 27, 2024. During the public hearing, the Applicant withdrew the request to 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.
11. The Applicant has submitted materials in support of the request, including the application and Memorandum document, which provide specific responses to the applicable criteria under review. These responses, attached as Exhibit "A" and Exhibit "B" respectively, and Staff Reports, attached as Exhibit "C", demonstrate that the applicable criteria for land-use approval are met, and serve as findings to support the decision.

APPEAL: The decision of the Planning Commission is final unless it is appealed to the City of Rockaway Beach City Council within 15 days of this notice. See §11.070 Request for Review of a Decision (Appeals) within the City of Rockaway Beach Zoning Ordinance. Appeals must only be filed concerning criteria that were addressed at the initial public hearing.

A copy of the complete case, including the final order, is available for inspection at no cost during regular business hours at Rockaway Beach City Hall located at 276 Highway 101 S, Rockaway Beach, Oregon 97136. Copies of the final order are also available for purchase at a reasonable cost.

Date: August 1, 2024


William Hassell, Planning Commission Chair

EXHIBIT “A”



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.

EXHIBIT “B”



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,¹ 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.

¹ 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]² 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.

² 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 10.³

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.

³ 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.

EXHIBIT “C”



**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 intends 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 23rd Ave to the pump station at NW 17th 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 23rd Avenue to the pump station at NW 17th 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.



**CITY OF ROCKAWAY BEACH
PLANNING COMMISSION ACTION**

STAFF REPORT

Case File #PUD-24-1

Meeting Date: July 18, 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; and
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.

At the public hearing, the Applicant withdrew the request to 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.

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.

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. Shall pay their proportional share to extend the White Dove sanitary sewer force main from NW 23rd Avenue to the pump station at NW 17th Avenue.
16. 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.
17. 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.
18. 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 the Department of States Lands must be current (no more than 2 years old).
19. 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.
20. The Applicant shall submit evidence of approval from the State Fire Marshall for all fire hydrant locations, street widths, and applicable Fire Code requirements.
21. The Applicant shall submit evidence that tsunami evacuation routes are sufficient to meet the proportional evacuation needs created by the proposed development.
22. 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.
23. The Applicant shall be responsible for all costs necessary for off-site public infrastructure improvements that are triggered by the proposed development.



24. 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.



August 14, 2024

Rockaway Beach City Council
City of Rockaway Beach
276 Hwy 101
Rockaway Beach, OR 97136

**Re: Appeal of Findings, Conclusions, and Final Order in Case File # PUD 24-1,
Nedonna Wave Planned Unit Development Application, dated August 1, 2024**

Decision Sought to be Review

A decision of the Planning Commission may be appealed to the City Council by a party to the hearing by filing an appeal pursuant to Rockaway Beach Zoning Ordinance 11.070(2)-(3). The Oregon Shores Conservation Coalition (“Oregon Shores”) is filing this appeal to oppose the Planning Commission’s decision, dated August 1, 2024, approving Applicant’s request to modify the approved final plan for Planned Unit Development Application #SPUD-07-19, allowing Applicant to create two lots instead of one lot at the north end of Jackson Street, 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 13, 14, 15 and 16 on the plan submitted with the Application.

Statement of Interest

Oregon Shores is a non-profit organization, with members in Rockaway Beach, that works to protect Oregon’s coastal environment and employ Oregon’s land use planning system to its best possible effect in preserving coastal communities. Oregon Shores opposes approval for Nedonna Development LLC’s proposed second phase of a planned unit development first permitted in 2008 (PUD #24-1, 2N1020AB, Tax Lots 10200, 10400, and 10,500). Oregon Shores was a party to the initial proceedings, submitting two comments to the Planning Commission below. This appeal is based on the following issues that Oregon Shores also raised in the proceedings below:

- A. The original 2008 approval of the plan for this development has expired.

- B. ORS 92.040 requires the Applicant to resubmit its initial application for this development.
- C. RBZO 3.080 prohibits residential development in a Special Area Wetlands Zone.
- D. RBZO 3.142 requires the Applicant develop evacuation measures and improvements.
- E. RBZO 4.150 requires the City to enforce its riparian setback for McMillan Creek pre-approval.
- F. The Planning Commission failed to adequately address each of these legal concerns.

Issues and Grounds for Review

The following is a breakdown of those issues apparent in the proposed application that were not adequately remedied or considered below, and should be reviewed by the City Council.

I. The Original 2008 Approval of the Plan for this Development Has Expired

The original approval for the full 28-lot Nedonna Wave Development on February 11, 2008 conditioned final plat approval on the basis that “[t]he developer shall complete the improvements within one year of tentative plan approval unless an extension is granted by the City to complete improvements.”¹ The City never granted an extension, nor was this condition rescinded. When the developer failed to complete all planned improvements within a year, the approval for the second phase of the project lapsed.

While the Applicant had not yet received approval to develop in two phases at the time of this initial approval, the City was aware that “the development may be completed in two phases.”² Accordingly, it is evident that the City expected the Applicant to complete all necessary on-site improvements for both phases of the development within that specified one-year period, prior to final plat approval.³ That condition attached to the final plan approval for the full development and when the project was later approved to be developed in two phases, the City made clear that all “conditions of approval [from the earlier decisions] continue to apply in their entirety except where amended specifically in these findings of fact and this modification

¹ Application # SPUD 2007-19, Exhibit A: Findings of Fact, p. 12 (Feb. 11, 2008); Application # SPUD 2007-19, Final Order: Exhibit B: Conditions of Approval, p. 6 (Feb. 11, 2008). Further, in the 2007 project justification for this development, it’s explained that “[t]he development of this property will be completed in this calendar year.” Project Justification for Nedonna Wave PUD, p. 1 (Nov. 2007). Likewise, it is estimated that construction would be completed by “Spring of 2008.” *Id.*

² Application # SPUD 2007-19, Exhibit A: Findings of Fact, p. 23 (Feb. 11, 2008).

³ See Application #07-19, Exhibit C: Findings of Fact: Final Plan Approval, p. 13-14 (July 22, 2008); see also RBZO Article 13, Section 16, Agreement for Improvements.

does not relieve them of the responsibility imposed during these previous public hearing processes.”⁴ And the City never explicitly altered that original condition. The modified final approval now specifically clarified that “[p]rior to approval of the final plat, all improvements for Phase One shall be installed,”⁵ however, this is not in conflict with the original condition of approval that required all improvements for the full subdivision to be completed within one year of tentative plan approval. This condition remained in effect, and the Applicant failed to meet it.

Regardless, even if the modification of the development plan allowing the project to move forward in two phases was intended to free the Applicant from this one-year requirement, this still would not excuse the Applicant from completing improvements and finalizing the development plans for Phase II in a timely manner, or meeting other requirements of the Rockaway Beach Zoning Ordinance (RBZO). Timing is a crucial component of the Planned Unit Development (PUD) proposal and permitting process. When a final development plan will be executed in stages, applicants are required to submit a proposed schedule for the execution of each stage, pursuant to RBZO 10.050(1)(i). Further, the RBZO specifically requires that a proposed plan be able to be “completed within a reasonable period of time,” RBZO 10.050(2)(d). The Planning Commission failed to make such a determination about the second phase of this project in 2008, or to otherwise find that special physical conditions or objectives of development existed that warranted a departure from the standard ordinance requirements. *Id.*; RBZO 10.050(2)(a).

In its most recent decision on the modification, the Planning Commission found that there was insufficient evidence to support the Applicant’s request to plat the proposed next stage of development as two separate subphases.⁶ During the July 18, 2024 meeting of the Commission and staff, it was noted that “the PUD code states that a schedule be provided if the development is to be completed in stages . . . [and] no such schedule had been provided by the Applicant.”⁷ In 2008, just like now, the Planning Commission should have determined there was insufficient evidence to support the Applicant’s request to develop the site in two stages due to its failure to provide a schedule as required by the PUD code. While RBZO 10.060(1) does include another

⁴ Application # 2007-19, Exhibit D: Modified Preliminary and Final Approval for a Two Phase Development, p. 3 (July 29, 2008).

