

**PUBLIC TESTIMONY
SUBMITTED FOR
SEPTEMBER 9, 2025
CITY COUNCIL HEARING
Remand #25-1
Nedonna Development
Phase 2 Planned Unit
Development**

(Received as of 8/19/2025)

No additional testimony received as of 9/2/2025

From: Pam Birmingham [REDACTED] >
Sent: Monday, August 18, 2025 7:39 AM
To: City Planner
Subject: Case File #Remand-25-1

To: Rockaway Beach City Council

Subject: Testimony Regarding Case File #Remand-25-1

As a real estate broker on the North Coast I certainly understand the need for more housing. That need however, should not be at the expense of sensitive wetland areas nor should it be allowed in areas with soil that is unstable.

Wetlands are not suitable for building for the following reasons:

1. **Increased Flood Risk:** Wetlands naturally absorb excess water, acting as a buffer against flooding. Filling them in or building on them can redirect this water, causing increased flooding in other areas, including the newly built homes and neighboring properties.

2. **Structural Issues:**

- **Foundational Instability:**

Wetlands often have soft, unstable soil, which can lead to shifting foundations, cracked driveways, and other structural problems for buildings constructed on them.

- **Moisture and Mold:**

The consistently damp conditions in wetlands can cause moisture problems in homes, leading to mold growth, particularly in basements and walls.

- **Decomposing Matter:**

Wetlands contain decomposing organic matter, which can release unpleasant and potentially hazardous gases when disturbed or trapped under a foundation.

3. **Liquefaction potential** Structures build on wetland type soil are much more susceptible to liquefaction and structural failure during an earthquake. This could cause loss of life and/or serious injury. The amount of liability that the city would have should this development be allowed to proceed is concerning. Knowingly allowing homes to be built in this area would not be a prudent decision either financially or morally.

I urge you to do the right thing for the community and deny this application.

Thank you,
Pam Birmingham
[REDACTED]

Seaside, OR 97138

Kenneth and Gullan Bragg

[REDACTED]

[REDACTED]

Rockaway Beach, OR 97136

August 19, 2025

Planning Department
PO Box 5
Rockaway Beach, OR 97136

Dear City Council,

Subject: Comments Regarding Case File #Remand-25-1

Thank you for this opportunity to provide comments prior to the September 9, 2025 public hearing to be held by the City Council regarding the remand of the Phase 2 Planned Unit Development application submitted by Nedonna Development. I have reviewed the Final Opinion and Order issued by the Land Use Board of Appeals (No. 2025-001) and agree with its conclusion that the City had erred regarding :

1. The application of the Special Area Wetlands Zone, and
2. The application (or lack thereof) of an expiration date of the original 2008 PUD approval.

In addition to LUBA's findings, I would like to add the following comments

If our remaining wetlands are not preserved and if more development and dwellings are allowed, then there **will be more flooding and jeopardy to homes.** (BTW: Our flood insurance has gone up over 20% in the last two years, most likely due to ever increasing risk).

Wetlands provide a sanctuary for wildlife. Daily we observe a variety of wildlife in Nedonna, including **bald eagles, heron, deer, rabbits, and many others.** Please do not allow more land to be taken away with the resulting impact to their habitat.

Safety remains a serious concern: In case of emergency, (tsunami, fire, flood) it would be very difficult for people to get out of Nedonna, and emergency responders to get into Nedonna, **due to the single entrance/exit to highway 101.**

It would also be impossible for some of the elderly and handicapped to use the tsunami exit paths which are unusable for wheelchairs, walkers, and people with bad knees to negotiate.

Adding additional seasonal visitors with more dwellings will only exacerbate this risk.

Sincerely, Kenneth and Gullan Bragg

From: Gary Corbin <[REDACTED]>
Sent: Saturday, August 16, 2025 6:17 PM
To: City Planner
Cc: Charles McNeilly; Penny Cheek; Mary McGinnis; Tom Martine; Kiley Konruff; Pat Ryan; Melissa Thompson
Subject: Comments Regarding Case File #Remand-25-1

To: Rockaway Beach, OR City Council
Subject: Testimony Regarding Case File #Remand-25-1

Dear Rockaway Beach City Council:

Thank you for this opportunity to provide written testimony prior to the September 9, 2025 public hearing to be held by the City Council regarding the remand of the Phase 2 Planned Unit Development application submitted by Nedonna Development. I have reviewed the Final Opinion and Order issued by the Land Use Board of Appeals (No. 2025-001) and agree with its conclusion that the City had erred in its approval of the application in two essential areas:

1. The application of the Special Area Wetlands Zone, and
2. The application (or lack thereof) of an expiration date on the original 2008 PUD approval.

Special Area Wetlands Zone

Several of the proposed development lots are clearly within the SA zone, where no development is permitted. The SA zone is a true base layer designation. No development can occur on the land so designated. WAVE can't develop there even with "offsets."

As LUBA noted: "The SA zone is a base zone, whose purpose is to "conserve significant freshwater wetlands and the shoreland and aquatic environment of Rockaway Beach's lakes[,] by limiting allowed activities to **low-intensity uses**. RBZO 3.080(1). None of the permitted or conditionally permitted uses listed in RBZO 3.080(2) and (3) include residential development of any kind. Filling wetland areas is permitted only for allowed uses or water dependent uses. RBZO 3.080(4)(k)."

The SA zone was established well prior to the 2008 application by the Rockaway City Council, and for good reason. The area so designated contains both the Nedonna and McMillan Creeks, key waterways that support a diverse array of wildlife and are key contributors to the wells supplying drinking water to the area. The creeks feed into the estuary, and in turn Nedonna River, and then directly to the ocean, and as such are essential habitats for a variety of fish, fowl, and mammalian wildlife. Neighbors have photographed deer, beaver, wild eagles, and a variety of other creatures who inhabit the proposed development area.

The developer's assertions that their development will leave the SA zone intact is erroneous. The City's own GIS maps show the lots encroaching on the SA area. Their dry-weather, mid-summer "surveys" of the area have no bearing on the fact that the area in question fills with water annually and serves essential purposes, outlined above, to the ecological health of the land.

The creeks in the SA zone also provide essential protection against flooding, thereby protecting existing homes and property in the vicinity. Continued development, including properties already developed in Phase I of this development, has encroached upon the watershed, leading to rising water levels dangerously close to properties. Simply put, there's nowhere else for the water to go.

Expired Application

The original application, approved in February 2008, required all improvements to be completed within one year of approval. A subsequent approval in July 2008 to divide the project into two Phases did not alter that deadline, and in September, designated the development as a PUD.

In short, Nedonna WAVE failed to complete its improvements within that period. Therefore, the original approval has expired and no further development can occur under the aegis of that application.

ORS 92.040, which governs applications for subdivisions (including PUDs) in Oregon, stipulates that “A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply.” As LUBA reiterates in their decision, the law also required that, “If phased development is proposed, the application must include a schedule. [RBZO 10.050(l)(i)]. ... The planning commission approves or denies that preliminary plan, based on standards that include a finding that the plan can be “completed within a reasonable period of time.” Then, within one year of receiving preliminary plan approval, the applicant must obtain final PUD plan approval. [RBZO 10.060.]”

The applicant has argued that this provision is vague and that their development fits within that “reasonable” time period. But the initial approval clearly established a one-year window for them to complete their developments, which the applicant did not meet. No amendment to that schedule was established when the Phased development amendment was approved in 2008.

ORS 92.040 further states that land approvals must occur within a “reasonable amount of time” – and that “in no event shall the time period exceed 10 years.” Thus, even the most generous definition of a “reasonable time” is limited by law to 10 years - far less than the 17 years that have passed since the original application. No further land use approvals are permitted for this application.

If Nedonna WAVE wishes to develop this land, therefore, the applicant must begin the application process anew, under the rules, zoning, and restrictions in force at the time of their new application.

To avoid future mistakes of this kind, the City must ensure that any new application **must** have a well-defined, **specific** schedule for **completion** of the work.

Furthermore, all of the conditions and stipulations attached by the Planning Commission and approved by City Council to the 2024 provisional approval must continue to be attached to any new proposal.

Further, we urge that in any new application, the new development should be oriented toward full-time homes - full-sized lots with ample parking, garages, etc. – rather than STRs. This means no “pie-shaped” sub-sized lots that cannot accommodate garages, parking, and other amenities essential to full-time residency in Nedonna Beach.

Thank you for your consideration of these points. I urge you to reject the applicant’s request to overturn the LUBA decision. Please reject this application and require the developer to initiate a new application request, one that respects local law, the needs of current residents, and the ecological sensitivity of our Special Area zone.

Sincerely,

Gary Corbin, Ph.D.

Rockaway Beach, OR

From: Laury Emerson <[REDACTED]>
Sent: Sunday, August 17, 2025 1:31 PM
To: City Planner
Subject: Case File #Remand-25-1

Laury Emerson
[REDACTED]

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

Dear City Council:
Subject: Comments Regarding Case File #Remand-25-1

Thank you for this opportunity to provide comments prior to the September 9, 2025 public hearing to be held by the City Council regarding the remand of the Phase 2 Planned Unit Development application submitted by Nedonna Development.

I have reviewed the Final Opinion and Order issued by the Land Use Board of Appeals (No. 2025-001) and agree with its conclusion that the City had erred regarding:

1. The application of the Special Area Wetlands Zone, and
2. The application (or lack thereof) of an expiration date on the original 2008 PUD approval.

In addition to LUBA's findings, I would like to add the following comments:

I own a home, and am a permanent, year-round, resident whose home is directly impacted by the freshwater forested shrub wetland on the Nedonna Slough. I invested in this neighborhood specifically for the beautiful location and community here. I treasure the daily viewing of wildlife that use my creekside property for a wildlife trail, and food source. I believe the ebb and flow of the wetlands are a necessary habitat for migrating fish, heron, deer, beavers, coyotes, and a wide variety of birds and reptiles. In the winter months, the rain, wind, and tidal pressures can already create a ground water increase that threaten flooding on my property, so I am very concerned that density in the areas north of my home would make this situation worse.

I am also very concerned about the protection of the City's drinking water wells, flood control, and water storage issues this development would impact. My understanding is 2/3 of the backup wells in our neighborhood are already not viable due to lack of drainage needed for a healthy aquifer. I am concerned more density, and filling in of our natural wetland areas will make this situation worse. These wells not only serve the Nedonna area, but all of Rockaway Beach.

I believe a comprehensive plan, ordinance updates, and impacts from existing development needs to be defined better prior to any further development. As someone who lives year round on these treasured wetland areas, I feel the wetland delineation by the developer does not accurately reflect actual annual conditions. Simply sending a crew to view these areas in the few warm and dry Summer months is not not sufficient.

I understand the plans for this development, are based on situations over seventeen years old. The population and environmental changes during this time have changed, and there is more stress/demand for drinking water and wastewater systems.

I appreciate your time and consideration.

Thank you,
Laury Emerson
Treasurer, Nedonna Rural Fire Protection District

From: [REDACTED] >

Sent: Thursday, August 14, 2025 5:36 PM

To: City Planner <cityplanner@corb.us>

Subject: Case File #Remand-25-1

Mary Erwert

[REDACTED]

Rockaway Beach, Or 97136

Dear City Council,

I agree with the Land Use Board of Appeals (No. 2025-001) conclusion that the city erred regarding the following:

- 1.The application of the Special Area Wetlands Zone, and
2. The application (or lack thereof) of an expiration date on the original 2008 PUD approval.

In addition I would like to add my concerns regarding the protection of the city's drinking water wells, flood control, water storage, fish protection, wildlife, best practices needed at a local level, diminishing wetlands due to development, lack of federal protections, lack of ingress/egress in the area.

Thank you,
Mary Erwert

To: City Council

Subject: File # Remand 25-1 – Concerns Regarding the Nedonna Wave Development

My neighbors and I have are aware of the recent Land Use Board of Appeals (LUBA) decision 2025-001 concerning the Nedonna Wave Development and we are watching next steps.

LUBA identified two critical errors in the City of Rockaway Beach's approval process and has remanded the matter back to the City for correction:

1. Improper Authorization of Residential Development in Special Area (SA) Wetlands

LUBA concluded that the SA zone is a base zone, not an overlay zone. As such, its protections are foundational and not subordinate to other zoning designations. The purpose of the SA zone is to conserve significant freshwater wetlands, among other ecological functions. In accordance with Rockaway Beach Zoning Ordinance (RBZO) 3.080, Sections 1–3 and 4(k), SA zones are restricted to low-intensity uses and expressly prohibit residential development. Wetland fill is permitted only for approved uses or those that are water-dependent.

Importantly, the presence of a Wetland Notification Overlay Zone does not alter or override the land use restrictions of the base SA zone. It merely functions as a procedural tool, obligating the developer to notify the Oregon Department of State Lands (DSL) and the U.S. Army Corps of Engineers, and to submit the required permits to the City.

Given the limitations of the City's zoning and comprehensive plan maps—both of which are small in scale and lacking detail—it is virtually impossible to determine the precise boundaries of the SA zone. A revised and clearly defined SA map is urgently needed. This mapping should be conducted by a neutral third-party expert, unaffiliated with either the developer or the City, to ensure accuracy and impartiality.

2. Incomplete Infrastructure for Phase 2

LUBA also found that required infrastructure improvements for Phase 2 were not completed as mandated.

I found in Exhibit A: Findings of Fact, dated February 11, 2008 (page 11), on-site and off-site improvements were clearly delineated. On page 12, under the heading "Final Plat," item #1 specifies that the developer was required to complete all improvements within one year of tentative plan approval, unless an extension was

granted. No such extension appears in the record. Item #7 under the same heading further requires that all on-site and off-site improvements be completed prior to submission of the final plat. A key off-site improvement listed was the regional sewer pump station—an improvement known not to have been completed at that time.

Furthermore, page 13 of the same document references a wetland delineation report and survey (#WD-06-0246) issued by DSL, valid only until August 1, 2011. To our knowledge, no updated delineation permit was issued after that date. However, public tax lot records available through the Tillamook County website indicate that homes continued to be constructed in Phase 1 between 2016 and 2018. This raises serious questions, as at least two additional valid wetland delineations would have been required during that time period.

Finally, for a development approved in two phases, a comprehensive build-out schedule should have been included in the Phase 2 documentation. Yet, no such schedule appears in the public record.

If you have been following current events, you are aware that communities across the United States are experiencing significant flooding and wildfires. Almost daily, there are reports of towns being inundated by floodwaters or residents forced to evacuate due to encroaching wildfires. Rockaway Beach has an opportunity to strengthen its resilience against such risks by preserving our wetlands, particularly the designated Special Area zones by upholding the zoning ordinances as mentioned above.

Wetlands play a critical role in flood control by functioning as natural sponges. They absorb and store excess water during periods of heavy rainfall and gradually release it, thereby reducing flood peaks, minimizing erosion, and mitigating downstream flooding in vulnerable areas. In addition, wetlands can serve as natural firebreaks. Their high water content helps to slow the spread of wildfire, while also providing essential refuge for wildlife during such events. Preserving these natural systems is not only consistent with existing law but also a prudent measure to safeguard the community from increasingly severe climate-related hazards.

I urge you to deny the applicant's request to overturn the LUBA decision. Please require the developer to initiate a new application request, one that respects local law, the needs of current residents, and the ecological sensitivity of our Special Area zones.

Thank you for your time,

Delta Holderness

[REDACTED]

Rockaway Beach

From: Daniel Howlett <[REDACTED]>
Sent: Monday, August 18, 2025 5:22 PM
To: City Planner
Cc: Melissa Thompson
Subject: Public Testimony #Remand-25-1

Hi Melissa, this public testimony is intended for the city planner, but I'd also like to include it as public testimony for the August Council Meeting. Please confirm. Thanks, Daniel

I am writing to express my concern about the proposed Nedonna Wave Development, which directly conflicts with the principles and policies outlined in Rockaway Beach's 2007 Comprehensive Plan.

Both the Planning Commission and the City Council stated that they had no choice but to approve this project. These decision-makers are part-time, unpaid volunteers who are not formally trained in land use or environmental science. As a community, we rely on city staff—especially the city planner—to provide accurate, well-researched reports that are reviewed and sanctioned by licensed city attorneys.

Yet the recent LUBA appeal found that the city erred in two significant ways:

1. Misapplication of the Special Area Wetlands Zone.
2. Failure to properly apply an expiration date to the 2008 PUD approval.

Despite these clear legal errors, city staff recommended approval of the project. This raises serious questions about the qualifications of those responsible for preparing the staff report. In fact, we have since learned that the current city planner was hired without an open, competitive process. The position was never advertised, no interviews were conducted, and no other candidates were considered. This is not only unfair to existing staff who may have sought the role, but also unfair to the community, which deserves the most qualified and capable professionals in these critical positions.

This lack of transparency and accountability at City Hall has now resulted in costly lawsuits—expenses borne by the very community whose interests were supposed to be protected. Going forward, we must ensure that city staff are hired through an open, competitive, and transparent process to secure the best possible expertise.

The Comprehensive Plan is our city's guiding land use document. It is designed to ensure that growth is balanced with environmental stewardship, and that wetlands and other sensitive

areas are protected for the long-term health of our community. If we fail to uphold it, we fail our responsibility to both current and future residents.

The Comprehensive Plan prioritizes the protection of critical environmental areas, including wetlands, groundwater aquifers, and riparian corridors. Key policies from the plan highlight the city's responsibility. Here are a few quotes:

- **Critical Groundwater Protection:** *"The City recognizes that Rockaway Beach lies in a critical groundwater area and shall refuse to permit uses which the Department of Environmental Quality determines could pollute or adversely affect the aquifer."*

The proposed development risks impacting the aquifer, contradicting this policy.

- **Wetlands and Riparian Corridor Protection:** *"Rockaway Beach will consider options in the future to adopt local standards to protect riparian corridors and wetlands... consistent with Statewide Planning Goal 5."*

Allowing development in sensitive wetland areas undermines this intent to balance growth with resource protection.

- **Coastal Shorelands and Wildlife Habitat:** *"Major marshes and significant wildlife habitat shall be protected... New development shall protect existing streams, riparian corridors, wetlands, and drainage ways."*

The development is inconsistent with directives to preserve wildlife habitats and minimize stormwater impacts.

- **Land Use Philosophy:** *"...those areas where development can occur should be more intensively used than sensitive lands such as the wetlands around the lakes, and steep slopes."*

Sensitive lands like wetlands should be preserved, with high-density development directed to less sensitive areas.

Approving this development would not only violate these policies but also set a troubling precedent, weakening Rockaway Beach's commitment to sustainable development. Protecting our wetlands ensures ecological health, safeguards vital water resources, and upholds the values embedded in our community's guiding document.

I urge the city council to honor the principles of the Comprehensive Plan and reject developments that threaten the integrity of our natural heritage. Rockaway Beach's future depends on responsible decision-making today.

Sincerely,
Daniel Howlett

[REDACTED]

[REDACTED]

From: Frank Imbrie <[REDACTED]>
Sent: Monday, August 18, 2025 11:55 AM
To: City Planner
Subject: LUBA 2025-001

Frank D Imbrie

[REDACTED] Rockaway Beach, OR. 97136. PH [REDACTED] Regarding the city error in not requiring a new application, I implore you to think of protecting our natural areas instead of developing them. Please protect our wetlands. Thank you

August 15, 2025

Rockaway Beach City Council and Planning Department
PO Box 5
Rockaway Beach OR 97136

SUBJECT: COMMENTS on CASE FILE #REMAND 25-1

TO THE DECISION MAKERS IN ROCKAWAY BEACH:

Thank you for this opportunity to provide comments prior to the September 9, 2025 City Council public hearing regarding the remand of the Phase 2 Planned Unit Development application submitted by Nedonna Development. I am opposed to any development in, or around, the Special Area Wetlands Zone in the Nedonna Beach area.

I have reviewed the Final Opinion and Order issued by the Land Use Board of Appeals (LUBA; No. 2025-001) and agree with its conclusion that the City has erred regarding:

1. The application of the Special Area Wetlands Zone; and,
2. The application (or lack thereof) of an expiration date on the original 2008 PUD approval.

I am a resident of Wheeler. For the five (5) years that I have lived here full time, I have thrilled to see marshes and other wetlands, protected land "along the edge" (Lower Nehalem Community Trust), rivers, streams, fields and more in our beautiful North Coast area, not just in my community. More often than not, these areas are alive with wildlife, including myriad birds, beaver, deer and more. In my opinion, those who live here and treasure these lands cannot let more land fall to development, especially lands that are designated as freshwater forested shrub wetlands for wildlife and that are critical sources of pure drinking water for our villages. The land under consideration should be available for all of us to enjoy, not merely for the few privileged individuals who may be able to afford to build or live in this small, special area.

In addition to LUBA's findings, I would like to add the following comments. The lands under consideration for development offer extensive benefits for not only Rockaway Beach, but for all who travel and treasure our North Coast landscapes. These lands under help control flood waters, store precious water, offer fishery protections, provide lands for wildlife, and, an opportunity to perfect best practices at the local level in view of diminishing federal protections and questionable building practices.

I ask your consideration for the long-term protection of the forested shrub wetlands of Nedonna Beach; please vote to oppose any further development.

Respectfully,
Mary Leverette

[REDACTED]
Wheeler OR 97147
[REDACTED]
[REDACTED]

From: Charyl Looper <[REDACTED]>
Sent: Tuesday, August 19, 2025 9:13 PM
To: City Planner
Cc: Charyl Looper
Subject: Comments for "Case File #Remand-25-1"

Charyl Looper

[REDACTED]
Rockaway Beach, OR 97136
[REDACTED]

Aug.19, 2025

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

Dear City Council:

Subject: Comments Regarding Case File #Remand-25-1

Thank you for this opportunity to provide comments prior to the September 9, 2025 public hearing to be held by the City Council regarding the remand of the Phase 2 Planned Unit Development application submitted by Nedonna Development. I have reviewed the Final Opinion and Order issued by the Land Use Board of Appeals (No. 2025-001) and **agree with its conclusion that the City had erred regarding:**

1. The application of the Special Area Wetlands Zone, and
2. The application (or lack thereof) of an expiration date on the original 2008 PUD approval.

In addition to LUBA's findings, I would like to add the following comments.

Wetlands:

I have owned my home in Nedonna for over 8 years now, and have personally experienced severe flooding and moisture issues multiple times already. After my experiences, the research I've done, and the comments I've heard from other neighbors regarding this appeal, I am absolutely certain that my house—and all the other homes on Kittiwake—should never have been built. Our homes were built on filled-in wetlands (mine, and many others by Anna Song and the builder, Greg Baumgart). **It is more than time to take a step back and see the errors of overdevelopment and begin to focus on being better stewards of the land. I know my house should not have been built, and I will continue to fight any new developments in the wetland areas.**

As it is, my house has moisture problems throughout the entire main floor. It was a new house when I bought it (from Anna Song), built 8 years ago, slab on grade. On a wetland. Water seeps through the concrete floor, so much so that I can't even have a rug on the floor unless they are made for outdoor-use (they will mold quickly and rot otherwise). A crocosmia has attempted to grow through the crack in the bedroom floor year after year. It gets about 7 inches tall before it dies away. **A PLANT is growing out of my floor.** This is all because of the way my foundation was constructed—on a wetland.

Filling in the wetland in Anna Song's proposed development area will absolutely affect my property negatively. The rainwater will need to run off, instead of being absorbed by the wetlands, and it will most certainly fill the creek beyond its borders in Nedonna. I will end up with more than a plant growing out of my floor, it will be entirely flooded, unliveable and unsellable in a matter of time.

Wildlife:

More than just the issues around my home, I am concerned about the wildlife we have in the area. Bald eagles, beaver, rabbits, river otters, fox, coyotes and just recently—a bear—live here. We need to protect as much land as we can to allow for the wildlife to not just survive, but to flourish.

It is up to all of us to protect these wetlands, and the wildlife within it. No one else will do it.

Thank you for your time,
Charyl Looper

Dick Martindale

Rockaway Beach, OR 97136

August 14, 2025

Planning Department

P.O. Box 5

Rockaway Beach, OR 97136

Dear City Council:

Subject: Comments Regarding Case File #Remand-25-1

Thank you for this opportunity to provide comments prior to the September 9, 2025 public hearing to be held by the City Council regarding the remand of the Phase 2 Planned Unit Development application submitted by Nedonna Development. I have reviewed the Final Opinion and Order issued by the Land Use Board of Appeals (No. 2025-001) and agree with its conclusion that the City had erred regarding:

1. The application of the Special Area Wetlands Zone, and
2. The application (or lack thereof) of an expiration date on the original 2008 PUD approval.

In addition to LUBA's findings, I would like to add the following comments.

Wetlands

- If we wish to protect our wetlands, we must do it through local ordinances. In 2023 a ruling by the U.S. Supreme Court in Sackett vs Environmental Protection Agency (EPA) had enormous ramifications for the health of the nation's waterways. This can be considered as one of the most important water-related Supreme Court decisions in a generation. Unfortunately, a majority of the justices used the case as a tool for dramatically weakening the Clean Water Act. There was no scientific data that supported that position. More recently, the current administration's EPA issued guidance to exclude even more types of wetlands from protection.
- Two of the City's drinking water wells pump water from a very shallow groundwater table in close proximity to this proposed development. Even if new development is connected to municipal sewer service, impervious surfaces are created that increase contaminated runoff which is detrimental to wetlands. In addition, the application of various pesticide products commonly used by property owners is a serious threat to the biodiversity of wetlands.
- Biodiversity is critical for the continued health of any habitat.
- Wetlands are a wonderful, natural feature to control flooding events.
- Wetlands are also a benefit to mitigate potential wildland fires.

Expiration Date

- Prior to approval of new development projects, the City has an opportunity to update its Comprehensive Plan and related ordinances. Clarifying the value and necessity of healthy

watersheds, including wetlands, will provide clear guidance for future decision making. In particular, wetland areas need to be accurately delineated by a neutral, third-party expert.

- Since this project was originally proposed in 2008 the population has increased by about 6%, while tourism has increased dramatically. Potential impact to existing infrastructure and our natural areas (which many visitors come here for) should be evaluated with 2025 conditions and data in mind.

Thank you again for this opportunity to provide comment.

Dick

From: Lyndsey Matteson <[REDACTED]>
Sent: Monday, August 18, 2025 8:16 PM
To: City Planner
Subject: #Remand-25-1

Statement to the Rockaway Beach City Council Regarding the Nedonna Wave Planned Unit Development #Remand-25-1

I am speaking today to urge the Council to reject the application for the Nedonna Wave Planned Unit Development, based on clear violations of existing zoning law and the critical need to preserve our wetlands for the health and safety of our community.

A **Special Area (SA) Wetlands Zone** is designated specifically to protect sensitive wetlands and their associated natural resources. These areas are governed by strict regulations intended to prevent inappropriate development, ensuring that these vital ecosystems are preserved for future generations.

In reviewing the findings from the Land Use Board of Appeals, several statements make it clear that the proposed development violates both the spirit and the letter of our zoning regulations:

- *“The SA zone does not list residential development as either a permitted or conditional use.”*
- *“The city erred in approving residential development, including two new lots, on parts of the subject property that are zoned SA, which does not permit residential development.”*

This is not a matter of interpretation. The Rockaway Beach Zoning Ordinance **does not** permit residential development—of any kind—in SA-zoned areas. Moreover, **filling wetland areas is permitted only for allowed uses or water-dependent uses**, which this residential development clearly is not.

