



**CITY OF ROCKAWAY BEACH
PLANNING COMMISSION ACTION**

STAFF REPORT

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

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

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

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

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

B. EVALUATION OF THE REQUEST

The appeal is based on the following issues:

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

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

Section 10.050. Procedure - Preliminary Development Plan.

1. The applicant shall submit four copies of the preliminary development plan to the Planning Commission prior to formal application for rezoning. Applications shall be accompanied by a fee prescribed in Section 11.050 of this ordinance. This plan and any written statements shall contain at least the following information:
 - i. A schedule, if it is proposed that the final development plan will be executed in stages.



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

2. The Planning Commission shall consider the preliminary development plan at a public meeting, at which time they shall determine whether the proposal conforms to City ordinances. In addition, in considering the plan, the Planning Commission shall seek to determine that:
 - i. The plan can be completed within a reasonable period of time.

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

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

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

ORS 92.040. Application for approval of subdivision or partition.

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



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

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

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

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

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

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

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

4. Standards. In the SA zone, the following standards shall apply:
 - a. All activities involving construction or alteration in wetlands or aquatic areas shall be reviewed by the Oregon Division of State Lands and the US Army Corps of Engineers to determine permit applicability.

The Application has been provided to DSL for review. The DSL response is included with the record, outlining additional reporting and permitting necessary for this Application.

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

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



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

The Planning Commission conditioned its approval, requiring the Applicant to complete a wetland delineation to be reviewed and approved by the Department of State Lands to determine if there is a change in the wetland boundaries and if a wetland removal-fill permit is required. This delineation shall be sufficiently sized to include both Phases 2 and 3. The approval from the Department of States Lands must be current (no more than 2 years old).

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

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

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

6. Evacuation Route Improvement Requirements. Except single family dwellings on existing lots and parcels, all new development, substantial improvements and land divisions in the Tsunami Hazard Overlay Zone shall incorporate evacuation measures and improvements, including necessary vegetation management, which are consistent with and conform to the adopted Tsunami Evacuation Facilities Improvement Plan. Such measures may include:
 - a. On-site improvements: (i) Improvements necessary to ensure adequate pedestrian access from the development site to evacuation routes designated in the Evacuation Route Plan in all weather and lighting conditions. (ii) Frontage improvements to designated evacuation routes that are located on or contiguous to the proposed development site, where such improvements are identified in the Tsunami Evacuation Facilities Improvement Plan. Such improvements shall be proportional to the evacuation needs created by the proposed development.

The Application does not address on-site evacuation route improvements.

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

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



The Application does not address off-site evacuation route improvements.

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

The Application does not address tsunami evacuation route signage.

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

The Application does not provide for evacuation route improvements.

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

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

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

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

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

The Planning Commission conditioned its approval as follows: The development shall avoid entering City designated riparian setback of 15' for McMillan Creek. If site constraints will not allow for this, the Applicant coordinate with Oregon Department of Fish and Wildlife to develop a plan to mitigate for these impacts and shall provide evidence of approval. Any development within these areas which could result in a loss of fish and wildlife habitat would require that the impact be mitigated consist with current habitat mitigation standards.

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



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

CONCLUSION

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

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

If the City Council affirms the decision of the Planning Commission, the City Council shall provide a statement that generally reflects the facts and rationale relied upon to reach the decision. The motion should also direct staff to prepare findings, conclusions, and a final order to implement the decision.

If the City Council modifies or renders a decision that reverses the decision of the Planning Commission, the City Council shall provide a statement that generally reflects the facts and rationale relied upon to reach the decision. The motion should also direct staff to prepare findings, conclusions, and a final order to implement the decision.

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

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

**EX-PARTE
MATERIALS
FOR HEARING**

**Land Use Appeal # 24-1
Nedonna Wave Planned Unit
Development - Phase 2**



City of Rockaway Beach

Regular City Council Meeting Minutes

Date: Wednesday, July 17, 2024
Location: Rockaway Beach City Hall, 276 Hwy 101 - Civic Facility

1. CALL TO ORDER

Mayor McNeilly called the meeting to order at 6:00 p.m.

McNeilly made a statement regarding deportment, requesting that all people respect those in attendance and the opinions of those with whom they may disagree prior, during and after City business meetings.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Start time: 6:01 p.m.

Council Members Present: Mayor Charles McNeilly; Councilors Penny Cheek, Mary McGinnis, Tom Martine, Kristine Hayes, and Alesia Franken

Staff Present: Luke Shepard, City Manager; Melissa Thompson, City Recorder; Marni Johnston, Finance Director; Dan Emerson, Public Works Superintendent; Todd Hesse, Fire Chief; Matt Kelly, Undersheriff, and Kevin Grogan, Sheriff's Deputy.

4. CONSENT AGENDA

Start time: 6:01:30 p.m.

- a. Approval of June 12, 2024 Regular Meeting Minutes
- b. Approval of June 12, 2024 Workshop Minutes
- c. Approval of June 11, 2024 Strategic Planning Retreat Minutes
- d. Review of June 2024 Check Register

Martine made a **motion**, seconded by Cheek, to approve the Consent Agenda.

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

Aye: 5 (Cheek, McGinnis, Martine, Hayes, Franken)

Nay: 0

5. PRESENTATIONS, GUESTS & ANNOUNCEMENTS

a. Community Grant Recipient Report – Theresa Bruneau, Meals for Seniors, Inc.

Start time: 6:02:55 p.m.

Bruneau gave a report summarizing how the Meals for Seniors grant funding was spent, and the meals provided to the community. Councilors commended the program.

b. Community Grant Recipient Report – Sandra Johnson & Robin Swain, Rockaway Beach Volunteers

Start time: 6:05:30 p.m.

Swain and Johnson reported on the tools and volunteer t-shirts and sweatshirts purchased with grant funding and the community projects and events supported by the volunteers. The Council Members expressed thanks for the volunteers.

c. Community Grant Recipient Report - Pam Hiller, Tillamook County Developmental Disabilities Advisory Council & David Richmond, Tillamook County Developmental Disabilities Program Manager

Start time: 6:10:16

Hiller reported that grants funds were used for food and park rental for the Annual Picnic for Intellectual and Developmental Disabilities. Richmond commended Hiller and provided an overview of the Tillamook County Developmental Disabilities Program, and the people it serves. They both expressed the value of the Annual Picnic to the community. Councilors commented on the success of the event and acknowledged City staff.

6. STAFF REPORTS

a. Fire Department

Start time: 6:18:35 p.m.

Hesse presented the staff report on the activities and operations of the Rockaway Beach Fire Rescue department for the month of June. He added that there was an upcoming Train the Trainer CERT class, and briefly reported on the 4th of July. Hesse confirmed that a burn ban was now in effect. McNeilly expressed appreciation for the department's medical response capabilities.

b. Sheriff's Office

Start time: 6:33:30 p.m.

Grogan summarized the Sheriff's Office report for June. He added that traffic signs installed near the Old Growth Cedar seemed to be working. There were brief comments regarding 4th of July.

c. Public Works

Start time: 6:28:46 p.m.

Emerson presented his report on activities in the Public Works department in June. Council Members expressed appreciation for assistance with a Strategic Plan information booth. McNeilly commented on Public Works' installation of a "no parking" sign on Beacon Street, noting it was one of the mitigation efforts to address public concerns in the neighborhood around Anchor Street Park.

d. City Manager

Start time: 06:37:30 p.m.

Shepard gave a presentation providing background information on the business items on the agenda, updates on other City projects and activities, and upcoming public meetings.

7. PUBLIC HEARING

a. Public Hearing on Ordinance 2024-03 Amending the Rockaway Beach Code of Ordinances, Chapter 91, Section 91.01 Feeding and Keeping of Wild Animals

Start time: 6:47:26 p.m.

McNeilly stated this Public Hearing allows public comment regarding proposed changes to the City code regarding the feeding and keeping of wild animals.

McNeilly opened the public hearing at 6:47 p.m.

Kathleen Lenge submitted a flyer from the Oregon Department of Fish and Wildlife titled "Don't Feed Deer and Elk." Lenge commented in support of the Ordinance, expressing concerns about the feeding of deer.

Barbara Riley shared concerns that deer cannot digest the food that those are feeding them, and expressed support for the Ordinance.

McNeilly closed the public hearing at 6:53 p.m.

8. CITIZEN INPUT ON NON-AGENDA ITEMS

Start time: 6:53:07 p.m.

Bill Hassell commented on recent projects providing accessibility in Rockaway Beach. Hassell advocated for Mobi-Mats to provide better wheelchair access to the beach at the Wayside. He read a letter of support from Dan Haag, Tillamook Coast Visitors Association Director of Trails, Outdoor Recreation, and Accessibility.

Delta Holderness read aloud a letter she submitted expressing concerns about the Nedonna Wave Planned Unit Development (PUD 24-1).

Goldea See stated that the Anchor Street Park is too loud at night. See advocated for installing a vegetation sound wall and reducing volume on the sound machines. She expressed appreciation for the parking sign that was installed.

Gary Corbin expressed concerns regarding the Nedonna Wave development proposal, advocating for a new application process.

Lyndsey Matteson expressed concerns about fireworks debris, including plastics, which was left after the professional fireworks show. Matteson suggested that if the debris was impossible to remove, then the Council should consider a drone show.

9. OLD BUSINESS

a. Approval of Amended May 8, 2024 Workshop Minutes

Start time: 07:12:00

McNeilly explained that at the June 12, 2024 City Council Meeting, Hayes asked that the minutes regarding her comments be amended, and City Recorder Thompson was directed to review the recording. McNeilly stated that amended minutes were in the agenda packet for consideration. McNeilly commented on the state statute requirements for meeting minutes and Robert's Rules of Order regarding minutes. McNeilly suggested that the Council Rules be amended to provide clear guidelines for meeting minutes.

Hayes made a **motion**, seconded by Franken, to approve the amended May 8th Workshop Minutes.

Hayes commented that the minutes looked clear to her.

McGinnis commented that she concurred with the definitions of minutes shared by McNeilly and that the amended minutes provided too much information. McGinnis supported the suggestion to amend the Council Rules to provide clarity.

Shepard commented that it would be helpful to the City Recorder for the Council to clarify expectations.

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

Aye: 4 (Franken, Hayes, Martine, McGinnis)

Nay: 1 (Cheek)

10. NEW BUSINESS

- a. **First & Second Reading by Title Only of Ordinance 2024-03 An Ordinance Amending City of Rockaway Beach Code of Ordinances Chapter 91, Section 91.01 Feeding and Keeping of Wild Animals**

Start time: 7:15:20 p.m.

McNeilly explained Ordinance 2024-03 expands the City of Rockaway Beach Code of Ordinances regarding the feeding and keeping of wild animals, making it consistent with state law, and adds a provision regarding penalties. McNeilly stated this was consideration to perform the first and second reading of Ordinance 2024-03.

Hayes made a **motion**, seconded by McGinnis, to perform the first and second reading by title only of Ordinance 2024-03.

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

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

McNeilly performed the first and second reading by title only of Ordinance 2024-03 An Ordinance Amending City of Rockaway Beach Code of Ordinances Chapter 91, Section 91.01 Feeding and Keeping of Wild Animals.

Martine made a **motion**, seconded by Franken, to approve the first and second reading by title only of Ordinance 2024-03.

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

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

- b. **Consideration to Adopt Ordinance 2024-03 Ordinance Amending City of Rockaway Beach Code of Ordinances Chapter 91, Section 91.01 Feeding and Keeping of Wild Animals**

Start time: 7:18:45 p.m.

McNeilly explained that with the first and second reading now complete, Ordinance 2024-03 is ready for adoption.

McGinnis made a **motion**, seconded by Franken, Adopt Ordinance 2024-03, an Ordinance Amending City of Rockaway Beach Code of Ordinances Chapter 91, Section 91.01 Feeding and Keeping of Wild Animals

McGinnis commented that public comments expressed concern about the health of the animals, and safety concerns. McGinnis noted the ordinance reflected state law.

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

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

c. Consideration to Make Appointments to the Planning Commission to Fill Vacant Positions 4 & 6

Start time: 7:20:22 p.m.

McNeilly explained that applications received for the open positions were included in the Council packet for review. He stated the two applicants for the vacant Planning Commission Positions were the previous position holders, Sandra Johnson (Position 4) and Nancy Lanyon (Position 6). The City Charter grants the Mayor authority to nominate for vacancies, with appointment by a majority of the Council.

McNeilly nominated Sandra Johnson to fill Position 4, and Nancy Lanyon to fill Position 6.

No audience members wished to comment.

Cheek made a **motion**, seconded by Franken, that the Rockaway Beach City Council appoint Sandra Johnson to position #4 and appoint Nancy Lanyon to position #6 for the Rockaway Beach Planning Commission.

McGinnis commented that these were two people who were currently serving on the Planning Commission and expressed appreciation that they were doing a solid job.

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

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

11. ITEMS REMOVED FROM CONSENT AGENDA – None removed

12. COUNCIL CONCERNS

Start time: 7:22:27 p.m.

Cheek thanked Hesse for the Fire Departments hard work on the 4th of July. Cheek thanked Shepard for his leadership and meeting packet information. She congratulated Shepard on doing a great job.

Franken commented that she was Council Liaison for the Sourcewater Protection Plan Development Advisory Committee (SPPDAC) and expressed that she was impressed by the level of participation and engagement by the citizens that are helping protect the watershed. Franken encouraged attendance at the next SPPDAC meeting on July 29th. Franken commented on the July 4th events and thanked the Rockaway Beach Volunteers, City staff, Fire Department, Sheriff's Office and Public Works. She encouraged the public to take the Strategic Plan survey.

Hayes commented she was glad that seasonal Public Works staff was hired. Hayes expressed disappointment about fireworks debris.

Martine commented he was pleased to hear the Community Grant reports and noted the importance of providing receipts.

McGinnis echoed Franken's comments regarding the 4th of July events, thanking City staff and volunteers. McGinnis stated that the City was still working on a grant for the Salmonberry Trail, and announced upcoming walks sponsored by the Salmonberry Trail foundation. She commented that milfoil on Lake Lytle was being addressed, noting that the state owns the lake. McGinnis shared comments on the Annual Picnic, and comments she had heard from short-term rental owners. McGinnis encouraged the public to participate in the Strategic Plan survey.

13. MAYOR'S REPORT

Start time: 7:33:37 p.m.

McNeilly shared a presentation slide with information on the Tillamook County Community Update hosted by the Tillamook County Commissioners every Tuesday, and invited the public to attend to hear updates from key organizations and cities throughout the county. McNeilly directed attention to visitrockawaybeach.org, the City's official tourism website. McNeilly thanked the Tillamook County Visitors Association for their work and shared his efforts to distribute QR code stickers promoting the website. McNeilly presented slides providing fact checks on social media posts. He invited the public to contact him by email with questions.

14. ADJOURNMENT

Start time: 7:45:28 p.m.

Franken **moved**, seconded by Martine, to adjourn the meeting at 7:45 p.m.

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

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

MINUTES APPROVED THE
14TH DAY OF AUGUST 2024


Charles McNeilly, Mayor

ATTEST


Melissa Thompson, City Recorder



City of Rockaway Beach

Regular City Council Meeting Minutes

Date: Wednesday, August 14, 2024
Location: Rockaway Beach City Hall, 276 Hwy 101 - Civic Facility

1. CALL TO ORDER

Mayor McNeilly called the meeting to order at 6:00 p.m.

McNeilly made a statement regarding deportment, requesting that all people respect those in attendance and the opinions of those with whom they may disagree prior, during and after City business meetings.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Start time: [06:02:09 PM \(00:01:37\)](#)

Council Members Present: Mayor Charles McNeilly; Councilors Penny Cheek, Mary McGinnis, Tom Martine, Kristine Hayes, and Alesia Franken

Staff Present: Luke Shepard, City Manager; Melissa Thompson, City Recorder; Elizabeth Avila, Administrative Assistant II; Dan Emerson, Public Works Superintendent; and Todd Hesse, Fire Chief.

4. CONSENT AGENDA

Start time: [06:02:32 PM \(00:01:59\)](#)

- a. Approval of July 17, 2024 Regular Meeting Minutes
- b. Approval of July 17, 2024 Workshop Minutes
- c. Review of July 2024 Check Register

Franken made a **motion**, seconded by Martine, to approve the Consent Agenda.

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

Aye: 5 (Cheek, McGinnis, Martine, Hayes, Franken)
 Nay: 0

5. PRESENTATIONS, GUESTS & ANNOUNCEMENTS

- a. **State of the City** – Mayor Charles McNeilly

Start time: [06:03:55 PM \(00:03:22\)](#)

McNeilly delivered a State of the City address. (A copy of the address is included in the record for the meeting.) McGinnis expressed appreciation for the community members of Rockaway Beach.

b. Jetty Creek Project Update – Daniel Wear, Sustainable Northwest

Start time: [06:38:44 PM \(00:38:12\)](#)

Wear gave a presentation providing updates on funding, stakeholder groups, and next steps in the Jetty Creek Watershed acquisition project. Wear and Shepard answered clarifying questions from the Council.

c. David's Chair - Jeff Kallevig, Operations Manager, NW Oregon, David's Chair Outdoor Mobility Systems

Start time: [06:18:58 PM \(00:18:26\)](#)

Kallevig shared a video and provided an overview of the David's Chair Outdoor Mobility System program. Kallevig answered clarifying questions for the Council.

d. Community Grant Recipient Report – Friends of the Library, Jean Scholtz

Start time: [07:00:39 PM \(01:00:06\)](#)

Scholtz reported on how funds were expended for three Community Grants received from the City. Martine expressed appreciation for the detailed report.

e. Community Grant Recipient Report – Rockaway Writer's Rendezvous, Don Backman

Start time: [07:11:44 PM \(01:11:12\)](#)

Don Backman, John Bailey, and Robin Swain shared how Community Grant funds were used for the Rockaway Writer's Rendezvous event. They provided Councilors with a copy of the anthology that was published using grant funds. Swain confirmed that anthologies are available for purchase at various locations in town and online. McGinnis disclosed that she is on the board of the Rockaway Writer's Rendezvous and shared how local businesses benefitted from the event. McNeilly shared he was judge and was impressed.

f. Community Grant Recipient Report – North Coast Communities for Watershed Protection (Fulcrum Community Resources) – Nancy Webster

Start time: [07:22:35 PM \(01:22:02\)](#)

Nancy Webster reported on how Community Grant funds were spent and future expenditures for the North Coast Communities for Watershed Protection speaker series. Webster shared an event flyer and a preliminary grant report with the Council. Comments provided by McNeilly, McGinnis and Cheek.

Hayes left the meeting room at 7:25 p.m. and returned at 7:26 p.m.

6. STAFF REPORTS

a. Fire Department

Start time: [07:32:19 PM \(01:31:46\)](#)

Hesse presented the staff report on the activities and operations of the Rockaway Beach Fire Rescue department for the month of July. He added that there were several open positions for volunteer firefighters. Hesse noted the presence of ocean riptides. Hesse commented on fires across the state, sharing that there were 14 conflagrations declared to date this year. Hesse answered questions from the Council.

b. Sheriff's Office – not present

c. Public Works

Start time: [07:45:24 PM \(01:44:51\)](#)

Emerson presented his report on activities in the Public Works department in July. Emerson added a brief overview of the Wayside Beach Access project improvements. Council members expressed appreciation for Public Works.

d. City Manager

Start time: [07:48:55 PM \(01:48:23\)](#)

Shepard gave a presentation providing background information on the business items on the agenda, upcoming public meetings, and highlights of recent grant funding secured by staff.

7. PUBLIC HEARING – None Scheduled

McNeilly called for a recess at 7:55 p.m. McNeilly called the meeting back to order at 8:00 p.m.

8. CITIZEN INPUT ON NON-AGENDA ITEMS

Start time: [08:01:06 PM \(01:54:56\)](#)

Goldea See shared thanks that there were plans to address noise concerns at Anchor Street Park, and expressed additional concerns about light. See suggested color-coded music cards could be provided for the musical playground equipment.

Bob Larson read a statement on behalf of Diane Johnson advocating for an ordinance to preserve wetlands.

Nancy Lanyon expressed concerns regarding a letter addressed to Mayor McNeilly from the Federal Emergency Management Agency's (FEMA) regarding Pre-Implementation Compliance Measures (PICM) for the National Flood Insurance Program (NFIP).

Delta Holderness referred to her submitted written comments and shared that she had a conversation with Chief Hesse regarding her concerns. Holderness expressed additional concerns regarding street safety in Nedonna Beach.

Seth Thompson advocated for the preservation of wetlands in Nedonna Beach.

Suzanne Thompspon, resident of David Avenue, expressed concerns about the Planning Commission approval of the Planned Unit Development application #PUD 24-1. Thompson shared concerns about only one evacuation exit, and risks to wetlands and salmon, trout and beaver habitats. She urged the City Council to deny the application if they had the opportunity to do so.

9. OLD BUSINESS – None Scheduled

10. NEW BUSINESS

a. Consideration of Resolution 2024-38 Approving a Lease Agreement with Neah-Kah-Nie School District No. 56 for Tennis Court Property

Start time: [08:20:55 PM \(02:14:45\)](#)

McNeilly explained this resolution approves a lease agreement with Neah-Kah-Nie School District No. 56 for the Tennis Court property for a period of 5 years, for a payment of \$10. McNeilly stated a previous 1-year lease with the district will expire in September.

