

BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

OREGON SHORES CONSERVATION COALITION,  
*Petitioner,*

vs.

CITY OF ROCKAWAY BEACH,  
*Respondent.*

LUBA No. 2025-001

FINAL OPINION  
AND ORDER

Appeal from City of Rockaway Beach.

Alexandria Dolezal filed the petition for review and argued on behalf of petitioner. Also on the brief was Eric Wriston and Crag Law Center.

No appearance by City of Rockaway Beach.

BASSHAM, Board Member; ZAMUDIO, Board Chair; WILSON, Board Member, participated in the decision.

REMANDED 07/02/2025

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

**NATURE OF THE DECISION**

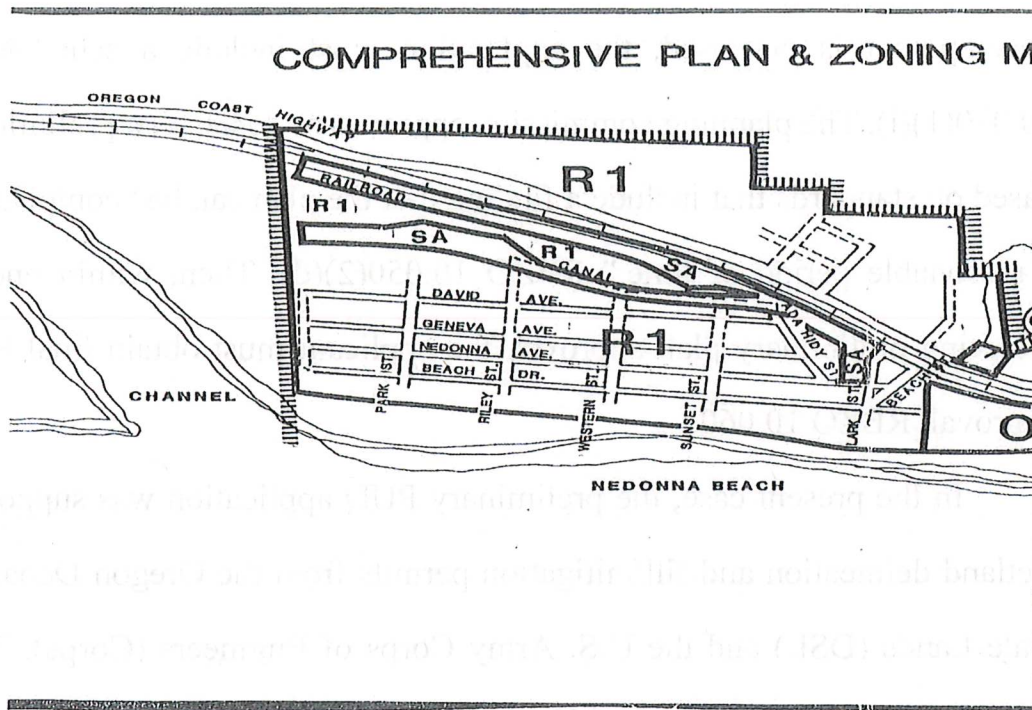
Petitioner appeals a city council decision approving an application to modify a planned unit development (PUD) that the city originally approved in 2008, and to authorize construction of Phase 2 of the original PUD approval.

**FACTS**

The subject property is a lot approximately 2.6 acres within a tract approximately 6.2 acres in size, split-zoned between single-family residential (R-1) and Special Area Wetland (SA). Both the R-1 and SA zones are base zones, which prescribe a list of permitted and conditional uses allowed in each zone. The SA zone does not list residential development as either a permitted or conditional use.