Further, the Land Use Board of Appeals noted:

- *“In the present case, petitioner argues that the city essentially treated the SA zone as an overlay zone such as the Wetland Notification Overlay Zone, and required only that the applicant submit a new delineation approved by DSL and the Corps and any required permits.”*
- *“The city ignored the fact that the SA zone prohibits residential uses and that the proposed Phase 2 residential construction, including the two new lots, is located within areas that arguably are mapped on the city’s zoning map as SA.”*
- *“Based on the city zoning map, the SA zone applies to a large portion of the subject property, and the city has not shown that the SA-zoned portion of the property, as depicted on the zoning map, includes no building sites, building lots, or other development not allowed in the SA zone.”*
- *“We presume that the SA zoning boundaries depicted on the zoning map could, with some effort, be mapped onto a detailed-scale map of the subject property. And we assume that*

petitioner is correct that, if such an effort were made, the SA-mapped areas of the property would include some proposed Phase 2 residential development.”

- *“Simply amending the zoning map to designate the property as a ‘PUD,’ essentially creating a type of overlay, does not operate as a basis to relocate the zoning boundaries for the underlying base zones, or to authorize uses that are prohibited under the base zones.”*

These are not just legal technicalities—these are protections in place for a reason.

It is obvious from these statements that the proposed development **would encompass Special Area wetlands**, and that such development **is prohibited by law**. But beyond legal compliance, we must consider what is at stake if we ignore these protections.

Wetlands play a vital role in the health and safety of our environment and our community. They are essential for:

- **Water quality improvement**
- **Flood control**
- **Providing habitat for fish and wildlife**
- **Carbon sequestration**
- **Erosion control**

Destroying these wetlands for the sake of development would not only break the law, it would also put our community’s environmental integrity, wildlife, and long-term resilience at risk.

I’d also like to add that you don’t need a zoning map to recognize this area as special—or as a wetland. Simply walk down Kittiwake Drive during one of the rainy months, and it becomes immediately clear: the land proposed for development, just east of the street, is submerged under water. This land functions as a wetland in the most obvious, visible way. To ignore what is plainly in front of us would not only be irresponsible, it is also short-sighted.

For these important reasons, I respectfully urge the Council to protect our wetlands, uphold the law, and prioritize the well-being of our community—now and for generations to come—by **rejecting the Nedonna Wave Planned Unit Development**.

Thank you,

Lyndsey Matteson

[REDACTED]

Rockaway Beach, Or 97136

[REDACTED]



Oregon Shores

August 19, 2025

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

Re: No. Remand-25-1: Remand Proceedings in LUBA No. 2025-001 Regarding the Application of Nedonna Development for Phase 2 Planned Unit Development Approval

Oregon Shores Conservation Coalition (“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 of 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 10500) (“the Project”). Oregon Shores is concerned about the impact that the Project will have on the City’s wetlands and watersheds—including the area within the Special Area Wetlands (SA) zone, which the City decided to protect for its ecological value decades ago. These wetlands not only serve important ecological and hydrological functions, but also lie above a drinking water aquifer that may be increasingly vital to the community in a future shaped by climate change and sea level rise.

After the City Council denied Oregon Shores’ appeal of the Planning Commission’s approval of this application, Oregon Shores filed an appeal of the decision to LUBA, and LUBA sustained both of Oregon Shores’ assignments of error on appeal. For the reasons described below, the City Council must deny this application on remand based on both of the assignments of error that LUBA sustained.

I. The Application Must be Denied Because the Proposed Development is Within the Special Area Wetlands Zone

The First Assignment of Error that LUBA sustained requires the City to determine whether the Project is within the Special Area Wetlands (SA) Zone. If development is proposed within the SA zone, the City must deny the Project. Because the zoning map is clear that a significant portion of the Phase 2 development is in the SA zone, the City must deny the application.

- a. LUBA’s Decision Requires the City to Deny the Application Because it Proposes Residential Development Within the SA Zone*

Oregon Coast For All

mandy@oregonshores.org | oregonshores.org
PO BOX 5626, COOS BAY, OREGON 97420

LUBA's decision is clear that residential uses are not an allowed use in the SA zone, meaning if any of the proposed development is within the SA zone, the City Council must deny the application. LUBA held that "[n]one of the permitted or conditionally permitted uses [in the SA zone] include residential development of any kind."¹ LUBA elaborated that this is different from the City's Wetland Notification Overlay Zone, which does not control what uses are allowed, but simply requires applicants to notify DSL and the Corps about the project.² In other words, it does not matter whether the Applicant has done or will do a wetland delineation: if any part of the development is within the SA zone, it cannot be approved.³

The reason LUBA remanded, as opposed to reversing, the City's decision was because it could not tell from the record whether there is indeed residential development proposed within the SA zone.⁴ Attached to this comment as Attachment A are images of the proposed development next to the City's zoning map and online mapping tool. A quick look at these maps makes clear that the proposed development indeed proposes to locate lots within the SA zone. Accordingly, the application must be denied.

b. The Boundary of the SA zone Cannot be Moved Without a Rezone Application.

Prior to LUBA's remand, the City appeared to take the position that Rockaway Beach Zoning Ordinance (RBZO) § 3.080(5) contains an implicit power to move the boundary of the SA zone where a wetland delineation shows there are no wetlands. This interpretation of RBZO § 3.080(5) is incorrect for many reasons, including 1) the text of the provision does not support it, 2) it would violate the purpose of the SA zone, 3) it would be impossible to implement in practice, and 4) it would be a clear violation of the specific procedures for a zone change laid out in state law and the RBZO.

First, RBZO § 3.080(5)'s plain language cannot support an interpretation that the boundaries of the SA zone can be shrunk without going through a rezone process. Instead, it is clear that the provision was intended to provide the City with an optional means to apply the protections of the SA zone to additional neighboring areas where a proposed development would impact the land protected by the zone. The provision reads as follows:

¹ *Oregon Shores Conservation Coalition v. City of Rockaway Beach*, LUBA No. 2025-001, slip op. at 6 (July 2, 2025).

² *Id.* at 6-7.

³ As Oregon Shores explained previously, the fact that the Applicant already received the PUD overlay for the development does not change this analysis as the RBZO is clear that the PUD overlay does not allow residential density beyond what would be allowed by the base zone. RBZO § 10.030 ("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.").

⁴ *Id.* at 11.

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.

“In the vicinity of an area,” makes clear that this provision applies to properties that are adjacent to or nearby the SA zone and not inside of it.⁵ For example, the proposed development is not “in the vicinity of an area designated Special Area Wetlands,” it is inside of an area designated Special Area Wetlands. This is confirmed by the fact that the boundary determination described here is something that “the City may require,” and not something that is available by right to applicants, making clear that it is a discretionary authority to impose additional requirements where there is concern about impacts to protected areas. RBZO § 3.080(5) simply gives the City discretionary authority to require a biologist report for proposed development near protected special area wetlands, to give it more information regarding impacts. There is nothing in the provision that provides that the SA zone boundary can be shrunk based on a wetland delineation.



Second, reading RBZO § 3.080(5) otherwise would conflict with the zone’s purpose as stated in the Comprehensive Plan and RBZO. The SA zone is meant to conserve important

⁵ Merriam-Webster defines “vicinity” to mean “the quality or state of being near.” Merriam-Webster, “Vicinity,” <https://www.merriam-webster.com/dictionary/vicinity>. It also defines the full idiom “in the vicinity of” to mean “in the area that is close to (a place).” Merriam-Webster, “In the Vicinity of,” <https://www.merriam-webster.com/dictionary/in%20the%20vicinity%20of>.

natural areas within the City's boundaries. It is concerned with more than just definitional wetlands. As the City's Comprehensive Plan explains, it was meant to protect "wetlands *and lowlands* that are subject to flooding, provide wildlife habitat, and are a significant scenic resource for Rockaway Beach."⁶ And as the purpose statement of the SA zone RBZO section states, the SA zone is meant "to conserve significant freshwater wetlands *and the shoreland and aquatic environment* of Rockaway Beach's lakes."⁷ Thus, allowing the SA zone to shrink at-will simply based on whether an applicant can demonstrate whether or not *jurisdictional wetlands* are present at the time of a delineation would defeat the purpose of the Special Area Wetlands zone.

Third, the lack of textual support for reading RBZO § 3.080(5) to allow the zone to shrink is bolstered by the absence of any instructions or guidelines for how such an authority would function in practice. Because the SA zone is a base zone, there is no underlying zone for this land to revert to if its boundaries were to shrink. Here, if the SA zone were removed from the subject property, there are no instructions in RBZO § 3.080(5) for what should happen next. What would the underlying zone be? The City Council previously assumed that residential uses could be allowed, but why? Could an industrial use be allowed? It cannot be that whatever zoning is applied to adjacent parcels would simply carry over into the SA zone, because in many cases the "carry-over" zoning would be not only more intensive, but completely unclear. See, for example, the area in the picture from the City's online zoning map below. If the SA zone were to be moved back from the area within and around the red circle, would the underlying zone be C1 or RR? These are the kinds of questions the RBZO would presumably answer if it meant to stash such a large power in such an innocuous provision.

Finally, allowing the boundary of the SA zone to shrink at-will would also be a clear violation of state law and the RBZO. The City has a combined comprehensive plan and zoning map, meaning that any zoning change must be processed as a plan amendment.⁸ Thus, reducing the SA zone boundary would require an amendment to the City's comprehensive plan map. But a comprehensive plan amendment is subject to a particular set of procedures set by state law and the RBZO.⁹ Thus, RBZO 3.080(5) cannot be interpreted to allow the SA zone boundary to shift inwards because that would be amending the comprehensive plan map without following the

⁶ Rockaway Beach Comprehensive Plan at 27 (emphasis added).

⁷ RBZO § 3.080(1) (emphasis added).

⁸ *Rutigliano v. Jackson County*, 42 Or LUBA 565, 573 (2002).

⁹ For example, the City of Rockaway Beach Comprehensive Plan requires any "amendment[] to the comprehensive plan map" to show that the amendment is consistent with the plan's goals and policies, is necessary to meet a land use need, that the land is suitable for the uses, that the area can be served by the appropriate level of public facilities, and that the amendment is compatible with the land use development pattern in the vicinity of the request.

required procedures. If the Applicant wishes to develop within the piece of its property currently designated as SA, it must follow these procedures and apply for a zone change.¹⁰

II. The Application Must be Denied Because the Underlying Plan Approval for the Project has Expired

The Second Assignment of Error that LUBA sustained requires the City to answer one question on remand: did the initial approvals of the Project include a condition that all improvements for both phases of the development be completed within one year. As LUBA explained, if the answer to this question is yes, then this application must be denied because there is no valid underlying approval to modify as the Applicant undisputedly did not complete all of the required improvements.¹¹ As described below, those initial approvals clearly included a condition that improvements be completed within a year, and the application must therefore be denied.

The plain language of the initial PUD approvals for this project was clear that all of the improvements, for both phases, had to be completed within one year. There were multiple layers of decision-making in the initial approval of this project, all of which are included with this comment as Attachment B. However, the expiration issue can be fully understood in four steps:

1. In February 2008, the Planning Commission approved a preliminary plan for the Project.¹² At the time, the Project had not been split into two phases. That initial

¹⁰ Even if the City Council were to read RBZO § 3.080(5) as allowing the SA zone boundary to move inwards, there is no dispute that there are at least some wetlands that are within the development. Regardless of whether those areas are seeing physical housing development, they are being used as a part of the residential use at issue here to provide open space for the housing. The development could not move forward if those SA zoned areas were not being put to that residential use. Accordingly, even if RBZO § 3.080(5) is read in that way, the project must be denied for seeking to allow a prohibited use within the SA zone. Additionally, a PUD only allows the density allowed in the parent zone. If SA areas are included within the development, the allowed residential density in those areas is zero. Accordingly, to issue this approval, the City would have to show that the overall density of the PUD is compliant, while factoring in those SA zones. In other words, the density of housing allowed by this application would have to be compliant with the code without factoring in any of the area that is zoned SA.

¹¹ “If [the City] intended the condition to apply to both phases, then petitioner would seem to be correct that the PUD has expired for failure to complete all Phase 2 improvements within one year of preliminary PUD approval.” *Oregon Shores Conservation Coalition v. City of Rockaway Beach*, LUBA No. 2025-001, slip op. at 14 (July 2, 2025).

¹² This decision is titled “Final Order” in the record and is included in Attachment B at page 5. Also included as a part of this initial order were Exhibit A (findings of fact), included in Attachment B at page 8, and Exhibit B (conditions of approval), included in Attachment B at page 42.

approval—which, again, applied to the whole 28-lot development—required as a condition of approval 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.”¹³

2. Later, in August 2008, the Planning Commission issued a final plan approval for the full 28-lot development.¹⁴ That approval again required that “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.”¹⁵
3. At the same time as it issued that final approval, which applied to the full development, the Planning Commission also authorized an amendment to the preliminary plan and final plan to allow the development to happen in two phases. The order splitting it into two phases explicitly stated that all previous conditions “apply in their entirety except where *specifically* amended.”¹⁶ Nothing in the order amends the one-year timeline that applied to the full development and all of the improvements listed in the previous orders.
4. Finally, in September 2008, the City Council approved the final plan and adopted the PUD overlay.¹⁷ The City Council’s order made clear that all earlier adopted conditions, including the one-year deadline for all of the improvements, still applied before final plat approval.¹⁸

Accordingly, based on this series of orders, it is clear that the plan approval for this project has expired and the subject application must be denied. A one year deadline was included for improvements for the full development as a condition of approval, and it was not “specifically amended” when the project was split into two phases.

Context from the RBZO confirms this understanding of the initial approvals. The City would have been violating the RBZO if it did not include the one-year time limit. When it approved the initial PUD, the City was obligated to set a development schedule and ensure that it

¹³ Attachment B at 19 and 47.

¹⁴ This decision is titled “Final Order (2)” in the record, included in Attachment B at page 3. This order approved both a final plan for the full project and splitting the development into two phases, as discussed in the next bullet. The final order included Exhibit C (giving final plan approval to the full development), included in Attachment B at page 49, and Exhibit D (modifying the final plan approval and preliminary plan approval to split the project into two phases), included in Attachment B at 67.

¹⁵ Attachment B at 64-65.

¹⁶ Attachment B at 68 (emphasis added).

¹⁷ This decision is titled “Final Order (3)” in the record, included in Attachment B at page 1.

¹⁸ Attachment B at 1.

could be completed within a reasonable amount of time.¹⁹ The one year time limit was how the City complied with these provisions.

The initial approval of this development established a one-year deadline for the Applicant to complete all of the improvements for both phases of the development. The Applicant has failed to meet that deadline by over 16 years, and the City Council must therefore deny the application.

III. Conclusion

The record is clear that the Project must be denied based on both of the Assignments of Error that LUBA sustained. It is both illegal and unwise to allow a development in the middle of protected wetland areas to resume construction after a 16-year hiatus. These protections exist for good reason—because the benefits of keeping sensitive areas like these wetlands intact are long-term, community-wide, and increasingly critical as climate and water resource pressures grow.

We appreciate the City Council’s thoughtful consideration of the issues concerning this development and are grateful for the opportunity to offer comment. By denying this application, the City has the opportunity not only to uphold legal integrity, but to demonstrate a meaningful commitment to its own planning goals and to the people who rely on a healthy, resilient landscape. Choosing to reject this outdated and unlawful proposal, and to protect the wetlands and aquifer beneath them, is a choice in favor of Rockaway Beach’s future.

Sincerely,

Mandy Watson

Coastal Conservation Manager

Oregon Shores



Mandy Watson
Coastal Conservation Manager

✉ mandy@oregonshores.org
☎ 847.226.8699

OREGONSHORES.ORG

¹⁹ RBZO § 10.050(1)(i) and RBZO § 10.050(2)(d). LUBA discusses this on page 13-14 of the decision. *Oregon Shores Conservation Coalition v. City of Rockaway Beach*, LUBA No. 2025-001 (July 2, 2025).

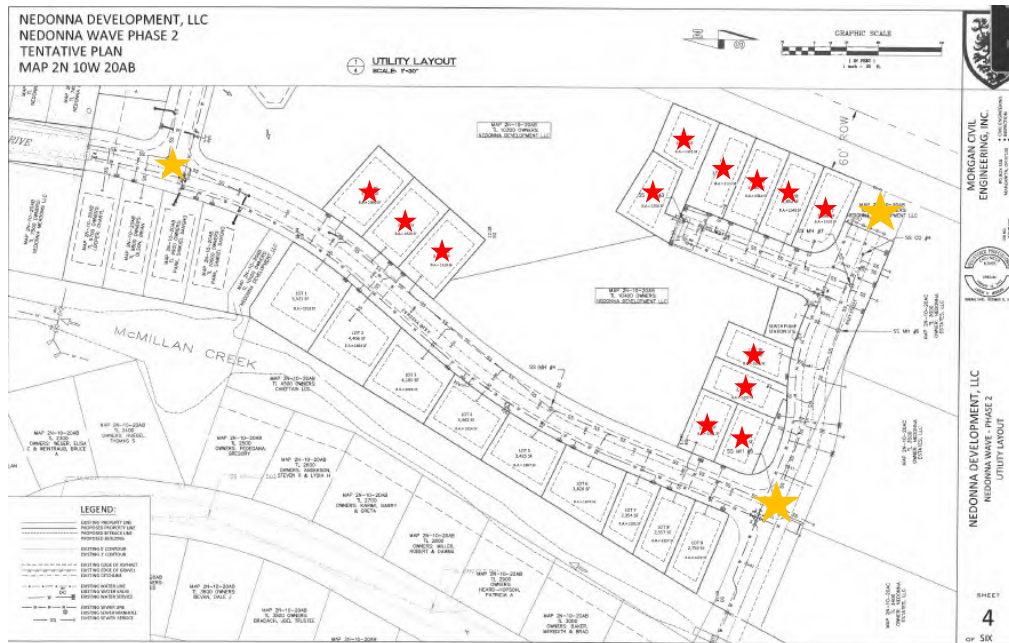
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PO BOX 5626, COOS BAY, OREGON 97420

Attachment A

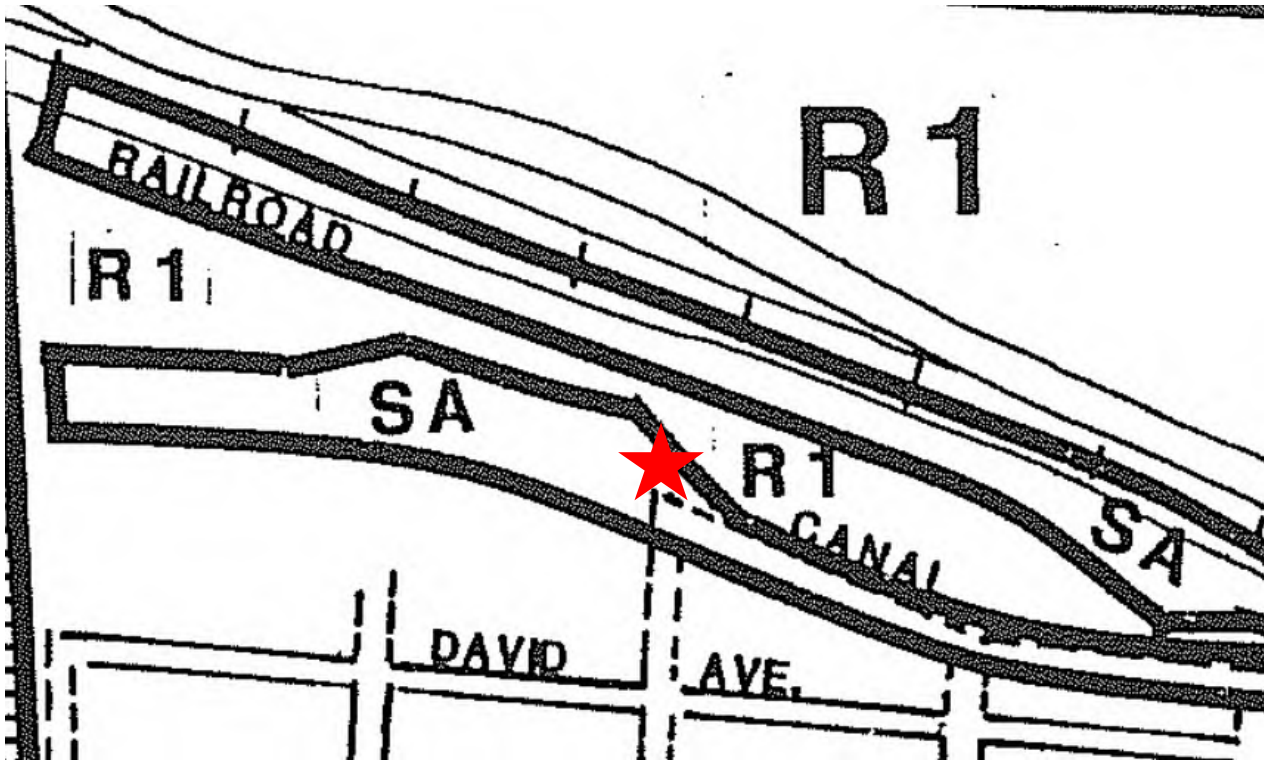
The below picture is a map of the project site. Phase 2 of the development includes all of the lots to the east of Kittiwake Drive, marked on the map with red stars, as well as nine lots to the west of Kittiwake drive.



Comparing this map to the City's online zoning map tool, it is clear that all of those lots east of Kittiwake Drive are within the SA zone. The orange stars in the map above and the map below mark the same intersections for ease of reference.



This matches the City's zoning and comprehensive plan map. Riley street is shown where the red star is, and it is clear that a large swath of the SA zone extends North from Riley Street a little east of David Avenue, further east almost to the railroad. This is just as it is depicted on the above, more detailed zoning map.



Attachment B

BEFORE THE CITY COUNCIL OF ROCKAWAY BEACH, OREGON

Application #2007-19 "NEDONNA WAVE" A 28-Lot Planned Unit Development Subdivision

Final Order Date: September 15, 2008

Page 1 of 2

"FINAL ORDER (3)"

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

APPLICATION REQUEST:

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

CITY COUNCIL DECISION: Approval with Conditions 5-0 Approval

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

FINDINGS OF FACT:

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

Exhibit A: Preliminary Plan Approval with Conditions on January 29, 2008;
 Exhibit B: Preliminary Plan Approval Conditions of Approval on January 29, 2008;
 Exhibit C: Final Plan Approval on May 27, 2008, and
 Exhibit D: Preliminary Plan and Final Plan Approval for a modification to permit the Subdivision to be developed in two stages, Phase One an eight (8) lot subdivision final plat and Phase Two a twenty (20) lot subdivision final plat.
 Exhibit E: August 13, 2008 City Council Final Approval to add P.U.D. to the Zoning Map
 Final Order (1) Exhibits A and B
 Final Order (2) Exhibits C and D
 Final Order (3) Exhibit E

CASE RECORD:

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

BEFORE THE CITY COUNCIL OF ROCKAWAY BEACH, OREGON

Application #2007-19 "NEDONNA WAVE" A 28-Lot Planned Unit Development Subdivision

Final Order Date: September 15, 2008

Page 2 of 2

"FINAL ORDER (3)"

APPEAL PERIOD:

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



Lisa M. Phipps, Mayor

9.19.08

Date

BEFORE THE CITY PLANNING COMMISSION OF ROCKAWAY BEACH, OREGON
Application #2007-19 "NEDONNA WAVE" A 28-Lot Planned Unit Development Subdivision
Findings of Fact Date: July 28, 2008 Page 1 of 2

"FINAL ORDER (2)"

Property Owner: Nedonna Development, LLC; Representative Member: "Anna" Song
Applicant: Mark Dane, Blue Sky Planning, Inc.
Engineer / Surveyor: HLB Otak, Inc., Ron Larson, PE, PLS
Location Description: South of Kittiwake Dr., North of Riley St., West of RR, East of McMillan Canal
Legal Description: Parcel 1 of Partition Plat 1997-20 and Parcel 3 of Partition Plat 1997-57; a portion of vacated Evergreen Street Rockaway Beach Ordinance #98-353
Assessor's Plat Map: 2N 10W 20AB TL 4600, 4900, 9000
Property Size: 6.23 acres
Development Zones: R-1 Zone: 3.9 acres; SA Special Area Wetlands 2.33 acres
Known Hazards: FHO Zone: A5 Flood Zone; HO Zone: Slopes that exceed 25%; HO Zone: Conditionally Stable Deflation Plain; Wetland Notification Overlay Zone

I. Description of Request:

Exhibit C: Request for Final Plan Approval for Nedonna Wave, a 28-lot Planned Unit Development Subdivision.

PLANNING COMMISSION DECISION: Approval with Conditions 5 Approval-0 Denial
The applicable criteria and standards against which the application was tested are contained in Exhibit C Findings of Fact. The Planning Commission held a public hearing on the request on May 27, 2008. The Planning Commission voted 6-0 in favor of Final Plan Approval for Application SPUD #07-19 with a decision of "Approval with Conditions" based on findings of fact contained in Exhibit A, Exhibit B, and Exhibit C.

Exhibit D: Request for Modification of Preliminary Plan Approval and Final Plan Approval to develop the site in two stages.

PLANNING COMMISSION DECISION: Approval with Conditions 5 Approval-0 Denial
The applicable criteria and standards against which the application was tested are contained in Exhibit D Findings of Fact. The Planning Commission held a public hearing on the request on July 22, 2008. The Planning Commission voted 4-0 in favor of Final Plan Approval for Application SPUD #07-19 for a decision of "Approval with Conditions" based on findings of fact.

FINDINGS OF FACT:

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".

CASE RECORD:

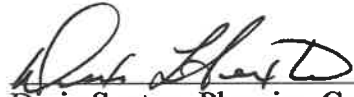
The complete case record including the findings of fact is available for review at City Hall by filing a request during regular business hours.

BEFORE THE CITY PLANNING COMMISSION OF ROCKAWAY BEACH, OREGON
Application #2007-19 "NEDONNA WAVE" A 28-Lot Planned Unit Development Subdivision
Findings of Fact Date: July 28, 2008 Page 2 of 2

"FINAL ORDER (2)"

APPEAL PERIOD:

A decision of the Planning Commission may be appealed to the City Council by a party to the hearing by filing an appeal within 15 days of the date the final order is signed. The notice of appeal filed with the City shall contain the information outlined in the RBZO Section 11.070(3) and may only be filed concerning criteria that were addressed at the initial public hearing.



Dixie Sexton, Planning Commission Chair

08-07-08

Date

BEFORE THE CITY PLANNING COMMISSION OF ROCKAWAY BEACH, OREGON
 Application #SPUD 2007-19 "NEDONNA WAVE" A Planned Unit Development Subdivision
 Application #VAR 2007-20; Application #VAR 2007-21; Application #VAR 2007-22
 Findings of Fact Date: February 11, 2008 Page 1 of 3

"FINAL ORDER"

Property Owner: Nedonna Development, LLC; Representative Member: "Anna" Song
 Engineer / Surveyor: HLB Otak, Inc., Ron Larson, PE, PLS
 Location Description: South of Kittiwake Dr., North of Riley St., West of RR, East of McMillan Canal
 Legal Description: Parcel 1 of Partition Plat 1997-20 and Parcel 3 of Partition Plat 1997-57; a portion of vacated Evergreen Street Rockaway Beach Ordinance #98-353
 Assessor's Plat Map: 2N 10W 20AB TL 4600, 4900, 9000
 Property Size: 6.23 acres
 Development Zones: R-1 Zone: 3.9 acres; SA Special Area Wetlands 2.33 acres
 Known Hazards: FHO Zone: A5 Flood Zone; HO Zone: Slopes that exceed 25%; HO Zone: Conditionally Stable Deflation Plain; Wetland Notification Overlay Zone

I. Description of Request:

APPLICATION # SPUD 2007-19: Approval with Conditions 5-0

The property owner requests approval of a 28 lot planned development subdivision on a site 6.23 acres in area. R-1 Zone: 3.9 acres; SA Special Area Wetlands 2.33 acres. The area of property within the SA Zone is determined by a wetland delineation report and survey concurred with by DSL.