No audience members wished to comment.

Martine made a **motion**, seconded by Cheek, to approve Resolution 2024-38 Approving a Lease Agreement with Neah-Kah-Nie School District No. 56 for Tennis Court Property.

McGinnis appreciated the change from a one-year to five-year lease. McNeilly commented that the court was well-used and was a great asset.

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

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

b. Consideration of Resolution 2024-39 Authorizing the Mayor and City Manager to Execute a Contract with the Lowest Responsive and Responsible Bidder for the Wayside Beach Access Improvements Project

Start time: [08:23:34 PM \(02:17:24\)](#)

McNeilly explained that this resolution delegates authority to the Mayor and City Manager to ensure a timely contract award and execution of the project.

No audience members wished to comment.

Hayes made a **motion**, seconded by Franken, to approve Resolution 2024-39, A Resolution Authorizing the Mayor and City Manager to Execute a Contract with the Lowest Responsive and Responsible Bidder for the Wayside Beach Access Improvements Project.

Hayes expressed enthusiasm.

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

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

c. Consideration of Resolution 2024-40 Approving a Memorandum of Understanding with David's Chair Outdoor Mobility Systems

Start time: [08:25:36 PM \(02:19:26\)](#)

McNeilly explained this resolution approves a Memorandum of Understanding with David's Chair Outdoor Mobility Systems to provide an electric all-terrain track chair to Rockaway Beach for loan and use by residence and visitors who reserve their usage through a website managed by David's Chair.

No audience members wished to comment.

McGinnis made a **motion**, seconded by Martine, to approve Resolution 2024-40 Approving a Memorandum of Understanding with David's Chair Outdoor Mobility Systems.

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

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

11. ITEMS REMOVED FROM CONSENT AGENDA

12. COUNCIL CONCERNS

Start time: [08:27:19 PM \(02:21:10\)](#)

Cheek commented she was pleased that City was acquiring David's Chair. Cheek commented

regarding legal action filed against the City by Hayes and two others, noting it costs the city money and taxpayers will foot the bill.

Franken shared she attended training in Garibaldi regarding Executive Sessions. Franken stated that a Sourcewater Protection Plan Development Advisory Committee (SPPDAC) meeting was held on July 29th. She shared she was impressed by citizen attention and involvement. Franken shared citizen concerns that the Council give consideration to infrastructure outside of the Jetty Creek watershed, especially project plans in the Nedonna Beach area. Franken thanked Sandra Johnson for arranging a tour of the Boneyard Ridge restoration project. Franken echoed the Mayor's sentiments from the State of the City address regarding the city's amazing staff.

Hayes thanked all who helped with the Art Festival. She expressed gratitude to Captain Grace for coming to her rescue. Hayes advocated for looking at dark skies' issues. Hayes shared neighbors' concerns regarding people in nature preserve doing illegal things. Hayes suggested entertaining an ordinance restricting access from dusk to dawn in the nature preserve and all parks to empower the Sheriff's Department to address issues. Hayes expressed gratitude for the passing of the resolution regarding Wayside access improvements.

Martine commented on the passing of resident Winnie Mercer. McNeilly expressed condolences to her family on their loss.

McGinnis thanked the Mayor for the State of City address. She reported attending the training on public meetings. McGinnis stated she toured the Astoria watershed, and would attend the Boneyard Ridge tour. McGinnis stated it was a privilege to be a Councilor and with it comes hard work. She thanked Planning Commission President Hassell for calling milfoil at Lake Lytle to the City's attention. McGinnis commented on responsibility for policy making. McGinnis stated that three individuals were involved in a court action in the last week to attempt to take position numbers off the ballot. McGinnis indicated that she stands by her previous comments that a citizens advisory committee should decide. McGinnis responded to written citizen testimony that the City doesn't have employee policies, stating that the City has both an employee policy handbook and a collective bargaining agreement with the union. She noted that City Councilors may not be involved in the hiring, firing, administration or removal of employees. McGinnis spoke in support of City employees, noting that they are the stability of the city.

13. MAYOR'S REPORT

Start time: [08:40:50 PM \(02:34:41\)](#)

McNeilly encouraged all to visit the City Facebook page for updates. McNeilly shared slides providing an update on the QR code for the visitrockawaybeach.org website, and business façade grant recipient's storefront improvements.

McNeilly reiterated comments shared at the June meeting regarding the process of electing City Councilors by position numbers. McNeilly stated that some community members suggested a change back to block voting. McNeilly explained that the City Charter was silent on the issue. He

stated that the best practice indicated that how a councilor is elected should not occur with the current election cycle, but should take effect with the next succeeding election. McNeilly stated for these reasons the City Elections Official and City Council followed the recommendation of the City Attorney to not make changes with the November 2024 election. McNeilly advocated for transparent and open community engagement through a holistic review of the City Charter, which would then go to the City voters for approval. McNeilly shared that an attorney representing Justin McMahan and Daniel Howlett had filed a petition with the Tillamook County Court to remove the position numbers from the ballot without a rigorous community discussion or input from the voters. McNeilly shared a document filed with the court indicating that Kristine Hayes was involved at some point with the petition. McNeilly spoke in defense of City staff, residents, and voters, stating that the city disagrees with the petition's assertions.

14. ADJOURNMENT

Start time: [08:48:01 PM \(02:41:52\)](#)

McGinnis **moved**, seconded by Martine, to adjourn the meeting at 8:48 p.m.

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

Aye: 5 (Cheek, Franken, Hayes, Martine, McGinnis)

Nay: 0

MINUTES APPROVED THE
11TH DAY OF SEPTEMBER 2024



Charles McNeilly, Mayor

ATTEST



Melissa Thompson, City Recorder



City of Rockaway Beach

City Council Workshop Minutes

Date: Wednesday, September 11, 2024

Location: Rockaway Beach City Hall, 276 HWY 101 – 2nd Floor Conference Room

1. CALL TO ORDER

Mayor McNeilly called the meeting to order at 4:30 p.m.

2. ROLL CALL

Council Members Present: Mayor Charles McNeilly; Councilors Penny Cheek, Mary McGinnis, Tom Martine, Kristine Hayes, and Alesia Franken

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

[Mayor - Charles McNeilly: Present](#)

[Position #3 - Kristine Hayes: Present](#)

[Position #4 - Alesia Franken: Present](#)

[Position #1 - Mary McGinnis: Present](#)

[Position #5 - Penelope Cheek: Present](#)

[Position #2 - Tom Martine: Present](#)

3. COUNCIL BRIEFING/DISCUSSION

a. Discussion Regarding Scope of Review for Land Use Appeal # 24-1, Nedonna Wave Planned Unit Development - Phase 2

Start time: [04:31:44 PM \(00:00:39\)](#)

Shepard explained that the Council will determine the scope of review for Land Use Appeal # 24-1 in the regular session, and that the City's land use attorney, Armand Resto-Spotts, and City Planner Johnson will give presentations. City Planner Johnson shared a presentation providing an overview of the Planning Commission's land use decision and the section of the City Zoning Ordinance regarding scope of review. Johnson answered clarifying questions for the Council. Resto-Spotts prefaced his comments by stating that the City Council cannot discuss the substance or the merits of the appeal. Resto-Spotts explained the scope of review options: hearing the appeal on the record, de novo, admitting new evidence related to specific issues necessary to resolve the matter, or remanding to the Planning Commission. He shared comments on each approach. Resto-Spotts suggested that a remand to the Planning Commission was not appropriate as there were no procedural issues. He explained that the other options were at the Council's discretion.

Johnson provided the Council with a document listing options for possible motions.

McNeilly noted that the option labelled “b” would limit additional evidence to one or more issues that the appellant has raised. McGinnis indicated she was leaning toward that option, and allowing new evidence on all five criteria raised in the appeal. Franken and McNeilly concurred. There were brief comments regarding tsunamis and wetlands. Resto-Spotts cautioned against talking about particulars of the property.

Hayes disclosed past work with the developer involved in the appeal, a call from the developer that she did not return, and past work with the wetlands specialist, noting potential conflict of interest. Hayes clarified that she did not anticipate working with the developer again. Resto-Spotts explained that prior relationships could be a potential conflict of interest or bias and should be put on the record at the hearing. He further explained that ex-parte contact and potential bias must be declared, and she should decide whether to recuse herself based on further consideration and if involved parties raise the issue at the hearing. Resto-Spotts stated that he did not consider it an actual conflict of interest related to the decision.

There was consensus to consider the scope of review to allow additional evidence regarding all five issues raised in the appeal. Johnson indicated she would prepare a motion for the Council based on their discussion. Resto-Spotts suggested wording for the motion.

Cheek disclosed she served on the Planning Commission in 2011. Resto-Spotts stated that did not pose any conflict or bias.

b. Review of Resolution 2024-41 Budget Resolution for Sound Amplification Equipment

Start time: [05:05:21 PM \(00:34:17\)](#)

Shepard explained that some members of the public had expressed difficulty hearing the Council in meetings, and staff was directed to address it. The Council reviewed the quotes and proposed resolution. Shepard answered clarifying questions. Hayes advocated to include a loop system for those with hearing aids.

c. Public Meetings Law Training Update

Start time: [05:10:22 PM \(00:39:18\)](#)

Shepard gave a brief overview of new requirements imposed by House Bill 2805, including annual public meeting law training. Shepard explained the city was on the waitlist for in-house training, possibly in November, with online training available starting in October. Thompson added that corresponding state administrative rules were still in the process of being adopted.

Additional Discussion:

In response to a request from McGinnis, Shepard provided an update on the Lake Lytle project and milfoil management, sharing a slide from the upcoming regular Council meeting presentation.

Cheek shared that she had heard requests from community members to lower speed limits on Highway 101. In response to a question from Hayes, Shepard shared that Alta was planning to provide an update on the Salmonberry Trail in October.

4. ADJOURNMENT

Start time: [05:21:39 PM \(00:50:35\)](#)

Martine made a **motion**, seconded by Franken, to adjourn the meeting at 5:22 p.m.

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

Aye: 5 (Cheek, McGinnis, Martine, Hayes, Franken)

Nay: 0

MINUTES APPROVED THE
9TH DAY OF OCTOBER 2024

Charles McNeilly, Mayor

ATTEST

Melissa Thompson, City Recorder



City of Rockaway Beach

Regular City Council Meeting Minutes

Date: Wednesday, September 11, 2024
Location: Rockaway Beach City Hall, 276 Hwy 101 - Civic Facility

1. CALL TO ORDER

Mayor McNeilly called the meeting to order at 6:00 p.m.

McNeilly made a statement regarding deportment, requesting that all people respect those in attendance and the opinions of those with whom they may disagree prior, during and after City business meetings.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Start time: [06:02:08 PM \(00:02:08\)](#)

Council Members Present: Mayor Charles McNeilly; Councilors Penny Cheek, Mary McGinnis, Tom Martine, Kristine Hayes, and Alesia Franken

Staff Present: Luke Shepard, City Manager; and Melissa Thompson, City Recorder; Dan Emerson, Public Works Superintendent; Todd Hesse, Fire Chief; and Kevin Grogan, Sheriff's Deputy

4. CONSENT AGENDA

Start time: [06:02:25 PM \(00:02:25\)](#)

- a. Approval of August 14, 2024 Regular Meeting Minutes
- b. Approval of August 14, 2024 Workshop Minutes
- c. Review of August 2024 Check Register

McGinnis made a **motion**, seconded by Martine, to approve the consent agenda.

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

Aye: 5 (Cheek, McGinnis, Martine, Hayes, Franken)

Nay: 0

5. PRESENTATIONS, GUESTS & ANNOUNCEMENTS

- a. **Presentation – Strategic Plan Update** – Ashley Sonoff, SSW Consulting

Start time: [06:03:53 PM \(00:03:54\)](#)

Sonoff gave a presentation covering the goals of the strategic plan, timeline, engagement summary, themes emerging from outreach surveys, and next steps in the strategic plan process. Councilors asked clarifying questions and praised the comprehensive explanation of the strategic plan process and community-driven approaches

6. STAFF REPORTS

a. Fire Department

Start time: [06:29:58 PM \(00:29:58\)](#)

Hesse, attending remotely, presented his staff report on the activities and operations of the Rockaway Beach Fire Rescue department for the month of August 2024. Hesse shared that he and Captain Grace were attending the EMS World Conference. Hesse added that the fire danger has been reduced to moderate, and noted that Tillamook County has participated in five of the fifteen State conflagrations this year. Hesse acknowledged the anniversary of September 11th, 2001. Hesse answered questions about the Nixle alert system and clarified for the Council that summer staffing would continue through October 31st.

b. Sheriff's Office

Start time: [06:38:50 PM \(00:38:50\)](#)

Deputy Kevin Grogan apologized for last month's absence due to training. Grogan summarized the Sheriff's Office report for August 2024. Grogan added that school was in session and to be aware of speed. He commented on law enforcement efforts to make connections with school students. Councilors noted a lighter activity report and expressed gratitude for the deputies' work during the busy summer period. They looked forward to possibly adding more deputies to relieve workload.

c. Public Works

Start time: [06:42:46 PM \(00:42:47\)](#)

Emerson presented his report on recent activities and operations within the Public Works department. He thanked Rachel Johansson and Jeanette Singleton for their generous plant donations for landscaping Anchor Street Park. Emerson confirmed that new signs were installed by Ramsay Signs. It was noted that Narcan installed at Phyllis Baker Park was donated by Robin Bach.

d. City Manager

Start time: [06:47:39 PM \(00:47:40\)](#)

Shepard shared a presentation providing background information on the action items on the agenda. Shepard also provided updates on Lake Lytle improvements, the Wayside Beach Access project, Nedonna Beach Water System improvements, new signs and landscaping at Anchor Street Park and Lake Lytle, upcoming public meeting dates, and a staff highlight.

7. PUBLIC HEARING

a. Ordinance 2024-04 Amending Code Chapter 31 Related to the Planning Commission

Start time: [07:01:37 PM \(01:01:37\)](#)

At 7:01 p.m., McNeilly opened the public hearing.

McNeilly explained that the purpose of the public hearing was to receive comment on Ordinance 2024-04 Amending Code Chapter 31 Related to the Planning Commission.

McNeilly invited public testimony.

Lisa Finkle, resident, testified in opposition, expressing concerns regarding reducing community representation, transparency and accountability, and impairing the Planning Commission's role in strategic planning.

Daniel Howlett, resident, testified in opposition, expressing concerns about the process for advertising and filling vacancies. Howlett advocated for bringing new members to city committees and rotating the Council liaison to the Planning Commission position annually.

McNeilly closed the public hearing at 7:08 p.m.

b. Ordinance 2024-07 An Ordinance Providing Authority and Procedures for Administrative Warrants and Creating a New Code Chapter 97

Start time: [07:08:56 PM \(01:08:56\)](#)

At 7:09 p.m., McNeilly opened the public hearing.

Debby Hunn, resident, expressed concerns regarding safety implications for city employees and advocated for a process and procedure manual to accompany the Ordinance. Hunn advocated for holding a first reading, public hearing, and second reading on different dates, and urged the Council to review the process.

Lisa Finkle, resident, spoke in opposition to the Ordinance and hoped for broader discussion regarding bringing back the police department. Finkle expressed concerns regarding residents' privacy and rights, and potential misuse. She urged the Council to seek community perspectives, particularly from those directly impacted by the ordinance.

McNeilly closed the public hearing at 7:15 p.m.

8. CITIZEN INPUT ON NON-AGENDA ITEMS

Start time: [07:15:20 PM \(01:15:20\)](#)

Ronnie Duckworth expressed frustration and concern over an ongoing drug-related issue on his street, describing a recent fire that broke out at a suspected drug house, resulting in a bus explosion. He requested law enforcement action. McNeilly commented that he would contact Duckworth.

Debby Hunn expressed shock that open litigation was discussed at a recent City Council meeting. Hunn referred to her written testimony, expressing concerns that certain Transient Room Tax (TRT) fund expenditures had been incorrectly budgeted. Hunn expressed additional concerns about election procedures, pointing out inconsistencies with the City Charter, and suggesting that issues could have been resolved without litigation.

Justin McMahan commented that he was a relator in a legal case against the city regarding the election process case and was running for City Council. McMahan acknowledged that they lost the case, but the judge deemed the case reasonable and not frivolous. McMahan stated that city's election process had been changed illegally, and expressed concerns that Ordinance 2024-02 had been presented differently in court than in public meetings. He advocated for ethics and transparency.

Lisa Finkle expressed concerns regarding a neighboring short-term rental property. She shared that the fire pit was a hazard affecting air quality and health. Finkle commented that the property's hot tub led to noise and activity extending beyond the city's quiet hours. Finkle urged the Council to enforce existing regulations and hold property managers accountable.

Rosemary Hamilton waived her time to Nancy Webster. Nancy Webster appreciated that the City was considering microphones for the Council Room.

Nancy Webster spoke in opposition to the Nedonna Wave development, asking the City to deny the entire development. She expressed concerns that development is within the DEQ Source Water Protection Area and near Jetty Creek, another primary water source. Webster stated the area's wells are vulnerable to contamination from high-density housing, construction, pesticide use, and potential saltwater intrusion. She expressed additional concerns that septic systems and sewer infrastructure could not accommodate more density. Webster raised additional concerns about inadequate fire exits and fire risks from beach fires and grass. She urged the Council to protect the area's wetlands, which are part of a saltwater marsh and critical fish-bearing habitat.

Daniel Howlett commented on the recent court case. Howlett expressed concerns that city leaders initially indicated support for removing council position numbers but later reversed their position. He expressed concern that council position numbers were added in 2014 without a vote. Howlett

expressed additional concerns about council members running unopposed, concerns regarding meeting audio recordings, and concerns about the expressed intent of the nomination ordinance. Howlett referred to his submitted written testimony and urged the public to support new leadership in November.

9. OLD BUSINESS – None Scheduled

10. NEW BUSINESS

a. Consideration of Resolution 2024-41 Adjusting Appropriations for the 2024-2025 Fiscal Year Budget

Start time: [07:41:58 PM \(01:41:58\)](#)

McNeilly explained that this resolution transfers funds within the General Fund from Contingency to the Administration Department for sound amplification equipment to address residents' concerns with the sound quality at City Council Workshops and Meetings.

No audience members wished to comment.

Martine made a **motion**, seconded by Cheek to approve Resolution 2024-41.

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

Aye: 5 (Cheek, McGinnis, Martine, Hayes, Franken)

Nay: 0

b. Determination of the Scope of Review for Land Use Appeal #24-1 on the Nedonna Wave Planned Unit Development – Phase 2

Start time: [07:43:54 PM \(01:43:55\)](#)

McNeilly explained to Delta Holderness that the scope of review determination was a non-hearing item. Holderness requested time to comment later on a non-agenda item.

McNeilly explained that the Rockaway Beach Zoning Ordinance, section 11.070(4) provides that the City Council must determine the scope of review prior to hearing appeals. He stated the City Council shall determine, as a non-public hearing item, that the scope of the review will be one of the following: (a) Restricted to the record made in the decision being appealed. (b) Limited to the presentation of additional evidence on such issues as the reviewing body determines necessary for a proper resolution of the matter. (c) A de novo hearing. (d) A remand of the matter to the hearing body for additional consideration. McNeilly stated the City Council held discussion and consultation with the land use attorney in the workshop, and he would now entertain a motion.

Franken made a **motion**, moved, seconded by Cheek, to review land use appeal #24-1 on the Nedonna Wave Planned Unit Development – Phase 2 in accordance with Rockaway Beach Zoning Ordinance, Section 11.070(4)(B): Limited to the presentation of additional evidence on such issues as the reviewing body determines necessary for a proper resolution of the matter, with a scheduled hearing date of October 9, 2024. Additional evidence shall be provided regarding the issues and criteria raised in the Appeal.

McGinnis explained that the motion was the second option (b) listed by McNeilly. She stated that both the applicant and the appellant gave some indication of what new testimony they would like, and all of their considerations would be included in this scope of review.

Hayes declared that she was going to recuse herself from the vote, stating that she was paid by the developer in 2009 to create the big circle of wetlands that are there. Hayes stated she worked with the wetland specialist and did the signs and the nautical rope that you see around all the wetlands. Hayes said she spoke with the attorney in the workshop and he said while she might not have a conflict of interest, she might have some bias. Hayes stated she had a lot of attachment to the property and so was going to recuse herself and not vote.

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

Aye: 3 (McGinnis, Martine, Franken)

Nay: 1 (Cheek)

Abstain: Hayes

McNeilly invited Delta Holderness to provide public comment on a non-agenda item.