⁵ *Id.* at 4.

⁶ Application # PUD 24-1, Findings, Conclusions, and Final Order, p. 16 (Aug. 1, 2024).

⁷ *Id.* at 6.

important distinction between staged and non-staged projects, requiring applicants 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, this does not change the fact that the Commission’s 2008 decision to authorize the two-phase development plan was improper.

Further, while the code does not set a specific time limit on when an applicant must apply for subsequent units or stages of the PUD, as noted above, during the preliminary steps of the PUD planning process it still must be determined that the proposed plan can be completed within a reasonable period of time. RBZO 10.050(1)(i), (2)(d). Even if the Applicant had provided a schedule, and there was sufficient evidence for multi-stage development, that would not absolve the Applicant from meeting this timing requirement. It cannot be reasonably argued that taking a more-than-15-years-long break between planning and construction is a “reasonable period of time” in which to execute a project of this kind and scope.

The Applicant applied for and received final plat approval for the first phase of the Planned Unit Development within one year after receiving final plan approval, and recorded the plat of Nedonna Wave Phase I on February 2, 2009 (Plat C-573, Tillamook County Plat Records). At that time, the Commission plainly understood that Phase II of the project would timely follow. When the project was approved to be developed in two phases, the Planning Commission made clear that all “conditions of approval [from the earlier approval order] continue to apply in their entirety except where amended specifically in these findings of fact and this modification does not relieve them of the responsibility imposed during these previous public hearing processes.”⁸ The Planning Commission did nothing to alter that condition, or extend the time permitted between preliminary planning and execution, as to allow Phase II of the Applicant’s development plan to remain in limbo for more than 15 years.

For any of the reasons explained above, the City Council should find that the 2008 approval is no longer valid, and reverse the Planning Commission’s unreasonable decision on this application.

II. ORS 92.040 Requires the Applicant to Resubmit its Initial Application for this Development

⁸ Application # SPUD 2007-19, Exhibit D: Modified Preliminary and Final Approval for a Two Phase Development, p. 3 (July 29, 2008).

Even if this Council believes that this application has not expired, ORS 92.040(3) requires that the proposed development be reviewed for compliance with the City's current regulations. ORS 92.040(3) provides 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 Oregon Court of Appeals explained the operation of ORS 92.040: "92.040(2) allows applicants who request approval to develop a subdivision lot to choose to apply to all subsequent construction on the lot the local government laws in effect at the time that the subdivision application was made *However, the protection provided to developers by subsection (2) may not exceed a period of 10 years.*"⁹ At bottom ORS 92.040(3) sets a ten-year time limit before a PUD approval expires, after which any further development must be approved under a new application, based on contemporary standards and regulations.

Because the Applicant here has reapplied for a modification of their initial approval in order to begin construction on the property after a significant lapse in time, this is a subsequent phase of construction which now compels the City to determine whether the development still fully complies with current regulations. This is especially true given that the Applicant is requesting to develop additional lots that were not included in the original 2008 proposal and development plan. Since the 10-year window has long since closed, the City must require the Applicant to file a new application if they wish to reinitiate site development. Allowing the Applicant to do otherwise defies state law.

The Applicant argues that ORS 92.040 is not relevant here, because this statute "applies only to subdivisions and partitions," whereas the present application is to "subdivide property in accordance with the current zoning of the property, which includes the PUD overlay, and in accordance with the current zoning code."¹⁰ However, this misconstrues the legal framework, as made clear by the original PUD approval at issue in this matter. Nedonna Wave, as a subdivision, is governed by ORS Chapter 92 and RBZO Article 13, which both concern subdivisions and partitions. The particular development project at issue is further regulated by RBZO Article 10, which specifically concerns Planned Unit Developments.¹¹ The Findings of

⁹ *The Athletic Club of Bend, Inc. v. City of Bend*, 239 Ore App 89, 97 (2010) (emphasis added).

¹⁰ Alterman Memo, p. 3 (July 4, 2024).

¹¹ A tentative PUD approval is a combination of both types of "[l]imited land use decision[s]", as defined by ORS 197.015(12), meaning the approval or denial of "a tentative subdivision or partition plan" or "an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but

Fact dated February 11, 2008 specifically state, “The project proposes the subdivision of a Planned Unit Development. The standards of the City Subdivision Ordinance and Oregon Revised Statutes Chapter 92 shall apply to approval of the final plat.”¹² In a section of the Findings of Fact considering improvement requirements and final plat approval, it is also specified that, “The Final Survey Plat shall be submitted consistent [with] ORS Chapter 92, with RBZO Article 13, Section 46, and applicable conditions of approval.”¹³ The original PUD approval makes it abundantly clear that the requirements of ORS Chapter 92 apply to the Nedonna Wave Planned Unit Development Subdivision project, including those sections that concern the review and approval of tentative plans and plats of subdivisions, like ORS 92.040. Due to this fact, any development within this PUD that occurs after 2018 must be reviewed anew, through an entirely separate application process, not merely a modification request.

If the City does not apply ORS 92.040(3) at this time, granting the approval would be a significant waste of resources because under this statute, the Applicant will not be able to get a final plat or building permits for this subdivision without a full review of the current City Code. And as discussed in the sections below, this development, as proposed, would not be allowed under Rockaway Beach’s current regulations.

The City Council must deny the application and make clear to the Applicant that it will need to get full approval of the proposed “Phase II” development before moving forward with construction.

III. RBZO 3.080 Prohibits Residential Development in a Special Area Wetlands Zone

Much of the proposed development, including the lots that are newly created by this modification, is in the City’s Special Area Wetlands Zone (SA). RBZO 3.080. This zone is distinct from the City’s Wetland Notification Overlay, which only requires notification to state agencies about wetland development. RBZO 3.080. In contrast, the SA zone is its own base zone, the purpose of which is to “conserve significant freshwater wetlands and the shoreland and aquatic environment of Rockaway Beach’s lakes.” RBZO 3.080(1).

not limited to site review and design review." *Willamette Oaks, LLC v. City of Eugene*, 248 Or App 212, 226 n 4, 273 P3d 219, 227 (2012).

¹² Application # SPUD 2007-19, Exhibit A: Findings of Fact, p. 5 (Feb. 11, 2008).

¹³ *Id.* at p. 32-33.

Residential development is not an allowed use within the SA zone. RBZO 3.080(2)-(3). Only recreational, restoration, and stabilization uses are allowed there, and all activities involving construction or alteration must be reviewed by the Oregon Division of State Lands and the U.S. Army Corps of Engineers. RBZO 3.080(2)-(4). The fact that there is an existing PUD overlay over this property does not change this fact or impact the underlying uses allowed in the SA zone; the PUD overlay only allows for the same density of the parent zone. RBZO 10.030. Given the firm limitations on development in the SA zone, any approval of residential development in these areas within the Nedonna Wave subdivision would clearly violate the RBZO, regardless of the PUD overlay.

When “development is proposed in the vicinity of an area designated Special Area Wetlands” the City requires a site investigation from “a qualified agent such as a biologist from the U.S. Army Corps of Engineers or the Division of State Lands” to delineate the extent of the zone prior to approval. RBZO 3.080(5). No such investigation has occurred, even though much of the proposed development, including the new lots that are requested as part of the modification, are in the SA zone. As explained above, the City cannot approve these modifications and allow new construction to move forward without assessing the proposed development within the context of the current local regulations and site conditions.

Due to the lack of site investigation, and the failure of the Applicant to demonstrate compliance with the requirements of RBZO 3.080, the City Council must deny this application.

IV. RBZO 3.142 Requires the Applicant Develop Evacuation Measures and Improvements

RBZO 3.142(6) provides that: “[e]xcept 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.” This requires improvements be made that “ensure adequate pedestrian access from the development site to evacuation routes designated in the Evacuation Route Plan in all weather and lighting conditions.” RBZO 3.142(6)(a)(i).