PLANNING COMMISSION DECISION: Approval with Conditions 5 Approval-0 Denial
 The Planning Commission held a public hearing on the request beginning on November 15, 2007 and continued with agreement by the applicant to November 27, 2007 and January 29, 2008. After receiving staff reports, receiving public testimony, and deliberating about the decision, the Planning Commission voted 5-0 in favor of application #07-19 for a decision of "approval with conditions" based on a finding of consistency of the application with applicable criteria as is required to meet the burden of proof. The property owner and applicant agreed to the conditions for the Planning Commission public hearing record. Final plans shall conform substantively to the approved tentative plan.

APPLICATION # VAR 2007-20: Approval 5 – 0

Concurrent variance application requests a building height of 29 feet for all lots of "Nedonna Wave" excepting lots 25-28. The criteria for a height variance in a Planned Unit Development are specified by Ordinance #143, Section 10.040 (7) Height Guidelines. Applicable criteria "allow a variance of heights where it is determined that surrounding property will not be harmed".

PLANNING COMMISSION DECISION: Approval with Conditions 5 Approval-0 Denial
 The Planning Commission held a public hearing on the request beginning on November 15, 2007 and continued with agreement by the applicant to November 27, 2007 and January 29, 2008. After receiving staff reports, receiving public testimony, and deliberating about the decision, the Planning Commission voted 5-0 in favor of application #07-20 for a decision of "approval with

BEFORE THE CITY PLANNING COMMISSION OF ROCKAWAY BEACH, OREGON
 Application #SPUD 2007-19 "NEDONNA WAVE" A Planned Unit Development Subdivision
 Application #VAR 2007-20; Application #VAR 2007-21; Application #VAR 2007-22
 Findings of Fact Date: February 11, 2008 Page 2 of 3

"FINAL ORDER"

conditions" based on a finding of consistency of the application with applicable criteria as is required to meet the burden of proof. The property owner and applicant agreed to the conditions for the Planning Commission public hearing record. Final plans shall conform substantively to the approved tentative plan.

APPLICATION # VAR 2007-21: Approval 5 – 0

Concurrent variance application requests a building height of 36 feet for lots 25 – 28. The criteria for a height variance in a Planned Unit Development are specified by Ordinance #143, Section 10.040 (7) Height Guidelines. Applicable criteria "allow a variance of heights where it is determined that surrounding property will not be harmed".

PLANNING COMMISSION DECISION: Approval 5 Approval-0 Denial

The Planning Commission held a public hearing on the request beginning on November 15, 2007 and continued with agreement by the applicant to November 27, 2007 and January 29, 2008. After receiving staff reports, receiving public testimony, and deliberating about the decision, the Planning Commission voted 5-0 in favor of application #07-21 for a decision of "approval with conditions" based on a finding of consistency of the application with applicable criteria as is required to meet the burden of proof. The property owner and applicant agreed to the conditions for the Planning Commission public hearing record. Final plans shall conform substantively to the approved tentative plan.

APPLICATION # VAR 2007-22: Approval 5 – 0

Concurrent variance application requests the deletion of sidewalks from the development. The criteria from which a variance is requested are found in RBZO Article 13, Section 44 (3) Sidewalks, which requires sidewalks on both sides of all streets except where the Planning Commission has granted a variance. The criteria for a variance to subdivision standards are specified by Ordinance #143, Article 13, Sections 47-50 Variance.

PLANNING COMMISSION DECISION: Approval with Conditions 5 Approval-0 Denial

The Planning Commission held a public hearing on the request beginning on November 15, 2007 and continued with agreement by the applicant to November 27, 2007 and January 29, 2008. After receiving staff reports, receiving public testimony, and deliberating about the decision, the Planning Commission voted 5-0 in favor of application #07-22 for a decision of "approval with conditions" based on a finding of consistency of the application with applicable criteria as is required to meet the burden of proof. The property owner and applicant agreed to the conditions for the Planning Commission public hearing record. Final plans shall conform substantively to the approved tentative plan.

FINDINGS OF FACT:

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".

BEFORE THE CITY PLANNING COMMISSION OF ROCKAWAY BEACH, OREGON
Application #SPUD 2007-19 "NEDONNA WAVE" A Planned Unit Development Subdivision
Application #VAR 2007-20; Application #VAR 2007-21; Application #VAR 2007-22
Findings of Fact Date: February 11, 2008 Page 3 of 3

"FINAL ORDER"

CASE RECORD:

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

APPEAL PERIOD:

A decision of the Planning Commission may be appealed to the City Council by a party to the hearing by filing an appeal within 15 days of the date the final order is signed. The notice of appeal filed with the City shall contain the information outlined in the RBZO Section 11.070(3) and may only be filed concerning criteria that were addressed at the initial public hearing.



Dixie Sexton, Planning Commission Chair



Date

BEFORE THE CITY PLANNING COMMISSION OF ROCKAWAY BEACH, OREGON
 Application #SPUD 2007-19 "NEDONNA WAVE" A Planned Unit Development Subdivision
 Application #VAR 2007-20; Application #VAR 2007-21; Application #VAR 2007-22
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"EXHIBIT A: FINDINGS OF FACT"

I. Application Information:

Property Owner: Nedonna Development, LLC; Representative Member: "Anna" Song
 Engineer / Surveyor: HLB Otak, Inc., Ron Larson, PE, PLS
 Location Description: South of Kittiwake Dr., North of Riley St., West of RR, East of McMillan Canal
 Legal Description: Parcel 1 of Partition Plat 1997-20 and Parcel 3 of Partition Plat 1997-57; a portion of vacated Evergreen Street Rockaway Beach Ordinance #98-353
 Assessor's Plat Map: 2N 10W 20AB TL 4600, 4900, 9000
 Property Size: 6.23 acres
 Development Zones: R-1 Zone: 3.9 acres; SA Special Area Wetlands 2.33 acres
 Known Hazards: FHO Zone: A5 Flood Zone; HO Zone: Slopes that exceed 25%; HO Zone: Conditionally Stable Deflation Plain; Wetland Notification Overlay Zone

II. Description of Request:

- PUD #07-19: The property owner requests approval of a 28-lot Planned Unit Development subdivision on a site 6.23 acre in area. R-1 Zone: 3.9 acres; SA Special Area Wetlands 2.33 acres. The area of property within the SA Zone is determined by a wetland delineation report and survey concurred with by DSL.
- VAR #07-20: Concurrent variance application requests a building height of 29 feet for all lots of "Nedonna Wave" excepting lots 25-28. The criteria for a height variance in a Planned Unit Development are specified by Ordinance #143, Section 10.040 (7) Height Guidelines. Applicable criteria "allow a variance of heights where it is determined that surrounding property will not be harmed".
- VAR #07-21: Concurrent variance application requests a building height of 36 feet for lots 25 – 28. The criteria for a height variance in a Planned Unit Development are specified by Ordinance #143, Section 10.040 (7) Height Guidelines. Applicable criteria "allow a variance of heights where it is determined that surrounding property will not be harmed".
- VAR #07-22: Concurrent variance application requests the deletion of sidewalks from the development. The criteria from which a variance is requested are found in RBZO Article 13, Section 44 (3) Sidewalks which require sidewalks on both sides of all streets except where the Planning Commission has granted a variance. The criteria for variance to subdivision standards are specified by Ordinance #143, Article 13, Sections 47-50 Variance.

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III. Applicable Criteria:

(ORS) Oregon Revised Statutes

ORS 227.350 Notice of Wetland Development; exception; approval by City
 ORS 227.522 Local government to approve subdivision...or construction; conditions

City of Rockaway Beach Technical Specification and Design Standards, April 2001
 Rockaway Beach Fire Code April 2005: International Fire Code with Oregon 2005 Amendments

(RBCP) City of Rockaway Beach Comprehensive Plan

(pg. 14-18) Nedonna Beach Exception Justification
 (pg. 29) Land Use Element, I. Beaches and Dunes, Policies 1-15
 (pg. 34) Coastal Shorelands Policies 1, 2, 5, 6, 7
 (pg. 19b) Coastal Shorelands Map Number 2, Beaches and Dunes
 (pg. 36) Natural Features
 (pg. 21a) Natural Features, Map Number 4, Potential Hazard Area
 (p. 42) Land Use Categories (G) Special Area Wetlands Zone (SA), Policy (2) (A), (D)
 (p. 44) Land Use Categories (L) Open Space, Scenic...Areas and Natural Resources (2)

(RBZO) City of Rockaway Beach Zoning Ordinance

Section 3.010 R-1 Zone Single Family Residential
 Section 3.080 SA Zone Special Area Wetlands
 Section 3.092 – 3.097 Flood Hazard Overlay Zone
 Section 3.100 – 3.112 Hazards Overlay Zone
 Section 3.130 – 3.132 Wetland Notification Overlay Zone
 Section 4.010 Access
 Section 4.020 Clear Vision Areas
 Article 10 Planned Unit Development
 Article 11 Administrative Provisions
 Article 13 Subdivision Ordinance

Acronyms that may be used within this report:

"COE" US Army Corps of Engineers; "DSL" Oregon Department of State Lands; "DEQ" Oregon Department of Environmental Quality; "ODFW" Oregon Department of Fish and Wildlife; "RBZO" Rockaway Beach Zoning Ordinance; "RBCP" Rockaway Beach Comprehensive Plan; "BFE" Base Flood Elevation; "SA Zone" Special Area Wetlands Zone; "R-1 Zone" Single Family Residential Zone; "PUD" Planned Unit Development; "HO Zone" Hazards Overlay Zone; "FHO Zone" Flood Hazard Overlay Zone

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"EXHIBIT A: FINDINGS OF FACT"

IV. Staff Summary of Findings of Fact:

The Nedonna Wave Planned Unit Development Subdivision requests the approval of 28 lots within the R-1 Zone. The application has been designed to meet the applicable criteria. No residential structures are proposed with this land division and no applications for residential structures will be accepted by the City until the final plat is approved as consistent with this tentative plan application. After final plat recording, each building permit will be evaluated for consistency with criteria applicable to a residential structure. Additional conditions other than those specified in this report may be imposed for consistency with applicable criteria.

In providing a decision for the application, the Planning Commission has to answer several key questions:

1. Does the project meet the criteria for a Planned Unit Development Subdivision in the R-1 Zone?
2. Have the signage and open space, subject to design review and approval of the Planning Commission been appropriately designed to meet the needs of the site?
3. Will surrounding property be harmed if two variances to height are granted?
4. Does the application meet the criteria for a variance to the requirement to install sidewalks along both sides of all streets?
 - (1) Are there exceptional or extraordinary circumstances that apply to the property resulting from tract size, shape, topography over which the property owners have no control?
 - (2) Is the variance necessary for the preservation of a property right of the applicant substantially the same as owners of other properties in the same vicinity possess?
 - (3) Would the variance be detrimental to the purposes of this ordinance, property in the same vicinity, or otherwise conflict with the objectives of any city plan or policy?; and
 - (4) Is the variance the minimum necessary to alleviate any hardship?

R-1 Zone Single Family Residential and Planned Unit Development

The density of Nedonna Wave is calculated by the amount of property within the R-1 Zone. Lot width, depth, and frontage requirements are reduced where permitted within a Planned Unit Development. The purpose of permitting these reductions is to consolidate and permanently preserve contiguous tracts of Open Space.

SA Zone Special Area Wetlands

The SA Zone wetlands present on the site have been consolidated for permanent preservation after receiving required authorizations from Oregon DSL, US Army Corps of Engineers, Oregon DEQ, and applicable regulatory agencies. The amount of wetlands has been increased by approximately half an acre.

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A visual barrier is to be installed along the upland boundaries of the Open Space tracts to identify their location and deter adverse impacts of improper use. Wetland identification signage is to be installed at a conspicuous location identifying the zone and function of the wetland open space tracts.

Riparian Vegetation

A 15 foot setback will be maintained from the boundary of all creeks within the development.

Flood Hazard Overlay Zone

The area within the project is affected by the A-5 Flood Hazard Overlay Zone with a Base Flood Elevation of 12 feet mean sea level and is defined by a topographical survey.

All improvements, all site development, and all proposed structures shall be certified by an appropriately qualified professional as consistent with the standards of the Flood Hazard Overlay Zone to prevent adverse impacts to the site and surrounding area.

Hazard Overlay Zone

A geologic site investigation report is submitted to describe hazards within the project area. A feasible engineering solution shall be provided to eliminate each hazard to the site and surrounding area. All site development plans shall be certified as consistent with the standards of the Hazard Overlay Zone.

Planned Unit Development

The project requests a Planned Unit Development to cluster development outside of sensitive natural areas and natural hazards.

The Planned Unit Development is a provision included in the City Zoning Ordinance to promote efficient land use of the buildable lands inventory in areas impacted by natural resources.

Nedonna Wave will dedicate a minimum of 50% of the total site to open space. Of said open space, 75% is common open space designed to provide contiguous tracts of wetland and wildlife habitat and 25% is utilized by private property owners in yards. In the common open space tracts, 37.5% of the site, in order to identify the boundaries of the open space and prevent unintentional degradation of this sensitive area currently used by others for dog walking, a visual barrier, such as a split rail fence, will be installed along the upland boundaries of the open space with wetland identification signage in a conspicuous location identifying the important natural features.

Planned Unit Development Variance to Building Height #VAR 2007-20 and #VAR 2007-21

Within a Planned Unit Development, criteria for a variance are specified by Ordinance #143, Section 10.040 (7). The Planning Commission may permit a variance to building height where it

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is determined that surrounding property will not be harmed. The variance criteria of Article 6 do not apply to a variance requested to building height within a Planned Unit Development.

Subdivision

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.

City of Rockaway Beach Technical Specifications and Design Standards

The City of Rockaway Beach Technical Specifications and Design Standards specify the requirements for installation of on-site and off-site improvements for streets, stormwater drainage, and water and sewer facilities as necessary to serve the project.

Necessary streets, utilities, and easements to serve the development shall be dedicated to the public, engineered and constructed at the expense of the developer.

Improvements

Improvements are specified for the entire project. The phased installation of improvements may be permitted when an improvement agreement is approved by the City Council.

Necessary improvements shall be installed prior to approval of the final plat unless an improvement agreement is approved by the City Council.

Subdivision Variance Application #VAR-2007-22

A variance to delete sidewalks from this development is requested by the applicant. Criteria for a variance are specified by Ordinance #143, Article 13, Section 48.

Building Permits

Each application for building permit shall be evaluated for consistency with standards applicable at the date of application for building permit. Standards of applicable criteria shall be met at the expense of the applicant.

Oregon Fire Code

The approval of an application for Planned Unit Development Subdivision does not relieve the requirement that each lot be evaluated at the date of application for building permit for consistency with the standards of the Oregon Fire Code

Conditions

Staff recommends that the impositions of reasonable conditions are necessary to ensure project consistency with the standards of applicable criteria.

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V. PLANNING COMMISSION DECISIONS:

Application #VAR 2007-20: Approval with Conditions 5-0

#VAR 2007-20: Concurrent variance application requests a building height of 29 feet for all lots of "Nedonna Wave" excepting lots 25-28.

Description of Decision:

After holding a public hearing on the application on January 29, 2008, the Planning Commission determined that the criteria for a height variance in a Planned Unit Development specified by Ordinance #143, Section 10.040 (7) Height Guidelines are met by the determination that surrounding property will not be harmed.

APPLICATION #VAR 2007-21: Approval with Conditions 5-0

#VAR 2007-21: Concurrent variance application requests a building height of 36 feet for lots 25 – 28.

Description of Decision:

After holding a public hearing on the application on January 29, 2008, the Planning Commission determined that the criteria for a height variance in a Planned Unit Development specified by Ordinance #143, Section 10.040 (7) Height Guidelines are met by the determination that surrounding property will not be harmed.

APPLICATION #VAR 2007-22: Approval with Conditions 5-0

#VAR 2007-22: Concurrent variance application requests a variance to delete the requirement of RBZO Article 13 Subdivision, Section 44 Improvements, (3) Sidewalks from the project. Sidewalks are required unless a variance is approved by the Planning Commission.

Description of Decision:

After holding a public hearing on the application on January 29, 2008, the Planning Commission determined that the criteria for a variance governed by RBZO Article 13, Section 48 Variance Criteria are met as the streets of Nedonna Wave are not at this time intended to be heavily traveled.

APPLICATION #SPUD 2007-19: "NEDONNA WAVE": Approval with Conditions 5-0

The local government shall approve an application necessary for the subdivision or construction on any land that is consistent with the comprehensive plan and applicable land use regulations or shall impose reasonable conditions on the application to make the proposed activity consistent with the plan and applicable regulations.

The Planning Commission approves application #SPUD 2007-19 with conditions necessary to make the proposed activity consistent with the plan and applicable regulations.

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APPLICATION #SPUD 2007-19: CONDITIONS OF APPROVAL

General Conditions of Approval:

1. All conditions of approval shall be required at the expense of the property owner and shall be designed and installed consistent with the standards of the applicable regulatory agency.
2. All conditions of approval shall be met at the time of final plat approval and consistent with any Subdivision Improvement Agreement approved by the City Council.
3. Conditions of approval are not intended and shall not be misunderstood to violate the requirements of City Standards, Local, State, or Federal Law.
4. Local, State, and Federal Permits may be required and shall be obtained at the expense of the developer as necessary to accomplish conditions of approval.

Building Permits:

1. With each application for building permit, an engineered stormwater drainage plan shall be prepared and installed at the expense of the property owner consistent with City Standards.
2. With each application for building permit, a suitable visual barrier, such as a split rail fence with stainless steel connectors shall be installed on the upland boundary at the expense of the property owner.
3. Each application for building permit shall be certified without disclaimer as consistent with the standards of the Flood Hazard Overlay Zone and the Hazards Overlay Zone by an appropriately qualified professional of record.
4. Pre-construction and post-construction elevation certificates shall be required at the cost of the applicant for each lot within the Flood Hazard Overlay Zone.
5. Site development plans for each lot shall be evaluated for compliance with the standards of applicable criteria. Due to the presence of wetlands, additional local, state, and / or federal permits may be required.
6. Each application for building permit shall be separately evaluated at the date of application for consistency with the standards of the applicable Fire Code and the standards shall be met at the cost of the applicant prior to construction of any dwelling units within the proposed Planned Unit Development.

RBZO Section 3.080, 3.130-3.132; 4.150: SA Zone; Wetland Notification Overlay Zone; Riparian Vegetation

1. The property owner shall provide a design for and shall install a suitable visual barrier, such as a split rail fence, and wetland identification signage along all upland boundaries of all wetland areas preserved as open space where the open space boundary lies adjacent to a public street right-of-way.
2. Each property owner shall install a suitable visual barrier, such as a split rail fence, and wetland identification signage along all upland boundaries of all wetland areas preserved as open space where the open space boundary lies adjacent to a private property line.

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RBZO Section 3.092-3.097: Flood Hazard Overlay Zone: A5 Flood Zone: Base Flood Elevation 12 feet

1. Engineered construction plans shall be designed to ensure that flooding will not be increased in the area by the development and to prevent adverse impacts from site development.
2. All site development shall be consistent with the standards of the Flood Hazard Overlay Zone and the FIRM National Flood Insurance Program.
3. Certification of plan consistency with the standards of the Flood Hazard Overlay Zone shall be submitted prior to site development and upon completion of site development and shall include:
 1. Engineered plans for site development certified in writing by the responsible geotechnical engineer as suitable to avoid adverse flood hazard impacts to the site and surrounding property.
 2. A post-construction elevation certificate for the site, structures, and an updated topographic survey shall be completed as necessary by a professional land surveyor.

RBZO Section 3.100-3.114: Hazards Overlay Zone:

1. Prior to construction, site development plans shall be certified in writing by the appropriately qualified responsible and licensed professional as consistent with the standards of applicable criteria, as being consistent with site investigation reports and as being designed to prevent adverse impacts to the site and surrounding area.
2. Certification reports documenting completion of work without disclaimer of liability shall be submitted to the City.
3. A feasible engineering solution shall be provided that is certified to prevent potential development hazards to the site and surrounding area.
4. All development shall conform substantially to geologic hazard and engineering geologic report recommendations.
 - (1) Geologic Hazard Report: Dune Hazard and Geologic Hazard Report #704-65012-1 dated February 20, 2006 by PSI, Incorporated, Warren Krager, RG, CEG, and Charles Lane, PE.
 - (2) Geotechnical Engineering Report: Geotechnical engineering recommendations dated May 3, 2006 by HLB Otak, Ron Larson, PE, PLS, and Jason Morgan, PE.

Vegetation Removal

1. Vegetation removal shall be limited to the area necessary for construction.
2. All exposed sand areas shall be maintained in vegetation and / or replanted as soon as practical following construction.
3. A 15 foot riparian setback shall be maintained from McMillan Creek consistent with City Standards.

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Grading and Erosion Control:

1. Grading and erosion control recommendations shall be adhered to as provided by PSI, Incorporated, HLB Otak, and City Technical Specifications and Design Standards.
2. During construction, the disturbed sand on the site shall be protected from movement by wind by covering with a thin layer of crushed rock or by using fabric fencing. Excavated materials shall not be stockpiled on the site overnight.
3. All lots shall be graded to provide positive flow away from the building and off the site into the approved roadside bio-conveyance ditches. All driveways shall drain directly into approved roadside bio-conveyance ditches. All run off shall be treated in an approved bio-conveyance ditch prior to entering of wetlands and natural drainage channels.

Open Space

1. A minimum of 50% of the site shall 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 and 75% of said open space, 37.5% of the site, shall be dedicated / conveyed as common open space in tracts. Suitable assurances shall be provided to ensure that private open space shall be maintained consistent with applicable criteria.
2. Open Space tracts shall be dedicated to a non-profit Homeowners Association or other suitable organization and a provision included in the dedication to re-dedicate the open space to a suitable organization should the Homeowners Association expire.
3. A permanent maintenance agreement shall provide financial assurance that common open space shall be continuously, perpetually and permanently maintained consistent with applicable criteria.
4. Prior to approval of the final plat, the property owner shall install two wetland identification kiosks, signage, and a suitable visual barrier, such as a split rail fence with stainless steel connections, suitable for the geologic and geographic conditions of the site along open space boundaries which abut public rights-of-way. Each lot owner shall install a suitable visual barrier such as split rail fence with stainless steel connections, suitable for the geologic and geographic conditions of the site with application for building permit.
5. The property owner shall record Oregon Department of Fish and Wildlife recommended Wetland Deed Restrictions on the Final Plat.

Coordinating Regulatory Agency Approvals:

1. The property owner shall submit all site development plans consistent with the standards of the Rockaway Beach Fire Code, Rockaway Beach Technical and Design Standards, Tillamook PUD, other Utilities (such as Embarq Telephone and Charter Communications)
2. With application for final plat approval, the property owner shall provide all necessary easements for sewer, drainage, water mains, public utility installations, and other like public purposes consistent with Article 13, Section 34.

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General Improvement Requirements:

1. Improvements required by RBZO Article 13, Section 44, shall be engineered and installed at the cost of the property owner consistent with applicable regulatory standards and the approval requirements of RBZO Article 13, Section 43.
2. All buried utilities shall have flexible connections to the structure to accommodate the large movements and settlements that can occur due to liquefaction of the underlying soils.
3. The responsible engineer of record shall certify without disclaimer of liability that improvements are engineered to meet the standards of the A5 Flood Zone standards.
4. Consistent with Rockaway Beach Ordinance #94-310, the property owner may be eligible for reimbursement of the apportionment of off-site improvements. Requests for reimbursement shall be submitted to the City Council.

Improvement Agreement:

1. Prior to site development and prior to final plat approval, the subdivider shall complete an improvement agreement consistent with RBZO Article 13, Section 16 and shall provide a bond or similar assurance for all work in the public right-of-way to ensure that if the off-site work of the agreement is not completed the city will have sufficient funds to complete the work.
2. Prior to final plat approval, all on-site improvements shall be completed as necessary to serve the project.
3. The design of sewer system improvements shall receive approval of DEQ prior to construction.
4. The design of water system improvements shall receive approval of the Oregon Health Division prior to construction.
5. The property owner shall receive and comply with the conditions of a DEQ 1200-C erosion control permit prior to site development.

Signage:

1. A SA Zone Wetland identification signage kiosk shall be installed at the expense of the property owner in conspicuous locations.
2. Street name signage shall be installed at the expense of the property owner no fewer than two at each intersection to City Standards.
3. "No parking" signage shall be installed within the development where required by the City to City Standards.
4. Signage identifying the development as "Nedonna Wave" may be installed at a suitable location within the subdivision subject to design review and approval of the Planning Commission.

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On-Site Improvements:

Streets:

1. Riley Street shall be platted as a 50' wide public right-of-way extension crossing McMillan Creek into Nedonna Wave and dedicated to the City.
2. Riley Street shall be designed, engineered, and constructed consistent with City Standards.
3. Kittiwake Drive, Song Street, Jackson Street and Duke Street shall be platted as 40' wide public rights-of-way and dedicated to the City.
4. Kittiwake Drive, Song Street, Jackson Street and Duke Street shall be designed, engineered and constructed consistent with City Standards.
5. The property owner shall dedicate to the City that portion of Riley Street which is on their property.
6. The property owner shall be financially responsible for applying effective dust treatments and gravel to the identified construction route and where necessary, for maintenance of and repair of the identified construction route consistent with Tillamook Road Department and City Standards.
7. The property owner(s) shall record and file with the City a non-remonstrance agreement to ensure that current and future property owners in the Nedonna Wave subdivision will not remonstrate against the formation of a Local Improvement District (LID) for road improvements that would benefit the Nedonna Beach Area. The property owner asked that the improvements subject to LID not be specifically enumerated.

On-site Improvements:

1. Improvements shall be installed consistent with the standards of RBZO Article 13, Section 43 Improvement Standards and Approval.
2. RBZO Article 13, Section 44 Improvement Requirements, shall be installed. Sidewalks shall comply with the decision for application #07-22 Variance to delete Sidewalks.
3. A Public Utility Easement shall be dedicated within each lot.
4. Engineered construction plans shall be prepared for on-site improvements for water, fire access, hydrants, and water supply, sewer, stormwater drainage, and streets in general conformance with the approved tentative plan and consistent with City Standards.
5. Power, cable, telephone and other utilities to serve the site shall be installed consistent with all requirements necessary for provision of services and consistent with City Standards.
6. Easements shall be provided where are they required by applicable regulatory agencies for the installation of required utilities.

Off-Site Improvements:

1. A regional sewer pump station and related housing including, but not limited to: 3-phase duplex station with controls, divot crane, on-site generator, telemetry, lighting and fencing shall be installed as necessary to serve the project.

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2. A sewer force main from the regional pump station to White Dove pump station shall be installed as necessary to serve the project.
3. Engineer and install to City Standards the construction of the Riley Street crossing of McMillan Creek. Tie into existing street and utility improvements on Kittiwake Drive as secondary loop access into the subdivision.
4. Engineer and install to City Standards a connection into the existing water mains on Kittiwake Drive (north line of Nedonna Wave) and on the west side of McMillan Creek on Riley Street (beyond the southwest corner of Nedonna Wave) to provide a looped water system through the Nedonna Wave subdivision as necessary to serve the project..
5. Engineer and install to City Standards an extension of the existing 6" diameter White Dove sewer force main from existing discharge manhole at 23rd Avenue to a new discharge manhole at 17th Avenue as necessary to serve the project. This is required to alleviate surcharging of the 23rd Avenue manhole.
6. The project engineer shall submit utility as-built plans in electronic and written format of such quality commonly used in municipality management and consistent with City Standards.