Delta Holderness shared a copy of written testimony submitted by Gary and Renee Corbin urging the Council to deny approval of the Nedonna Wave development. (A copy of the Corbin's testimony is included in the record for the meeting.) Holderness read aloud a statement urging the City Council to start over with a new application process for the 2008 Planned Unit Development (PUD). (A copy of Holderness' testimony is included in the record for the meeting.)

c. First & Second Reading of Ordinance 2024-04 Amending Code Chapter 31 Related to the Planning Commission

Start time: [07:51:16 PM \(01:51:17\)](#)

McNeilly explained Ordinance 2024-04 amends the City of Rockaway Beach Code of Ordinances regarding the Planning Commission. He stated this amendment was approved by the Planning Commission and reviewed by the City Council at two workshops. McNeilly explained that the ordinance was available for inspection in accordance with the City Charter.

McGinnis made a **motion**, seconded by Cheek, to perform the first and second reading by title only of Ordinance 2024-04.

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

Aye: 4 (Cheek, McGinnis, Martine, Franken)

Nay: 1 (Hayes)

McNeilly performed the first and second reading by title only of Ordinance 2024-04.

Cheek made a **motion**, seconded by Franken, to approve the first and second reading by title only of Ordinance 2024-04.

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

Aye: 4 (Cheek, McGinnis, Martine, Franken)

Nay: 1 (Hayes)

d. Consideration to Adopt Ordinance 2024-04 Amending Code Chapter 31 Related to the Planning Commission

Start time: [07:54:06 PM \(01:54:06\)](#)

McNeilly explained that with the first and second reading now complete, Ordinance 2024-04 is ready for adoption.

McGinnis made a **motion**, seconded by Martine, to adopt Ordinance 2024-04 Amending Code Chapter 31 Related to the Planning Commission.

McGinnis commented that the Ordinance broadens the Planning Commission's authority and makes it more effective. She noted that the old ordinance had strange, outdated provisions. McGinnis noted that some provisions, including limits on the number of real estate professionals, are required by state law. She explained that the Charter provides rules for appointments. McGinnis noted that the work on the ordinance began in February and included citizen involvement, and multiple public meetings.

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

Aye: 4 (Cheek, McGinnis, Martine, Franken)

Nay: 1 (Hayes)

e. First & Second Reading of Ordinance 2024-07 Providing Authority and Procedures for Administrative Warrants and Creating a New Code Chapter 97

Start time: [07:58:04 PM \(01:58:04\)](#)

McNeilly explained that Ordinance 2024-07 amends the City of Rockaway Beach Code of Ordinances, adding a new chapter in the City code that provides the authority and procedures for administrative warrants. McNeilly stated that the ordinance was available for inspection in accordance with the City Charter.

Cheek made a **motion**, seconded by McGinnis to perform the first and second reading by title only of Ordinance 2024-07.

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

Aye: 4 (Cheek, McGinnis, Martine, Franken)

Nay: 1 (Hayes)

McNeilly performed the first and second reading by title only of Ordinance 2024-07.

Franken made a **motion**, second by Martine, to approve the first and second reading by title only of Ordinance 2024-07.

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

Aye: 4 (Cheek, McGinnis, Martine, Franken)

Nay: 1 (Hayes)

f. Consideration to Adopt Ordinance 2024-07 Providing Authority and Procedures for Administrative Warrants and Creating a New Code Chapter 97

McNeilly explained that with the first and second reading now complete, Ordinance 2024-07 is ready for adoption.

Franken made a **motion**, second by Martine, to adopt Ordinance 2024-07.

Hayes commented that she shared in workshop that she spoke with the Sheriff about it and he said nobody should go on property without being accompanied by law enforcement. Hayes advocated for requiring that law enforcement accompany staff. She expressed concerns about loss of land rights and overreach. Hayes indicated she would vote no.

McGinnis spoke in favor of the ordinance, commenting that the city already has an abatement ordinance, and this ordinance gives authority for a Sheriff's Deputy to accompany staff. McGinnis added that some abandoned properties might be treated differently. At the request of McGinnis, Shepard confirmed that the ordinance gives the Sheriff's Office authority to assist.

Cheek concurred with McGinnis, commenting that there was some misunderstanding, and the ordinance allows an officer to accompany staff.

Franken suggested that no one would knowingly put city staff in danger.

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

Aye: 4 (Cheek, McGinnis, Martine, Franken)

Nay: 1 (Hayes)

RECESS INTO EXECUTIVE SESSION

At 8:07 p.m., McNeilly announced that the City Council would now recess to a conference room and into Executive Session pursuant to ORS 192.660 (2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. McNeilly stated this executive session will include discussion of pursuit of attorney fees against relators in Case No. 24CV37762. He added that no final action will be taken in this closed session it is if a decision needs to be made it will be done when open session resumes.

RECONVENE REGULAR SESSION

McNeilly called the regular session back to order at 9:19 p.m.

g. Consideration of Pursuit of Attorney Fees against Relators in Case No. 24CV37762

Start time: [09:19:10 PM \(02:08:04\)](#)

McNeilly explained that the Council may now consider taking action regarding whether or not to pursue attorney's fees against relators who filed a legal action against the City that was decided in the City's favor.

McNeilly invited public comment.

Debby Hunn commented that today was September 11th and was hoping town would come together. Hunn expressed concerns about Ordinance 2024-04, stating that the state requires single topic ordinances, and one ordinance cannot cover both elections and nominations. Hunn expressed additional concerns about public notice and holding a public hearing and two readings of the ordinance on the same day. She was concerned that video and audio evidence were not allowed in court. Hunn advocated for running an open election with top three votes serving a four-year term, and next two votes serving a two-year term.

Martine made a **motion**, seconded by McGinnis, to pursue an award of attorney fees against realtors in case number 24CV37762.

McGinnis commented that there was a long discussion and consideration that took place during the executive session. She emphasized that while they can provide their reasons for voting, they cannot disclose the legal advice shared in the session. McGinnis addressed misinformation circulating within the community and expressed a desire for healing. She noted that the judge in the case clearly denied the writ twice and cited laws that supported the city's position, which was her reason for supporting the decision.

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

Aye: 4 (Cheek, McGinnis, Martine, Franken)

Nay: 0

Abstain: Hayes

McNeilly read aloud Council Meeting Rules and Procedures Section 3.13 Duty to Vote: When a question is taken, every member of the Council eligible to vote shall vote unless a Councilor states a valid reason to abstain or has a direct conflict of interest. McNeilly requested that Hayes state a valid reason for abstaining or state that she had a direct conflict of interest. Hayes stated she didn't think so unless she could step out and call her attorney. McNeilly asked that the record show that Hayes did not follow the Council rules that she voted into place.

11. ITEMS REMOVED FROM CONSENT AGENDA – None removed

12. COUNCIL CONCERNS

Start time: [09:26:54 PM \(02:15:48\)](#)

Cheek commented that she was pleased with the audience attendance and participation, and that the whole community should have input into everything that the Council does.

Franken commented that the Tillamook Bay Community College Small Business Development Center is partnering with the Economic Development Council of Tillamook County for a pitch contest, noting that it was a great resource for entrepreneurs or business owners. Franken reported she attended the emergency management meeting for water sanitation and thanked Captain Grace and the Emergency Management team. She encouraged all to view the presentation on the website. Franken also encouraged participation in the Great Shakeout. She reported on attendance at a tour of the Bone Ridge forest. Franken encouraged participation in the Sourcewater Protection Plan Town Hall.

Hayes commented on the hearing about elections, stating that three public officials testified that the Council did not pass an ordinance adding seats and one testified otherwise. Hayes expressed

concern and confusion, stating that the judge basically said I'm sorry if you don't understand that you passed that. She encouraged those who were confused to watch the testimony. Hayes expressed additional concerns that the litigation was discussed publicly for political reasons, when others were handled in executive session. Hayes felt this discouraged citizens from speaking up and found it shameful. Hayes shared additional comments reflecting on 9/11.

Martine shared reflections on 9/11, noting that none of us will ever forget.

McGinnis shared reflections on being a teacher during 9/11 and acknowledged first responders. She shared that the League of Oregon Cities' *Local Focus* magazine featured Rockaway's Anchor Street Park. McGinnis commended Bill Hassell and shared about work they were doing to acquire benches for the Boardwalk, and efforts to mitigate milfoil. She shared that they represented Rockaway with Hassell's drone photos at a Salmonberry Trail Foundation event, thanking Public Works for their help. McGinnis encouraged attendance at the upcoming Arts & Music Festival and the Great Shakeout event.

13. MAYOR'S REPORT

Start time: [09:37:35 PM \(02:26:29\)](#)

McNeilly shared slides, providing updates on an increase in visits to the visitor website, indicating that the QR was being utilized. He shared images of new Rockaway Beach Shopping Bag designs. McNeilly extended thanks to Nan Devlin and the Tillamook Coast Visitors Association.

14. ADJOURNMENT

Start time: [09:39:56 PM \(02:28:50\)](#)

Martine made a **motion**, seconded by Cheek to adjourn the meeting at 9:39 p.m.

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

MINUTES APPROVED THE
9TH DAY OF OCTOBER 2024

Charles McNeilly, Mayor

ATTEST

Melissa Thompson, City Recorder

DRAFT

City Council must DENY approval of Nedonna WAVE development

September 2, 2024

To: Rockaway Beach City Council

From: Gary and Renee Corbin

26642 Kittiwake Dr

Rockaway Beach, OR. 97136

On July 27, 2024, the Rockaway Beach Planning Commission voted to approve a modification to PUD 24-01, the “Nedonna Wave” application for development. Our understanding is that the next step in this process is consideration for approval by the Rockaway Beach City Council.

We strongly urge the City Council to deny any further development, including issuing of permits for excavation, construction, and development, of Nedonna Wave. The proposed development fails to comply with at least three legal requirements, at least one of which cannot be satisfied in any form. Those three requirements are:

1. Failure to complete the proposed development within the development window of the original application
2. Failure to comply with federal regulations governing development in coastal flooding areas
3. Failure to address critical safety requirements for tsunami evacuation and fire and emergency response

1. Failure to complete the development within the required 10-year time frame

ORS 92.040 (3) stipulates:

*A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, **in no event shall the time period exceed 10 years**, whether or not a time period is established by the local government. [Emphasis added]*

Nedonna Wave has argued that a PUD is not a subdivision. However, the language of the statute clearly disagrees. ORS 92.010 (17) stipulates:

“Subdivision” means either an act of subdividing land or an area or a tract of land subdivided.

ORS 92.010 (9) further states:

“Partitioning land” means dividing land to create not more than three parcels of land within a calendar year...

The statute makes no exceptions for PUDs.

Since the 10-year window has long since closed, the City must require the Applicant to file a new application if they wish to reinstate site development.

2. FEMA wetland rules

The Federal Emergency Management Agency issued “Updates to Floodplain Management and Protection of Wetlands Regulations To Implement the Federal Flood Risk Management Standard” (44 CFR Part 9) in July, 2024. This rule update, effective September 9 2024, limits construction activities in floodplain areas – which specifically include low-lying coastal areas such as Nedonna Beach – and requires a formal, public, documented 8-step review process, summarized below:

- (1) Determine whether the proposed action is located in a wetland or floodplain and its potential to affect or be affected by a wetland or floodplain;

- (2) Notify the public of the intent to carry out the proposed action within or affecting a wetland or floodplain, and involve the affected and interested public in the decision-making process;
- (3) Identify and evaluate practicable alternatives to locating the proposed action in a floodplain or wetland, including alternative sites, actions, and the “no action” option;
- (4) Identify the potential direct and indirect impacts associated with the occupancy or modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action;
- (5) Minimize the proposed action's potential adverse impacts and support to or within the floodplains and wetlands identified under Step 4;
- (6) Re-evaluate the proposed action and other practicable alternatives identified in step 3 based on new information gained in steps 4 and 5;
- (7) Inform the public of any final decision that the floodplain or wetland is the only practicable alternative; and *[assuming confirmation of all of the above steps]*
- (8) Implement the action.

The rule explicitly includes development of new housing as an “action” regulated by this process.

There is no evidence that the City of Rockaway, nor Nedonna Wave Development, have conducted any part of this process. No development in the flood zone may proceed without such review.

3. Evacuation route and Fire Safety Access

Rockway Beach Zoning Ordinance 3.142 requires the applicant to develop evacuation measures and improvements in compliance with the ordinance. The proposed application does not address evacuation route improvements.

Moreover, the Nedonna Beach area is already out of compliance with the Oregon Fire Code. Appendix D, Section D107.1, mandates that developments with more than 30 single-family dwellings must have two separate and approved fire apparatus access roads. Nedonna Beach, which already has over 400 housing units, has only one approved access road.

Allowing this development to continue escalates the safety risk – already unacceptable and out of legal compliance – for Nedonna Beach residents and visitors and places the city at risk for litigation and millions of dollars in potential liability in the event of a tsunami or fire emergency.

The City of Rockaway must deny the applicant’s plans to proceed with this development and require them to resubmit a new plan which addresses these concerns, as well as the several others raised at Planning Commission and City Council meetings in the past.

Sincerely,

Gary and Renee Corbin

Good evening,

My name is Delta Holderness. I live at 9340 Song St, Nedonna Beach area of Rockaway.

At the July 18th, 2024 Planning Commission meeting, a planning commission council person asked what the definition of a PUD is vs a subdivision.

Mary Johnson answered the question by stating and I quote, "a PUD is basically an overlay to a subdivision application. It allows a developer to build denser housing." Unquote. Mary did go on to state that this is done so that the developer doesn't build into wetlands or other protected areas, also it allows reduction in the amount of street frontage. If you would like to hear her precise words that I did not quote, you can hear the question and answer starting at 43 minutes and 7 seconds during that July meeting.

Therefore, no one can state that a PUD doesn't meet the definition of a subdivision and therefore, ORS 92.040 must apply to this 2008 PUD application.

As a reminder:

ORS 92.040(3) provides that all subsequent stages of subdivision development must be reviewed for compliance with current local regulations when more than 10 years has passed since the initial land use decision.

The Oregon Court of Appeals explained the operation of this ordinance, as it allows applicants who request approval to develop a subdivision lot and any subsequent construction on the lot can follow the local government laws in effect at the time that the subdivision application was made

However, the protection provided to developers by subsection (2) may not exceed a period of 10 years."

The ordinance with its ten-year time limit makes it so that any further development after 10 years must be approved under a new application, based on contemporary standards and regulations.



City of Rockaway Beach

Planning Commission Meeting Minutes

Date: Thursday, June 20, 2024

Location: Rockaway Beach City Hall, 276 HWY 101 - Civic Facility

1. CALL TO ORDER

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

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

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

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

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

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

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

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

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

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

President: Bill Hassell

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

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

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

4. APPROVAL OF MINUTES

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

City Recorder Thompson noted corrections to the minutes.

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

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

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

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

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

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

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

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

5. PRESENTATIONS, GUESTS & ANNOUNCEMENTS

6. STAFF REPORTS

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

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

7. PUBLIC HEARING

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

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

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

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

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

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

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

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

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

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

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

City Planner Johnson reported that no written correspondence was received.

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

Testimony in support of the application: None

Testimony in opposition to the application: None

Testimony that is neutral or questions: None

Applicants' rebuttal: None

Commission questions: None

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In response to Commissioner questions, Alterman provided the following:

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

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

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

Testimony in support of the application:

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

Testimony in opposition to the application:

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

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

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

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

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

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

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

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

8. CITIZEN INPUT ON NON-AGENDA ITEMS

No audience members wished to comment.

9. OLD BUSINESS – None Scheduled

10. NEW BUSINESS – None Scheduled

11. PLANNING COMMISSION COMMENTS & CONCERNS

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

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

Zedrick commented that Anchor Street Park looked fun.

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

Olson stated he had no joys or concerns.

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

12. ADJOURNMENT

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

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

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

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

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

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

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

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

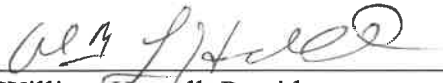
[Position #5 - Bill Hassell: Approve](#)

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

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

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

MINUTES APPROVED THE
18TH DAY OF JULY 2024



William Hassell, President

ATTEST



Melissa Thompson, City Recorder



City of Rockaway Beach, Oregon

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

____ - ____

PLANNED UNIT DEVELOPMENT APPLICATION

APPLICANT INFORMATION:

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

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

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

PROPERTY OWNER INFORMATION:

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

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

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

PROPERTY LOCATION:

Tracts E and F, Nedonna Wave Phase 1

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

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

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

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

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

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

DocuSigned by:

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

Dean N. Alterman, attorney for applicant

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

DocuSigned by:

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

Anna Song, for Nedonna Development, LLC

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

CITY OF ROCKAWAY BEACH ZONING ORDINANCE

Article 10. Planned Unit Development (PUD)

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

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

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

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

Section 10.040. Development Standards.

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

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

Section 10.050. Procedure - Preliminary Development Plan.

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

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

Section 10.060. Procedure - Final Approval.

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

Section 10.080. Adherence to Approved Plan and Modification Thereof.

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

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



MEMORANDUM

To: City of Rockaway Beach

From: Dean N. Alterman
Alterman Law Group PC

Date: February 20, 2024

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

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

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

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

I. History

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

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

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

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

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

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

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

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

II. Application to plat Phase 2 with three modifications

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

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

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

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

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

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

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

III. General Standards for Subdivisions

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

SECTION 5 Procedure For Review

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

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

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

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

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

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

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

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

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

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

SECTION 9

Information Statement

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

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

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

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

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

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

SECTION 10

Supplemental Proposals with Tentative Plan

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

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

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

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

SECTION 11

Procedure For Review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 32

Principles of Acceptability

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

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

SECTION 33

Streets

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 34

Utility Easements

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

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

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

SECTION 35

Building Sites

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

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

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

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

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

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

² This word appears to have been inadvertently omitted from the code.

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

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

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

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

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

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

SECTION 36

Blocks

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

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

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

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

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

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

SECTION 37

Large Building Sites

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

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

SECTION 38

Water Courses

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

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

SECTION 39

Land For Public Purposes

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

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

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

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

SECTION 40

Unsuitable Land

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

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

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

SECTION 41 Land Subject to Inundation

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

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

SECTION 42 Proposed Name of Subdivision

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

Response: The property is already part of the Nedonna Wave subdivision and is being platted by the same party that platted Phase 1. The final plat of Phase 2 will continue the lot numbers from Phase 1, starting with Lot 10.³

IV. Specific standards for planned unit developments

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

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

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

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

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

Section 10.040. Development Standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. Conclusion

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

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

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

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

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

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

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

EXISTING LAYOUT
SCALE: 1"=40'

VICINITY MAP
SCALE: 1"=±500'

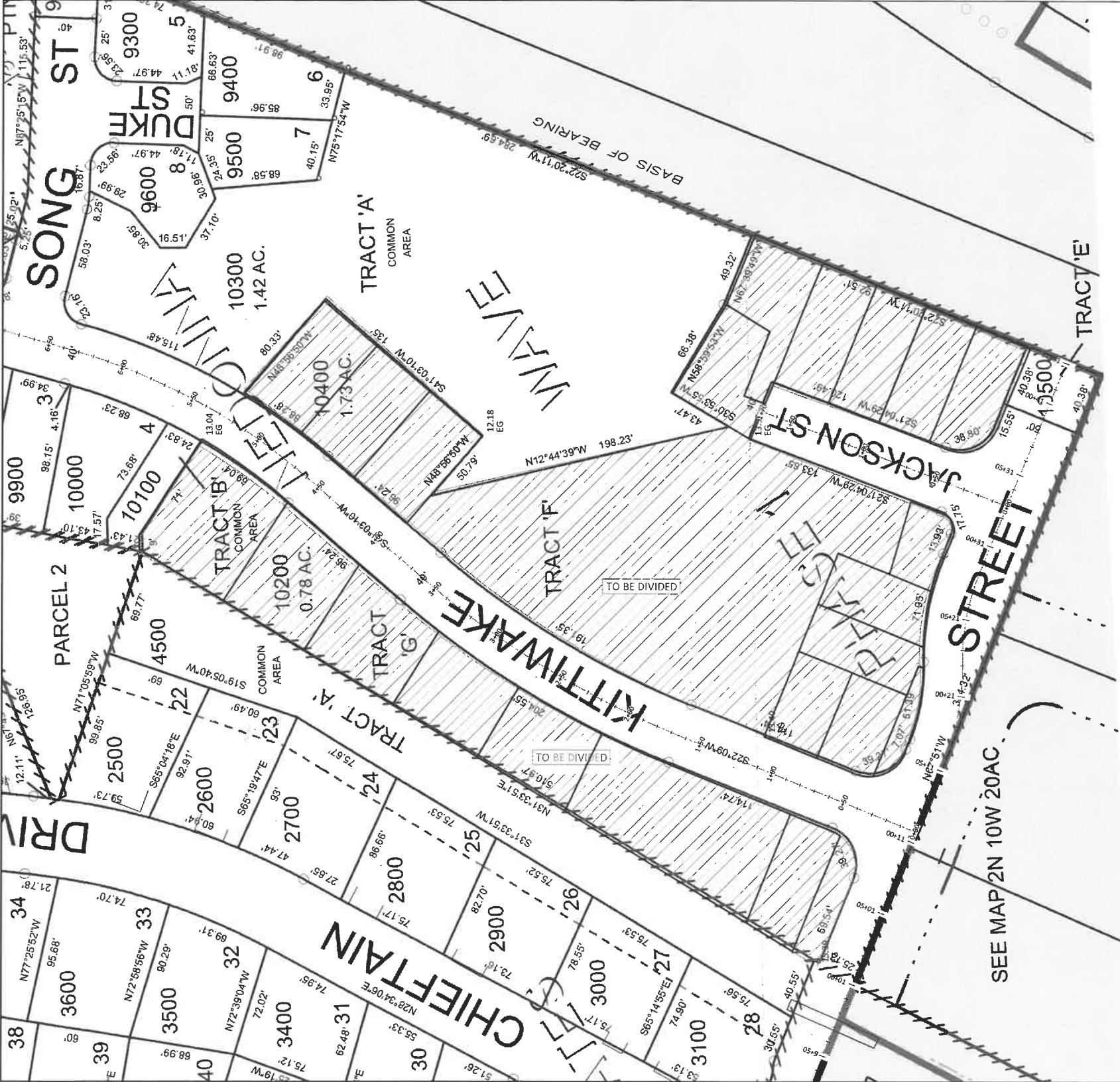


MORGAN CIVIL
ENGINEERING, INC.
PO BOX 358
MANZANITA, OR 97130
(503) 801-6016
www.morgancivil.com