This project will have a detrimental impact on the City’s Tsunami Evacuation plan by blocking access to and increasing the number of people using the already constrained evacuation routes. In order to “conform to the adopted Tsunami Evacuation Facilities Improvement Plan,” the developer would need to make improvements to the evacuation routes, and ensure that they

are maintained and that additional capacity is added to them through the creation of new routes. RBZO 3.142(6). However, the application does not address evacuation route improvements. In fact, during the initial hearing the Applicant claimed that such an action was the City's responsibility, but RBZO 3.142 makes clear that is not the case. The improvements developers need to make can include both on-site improvements and off-site improvements, and therefore developers can both improve access on the property they own or provide funding for the City to make off-site improvements in other areas to adjust for the detrimental effect of the development.

The Findings, Conclusions, and Final Order still do not sufficiently address this issue, or the inadequacy of the existing routes to serve a larger population. While the Applicant is ordered to conduct a traffic study,¹⁴ doing so is not an "improvement" to evacuation routes, as RBZO 3.142 requires. And while the Applicant has also been ordered to submit evidence that the tsunami evacuation routes are sufficient to the proportional needs of the proposed development, the Final Order does not include any discussion about what actual findings or improvements would serve as evidence that the standard has been adequately met. The Applicant must make actual improvements to alleviate the detriment this development will have on existing evacuation routes, however, there are no consequences or mechanisms of enforcement included in the conditions of approval to ensure that sufficient improvements are actually carried out.

The record does not clearly support a determination of compliance with the approval criteria in regards to the evacuation route issue, and the City should not find otherwise. *See Deal v. City of Hermiston*, 35 Or LUBA 16 (1998). The City cannot defer matters for later review or action when it has no meaningful ability to subsequently enforce a requirement, or where public input will not be possible. *See Citizens Against LNG v. Coos County*, 63 Or LUBA 162 (2011). After final approval the City can no longer add conditions requiring specific improvements necessary to address the issues that might be identified during the traffic study. Accordingly, this issue should be fully interrogated at this early stage in the process, while the City is able to meaningfully act.

V. RBZO 4.150 Requires the City to Enforce its Riparian Setback for McMillan Creek Pre-Approval

¹⁴ PUD # 24-1, Findings, Conclusions, and Final Order, p. 18 (Aug. 1, 2024).

Under RBZO 4.150 riparian vegetation within 15 feet of McMillan Creek must be maintained and protected, and likewise, no development is allowed within the setback. The Final Order suggests that the Applicant coordinate with Oregon Department of Fish and Wildlife (ODFW) to develop a plan to mitigate impacts when the setback cannot be maintained due to “site constraints.”¹⁵ However, that is not the standard laid out in RBZO 4.150.

RBZO 4.150(5) provides that “the City may approve the removal of riparian vegetation when vegetation removal and a plan to re-vegetate the riparian area has been approved by [ODFW].” This provision clearly only envisions temporary removal of riparian vegetation within setback areas that can then be “re-vegetate[d],” while the ordinance clearly does not allow any kind of development within the riparian area, regardless of whether those impacts are mitigated. Additionally, this provision is forward-looking, requiring the Applicant to consider the impacts that will occur in the setback area and then have a plan for vegetation removal approved by ODFW that is to be decided on by the City during the application review process. RBZO 4.150(5). Approving the application without actually knowing the impact on riparian vegetation and the extent of removal that will occur, and consequently before coordination with ODFW had occurred, is plainly contrary to the RBZO.

The City cannot approve this application until the Applicant makes clear that the development plan can meet the requirements of the 15-foot setback area, and if vegetation removal will occur, the Applicant must submit a plan approved by ODFW for how that removal will occur and how the area will be re-vegetated. The City should not approve development based on a hypothetical mitigation and regeneration plan, without having thoroughly considered the extent of the expected impact on McMillan Creek and whether the standards in RBZO 4.150 can be realistically achieved based on that information.

Request for Review

Review of this application and the decision of the Planning Commission dated August 1, 2024 is requested under RBZO 11.070(2).

Respectfully submitted,

¹⁵ *Id.* at 17.

/s/ Eric Wriston

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**CITY OF ROCKAWAY BEACH
PLANNING COMMISSION ACTION**

STAFF REPORT

Case File #Land Use Appeal-24-1
Hearing Date: October 9, 2024

APPLICANT: Nedonna Development LLC
AGENT FOR APPLICANT: Dean N. Alterman

APPELLANT: Oregon Shores Conservation Coalition
AGENT FOR APPELLANT: Eric Wriston, Crag Law Center

REQUEST: On August 14, 2024, the City of Rockaway Beach received an appeal of the Planning Commission's decision on Planned Unit Development Application 24-1 – Nedonna Wave Phase 2, filed by Appellant, Oregon Shores Conservation Coalition. The appeal is based on the following issues:

1. The original 2008 approval of the plan for this development has expired.
 2. ORS 92.040 requires the Applicant to resubmit its initial application for this development.
 3. RBZO 3.080 prohibits residential development in a Special Area Wetlands Zones.
 4. RBZO 3.142 requires the Applicant develop evacuation measures and improvements.
 5. RBZO 4.150 requires the City to enforce its riparian setback for McMillan Creek, preapproval.
- A. REPORT OF FACTS:** On August 11, 2024, per RBZO 11.070, the City Council determined at a non-public hearing, the scope of review for the appeal. The City Council determined the scope of review would be limited to the presentation of additional evidence regarding the issues and criteria raised in the appeal.

B. EVALUATION OF THE REQUEST

The appeal is based on the following issues:

ISSUE NO. 1: The original 2008 approval of the plan for this development has expired.

The following substantive criteria apply to this issue. To facilitate review, staff comments are in *italicized font*.

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:
 - i. A schedule, if it is proposed that the final development plan will be executed in stages.



The Appellant notes that in the original 2008 approval, the Applicant did not provide a schedule as required when seeking to develop a PUD in phases. Regardless, the City did approve the application in 2008, in two phases.

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:
 - i. The plan can be completed within a reasonable period of time.

The City's development code should provide clear and objective standards. Without a timeframe specifically set by the RBZO or by the Planning Commission in their 2008 approval, no clear and objective timeframe was set for when the 2008 approval was required to be completed.

ISSUE NO. 2: ORS 92.040 requires the Applicant to resubmit its initial application for this development.

The following substantive criteria apply to this issue. To facilitate review, staff comments are in *italicized font*.

ORS 92.040. Application for approval of subdivision or partition.

1. Before a plat of any subdivision or partition subject to review under ORS 92.044 (Adoption of standards and procedures governing approval of plats and plans) may be made and recorded, the person proposing the subdivision or partition or authorized agent or representative of the person shall make an application in writing to the county or city having jurisdiction under ORS 92.042 (Governing body having jurisdiction to approve plans, maps or plats) for approval of the proposed subdivision or partition in accordance with procedures established by the applicable ordinance or regulation adopted under ORS 92.044 (Adoption of standards and procedures governing approval of plats and plans). Each such application shall be accompanied by a tentative plan showing the general design of the proposed subdivision or partition. No plat for any proposed subdivision or partition may be considered for approval by a city or county until the tentative plan for the proposed subdivision or partition has been approved by the city or county. Approval of the tentative plan shall not constitute final acceptance of the plat of the proposed subdivision or partition for recording. However, approval by a city or county of such tentative plan shall be binding upon the city or county for the purposes of the preparation of the subdivision or partition plat, and the city or county may require only such changes in the subdivision or partition plat as are necessary for compliance with the terms of its approval of the tentative plan for the proposed subdivision or partition.
2. After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise.



3. A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, in no event shall the time period exceed 10 years, whether or not a time period is established by the local government. [Amended by 1955 c.756 §7; 1973 c.696 §7; 1983 c.826 §8; 1989 c.772 §5; 1995 c.812 §9; 2005 c.22 §71]

While City Staff initially agreed with the Appellant's interpretation of this ORS, after speaking with the Applicant and the City's legal counsel, Staff reversed its opinion, based on the arguments presented by the Applicant and the applicable case law.

The Applicant argued that ORS 92.040(3) does not make land use decisions expire; rather, it states that a City can allow an Applicant whose application was approved to choose between the old rules and the new rules for up to 10 years after the application is approved.