Final Plat:

1. 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.
2. The criteria of RBZO Article 13, Section 11 Procedure for Review, shall be met at the expense of the property owner.
3. The criteria of RBZO Article 13, Section 12 Form of Plat, shall be met at the expense of the property owner.
4. The criteria of RBZO Article 13, Section 13 Information on the Final Plat, shall be met at the expense of the property owner.
5. The criteria of RBZO Article 13, Section 14 Certification, shall be met at the expense of the property owner.
6. The criteria of RBZO Article 13, Section 15 Supplemental Data, shall be met at the expense of the property owner.
7. Consistent with the criteria of RBZO Article 13, Section 16, at the time of the submission of the final plat, the subdivider shall have completed all on-site and off-site improvements to serve the subdivision consistent with an approved improvement agreement.
8. The property owner shall set monuments consistent with RBZO Article 13, Section 45
9. The property owner shall design and record the final survey consistent with RBZO Article 13, Section 45
10. The name of the proposed subdivision shall receive the approval of the County Surveyor or shall be revised as required.

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VI. Findings of Fact:

(ORS) Oregon Revised Statutes

ORS 227.522 ***Local government to approve subdivision...or construction; conditions***
The local government shall approve an application for a permit, authorization or other approval necessary for the subdivision or partition of or construction on any land that is consistent with the comprehensive plan and applicable land use regulations or shall impose reasonable conditions on the application to make the proposed activity consistent with the plan and applicable regulations. A local government may deny an application that is inconsistent with the comprehensive plan and applicable land use regulations that cannot be made consistent through the imposition of reasonable conditions of approval.

Finding of Fact: Criteria met

1. The application meets the applicable criteria.
2. The statement "Criteria met" in these findings of fact indicates that the application meets the applicable criteria and that reasonable conditions of approval are imposed to ensure that there is full understanding between the applicant and the administrators the development of the site through the final plat shall be consistent with adopted regulatory standards and the recommendations of appropriately qualified professionals.

ORS 227.350 ***Notice of Wetland Development; exception; approval by City***

...

Finding of Fact: Criteria met

1. A wetland delineation report and survey is submitted with the development application.
2. The Oregon Department of State Lands (DSL) issued authorization #WD-06-0246 on August 1, 2006 as written concurrence with the wetland delineation valid for five years until August 1, 2011.
3. All activities involving construction or alteration in wetlands are reviewed by the Oregon Department of State Lands and the US Army Corps of engineers to determine permit applicability.
4. The applicant requested authorization to relocate wetlands to larger contiguous holdings suitable for preservation and management.
5. Joint Permit Application #36702 received authorization from DSL #36702-RF, from the Army Corps #2006-00395 and from the City FP#07-05.

City of Rockaway Beach Technical Specifications and Design Standards, April 2001

...

Finding of Fact: Criteria met

1. All improvements required to serve the Planned Unit Development subdivision shall be completed consistent with City of Rockaway Beach Technical Specifications and Design Standards.

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Rockaway Beach Fire Code April 2007: International Fire Code with Oregon 2007 Amendments

...

Finding of Fact: Criteria met

1. All improvements required to meet fire code standards for the Planned Unit Development shall be completed consistent with City Fire Code Standards.
2. Each request for building permit application shall be reviewed by the fire chief to ensure adequate access and water supply consistent with fire code.

(RBCP) City of Rockaway Beach Comprehensive Plan

(pg. 14-18) Nedonna Beach Exception

...

Finding of Fact: Criteria met

1. The Nedonna Beach Exception is adopted by the City and is acknowledged by the State to permit development of property within Nedonna Beach when development meets the standards of applicable criteria or can meet the criteria through the imposition of reasonable conditions of approval.

(pg. 29) Land Use Element Beaches and Dunes Policies 1-15

...

Finding of Fact: Criteria met

1. Beaches and Dunes Policies 1-15 are implemented through Rockaway Beach Zoning Ordinance #143, as amended. As indicated by the application and these findings of fact, the development shall continue to meet applicable criteria, which include:
 - a. Section 3.092-3.097 Flood Hazard Overlay Zone;
 - b. Section 3.100 – 3.114 Hazard Overlay Zone;

(pg. 34) Coastal Shorelands Policies 1, 2, 5, 6, and 7

...

Finding of Fact: Criteria met

1. Coastal Shorelands Policies 1, 2, 5, 6, and 7 are implemented through Rockaway Beach Zoning Ordinance #143, as amended. As indicated by the application and these findings of fact, the application shall continue to meet applicable criteria, which include:
 - a. Section 3.092-3.097 Flood Hazard Overlay Zone;
 - b. Section 4.150 Riparian Vegetation;
 - c. Article 10 Planned Unit Development, by clustering development to protect identified wetlands, wildlife habitat and other identified coastal shoreland resources.

(pg. 35) Hazards Policies 1, 2, 3

...

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Finding of Fact: Criteria met

1. Hazards Policies 1, 2, 3 are implemented through Rockaway Beach Zoning Ordinance #143 as amended. As indicated by the application and these findings of fact, the application shall continue to meet applicable criteria, which include:
 - a. Section 3.092-3.097 Flood Hazard Overlay Zone;
 - b. Section 3.100 – 3.114 Hazard Overlay Zone.

(pg. 36) Natural Features Policies 1, 2, 3

...

Finding of Fact: Criteria met

1. Natural Features Policies 1, 2, 3 are implemented through Rockaway Beach Zoning Ordinance #143, as amended. As indicated by the application and these findings of fact, the application shall continue to meet applicable criteria, which include:
 - (a) Section 3.100 – 3.114 Hazard Overlay Zone;
 - (b) Section 4.150 Riparian Vegetation which requires the protection of drainage ways;
 - (c) Section 4.065 Street and Drainage Standards
 - (d) Article 10 Planned Unit Development which encourages cluster development as a method for minimizing development impacts in areas with sensitive natural features.
 - (e) RBZO, Article 13, Section 41 Lands Subject to Inundation

(pg. 19b) Map Number 2 Beaches and Dunes

...

Finding of Fact: Criteria met

1. Rockaway Beach Comprehensive Plan Map Number 2 Beaches and Dunes identifies the area as containing area of Conditionally Stable Dunes.

(pg. 21a) Map Number 4 Potential Hazard Areas

...

Finding of Fact: Criteria met

1. Rockaway Beach Comprehensive Plan Map Number 4 Potential Hazard Area identifies the area as containing area of wetlands and high ground water.

(pg. 22b) Map Number 6 Forest Lands, Scenic and Natural Areas

...

Finding of Fact: Criteria met

1. Rockaway Beach Comprehensive Plan Map Number 6 identifies the area as containing area of wildlife habitat.

(p. 42) Land Use Categories (G) Special Area Wetlands Zone (SA), Policy (2) (a)

...

Finding of Fact: Criteria met

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1. Land Use Categories (G) Special Area Wetlands Zone Policies 2 (a) and 2 (d) are implemented through Rockaway Beach Zoning Ordinance #143, as amended. As indicated by the application and these findings of fact, the application shall continue to meet applicable criteria, which include:
 - c. Section 4.150 Riparian Vegetation, trees and plants that grow on the shoreline shall be disturbed as little as possible.

(p. 44) Land Use Categories (L) Open Space, Scenic...Areas and Natural Resources (2)

...

Finding of Fact: Criteria met

1. Land Use Categories (L) Open Space, Scenic and Historic Areas, and Natural Resources Policy 2, indicates that although wetlands within the application area are not protected through Statewide Planning Goal 5, these areas may still require a permit from the US Army Corps of Engineers and DSL.
2. Joint Permit Application #36702 received authorizations from DSL #36702-RF, from the Army Corps #2006-00395 and from the City FP#07-05 to permit a relocation of wetland areas.

(RBZO)

City of Rockaway Beach Zoning Ordinance

Section 3.010 R-1 Zone Single Family Residential

...

Section 3.080 SA Zone Special Area Wetlands

...

Finding of Fact: Criteria met

The Planned Unit Development preliminary development plan meets the quantitative criteria of the R-1 Zone with quantitative modifications permitted by Article 10 Planned Unit Development when the overall density is consistent with the parent zone.

1. In a planned unit development, lot areas, depth, width, and frontage are permitted reduced standards from those required for new lots in the R-1 Zone when the overall site density is consistent with parent zone standards.
2. The parent zone is described as the R-1 Zone and the SA Zone.
3. Density is based upon the gross area of the R-1 Zone property.
4. The area of property ownership is 6.23 acres. R-1 Zone area is 3.9 acres, 169,884 square feet, and the SA Zone area is 2.33 acres.
5. The area of property within the SA Zone is defined by wetland delineation and survey concurred with by DSL on August 1, 2006 valid until August 1, 2011.
6. The R-1 Zone has an outright residential single family density of one lot per 5,000 square feet ~8.71 lots per acre a gross density of 33 lots.
7. The SA Zone has an outright residential single family density of 0 lots per acre.

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8. Site dimension tables illustrate the quantitative data of the proposed planned unit development.

Section 3.092 – 3.097 Flood Hazard Overlay Zone

...

Finding of Fact: **Criteria met**

1. The criteria of Section 3.092-3.097 Flood Hazard Overlay Zone have been met and shall continue be met by a condition of development that requires that all infrastructure and development shall be certified by appropriately qualified professionals to meet the criteria of the flood hazard overlay zone.
 - a. A pre-construction elevation certificate identifies the site as within the A5 Flood Zone with a Base Flood Elevation of 12 feet above mean sea level.
 - b. The development application identifies the areas impacted by flood hazards with the submittal of a topographic survey.
 - c. All site development plans shall be designed, engineered, and certified by an appropriately qualified engineer to prevent adverse flood hazard impacts to the site and surrounding area.
 - d. Engineered plans shall include a stormwater drainage management plan.

Section 3.100 – 3.114 Hazards Overlay Zone

...

Finding of Fact: **Criteria met**

1. The criteria of Section 3.100 – 3.114 Hazards Overlay Zone has been and shall be met by a condition of development that requires that all infrastructure and site development plans shall be certified by appropriately qualified professionals to meet the criteria of the Hazard Overlay Zone and to prevent adverse impacts to the site and surrounding property.
 - a. The development application identifies geologic hazards by providing a geologic site investigation report #704-65012-1 dated February 20, 2006 by PSI, Incorporated, Warren Krager, RG, CEG, and Charles Lane, PE.
 - b. The development provides mitigation methods for identified geologic hazards by providing geotechnical engineering recommendations report dated May 3, 2006 by HLB Otak, Ron Larson, PE, PLS, and Jason Morgan, PE.
 - c. Feasible engineering solutions to the identified hazards are required to be submitted and reviewed at the cost of the developer prior to site development.
 - d. All plans shall be certified in writing by the responsible qualified licensed professional as being consistent with applicable criteria to prevent adverse impacts to the site and surrounding area and the findings and recommendations of the site investigation reports.
 - e. The City shall charge a plan review fee to work with the City Planner, the City Public Works Director and the City Engineer to ensure site development plans adequately address potential hazards.

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Section 4.010 Access

...

Finding of Fact: Criteria met

1. Each lot is proposed to abut upon a street for at least 25 feet.

Section 4.020 Clear Vision Areas

...

Finding of Fact: Criteria met

1. The design of the preliminary development plan prevents the location of structures within required clear vision areas.

Section 4.150 Riparian Vegetation

...

Finding of Fact: Criteria met

1. The criteria of Section 4.150 Riparian Vegetation require that a fifteen feet setback be maintained from the mean high water of McMillan Creek.
2. The mean high waterline of McMillan Creek is surveyed by HLB Otak, Ron Larson, PLS.

Article 10 Planned Unit Developments

...

Finding of Fact: Criteria met

Section 10.040 Development Standards

...

Finding of Fact: Criteria met

(1) Minimum Site Size:

...

Finding of Fact: Criteria met

1. The planned unit development is established on a site consistent with the parent zones and modifications permitted to quantitative requirements consistent with Article 10 Planned Unit Development as indicated in the Findings of Fact.
2. The Oregon Department of Fish and Wildlife requests that a deed restriction be placed into a covenant to the deed of each lot in the subdivision that states:
 - *This property is in an area of known big game and furbearing animal use. Any and all future owners of this property agree to indemnify and hold harmless [the City and] the Oregon Department of Fish and Wildlife for any damage and or inconvenience caused by these animals to persons, real property, and / or personal property. This agreement shall inure in perpetuity to all successors, assignors, and heirs. This agreement cannot be deleted without prior contact and agreement in writing by [the City and] the Oregon Department of Fish and Wildlife.*

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(2) Open Spaces:

...

Finding of Fact: Criteria met

1. In this residential development, 50% of the total site area, 3.12 acres, is devoted to open space. Of this area, 25% of said open space may be utilized privately by individual owners or users of the PUD; 75% of said open space shall be common open space.
2. Of the 6.23 acres of total property ownership, 37.5% of the site shall be dedicated / conveyed as common open space in tracts. Suitable assurances shall be provided to ensure that private open space shall be maintained consistent with applicable criteria.

(3) Density:

...

Finding of Fact: Criteria met

1. The permitted density of the site based on the gross site area, total area including street dedications is met by the application.
2. The R-1 Zone, 3.9 acres, ~169,884 square feet of the site, permits a density of one residential lot per 5,000 square feet. Total site density permitted is 33 lots.
3. The SA Zone, 2.33 acres, ~101,495 square feet of the site, permits a density of zero residential lots.

(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 preliminary development plan.

Finding of Fact: Criteria met

1. Minimum area, width, depth, and frontage requirements for subdivision lots in the PUD are less than the minimum set forth for subdivision lots in the R-1 Zone where quantitative reductions are permitted.
2. Density is consistent with the parent zone
3. Lots of the final plat shall conform to the preliminary development plan.

(5) Off-Street Parking:

...

Finding of Fact: Criteria met

1. Off-street parking shall be met at the time of application for building permit.

(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, and potential violation of property and privacy rights of adjoining property owners, and need for said sign.

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Finding of Fact: **Criteria met**

1. Street signs shall be consistent with City Standards for each street; and
2. The applicant submits a copy of proposed opens space signage for a Wetland Identification kiosk to be located in a conspicuous location.

(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 to height where it determines that surrounding property will not be harmed.

Finding of Fact: **Criteria met**

1. The R-1 Zone permits an outright building height of 24' feet for single family dwelling units at this site.
2. Two height variances are requested:
 - (1) Application #07-20: Height variance request is for 29 feet, lots 1-24
 - (2) Application #07-21: Height variance request for 36 feet, lots 25-28

(8) *Streets and Roads:*

1. Necessary streets and roads within the PUD will be dedicated to the public and constructed consistent with City Technical Specifications and Design Standards and Rockaway Beach Fire Code.
2. Necessary streets include the dedication and improvement of:
 - (1) Kittiwake Drive: Dedication and extension of an existing 40' wide right-of-way
 - (2) Riley Street: Dedication and extension of an existing 50' wide right-of-way
 - (3) Jackson Street: Dedication of a new 40' wide right-of-way
 - (4) Song Street: Dedication of a new 40' wide right-of-way
 - (5) Duke Street: Dedication of a new 40' wide right-of-way

(9) *Dedication and Maintenance of Facilities:*

(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.

Staff Findings: **Criteria met by the imposition of conditions of approval**

1. The applicant proposes a delineation of open space within the SA Zone by a suitable visual barrier such as a split rail fence and wetland identification signage that will describe the permitted uses of wetland open space.
2. Additional open space is dedicated within the boundaries of each lot for private use by the owners and residents.

(b) *Common Area*

...

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Finding of Fact: **Criteria met**

1. Of the required open space 75% will be dedicated in Open Space Tracts to a non-profit corporation or other suitable agency for permanent reservation and maintenance.
2. If the non-profit corporation expires, the final plat shall dedicate the common open space to a suitable public agency.
3. A permanent maintenance agreement

(c) *Easements:*

...

Finding of Fact: **Criteria met**

1. A public utility easement is provided with the property boundaries of each lot that will be utilized for the location of power, telephone and cable service lines.
2. Prior to final plat approval, easements will be provided where necessary to meet the applicable criteria of City Standards.

(10) *Approvals:*

...

Finding of Fact: **Criteria met**

1. The City Engineer, City Public Works Director, and City Planner have reviewed the preliminary development plan for general conformance with City Standards for the provision of water, sewer, stormwater drainage, and street construction in regard to approval of the proposal.
2. The City Fire Chief has reviewed the project for consistency with fire code, access and water supply requirements.
3. Each building permit shall be reviewed for consistency with Fire Code access and water supply requirements applicable at the date of request.
4. The applicant shall work with the power company, the phone company, the cable company, the City and other utilities to install necessary improvements consistent with the standards of applicable criteria.

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... This plan and any written statements shall contain at least the following information.***

(a) *Proposed land use and densities*

...

Staff Findings: **Criteria met**

(b) *Location and approximate dimension and height of structures:*

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...
Finding of Fact: **Criteria met**

TWO APPLICATIONS FOR VARIANCE TO BUILDING HEIGHT ARE REQUESTED:

- (1) **Application #VAR-2007-20 requests a variance to 29 feet for all lots excepting lots 25-28.**
- (2) **Application #VAR-2007-21 requests a variance to 36 feet for lots 25-28.**

(c) *Plan for the use...of recreation use open ...or common open spaces:*

...
Finding of Fact: **Criteria met**

(d) *Maps showing existing features of site and topography:*

...
Staff Findings: **Criteria met**

- 1. A wetland delineation report and survey map is submitted as concurred with by DSL showing the location of wetland areas.
- 2. A topographical survey map is submitted showing the location of areas of A5 Flood Hazard with a Base Flood Elevation 12 feet and the location of steep slopes that exceed 25%.

(e) *Proposed method of utilities service including drainage:*

...
Finding of Fact: **Criteria met**

- 1. Preliminary development plans provide proposals for utilities service and drainage.
- 2. Utilities service shall be provided by the developer as necessary to serve the proposed development consistent with City Standards.

(f) *Road and circulation plan including off-street parking:*

...
Finding of Fact: **Criteria met**

- 1. The project dedicates, extends and constructs to City standards Riley Street a 50' wide public right-of-way, Kittiwake Drive a 40' wide public right-of-way, Jackson Street a 40' wide public right-of-way, Song Street, a 40' wide public right-of-way, and Duke Street, a 40' wide public right-of-way.
- 2. Off-street parking shall be met at the time of building permit application.

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(g) *Relation of the proposed development to the surrounding area and the Comprehensive Plan:*

Finding of Fact: **Criteria met**

1. The project is located within the geographic area known as and described by Rockaway Beach as "Nedonna Beach".
2. Tillamook County, the City of Rockaway Beach, and OPRD have jurisdiction over portions of Nedonna Beach.
3. Nedonna Beach is accessed by a pre-existing access at Beach Street.
4. "Nedonna Wave" does not increase the density permitted by the land use zone.
5. The Comprehensive Plan requires that new developments provide City sewer service.
6. The City Subdivision Ordinance requires two accesses into the development where a street will exceed 400 feet and serve more than 18 dwelling units.
7. Kittiwake Drive exceeds 400 feet and serves more than 18 dwelling units.
8. The adjacent development, Nedonna Meadows is required to work with the developer of Nedonna Wave to dedicate an extension and improvement of Riley Street to provide a second access to both Nedonna Wave and Nedonna Meadows.
9. The Nedonna Beach area currently includes approximately 44 permanently occupied homes, 344 single family dwellings, and 162 vacant lots (total 506 lots); the Manhattan Beach Oregon State Park Wayside that provides area for RV parking and tourist access; and the Nedonna Beach County Park.
10. Nedonna Wave proposes to divide R-1 Zone parcels suitable for land division into 28 lots.

(h) *Lot layout.*

Finding of Fact: **Criteria met**

1. The lot layout is consistent with the R-1 Zone modified as is permitted within a Planned Unit Development.

(i) *A schedule if it is proposed that the final development plan will be executed in stages.*

Finding of Fact: **Criteria met**

1. The applicant indicates that the development may be completed in two phases.
2. Improvements will be installed as necessary to serve the development consistent with City Standards prior to final plat approval.
3. RBZO Article 13, Section 16 Improvement Agreement, permits the phased installation of improvements where an improvement agreement is approved by the City Council.

"EXHIBIT A: FINDINGS OF FACT"

(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 the development which the proposal will satisfy to warrant a departure from the standard ordinance requirements.*

Finding of Fact:

Criteria met

1. The purpose of the Nedonna Wave Planned Unit Development Subdivision is to create lots within large parcels of R-1 Zone property and to conserve tracts of contiguous SA Zone property within open space tracts identified by a visual barrier, such as a split rail fence, and wetland identification signage.

(b) *Resulting development will not be inconsistent with the objectives of the Comprehensive Plan provisions or zoning objectives of the area.*

Finding of Fact:

Criteria met

1. With conditions of approval, and consistent with findings of fact, the proposed project is consistent with the objectives of the Comprehensive Plan.

(c) *The proposed development will be substantial harmony with the surrounding area, including vegetation and topography and any important natural areas such as marshes or wildlife habitat.*

Finding of Fact:

Criteria met

1. The proposed project preserves large SA Zone tracts as Open Space, identifies the standards of the SA Zone and function of wetlands with wetland identification signage, and installs a visual barrier, such as a split rail fence, on the common open space boundary.
2. This area within the FHO and HO Zones requires engineer certification of all site development plans to prevent adverse impacts to the surrounding area.
3. Approval of the lots within a subdivision does not approve building permits.
4. Each building permit will be evaluated for consistency with criteria applicable at the time of building permit application.
5. Prior to approval of the final plat, the property owner shall install a wetland identification signage kiosk in a conspicuous location and a suitable visual barrier, such as split rail fence with stainless steel connections, suitable for the geologic and geographic conditions of the site along open space boundaries which abut public rights-of-way.
6. With application for building permit, the applicant shall ensure that each lot owner shall install a suitable visual barrier such as split rail fence with stainless steel connections, suitable for the geologic and geographic conditions of the site with application for building permit.

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(d) *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.
2. Improvements will be installed as necessary to serve the development consistent with City Standards prior to final plat approval.
3. RBZO Article 13, Section 16 permits the phased installation of improvements where an improvement agreement is approved by the City Council.

(f) *The streets are adequate to support the anticipated traffic and the development will not overload the streets outside the planned area.*

Finding of Fact: Criteria met

1. A substantial amount of public testimony, Planning Commission discussion, and testimony from coordinating regulatory agencies has been received for the record about the adequacy of streets adequacy to support the anticipated traffic to ensure that the development will not overload the streets outside the planned area.
2. In determining reasonable conditions of approval necessary to ensure consistency with this criterion, City Staff has determined that in the Nedonna Beach area 44 homes are currently registered as primary residences.
3. The City Public Works Department recommends the dedication and improvement of rights-of-way recommended as necessary to serve the development consistent with the standards of applicable criteria.
4. The County Road Department recommends conditions of approval to mitigate potential impacts of the development to the surrounding area.
 - o Riley Street shall be paved from Nedonna Avenue to Beach Drive.

(g) *Proposed utility and drainage facilities are adequate for the population densities and type of development proposed.*

Finding of Fact: Criteria met

1. The project site located within a Flood Hazard Overlay Zone and Hazards Overlay Zone requires that site development plans be designed and certified by an appropriately qualified licensed engineer to not adversely impact the site and surrounding property.
2. Utilities and drainage facilities shall be installed as necessary to serve the development consistent with City Standards.

(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.*

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Finding of Fact: Criteria met

1. Application for final plat approval shall be made consistent with the criteria of Rockaway Beach Zoning Ordinance Article 10 Planned Unit Development.

...

Article 11 Administrative Provisions

Section 11.070 Request for Review of a Decision (Appeals)

...

- (2) *A decision of the Planning Commission may be appealed to the City Council by a party to the hearing by filing an appeal within 15 days of the date the final order is signed. The notice of appeal filed with the City shall contain the information outlined in Section 11.070 (3).*

Article 13 Subdivision Ordinance

...

Subdivision Final Plat: Sections 11-17...

- Section 11 Procedure for Review...***
- Section 12 Form of Plat...***
- Section 13 Information on Final Plat...***
- Section 14 Certification...***
- Section 15 Supplemental Data...***
- Section 16 Agreement for Improvements...***
- Section 17 Bond...***

...

Finding of Fact: Criteria met

1. Application for final plat approval shall be made consistent with the criteria of Rockaway Beach Zoning Ordinance Article 13 including Sections 11-17.

PRINCIPLES OF ACCEPTABILITY

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.

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*

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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.*

Finding of Fact:

Criteria met

1. Streets extensions, dedications, and improvements proposed for Kittiwake Drive and Riley Street provide for the continuation of existing principal streets in the surrounding area.
2. The extension of Kittiwake Drive to Riley Street provides looped access and deletes the temporary cul-de-sac permitted for Nedonna Meadows application #ESPUD 2003-04.
3. The applicant proposes the dedication and improvement of Song Street, Jackson Street, and Duke Street to serve the development.
4. Due to the location of wetlands within the project boundaries, street widths for Kittiwake Drive, Jackson Street, Duke Street and Song Street are permitted a 40' wide public right-of-way.

(2) Street Widths:

...

Finding of Fact:

Criteria met

1. *Kittiwake Drive* is the dedication of a 40' wide public right-of-way.
2. *Riley Street* is the extension of a 50' wide public right-of-way.
3. *Song Street* is the dedication, extension, and improvement of a 40' wide public right-of-way.
4. *Jackson Street* is the dedication, extension, and improvement of a 40' wide public right-of-way.
5. *Duke Street* is the dedication, extension, and improvement of a 40' wide public right-of-way.

(3) Alignment:

...

Finding of Fact:

Criteria met

(4) Future Street Extension:

...

Finding of Fact:

Criteria met

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(5) Intersection Angles:

...
Finding of Fact: Criteria met

(6) Existing Streets:

...
Finding of Fact: Criteria met

(7) Reserved Strips:

...
Finding of Fact: Criteria met

(8) Half Streets:

Finding of Fact: Criteria met
 1. No half streets are proposed.

(9) Cul-de-sac:

A cul-de-sac shall be as short as possible and shall have a maximum length of 400 feet and serve building sites for not more than 18 dwelling units. A cul-de-sac shall terminate with a circular turnaround.

Finding of Fact: Criteria met by the imposition of conditions of approval

1. The improvement of Kittiwake Drive to Riley Street is required for the addition of any lots to Kittiwake Drive, a street that exceeds 400 feet and serves more than 18 dwelling units.
2. A temporary variance was granted for decision #ESPUD 2003-04 with the condition that the developer work with this project site to provide access consistent with RBZO Article 13 Subdivision Ordinance, Section 33 Streets (9) Cul-de-sac.

(10) Alleys:

Finding of Fact: Criteria met
 1. No alleys are proposed.

(11) Grades and Curves:

Staff Findings: Criteria met by the imposition of conditions of approval

(12) Marginal Access Streets:

Finding of Fact: Criteria met.
 1. No marginal access streets are proposed.

(13) Street Names:

Staff Findings: Criteria met by the imposition of conditions of approval

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"EXHIBIT A: FINDINGS OF FACT"

1. All street names shall be approved by the City with the final decision by the County Surveyor consistent with the established street pattern and to avoid duplication and confusion.

...

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 (5) feet 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 width, such as for anchorage, may be allowed when the purposes of easements may be accomplished by easement of lesser width as approved by the City.

Finding of Fact: Criteria may be met by conditions of approval

1. A 5' wide PUE is provided within the boundaries of each lot directly adjacent to each 50' public right-of-way.
2. Where additional utility easements are necessary, the applicant shall provide them with the final plat.

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...

Finding of Fact: Criteria met

1. The size, width, shape, and orientation of building sites are consistent with the R-1 Zone residential lot size provisions with quantitative modifications permitted within a Planned Unit Development Subdivision.

(2) Access:

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

Finding of Fact: Criteria met

1. Each lot and parcel abuts upon a street for a width of at least 25 feet.

(3) Through Lots and Parcels:

Finding of Fact: Criteria met

1. No through lots are proposed.

(4) Lot and Parcel Side Lines:

Finding of Fact: Criteria met

1. Lot and parcel side lines run at right angles to the street as far as is practicable.

Section 36 Blocks

"EXHIBIT A: FINDINGS OF FACT"

(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.