REGISTERED PROFESSIONAL
ENGINEER
63055
JASON R. MORGAN
RENEWAL DATE: DECEMBER 31, 2029

NEDONNA DEVELOPMENT, LLC
NEDONNA WAVE - PHASE 2
COVER SHEET

SHEET
1
OF SIX

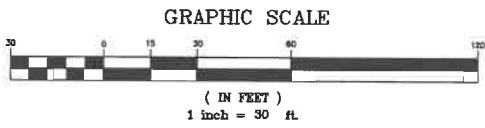


NEDONNA DEVELOPMENT, LLC
NEDONNA WAVE PHASE 2
TENTATIVE PLAN
MAP 2N 10W 20AB

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

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

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



**MORGAN CIVIL
ENGINEERING, INC.**
• CIVIL ENGINEERING
• INSPECTION
• PLANNING
PO BOX 358
MANZANITA, OR 97130
(503) 801-6016
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JOB NO. 2009-001
DATE NOV. 8, 2020
**REGISTERED PROFESSIONAL
ENGINEER
63065**
OREGON
JANUARY 15, 2005
JASON R. MORGAN
RENEWAL DATE: DECEMBER 31, 2020

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

SHEET
2
OF SIX

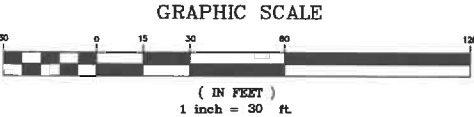


LEGEND:

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

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

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



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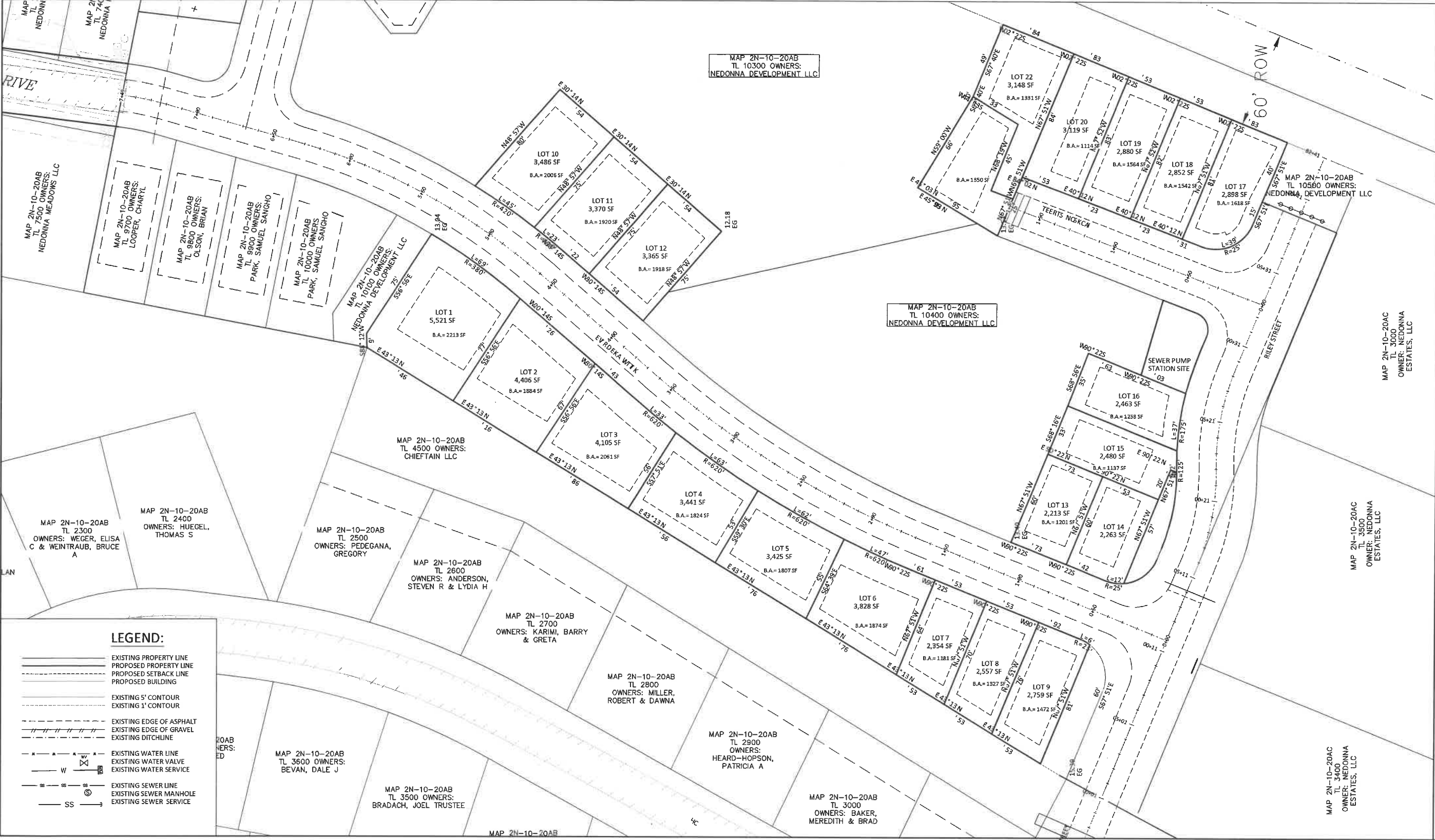
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REGISTERED PROFESSIONAL
ENGINEER
JASON R. MORGAN
NOV. 8, 2020

NEDONNA DEVELOPMENT, LLC
NEDONNA WAVE - PHASE 2
LOT DIMENSIONS

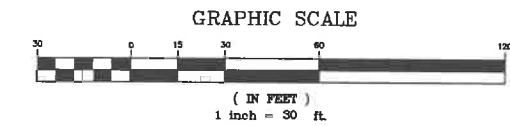
SHEET
3
OF SIX



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

1
4

UTILITY LAYOUT
SCALE: 1"=30"



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JOB NO.
#20-09-SON
DATE
NOV. 8, 2020



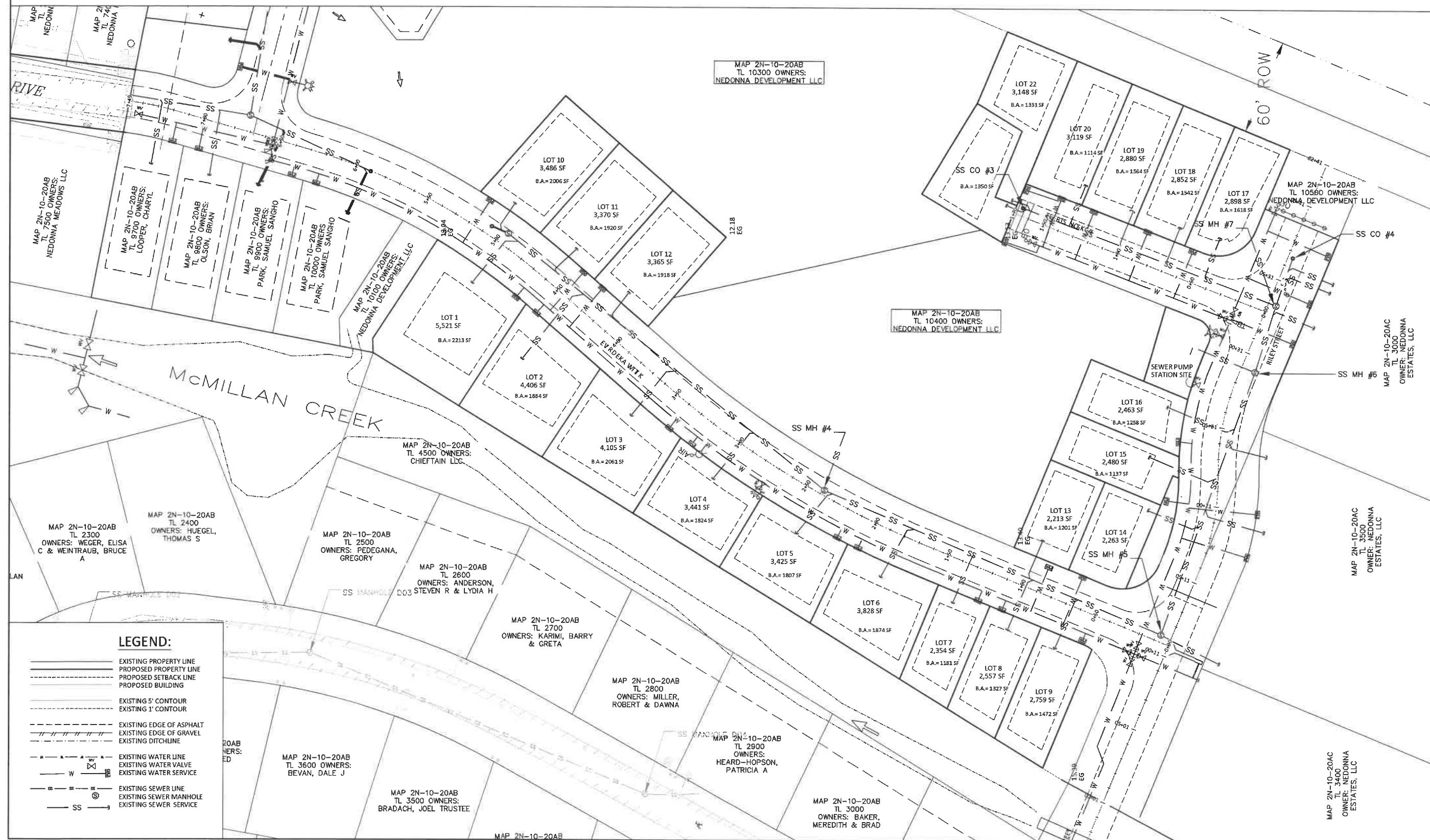
RENEWAL DATE: DECEMBER 31, 2020

NEDONNA DEVELOPMENT, LLC
NEDONNA WAVE - PHASE 2
UTILITY LAYOUT

SHEET

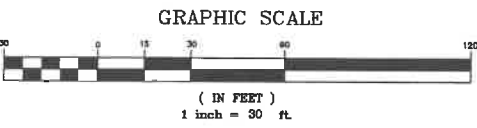
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OF SIX



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

1
5
PROPOSED BUILDING DIMENSIONS
SCALE: 1"=30"



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• INSPECTION
• PLANNING

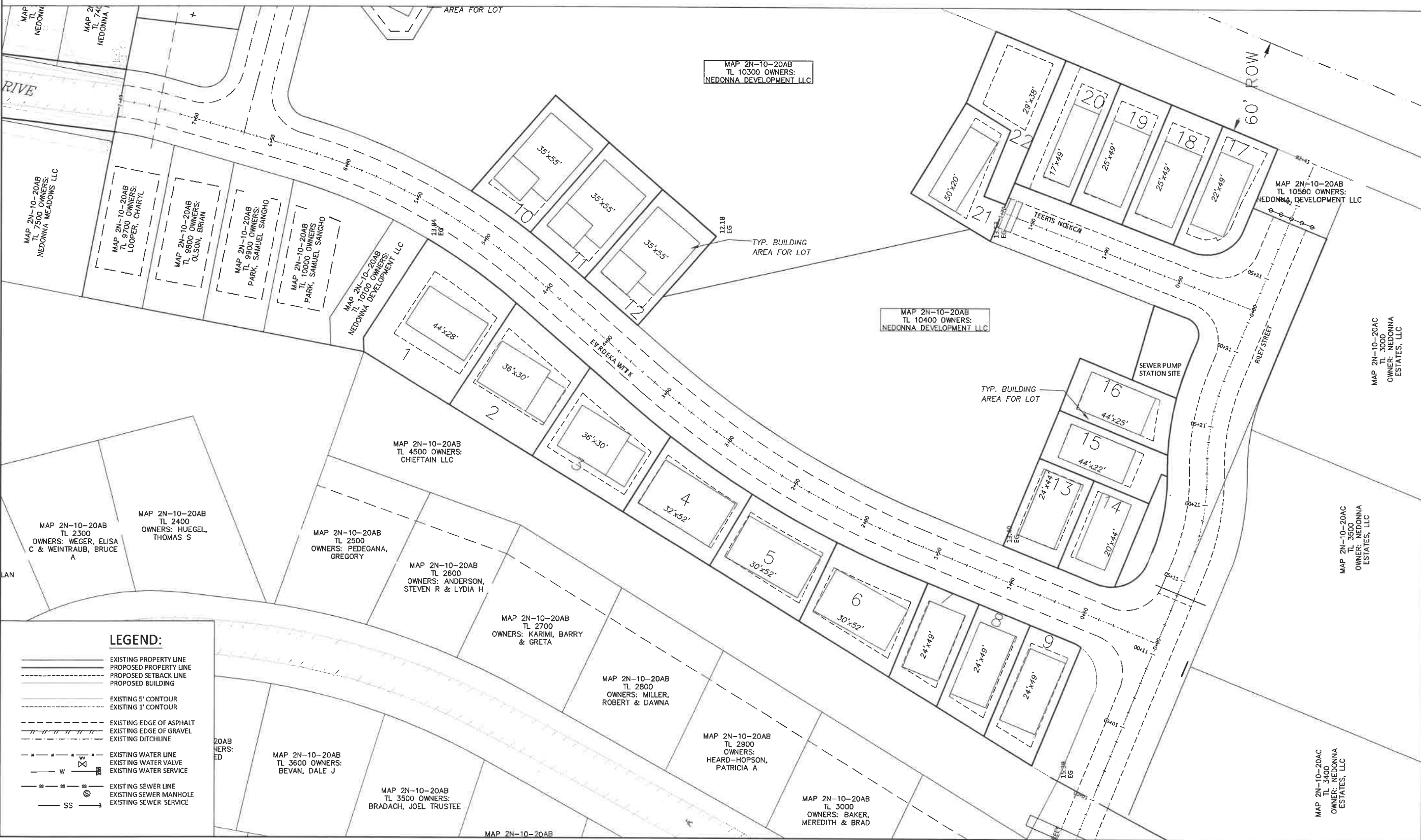
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JOB NO. 2020-001
DATE NOV. 8, 2020



NEDONNA DEVELOPMENT, LLC
NEDONNA WAVE - PHASE 2
BUILDING LAYOUT

SHEET
5
OF SIX



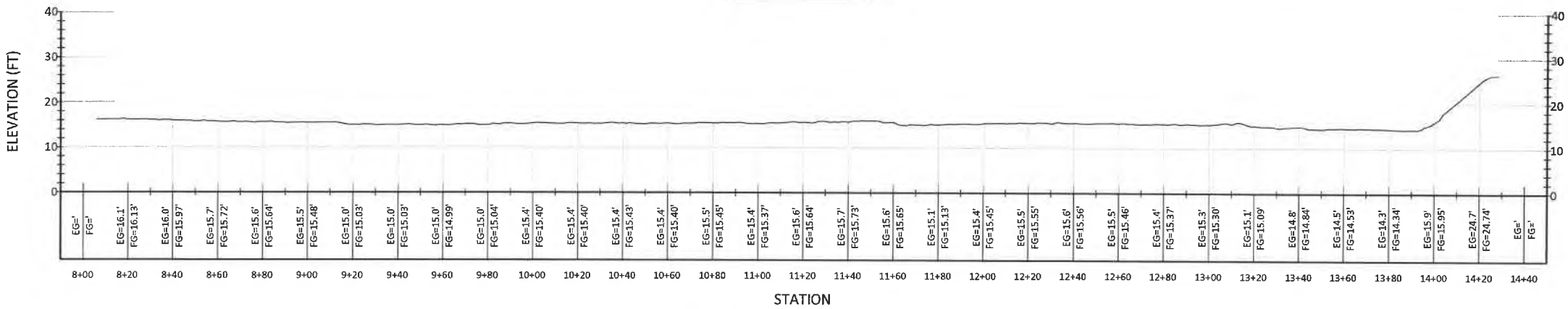
LEGEND:

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

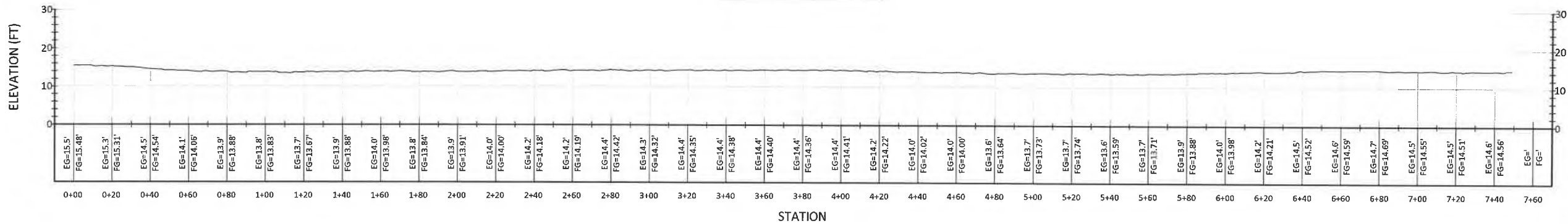
NEDONNA DEVELOPMENT, LLC
NEDONNA WAVE PHASE 2
TENTATIVE PLAN
MAP 2N 10W 20AB

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

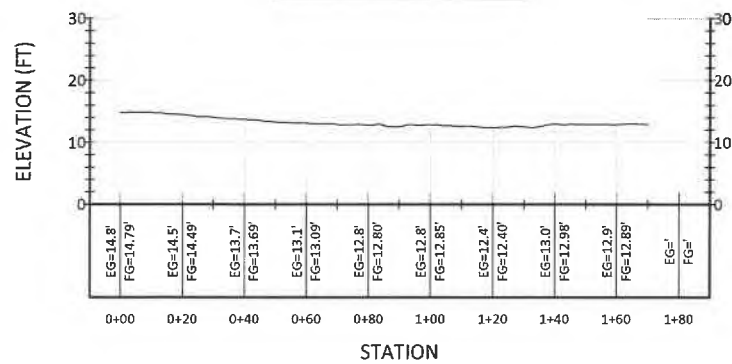
RILEY STREET



KITTIWAKE DRIVE



JACKSON STREET



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NEDONNA DEVELOPMENT, LLC
NEDONNA WAVE - PHASE 2
ROAD PROFILES

AFTER RECORDING RETURN TO:

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

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

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

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

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

RECITALS

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

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

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

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

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

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

ARTICLE 1 DEFINITIONS

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

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

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

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

1.4 **"Board"** shall mean the Board of Directors of the Association.