Attached to the petition for review at Appendix 35 is an excerpt from the city's zoning map, which is combined with its comprehensive plan map. The combined map is small in scale, without detail. It depicts streets and major features like a railroad and the Oregon Coast Highway, but no property boundaries or individual lots or parcels. In the general area of the subject property, the city zoning map depicts the boundary lines between the R-1 and SA-zone with thick black lines that stretch north and south in two linear strips, with R-1 zoning surrounding and between the two strips. Below we reprint that excerpt from the plan and zoning map, from Appendix 35 of the petition for review, oriented with east upward, and north to the left:

1



R1	SINGLE FAMILY/DUPLEX	SA	SPECIAL AREA WETLANDS AREA
R2	RESIDENTIAL	WD	WATERFRONT DEVELOPMENT
R3	LOW DENSITY RESIDENTIAL	RMD	RESIDENTIAL MANUFACTURED DWELLING
RR	RESIDENTIAL RESORT	CU	CONDITIONAL USE
SRR	SPECIAL RESIDENTIAL RESORT	OS	OPEN SPACE
C1	COMMERCIAL		

App. 35

2

3 As we understand it, the subject property is located west of the railroad and  
 4 Oregon Coast Highway, and east of David Avenue. It is located north and east of  
 5 the dashed right of way marked "Canal." Riley Street, if extended eastward,  
 6 would form the southern boundary of the property, while Park Street, if extended  
 7 eastward, would form the northern boundary.

8 In 2007, the applicant applied to the city to approve a PUD for a 28-lot  
 9 residential development, initially in one phase. Under Rockaway Beach Zoning  
 10 Ordinance (RBZO) section 10, a PUD application is processed in several steps,

1 with the applicant first seeking preliminary development plan approval. If phased  
2 development is proposed, the application must include a schedule. RBZO  
3 10.050(1)(i). The planning commission approves or denies that preliminary plan,  
4 based on standards that include a finding that the plan can be “completed within  
5 a reasonable period of time.” RBZO 10.050(2)(d). Then, within one year of  
6 receiving preliminary plan approval, the applicant must obtain final PUD plan  
7 approval. RBZO 10.060.

8 In the present case, the preliminary PUD application was supported by a  
9 wetland delineation and fill/mitigation permits from the Oregon Department of  
10 State Lands (DSL) and the U.S. Army Corps of Engineers (Corps). The 2007  
11 delineation showed a large 67,953-square foot wetland roughly in the middle of  
12 the property, and a number of smaller isolated wetland areas. Record 1661. The  
13 DSL and Corps permits authorized fill of some wetland areas, offset by  
14 mitigation. The 2007 delineation and the DSL and Corps permits expired after  
15 five years. Record 51, 65.

16 In February 2008, the planning commission approved the preliminary plan  
17 for the 28-lot PUD in one phase. A condition in the February 2008 preliminary  
18 PUD approval required the developer to complete all improvements within one  
19 year, unless the city granted an extension.

20 In July 2008, the applicant requested modification of the PUD, to allow  
21 development in two phases. Phase 1 would consist of lots 1-8 in the northern  
22 portion of the property, while Phase 2 would consist of lots 9-28, in the southern

1 portion. At the same time, the applicant applied for final PUD approval for the  
2 two-phase development application. In August 2008, the planning commission  
3 granted final PUD approval, as modified to allow two phases. Subsequently, in  
4 September 2008, the city council approved amending the zoning map to designate  
5 the property as a "PUD."

6 The applicant completed construction of Phase 1 and recorded a final  
7 subdivision plat for Phase 1 within one year of the preliminary PUD approval.  
8 The applicant also constructed streets and other infrastructure for Phase 2, and  
9 completed all wetland fills and mitigation authorized by the 2008 DSL and Corps  
10 permits. However, as a consequence of the 2008 economic recession, the  
11 applicant suspended further plans to construct Phase 2.

12 Fast forward fifteen years. In February 2024, the applicant filed an  
13 application seeking to modify the 2008 final PUD plan, to include two additional  
14 lots, among other changes. The planning commission approved the two  
15 additional lots, but the other requested modifications were withdrawn or denied.  
16 The planning commission imposed several conditions including one that the  
17 applicant provide a new wetland delineation approved by DSL, and copies of any  
18 required DSL or Corps permits.

19 Petitioner appealed the planning commission approval to the city council,  
20 arguing that because Phase 2 had not been constructed within one year of  
21 approval, as required by the condition of approval, the 2008 PUD approval had  
22 expired. Further, petitioner argued that the applicant proposed to construct the

1 Phase 2 residential lots, including the two additional lots, within areas mapped as  
2 part of the SA zone, which does not allow any residential uses.

3 The city council held a hearing on the appeal on November 20, 2024. On  
4 December 18, 2024, the city council issued its decision denying the appeal and  
5 approving the requested PUD modification.