Finding of Fact: **Criteria met**

1. The length, width, and shape of the blocks are generally designed to be located outside of the SA Zone property.
2. The limitations of topography in the development of blocks include the location of large contiguous tracts of SA Zone property, property within the A5 Flood Zone, and high groundwater.
3. A geologic site investigation report describes the limitations of the topography for which feasible engineered solutions will be required prior to site development.

(2) Size:

No block shall be more than 1,000 feet in length between street corner lines unless...the topography or the location of adjoining streets justifies an exception. 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.

Finding of Fact: **Criteria met**

1. Blocks do not exceed 600 feet in length between public rights of way.

(3) Walkways:

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

Finding of Fact: **Criteria met**

1. Blocks do not exceed 600 feet in length between public rights of way.
2. Pedestrian access is provided within public rights of way.
3. Pedestrian walkways to the common open space, permitted with standards within the SA Zone, are not proposed at this time and may be developed at a later date to serve the development.

Section 37 *Large Building Sites*

...

Staff Findings: **Criteria met**

1. No large building sites likely to be redivided are proposed.

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.

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Staff Findings: Criteria may be met by conditions of approval

1. McMillan Creek is located west of and adjacent to the proposed development. McMillan Creek was dedicated as a public right-of-way with the Seventh Addition to Nedonna Beach.
2. Natural drainage ways traverse the proposed development. An engineered storm drainage system shall be designed and certified to ensure that the development will not adversely impact natural drainage ways, the proposed development or the surrounding area.
3. SA Zone wetlands are preserved in large contiguous tracts in the proposed development.
4. An engineered storm drainage system shall be designed and certified to ensure that the SA Zone wetlands will continue to receive an adequate water supply consistent with the wetland characteristics.
5. Consistent with the requirements of DEQ for developments that disturb over one acre of land, an engineered storm water drainage plan and engineered erosion and sedimentation control plan shall ensure that non-point source pollutants will not adversely impact the wetlands and aquatic areas.

...

Section 41 Land Subject to Inundation

Finding of Fact: Criteria met

1. The site is located within an A5 Flood Zone subject to flood hazard by or collection of storm water.
2. The site investigation report submitted with application describes high groundwater hazards.
3. An adequate system of storm drainage management designed and certified by an appropriately qualified engineer to prevent adverse impacts to the site and surrounding area shall be installed to serve the "Nedonna Wave" development.
4. High groundwater hazards are described in the geologic site investigation report submitted with development application

Section 42 Proposed Name of Subdivision

...

Finding of Fact: Criteria met

1. The County Surveyor has the decision of final approval for all subdivision names.

IMPROVEMENTS

Section 43 Improvement Standards and Approval

...

Finding of Fact: Criteria met

1. Improvement standards and approval requirements are described by RBZO Article 13, Section 43.

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"EXHIBIT A: FINDINGS OF FACT"

Section 44 Improvement Requirements

Finding of Fact: **Criteria met**

1. Improvements of Section 44 as described by findings of fact and conditions of approval shall be installed at the expense of the applicant at the time of subdivision and include:

(1) Streets:

...

(2) Structures:

...

(3) Sidewalks:

Sidewalks shall be installed along both sides of each street and in pedestrian ways unless a variance has been granted by the Planning Commission.

VARIANCE APPLICATION #VAR-2007-22 REQUESTS TO DELETE SIDEWALKS FROM THE "NEDONNA WAVE" DEVELOPMENT.

(4) Sewers:

...

(5) Water:

...

(6) Railroad Crossings:

...

(7) Underground Utilities:

...

(8) Street Lighting:

...

(9) Street Trees:

...

(10) Street Name Signs:

...

(11) Improvement of Easements:

...

(12) Off-Site Street Improvements:

...

Section 45 Monuments:

...

Finding of Fact: **Criteria met**

1. All monuments shall be set by the property owner prior to final plat approval consistent with the requirements of ORS Chapter 92 and RBZO Article 13, Section 45.

Section 46 Survey Requirements:

...

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"EXHIBIT A: FINDINGS OF FACT"

Finding of Fact: **Criteria met**

1. The Final Survey Plat shall be submitted consistent ORS Chapter 92, with RBZO Article 13, Section 46, and applicable conditions of approval.

Section 47 - 50: **Subdivision Variance:**

...

Finding of Fact: **Criteria met**

VAR #2007-22: **The property owner requests approval of concurrent variance application to delete sidewalks required on both sides of each by RBZO Article 13, Section 44 (3) consistent with the criteria of RBZO Article 13, Sections 47-50 Variance.**

Article 13 Section 47 Variance Procedure

...

- (4) *The Planning Commission shall make a decision on the variance request in accordance with section 11.060 (6) of the Zoning Ordinance.*
- (5) *A decision of the Planning Commission may be appealed to the City Council in accordance with Section 11.070 of the Zoning Ordinance.*

...

Article 13 Section 48 Variance Criteria

Variances to the requirements of this ordinance may be granted where the following criteria are met:

- (1) *Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same vicinity, and result from tract size or shape, topography or other circumstances over which the owners of property since enactment of this ordinance have had no control.*

Finding of Fact: **Criteria met**

Sidewalks in this location are a source of fill in an A5 flood zone and where they are determined to be unnecessary could be deleted to reduce impacts to the site.

- (2) *The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same vicinity possess.*

Finding of Fact: **Criteria met**

Subdivisions of the Nedonna Beach Area have not been required to install sidewalks where streets are not planned for heavy use as collector or arterial streets.

- (3) *The variance would not be materially detrimental to the purposes of this ordinance, or to property in the vicinity in which the property is located, or otherwise conflict with the objectives of any City plan or policy.*

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Finding of Fact:

Criteria met

The Rockaway Beach Comprehensive Plan provides policies for sidewalks. Housing Policies states that (1) *Street, sidewalk and other development and subdivision improvement standards should be realistically sized so as to not add undue costs to housing development. Street widths and paving techniques should reflect the density of development, the projected traffic loads, whether the development will be a permanent or vacation use, and the character of the surrounding streets.*

Special Transportation Needs Policy (1) states that "*Sidewalks should be constructed along all heavily traveled streets, including US Highway 101...*" The streets of this development are currently intended for local medium volume residential use and are not planned for collector or arterial street designation. The nature of the Nedonna Beach area is second home and vacation use. City water billing accounts and County Tax Assessor records indicate that approximately 44 of the homes in this area are considered primary residences.

- (4) *The variance requested is the minimum variance which would alleviate hardship.*

Finding of Fact:

Criteria met

Staff recommends that approval of a variance to sidewalks at this time is the minimum variance.

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"FINAL ORDER: EXHIBIT B: CONDITIONS OF APPROVAL"

CONDITIONS OF APPROVAL

APPLICATION #SPUD 2007-19: CONDITIONS OF APPROVAL

General Conditions of Approval:

1. All conditions of approval shall be required at the expense of the property owner and shall be designed and installed consistent with the standards of the applicable regulatory agency.
2. All conditions of approval shall be met at the time of final plat approval and consistent with any Subdivision Improvement Agreement approved by the City Council.
3. Conditions of approval are not intended and shall not be misunderstood to violate the requirements of City Standards, Local, State, or Federal Law.
4. Local, State, and Federal Permits may be required and shall be obtained at the expense of the developer to as necessary to accomplish conditions of approval.

Building Permits:

1. With each application for building permit, an engineered stormwater drainage plan shall be prepared and installed at the expense of the property owner consistent with City Standards.
2. With each application for building permit, a suitable visual barrier, such as a split rail fence with stainless steel connectors shall be installed on the upland boundary at the expense of the property owner.
3. Each application for building permit shall be certified without disclaimer as consistent with the standards of the Flood Hazard Overlay Zone and the Hazard Overlay Zone by an appropriately qualified professional of record.
4. Pre-construction and post-construction elevation certificates shall be required at the cost of the applicant for each lot within the Flood Hazard Overlay Zone.
5. Site development plans for each lot shall be evaluated for compliance with the standards of applicable criteria. Due to the presence of wetlands, additional local, state, and / or federal permits may be required.
6. Each application for building permit shall be separately evaluated at the date of application for consistency with the standards of the applicable Fire Code and the standards shall be met at the cost of the applicant prior to construction of any dwelling units within the proposed Planned Unit Development.

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RBZO Section 3.080, 3.130-3.132; 4.150: SA Zone; Wetland Notification Overlay Zone; Riparian Vegetation

1. The property owner shall provide a design for and shall install a suitable visual barrier, such as a split rail fence, and wetland identification signage along all upland boundaries of all wetland areas preserved as open space where the open space boundary lies adjacent to a public street right-of-way.
2. Each property owner shall install a suitable visual barrier, such as a split rail fence, and wetland identification signage along all upland boundaries of all wetland areas preserved as open space where the open space boundary lies adjacent to a private property line.

RBZO Section 3.092-3.097: Flood Hazard Overlay Zone: A5 Flood Zone: Base Flood Elevation 12 feet

1. Engineered construction plans shall be designed to ensure that flooding will not be increased in the area by the development and to prevent adverse impacts from site development.
2. All site development shall be consistent with the standards of the Flood Hazard Overlay Zone and the FIRM National Flood Insurance Program.
3. Certification of plan consistency with the standards of the Flood Hazard Overlay Zone shall be submitted prior to site development and upon completion of site development and shall include:
 1. Engineered plans for site development certified in writing by the licensed responsible geotechnical engineer as suitable to avoid adverse flood hazard impacts to the site and surrounding property.
 2. A post-construction elevation certificate for the site and an updated topographic survey shall be completed by a professional land surveyor.

RBZO Section 3.100-3.114: Hazards Overlay Zone:

1. Prior to construction, site development plans shall be certified in writing by the appropriately qualified responsible licensed professional as consistent with the standards of applicable criteria, as being consistent with site investigation reports and as being designed to prevent adverse impacts to the site and surrounding area.
2. Certification reports documenting completion of work without disclaimer of liability shall be submitted to the City.
3. A feasible engineering solution shall be provided that is certified to prevent potential development hazards to the site and surrounding area.
4. All development shall conform substantially to geologic hazard and engineering geologic report recommendations.

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- (1) Geologic Hazard Report: Dune Hazard and Geologic Hazard Report #704-65012-1 dated February 20, 2006 by PSI, Incorporated, Warren Krager, RG, CEG, and Charles Lane, PE.
- (2) Geotechnical Engineering Report: Geotechnical engineering recommendations dated May 3, 2006 by HLB Otak, Ron Larson, PE, PLS, and Jason Morgan, PE.

Vegetation Removal:

1. Vegetation removal shall be limited to the area necessary for construction.
2. All exposed sand areas shall be maintained in vegetation and / or replanted as soon as practical following construction.
3. A 15 foot riparian setback shall be maintained from McMillan Creek consistent with City Standards.

Grading and Erosion Control:

1. Grading and erosion control recommendations shall be adhered to as provided by PSI, Incorporated, HLB Otak, and City Technical Specifications and Design Standards.
2. During construction, the disturbed sand on the site shall be protected from movement by wind by covering with a thin layer of crushed rock or by using fabric fencing. Excavated materials shall not be stockpiled on the site overnight.
3. All lots shall be graded to provide positive flow away from the building and off the site into the approved roadside bio-conveyance ditches. All driveways shall drain directly into approved roadside bio-conveyance ditches. All run off shall be treated in an approved bio-conveyance ditch prior to entering of wetlands and natural drainage channels.

Open Space:

1. A minimum of 50% of the site shall 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 and 75% of said open space, 37.5% of the site shall be dedicated / conveyed as common open space in tracts. Suitable assurances shall be provided to ensure that private open space shall be maintained consistent with applicable criteria.
2. Open Space tracts shall be dedicated to a non-profit Homeowners Association or other suitable organization and a provision included in the dedication to re-dedicate the open space to a suitable organization should the Homeowners Association expire.
3. A permanent maintenance agreement shall provide financial assurance that common open space shall be continuously, perpetually and permanently maintained consistent with applicable criteria.
4. Prior to approval of the final plat, the property owner shall install two wetland identification kiosk signage and a suitable visual barrier, such as split rail fence with stainless steel connections, suitable for the geologic and geographic conditions of the site along open space boundaries which abut public rights-of-way. Each lot owner shall

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install a suitable visual barrier such as split rail fence with stainless steel connections, suitable for the geologic and geographic conditions of the site with application for building permit.

5. The property owner shall record Oregon Department of Fish and Wildlife recommended Wetland Deed Restrictions on the Final Plat.

Coordinating Regulatory Agency Approvals:

1. The property owner shall submit all site development plans consistent with the standards of the Rockaway Beach Fire Code, Rockaway Beach Technical Specifications and Design Standards, Tillamook PUD, other Utilities (such as Embarq Telephone and Charter Communications)
2. With application for final plat approval, the property owner shall provide all necessary easements for sewer, drainage, water mains, public utility installations, and other like public purposes consistent with Article 13, Section 34.

General Improvement Requirements:

1. Improvements required by RBZO Article 13, Section 44, shall be engineered and installed at the cost of the property owner consistent with applicable regulatory standards and the approval requirements of RBZO Article 13, Section 43.
2. All buried utilities shall have flexible connections to the structure to accommodate the large movements and settlements that can occur due to liquefaction of the underlying soils.
3. The responsible engineer of record shall certify without disclaimer of liability that improvements are engineered to meet the standards of the A5 Flood Zone standards.
4. Consistent with Rockaway Beach Ordinance #94-310, the property owner may be eligible for reimbursement of the apportionment of off-site improvements. Requests for reimbursement shall be submitted to the City Council.

Improvement Agreement:

1. Prior to site development and prior to final plat approval, the subdivider shall complete an improvement agreement consistent with RBZO Article 13, Section 16 and shall provide a bond or similar assurance for all work in the public right-of-way to ensure that if the off-site work of the agreement is not completed the city will have sufficient funds to complete the work.
2. Prior to final plat approval, all on-site improvements shall be completed as necessary to serve the project.
3. The design of sewer system improvements shall receive approval of DEQ prior to construction.

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4. The design of water system improvements shall receive approval of the Oregon Health Division prior to construction.
5. The property owner shall receive and comply with the conditions of a DEQ 1200-C erosion control permit prior to site development.

Signage:

1. Two SA Zone Wetland identification signage kiosks shall be installed at the expense of the property owner in conspicuous locations.
2. Street name signage shall be installed at the expense of the property owner no fewer than two at each intersection consistent with City Standards.
3. "No parking" signage shall be installed within the development where required by the City consistent with City Standards.
4. Signage identifying the development as "Nedonna Wave" may be installed at a suitable location within the subdivision subject to design review and approval of the Planning Commission.

On-Site Improvements:

Streets:

1. Riley Street shall be platted as a 50' wide public right-of-way extension crossing McMillan Creek into Nedonna Wave and dedicated to the City.
2. Riley Street shall be designed, engineered, and constructed consistent with City Standards.
3. Kittiwake Drive, Song Street, Jackson Street and Duke Street shall be platted as 40' wide public rights-of-way and dedicated to the City.
4. Kittiwake Drive, Song Street, Jackson Street and Duke Street shall be designed, engineered and constructed consistent with City Standards.
5. The property owner shall dedicate to the City that portion of Riley Street which is on their property.
6. The property owner shall be financially responsible for applying effective dust treatments and gravel to the identified construction route and where necessary, for maintenance of and repair of the identified construction route consistent with Tillamook County Road Department standards and City Standards.
7. The property owner(s) shall record and file with the City a non-remonstrance agreement to ensure that current and future property owners in the Nedonna Wave subdivision will not remonstrate against the formation of a Local Improvement District (LID) for road improvements that would benefit the Nedonna Beach Area. The property owner asked that the improvements subject to LID not be specifically enumerated.

On-site improvements:

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1. Improvements shall be installed consistent with the standards of RBZO Article 13, Section 43 Improvement Standards and Approval.
2. RBZO Article 13, Section 44 Improvement Requirements shall be installed. Sidewalks shall comply with the decision for application #07-22 Variance to delete Sidewalks.
3. A Public Utility Easement shall be dedicated within each lot.
4. Engineered construction plans shall be prepared for on-site improvements for water, fire access, hydrants, and water supply, sewer, stormwater drainage, and streets in general conformance with the approved tentative plan and consistent with City Standards.
5. Power, cable, telephone and other utilities to serve the site shall be installed consistent with all requirements necessary for provision of services and consistent with City Standards.
6. Easements shall be provided where they are required by applicable regulatory agencies for the installation of required utilities.

Off-Site Improvements:

1. A regional sewer pump station and related housing including, but not limited to: 3-phase duplex station with controls, divot crane, on-site generator, telemetry, lighting and fencing shall be installed as necessary to serve the project.
2. A sewer force main from the regional pump station to White Dove pump station shall be installed as necessary to serve the project.
3. Engineer and install to City Standards the construction of the Riley Street crossing of McMillan Creek. Tie into existing street and utility improvements on Kittiwake Drive as secondary loop access into the subdivision.
4. Engineer and install to City Standards a connection into the existing water mains on Kittiwake Drive (north line of Nedonna Wave) and on the west side of McMillan Creek on Riley Street (beyond the southwest corner of Nedonna Wave) to provide a looped water system through the Nedonna Wave subdivision as necessary to serve the project.
5. Engineer and install to City Standards, an extension of the existing 6" diameter White Dove sewer force main from existing discharge manhole at 23rd Avenue to a new discharge manhole at 17th Avenue as necessary to serve the project. This is required to alleviate surcharging of the 23rd Avenue manhole.
6. The project engineer shall submit utility as-built plans in electronic and written format of such quality commonly used in municipality management and consistent with City Standards.

Final Plat:

1. 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.

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2. The criteria of RBZO Article 13, Section 11 Procedure for Review, shall be met at the expense of the property owner.
3. The criteria of RBZO Article 13, Section 12 Form of Plat, shall be met at the expense of the property owner.
4. The criteria of RBZO Article 13, Section 13 Information on the Final Plat, shall be met at the expense of the property owner.
5. The criteria of RBZO Article 13, Section 14 Certification, shall be met at the expense of the property owner.
6. The criteria of RBZO Article 13, Section 15 Supplemental Data, shall be met at the expense of the property owner.
7. Consistent with the criteria of RBZO Article 13, Section 16, at the time of the submission of the final plat, the subdivider shall have completed all on-site and off-site improvements to serve the subdivision consistent with an approved improvement agreement.
8. The property owner shall set monuments consistent with RBZO Article 13, Section 45
9. The property owner shall design and record the final survey consistent with RBZO Article 13, Section 45
10. The name of the proposed subdivision shall receive the approval of the County Surveyor or shall be revised as required.

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"EXHIBIT C: Findings of Fact: Final Plan Approval"

I. Application Information:

Property Owner: Nedonna Development, LLC; Representative Member: "Anna" Song
 Applicant: Mark Dane, Blue Sky Planning, Inc.
 Engineer / Surveyor: HLB Otak, Inc, Ron Larson, PE #9943, PLS
 Location Description: West on Beach Street to Nedonna Avenue; Nedonna Avenue to Section Line Road; Section Line Road to Kittiwake Drive OR Riley Street to Kittiwake Drive
 Legal Description: Parcel 1 of Partition Plat 1997-20 and Parcel 3 of Partition Plat 1997-57; a portion of Evergreen Street vacated by Rockaway Beach Ordinance #98-353
 Assessor's Plat Map: 2N 10W 20AB, Tax Lots 4600, 4900, and 9000
 Property Size: 6.23 Acres
 Development Zones: R-1 Zone; 3.9 acres; SA Special Area Wetlands 2.33 acres
 Known Hazards: FHO Zone; A5 Flood Zone; HO Zone; Lots 25-28 contain slopes that exceed 25%; HO Zone: Deflation Plain; Wetland Notification Overlay Zone

II. Description of Request:

The applicant requests from the Planning Commission Final Plan approval for Application #SPUD 07-19 Nedonna Wave a twenty-eight (28) residential lot Planned Unit Development Subdivision.

III. Applicable Criteria:

(RBZO)	City of Rockaway Beach Zoning Ordinance
Article 10	Planned Unit Development
	Section 10.060 Final Plan Approval (1), (2)
	Section 10.070 Mapping
	Section 10.080 Adherence to the Approved Plan and Modification Thereof

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"EXHIBIT C: Findings of Fact: Final Plan Approval"

Applicable Criteria Application #07-19 Final Orders Exhibits A, B, C, D Findings of Fact:

Application #07-19: Nedonna Wave a 28-Lot Planned Unit Development Subdivision

Concurrent Applications #07-20, #07-21, #07-22

Final Order

Exhibit A Findings of Fact

Exhibit B Conditions of Approval

Final Order (2)

Exhibit C Findings of Fact

Exhibit D Findings of Fact

Engineered Construction Plans

City Engineer Approval of Engineered Construction Plans

Approved Preliminary Development Subdivision Plan

DSL File #: 36702

Wetland Delineation #: WD 2006-0246

(ORS) Oregon Revised Statutes

ORS 227.350 Notice of Wetland Development

ORS 227.522 Local government to approve subdivision...or construction; conditions

City of Rockaway Beach Technical Specifications and Design Standards, April 2001

Rockaway Beach Fire Code: April 2007, International Fire Code with Oregon 2007

Amendments

(RBCP) City of Rockaway Beach Comprehensive Plan

Nedonna Beach Exception Justification

Land Use Element, I. Beaches and Dunes, Policies 1-15

Coastal Shorelands Map Number 2, Beaches and Dunes

Natural Features

Natural Features Map Number 4, Potential Hazard Area

Land Use Categories (G) Special Area Wetlands Zone (SA), Policy (2) (A), (D)

Land Use Categories (L) Open Space, Scenic...Areas and Natural Resources (2)

(RBZO) City of Rockaway Beach Zoning Ordinance

Section 3.010 R-1 Zone Single Family Residential

Section 3.080 SA Zone Special Area Wetlands

Section 3.092 – 3.097 Flood Hazard Overlay Zone

Section 3.100 – 3.112 Hazards Overlay Zone

Section 3.130 – 3.132 Wetland Notification Overlay Zone

Section 4.010 Access

Section 4.020 Clear Vision Areas

Article 10 Planned Unit Development

Article 11 Administrative Provisions

Article 13 Subdivision Ordinance

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V. Planning Commission Decision: 6-0

The Planning Commission approves the Nedonna Wave Final Plan consistent with the conditions of approval approved by the City Planning Commission in their decision on January 29, 2008 and July 22, 2008 and described in the Final Order Exhibit A, Findings of Fact and Conditions of Approval of Exhibit B, these findings of fact Exhibit C and the specific modification of Exhibit D on July 22, 2008 to permit a two-stage development based on the following conclusions:

- (1) Final Plan Approval: 28 Lot Planned Unit Development Subdivision:
 Conditions of Final Plan approval are met by the submittal of final site development plans for a 28-lot Planned Unit Development Subdivision to permit development in two stages, Phase One, an eight (8) lot phase and Phase Two, a twenty (20) lot phase consistent with Planning Commission approved preliminary development and final development plans.
- (2) City Engineer Approved Construction Plans for Work Completed to Date:
 The City Engineer has affixed his signature to approved construction plans for work completed to date.
- (3) City Engineer to Approve Construction Plans for Work Remaining Prior to Construction:
 For work not yet completed, conditions of construction plan approval are based on adopted regulatory standards. Prior to construction of remaining improvements, the City Engineer shall affix his signature to approve construction plans for work remaining and require certification consistent with applicable regulatory standards.
- (4) Final Order Conditions of Approval shall be met Prior to Final Plat Approval: Prior to final subdivision plat approval, all conditions of approval shall be met consistent with applicable criteria and the conditions of approval described in the Final Order and Findings of Fact Exhibit A, Exhibit B, Final Order (2), Exhibit C, and the modification of Exhibit D to permit a two stage development.
- (5) Final Order Improvements shall be completed prior to Final Plat approval:
 Prior to final subdivision plat approval, all improvements shall be completed consistent with Rockaway Beach Zoning Ordinance (RBZO) Article 13 Subdivision Ordinance, Section 16 Agreement for Improvements.
- (6) City signature on the Final Plat certifies compliance with adopted regulatory standards:
 The City shall affix signature to the final subdivision plat when all improvements constructed are in full compliance with applicable criteria and the conditions of approval, all improvements have been certified as required by applicable regulatory agencies, and , all conditions of approval are met consistent with Findings of Fact Exhibit A, B, C and D.

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V. Findings of Fact:

(RBZO) *City of Rockaway Beach Zoning Ordinance*

...

Article 10 Planned Unit Development

...

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 approved, 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 development plan plus any requirements set forth by the Planning Commission.*

Findings of Fact:

1. The applicant submits a final plan consistent in all respects with the approved preliminary development plan. The final plan has been affixed with the stamp "Approved" and signed by the City Engineer.
2. Additional information included in the preliminary development plan includes documentation required prior to final subdivision plat approval in the conditions approval. These items are enumerated in these findings of fact in the Section "Conditions of Approval" and shall be met prior to the City affixing their signature for final subdivision plat approval.

Conclusions: Criteria met for final plan approval as described in findings of fact.

- (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 as are, in its judgment, necessary to insure conformity to the applicable criteria*

Findings of Fact:

1. The Planning Commission shall examine the final 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 as are, in its judgment, necessary to insure conformity to the applicable criteria

Conclusions: Criteria met for final plan approval as described in findings of fact.

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2. *All conditions of approval shall be met at the time of final plat approval and consistent with any Subdivision Improvement Agreement approved by the City Council.*
3. *Conditions of approval are not intended and shall not be misunderstood to violate the requirements of City Standards, Local, State, or Federal Law.*
4. *Local, State, and Federal Permits may be required and shall be obtained at the expense of the developer to as necessary to accomplish conditions of approval.*

Findings of Fact:

General Conditions of Approval:

- (1) Conditions of approval described herein shall be met prior to final subdivision plat approval except where noted in this report.
- (2) All improvements shall be completed as described herein and consistent with approved plans prior to final subdivision plat approval unless an improvement agreement is approved by the City Council.
- (3) Final certifications for all improvements shall be approved by the city prior to final subdivision plat approval.
- (4) All Permits shall be obtained for all improvements consistent with local state and federal law prior to final subdivision plat approval and consistent unless an improvement agreement is approved by the City Council.

Conclusions: **Criteria met for final plan approval as described in findings of fact.**

Building Permits:

1. *With each application for building permit, an engineered stormwater drainage plan shall be prepared and installed at the expense of the property owner consistent with City Standards.*
2. *With each application for building permit, a suitable visual barrier, such as a split rail fence with stainless steel connectors shall be installed on the upland boundary at the expense of the property owner.*
3. *Each application for building permit shall be certified without disclaimer as consistent with the standards of the Flood Hazard Overlay Zone and the Hazard Overlay Zone by an appropriately qualified professional of record.*
4. *Pre-construction and post-construction elevation certificates shall be required at the cost of the applicant for each lot within the Flood Hazard Overlay Zone.*
5. *Site development plans for each lot shall be evaluated for compliance with the standards of applicable criteria. Due to the presence of wetlands, additional local, state, and / or federal permits may be required.*
6. *Each application for building permit shall be separately evaluated at the date of application for consistency with the standards of the applicable Fire Code and the standards shall be met at the cost of the applicant prior to construction of any dwelling units within the proposed Planned Unit Development.*

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Findings of Fact:

Building Permits:

- (1, 2, 3, 4, 5, 6): Conditions of approval are not applicable to final plan approval. The applicant shall ensure compliance at the time of building permit approval.

Conclusions: Criteria met for final plan approval as described in findings of fact.