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

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

1.7 **"City"** shall mean the City of Rockaway Beach.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

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

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

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

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

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

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

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

ARTICLE 3 NO ARCHITECTURAL CONTROL COMMITTEE

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

ARTICLE 4 USE OF PROPERTY/DEVELOPMENT CONTROLS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 COMMON OPEN SPACES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 6 EASEMENTS AND MAINTENANCE

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

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

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

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

ARTICLE 7 ARCHITECTURAL DESIGN STANDARDS

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

7.2 **Specific Standards.**

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 8 PROPERTY MAINTENANCE COVENANTS

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

ARTICLE 9 AMENDMENT AND REPEAL

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

9.2 Amendment and Repeal.

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

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

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

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

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

ARTICLE 10 DECLARANT'S SPECIAL RIGHTS

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

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

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

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

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

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

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

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

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

ARTICLE 11 ASSOCIATION

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

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

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

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

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

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

ARTICLE 12

ENFORCEMENT

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

ARTICLE 13 MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

NEDONNA DEVELOPMENT, LLC:

State of Oregon)
County of Multnomah)

Notary Public for Oregon
My commission expires _____

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

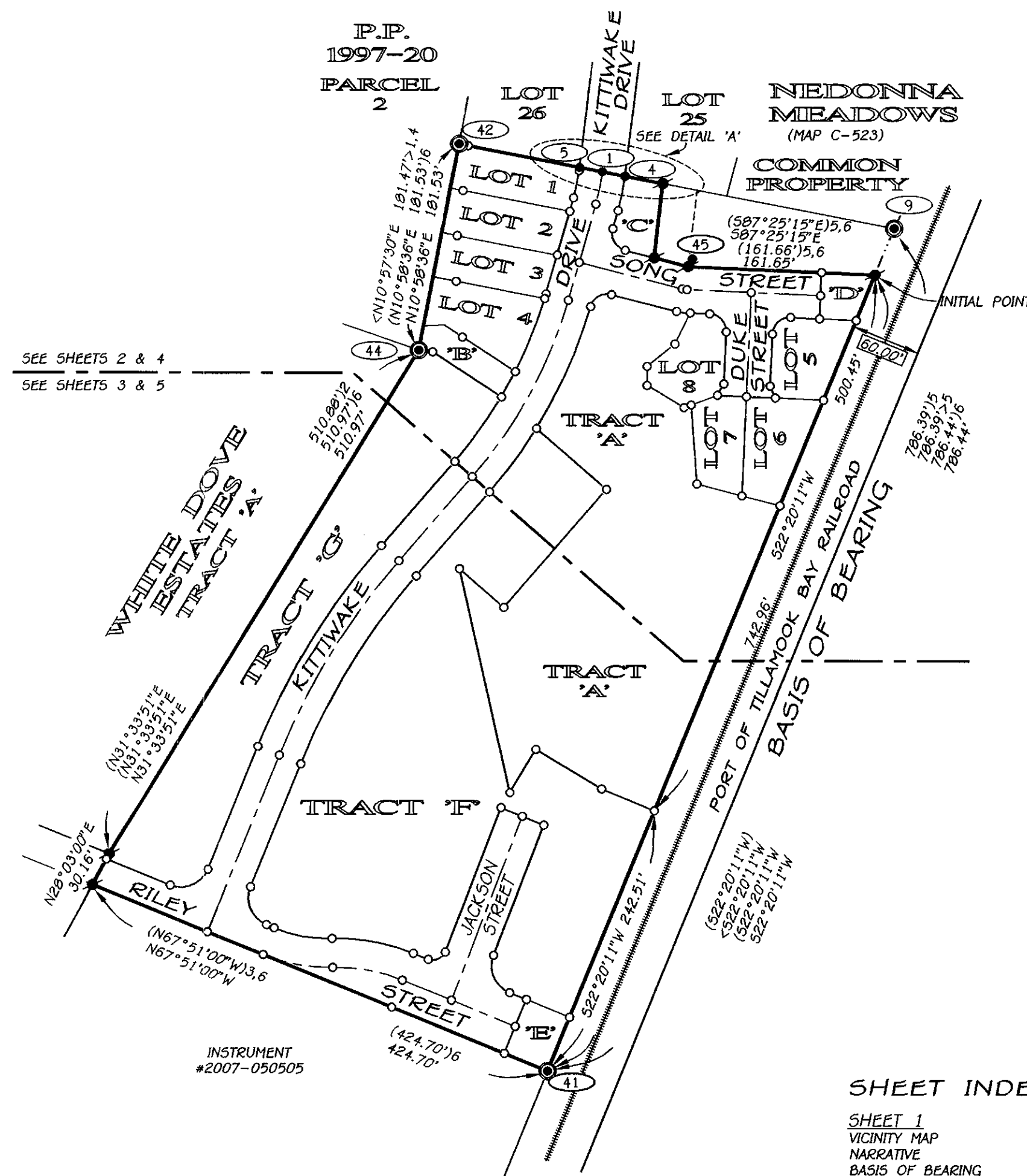
Date

NEDONNA WAVE PHASE 1

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

DECEMBER 31, 2008

SHEET 1 of 6



VICINITY MAP

SHEET INDEX

SHEET 1
VICINITY MAP
NARRATIVE
BASIS OF BEARING
MONUMENT NOTES
LEGEND
SHEET INDEX

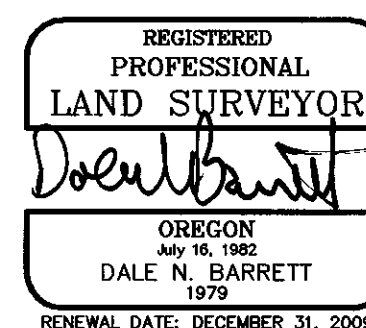
SHEET 2
LOT CONFIGURATION
DETAIL 'A'
CURVE TABLE
LINE TABLE
LEGEND

SHEET 3
LOT CONFIGURATION
CURVE TABLE
LINE TABLE
LEGEND

SHEET 4
EASEMENT MAP
EASEMENTS CREATED BY THIS PLAT
EASEMENTS OF RECORD
LEGEND

SHEET 5
EASEMENT MAP
EASEMENTS CREATED BY THIS PLAT
LEGEND

SHEET 6
SURVEYOR'S CERTIFICATE
DECLARATION
APPROVALS
CERTIFICATE OF COUNTY CLERK
COVENANTS, CONDITIONS & RESTRICTIONS



NARRATIVE

THIS SURVEY WAS CONDUCTED AS A REPLAT OF PARCEL 1, PARTITION PLAT 1996-59 AND PARCEL 3, PARTITION PLAT 1997-57 AS DESCRIBED IN INSTRUMENT #2006-000917 & INSTRUMENT #2006-000919, TILLAMOOK COUNTY DEED RECORDS. THE PURPOSE OF THIS SURVEY IS TO SUBDIVIDE THE SUBJECT PROPERTY INTO THE 8 LOTS AND TRACTS 'A', 'B', 'C', 'D', 'E', 'F' AND 'G' AS SHOWN HEREON, AS PER THE CLIENT'S REQUEST. THE WESTERLY AND NORTHERLY LINES AND PORTIONS OF THE EASTERLY AND SOUTHERLY LINES OF THE SUBJECT PROPERTY WERE HELD AS PER MAP B-3002, TILLAMOOK COUNTY SURVEY RECORDS.

BASIS OF BEARING

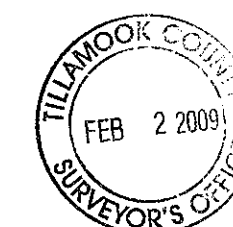
THE LINE BETWEEN THE FOUND MONUMENTS (9) AND (41) BEARS SOUTH 22°20'11" WEST, PER THE RECORD VALUE FROM PARTITION PLAT 1996-59 (MAP P-362), TILLAMOOK COUNTY PLAT RECORDS.

MONUMENT NOTES

- (1) FOUND 5/8" REBAR WITH PLASTIC CAP STAMPED "C. WAYNE COOK PLS 1098" FLUSH IN ASPHALT, AT THE CENTERLINE OF KITTIWAKE DRIVE, NEDONNA MEADOWS, HELD AS ORIGINAL MONUMENT FROM MAP C-523, TILLAMOOK COUNTY PLAT RECORDS.
- (4) FOUND 5/8" REBAR WITH PLASTIC CAP STAMPED "C. WAYNE COOK PLS 1098" FLUSH IN GROUND, AT THE SOUTHWEST CORNER OF LOT 25, NEDONNA MEADOWS, HELD AS ORIGINAL MONUMENT FROM MAP C-523, TILLAMOOK COUNTY PLAT RECORDS.
- (5) FOUND 5/8" REBAR WITH PLASTIC CAP STAMPED "C. WAYNE COOK PLS 1098" FLUSH IN GROUND, AT THE SOUTHEAST CORNER OF LOT 26, NEDONNA MEADOWS, HELD AS ORIGINAL MONUMENT FROM MAP C-523, TILLAMOOK COUNTY PLAT RECORDS.
- (9) FOUND 5/8" REBAR WITH PLASTIC CAP STAMPED "C. WAYNE COOK PLS 1098" FLUSH IN GROUND, HELD AS AN ORIGINAL MONUMENT FROM MAP C-523, TILLAMOOK COUNTY PLAT RECORDS.
- (41) FOUND 5/8" REBAR WITH PLASTIC CAP STAMPED "DON MARX PLS 332" 0.3' ABOVE GROUND, HELD AS AN ORIGINAL MONUMENT FROM MAP P-362, TILLAMOOK COUNTY SURVEY RECORDS.
- (42) FOUND 5/8" REBAR WITH ILLEGIBLE PLASTIC CAP FLUSH IN GROUND, HELD AS AN ORIGINAL MONUMENT FROM MAP C-523, TILLAMOOK COUNTY PLAT RECORDS.
- (44) FOUND 5/8" REBAR WITH PLASTIC CAP STAMPED "DON MARX PLS 332" 0.3' ABOVE GROUND, HELD AS AN ORIGINAL MONUMENT FROM MAP P-280, TILLAMOOK COUNTY SURVEY RECORDS.
- (45) FOUND 5/8" REBAR WITH PLASTIC CAP STAMPED "DON MARX PLS 332" 0.9' ABOVE GROUND, 0.26' NORTH AND 0.51' EAST OF CALCULATED POSITION. SEE MAP P-362, TILLAMOOK COUNTY SURVEY RECORDS.

LEGEND

- INDICATES SET 5/8" X 40" REBAR WITH PLASTIC CAP STAMPED "HLB OTAK INC".
- INDICATES SET 5/8" X 20" REBAR WITH PLASTIC CAP STAMPED "HLB OTAK INC".
- INDICATES MONUMENT FOUND AS NOTED HEREON, HELD FOR CONTROL.
- INDICATES FOUND 5/8" REBAR WITH PLASTIC CAP STAMPED "HLB & ASSOC INC", IN CALCULATED POSITION. SEE MAP B-3002, TILLAMOOK COUNTY SURVEY RECORDS.
- INDICATES MONUMENT FOUND AS NOTED HEREON.
- () INDICATES RECORD VALUE FROM MAP C-523, TILLAMOOK COUNTY PLAT RECORDS.
- () INDICATES RECORD VALUE FROM MAP P-280, TILLAMOOK COUNTY SURVEY RECORDS.
- () INDICATES RECORD VALUE FROM MAP P-362, TILLAMOOK COUNTY SURVEY RECORDS.
- () INDICATES RECORD VALUE FROM MAP P-389, TILLAMOOK COUNTY SURVEY RECORDS.
- () INDICATES RECORD VALUE FROM MAP P-426, TILLAMOOK COUNTY SURVEY RECORDS.
- () INDICATES RECORD VALUE FROM MAP B-3002, TILLAMOOK COUNTY SURVEY RECORDS.
- < > INDICATES CALCULATED VALUE.
- NO () OR < > INDICATES MEASURED VALUE.



"SONG" #A2005
5403Y132.DWG



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

CLATSOP COUNTY
4253-A HWY 101 N.
GEARHART, OR 97130
(503) 738-3425
FAX: (503) 738-7455

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

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

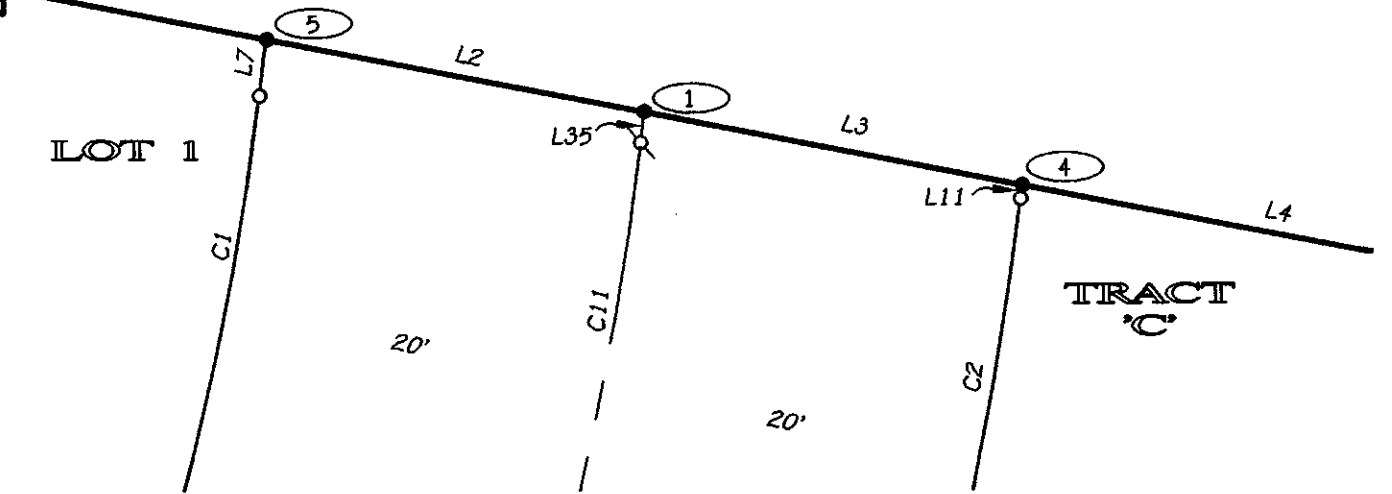
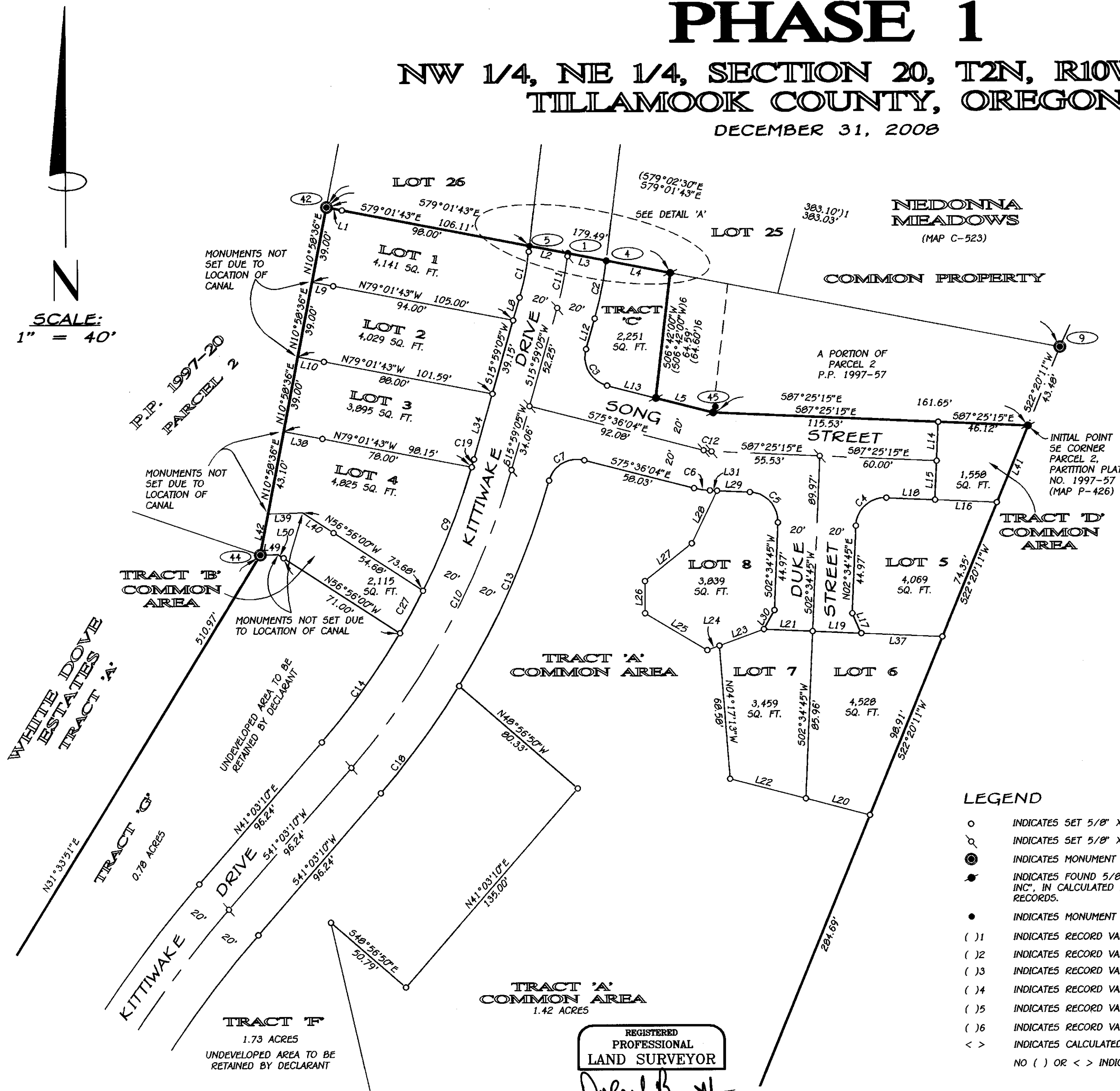
WWW.HLB-OTAK.COM

NEDONNA WAVE PHASE 1

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

DECEMBER 31, 2008

SHEET 2 of 6



DETAIL 'A'
1" = 10'

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

LINE	BEARING	LENGTH
L1	S79°01'43"E	8.11'
L2	S79°01'43"E	20.05'
(L2)1	S79°02'30"E	20.05'
L3	S79°01'43"E	20.05'
(L3)1	S79°02'30"E	20.05'
L4	S79°01'43"E	33.30'
(L4)6	S79°01'43"E	33.30'
L5	S75°36'04"E	30.27'
(L5)6	S75°36'04"E	30.27'
L6	N28°03'00"E	25.13'
L7	S07°07'27"W	2.94'
L8	S15°59'05"W	12.17'
L9	S79°01'43"E	11.00'
L10	S79°01'43"E	13.59'
L11	N07°07'27"E	0.25'
L12	N15°59'05"E	16.27'
L13	N75°36'04"W	25.83'
L14	N02°34'45"E	20.00'
L15	N02°34'45"E	20.00'
L16	S87°25'15"E	31.76'
L17	N23°59'09"W	11.18'
L18	S87°25'15"E	25.00'
L19	S87°25'15"E	25.00'
L20	N75°17'54"W	33.95'
L21	S87°25'15"E	25.00'
L22	N75°17'54"W	40.15'
L23	N69°46'31"E	24.35'
L24	S69°46'31"W	6.61'
L25	N59°05'58"W	37.10'
L26	N00°00'00"E	16.51'
L27	N51°17'52"E	30.85'
L28	N25°56'26"E	29.99'
L29	S87°25'15"E	16.87'
L30	S29°08'39"W	11.18'
L31	S87°25'15"E	3.66'
L32	N28°03'00"E	5.03'
L33	S67°51'00"E	7.07'
L34	S15°59'05"W	34.99'
L35	S07°07'27"W	1.60'
L36	S67°51'00"E	59.54'
L37	S87°25'15"E	41.63'
L38	N79°01'43"W	20.15'
L39	S88°12'04"W	17.57'
L40	N56°56'00"W	19.00'
L41	S22°20'11"W	42.50'
L42	N10°58'36"E	21.43'
L43	S67°51'00"E	13.93'
L44	S67°51'00"E	20.00'
L45	S67°51'00"E	20.00'
L46	S67°51'00"E	15.55'
L47	N22°20'11"E	25.00'
L48	N22°20'11"E	25.00'
L49	S88°12'04"W	9.00'
L50	N56°56'00"W	3.51'

LEGEND

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- < > INDICATES CALCULATED VALUE.
- NO () OR < > INDICATES MEASURED VALUE.