6 This appeal followed.

### 7 **FIRST ASSIGNMENT OF ERROR**

8 Petitioner argues that the city erred in approving residential development,  
9 including two new lots, on parts of the subject property that are zoned SA, which  
10 does not permit residential development.

11 As petitioner notes, the SA zone is a base zone, whose purpose is to  
12 “conserve significant freshwater wetlands and the shoreland and aquatic  
13 environment of Rockaway Beach’s lakes[,]” by limiting allowed activities to  
14 low-intensity uses. RBZO 3.080(1). None of the permitted or conditionally  
15 permitted uses listed in RBZO 3.080(2) and (3) include residential development  
16 of any kind. Filling wetland areas is permitted only for allowed uses or water-  
17 dependent uses. RBZO 3.080(4)(k).

18 Petitioner argues, and we agree, that the SA zone, as a base zone, is  
19 different from a related city zone, the Wetland Notification Overlay Zone at  
20 RBZO 3.130. As the name suggests, the Wetland Notification Overlay Zone is  
21 an overlay zone, which is applied over a base zone in areas that may have  
22 wetlands, but which are not zoned SA. The Wetland Notification Overlay Zone

1 does not itself change or limit any uses allowed in the base zone. It simply  
2 provides a mechanism for requiring the applicant for development to notify DSL  
3 and the Corps and, if based on a delineation those agencies determine they have  
4 jurisdiction, supply the city with required permits.

5 In the present case, petitioner argues that the city essentially treated the SA  
6 zone as an overlay zone such as the Wetland Notification Overlay Zone, and  
7 required only that the applicant submit a new delineation approved by DSL and  
8 the Corps and any required permits. Petitioner argues that the city ignored the  
9 fact that the SA zone prohibits residential uses and that the proposed Phase 2  
10 residential construction, including the two new lots, is located within areas that  
11 arguably are mapped on the city's zoning map as SA.

12 Petitioner raised this issue on appeal to the city council, but the city council  
13 findings do not directly address the issue. The findings first quote RBZO  
14 3.080(5), which provides:

15 "Zone Boundary Determination. At such time that a development is  
16 proposed in the vicinity of an area designated [SA], the [c]ity may  
17 require a site investigation to determine the exact location of the  
18 zone boundary. The site investigation shall be performed by a  
19 qualified agent such as a biologist from the [Corps] or [DSL]." See  
20 Record 16.

21 After quoting RBZO 3.080(5), the city council decision states:

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

1 “The Planning Commission conditioned its approval, requiring the  
2 [a]pplicant to complete a wetland delineation to be reviewed and  
3 approved by [DSL] to determine if there is a change in the wetland  
4 boundaries and if a wetland removal-fill permit is required.” Record  
5 16.

6 Thus, the city council appeared to rely on the condition requiring a wetland  
7 delineation, pursuant to RBZO 3.080(5), to ensure that no development in Phase  
8 2 occurs in wetland areas. In a different section of the decision the city council  
9 noted testimony from city staff that DSL had in fact recently reviewed a new  
10 wetland delineation on the property. Record 11-12. That new delineation is not  
11 in the record. However, city staff informed the council that the new delineation  
12 confirms that no “building lots” are located in wetland areas on the property. *Id.*  
13 Staff stated that the wetland areas on the site are located within areas set aside as  
14 open space, which would be protected under the SA wetlands regulations. *Id.*

15 Petitioner does not address the city’s reliance on RBZO 3.080(5) to ensure  
16 compliance with the SA zone. However, we understand petitioner to argue that  
17 the city’s application of RBZO 3.080(5) does not change the fact that, based on  
18 the city zoning map, the SA zone applies to a large portion of the subject property,  
19 and the city has not shown that the SA-zoned portion of the property, *as depicted*  
20 *on the zoning map*, includes no buildings sites, building lots, or other  
21 development not allowed in the SA zone.