RBZO Section 3.080, 3.130-3.132; 4.150: SA Zone; Wetland Notification Overlay Zone; Riparian Vegetation

1. *The property owner shall provide a design for and shall install a suitable visual barrier, such as a split rail fence, and wetland identification signage along all upland boundaries of all wetland areas preserved as open space where the open space boundary lies adjacent to a public street right-of-way.*
2. *Each property owner shall install a suitable visual barrier, such as a split rail fence, and wetland identification signage along all upland boundaries of all wetland areas preserved as open space where the open space boundary lies adjacent to a private property line.*

Findings of Fact:

RBZO Section 3.080, 3.130-3.132; 4.150: SA Zone; Wetland Notification Overlay Zone; Riparian Vegetation

- (1) Item (1): Shall be met prior to final subdivision plat approval.
 - (a) Design of the rope fence is included with application for final plan approval.
 - (b) Install a suitable visual barrier adjacent to wetland areas prior to final subdivision plat approval.
 - (c) Install wetland identification signage prior to final subdivision plat approval.
- (2) Item (2) shall be completed with each building permit. This condition will be added to the requirements for each building permit.

Conclusions: Criteria met for final plan approval as described in findings of fact.

RBZO Section 3.092-3.097: Flood Hazard Overlay Zone: A5 Flood Zone: Base Flood Elevation 12 feet

1. *Engineered construction plans shall be designed to ensure that flooding will not be increased in the area by the development and to prevent adverse impacts from site development.*
2. *All site development shall be consistent with the standards of the Flood Hazard Overlay Zone and the FIRM National Flood Insurance Program.*

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3. *Certification of plan consistency with the standards of the Flood Hazard Overlay Zone shall be submitted prior to site development and upon completion of site development and shall include:*
 1. *Engineered plans for site development certified in writing by the licensed responsible geotechnical engineer as suitable to avoid adverse flood hazard impacts to the site and surrounding property.*
 2. *A post-construction elevation certificate for the site and an updated topographic survey shall be completed by a professional land surveyor.*

Findings of Fact:

RBZO Section 3.092-3.097: Flood Hazard Overlay Zone: A5 Flood Zone: Base Flood Elevation 12 feet

- (1, 2) The City Engineer, approving plans for construction in writing and noting such approval on construction plans has accepted the plans as consistent with the applicable criteria
- (3) Criteria may be met prior to final subdivision plat approval
 - (a) Provide required certifications from the responsible geo-technical engineer prior to final subdivision plat approval
 - (b) Provide a post-construction elevation certificate for the site.
 - (c) Provide an update topographic survey prior to final subdivision plat approval.

Conclusions: **Criteria met for final plan approval as described in findings of fact.**

RBZO Section 3.100-3.114: Hazards Overlay Zone:

1. *Prior to construction, site development plans shall be certified in writing by the appropriately qualified responsible licensed professional as consistent with the standards of applicable criteria, as being consistent with site investigation reports and as being designed to prevent adverse impacts to the site and surrounding area.*
2. *Certification reports documenting completion of work without disclaimer of liability shall be submitted to the City.*
3. *A feasible engineering solution shall be provided that is certified to prevent potential development hazards to the site and surrounding area.*
4. *All development shall conform substantially to geologic hazard and engineering geologic report recommendations.*
 - (1) *Geologic Hazard Report: Dune Hazard and Geologic Hazard Report #704-65012-1 dated February 20, 2006 by PSI, Incorporated, Warren Krager, RG, CEG, and Charles Lane, PE.*
 - (2) *Geotechnical Engineering Report: Geotechnical engineering recommendations dated May 3, 2006 by HLB Otak, Ron Larson, PE, PLS, and Jason Morgan, PE.*

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Findings of Fact:

RBZO Section 3.100-3.114: Hazards Overlay Zone:

- (1, 3, 4) The City Engineer, approving plans for construction in writing and noting such approval on construction plans has accepted the plans as consistent with the applicable criteria of the Hazards Overlay Zone.
- (2) The City Engineer shall indicate compliance with criteria at the time the City Engineer affixes signature to the final subdivision plat.

Conclusions: **Criteria met for final plan approval as described in findings of fact.**

Vegetation Removal:

1. *Vegetation removal shall be limited to the area necessary for construction.*
2. *All exposed sand areas shall be maintained in vegetation and / or replanted as soon as practical following construction.*
3. *A 15 foot riparian setback shall be maintained from McMillan Creek consistent with City Standards.*

Findings of Fact:

Vegetation Removal:

- (1, 3) Criteria met for site development as shown on approved construction plans.
- (2) Criteria shall be met prior to final subdivision plat approval. All exposed sand areas shall be maintained in vegetation and / or replanted as soon as practical following construction.

Conclusions: **Criteria met for final plan approval as described in findings of fact.**

Grading and Erosion Control:

1. *Grading and erosion control recommendations shall be adhered to as provided by PSI, Incorporated, HLB Otak, and City Technical Specifications and Design Standards.*
2. *During construction, the disturbed sand on the site shall be protected from movement by wind by covering with a thin layer of crushed rock or by using fabric fencing. Excavated materials shall not be stockpiled on the site overnight.*
3. *All lots shall be graded to provide positive flow away from the building and off the site into the approved roadside bio-conveyance ditches. All driveways shall drain directly into approved roadside bio-conveyance ditches. All run off shall be treated in an approved bio-conveyance ditch prior to entering of wetlands and natural drainage channels.*

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Findings of Fact:

Grading and Erosion Control:

- (1, 2, 3) The City Engineer, approving plans for construction in writing and noting such approval on construction plans has accepted the plans as consistent with the applicable criteria
- (1, 2, 3) The City Engineer shall indicate compliance with criteria at the time the City Engineer affixes signature to the final subdivision plat.

Conclusions: **Criteria met for final plan approval as described in findings of fact.**

Open Space:

- 1. *A minimum of 50% of the site shall 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 and 75% of said open space, 37.5% of the site shall be dedicated / conveyed as common open space in tracts. Suitable assurances shall be provided to ensure that private open space shall be maintained consistent with applicable criteria.*
- 2. *Open Space tracts shall be dedicated to a non-profit Homeowners Association or other suitable organization and a provision included in the dedication to re-dedicate the open space to a suitable organization should the Homeowners Association expire.*
- 3. *A permanent maintenance agreement shall provide financial assurance that common open space shall be continuously, perpetually and permanently maintained consistent with applicable criteria.*
- 4. *Prior to approval of the final plat, the property owner shall install two wetland identification kiosk signage and a suitable visual barrier, such as split rail fence with stainless steel connections, suitable for the geologic and geographic conditions of the site along open space boundaries which abut public rights-of-way. Each lot owner shall install a suitable visual barrier such as split rail fence with stainless steel connections, suitable for the geologic and geographic conditions of the site with application for building permit.*
- 5. *The property owner shall record Oregon Department of Fish and Wildlife recommended Wetland Deed Restrictions on the Final Plat.*

Findings of Fact:

Open Space: Criteria shall be met prior to final subdivision plat approval

- (1) A minimum of 50% of the site shall be dedicated as open space on the final subdivision plat prior to final subdivision plat approval.
- (2) On the final subdivision plat: Open Space tracts shall be dedicated to a non-profit Homeowners Association or other suitable organization and a provision included in the dedication to re-dedicate the open space to a suitable organization should the Homeowners Association expire.

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- (3) On the final subdivision plat: The open space dedication shall describe financial responsibility for the maintenance of open space. A recorded permanent maintenance agreement shall describe maintenance and financial responsibility. The recordation number shall be noted on the final subdivision plat prior to final subdivision plat approval.
- (4) Prior to approval of the final subdivision plat, the property owner shall install two (2) wetland identification signs and the approved visual barrier along open space boundaries that abut public rights-of-way. Each lot owner shall install a suitable visual barrier such as split rail fence with stainless steel connections, suitable for the geologic and geographic conditions of the site with application for building permit.
- (5) The property owner shall record Oregon Department of Fish and Wildlife recommended Wetland Deed Restrictions on the final subdivision plat.

Conclusions: Criteria met for final plan approval as described in findings of fact.

Coordinating Regulatory Agency Approvals:

1. *The property owner shall submit all site development plans consistent with the standards of the Rockaway Beach Fire Code, Rockaway Beach Technical Specifications and Design Standards, Tillamook PUD, other Utilities (such as Embarq Telephone and Charter Communications)*

Findings of Fact:

Coordinating Regulatory Agency Approvals:

Item 1: Criteria met for site development as shown on approved construction plans.

- (1) The City Engineer, approving engineered plans for construction in writing and noting such approval on construction plans has accepted the plans as consistent with these applicable criteria. The City Engineer shall indicate compliance with criteria at the time the City Engineer affixes signature to the final subdivision plat.
- (2) With application for final subdivision plat approval, the property owner shall provide all necessary easements for sewer, drainage, water mains, public utility installations, and other like public purposes consistent with Article 13, Section 34.

Conclusions: Criteria met for final plan approval as described in findings of fact.

General Improvement Requirements:

1. *Improvements required by RBZO Article 13, Section 44, shall be engineered and installed at the cost of the property owner consistent with applicable regulatory standards and the approval requirements of RBZO Article 13, Section 43.*

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2. *All buried utilities shall have flexible connections to the structure to accommodate the large movements and settlements that can occur due to liquefaction of the underlying soils.*
3. *The responsible engineer of record shall certify without disclaimer of liability that improvements are engineered to meet the standards of the A5 Flood Zone standards.*
4. *Consistent with Rockaway Beach Ordinance #94-310, the property owner may be eligible for reimbursement of the apportionment of off-site improvements. Requests for reimbursement shall be submitted to the City Council.*

Findings of Fact:

General Improvement Requirements:

- (1) The City Engineer, approving engineered plans for construction in writing and noting such approval on construction plans has accepted the plans as consistent with these applicable criteria. The City Engineer shall indicate compliance with criteria at the time the City Engineer affixes signature to the final subdivision plat.
- (2) The City Engineer shall indicate compliance with criteria at the time the City Engineer affixes signature to the final subdivision plat.
- (3) The City Engineer, approving engineered construction plans in writing and noting such approval on construction plans has accepted construction plans and consistent with these applicable criteria. The City Engineer shall indicate full compliance with criteria and the applicable conditions of approval at the time the City Engineer affixes signature to the final subdivision plat.
- (4) It is the responsibility of the property owner to apply for reimbursement consistent with Rockaway Beach Ordinance #94-310 for of the apportionment of off-site improvements. Requests for reimbursement shall be submitted to the City Council.

Conclusions: **Criteria met for final plan approval as described in findings of fact.**

Improvement Agreement:

1. *Prior to site development and prior to final subdivision plat approval, the subdivider shall complete an improvement agreement consistent with RBZO Article 13, Section 16 and shall provide a bond or similar assurance for all work in the public right-of-way to ensure that if the off-site work of the agreement is not completed the city will have sufficient funds to complete the work.*
2. *Prior to final plat approval, all on-site improvements shall be completed as necessary to serve the project.*
3. *The design of sewer system improvements shall receive approval of DEQ prior to construction.*
4. *The design of water system improvements shall receive approval of the Oregon Health Division prior to construction.*

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5. *The property owner shall receive and comply with the conditions of a DEQ 1200-C erosion control permit prior to site development.*

Findings of Fact:

Improvement Agreement:

- (1), (2) Prior to final plat approval, all on-site improvements shall be completed as necessary to serve the project unless an improvement agreement is approved by the City Council consistent with Rockaway Beach Zoning Ordinance (RBZO) Article 13, Section 16 with a bond required by (RBZO) Article 13, Section 17. The City Engineer shall indicate full compliance with criteria and the applicable conditions of approval at the time the City Engineer affixes signature to the final subdivision plat.
- (3) The City Engineer, approving engineered construction plans in writing and noting such approval on construction plans has accepted sewer system construction plans as consistent with these applicable criteria. The City Engineer shall indicate full compliance with criteria and the applicable conditions of approval at the time the City Engineer affixes signature to the final subdivision plat.
- (4) The City Engineer, approving engineered construction plans in writing and noting such approval on construction plans has accepted water system construction plans as consistent with these applicable criteria. The City Engineer shall indicate full compliance with criteria and the applicable conditions of approval at the time the City Engineer affixes signature to the final subdivision plat.
- (5) The City Engineer, approving engineered construction plans in writing and noting such approval on construction plans has accepted the DEQ 1200-C erosion control permit consistent with these applicable criteria. The City Engineer shall indicate full compliance with criteria and the applicable conditions of approval at the time the City Engineer affixes signature to the final subdivision plat.

Conclusions: **Criteria met for final plan approval as described in findings of fact.**

Signage:

1. *Two SA Zone Wetland identification signage kiosks shall be installed at the expense of the property owner in conspicuous locations.*
2. *Street name signage shall be installed at the expense of the property owner no fewer than two at each intersection consistent with City Standards.*
3. *"No parking" signage shall be installed within the development where required by the City consistent with City Standards.*
4. *Signage identifying the development as "Nedonna Wave" may be installed at a suitable location within the subdivision subject to design review and approval of the Planning Commission.*

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Findings of Fact:

Signage:

- (1) Prior to approval of the final subdivision plat, the property owner shall install two (2) wetland identification signs and the approved visual barrier along open space boundaries that abut public rights-of-way.
- (2) Prior to final subdivision plat approval, Street name signage shall be installed at the expense of the property owner no fewer than two at each intersection consistent with City Standards. The City Engineer shall indicate full compliance with criteria and the applicable conditions of approval at the time the City Engineer affixes signature to the final subdivision plat.
- (3) Prior to final subdivision plat approval, "No parking" signage shall be installed within the development where required by the City consistent with City Standards. The City Engineer shall indicate full compliance with criteria and the applicable conditions of approval at the time the City Engineer affixes signature to the final subdivision plat.
- (4) Identification signage for Nedonna Wave is not required. At any time such identification signage is made, the request shall be made to the City Planning Commission.

Conclusions: **Criteria met for final plan approval as described in findings of fact.**

On-Site Improvements:

Streets:

1. *Riley Street shall be platted as a 50' wide public right-of-way extension crossing McMillan Creek into Nedonna Wave and dedicated to the City.*
2. *Riley Street shall be designed, engineered, and constructed consistent with City Standards.*
3. *Kittiwake Drive, Song Street, Jackson Street and Duke Street shall be platted as 40' wide public rights-of-way and dedicated to the City.*
4. *Kittiwake Drive, Song Street, Jackson Street and Duke Street shall be designed, engineered and constructed consistent with City Standards.*
5. *The property owner shall dedicate to the City that portion of Riley Street which is on their property.*
6. *The property owner shall be financially responsible for applying effective dust treatments and gravel to the identified construction route and where necessary, for maintenance of and repair of the identified construction route consistent with Tillamook County Road Department standards and City Standards.*
7. *The property owner(s) shall record and file with the City a non-remonstrance agreement to ensure that current and future property owners in the Nedonna Wave subdivision will not remonstrate against the formation of a Local Improvement District (LID) for road improvements that would benefit the Nedonna Beach Area. The property owner asked that the improvements subject to LID not be specifically enumerated.*

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Findings of Fact:

Streets:

1. On the final subdivision plat, Riley Street shall be platted as a 50' wide public right-of-way extension crossing McMillan Creek into Nedonna Wave and dedicated to the City.
- (2, 4) The City Engineer, approving plans for construction in writing and noting such approval on construction plans has accepted construction plans as consistent with the applicable criteria
- (2, 4) The City Engineer shall indicate full compliance with criteria and the applicable conditions of approval at the time the City Engineer affixes signature to the final subdivision plat.3. On the final subdivision plat, Kittiwake Drive, Song Street, Jackson Street and Duke Street shall be platted as 40' wide public rights-of-way and dedicated to the City.
4. Kittiwake Drive, Song Street, Jackson Street and Duke Street shall be designed engineered and constructed consistent with City Standards.
5. On the final subdivision plat for the Nedonna Wave Subdivision, property owners shall dedicate to the City that portion of Riley Street that is on their property within Nedonna Wave subdivision boundaries.
6. The property owner shall be financially responsible for applying effective dust treatments and gravel to the identified construction route and where necessary, for maintenance of and repair of the identified construction route consistent with Tillamook County Road Department standards and City Standards.
7. The property owner(s) shall record and file with the City a non-remonstrance agreement to ensure that current and future property owners in the Nedonna Wave subdivision will not remonstrate against the formation of a Local Improvement District (LID) for road improvements that would benefit the Nedonna Beach Area. The property owner asked that the improvements subject to LID not be specifically enumerated.

Conclusions: **Criteria met for final plan approval as described in findings of fact.**

On-site improvements:

1. *Improvements shall be installed consistent with the standards of RBZO Article 13, Section 43 Improvement Standards and Approval.*
2. *RBZO Article 13, Section 44 Improvement Requirements shall be installed. Sidewalks shall comply with the decision for application #07-22 Variance to delete Sidewalks.*
3. *A Public Utility Easement shall be dedicated within each lot.*
4. *Engineered construction plans shall be prepared for on-site improvements for water, fire access, hydrants, and water supply, sewer, stormwater drainage, and streets in general conformance with the approved tentative plan and consistent with City Standards.*
5. *Power, cable, telephone and other utilities to serve the site shall be installed consistent with all requirements necessary for provision of services and consistent with City Standards.*

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6. *Easements shall be provided where they are required by applicable regulatory agencies for the installation of required utilities.*

Findings of Fact:

On-site improvements:

- (1, 2, 3, 4, 5, 6, 7) The City Engineer, approving engineered plans for construction in writing and noting such approval on engineered construction plans has accepted construction plans as consistent with the applicable criteria.
- (1, 2, 3, 4, 5, 6, 7) The City Engineer shall indicate full compliance with criteria and the applicable conditions of approval at the time the City Engineer affixes signature to the final subdivision plat.

Conclusions: **Criteria met for final plan approval as described in findings of fact.**

Off-Site Improvements:

1. *A regional sewer pump station and related housing including, but not limited to: 3-phase duplex station with controls, divot crane, on-site generator, telemetry, lighting and fencing shall be installed as necessary to serve the project.*
2. *A sewer force main from the regional pump station to White Dove pump station shall be installed as necessary to serve the project.*
3. *Engineer and install to City Standards the construction of the Riley Street crossing of McMillan Creek. Tie into existing street and utility improvements on Kittiwake Drive as secondary loop access into the subdivision.*
4. *Engineer and install to City Standards a connection into the existing water mains on Kittiwake Drive (north line of Nedonna Wave) and on the west side of McMillan Creek on Riley Street (beyond the southwest corner of Nedonna Wave) to provide a looped water system through the Nedonna Wave subdivision as necessary to serve the project.*
5. *Engineer and install to City Standards, an extension of the existing 6" diameter White Dove sewer force main from existing discharge manhole at 23rd Avenue to a new discharge manhole at 17th Avenue as necessary to serve the project. This is required to alleviate surcharging of the 23rd Avenue manhole.*
6. *The project engineer shall submit utility as-built plans in electronic and written format of such quality commonly used in municipality management and consistent with City Standards.*

Findings of Fact:

Off-Site Improvements:

- (1, 2, 3, 4, 5) Prior to approval of the final subdivision plat, all improvements shall be installed consistent with the conditions of approval contained herein and

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- consistent with any improvement agreement approved by the City Council.
- (6) Prior to approval of the final subdivision plat, the project engineer shall submit utility as-built plans in electronic and written format of such quality commonly used in municipality management and consistent with City Standards.
- (1, 2, 3, 4, 5, 6) The City Engineer shall indicate full compliance with criteria and the applicable conditions of approval at the time the City Engineer affixes signature to the final subdivision plat.
- Conclusions:** Criteria met for final plan approval as described in findings of fact.

Final Plat:

1. *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.*
2. *The criteria of RBZO Article 13, Section 11 Procedure for Review, shall be met at the expense of the property owner.*
3. *The criteria of RBZO Article 13, Section 12 Form of Plat, shall be met at the expense of the property owner.*
4. *The criteria of RBZO Article 13, Section 13 Information on the Final Plat, shall be met at the expense of the property owner.*
5. *The criteria of RBZO Article 13, Section 14 Certification, shall be met at the expense of the property owner.*
6. *The criteria of RBZO Article 13, Section 15 Supplemental Data, shall be met at the expense of the property owner.*
7. *Consistent with the criteria of RBZO Article 13, Section 16, at the time of the submission of the final plat, the subdivider shall have completed all on-site and off-site improvements to serve the subdivision consistent with any approved improvement agreement.*
8. *The property owner shall set monuments consistent with RBZO Article 13, Section 45*
9. *The property owner shall design and record the final survey consistent with RBZO Article 13, Section 45*
10. *The name of the proposed subdivision shall receive the approval of the County Surveyor or shall be revised as required.*

Findings of Fact:

Final Plat: Criteria required to be met prior to final subdivision plat approval.

1. 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

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improvements. Final subdivision plat review shall conform to the procedures of RBZO Article 10 and Article 13.

2. Prior to final subdivision plat approval, and within one year of preliminary plan approval on January 29, 2008 and July 22, 2008, the criteria of RBZO Article 13, Section 11 Procedure for Review, shall be met at the expense of the property owner.
3. Prior to final subdivision plat approval, and within one year of preliminary plan approval on January 29, 2008 and July 22, 2008, the criteria of RBZO Article 13, Section 12 Form of Plat, shall be met at the expense of the property owner.
4. Prior to final subdivision plat approval, and within one year of preliminary plan approval on January 29, 2008 and July 22, 2008, the criteria of RBZO Article 13, Section 13 Information on the Final subdivision plat, shall be met at the expense of the property owner.
5. Prior to final subdivision plat approval, and within one year of preliminary plan approval on January 29, 2008 and July 22, 2008, the criteria of RBZO Article 13, Section 14 Certification, shall be met at the expense of the property owner.
6. Prior to final subdivision plat approval, and within one year of preliminary plan approval on January 29, 2008 and July 22, 2008, the criteria of RBZO Article 13, Section 15 Supplemental Data, shall be met at the expense of the property owner.
7. Prior to final subdivision plat approval, and within one year of preliminary plan approval on January 29, 2008 and July 22, 2008, the subdivider shall have completed all on-site and off-site improvements to serve the subdivision consistent with RBZO Article 13, Section 16.
8. Prior to final subdivision plat approval, and within one year of preliminary plan approval on January 29, 2008 and July 22, 2008, the property owner shall set monuments consistent with RBZO Article 13, Section 45
9. Prior to final subdivision plat approval, and within one year of preliminary plan approval on January 29, 2008 and July 22, 2008, the property owner shall design and record the final survey consistent with RBZO Article 13, Section 45.
10. Prior to final subdivision plat approval, and within one year of preliminary plan approval on January 29, 2008 and July 22, 2008, the name of the proposed subdivision shall receive the approval of the County Surveyor or shall be revised as required.

Conclusions: Criteria met for final plan approval as described in findings of fact.

Planning Commission Decision: Modification Exhibit D July 22, 2008:

Conditions of Approval:

1. *Two Final Plats: Renumbered Lots 1 – 8 shall be permitted as Phase One of the Nedonna Wave Final Plat subject to the applicable conditions of preliminary development and tentative plan approval. 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.*

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2. Open Space for Phase One Site and Open Space for the Total Site Area of both phases calculated together: The application shall devote Open Space to equal 50% of Phase One and Open Space shall equal 50% of the total site area for both Phase One and Phase Two calculated together. For each Phase One and both Phase One and Phase Two calculated together, Common Open Space shall equal a minimum of 75% of the total site open space and private Open Space may be 25% of the Total Open Space where it can where it can be devoted on the final plat.
3. Prior to approval of the final plat, all improvements for Phase One shall be installed consistent with City Standards and Final Orders and corresponding Exhibits A, B, and C which will continue to apply in their entirety except where amended specifically in this Final Order and findings of fact, Exhibit D. Conditions which continue to apply include but are in no way limited to the recordation of deed restrictions, open space, certification of engineering, and the submittal of as-built plans in electronic and written format of such quality commonly used in municipality management and consistent with City Standards.
4. 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.

Findings of Fact:

1. Findings of fact for the July 22, 2008 Final Order Exhibit D to request modified preliminary and final plan approval to permit development in two stages, Phase One, an eight (8) lot phase and Phase Two, a twenty (20) lot phase are described in the findings of fact Exhibit D.

Conclusions: **Criteria met for final plan approval as described in findings of fact.**

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"EXHIBIT D: Modified Preliminary and Final Approval for a Two Phase Development"

I. Application Information:

Property Owner:	Nedonna Development, LLC: Member, "Anna" Song
Applicant:	Mark Dane, Blue Sky Planning, Inc
Applicant Engineer / Surveyor:	HLB Otak, Ron Larson, PE, PLS
Legal Description:	Partition Plat: 1997-20, Parcel 1; Partition Plat 1997-57, Parcel 3; and Portion of Vacated Evergreen Street Ordinance #98-353

II. Description of Request:

The property owner requests modified preliminary development plan approval and final plan approval for Application SPUD #07-19 Nedonna Wave a 28 Lot Planned Unit Development to allow the application to be developed in two phases. Concurrent Final Orders and corresponding Exhibits A, B, and C will continue to apply in their entirety except where modified specifically in these findings of fact Exhibit D.

Application #2007-19 Nedonna Wave, a 28-Lot Planned Unit Development Subdivision;
Application #2007-20 A Variance to delete sidewalks from the development;
Application #2007-21 A Variance to increase building height; and
Application #2007-22 A Variance to increase building height

Exhibit A: Findings of Fact Planning Commission Preliminary Development Plan and Tentative Plan Approval of said applications January 29, 2008.
Exhibit B: Conditions of Approval said Applications #2007-19
Exhibit C: Findings of Fact Planning Commission Final Plan Approval May 27, 2008
Exhibit D: Findings of Fact Planning Commission Modification to allow Two (2) Phases

The applicable criteria for Application #2007-19 Modification of Tentative Plan and Final Plan Approval for a Two Phase Development for the Nedonna Wave 28-Lot Planned Unit Development Subdivision including those of Article 10, Section 10.040 (2) Open Space, 10.050 (1) (i) a schedule, if it is proposed that the development plan will be executed in stages, and Section 10.060 (1) which requires submittal of the final plan within one year or permits submittal for the first unit when submission in stages has been authorized by the Planning Commission shall be reflected in the Final Order and Exhibit D Findings of Fact for Modification of Tentative Plan and Final Plan Approval for a Two Phase Development.

Phase 1: An 8 Lot Planned Unit Development Subdivision
Phase 2: A 20 Lot Planned Unit Development Subdivision

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III. Applicable Criteria:

Rockaway Beach Zoning Ordinance (RBZO)

Article 10 Planned Unit Development

Article 11 Administrative Provisions

IV. Staff Summary of Findings of Fact:

Preliminary Development Plan and Tentative Plan approval for Applications #2007-19 Nedonna Wave 28-Lot Planned Unit Development Subdivision, and concurrent applications #2007-20, #2007-21, and #2007-22 are provided in Final Order and Exhibit A Findings of Fact, Exhibit B Conditions of Approval adopted for the January 29, 2008 Planning Commission decision and Final Order and Exhibit D Findings of Fact adopted for the July 22, 2008 Planning Commission decision.

Final Plan approval for Application #2007-19 the Nedonna Wave 28-Lot Planned Unit Development Subdivision are provided in Final Order and Exhibit C Findings of Fact for Final Plan approval adopted for the Planning Commission decision of May 27, 2008 and Final Order and Exhibit D Findings of Fact adopted for the July 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.

The applicable criteria for Application #2007-19 Modification of Tentative Plan and Final Plan Approval for a Two Phase Development for the Nedonna Wave 28-Lot Planned Unit Development Subdivision are found in *RBZO Article 10, Section 10.040 (2) Open Space, 10.050 (1) (i) a schedule, if it is proposed that the development plan will be executed in stages, and Section 10.060 (1) which requires submittal of the final plan within one year or permits submittal for the first unit when submission in stages has been authorized by the Planning Commission.*

RBZO Article 10, Section 10.040 (2) Open Space: Evidence provided and described in these findings of fact indicates that open space criteria can be met by the imposition of reasonable conditions of approval to require the devotion of Open Space on the final plat. As a condition of approval the application shall devote Open Space to equal 50% of Phase One and Open Space shall equal 50% of the total site area for both Phase One and Phase Two calculated together. For each Phase One and both Phase One and Phase Two calculated together, Common Open Space shall equal a minimum of 75% of the total site open space and private Open Space may be 25% of the Total Open Space where it can where it can be devoted on the final plat.