REGISTERED
PROFESSIONAL
LAND SURVEYOR
Daniel Barrett
OREGON
JULY 16, 1982
DALE N. BARRETT
1979
RENEWAL DATE: DECEMBER 31, 2009



"SONG" #A2005
5403Y132.DWG



PACIFIC COUNTY
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FAX: (360) 642-4054

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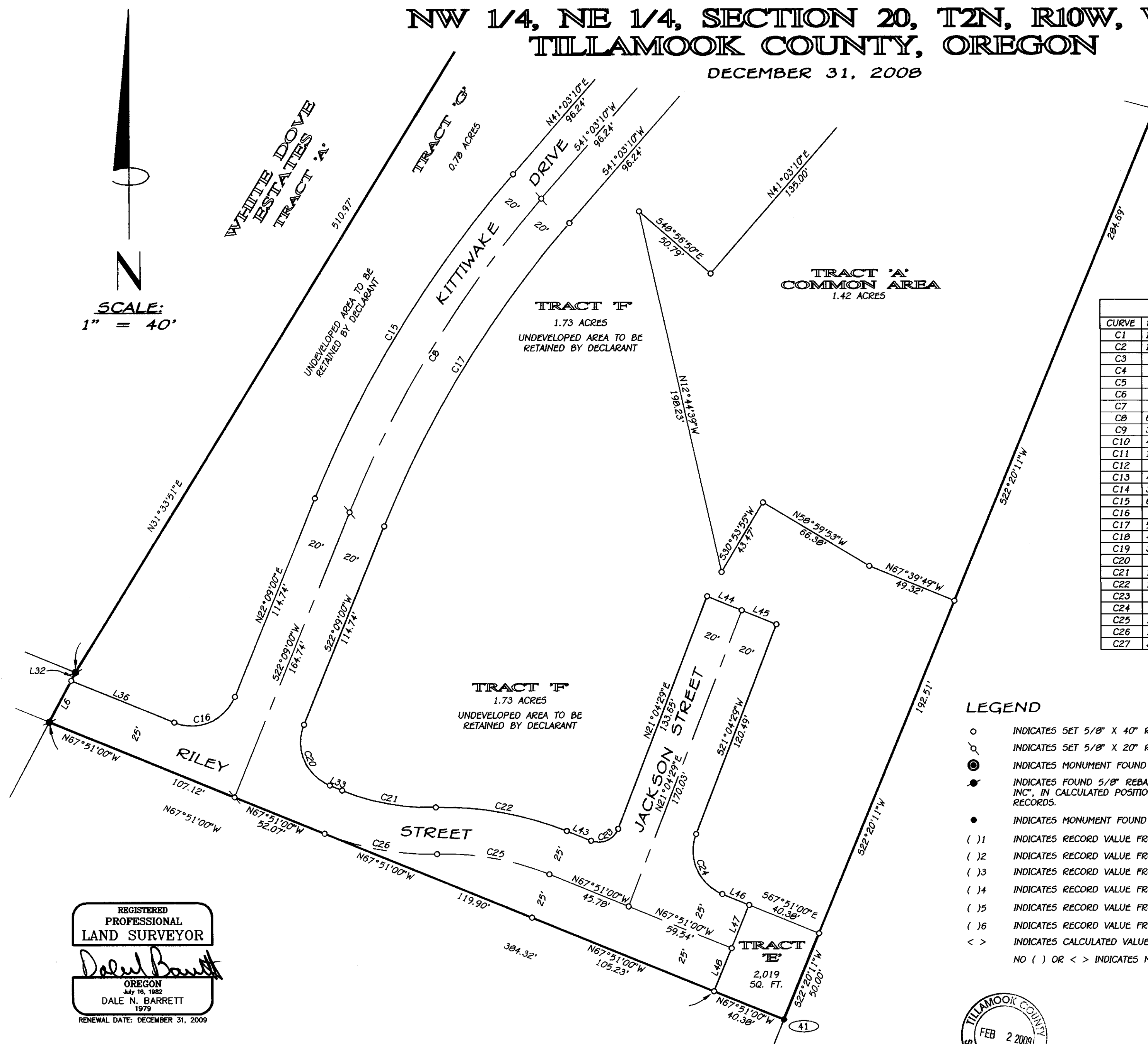
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NEDONNA WAVE PHASE 1

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

DECEMBER 31, 2008

SHEET 3 of 6



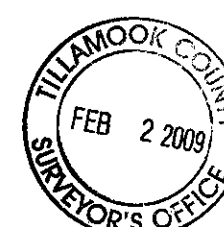
CURVE TABLE						
CURVE	RADIUS	LENGTH	DELTA	CH. BEARING	CH. LENGTH	
C1	155.00'	23.97'	0°51'38"	S11°33'16"W	23.95'	
C2	195.00'	30.16'	0°51'38"	N11°33'16"E	30.13'	
C3	15.00'	23.98'	91°35'09"	N29°48'30"W	21.50'	
C4	15.00'	23.56'	90°00'00"	N47°34'45"E	21.21'	
C5	15.00'	23.56'	90°00'00"	S42°25'15"E	21.21'	
C6	40.00'	8.25'	11°49'11"	S01°30'40"E	8.24'	
C7	15.01'	23.16'	00°24'51"	N60°11'32"E	20.93'	
C8	600.00'	197.95'	10°54'10"	S31°36'05"W	197.05'	
C9	380.00'	60.23'	10°17'15"	S21°45'20"W	60.14'	
C10	400.00'	175.01'	25°04'05"	S28°31'08"W	173.62'	
C11	175.00'	27.06'	0°51'38"	S11°33'16"W	27.04'	
C12	20.00'	4.13'	11°49'11"	S01°30'40"E	4.12'	
C13	420.00'	115.48'	15°45'11"	N23°51'40"E	115.11'	
C14	380.00'	69.04'	10°24'37"	S35°50'52"W	60.95'	
C15	620.00'	204.55'	18°54'10"	N31°36'05"E	203.62'	
C16	25.00'	39.27'	90°00'00"	N67°09'00"E	35.36'	
C17	580.00'	191.35'	18°54'10"	S31°36'05"W	190.49'	
C18	420.00'	60.20'	9°18'55"	S36°23'43"W	60.21'	
C19	380.00'	4.16'	0°37'38"	S16°17'54"W	4.16'	
C20	25.00'	39.27'	90°00'00"	S22°51'00"E	35.36'	
C21	125.00'	51.39'	23°33'23"	S79°37'42"E	51.03'	
C22	175.00'	71.95'	23°33'23"	S79°37'42"E	71.44'	
C23	11.17'	17.75'	91°04'32"	N66°36'44"E	15.94'	
C24	25.00'	30.80'	00°55'29"	S23°23'16"E	35.02'	
C25	150.00'	61.67'	23°33'23"	S79°37'42"E	61.24'	
C26	150.00'	61.67'	23°33'23"	S79°37'42"E	61.24'	
C27	380.00'	24.83'	3°44'36"	S28°46'16"W	24.82'	

LINE TABLE		
LINE	BEARING	LENGTH
L1	S79°01'43"E	8.11'
L2	S79°01'43"E	20.05'
(L2)1	S79°02'30"E	20.05'
L3	S79°01'43"E	20.05'
(L3)1	S79°02'30"E	20.05'
L4	S79°01'43"E	33.30'
(L4)6	S79°01'43"E	33.30'
L5	S75°36'04"E	30.27'
(L5)6	S75°36'04"E	30.27'
L6	N28°03'00"E	25.13'
L7	S07°07'27"W	2.94'
L8	S15°59'05"W	12.17'
L9	S79°01'43"E	11.00'
L10	S79°01'43"E	13.59'
L11	N07°07'27"E	0.25'
L12	N15°59'05"E	16.27'
L13	N75°36'04"W	25.83'
L14	N02°34'45"E	20.00'
L15	N02°34'45"E	20.00'
L16	S87°25'15"E	31.76'
L17	N23°59'09"W	11.18'
L18	S87°25'15"E	25.00'
L19	S87°25'15"E	25.00'
L20	N75°17'54"W	33.95'
L21	S87°25'15"E	25.00'
L22	N75°17'54"W	40.15'
L23	N69°46'31"E	24.35'
L24	S69°46'31"W	6.61'
L25	N59°05'58"W	37.10'
L26	N00°00'00"E	16.51'
L27	N51°17'52"E	30.85'
L28	N25°56'26"E	29.99'
L29	S87°25'15"E	16.87'
L30	S29°08'39"W	11.18'
L31	S87°25'15"E	3.66'
L32	N28°03'00"E	5.03'
L33	S67°51'00"E	7.07'
L34	S15°59'05"W	34.99'
L35	S07°07'27"W	1.60'
L36	S67°51'00"E	59.54'
L37	S87°25'15"E	41.63'
L38	N79°01'43"W	20.15'
L39	S88°12'04"W	17.57'
L40	N56°56'00"W	19.00'
L41	S22°20'11"W	42.50'
L42	N10°58'36"E	21.43'
L43	S67°51'00"E	13.93'
L44	S67°51'00"E	20.00'
L45	S67°51'00"E	20.00'
L46	S67°51'00"E	15.55'
L47	N22°20'11"E	25.00'
L48	N22°20'11"E	25.00'
L49	S88°12'04"W	9.00'
L50	N56°56'00"W	3.51'

LEGEND

- INDICATES SET 5/8" X 40" REBAR WITH PLASTIC CAP STAMPED "HLB OTAK INC".
- INDICATES SET 5/8" X 20" REBAR WITH PLASTIC CAP STAMPED "HLB OTAK INC".
- INDICATES MONUMENT FOUND AS NOTED HEREON, HELD FOR CONTROL.
- INDICATES FOUND 5/8" REBAR WITH PLASTIC CAP STAMPED "HLB & ASSOC INC", IN CALCULATED POSITION. SEE MAP B-3002, TILLAMOOK COUNTY SURVEY RECORDS.
- INDICATES MONUMENT FOUND AS NOTED HEREON.
- () INDICATES RECORD VALUE FROM MAP C-523, TILLAMOOK COUNTY PLAT RECORDS.
- () INDICATES RECORD VALUE FROM MAP P-280, TILLAMOOK COUNTY SURVEY RECORDS.
- () INDICATES RECORD VALUE FROM MAP P-362, TILLAMOOK COUNTY SURVEY RECORDS.
- () INDICATES RECORD VALUE FROM MAP P-389, TILLAMOOK COUNTY SURVEY RECORDS.
- () INDICATES RECORD VALUE FROM MAP P-426, TILLAMOOK COUNTY SURVEY RECORDS.
- () INDICATES RECORD VALUE FROM MAP B-3002, TILLAMOOK COUNTY SURVEY RECORDS.
- < > INDICATES CALCULATED VALUE.
- NO () OR < > INDICATES MEASURED VALUE.

REGISTERED
PROFESSIONAL
LAND SURVEYOR
Dale N. Barrett
OREGON
JULY 16, 1982
DALE N. BARRETT
1978
RENEWAL DATE: DECEMBER 31, 2009



"SONG" #A2005
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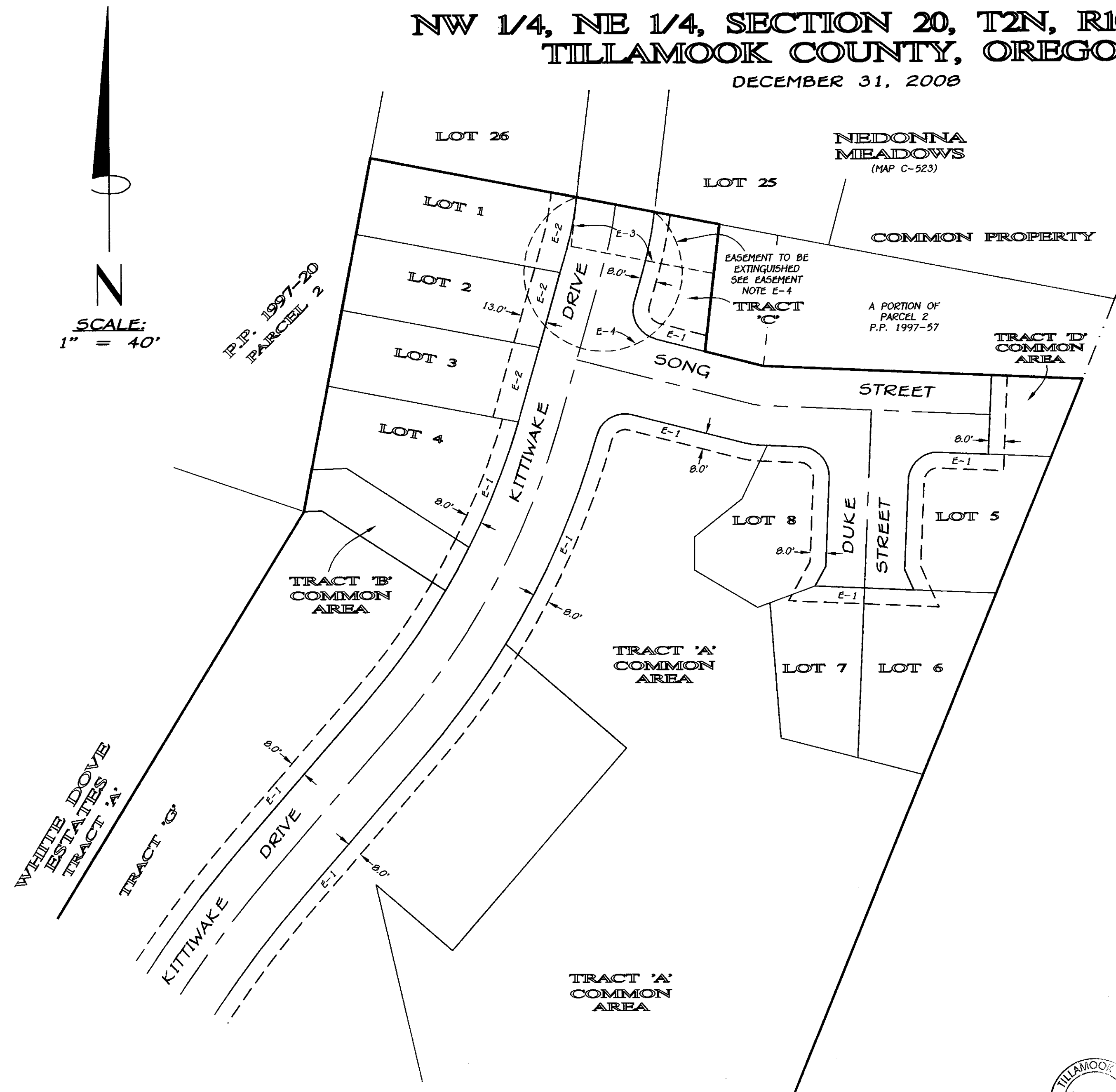
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NEDONNA WAVE PHASE 1

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

DECEMBER 31, 2008

SHEET 4 of 6



EASEMENTS CREATED BY THIS PLAT

E-1 - 8.0 FOOT WIDE NON-EXCLUSIVE UTILITY EASEMENT INCLUDING, BUT NOT LIMITED TO POWER, CABLE TV, TELEPHONE, SEWER, STORM DRAINAGE, AND WATER SERVICES.

E-2 - 13.0 FOOT WIDE NON-EXCLUSIVE UTILITY EASEMENT INCLUDING, BUT NOT LIMITED TO POWER, CABLE TV, TELEPHONE, SEWER, STORM DRAINAGE, AND WATER SERVICES.

E-5 - A DRAINAGE EASEMENT IS HEREBY CREAED OVER ALL OF TRACTS A, B, AND D.

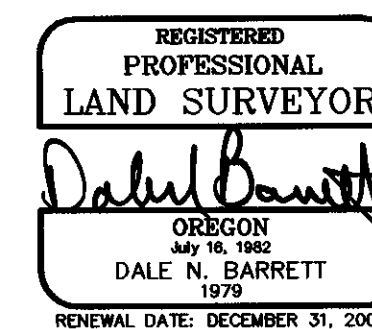
EASEMENTS OF RECORD

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

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

LEGEND

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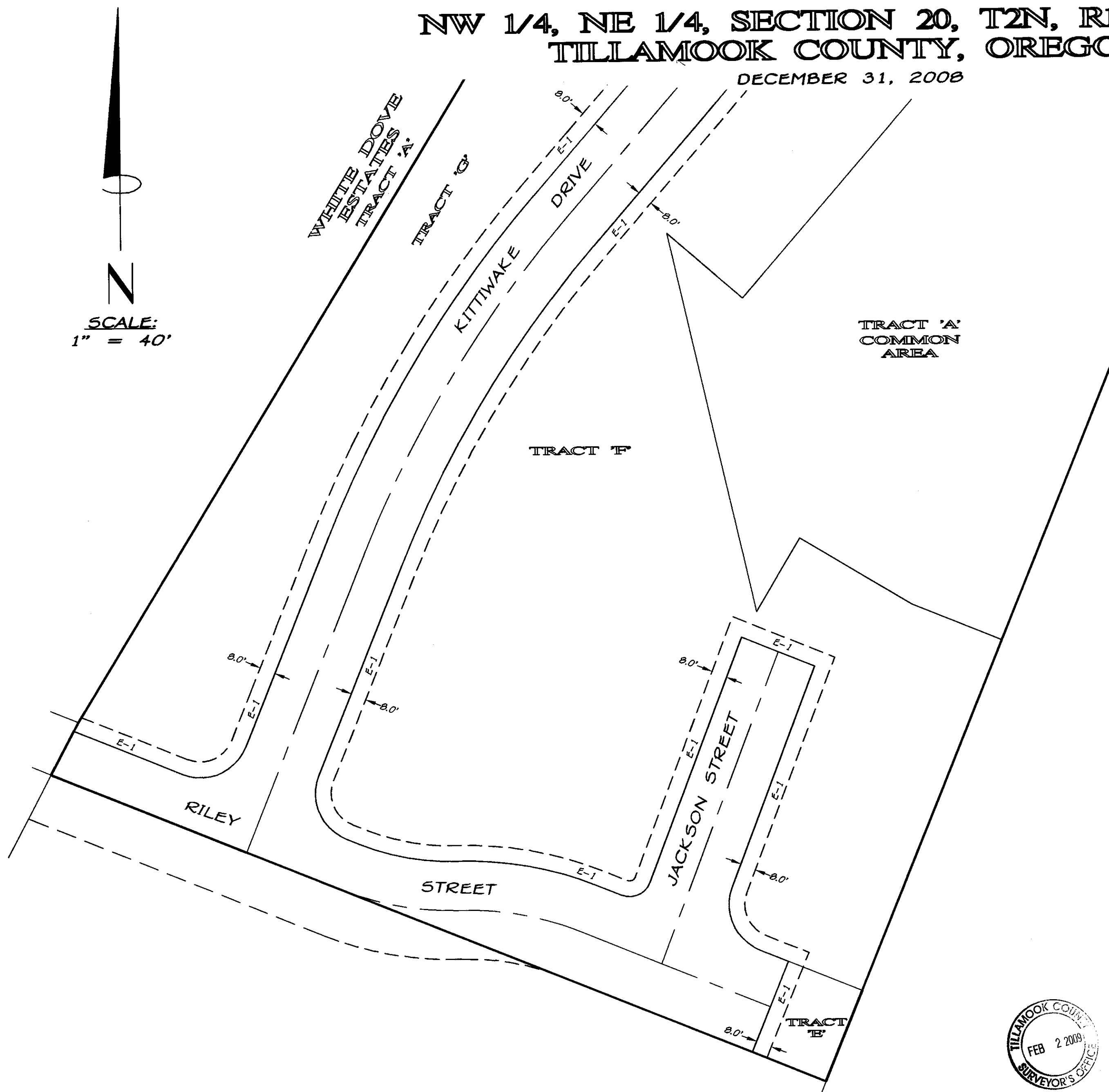
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NEDONNA WAVE PHASE 1

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

SHEET 5 of 6

DECEMBER 31, 2008



EASEMENTS CREATED BY THIS PLAT

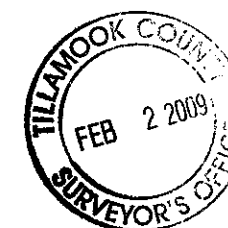
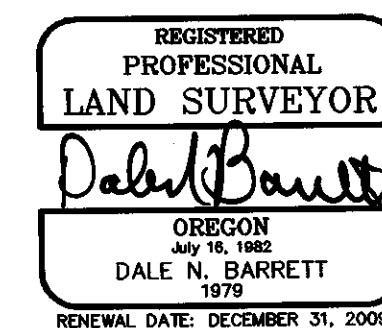
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- ()5 INDICATES RECORD VALUE FROM MAP P-426, TILLAMOOK COUNTY SURVEY RECORDS.
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TILLAMOOK COUNTY, OREGON

DECEMBER 31, 2008

SHEET 6 of 6

SURVEYOR'S CERTIFICATE

I, DALE N. BARRETT, CERTIFY THAT:

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

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

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

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

Dale N. Barrett
DALE N. BARRETT, PLS 1979

DECLARATION

KNOW ALL PERSONS BY THESE PRESENTS THAT NEDONNA DEVELOPMENT, LLC, A LIMITED LIABILITY COMPANY, BEING THE OWNER OF THE LAND HEREIN DESCRIBED, DOES HEREBY MAKE, ESTABLISH AND DECLARE THE ANNEXED MAP OF "NEDONNA WAVE PHASE 1", AS DESCRIBED IN THE ACCOMPANYING SURVEYOR'S CERTIFICATE, TO BE A TRUE AND CORRECT MAP AND PLAT THEREOF, ALL LOTS AND TRACTS BEING DIMENSIONS SHOWN ON SAID MAP, AND THAT ALL STREETS WITHIN THIS PLAT ARE HEREBY DEDICATED TO THE PUBLIC FOREVER.

EASEMENTS E-1, E-2 AND E-5 ARE CREATED FOR THE PURPOSES STATED HEREON. TRACTS A, B AND D ARE HEREBY DEDICATED AS COMMON OPEN SPACES AS DEFINED IN THE COVENANTS, CONDITIONS AND RESTRICTIONS FOR NEDONNA WAVE SUBDIVISION.

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

ACKNOWLEDGMENT

STATE OF OREGON >
COUNTY OF TILLAMOOK > S.S.

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

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

Debbie Carr
PRINTED NAME OF NOTARY PUBLIC

NOTARY PUBLIC - OREGON COMMISSION NO.: 402614

MY COMMISSION EXPIRES ON THE 9 DAY
OF March, 2010

APPROVALS

STATE OF OREGON >
COUNTY OF TILLAMOOK > S.S.

EXAMINED AND APPROVED BY THE FOLLOWING:

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

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

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

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

Pat Sherman 01-30-09
CITY PLANNING COMMISSION CHAIRPERSON, DATE
CITY OF ROCKAWAY BEACH

Twin Lutz 1-30-2009
TILLAMOOK COUNTY ASSESSOR DATE

OTM at 2-2-2009
TILLAMOOK COUNTY COMMISSIONER DATE

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

M. P. Lutz 1-30-09
CITY ENGINEER, DATE
CITY OF ROCKAWAY BEACH

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

CERTIFICATE OF COUNTY CLERK

STATE OF OREGON >
COUNTY OF TILLAMOOK > S.S.