22 As noted, the zoning map is at a scale and level of detail that makes it  
23 difficult to verify from the map alone exactly where the zoning boundaries are  
24 located relative to the subject property, and exactly which parts of the property

1 are subject to the SA zone. Each boundary line appears to be as wide as some of  
2 the rights-of-way depicted on the map, and those lines are generally drawn  
3 without reference to property lines or other features that would allow locating the  
4 zone boundaries on the ground with any precision.<sup>1</sup> Nonetheless, we presume that  
5 the SA zoning boundaries depicted on the zoning map could, with some effort,  
6 be mapped onto a detailed-scale map of the subject property. And we assume that  
7 petitioner is correct that, if such an effort were made, the SA-mapped areas of the  
8 property would include some proposed Phase 2 residential development. We note  
9 that the shapes of the actual wetland areas depicted on the wetland delineation  
10 submitted in 2007 bear little or no resemblance to the general “shapes” of the SA-  
11 zoned areas depicted on the zoning map in the area that includes the subject  
12 property. *See, e.g.*, Record 1661 (delineation showing then-existing wetlands).

13 The city’s underlying presumption regarding the SA zone and operation of  
14 RBZO 3.080(5) seems to be that the SA zoning boundaries depicted on the  
15 official zoning map are merely suggestive, and that the “actual” SA zoning  
16 boundaries are determined by conducting a wetland delineation pursuant to  
17 RBZO 3.080(5). We understand the city to implicitly reason that, if the wetland  
18 delineation shows that an area mapped on the zoning map as SA is actually not a

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<sup>1</sup> We note that RBZO 2.050 states that “[u]nless otherwise specified, zone boundaries are section lines, subdivision lines, lot lines, center lines of street or railroad rights-of-way, or such lines extended.” In the area of the subject property, the zoning map depicts few if any of these locational aids, and the boundaries of the SA zone appear to be drawn without regard to these aids.

1 wetland, then the zoning boundary line between the SA zone and the bordering  
2 zone (here, the R-1 zone) can be effectively “moved” to the current physical  
3 location of the wetland area, and then the bordering R-1 base zone somehow  
4 expands or “fills in” to supply the regulations governing development of that  
5 area, not the SA zone. Conversely, if the delineation finds a wetland within an  
6 area mapped as R-1, then the boundary between the two zones is relocated so that  
7 the SA zone supplies the regulations governing that wetland area.

8 We understand petitioner to argue that refining the SA zoning boundary  
9 line by a wetland delineation effectively moves the SA zone boundary line, and  
10 that change requires zoning map amendment approval. That is so, petitioner  
11 argues, because SA is a *base* zone, and not an overlay, so “there is no underlying  
12 zone for the property [that is determined to be not within the SA zone] to revert  
13 back to[.]” Petition for Review 13.

14 Petitioner notes that in September 2008 the city council approved adding  
15 the designation “PUD” to the zoning map, pursuant to RBZO 10.070, which  
16 provided that “[a]n approved PUD shall be identified on the zoning map with the  
17 letters ‘PUD’ in addition to the abbreviated designation of the parent zone.”<sup>2</sup> That  
18 zoning map amendment did not, as far as we are informed, change the location

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<sup>2</sup> RBZO 10.070 is quoted in the record and is accompanied by findings, as part of the 2008 Decision. Record 209. Although no party alerts us to this change, at some point between 2008 and today, RBZO 10.070 was repealed by the City of Rockaway Beach and is no longer a part of the RBZO.

1 of any zoning boundary lines. We understand petitioner to argue that simply  
2 amending the zoning map to designate the property as a “PUD,” essentially  
3 creating a type of overlay, does not operate as a basis to relocate the zoning  
4 boundaries for the underlying base zones, or to authorize uses that are prohibited  
5 under the base zones. The findings do not address what role, if any, the PUD  
6 designation required by RBZO 10.070 played with respect to the location of the  
7 SA zone boundary lines in 2008, nor how that impacts or might impact the  
8 location of those boundaries in 2025.

9 Petitioner requests that the city’s be reversed under OAR 661-010-  
10 0071(1)(c), as a land use decision that “violates a provision of applicable law and  
11 is prohibited as a matter of law.” However, we have more questions than answers  
12 when it comes to the city’s SA zone and application of RBZO 3.080(5). It is not  
13 clear to us, based on the current briefing and record, that the city’s decision is  
14 necessarily “prohibited as a matter of law.” The city’s decision does not squarely  
15 address the issue raised by petitioner below regarding conflict with the SA zone  
16 as mapped on the city zoning map, or adopt findings or interpretations explaining  
17 the city’s apparent conclusion that the modified Phase 2 approved in this decision  
18 is consistent with the SA zone. We conclude that remand is the more appropriate  
19 disposition, to allow the city to adopt more adequate findings. OAR 661-010-  
20 0071(2)(a).