RBZO Article 10, 10.050 (1) (i) a schedule, if it is proposed that the development plan will be executed in stages, and Section 10.060 (1)(2) which requires submittal of the final plan within one year or permits submittal for the first unit when submission in stages has been authorized by the Planning Commission. The application for a modification to the preliminary development

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plan and final plan approval requests a two stage development plan that is substantively consistent with the approved preliminary development plan and final development plan and continues to meet applicable criteria as described in findings of fact. 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.

Staff Conclusions:

1. Evidence is submitted that the application to develop Application #2007-19 in two phases will meet applicable criteria with the imposition of reasonable conditions of approval.
2. Prior to approval of the final plat, all improvements for Phase One shall be installed consistent with City Standards and Final Orders and corresponding Exhibits A, B, C, and D which continue to apply in their entirety except where amended specifically in these findings of fact.
3. The request to develop Application #2007-19 in two stages, Phase 1 (8) lots and Phase 2 (20) lots is the only subject of this Planning Commission decision and as such said criteria are the only subject of any appeal.

A decision of the Planning Commission may be appealed to the City Council by a party to the hearing by filing an appeal within 15 days of the date the final order is signed. The notice of appeal filed with the City shall contain the information outlined in Section 11.070 (3).

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V. Staff Recommendation: Approval with Conditions

1. Two Final Plats: Lots 1 – 8 shall be permitted as Phase One of the Nedonna Wave Final Plat subject to the applicable conditions of preliminary development and tentative plan approval. 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.
2. Open Space for Phase One Site and Open Space for the Total Site Area of both phases calculated together: The application shall devote Open Space to equal 50% of Phase One and Open Space shall equal 50% of the total site area for both Phase One and Phase Two calculated together. For each Phase One and both Phase One and Phase Two calculated together, Common Open Space shall equal a minimum of 75% of the total site open space and private Open Space may be 25% of the Total Open Space where it can where it can be devoted on the final plat.
3. Prior to approval of the final plat, all improvements for Phase One shall be installed consistent with City Standards and Final Orders and corresponding Exhibits A, B, and C which will continue to apply in their entirety except where amended specifically in this Final Order and findings of fact, Exhibit D. Conditions which continue to apply include but are in no way limited to the recordation of deed restrictions, open space, certification of engineering, and the submittal of as-built plans in electronic and written format of such quality commonly used in municipality management and consistent with City Standards.
4. 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.

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"EXHIBIT D: Modified Preliminary and Final Approval for a Two Phase Development"

VI. Findings of Fact:

Rockaway Beach Zoning Ordinance

...

Section 10.040 Development Standards

...

- (2) *Open Space;*
In all residential developments...50% of the total area should be devoted to open space. Of this area 25% of said open space may be used privately by individual owners or users of the PUD; however, 75% of this area should be common or shared open space...

...

Findings of Fact:

1. Open space is addressed in these findings of fact as open space is required to be dedicated in sufficient area consistent with the methodology and calculation of Section 10.040 (2).
2. Open space shall equal 50% of the total site area. Of the required Open Space, a minimum of 75% shall be Common Open Space 25%, may be private open space in yard area where it can be devoted on the final plat.
3. The total site area of Phase One is ~160,159 square feet (~3.68 acres). Phase One requires 50%, ~78,625.5 square feet (~1.84 acres) of open space devotion. Of the total open space, a minimum of 75%, ~58,969 square feet shall be common open space and private open space may equal up to 25%, ~19,656 square feet where it can be devoted on the final plat.
 - a. The Phase One application devotes 65,438 square feet of common open space and 14,772 square feet of private open space for a total of 80,210 square feet of Open Space. Phase One Open Space criteria are met.
4. Total site area remaining in Phase 2 will be ~70,314 square feet (~1.61 acres) and will require the devotion of ~1.61 acres of open space. When the open space is devoted for Phase 2, the total of Phase 1 and Phase 2 Open Space shall constitute 50% of the site, Common Open Space shall constitute 75% of the total Open Space and Private Open Space shall constitute 25% of the total Open Space.
 - a. The Phase Two application devotes 38,725 square feet of common open space and 31,003 square feet of private open space for a total of 69,728 square feet of Open Space. When calculated with the Open Space areas devoted in Phase One, the Phase Two Open Space criteria are met.
5. The total site area is ~271,217 square feet (~6.23 acres) that permits the development of ~135,608.5 square feet (~3.115 acres), 50% of site area and requires the devotion of ~135,608.5 square feet (~3.115 acres), 50% of site area, as Open Space. Of the required Open Space, a minimum of 75%, ~101,706.375 square feet (~2.34 acres) shall be Common Open Space and up to 25%

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~33,902.125 square feet (~0.77 acres) may be devoted as private Open Space where it can be devoted on the final plat.

- a. The application for both Phase One and Phase Two devotes a total of 104,174 square feet of common open space and 45,725 square feet of private open space for a total of 149,938 square feet of open space. Open Space criteria are met.

Conclusions:

1. Application evidence indicates that open space criteria can be met by the imposition of reasonable conditions of approval to require the devotion of Open Space on the final plat.

Condition of Approval:

The application shall devote Open Space to equal 50% of Phase One and Open Space shall equal 50% of the total site area for both Phase One and Phase Two calculated together. For each Phase One and both Phase One and Phase Two calculated together, Common Open Space shall equal a minimum of 75% of the total site open space and private Open Space may be 25% of the Total Open Space where it can where it can be devoted on the final plat.

Section 10.050 Procedure – Preliminary Development Plan

- (1) *...This plan and any written statements shall contain at least the following information:*
- (i) *A schedule, if it is proposed that the development plan will be executed in stages.*

...

Findings of Fact:

1. The applicant submits a request to phase the final development plan in two stages, Phase One and Phase Two.
2. In Phase I, the property owner requests to plat Lots 1 – 8 as shown on the revised preliminary development plan and proposes to complete the improvements listed in this report for PHASE I.

Sanitary Sewer System Improvements

1. Add new 4" diameter. sewer service for Hursey property. Install strap-on tee just north of MH #1, then 45° bend to extend sewer service to Hursey property, TL 9100.
2. No core drill on MH #1, therefore, no Poly Coat required on MH #1.
3. Add standard 8" diameter. cleanout in ROW of Song Street on end of existing 8" diameter. sewer service out of MH #1. Add frame and grate for this CO as per std City CO detail. Install 8" x 4" reducer and 4" cap as sewer service to Hursey property, TL 9100.
4. Core drill MH#2 for new 8" diameter. sewer main to south of MH #2. Install Kore-N-Seal for new 8" sewer main. Construct new smooth channel in base of MH #2.
5. Install Poly Coat on interior of MH #2 after MH work above is complete.

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6. Remove existing sewer main from Sta. 10+80 to +/-11+95 in order to install new sewer main from MH #2 to new CO at Sta. 11+68.
7. Install new 8" diameter. sewer main from MH #2 south to new 8" diameter. CO at Sta. 11+68. Install two new 4" diameter sewer services to lots 3 and 4 (original lot # system).
8. Install new 4" diameter. sewer service to Open Space 'C' (for possible future lot).
9. Install 8" diameter. sewer plug just north of MH #3.
10. Construct loop to south (remaining in Riley St. ROW) on existing White Dove force main.
11. Abandon existing sewer main that crosses below SD culvert. Fill with sand.
12. Pressure test all sewer mains on Duke Street, Song Street and Kittiwake Drive. Do NOT pressure test sewer on Jackson Street and on Riley Street east of Kittiwake Drive.
13. Vacuum test MH #1, #2, #3, #4 and #5.
14. NOTE: City is prepared to accept the above portions of the sewer system where sewer mains will be completed and covered with final asphalt pavement.

Water System Improvements

1. Install one 3/4" diameter. water service to Hursey property Tax Lot 9100. Length and location of this water service is of no consequence to City Staff. Run parallel and perpendicular to ROW lines.
2. Install new 3/4" diameter water service to Open Space 'C' (for possible future lot).
3. Engineer & Install to City Standards a connection into the existing water mains on Kittiwake Drive (north of Nedonna Wave) and on the west side of McMillan Creek on Riley Street (to provide a looped water system through the Nedonna Wave subdivision necessary to serve the project.
4. Pressure test and disinfect entire water system for the entire subdivision.

Street and Road Improvements

1. Re-grade all roadway subgrade on Duke "Street, Song Street, Kittiwake Drive and on Riley Street west of Kittiwake.
2. Install geotextile support fabric, base rock, crushed rock and asphalt pavement on Duke "Street, Song Street, Kittiwake Drive and on Riley Street west of Kittiwake to tie into existing pavement on Riley Street west of McMillan Creek. Extend geotextile support fabric, base rock, crushed rock and asphalt pavement on Riley Street approximately 30 feet east of CL-CL intersection of Riley and Kittiwake, in order to construct "tee" intersection rather than "L" intersection at Riley and Kittiwake. Extend geotextile support fabric, base rock, crushed rock and asphalt pavement on Riley Street approximately 195 feet west of CL-CL intersection of Riley and Kittiwake to tie into existing pavement on Riley Street west of McMillan Creek.
3. NOTE: Box culvert improvements, as may be required, are at the direction of Tillamook County Public Works Department. This requirement has yet to be determined. Ron Larson to contact Leanne Welch at TCPWD to resolve this subject.

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4. Construct road ditches/swales on Duke "Street, Song Street, Kittiwake Drive and on Riley Street west of Kittiwake as per plans.
5. Construct permanent street barricade at east end of Song Street.
6. Remove temporary gate on Kittiwake at north end of Nedonna Wave subdivision.
7. Relocate temporary gate on Riley Street to new east end of pavement, approximately 30 feet east of CL-CL intersection of Riley and Kittiwake.
8. Install street signs for Duke "Street, Song Street, Kittiwake Drive and on Riley Street west of Kittiwake as per plans.

Subdivision Final Plat

1. Plat Phase One as eight lots (none of which will need new regional sewer pump station). Plat all streets in the entire subdivision; dedicate all streets to the public.
2. City will request separate dedication of southerly portion of Riley Street ROW by adjoining property owner in accordance with Riley Street Road Agreement. [Ron Larson emailed signed agreement to Shawn Vincent and Sabrina Pearson on 05/14/08.]

Wetlands Signage and Visual Barrier/Fencing

1. Install two wetlands notification signs as per Tentative Plat conditions of approval [SAI Design has requirements for the signs and for the visual barrier/fence.]
2. Install Visual Barrier/Fence adjacent to wetlands areas that adjoin the public ROW in Phase One. Tentative Plat Conditions of Approval require property owners to install visual barrier/fence where private property is adjoining wetlands.

Power and Street Lighting

1. Pay TPUD fee for power service to Phase One (for nine lots; power will be stubbed out to Open Space "C" at this time in anticipation of a future change to allow one lot on that Open Space.) Obtain letter of service availability from TPUD for eight lots in Phase One.
2. Install Street Lighting for Phase One, as per Sheet U1 of approved plans – minimum of two (2) street lights. One at SE corner of Duke St. and Song St. One at NE corner of Kittiwake and Song Street.

PHASE II:

In Phase 2, the property owner requests to plat Lots 9 - 28 and proposes to complete the improvements listed in this report for PHASE II.

1. A 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 shall be installed as necessary to serve the project.
2. A sewer force main from the regional pump station to the White Dove pump station shall be installed as necessary to serve the project.

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3. Engineer and install to City standards, and extension of the existing 6" diameter White Dove Sewer manhole at 17th Avenue as necessary to serve the project. This is required to alleviate surcharging of the 23rd Avenue Manhole.
4. The project engineer shall submit utility as-built plans in electronic and written format of such quality commonly used in municipality management and consistent with City Standards.
5. Paving remainder of Riley Street east of Kittiwake, and Jackson Street.
6. Not all conditions of approval for Phase One are enumerated in this proposed phase plan.
7. 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.

Conclusion:

The applicant need not enumerate all improvements and conditions of approval consistent with City Standards and Final Orders and corresponding Exhibits A, B, C, and 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.

Conditions of Approval:

1. Prior to approval of the final plat, all improvements for Phase One shall be installed consistent with City Standards and Final Orders and corresponding Exhibits A, B, C, and D which continue to apply in their entirety except where amended specifically in these findings of fact. Conditions which continue to apply include but are in no way limited to the recordation of deed restrictions, open space, certification of engineering, and the submittal of as-built plans in electronic and written format of such quality commonly used in municipality management and consistent with City Standards.
2. 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.

...

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Section 10.060 Procedure - Final Approval

...

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 approved, 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 development plan plus any requirements set forth by the Planning Commission.*
- (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 as are, in its judgment, necessary to insure conformity to the applicable criteria*

...

Findings of Fact:

1. The application provides a preliminary and final plan that is substantively consistent with the approved preliminary development plan and continues to meet applicable criteria as described in these findings of fact.
2. Final Orders and corresponding Exhibits A, B, C, and D 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.

Conclusion: Criteria met for final plan approval as described in findings of fact.

Section 11.070 Appeals

...

- (2) *A decision of the Planning Commission may be appealed to the City Council by a party to the hearing by filing an appeal within 15 days of the date the final order is signed. The notice of appeal filed with the City shall contain the information outlined in Section 11.070 (3).*

Findings of Fact:

The request for modification reviews only the criteria applicable to the request to develop Application #2007-19 in two stages, Phase 1 (8) lots and Phase 2 (20) lots

Conclusion:

The request to develop Application #2007-19 in two stages, Phase 1 (8) lots and Phase 2 (20) lots is the only subject of this Planning Commission decision and as such said criteria are the only subject of any appeal.

From: Nancy Osborne <[REDACTED]>
Sent: Friday, August 15, 2025 10:58 AM
To: City Planner <cityplanner@corb.us>
Subject: Case File #Remand-25-1

August 15, 2025
To: Planning Department & City Council

Thank you for this opportunity to provide comments before your September 9th public hearing regarding the remand of the Phase 2 Planned Unit Development application submitted by Nedonna Development. I have looked over the First Opinion and Order Issued by the Land Use Board of Appeals (No. 2025-001) and agree with the finding that the City had erred regarding:

1. The application of the Special Area Wetlands Zone, and
2. The application (or lack thereof) of an expiration date on the original 2008 PUD approval.

In addition to the LUBA's findings, I would like to add:

Wetlands are among the most biologically productive systems in the world. They provide primary habitat for many species and food, water, and cover for many others.

Organic waste and runoff from pesticide/herbicide usage (timber company sprayings in logged hillsides) is filtered at wetland sites before entering the ocean.

Wetlands are carbon-storing giants; they also provide flood control, clean water, shoreline and storm protection and as mentioned, vital habitat for birds, otter, beaver, and numerous fish species.

So, I thank you for your work and I hope you recognize the value of our wetland/estuary sites and preserve them for the future.

Nancy A. Osborne
[REDACTED] St
Rockaway Beach, OR
[REDACTED]

From: Rebecca Overmyer-Velázquez <[REDACTED]>
Sent: Sunday, August 17, 2025 9:26 PM
To: City Planner
Subject: Comments Regarding Case File #Remand-25-1

- "Case File #Remand-25-1"

August 17, 2025

Rebecca Overmyer-Velázquez
[REDACTED]
Neahkahnie OR 97131
[REDACTED]

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

Dear City Council,

Thank you for this opportunity to provide comments prior to the September 9, 2025 public hearing to be held by the City Council regarding the remand of the Phase 2 Planned Unit Development application submitted by Nedonna Development. I have reviewed the Final Opinion and Order issued by the Land Use Board of Appeals (No. 2025-001) and agree with its conclusion that the City had erred regarding:

1. The application of the Special Area Wetlands Zone, and
2. The application (or lack thereof) of an expiration date on the original 2008 PUD approval.

In addition to LUBA's findings, I would like to add the following comments.

I have concerns about the freshwater forested shrub wetlands that the Nedonna Development plan endangers, including: protection of the City's drinking water wells, flood control, water storage, fishery protection, wildlife, best practices needed at local level, diminishing wetlands due to development--all of these are important to consider! Once these critical resources that make coastal life so unique are diminished or destroyed, it will be very hard to get them back.

The impacts from existing development need to be defined better prior to further development, while the wetland delineation by the developer does not reflect actual conditions. Just like we've been experiencing in Neahkahnie, in Rockaway there's been more stress on and demand for drinking water and wastewater systems since 2008--this is not sustainable! Additional stress on our water sources is the last thing we need on our beautiful coast. I urge you to protect our environment and our communities.

Thank you,
Rebecca Overmyer-Velázquez

From: Rhonda <[REDACTED]>
Sent: Friday, August 15, 2025 12:36 PM
To: City Planner <cityplanner@corb.us>
Subject: Comments Regarding Case File #Remand-25-1

Dear City Council:

Thank you for this opportunity to provide comments prior to the September 9, 2025 public hearing to be held by the City Council regarding the remand of the Phase 2 Planned Unit Development application submitted by Nedonna Development. I have reviewed the Final Opinion and Order issued by the Land Use Board of Appeals (No. 2025-001) and agree with its conclusion that the City had erred regarding:

1. The application of the Special Area Wetlands Zone, and
2. The application (or lack thereof) of an expiration date on the original 2008 PUD approval.

In addition to LUBA's findings, I would like to add the following comments.

Our Drinking Water

As an owner of property in Rockaway, my concern regarding this development is for my family and my guests who spend a lot of time in Rockaway year round. We know that our drinking water has been compromised from the clear cutting and spraying in the hillsides. The city needs to take necessary steps towards taking care of our watershed. The groundwater table near where this development is proposed is very shallow. The potential for contaminated runoff from this development and/or homeowner pesticide use would be great even if new development is connected to the city's water and sewer system. This should be prevented.

Wetlands

Since 2008, our population and tourism has increased significantly. Many of my guests and I have come to visit the Big Cedar Preserve and are awed by the wetlands surrounding the area. Our wetland areas from Wheeler to Rockaway have actually increased since 2008. They provide habitat to wildlife which depend upon it. There are many Sitka Spruce trees that are between 80-100 years old. Wetlands in our area can also help mitigate flooding and fires in our city.

Expiration Date

We understand there will be development in Rockaway to accommodate housing needs, but development should not continue in wetland areas. The city has an opportunity to update the comprehensive plan and ordinances to protect wetland areas. This developer should have to reapply and the city should use the current code and conditions, not from 2008. Any maps used in decision making should be scientifically accurate and provided through a neutral third-party.

I very much appreciate this opportunity to provide my comments and hope that you will take into consideration good decisions benefitting the future and health of our watershed for generations to come.

Rhonda Piasecki
[REDACTED]
Rockaway Beach, OR 971
[REDACTED]

Kathie Raisler

Rockaway Beach, Oregon 97136

Rockaway Beach City Council and Planning Commission

276 S Hwy 101

Rockaway Beach, Oregon 97136

Subject: Concerns Regarding Development in the Nedonna Beach Neighborhood

Dears Members of the City Council and Planning Commission,

I am writing to express my concern regarding the ongoing and proposed development activities within the Nedonna Beach neighborhood. As a resident and stakeholder in this community, I respectfully urge the City Council to pause and critically re-evaluate the planning and approval process for any development in this area-particularly regarding the project commonly referred to as the "Nedonna Wave" development.

1. Ingress/Egress and Public Safety

The Nedonna Beach neighborhood currently suffers from a lack of adequate ingress and egress. This concern has previously been acknowledged, notably in LUBA Case NO. 2008-064, which cited that the absence of a secondary access point violates key public safety standards, including ORS 106.1 and D107.1. These regulations re not merely advisory- they are enforced by the State Fire Marshall and are vital for ensuring timely evacuation and emergency response. Increased residential density without adequate access further strains emergency services, endangering both existing and future residents.

2. Environmental Protections and Wetlands

The Nedonna Beach area contains established wetland zones that serve critical ecological functions, including flood mitigation, wildlife habitat, and water quality protection. These wetlands must be accurately identified and preserved. To ensure

objectivity and compliance with environmental regulations, I urge the City to require a new and independent environmental assessment conducted by a qualified third party. Any development that affects these sensitive areas should be halted until this thorough and transparent evaluation is completed.

3. Failure to Meet Previous Legal Criteria

As referenced above, the Land Use Board of Appeals {LUBA} determined that the developer had not satisfied the required conditions for devolvement approval. Despite this, the project has moved forward without adequately addressing those deficiencies. This is a fundamental procedural failure that cannot be ignored.

4. Lapsed Approval and Need for Updated Compliance

Given the developer's continued non-compliance with the criteria established in the 2008 and now 2025 rulings, any prior approval has become invalid. Therefore, the application process must be restarted from the beginning. This includes full compliance with all current development codes, environmental protections, and public safety regulations. To proceed otherwise would be to sidestep the rule of law and lace the city at legal and ethical risk.

5. Accountability and Adherence to Municipal Codes

Finally, I urge the City of Rockaway Veach to rigorously review its development codes and ensure that all projects-especially those in environmentally and infrastructurally sensitive areas- meet every applicable requirement. The city must follow both the letter and the spirit of the law, prioritizing the safety, sustainability, and well-being of its current residents and the natural environment.

Conclusion

Development must be done responsibly and transparently, respecting both the rule of law and unique environmental character of our coastal community. I respectfully request that the City Council and Planning Commission deny any further action on the Nedonna development until all safety, legal, and environmental concern have been properly addressed through a new and compliant application process.

Thank you for your attention to this matter. I appreciate your commitment to the well-being pf Rockaway Beach and trust that you will take these concerns seriously.

Sincerely,

Kathie Raisler

From:

Kathie Raisler

[REDACTED]

Rockaway Beach, Or 97136

To:

Rockaway Beach City Council
City of Rockaway Beach
276 S. Highway 101
P.O. Box 5
Rockaway Beach, OR 97136

Re: Opposition to Proposed Nedonna Development – Phase 2 PUD (#Remand-25-1)

Dear Mayor and City Council Members,

I am writing to formally express my opposition to the proposed Phase 2 development of the Nedonna Planned Unit Development as outlined in Case File #Remand-25-1. The recent Land Use Board of Appeals (LUBA) Final Opinion and Order (No. 2025-001, July 2, 2025) identified two critical legal and procedural deficiencies in the City's prior approval that remain unresolved and are of significant concern to the public.

1. Conflict with Special Area Wetlands (SA) Zone Provisions

The SA zone is a base zone under RBZO 3.080 whose purpose is to conserve significant freshwater wetlands and related shoreland environments by limiting uses to low-intensity, non-residential activities. LUBA sustained the finding that portions of the Phase 2 project, including proposed residential lots, appear to fall within areas mapped as SA on the City's zoning map—areas where residential use is prohibited. The City's reliance on a new wetland delineation to redefine SA zone boundaries without a formal zoning map amendment is inconsistent with the legal status of SA as a base zone. Until the City can clearly demonstrate, through legally valid processes, that no SA-zoned areas will be used for residential development, the project should not proceed.

2. Expiration of the 2008 PUD Approval for Phase 2

LUBA also found that the City failed to resolve whether the 2008 preliminary PUD Condition of Approval 1—which required completion of improvements within one year unless extended—applies to both phases. Given that Phase 2 construction has not occurred in over 15 years, and no valid schedule or extensions were approved, there is a strong legal argument that the Phase 2 approval has expired. Proceeding without first addressing this issue undermines both the City's development code and the principle of fair, timely land use decisions.

3. Broader Public Interest Concerns

Beyond the specific remand issues, the proposed development raises ongoing community concerns:

- **Public Safety & Access:** As noted in past land use disputes (e.g., LUBA 2008-064), the absence of a secondary ingress/egress point violates fire code provisions (ORS 106.1 and D107.1) and jeopardizes emergency response effectiveness.
- **Environmental Protection:** The wetland areas in question serve vital ecological and stormwater functions. Any development in or near these areas should be preceded by an independent, up-to-date wetland assessment—not solely one conducted by or for the developer.
- **Community Impact:** Increased residential density will place additional strain on local emergency services, infrastructure, and evacuation routes in a coastal hazard area.

Conclusion

The LUBA remand confirms that the City must address substantial legal and procedural deficiencies before reconsidering this application. I urge the Council to deny the Phase 2 PUD request unless and until:

1. A lawful zoning map amendment process is completed to resolve the SA zone boundary issue.
2. The City makes a formal determination on whether the 2008 approval for Phase 2 has expired.
3. Independent environmental and safety reviews are conducted and publicly vetted.

This is an opportunity for the City to uphold the integrity of its land use regulations, protect sensitive wetlands, and ensure the safety and well-being of the Nedonna Beach community.

Thank you for your attention to this matter and for your service to our community.

Respectfully submitted,
Kathie Raisler

[REDACTED]

Janet Teshima
[REDACTED]
[REDACTED]

August 15, 2025

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

Dear City Council:

Subject: Comments Regarding Case File #Remand-25-1

Thank you for this opportunity to provide comments prior to the September 9, 2025 public hearing to be held by the City Council regarding the remand of the Phase 2 Planned Unit Development application submitted by Nedonna Development. I have reviewed the Final Opinion and Order issued by the Land Use Board of Appeals (No. 2025-001) and agree with its conclusion that the City had erred regarding:

1. The application of the Special Area Wetlands Zone, and
2. The application (or lack thereof) of an expiration date on the original 2008 PUD approval.

In addition to LUBA's findings, I would like to add the following comments.

Special Area Wetlands:

1. The vast majority of the subject property is a base zone, zoned Special Area Wetland (SA). The PUD clearly has homes planned in the SA zone in violation of RBZO 3.080. Figure 1 shows that even at the "poor" resolution of the map the land between Park and Riley, bound by the railroad tracks and McMillan creek zoned SA excluding a small strip in the middle. Any overlay zone (PUD, R1 etc.) applied does not change or limit any uses allowed in the base zone.

2. Filling wetland areas is permitted only for allowed uses or water dependent uses. (RBZO 3.080(4)(K)). The PUD fulfills neither and although the developer completed wetland fills and mitigation authorized by the 2008 DSL and Corps permits, it still lacks compliance with RBZO 3.080(4)(K)

Expiration Date Concerns:

1. Condition of Approval 1 carries over to Phase 2. In fact, the finding that the proposed PUD/Phase 2 plan must show that it “can be completed within a reasonable period of time” (RBZO 10.050(2)(d)) supports the premise that time matters. The addition of a second Phase 2 has no bearing on Condition of Approval 1. The developer shall complete the improvements within one year applies unless an extension is granted stands. This timeframe has clearly passed.

We are able to live in beautiful Nedonna Beach because the south Jetty of the Nehalem, built in the early 1900's, diverted sands and silt creating the sandy flats we live on today. Early loggers and residents battled with flooding into the 1950's until they managed to get creeks flowing off the coastal mountains channeled out to sea via McMillan Creek. Today, excluding the threat of a tsunami, flooding has been “managed” and for now the community is in a stable place. Developing what may be the last of historic wetlands would really be sad and threaten the stability we enjoy today.

Imagine what Rockaway could do if it curated the lakes, dunes, forests, watershed, wildlife and wetlands between the Nehalem River and Tillamook Bay.

Thank you,

Janet Teshima

[REDACTED]

Rockaway Beach, Oregon 97136

SA Wetland Phase 2 PUD



Figure 1. Region between thick black lines is zoned
SA

From: **Elaine Busby Thompson** <[REDACTED]>
Date: Fri, Aug 15, 2025 at 9:05 AM
Subject: Case File #Remand-25-1
To: <city.planner@corb.us>

Dear City Council:

Subject: Comments Regarding Case File #Remand-25-1

Thank you for this opportunity to provide comments prior to the September 9, 2025 public hearing to be held by the City Council regarding the remand of the Phase 2 Planned Unit Development application submitted by Nedonna Development. I have reviewed the Final Opinion and Order, in fact I attended the meeting where this happened. I know at the time Fema had been late getting out its report.

But since Fema has now acted, I believe the city is in error regarding:

1. The application of the Special Area Wetlands Zone, and
2. The application (or lack thereof) of an expiration date on the original 2008 PUD approval.