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

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

STATE OF OREGON >
COUNTY OF TILLAMOOK > S.S.

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

Tassi O'Neil
TASSI O'NEIL, COUNTY CLERK

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

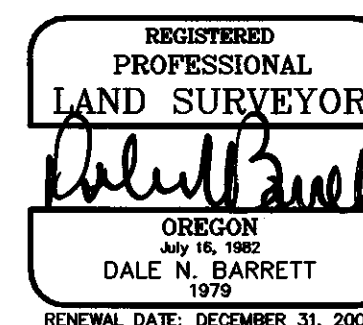
Dale N. Barrett
DALE N. BARRETT, PLS 1979

COVENANTS, CONDITIONS & RESTRICTIONS

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

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

SEE INSTRUMENT #2009-000168 TILLAMOOK COUNTY DEED RECORDS FOR DECLARATION DEED RESTRICTIONS/RESTRICTIVE COVENANT (AGREEMENT FOR IMPROVEMENTS).



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

Planned Unit Development (PUD #24-01)

Received as 6/13/2024

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

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

Date: 6/10/2024

Subject: Written public comments regarding PUD-24-1

Dear City of Rockaway Beach,

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

Issue #1:

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

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

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

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

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

Issue #2:

I believe that this development will be in violation of RBZO 3.092, section 2. The entire White Dove neighborhood is already under substantial flood pressure from McMillan creek which runs between my lot and tax lot 10200.

Homes on lots #1-16 will reduce direct rainwater absorption into the ground, which will result in more rain runoff into McMillan creek, worsening the existing flooding risk. Additionally, lots #10-12 are routinely in or directly near standing water due to the inadequate drainage of this area into the already stressed McMillan creek.

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

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

Response: As part of developing Phase 1, the applicant installed storm drain culverts from the wetland area under Kittiwake Drive to Tract B and thence to McMillan Creek to provide storm drainage from Tract F.

The applicant believes the existing wetland and drainage facility to be adequate. The plat complies with this standard."

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

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



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



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



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

Issue#3:

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

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

Issue#4:

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



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

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

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

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

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

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

Sincerely,
Danny J. Wilhelmi

City Planner

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

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

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

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

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

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

Good afternoon, Mary

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

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

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

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

Sincerely,
Delta Holderness

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

Sincerely,
Delta Holderness

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

Hello, Mary.

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

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

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

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

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

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

vacation rentals.

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

Donna L. Locke

8760 Beach St.

Nedonna Beach

(503) [REDACTED]

[REDACTED]

Sent from my iPad

City Planner

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

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

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

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

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

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

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

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

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

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

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

Respectfully,

Gary Corbin and Renee Faddis

██████ Kittiwake Dr.

Rockaway Beach, OR

503-██████

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

Hi Mary,

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

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

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

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

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

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

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

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

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

Karl Nulton
[REDACTED] Riley st.

[Sent from AOL on Android](#)

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

Hello,

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

Thank you for hearing our concerns.

Mary and Dan Erwert

██████ White Dove Avenue

Rockaway Beach, Or

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

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

Hello Mary,

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

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

Thank you for your work and consideration,

Paul Thompson

photo



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

A 14 Oak Street, Hood River, OR 97031
O 541-386-2330 X 409 **M** 541-490-1044
E paul@copperwest.com **W** copperwest.com

☐ ☐



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

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

From: Thomas Heckenberg
[REDACTED] White Dove Ave
Rockaway Beach
ph: 503-[REDACTED]
email: [REDACTED]

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

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

Emergency Evacuation:

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

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

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

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

Water Flow Impact:

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

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

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

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

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

Thank you for your consideration.
Thomas Heckenberg



**CITY OF ROCKAWAY BEACH
PLANNING COMMISSION ACTION**

STAFF REPORT

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

APPLICANT: Nedonna Development LLC

AGENT FOR APPLICANT: Dean N. Alterman

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

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

A. REPORT OF FACTS

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



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

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

B. EVALUATION OF THE REQUEST

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

The Application does not address tsunami evacuation route signage.

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

The Application does not provide for evacuation route improvements.

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

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

No recreation facilities are proposed in the Application.

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

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

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



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

C. STAFF SUMMARY

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

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

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

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

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

D. CONCLUSION

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

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

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

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



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

June 12, 2024

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

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

Dear Mary,

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

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

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

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

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

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

Should you have any questions, please contact me.

Sincerely,
HBH Consulting Engineers, Inc.

Andrey Chernishov, PE, CWRE
Assistant City Engineer



Wetland Land Use Notice Response

Response Page

Department of State Lands (DSL) WN# *

WN2024-0351

Responsible Jurisdiction

Staff Contact

Mary Johnson

Jurisdiction Type

City

Municipality

Rockaway Beach

Local case file #

PUD-24-01

County

Tillamook

Activity Location

Township

02N

Range

10W

Section

20

QQ section

AB

Tax Lot(s)

10200,104
00,10500

Street Address

Address Line 2

City

State / Province / Region

Postal / Zip Code

Country

Tillamook

Latitude

45.649567

Longitude

-123.934048

Wetland/Waterway/Other Water Features

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

Your Activity

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

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

Applicable Oregon Removal-Fill Permit Requirement(s)

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

DSL Review

Wetland Ecologist Comments

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

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

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

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

This is a preliminary jurisdictional determination and is advisory only.

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

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

Contact Information

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

Response Date

6/13/2024

Response by:

Daniel Evans

Response Phone:

503-428-8188



**CITY OF ROCKAWAY BEACH
PLANNING COMMISSION ACTION**

**STAFF REPORT
SUPPLEMENTAL NO. 1**

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

STAFF RECOMMENDATION

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

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

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

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



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



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

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

An aerial photograph of a suburban neighborhood. The image shows several large, single-story houses with grey roofs, surrounded by green lawns and mature trees. A paved road curves through the center of the image, intersecting with another road. The overall scene is a typical suburban residential area.

NEDONNA WAVE PLANNED UNIT DEVELOPMENT PHASE 2

WHY ARE WE HERE?

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

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



PLANNING COMMISSION'S ROLE

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

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

CASE FILE #PUD-24-1

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

AGENT FOR APPLICANT:
Dean N. Alterman



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

LOT SIZE: approximately 2.56 acres

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

The Applicant is now ready to plat Phase 2.

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

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

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

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

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

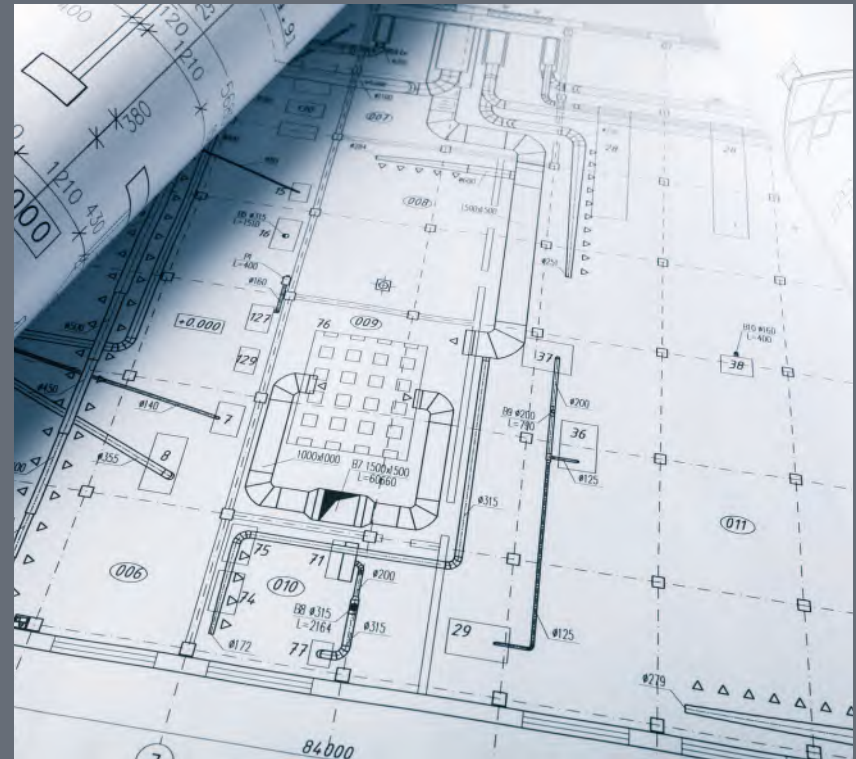
If the City grants the three modification requests, then the total number of lots in Nedonna Wave would increase above the 28-lots originally approved, but not above the 33-lot density limit that the City identified as applicable in the 2008 PUD approval.

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

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

AGENCY COMMENTS:

- City of Rockaway Beach Engineer: HBH Engineering provided a letter which identifies issues that will need to be addressed through the more formal engineering review if this request is approved.
- Department of State Lands: DSL provided a response to the Wetland Use Notification which identifies additional reporting and permitting that will need to be completed and obtained prior to any disturbance of the wetland areas.



AGENCY COMMENTS:

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

PUBLIC TESTIMONY:

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



ORDINANCE STANDARDS

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



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

Section 3.010 outlines the standards for the R1 Zone

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

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

Section 3.010 outlines the standards for the R1 Zone

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

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

Section 3.010 outlines the standards for the R1 Zone

- i. MAXIMUM BUILDING HEIGHT - This standard is typically reviewed for conformance and applied at the time a building permit is requested (not applicable at this time). **However, it should be noted that the Applicant was granted height variances in 2008, which carry with the PUD approval.**
- j. MINIMUM LOT VEGETATION - This standard is typically reviewed for conformance and applied at the time a building permit is requested (not applicable at this time)

ROCKAWAY BEACH ZONING ORDINANCE - SECTION 3.080 - SPECIAL AREA WETLANDS (SA)

Section 3.080 outlines the purpose and permitted uses in the SA zone

- a. DSL & COE PERMITS - The Application was been provided to DSL for review. The DSL responded, outlining additional reporting and permitting necessary for this Application.
- b. SHORELAND SITTING CRITERIA - The Shoreland Siting Criteria applies to developments taking place within 50 feet of the shore of any lake, therefore this criteria does not apply.
- c. DOCKS - No docks are proposed in this Application, therefore this criteria does not apply.
- d. ACCESS THROUGH WETLANDS - The Application does not propose any access to the water areas, therefore this criteria is not applicable.
- e. AQUATIC VEGETATION REMOVAL - The subject property does not provide angler access, therefore this criteria is not applicable.

ROCKAWAY BEACH ZONING ORDINANCE - SECTION 3.080 - SPECIAL AREA WETLANDS (SA)

Section 3.080 outlines the purpose and permitted uses in the SA zone

- f - h. DREDGING - Dredging is not proposed as part of this Application, therefore this criteria is not applicable.
- i. PILING INSTALLATION - Piling installation is not proposed as part of this Application, therefore this criteria is not applicable.
- j. SHORELINE STABILIZATION - Shoreline stabilization is not proposed as part of this Application, therefore this criteria is not applicable.
- k - m. FILL - Fill is not proposed as part of this Application, therefore this criteria is not applicable.
- n. ZONE BOUNDARY DETERMINATION - The Application has been provided to DSL for review. The DSL responded, outlining the requirement for an updated site investigation to be conducted by a qualified agent to determine the exact location of the zone boundary.

ROCKAWAY BEACH ZONING ORDINANCE - SECTION 3.092 - FLOOD HAZARD OVERLAY ZONE (FHO)

Section 3.092 outlines the purpose and objectives of the FHO zone

- a. ENGINEERED PLANS TO MINIMIZE FLOOD DAMAGE - The City Engineers have outlined all public improvements be constructed within the public right of way. The public right of way is located outside of the flood zone and therefore are consistent with the requirements of minimizing flood damage.
- b. UTILITIES CONSTRUCTED TO MINIMIZE FLOOD DAMAGE - The City Engineers outlined all public improvements be constructed within the public right of way. The public right of way is located outside of the flood zone and therefore are consistent with the requirements of minimizing flood damage.
- c. DRAINAGE TO REDUCE FLOOD DAMAGE - The City Engineers recommend directing the Applicant to submit an acceptable storm drainage report prior to the final design of the storm drainage system.
- d. BASE FLOOD ELEVATION - The Application is less than 50 lots and 5 acres, therefore this criteria is not applicable.

ROCKAWAY BEACH ZONING ORDINANCE - SECTION 3.132 - WETLAND NOTIFICATION ZONE (WO)

Section 3.132 outlines the purpose and objectives of the WO zone

1. SITE PREPARATION - The Applicant has not taken any site preparation action, with the exception of the approved site preparation completed during Phase 1.
2. NOTIFICATION - The Applicant has not yet applied for any site preparation work with this Application.
- 3 - 5. DSL & COE REVIEW & PERMITTING - *As noted in the response from the DSL, additional permitting and review are necessary prior to site preparation work.*
6. DSL & COE JURISDICTION - Based upon the response received from DSL on the initial review of the Application, the DSL has determined that it does have jurisdiction, therefore this standard does not apply.

ROCKAWAY BEACH ZONING ORDINANCE - SECTION 3.140(6) - TSUNAMI HAZARD OVERLAY ZONE (TH)

Section 3.140(6) outlines the purpose and objectives of the TH zone

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

- a. ON-SITE IMPROVEMENTS - The Application does not address on-site evacuation route improvements. The current tsunami evacuation route is located at the termination of Riley Street, past Jackson Street. The Applicant has request the City vacate the eastern portion of Riley Street to allow for the future development of an additional lot, which would block the current evacuation route.

ROCKAWAY BEACH ZONING ORDINANCE - SECTION 3.140(6) - TSUNAMI HAZARD OVERLAY ZONE (TH)

Section 3.140(6) outlines the purpose and objectives of the TH zone

- b. OFF-SITE IMPROVEMENTS - The Application does not address off-site evacuation route improvements. The current tsunami evacuation route is located at the termination of Riley Street, past Jackson Street. The Applicant has request the City vacate the eastern portion of Riley Street to allow for the future development of an additional lot, which would block the current evacuation route.
- c. EVACUATION ROUTE SIGNAGE - The Application does not address tsunami evacuation route signage.
- d. EVACUATION ROUTE IMRPOVEMENTS - The Application does not provide for evacuation route improvements.

ROCKAWAY BEACH ZONING ORDINANCE - ARTICLE 10

PLANNED UNIT DEVELOPMENT (PUD)

1. MINIMUM LOT SIZE - In the 2008 approval of the Nedonna Wave Planned Unit Development, the Planning Commission allowed for the creation of minimum lot sizes which were lesser than the parent R-1 zone.
2. OPEN SPACE - The Application provides for the required open space, most of which is maintained wetlands and public roadways.
3. DENSITY - As noted in the Applicant's Memorandum, the with the addition of the proposed two additional lots, the density requirement is still met.
4. SUBDIVISION LOT SIZES - The minimum area, width, depth and frontage requirements are lesser than the parent R-1 zone. Density is in conformance with the R-1 zone.

ROCKAWAY BEACH ZONING ORDINANCE - ARTICLE 10

PLANNED UNIT DEVELOPMENT (PUD)

5. OFF-STREET PARKING - This standard is typically reviewed for conformance and applied at the time a building permit is required.
6. SIGNS - The Applicant submitted sign approval with the original PUD application. The Applicant is not seeking modification to these signs.
7. HEIGHT GUIDELINES - The Applicant had previously sought and been approved for variances for height for the PUD. Copies of the Variance request are included in the original application materials.
8. STREETS & ROADS - The City Engineer comments attached to this application direct the Applicant to construct all streets to meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications.
- 9a. RECREATION FACILITIES - No recreation facilities are proposed in the Application.

ROCKAWAY BEACH ZONING ORDINANCE - ARTICLE 10 PLANNED UNIT DEVELOPMENT (PUD)

9b. COMMON AREA - The Applicant has provided common open space and CC&Rs included in the Application for the Planning Commission to consider.

9c. EASEMENTS - The comments provided by the City Engineer direct all public improvements to be constructed within the existing public right of way or right of way to be dedicated to the City as part of the development.

STAFF SUMMARY

The Applicant has requested approval of modifications to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008. The requested modifications would allow the Applicant to develop Phase 2 in two sub-phases and to create two additional lots. In addition to these modifications, the Applicant has also requested the City vacate the east stub of Riley Street to form an additional future building lot.

Staff have solicited comments from other affected agencies and stakeholders, and those comments have been included in the record. Most notably, the City Engineer has identified several necessary improvements to existing City facilities including water and sewer services, stressing the importance of providing adequate water supply to meet fire flow requirements.

In general, necessary public infrastructure improvements that are triggered by a proposed development must be provided by the developer of the project. If approved, conditions of approval related to infrastructure improvements can be attached, which must be met prior to final plat approval.

Staff have identified the substantive criteria for review of the request by the Planning Commission, and included the criteria in this report, along with comments where appropriate. However, at the public hearing any party may provide testimony addressing these criteria or other criteria the party believes is applicable to the request.

CONCLUSION

The Planning Commission should carefully consider the request, including all oral and written testimony on record and presented at the public hearing, including comments from the City Engineer, government agencies, and other interested parties. After considering testimony as it relates to this applicable criteria, the Planning Commission will need to make a decision on the request.

If the Commission determines that the modifications to the Nedonna Wave Planned Unit Development meet the standards of the Rockaway Beach Zoning Ordinances, it can make a motion to approve the request, including a statement that generally reflects the facts and rationale relied upon to reach the decision. The motion should also direct staff to prepare findings, conclusions, and a final order to implement the decision.

A motion to deny the request should set forth the general facts and rationale for the decision and direct staff to prepare the final order.

A decision to approve or deny the request will be subject to a 15-day appeal period that will begin after written findings to support the decision have been signed by the Planning Commission Chair.

STAFF RECOMMENDATION

Approval of the Applicants requests to (1) develop Phase 2 in two sub-phases, instead of one phase, (2) create two lots instead of one lot at the north end of Jackson Street, numbered as lots 21 and 22 on the plans submitted with this application, and to (3) create four lots instead of three lots out of the lots numbered as 13, 14, 15, and 16 on the plans submitted with this application, with conditions as identified below; and

Denial of the Applicants request to vacate the east stub of Riley Street at Jackson Street.

In the event of an approval, staff offer the following conditions for the Commissioner's consideration:

- Approval is based upon the submitted plan. Any substantial change in the approved plan shall be submitted to the City of Rockaway Beach as a new application for a PUD amendment.
- The Applicant shall submit drafts of appropriate deed restrictions or protective covenants to provide for the maintenance of common areas and to assure that the objectives of the PUD shall be followed.
- The Applicant shall record a deed restriction or other covenant applicable to each lot in the subdivision, in a form acceptable to the State of Oregon Fish and Wildlife Department, that indemnifies ODFW for any damage or inconvenience to persons, real property, or personal property caused by big game and furbearing animals.

STAFF RECOMMENDATION

- The Applicant shall submit evidence that all required improvements of Section 44 of the Rockaway Beach Subdivision Ordinance have been met.
- The Applicant shall submit evidence that the requirements for monuments and survey as identified in Section 45 and 46 of the Rockaway Beach Subdivision Ordinance have been met.
- Within one year the Applicant shall submit a final portion plat in conformance with the approved plan and Sections 30 and 31 of the Rockaway Beach Subdivision Ordinance. The Planning Commission, upon written request by the Applicant, may grant an extension of the tentative plan approval for a period of one year. Failure to obtain a time extension or final plat approval prior to expiration of the tentative plan shall render the tentative plan approval void. Such yearly time extensions will be necessary until all phases of the development have been granted final plat approval.
- Any utilities serving the development shall be installed underground.
- All public underground utilities including, but not limited to, water, gravity sanitary sewer, sanitary sewer force main, and storm drainage, installed on Phase 2 or for future use by Phase 2 or have not been used since constructed, shall be tested at the expense of the Applicant and accepted by the City Engineer.

STAFF RECOMMENDATION

- All stream crossings, including utilities, are to comply with fish passage requirements. The Oregon Department of Fish and Wildlife shall approve in advance any stream crossing.
- The development shall avoid entering City designated riparian setback of 15' for McMillan Creek. If site constraints will not allow for this, the Applicant coordinate with Oregon Department of Fish and Wildlife to develop a plan to mitigate for these impacts and shall provide evidence of approval. Any development within these areas which could result in a loss of fish and wildlife habitat would require that the impact be mitigated consist with current habitat mitigation standards.
- The Applicant shall construct all public improvements, not limited to sewer, water, storm and street design, and construction shall meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications. The cost for plan review by the City Engineer shall be the responsibility of the Applicant/Developer.
- The Applicant shall submit an acceptable storm drainage report prior to final design of the storm drainage system, including basin map and flow rates, for review by the City Engineer.
- The Applicant shall provide evidence that a 1200C Permit has been obtained from the Oregon Department of Environmental Quality for erosion control prior to grading and construction of the development.