This interpretation was supported by the ruling in Claus v. City of Sherwood (LUBA No. 2022-080, filed on March 9, 2023) and in Athletic Club of Bend, Inc. v. City of Bend, 239 Or App 89 (2010).

ISSUE NO. 3: RBZO 3.080 prohibits residential development in a Special Area Wetlands Zones.

The following substantive criteria apply to this issue. To facilitate review, staff comments are in *italicized font*.

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

4. Standards. In the SA zone, the following standards 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 included with the record, outlining additional reporting and permitting necessary for this Application.

The Planning Commission conditioned its approval, requiring the Applicant to submit evidence that all necessary permits and approvals from the U.S. Army Corps of Engineers and Oregon Department of States Lands have been obtained for impacts to wetlands, in accordance with the approved plan.

5. 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 included in the record, outlining the requirement for an updated site investigation to be conducted by a qualified agent to determine the exact location of the zone boundary.

The Planning Commission conditioned its approval, requiring the Applicant to 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 the Department of States Lands must be current (no more than 2 years old).

ISSUE NO. 4: RBZO 3.142 requires the Applicant develop evacuation measures and improvements.

The following substantive criteria apply to this issue. To facilitate review, staff comments are in *italicized font*.

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

6. 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 Planning Commission conditioned its approval, requiring the Applicant to submit evidence that tsunami evacuation routes are sufficient to meet the proportional evacuation needs created by the proposed development

- 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.

- 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.

ISSUE NO. 5: RBZO 4.150 requires the City to enforce its riparian setback for McMillan Creek, preapproval.

The following substantive criteria apply to this issue. To facilitate review, staff comments are in *italicized font*.

Section 4.150. Riparian Vegetation. Riparian vegetation adjacent to the lakes and streams in Rockaway Beach shall be protected in accordance with the following provisions:

1. The following areas of riparian vegetation are defined:
 - a. Fifteen feet on either side of McMillan, Steinhilber, Finney, Rock, Heitmiller, Saltair, and Spring Creeks and any other known stream bed.

No development is proposed within 15 feet of McMillan Creek, as reflected in the maps provided by the Applicant.

The Planning Commission conditioned its approval as follows: The development shall avoid entering City designated riparian setback of 15' for McMillan Creek. If site constraints 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.

This condition is consistent with RBZO 4.150 (5), which states: The City may approve the removal of riparian vegetation when vegetation removal and a plan to re-vegetate the



riparian area has been reviewed and approved by the Oregon department of Fish and Wildlife.

CONCLUSION

The City Council should carefully consider the request, including all oral and written testimony on record and presented at the public hearing, as they pertain to the criteria on which the appeal was filed. After considering testimony as it relates to these applicable criteria, the City Council will need to make a decision on the request.

The City Council may affirm, reverse, or modify in whole or in part, the Planning Commission's decision on the Nedonna Wave Planned Unit Development application, #PUD-24-1.

If the City Council affirms the decision of the Planning Commission, the City Council shall provide 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.

If the City Council modifies or renders a decision that reverses the decision of the Planning Commission, the City Council shall provide 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.

If the City Council elects to remand the matter back to the Planning Commission for further consideration as it deems necessary, it shall include a statement explaining the error found to have materially affected the outcome of the original decision and the action necessary to rectify such.

Notice of the City Council decision shall be provided to all parties to the hearing within five working days of the date that the final order is signed. The decision may be appealed to the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days.



CITY OF ROCKAWAY BEACH

APPEAL #24-1: NEDONNA WAVE PUD PHASE 2

CITY COUNCIL PUBLIC HEARING

BACKGROUND

In 2008, the City approved Nedonna Wave's application for a phased 28-lot development with PUD overlay. In 2009, the Applicant applied for and received final approval for the first phase of the PUD, and recorded the plat of Nedonna Wave - Phase 1.

Earlier this year the City received a request from the Applicant to make modifications to the approved Phase 2 final plan. A public hearing was held before the Planning Commission to consider the request.

The Planning Commission approved the Applicant's request to (1) create two lots instead of one lot at the north end of Jackson Street and to create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street could be developed in accordance with the applicable standards of the Rockaway Beach Zoning Ordinance.

The Planning Commission denied Applicant's request to plat Phase 2 as two separate subphases.

The Planning Commission's Final Order was posted and served in accordance with the Rockway Beach Zoning Ordinance.

An appeal of the Planning Commission's decision was filed by Oregon Shores Conservation Coalition based on the following issues:

1. The original 2008 approval of the plan for this development has expired.
2. ORS 92.040 requires the Applicant resubmit its initial application for this development.
3. RBZO 3.080 prohibits residential development in a Special Area Wetlands Zone.
4. RBZO 3.142 requires the Applicant develop evacuation measures and improvements.
5. RBZO 4.150 requires the City to enforce its riparian setback for McMillan Creek, preapproval.

FOLLOWING RECEIPT OF THE APPEAL, THE CITY COUNCIL DETERMINED THE SCOPE OF REVIEW WOULD BE LIMITED TO EVIDENCE REGARDING THE FIVE ISSUES RAISED IN THE APPEAL.

ONLY ADDITIONAL EVIDENCE GIVEN REGARDING THE FIVE ISSUES RAISED IN THE APPEAL MAY BE CONSIDERED BY THE CITY COUNCIL.

During the public hearing, testimony will be given and written comment received for the City Council's consideration. The City Councilors will need to use their discretion to determine whether the testimony they have received are regarding one of the five criteria in the appeal.

If the testimony received is outside of the scope of review, the City Councilors should not consider this testimony in their decision making.

However, if the testimony given is regarding one of the five criteria in the appeal, this additional evidence should be considered by the City Council in making their decision.

ISSUE #1

THE ORIGINAL 2008 APPROVAL OF THE PLAN FOR THIS DEVELOPMENT HAS EXPIRED.

RBZO Article 10. Planned Unit Development (PUD)

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.

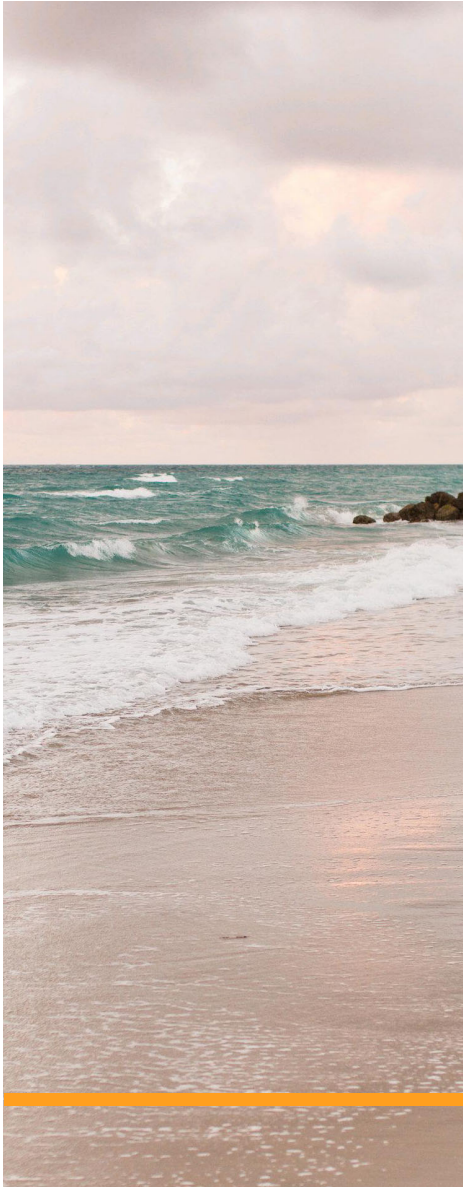
ISSUE #1

THE ORIGINAL 2008 APPROVAL OF THE PLAN FOR THIS DEVELOPMENT HAS EXPIRED.

Staff Finding

As required by the RBZO, the Applicant filed a final plat for Phase 1 of the two phase PUD, within 1 year of receiving concept approval from the City. The RBZO does not set any time requirement for the Applicant to file additional phases when submitting in stages.

Should the City wish to set time requirements for subsequent phases of future PUDs applications a code amendment to create the provision would be required.