In addition to LUBA's findings, I would like to add the following comments.

I have held a property in Nedonna Beach for 25 years. As you know, the area already floods in several areas. Putting more housing near these wetlands is just not good practice.

I also think that the nature and wildlife that this area still has is worthy of our protection. We are a tourism based economy, and this is what people deeply love about the coast. Oregonians cherish their natural areas.

There is also enough stress on our drinking water and wastewater systems.

I believe from what I heard at the meeting that you wanted to make this appropriate decision, but I understand that under the law, you could not.

Now Fema has come out with the proper requirements that make it easy for you to take the right stand for the future of this special area.

Sincerely,

Elaine Thompson
[REDACTED]

Rockaway Beach, Oregon

Mailing address:
[REDACTED]
[REDACTED]
[REDACTED]

From: Phyllis T <[REDACTED]>
Sent: Monday, August 18, 2025 11:17 AM
To: City Planner
Subject: Comment RE Case File #Remand-25-1 SUPPORTING LUBA findings regarding errors in PUD application of Nedonna Development

TO: Planning Department, P.O. Box 5, Rockaway Beach, OR 97136 cityplanner@corb.us
RE: Case File #Remand-25-1
I support LUBA findings regarding errors in PUD application of Nedonna Development

FROM: Phyllis Thompson, [REDACTED] Manzanita, OR 97130 Phone 503-368-5134

18 August 2025

Dear City Council:

Thank you for this opportunity to provide comments for the September 9, 2025, public hearing in regard to the remand of the Phase 2 Planned Unit Development application submitted by Nedonna Development. I have read the Final Opinion and Order issued by the Land Use Board of Appeals (No. 2025-001) and am pleased to note its conclusion that the City had erred regarding:

1. The application of the Special Area Wetlands Zone, and 2. The application (or lack thereof) of an expiration date on the original 2008 PUD approval.

Regarding the first error, I have been shocked throughout Nedonna Development's application process that the City of Rockaway would even consider a proposal to build on vital and productive wetlands. This working wetland protects (just as one example) Highway 101 from collapsing near Jetty Creek as it has in the past and provides habitat for creatures and cleansing systems that support the drinking water, salmon fisheries, crabbing, and many other features essential to life in the Nehalem Bay watershed.

Regarding the second error, I find it hard to believe that responsible up-to-date data has been gathered regarding the availability of fresh drinking water for a development of this kind. The impacts of increased freshwater usage on existing residents of the Nedonna area, not to mention the shallow water table everywhere along the Pacific shoreline and its impact on cisterns and water quality for all, must be thoroughly studied before such a development can be approved.

Thank you for your hard work on behalf of the current residents of the City of Rockaway Beach.

Phyllis Thompson

From: Suzanne C. Thompson <[REDACTED]>
Sent: Monday, August 18, 2025 11:16 AM
To: City Planner
Subject: Case File #Remand-25-1

Suzanne Thopson
26085 David Avenue
Rockaway Beach OR 97136
909-767-9079

RE: Case File #Remand-25-1

August 18, 2025

I am writing regarding the remand of the Phase 2 Planned Unit Development application submitted by Nedonna Development. I agree with the Land Use Board of Appeals (LUBA) Decision (No. 2025-001): the City made several errors in the application of the Special Area Wetlands Zone and the lack of an expiration date on the original 2008 PUD approval.

The original project had to complete the required infrastructure work and have it approved in a “reasonable amount of time”. It has now been 17 years since that approval process started. This is not a “reasonable amount of time” by any definition. The developer clearly failed to meet the requirements and should not be given special exemptions. To do that would make a joke of the city’s regulations and processes.

In addition to LUBA’s findings and the clear failure to act within the required time, it is important to consider how critical wetlands are to the well-being of a watershed and protection of the City of Rockaway Beach’s water. We lose more and more of our water supply when the city allows development in local wetland areas. Wetlands are how the earth protects its water by storing, purifying, and recharging our aquifers. In addition, wetlands reduce the severity of floods and wildfires, as well as providing habitat for wildlife. The city of Rockaway Beach should be dedicated to protecting our remaining wetlands.

The citizens of Rockaway Beach strongly request that you reject the development application and serve the current and future needs of the city by protecting essential wetlands.

Sincerely,

Suzanne Thompson

From: nancy webster <[REDACTED]>
Sent: Tuesday, August 19, 2025 4:42 PM
To: City Planner
Cc: Charles McNeilly; Penny Cheek; Mary McGinnis; Tom Martine; Kiley Konruff; Pat Ryan; Melissa Thompson
Subject: Case File #Remand-25-1
Attachments: image001-2.png; groundwater drinking water source.png; image002.png

Name: Nancy Webster
Address: [REDACTED] Rockaway Beach, Oregon 97136
Phone: 5 [REDACTED]

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

Date: August 19, 2025
Subject: Comments Regarding Case File #Remand-25-1

To the City Council:

Thank you for this opportunity to provide comments prior to the September 9, 2025 public hearing to be held by the City Council regarding the remand of the Phase 2 Planned Unit Development application submitted by Nedonna Development. I have reviewed the Final Opinion and Order issued by the Land Use Board of Appeals (No. 2025-001) and agree with its conclusion that the City had erred regarding:

1. The application of the Special Area Wetlands Zone, and
2. The application (or lack thereof) of an expiration date on the original 2008 PUD approval.

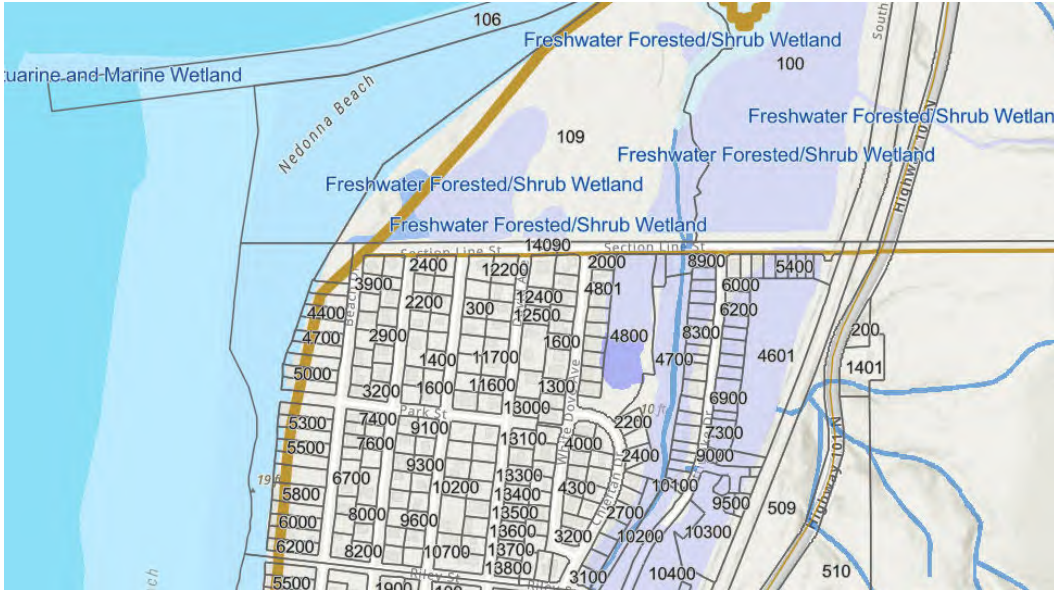
In their remand to the City, LUBA stated that the mapping of the proposed development area was unclear. Therefore, in support of LUBA's findings, I would like to add the wetland mapping information found below.

Nedonna Development has not provided adequate mapping for the City to make responsible decisions concerning the ecology of the area and its connection to the health of our community. These ecologically vital wetlands need to be protected. By protecting them, we will help to safeguard the aquifer below the Nedonna Beach neighborhood, a critical source of drinking water for the community. (see attachment DEQ defined Rockaway Beach groundwater drinking water source area.) We must uphold and strengthen land use protections of these wetlands, not weaken them.

There are several resources available that clearly show wetland delineation in the Nedonna Beach neighborhood. Please refer to the following mapping: **(A)** This clearly delineates the freshwater forested and shrub wetlands in the area; **(B)** Perennial streams: Both McMillan Creek and Nedonna Creek (a fish-bearing stream) originate at a height of approximately 600 feet in the coastal hills, merge near Riley Street, flow through freshwater forested and shrub wetlands, and then into the estuarine and marine wetlands (habitat for Jetty Creek salmonid), the Nehalem River, and the ocean. These streams need the strongest protections, protections which would be weakened or lost through the proposed development.

(A) Department of State Lands

<https://maps.dsl.state.or.us/swi/> - From the Department of State Lands (DSL), which is the official *preliminary* source for wetland delineation in Oregon. Proposed development in wetland areas requires additional assessment by DSL. Note these maps load slowly. (attachment 001-2)



(B) Additionally, here is the map for the National Wetland Inventory data from the Department of Fish & Wildlife: <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>

(C) Another compelling source of information is the FEMA flood risk map. This mapping illustrates why an area should NOT be developed due to the risk of flooding. NOTE: This data is only visible if you zoom in closely – it should look like this: (attachment .002)

<https://www.arcgis.com/apps/webappviewer/index.html?id=8b0adb51996444d4879338b5529aa9cd>



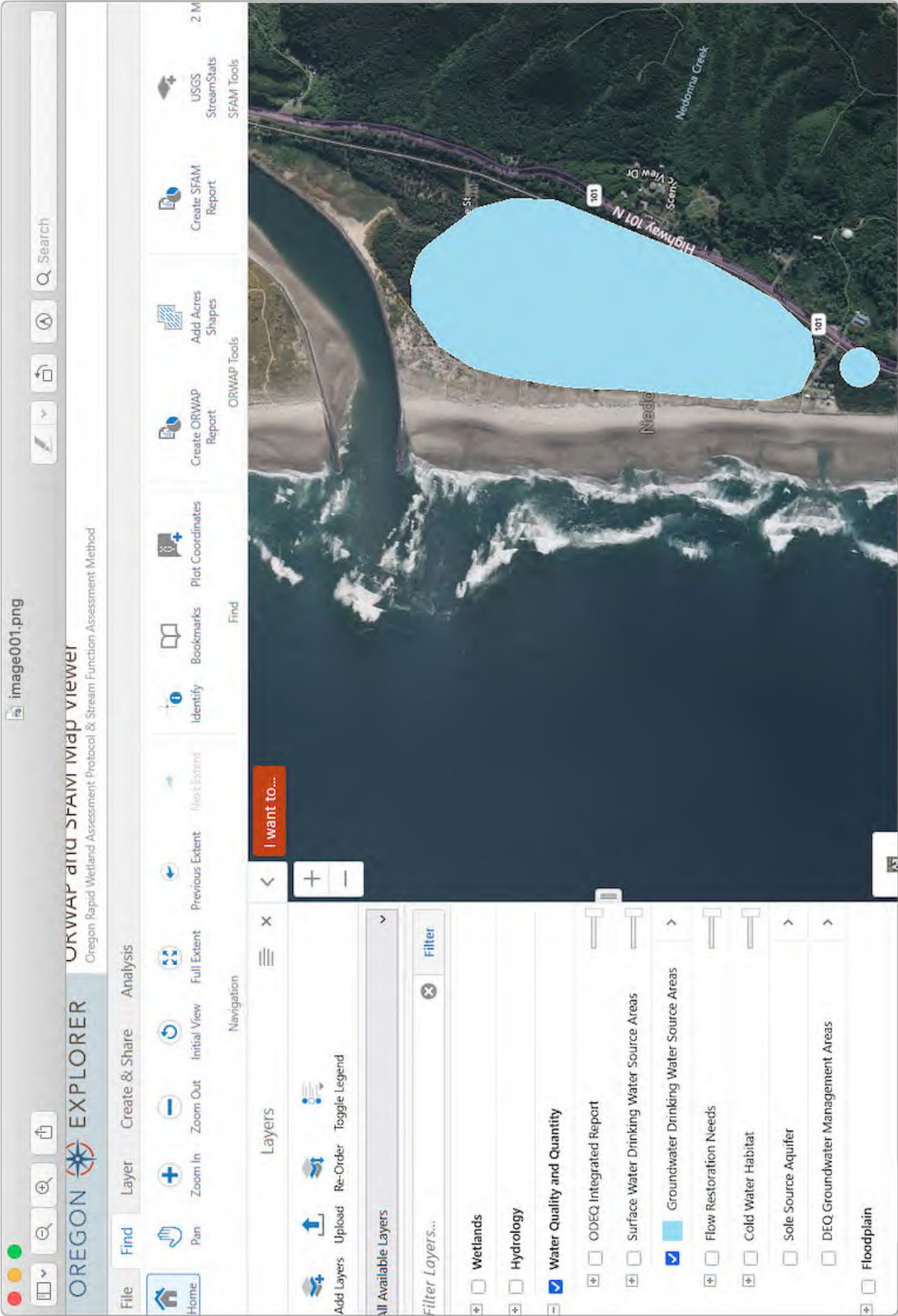
Save and Protect Remaining Streams and Wetlands.

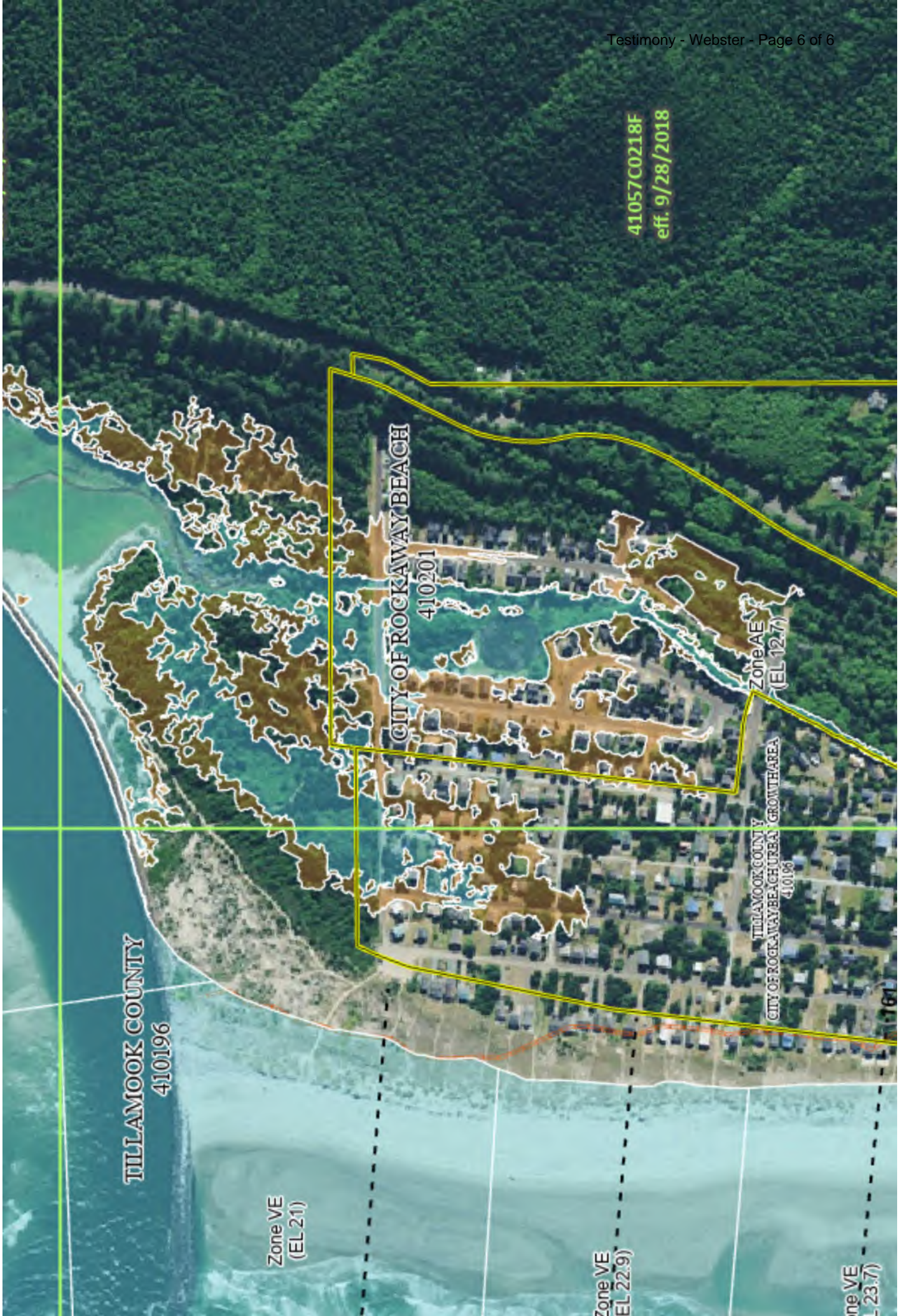
In summary, the Nedonna Beach area includes wetlands that were naturally accreted after the Nehalem River jetties were completed in 1918. Over past decades, there has already been a significant amount of wetlands drained, filled in, and developed. Several winters ago, as I was watching flood waters flow over Section Line Road, someone working for Tillamook County Public Works came by and told me "the more wetlands that are paved, the more flooding will occur." There are still significant wetlands on three sides of the Nedonna Beach neighborhood, the fourth side being the Pacific Ocean.

We are at a critical crossroads. Let's move forward and make a commitment to protect those wetlands and streams that remain. As we face multiple challenges from climate change, including rising sea levels, more than ever we need to maintain a healthy ecological environment for a healthy community.

Let us all, as a community, join together to safeguard and restore our streams and wetlands for future generations.







41057C0218F
eff. 9/28/2018

From: Danny J Wilhelmi

[REDACTED]
Rockaway Beach, OR 97136
[REDACTED]

Date: 8/19/2025

To: Planning Department

P.O. Box 5

Rockaway Beach, OR 97136

Subject: Case File #Remand-25-1

Dear City Council,

Thank you for this opportunity to provide comments prior to the September 9, 2025 public hearing to be held by the City Council regarding the remand of the Phase 2 Planned Unit Development application submitted by Nedonna Development. I have reviewed the Final Opinion and Order issued by the Land Use Board of Appeals (No. 2025-001) and agree with its conclusion that the City had erred regarding:

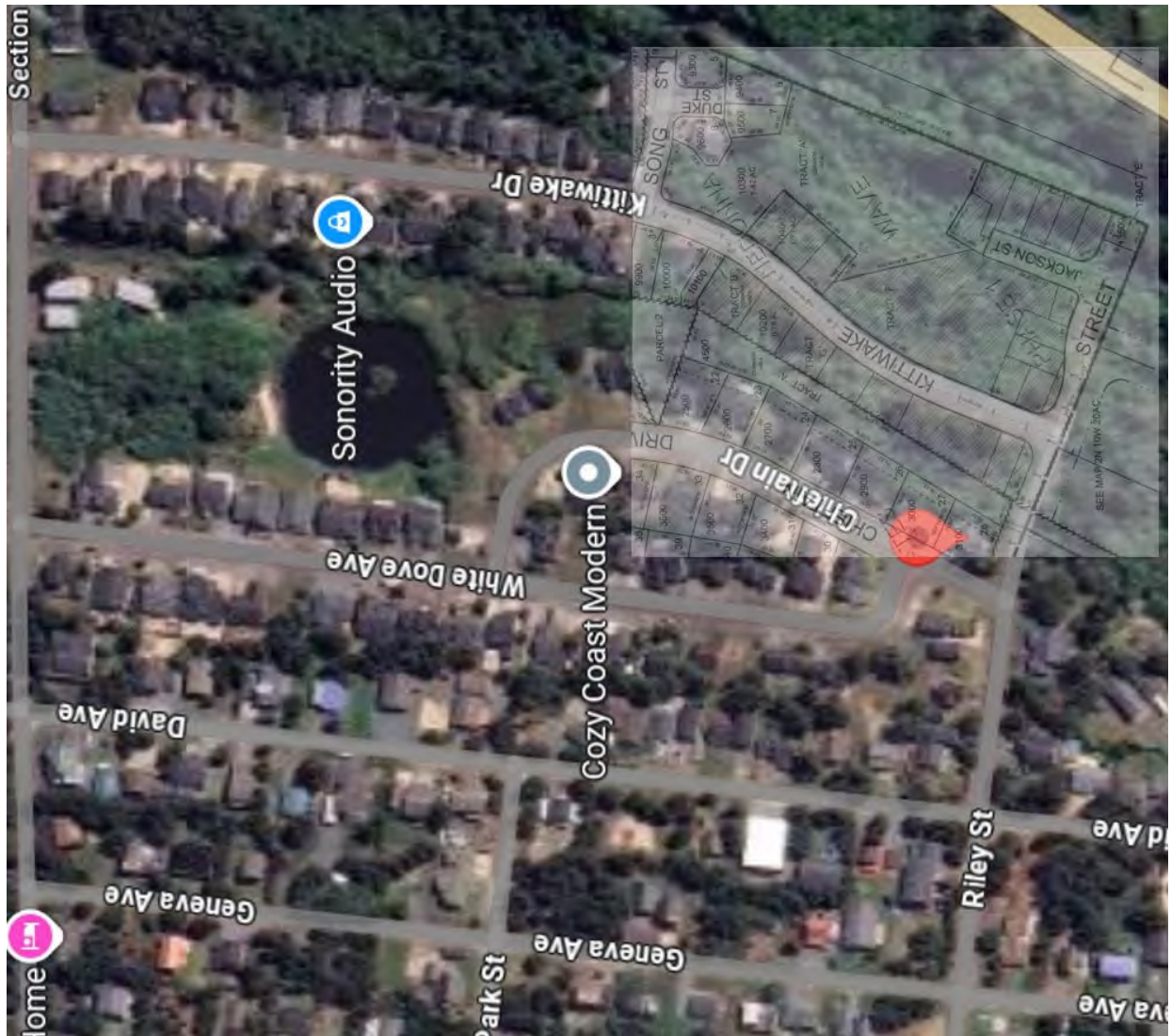
1. The application of the Special Area Wetlands Zone, and
2. The application (or lack thereof) of an expiration date on the original 2008 PUD approval.

Related to issue #1, I attempted to overlay the zoning map on top of the PUD-24-1 lot map, to see if the PUD-24-1 lots were planned to be built in a designated SA. The issue is that zoning map is very large in scale (and not very detailed) while the PUD-24-1 map is very small in scale (and very detailed), this was noted by LUBA as well. To attempt a reasonable overlay (which should have been done originally in some way, shape, or form prior to approval), I combined them in two separate steps as documented below.

- 1) First: Overlay the PUD-24-1 development map on top of a modern satellite image of Nedonna beach. This allowed me to provide a larger area scale/perspective to the PUD-24-1 image, showing a multitude of streets beyond just Kittiwake, Chieftain, and Riley.
- 2) Second: Take the combined map in step1 and then overlay the zoning map on top of it. Given that the zoning map did not have Kittiwake & Chieftain streets on it at all, step1 was necessary to align to the streets which are depicted on the zoning map.

Step1 overlay is shown below.

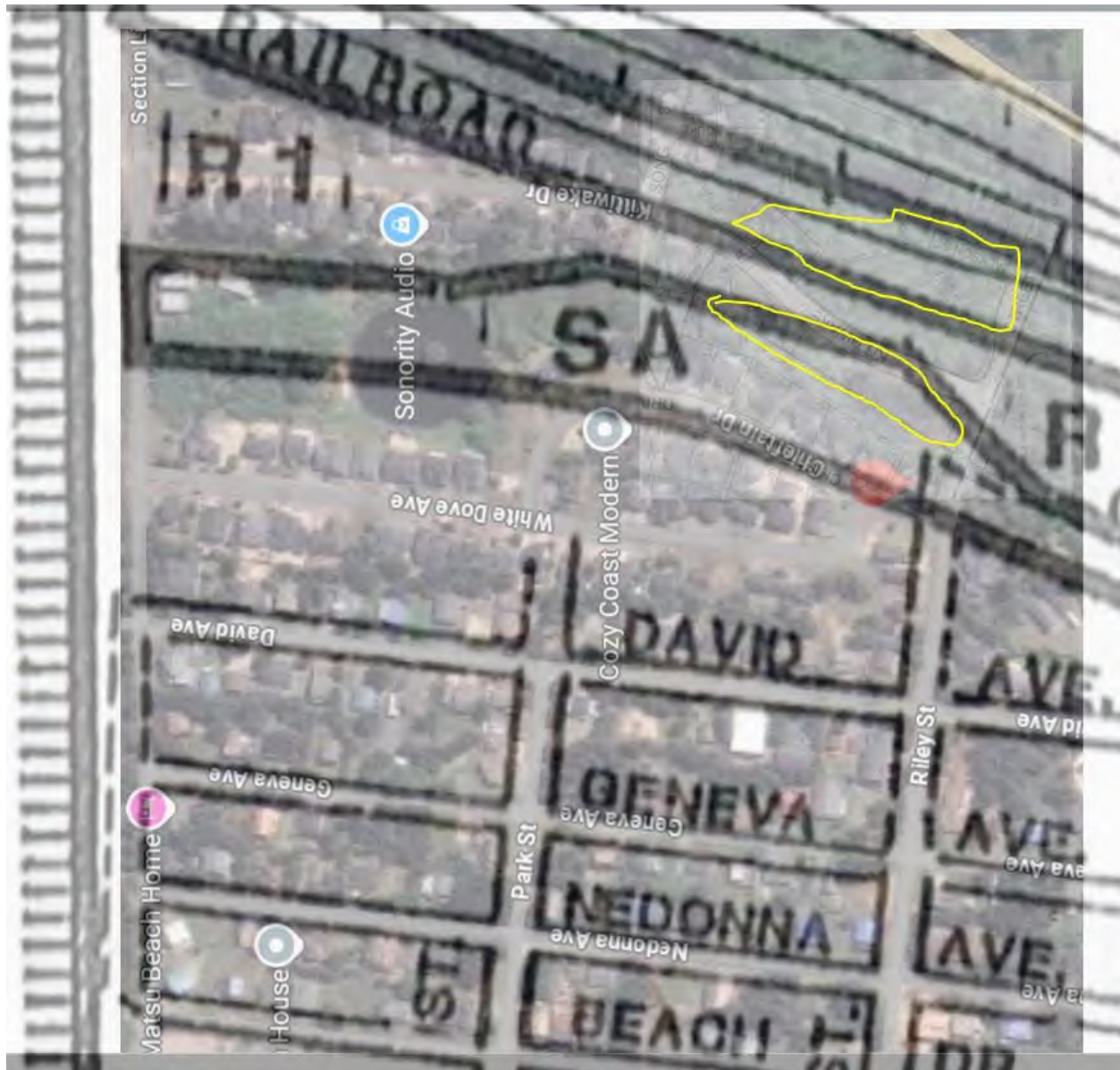
You can see that I can align Chieftain, Kittiwake, and Riley between the satellite image and the PUD-24-1 map very well, hence the remainder of the orientation of additional streets not shown in this zoomed view will be accurate with respect to the detailed info within PUD-24-1.



Step2 is shown below.

You can see the zoning map overlayed now (basically three maps on top of each other). The grid of streets is aligned fairly well to the satellite image (Beach, Nedonna, Geneva, David, Park, Riley, Section Line) which is already pre-aligned with PUD-24-1

I circled in yellow lots which are in PUD-24-1 and appear to be within the SA designated zone.



LUBA wrote in its order: “Nonetheless, we presume that the SA zoning boundaries depicted on the zoning map could, with some effort, be mapped onto a detailed-scale map of the subject property. And we assume that petitioner is correct that, if such an effort were made, the SA-mapped areas of the property would include some proposed Phase 2 residential development.”

I believe my letter and mapping study attempted to do just that, and I believe it has supported/proven the comment from LUBA. As such I do not believe the development is allowed to proceed given that some of the lots will fall into SA zone.

Respectfully,

Danny Wilhelmi