21 The first assignment of error is sustained.

1   **SECOND ASSIGNMENT OF ERROR**

2           Petitioner argues that the February 2008 preliminary PUD approval was  
3   subject to Condition of Approval 1, which required that “[t]he developer shall  
4   complete the improvements within one year of preliminary plan approval unless  
5   an extension is granted by the [c]ity to complete improvements.” Record 1465.  
6   According to petitioner, that condition of approval was carried forward under the  
7   final PUD, which approved development in two phases. As noted, the applicant  
8   subsequently completed Phase 1 and most of the infrastructure for Phase 2 within  
9   one year of preliminary PUD approval, but did not complete all of the Phase 2  
10   infrastructure, or apply for Phase 2 subdivision plat approval. Petitioner  
11   contended on appeal below that Condition of Approval 1 applied to both phases,  
12   not just Phase 1. Record 74-76. The applicant contended to the contrary that  
13   completing the improvements for Phase 1 satisfied preliminary PUD Condition  
14   of Approval 1, and that the Final PUD approval did not require that Phase 2 be  
15   completed within any specified period of time. The applicant also argued that  
16   nothing in the city code or state law imposed any expiration date on the PUD  
17   approval.

18           The city council addressed this issue with the following finding:

19           “The Appellant noted that in the original 2008 approval, the  
20           Applicant did not provide a schedule as required [by RBZO 10.050]  
21           when seeking to develop a Planned Unit Development in phases.  
22           Regardless, as noted in the Applicant’s arguments at the hearing on  
23           the appeal, the City did approve the application in 2008, in two

1 phases. The 2008 approval is still valid, as neither the City's code  
2 nor State Law caused the application to expire." Record 14.

3 Relatedly, the city found:

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

9 However, the city council adopted no findings addressing petitioner's arguments  
10 regarding preliminary PUC approval Condition of Approval 1, and whether that  
11 condition was carried forward to the final PUD plan, as modified to allow  
12 development in two phases, or whether some other provision or condition in the  
13 final PUD approval superseded Condition of Approval 1, with respect to  
14 development of Phase 2.

15 As the findings note, RBZO 10.050(1)(i) requires that a PUD applicant  
16 provide a schedule for completing improvements when proposing phased  
17 development, and the applicant here failed to propose a schedule for each phase  
18 when seeking modification of the original one-phase preliminary PUD approval.  
19 The city approved the modification and final PUD plan without such a schedule.  
20 As petitioner notes, RBZO 10.050(2)(d) requires that a finding that the proposed  
21 preliminary PUD plan "can be completed within a reasonable period of time." In  
22 approving the modification and final PUD plan in 2008, the planning commission  
23 may possibly have erred in (1) failing to require that the applicant submit a  
24 development schedule when proposing phased development, and (2) failing to

1 impose a specific deadline on phased development to ensure that development in  
2 fact occurred “within a reasonable period of time.” RBZO 10.050(2)(d). If such  
3 errors were made in the 2008 PUD decision, then they cannot be remedied in an  
4 appeal of the present decision because the 2008 PUD decision is final and not  
5 subject to our review. However, RBZO 10.050(1)(i) and 10.050(2) may provide  
6 context that sheds light on the question of whether the city intended, in adopting  
7 the final PUD plan, to carry forward and apply preliminary PUD plan Condition  
8 of Approval 1 to both Phase 1 and Phase 2. If it intended the condition to apply  
9 to both phases, then petitioner would seem to be correct that the PUD has expired  
10 for failure to complete all Phase 2 improvements within one year of preliminary  
11 PUD approval. If the city did not so intend, and preliminary Condition of  
12 Approval 1 did not apply to Phase 2, then that condition obviously could not  
13 terminate the PUD.

14 We agree with petitioner that remand is required for the city to consider  
15 and resolve that question in the first instance.

16 The second assignment of error is sustained.

17 The city’s decision is remanded.