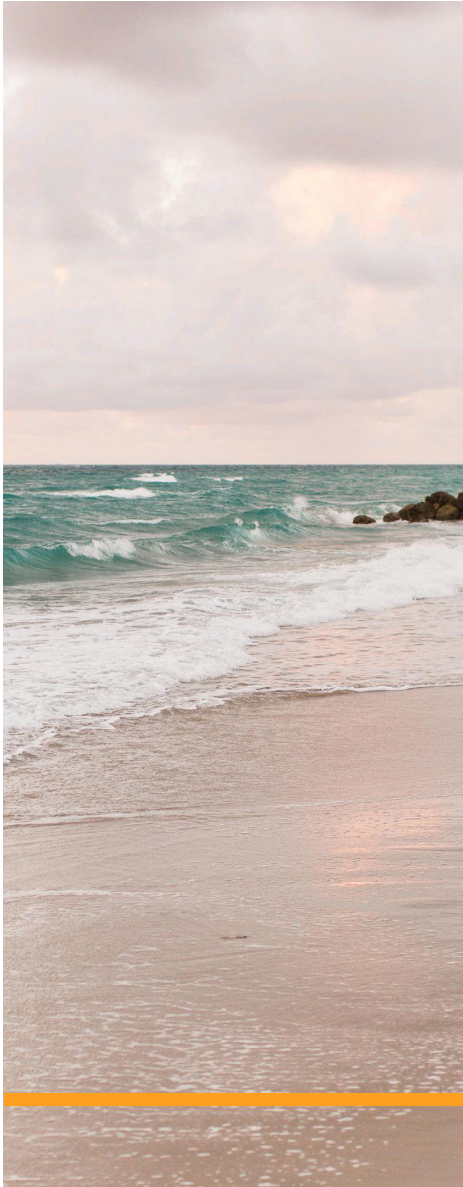


ISSUE 2

ORS 92.040 REQUIRES THE APPLICANT RESUBMIT ITS INITIAL APPLICATION FOR THIS DEVELOPMENT.

ORS 92.040. Application for Approval of Subdivision or Partition

2. After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise.
 3. A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, in no event shall the time period exceed 10 years, whether or not a time period is established by the local government.
-



ISSUE 2

ORS 92.040 REQUIRES THE APPLICANT RESUBMIT ITS INITIAL APPLICATION FOR THIS DEVELOPMENT.

Staff Finding

While City Staff initially agreed with the Appellant's interpretation of this ORS, which would have caused the 2008 approval to expire and require the Applicant resubmit the application in its entirety, after speaking with the Applicant and the City's legal counsel, Staff reversed its opinion, based on the arguments presented by the Applicant and the applicable case law.

The Applicant argued that ORS 92.040(3) does not make land use decisions expire; rather, it states that a City can allow an Applicant whose application was approved to choose between the old rules and the new rules for up to 10 years after the application is approved. This interpretation was supported by the ruling in *Claus v. City of Sherwood* (LUBA No. 2022-080, filed on March 9, 2023) and in *Athletic Club of Bend, Inc. v. City of Bend*, 239 Or App 89 (2010).



ISSUE 3

RBZO 3.080 PROHIBITS RESIDENTIAL DEVELOPMENT IN A SPECIAL AREA WETLANDS ZONE

RBZO Section 3.080. Special Area Wetlands.

5. 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.



ISSUE 3

RBZO 3.080 PROHIBITS RESIDENTIAL DEVELOPMENT IN A SPECIAL AREA WETLANDS ZONE

Staff Finding.

The Application has been provided to DSL for review. The DSL response is included with the record, outlining additional reporting and permitting necessary for this Application. Staff have spoken with representatives from DSL regarding this application, who confirmed that the proposed areas of development have already been mitigated during Phase 1, for Phase 2.

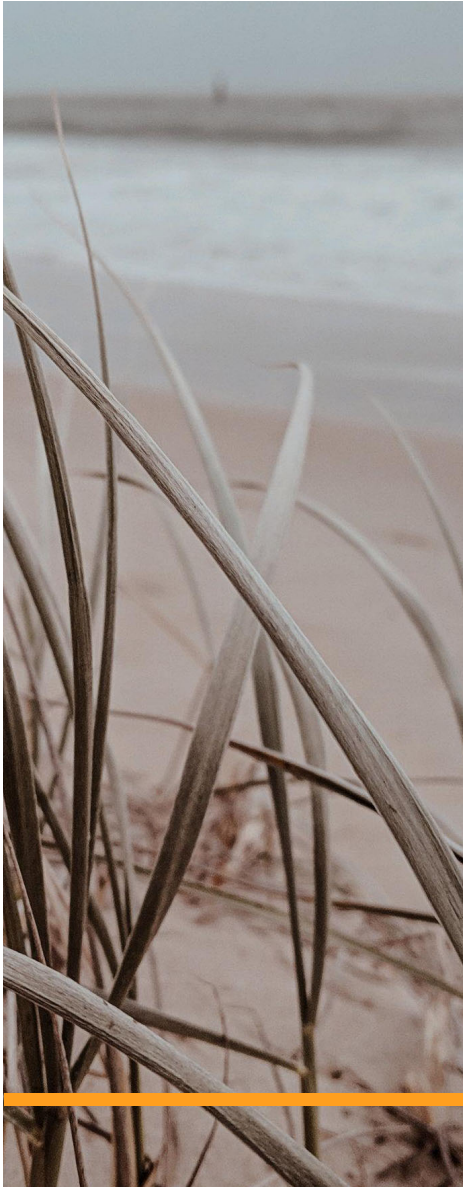


ISSUE 3

RBZO 3.080 PROHIBITS RESIDENTIAL DEVELOPMENT IN A SPECIAL AREA WETLANDS ZONE

Staff Finding.

Additionally, Staff note that, do to Section 3.080(5), the City has historically applied the SA Zone as an overlay to neighboring residential zones. There are multiple nearby properties in the Nedonna Beach neighborhood which have been developed as recently as 2021 which are located in the SA Zone, but were approved for development after a wetland delineation was completed and development approved by the Department of State Lands.



ISSUE 4

RBZO 3.142 REQUIRES THE APPLICANT DEVELOP EVACUATION MEASURES AND IMPROVEMENTS.

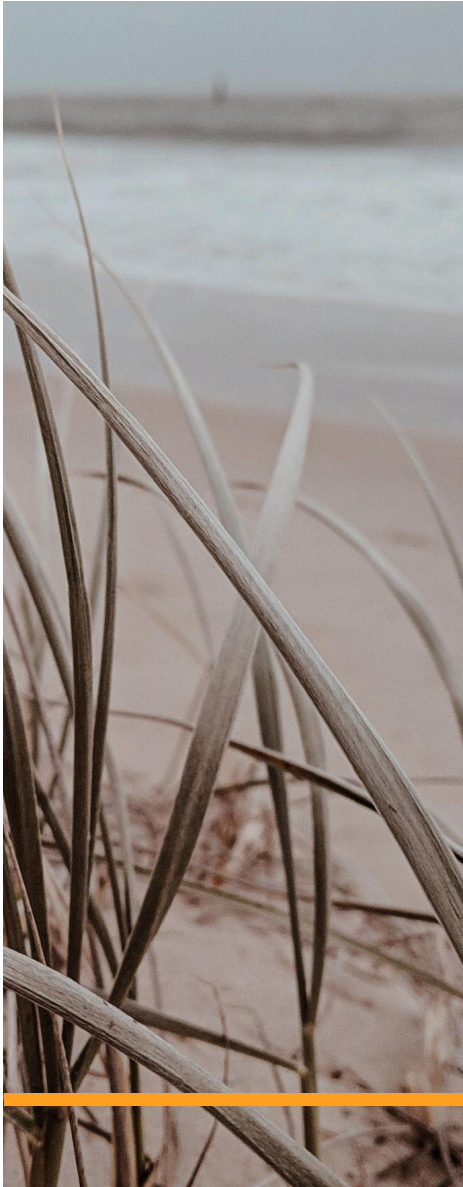
RBZO Section 3.140 (6), Tsunami Hazard Overlay Zone (TH).

In the TH zone the following regulations shall apply:

6. Evacuation Route Improvement Requirements.All new development, substantial improvements and land divisions in the TH shall incorporate evacuation measures and improvements,...

Such measures may include:

- a. On-site improvements.
 - b. Off-site improvements.
 - c. Evacuation route signage.
 - d. Evacuation route improvements.
-



ISSUE 4

RBZO 3.142 REQUIRES THE APPLICANT DEVELOP EVACUATION MEASURES AND IMPROVEMENTS.

Staff Finding.

The Applicant has submitted supplementary material to address the on-site, evacuation route, and signage improvements that will be made, addressing the requirements of the TH zone.

As noted in the supplementary materials, no off-site improvements are proposed to the evacuation routes, as these areas are privately owned, nor are any improvements outlined in the Tsunami Evacuation Facilities Improvement Plan for this area, outside of those proposed by the Applicant.

ISSUE #5

RBZO 4.150 REQUIRES THE CITY TO ENFORCE IT'S RIPARIAN SETBACK FOR MCMILLAN CREEK, PREAPPROVAL.

RBZO Section 4.150. Riparian Vegetation.

Riparian vegetation adjacent to the lakes and streams in Rockaway Beach shall be protected in accordance with the following provisions:

1. The following areas of riparian vegetation are defined:
 - a. Fifteen feet on either side of McMillan...

ISSUE #5

RBZO 4.150 REQUIRES THE CITY TO ENFORCE IT'S RIPARIAN SETBACK FOR MCMILLAN CREEK, PREAPPROVAL.

Staff Finding.

No development is proposed within 15 feet of McMillan Creek, as reflected in the maps provided by the Applicant. The only utility crossings of McMillan Creek are existing water service lines and valves. The proposed building footprints appear to be 15' or more from McMillan Creek. This requirement will be reviewed again for conformance when zoning applications are submitted.

STAFF RECOMMENDATION

STAFF RECOMMEND **DENIAL OF APPEAL 24-1 ON ALL GROUNDS.**

Staff find that substantive evidence exists to uphold the Planning Commission's July 18, 2024 decision on application PUD 24-1. The Applicant has provided evidence in the application and additional materials submitted to meet the requirements of the City's ordinances, as well as State law.

CONCLUSION

The City Council should carefully consider the request, including all oral and written testimony on record and presented at the public hearing, **ONLY AS THE TESTIMONY PERTAINS TO THE FIVE CRITERIA ON WHICH THE APPEAL WAS FILED**. After considering testimony as it relates to these applicable criteria, the City Council will need to make a decision on the request.

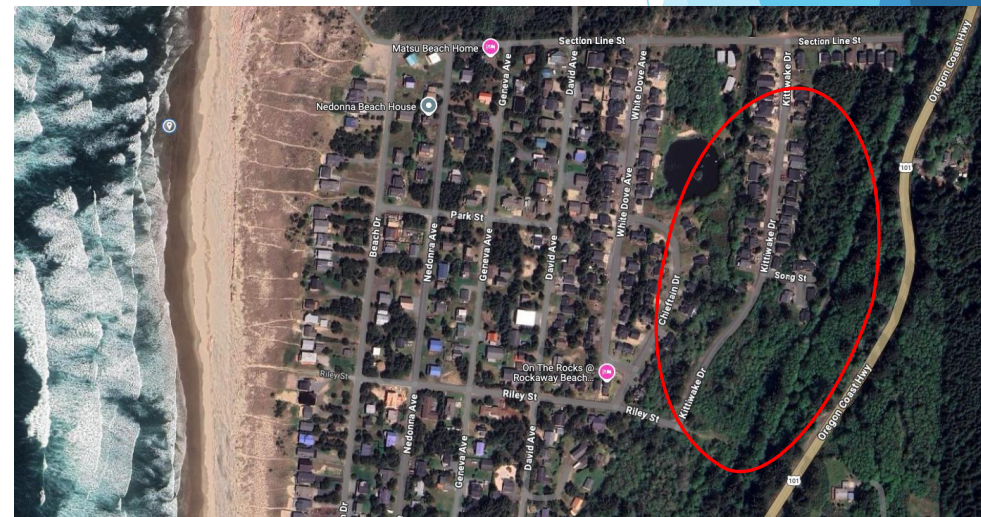
Notice of the City Council decision shall be provided to all parties to the hearing within five working days of the date that the final order is signed. The decision may be appealed to the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days



APPEAL #24-1: Nedonna Wave Planned Unit Development

Case Background

- ▶ **Nedonna Wave:** A 28-lot Planned Unit Development (PUD) approved in 2008.
- ▶ **Phased Development:**
 - ▶ PUD was approved for development in two phases in July 2008
 - ▶ Applicant recorded the plat of Nedonna Wave Phase I on February 2, 2009
 - ▶ 8 lots were developed during Phase I, before construction was suspended
 - ▶ Phase II improvements were never completed



Current Application

- ▶ Developer now wants to resume & expand Phase II
- ▶ March 4, 2024
 - ▶ Application for PUD #24-1
 - ▶ Modification to approved Final Plan
 - ▶ Phase 2.1: lots east of Kittiwake Drive
 - ▶ Phase 2.2: lots west of Kittiwake Drive
 - ▶ **Two additional lots**—requested to create two lots instead of one lot at the N end of Jackson St., and four lots instead of three at the NE corner of Kittiwake Dr. and Riley St.
- ▶ June 20 and 27, 2024
 - ▶ Public Hearings
- ▶ July 18, 2024
 - ▶ Planning Commission Meeting w/ City Staff
- ▶ August 1, 2024
 - ▶ Notice of Decision
 - ▶ Findings, Conclusions, and Final Order



Grounds for Appeal

Oregon Shores' appeal is based on five key issues:

1. **Expired Approval:** The original 2008 PUD approval has lapsed.
2. **Resubmission Required Under State Law:** ORS 92.040 requires the applicant to resubmit the initial application under current regulations.
3. **Development in Wetlands:** RBZO 3.080 prohibits residential development in Special Area Wetlands Zones.
4. **Evacuation Measures:** RBZO 3.142 requires the applicant to develop evacuation measures and improvements.
5. **Riparian Setback:** RBZO 4.150 requires the City to enforce its riparian setback for McMillan Creek before approval.

Issue 1: Expired Approval

- ▶ The 2008 approval lapsed when the Applicant failed to complete all planned improvements within one year of tentative plan approval, as required by the conditions of approval.
 - ▶ **Phased Development:** Even though later approval allowed two phases, all initial conditions, including timing requirements, remained valid.
 - ▶ **Failure to Comply:** No extension was granted by the City beyond one year from tentative plan approval, and the developer suspended construction before completing all improvements.
 - ▶ No unique schedule was adopted for the Phase II improvements
 - ▶ The time to complete those improvements under the 2008 approval has long since passed

Supporting Docs

- ▶ Nedonna Wave Project Plan (November 2007) [at Ex 1]

- ▶ “DEVELOPMENT SCHEDULE: The development of this property **will be completed in this calendar year**. In general, development will proceed according to the following schedule: Summer 2007 Phase I construction with completion by Spring of 2008” (p 1/3)

Property Location:
Map: ~~ZN10 ZONE~~ Tax Lot: 4600, 4900, 9000 Block: - Lot(s): -
Situs Address: n/a
Name of Proposed Subdivision: Nedonna Wave
consisting of 6.23 acres divided into 28 lots, proposed in 1 phases.
Township 2N Range 10W Section 20AB Land Use Zone R-1

- ▶ Staff Report (January 2008) [at Ex 2]

- ▶ “The developer shall complete the improvements within one year of tentative plan approval unless an extension is granted by the City to complete improvements. Final plat review shall conform to the procedures of RBZO Article 10 and Article 13.” (p 12/33)

1st Final Order (28-lot PUD preliminary plan approval)

- ▶ **“Final Order”** (02/19/2008) [at Ex 3]
 - ▶ “The Findings of Fact relied upon by the Planning Commission for decision is attached as **Exhibit "A"**. Conditions of Approval are attached as **"Exhibit B"**.” (p 2/3)
- ▶ **“Exhibit A: Findings of Fact”** [at Ex 4]
 - ▶ “The developer shall complete the improvements within one year of tentative plan approval unless an extension is granted by the City to complete improvements. Final plat review shall conform to the procedures of RBZO Article 10 and Article 13.” (p 12/34)
 - ▶ Findings do not discuss timing concerns when considering whether “[t]here are special physical conditions or objectives of the development which the proposal will satisfy to warrant a departure from the standard ordinance requirements.” (p 24/34)
 - ▶ “The plan can be completed within a reasonable amount of time. Finding of Fact: Criteria met 1. The applicant indicates that the **development may be completed in two phases.**” (p 25/34)
- ▶ **“Exhibit B: Conditions of Approval”** [at Ex 5]
 - ▶ “The developer shall complete the improvements within one year of tentative plan approval unless an extension is granted by the City to complete improvements.” (p 6/7)

2nd Final Order (Two-Phase approval)

- ▶ **“Final Order (2)” (08/07/2008) [at Ex 6]**
 - ▶ “Findings of Fact relied upon by the Planning Commission for decision are attached as **Exhibit A, Exhibit C, and Exhibit D**. Conditions of Approval are attached as **“Exhibit B”**” (p 1/2)
- ▶ **“Exhibit C: Findings of Fact: Final Plan Approval” [at Ex 7A]**
 - ▶ Codifying 5/27/2008 Planning Commission decision
 - ▶ “The developer shall complete the improvements within one year of tentative plan approval unless an extension is granted by the City to complete improvements.” (p 18/20)
 - ▶ “Prior to final plat approval, and within one year of preliminary plan approval on January 29, 2008 and July 22, 2008, the developer shall complete the improvements within one year of tentative plan approval unless an extension is granted by the City to complete improvements. Final subdivision plat review shall conform to the procedures of RBZO Article 10 and Article 13.” (pp 18-19/20)
 - ▶ “Renumbered Lots 9 - 28 shall be permitted as **Phase Two** of the Nedonna Wave Final Plat subject to the applicable conditions of preliminary development and tentative plan approval.” (p 19/20)

2nd Final Order (Two-Phase approval)

- ▶ “Exhibit D: Modified Preliminary & Final Approval for Two Phase Development” [at Ex 7B]
 - ▶ Codifying 7/22/2008 Planning Commission decision
 - ▶ “Final Order and Exhibits A, B, C, and D Findings of Fact apply in their entirety except where specifically amended.” (p 2/10)
 - ▶ “The applicant need not enumerate all improvements and conditions of approval consistent with City Standards and Final Orders and corresponding Exhibits A, B, and C, and these findings of fact Exhibit D as they **continue to apply in their entirety except where amended specifically in these findings of fact and this modification does not relieve them of the responsibility imposed during these previous public hearing processes.**” (p 3/10)
 - ▶ “Lots 9-28 shall be permitted as Phase Two of the Nedonna Wave Final Plat **subject to the applicable conditions of preliminary development and tentative plan approval.**” (p 4/10)
 - ▶ “The Two Phase request limits the development of Phase One to eight (8) lots and Phase Two to twenty (20) lots and does for **that limitation serve only to specifically postpone the installation of the remaining utilities** in Riley Street east of Kittiwake, regional sewer pump station and related housings included but not limited to: 3 phase duplex station with controls, divot crane, onsite generator, telemetry, lighting and fencing; the extension of the existing 6” diameter White Dove Sewer manhole at 17th Avenue as necessary to serve the project to and to alleviate surcharging of the 23rd Avenue Manhole; and Paving remainder of Riley Street east of Kittiwake, and Jackson Street.” (p 9/10)

3rd Final Order (PUD overlay approval)

- ▶ **“Final Order (3)”** (09/19/2008) [at Ex 8]
 - ▶ “. . . 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.” (p 1/2)
- ▶ **“Exhibit E”** [at Ex 9]
 - ▶ “All approvals shall conform to the approved Preliminary Development Plan as approved by Final Orders Exhibit A, Exhibit B and Exhibit D.” (p 3/6)
 - ▶ “No changes to the approved preliminary development plan are requested with this application for Final Approval.” (p 6/6)

City Code Supports Approval Expiration

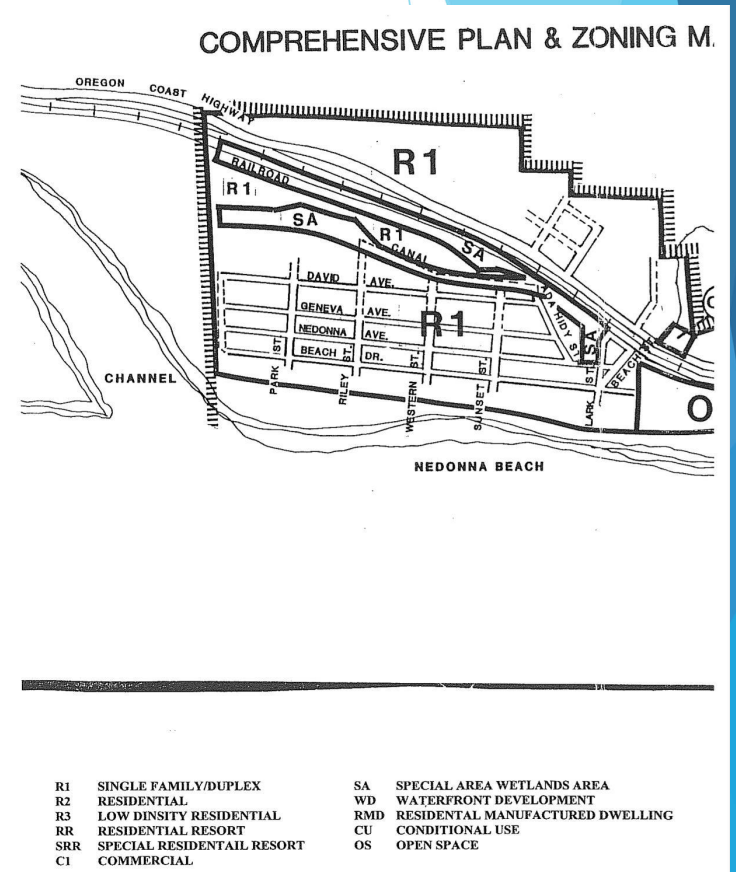
- ▶ Under the RBZO, the Planning Commission could not have intended for approval of two-stage development to extend the timeline indefinitely
- ▶ Schedule and reasonable completion period required:
 - ▶ **RBZO 10.050(1)(i)**: requires applicants to submit a **proposed schedule for the execution of each stage** when a final development plan will be executed in stages
 - ▶ **RBZO 10.050(2)(d)**: requires that a proposed plan be able to be “completed within a reasonable period of time”
- ▶ Developers cannot sit in limbo, or stop and start projects at their own discretion:
 - ▶ **RBZO 13.16**: “Before City Council’s approval of a final plat, the subdivider shall either install required improvements and repair existing streets and other public facilities damaged in the development of the property or **execute and record an agreement between himself and the City, specifying the period within which required improvements and repairs shall be completed and providing that, if the work is not completed within the period specified, the City may complete the work and recover the full cost and expense . . .**”
 - ▶ **RBZO 13.43(2)**: Improvement work shall not be commenced until the City has been notified in advance, and if work has been discontinued for any reason, it shall not be resumed until the City has been notified.

Issue 2: Resubmission Required Under State Law (ORS 92.040)

- ▶ ORS 92.040(2)-(3) requires that subsequent phases of PUD development be reviewed for compliance with current regulations
 - ▶ Well over 10 years have passed since initial approval
 - ▶ Current application is a “subsequent phase of construction,” triggering ORS 92.040(3) review, especially given the modification request to develop **two additional lots**
- ▶ Oregon Court of Appeals and LUBA case law support this
 - ▶ *Athletic Club of Bend v. City of Bend*, 239 Or App 89 (2010)
 - ▶ *Claus v. City of Sherwood* (LUBA 2023)
- ▶ Applicant incorrectly argued that ORS 92.040 only applies to subdivisions, not PUDs
 - ▶ The original PUD approval identifies the project as a subdivision, subject to ORS Chapter 92 and RBZO Article 13
- ▶ ORS 92.040 creates a **temporary** safe harbor to protect developers from unfavorable regulation changes mid-project
 - ▶ That safeguard is **not indefinite**
 - ▶ In order to meet changing community needs and priorities, new development must be assessed under updated standards

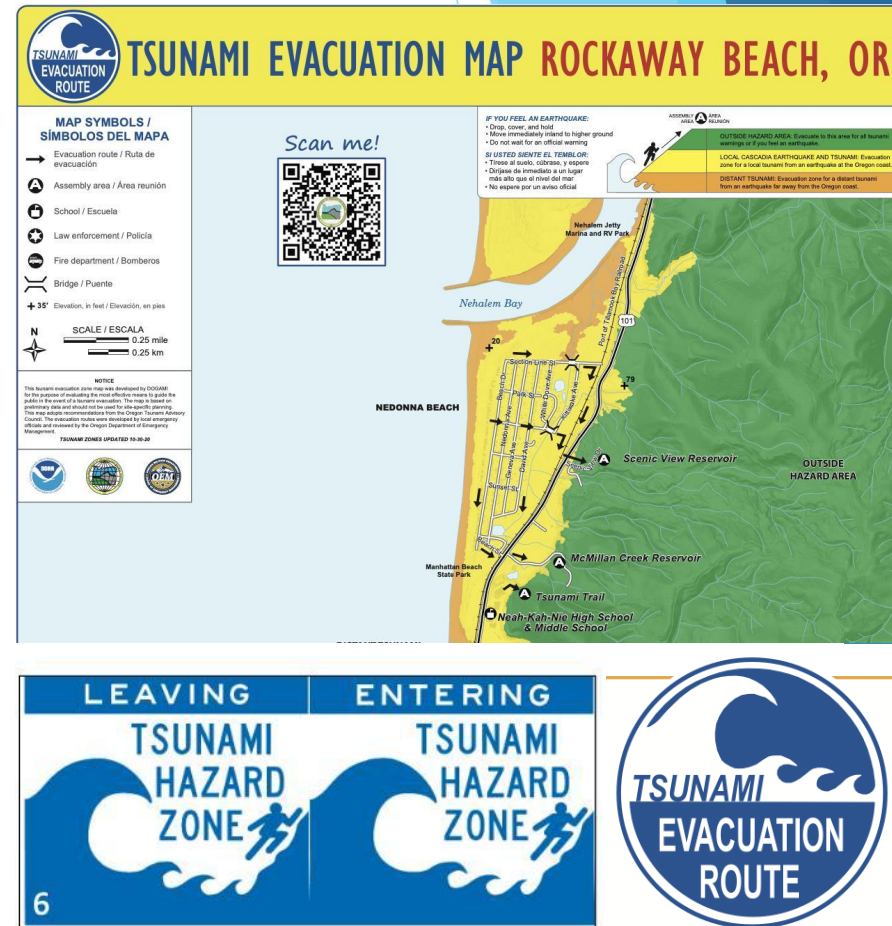
Issue 3: Development in Wetlands (RBZO 3.080)

- ▶ RBZO 3.080 prohibits residential development in Special Area Wetlands (SA) zones
 - ▶ **Permitted Uses:** Only recreational, restoration, and stabilization uses are allowed in SA zones.
- ▶ The Nedonna Wave PUD falls within the SA zone
 - ▶ Any approval of residential development within these areas would violate the RBZO
- ▶ All construction or alteration activities in SA zones require review by the Oregon Division of State Lands & the Corps (RBZO 3.080(4)(a))
 - ▶ No required site investigation by qualified agencies has been conducted for Phase II and the two new lots
- ▶ No updated “Zone Boundary Determination” under RBZO 3.080(5) occurred
- ▶ The last wetland delineation was completed in 2005



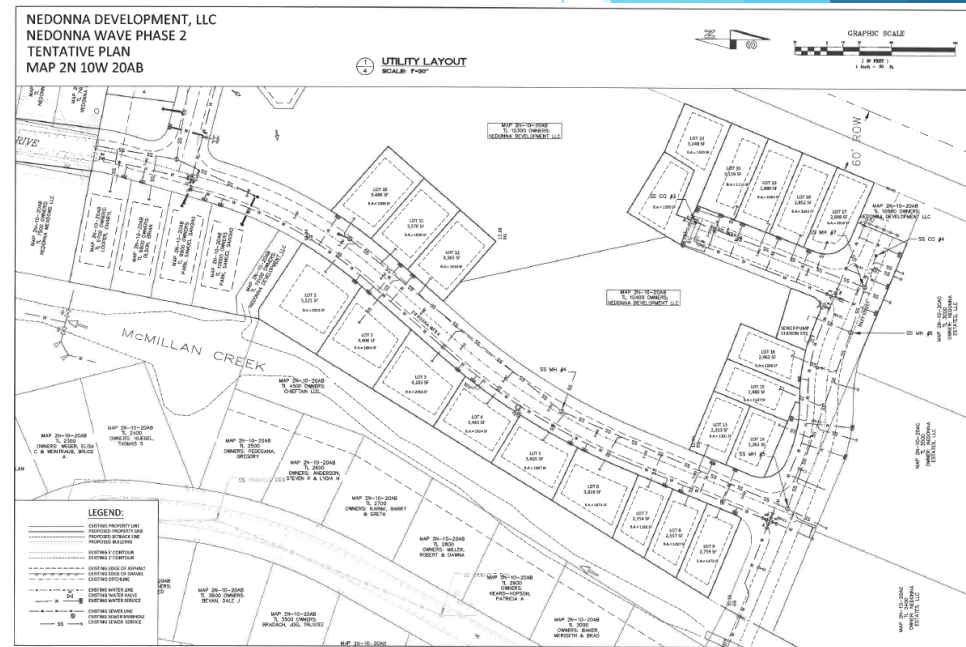
Issue 4: Evacuation Measures (RBZO 3.142)

- ▶ RBZO 3.142(6) mandates the development of evacuation measures and improvements for all new construction in the Tsunami Hazard Overlay Zone
 - ▶ The Nedonna Wave PUD falls within this zone
 - ▶ **Impact on Evacuation Routes:** Applicant's proposal will add population pressure to evacuation routes, likely requiring improvements
- ▶ The application does not address off-site evacuation route improvements or tsunami evacuation route signage
- ▶ **Insufficient Planning Commission Action:** No concrete plan or study was required to address evacuation measures, or ensure that the Applicant will fund and implement any necessary improvements
 - ▶ A traffic study post-approval does not demonstrate compliance



Issue 5: Riparian Setback (RBZO 4.150)

- ▶ RBZO 4.150 requires the City to enforce its riparian setback for McMillan Creek before approval
 - ▶ **15-Foot Riparian Setback:** Development is prohibited within this setback to protect riparian vegetation.
 - ▶ **Mitigation Plan Required:** If vegetation removal is necessary, applicants must submit a plan for removal and re-vegetation approved by the Oregon Department of Fish and Wildlife (ODFW)
- ▶ The Planning Commission approved the Application before submission of a re-vegetation plan
 - ▶ The Commission instructed the Applicant to coordinate with ODFW to develop such a plan, however, RBZO 4.150(5) is forward-looking
 - ▶ The Commission must assess the riparian setback requirements and the potential impact of the project *before* approval



In Summation

- ▶ The original approval has expired
- ▶ The developer must resubmit the application under ORS 92.040
 - ▶ Especially in light of two additional lots
- ▶ The Planning Commission failed to find that the proposal is consistent with the RBZO
 - ▶ PC's findings concerning compliance with the RBZO are inadequate in regards to wetlands, evacuations measures, and riparian setbacks
 - ▶ The staff review and approval of construction going forward will be a ministerial review process that does not include notice and an opportunity for a public hearing at which petitioners will have a right to participate.
- ▶ The City Council should deny the current application