STAFF RECOMMENDATION

- The Applicant shall provide evidence that all sanitary sewer designs have received written approval from the Department of Environmental Quality, including a pre-design report for the new regional pump station to serve the development.
- The Applicant shall provide the following off-site improvements:
 - Regional sanitary sewer pump station and related infrastructure including, but not limited to the following: three-phase submersible duplex pump station with controls, davit crane, on-site generator, telemetry, lighting, and fencing. The tract on which the pump station is to be located is to be dedicated to the City.
 - Sanitary sewer force main from the regional pump station to the existing White Dove pump station.
 - Extend the White Dove sanitary sewer force main from NW 23rd Avenue to the pump station at NW 17th Avenue.
 - All public improvements shall be constructed within the existing public right-of-way or right-of-way that will be dedicated to the City as part of this development

STAFF RECOMMENDATION

- The Applicant shall provide a traffic study for the development, including peak season and emergency evacuation needs, as well as the intersection of US Highway 101 and Beach Street.
- The Applicant shall complete a wetland delineation to be reviewed and approved by the Department of State Lands to determine if there is a change in the wetland boundaries and if a wetland removal-fill permit is required. This delineation shall be sufficiently sized to include both Phases 2 and 3. The approval from Department of State Lands must be current (no more than 2 years old).
- The Applicant shall submit evidence that all necessary permits and approval from the U.S. Army Corps of Engineers and Oregon Department of State Lands have been obtained for impacts to wetlands in accordance with the approval plan.
- The Applicant shall submit evidence of approval from the State Fire Marshall for all fire hydrant locations, street widths, and applicable Fire Code requirements.
- Prior to final plat approval, the Applicant shall be responsible for providing and installing all improvements including sewer, water, street, stormwater management facilities, street lights, street name signs, and street trees in accordance with Subdivision Ordinance Section 44 entitled Improvements Required, and in accordance with the City Engineer approved plans.

STAFF RECOMMENDATION

- The Applicant shall be responsible for all costs necessary for off-site public infrastructure improvements that are triggered by the proposed development.
- The Applicant shall establish a homeowner's association for the development, and all open space within the development shall be owned and maintained by the homeowner's association. The required homeowner's association shall be responsible for any and all necessary stormwater maintenance facilities that serve the development. The required homeowner's association shall be responsible for maintaining the storm water quality tracts.



City of Rockaway Beach

Planning Commission Special Meeting Minutes

Date: Thursday, June 27, 2024

Location: Rockaway Beach City Hall, 276 HWY 101 - Civic Facility

1. CALL TO ORDER

Planning Commission President Hassell called the meeting to order at 5:01 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Start time: [05:01:30 PM \(00:00:20\)](#)

[Position #2 - Stephanie Winchester: Present](#)

[Position #3 - Pat Olson: Present](#)

[Position #7 - Georgeanne Zedrick: Present](#)

[Position #5 - Bill Hassell: Present](#)

[Position #1 - Zandra Umholtz: Present \(lost Zoom connection at 5:01 p.m., reconnected at 5:04 p.m.\)](#)

[Position #4 - Sandra Johnson: Present](#)

[Position #6 - Nancy Lanyon: Present](#)

President: Bill Hassell

Commissioners: Sandra Johnson, Nancy Lanyon, Pat Olson, Zandra Umholtz, Stephanie Winchester and Georgeanne Zedrick

Council Members Excused: Charles McNeilly, Mayor; and Mary McGinnis, Planning Commission Liaison

Staff Present: Mary Johnson, City Planner; and Melissa Thompson, City Recorder

4. APPROVAL OF MINUTES – None Scheduled

5. PRESENTATIONS, GUESTS & ANNOUNCEMENTS – None Scheduled

6. STAFF REPORTS – None Scheduled

7. PUBLIC HEARING

Start time: [05:04:20 PM \(00:03:10\)](#)

a. CU #24-1: Consideration of an Application for Conditional Use at 137 South Beacon Street (Tillamook County Assessor's Map # 2N1032CC Lot #6300) for a Single Family Dwelling in the C-1 Commercial Zone.

Hassell opened the public hearing at 5:04 p.m.

Hassell explained that the Commission held a Public Hearing on this matter on June 20, 2024, and after the staff report, receipt of correspondence, applicant's presentation, the opportunity for public testimony, and Commission questions, the Commission moved to close the Public Hearing and keep the record open until June 27, 2024 for additional written arguments. Hassell reviewed the order of business.

Hassell invited Commissioners to declare any bias or conflicts of interest. None were declared.

Hassell invited Commissioners to declare any ex-parte contact. None were declared.

City Planner Johnson reported that additional written testimony regarding was received from the applicants, Shannon and Alex Smith, and was included in the meeting packet.

Commission Discussion/Deliberation:

- Lanyon expressed concerns that the 50% minimum first floor be recognized. She stated that the other residential part is acceptable, but it was important to maintain the commercial element.
- Winchester commented that she appreciated the Applicants written testimony explaining the intent for possible future mixed-use, noting that might have been the intent when the property was rezone commercial.
- Johnson also appreciated the Applicant's argument and noted that while commercial use was encouraged in the general plan, this property was practically surrounded by residential properties, and there seemed to be a lot of empty commercial buildings. Johnson stated that while she appreciated the concerns about the commercial zone, she did not think the requirement that this particular property be developed commercial will encourage all of the interests that we are supposed to be taking into consideration in granting or denying a variance of this type, and the benefits of allowing it outweighed the need for more commercial space at this time in Rockaway Beach.

Winchester made a **motion**, seconded by Umholtz, that, based on the findings of fact presented in the City Staff Report, and testimony received, the Planning Commission approve Conditional Use Application Number 24-01, and direct staff to prepare final findings and conclusions, and authorize the Chair to sign an order to that effect.

City Planner Johnson confirmed for the Commission that there were no conditions associated with the approval.

The **motion carried** by the following vote:

[Position #2 - Stephanie Winchester: Motion](#)

[Position #1 - Zandra Umholtz: 2nd](#)

[Position #2 - Stephanie Winchester: Approve](#)

[Position #3 - Pat Olson: Approve](#)
[Position #7 - Georgeanne Zedrick: Disapprove](#)
[Position #5 - Bill Hassell: Approve](#)
[Position #1 - Zandra Umholtz: Approve](#)
[Position #4 - Sandra Johnson: Approve](#)
[Position #6 - Nancy Lanyon: Disapprove](#)

- b. PUD #24-1: Consideration of an Application from Nedonna Development LLC, for a modification to the Planned Unit Development that was approved by the City in 2008 for the property identified on Tillamook County Assessor's Map as 2N1020AB Tax Lots 10200, 10400, and 10500.**

Start time: [05:12:30 PM \(00:11:20\)](#)

Hassell opened the public hearing at 5:12 p.m.

Hassell explained that the Commission held a Public Hearing on this matter on June 20, 2024, and after the staff report, receipt of correspondence, applicant's presentation, public testimony, and applicant rebuttal, the Commission moved to continue the Public Hearing until 5:00 p.m. on June 27, 2024.

Hassell invited Commissioners to declare any bias or conflicts of interest. None were declared.

Hassell invited Commissioners to declare any ex-parte contact since the Public Hearing on June 20, 2024. Lanyon declared that she was a member of the North Coast Citizens for Watershed Protection (NCCWP), whose mission is to prevent clearcutting and pesticide use in the watershed. Lanyon shared that she maintained membership and discussions for that purpose only. She stated that she had been contacted by the public and had referred the public to submit testimony directly to the Planning Commission.

Hassell declared a site visit to investigate tsunami evacuation and observed stairs that had been constructed many years ago, and a lot of signs pointing in two directions for evacuation.

Hassell read public hearing disclosure statements and procedures, and testifying instructions.

City Planner Johnson reported that new written testimony received from the following and included in the meeting packet: Albert LePage, Delta Holderness, Gary Corbin, Goldea See, Janet Teshima, Kathie Raisler, Nancy Webster, the Applicant, Oregon Coast Alliance, and Oregon Shores Conservation Coalition. City Recorder Thompson read aloud additional written testimony received from Susan Norris.

City Planner Johnson read-aloud the Ordinance standards that apply to the application.

Testimony in support of the application: None

Testimony in opposition to the application:

- Nancy Webster shared concerns about the water quality and wells in Nedonna Beach.

- Gary Corbin referred to his written testimony and stated there are bald eagles nesting in the development area, that Jackson Street is a wetland, and that the Applicant did not provide garages on the homes that are already built. For these reasons, he believed the application should be denied.

Testimony that is neutral or a question:

- Tom Holderness inquired about open spaces and asked the consequences for open space violations. Delta Holderness commented that her written testimony provided more information about the open space in question. City Planner Johnson replied that she would review the written testimony and would provide a response.

Hassell invited the Applicant to provide rebuttal.

Dean Alterman, attorney for the Applicant, provided rebuttal to the opposing testimony. Alterman stated that the public seems to have a misconception of ORS 194.040. He continued that this ORS applied to subdivision applications and that it did not apply to the revision to the PUD application the Applicant is seeking. Alterman clarified that the Applicant has not done any recent excavation work, but that areas had been cleared to allow the wetland expert to view the property and determine where wetlands are located. He further stated that the Applicant is not proposing to fill any wetlands with this application, but that the City had previously approved the filling of wetlands with the original approval and that work had been completed. In response to the testimony that had been received regarding bald eagles nesting, Alterman stated that is regulated by the Federal government, not by the City's land use code and therefore is not criteria subject to this application. Alterman addressed testimony regarding the City's sewer and water systems potentially being inadequate, stating that the City's engineer had addressed these concerns in their comments, which the City staff had incorporated into the staff report conditions. Alterman stated that the Applicant would be addressing these conditions, however the Applicant was only willing to make the improvements to the sewer force main for the development's portion of the impacts and would not be willing to take on the full cost of this improvement. Other than the cost of the sewer force main improvement, all other recommended conditions were acceptable to the Applicant.

Lanyon and Commissioner Johnson both expressed that they needed additional time to consider the written testimony that was received.

Commission Questions:

- Umholtz asked why the Applicant is requesting to complete Phase 2 in two sub-phases instead of one. Alterman responded that the sub-phasing would allow the Applicant to create two smaller developments, instead of one larger one at the same time. This development style would allow the Applicant to front the development costs in phases, instead of all up front. Winchester further questioned what advantage the sub-phasing would bring. Alterman responded the sub-phased would dictate how much capital the Applicant needed to expend at one time. He elaborated that the Applicant had made a substantial amount of the required improvements for Phase 2 during the construction of Phase 1.

- Umholtz noted that the City's engineers did not comment on emergency evacuation routes and stated she would like an expert to comment on the application as part of the conditions of approval.
- Umholtz asked questions of staff regarding ownership and maintenance responsibility of culverts and utilities. City Planner Johnson explained that the responsibility was dependent on the location. City Planner Johnson confirmed that all the proposed homes within the PUD would be connected to City sewer and water services.
- Winchester asked questions of staff regarding road frontage being reduced from the original application. City Planner Johnson confirmed that the application had been reviewed by the City's Public Works Department, who had no concerns regarding the road frontages.
- Umholtz asked staff if a recommendation for a traffic study is included as a recommended condition. City Planner Johnson confirmed this was included as a recommended condition, noting that the traffic study should include peak and summer impacts. Commissioner Johnson asked further questions regarding how a traffic study's findings would be implemented.

City Planner Johnson referenced items included in the staff report, noting that stakeholder comments would be added as conditions of approval. She added that the City Engineer and Public Works confirmed that the City has adequate water to supply the 22 homes. City Planner Johnson noted that legal counsel agrees that ORS 92.040(3) does not allow the City to deny the application outright and she added supportive case law to staff report. City Planner Johnson reviewed the proposed conditions of approval that would address concerns raised in public testimony.

City Planner Johnson recommended changes to the proposed conditions. Removal of condition 15.c. and addition of the following two conditions:

- The prior to applying for final plat approval, Applicant shall work with the City of Rockaway Beach and the City's Engineers to come to an agreement regarding the construction and expense associated with extension of the White Dove sanitary sewer force main from NW 23rd Ave to the pump station at NW 17th Ave.
- The Applicant shall obtain comment from the Silver Jackets, Oregon Emergency Management, regarding the tsunami evacuation needs for the proposed development.

Chair Hassell noted that the Applicant has withdrawn the request for the vacation of the stub of Riley Street.

The Agents for the Applicant retained the right to submit final written arguments by July 4, 2024.

Johnson made a **motion**, seconded by Winchester, to close the Public Hearing and keep the record open until July 4, 2024 for the Applicant's final written argument and to deliberate at the next regularly scheduled meeting on July 18, 2024.

The **motion carried** by the following vote:

Position #4 - Sandra Johnson: Motion
Position #2 - Stephanie Winchester: 2nd
Position #2 - Stephanie Winchester: Approve
Position #3 - Pat Olson: Approve
Position #7 - Georgeanne Zedrick: Approve
Position #5 - Bill Hassell: Approve
Position #1 - Zandra Umholtz: Approve
Position #4 - Sandra Johnson: Approve
Position #6 - Nancy Lanyon: Approve

8. CITIZEN INPUT ON NON-AGENDA ITEMS – None Scheduled

9. OLD BUSINESS – None Scheduled

10. NEW BUSINESS – None Scheduled

11. PLANNING COMMISSION COMMENTS & CONCERNS

Start time: 06:42:43 PM (01:41:33)

Lanyon thanked City Planner Johnson for her work.

Olson and Hassell commented that they appreciated having more time.

12. ADJOURNMENT

Start time: 06:43:27 PM (01:42:17)

Olson made a **motion**, seconded by Zedrick, to adjourn the meeting at 6:43 p.m.

The **motion carried** unanimously.

MINUTES APPROVED THE
15TH DAY OF AUGUST 2024



William Hassell, President

ATTEST



Melissa Thompson, City Recorder



**CITY OF ROCKAWAY BEACH
PLANNING COMMISSION ACTION**

STAFF REPORT

Case File #PUD-24-1

Continued Hearing Date: June 27, 2024

APPLICANT: Nedonna Development LLC

AGENT FOR APPLICANT: Dean N. Alterman

REQUEST: The Applicant is requesting a modification to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008. The Applicant seeks the following modifications to Phase 2 of the 2008 approval:

1. To develop Phase 2 in two sub-phases, instead of one phase;
2. To create two lots instead of one lot at the north end of Jackson Street (identified as lot 24 on the 2008 approved plan), identified as lots 21 and 22 on the plans submitted with the Application;
3. To create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street (identified as Lots 14, 15, and 16 on the 2008 approved plan), identified as lots 13, 14, 15 and 16 on the plan submitted with the Application; and
4. Provide that when the owner of the land to the south extends Jackson Street south into that property, the City will vacate the east stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.

STAFF SUMMARY

The Applicant has requested approval of an amendment to Phase 2 of the Nedonna Wave Planned Unit Development, as detailed above, which was approved by the City of Rockaway Beach in 2008. The Memorandum provided with the Application materials contains history of the previously approved application, reasons for the requested modifications, and responses to some of the criteria of the Rockaway Beach Zoning Ordinance.

Staff have solicited comments from other affected agencies and stakeholders, and those comments have been included in the record. In response to public comment received in writing and at the public hearing on June 20th, Staff have confirmed with the City of Rockaway Beach Public Works Department and City of Rockaway Beach Engineer, HBH Engineering, that the City has sufficient water supply to service the 2008 approved PUD of 20 homes (yet to be built), as well as the additional 2 homes requested in this amendment.

Additionally, Staff would like to address the comments brought forth that the application should have been denied based upon ORS 92.040(3). After consultation with the City's legal counsel, no direct case law or authority could be found to support the claim that a PUD/subdivision approval cannot exceed 10 years. Instead, the case law suggests that ORS 92.040(3) pertains to the standards applicable to a PUD/subdivision approval, not the approval itself.



In LUBA, *Claus v. City of Sherwood* (LUBA No. 2022-080), it was concluded that ORS 92.040(3) concerns the “standards” to apply to the subdivision decision.

In the Court of Appeals, *Athletic Club of Bend, Inc. v. City of Bend* (OR App 89), it was found that ORS 92.040(3) offered developers the choice between the rules in force at the time of approval and the rules in force at the time of a later application.

Based upon the applicable case law and advice from the City’s legal counsel, Staff have accepted the application request to amend the 2008 PUD approval. The Planning Commission’s role is to determine if the application meets the City of Rockaway Beach criteria.

The City Engineer has identified necessary permitting and improvements to existing City sewer facilities. In general, necessary public infrastructure improvements that are triggered by a proposed development must be provided by the developer of the project. If approved, conditions of approval related to infrastructure improvements, both on and off-site, must be met prior to final plat approval and paid for by the Applicant.

Furthermore, additional conditions of approval are recommended to:

- Address requirements outlined by the State of Oregon Fish and Wildlife Department;

- Ensure Oregon Department of Environmental Quality permits and approvals have been obtained;

- Ensure emergency evacuations needs and peak season traffic for the development are analyzed through a traffic study;

- Address the Department of State Lands requirement for review and approval of wetlands boundaries and related permits;

- Ensure all necessary permits and approval from the U.S. Army Corps of Engineers and Oregon Department of State Lands have been obtained for impacts to wetlands; and

- Ensure approval is received from the State Fire Marshall and that all applicable Fire Code requirements have been met.

CONCLUSION

The Planning Commission should carefully consider the request, including all oral and written testimony on record and presented at the public hearing, including comments from the City Engineer, government agencies, and other interested parties. After considering testimony as it relates to the applicable criteria, the Planning Commission will need to make a decision on the request.

If the Commission determines that the modifications to the Nedonna Wave Planned Unit Development meet the standards of the Rockaway Beach Zoning Ordinances, it can make a motion to approve the request, including a statement that generally reflects the facts and rationale relied upon to reach the decision. The motion should also direct staff to prepare findings, conclusions, and a final order to implement the decision.



A motion to deny the request should set forth the general facts and rationale for the decision and direct staff to prepare the final order.

A decision to approve or deny the request will be subject to a 15-day appeal period that will begin after written findings to support the decision have been signed by the Planning Commission Chair.

STAFF RECOMMENDATION

Approval of the Applicants requests to (1) develop Phase 2 in two sub-phases, instead of one phase, (2) create two lots instead of one lot at the north end of Jackson Street, numbered as lots 21 and 22 on the plans submitted with this application, and to (3) create four lots instead of three lots out of the lots numbered as 13, 14, 15, and 16 on the plans submitted with this application, with conditions as identified below; and

Denial of the Applicants request to vacate the east stub of Riley Street at Jackson Street.

In the event of an approval, Staff offer the following conditions for the Commissioner's consideration:

1. Approval is based upon the submitted plan. Any substantial change in the approved plan shall be submitted to the City of Rockaway Beach as a new application for a PUD amendment.
2. The Applicant shall submit drafts of appropriate deed restrictions or protective covenants to provide for the maintenance of common areas and to assure that the objectives of the PUD shall be followed.
3. The Applicant shall record a deed restriction or other covenant applicable to each lot in the subdivision, in a form acceptable to the State of Oregon Fish and Wildlife Department, that indemnifies ODFW for any damage or inconvenience to persons, real property, or personal property caused by big game and furbearing animals.
4. The Applicant shall submit evidence that all required improvements of Section 44 of the Rockaway Beach Subdivision Ordinance have been met.
5. The Applicant shall submit evidence that the requirements for monuments and survey as identified in Section 45 and 46 of the Rockaway Beach Subdivision Ordinance have been met.
6. Within one year the Applicant shall submit a final portion plat in conformance with the approved plan and Sections 30 and 31 of the Rockaway Beach Subdivision Ordinance. The Planning Commission, upon written request by the Applicant, may grant an extension of the tentative plan approval for a period of one year. Failure to obtain a time extension or final plat approval prior to expiration of the tentative plan shall render the tentative plan approval void. Such yearly time extensions will be necessary until all phases of the development have been granted final plat approval.
7. Any utilities serving the development shall be installed underground.



8. All public underground utilities including, but not limited to, water, gravity sanitary sewer, sanitary sewer force main, and storm drainage, installed on Phase 2 or for future use by Phase 2 or have not been used since constructed, shall be tested at the expense of the Applicant and accepted by the City Engineer.
9. All stream crossings, including utilities, are to comply with fish passage requirements. The Oregon Department of Fish and Wildlife shall approve in advance any stream crossing.
10. The development shall avoid entering City designated riparian setback of 15' for McMillan Creek. If site constrains will not allow for this, the Applicant coordinate with Oregon Department of Fish and Wildlife to develop a plan to mitigate for these impacts and shall provide evidence of approval. Any development within these areas which could result in a loss of fish and wildlife habitat would require that the impact be mitigated consist with current habitat mitigation standards.
11. The Applicant shall construct all public improvements, not limited to sewer, water, storm and street design, and construction shall meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications. The cost for plan review by the City Engineer shall be the responsibility of the Applicant/Developer.
12. The Applicant shall submit an acceptable storm drainage report prior to final design of the storm drainage system, including basin map and flow rates, for review by the City Engineer.
13. The Applicant shall provide evidence that a 1200C Permit has been obtained from the Oregon Department of Environmental Quality for erosion control prior to grading and construction of the development.
14. The Applicant shall provide evidence that all sanitary sewer designs have received written approval from the Department of Environmental Quality, including a pre-design report for the new regional pump station to serve the development.
15. The Applicant shall provide the following off-site improvements:
 - a. Regional sanitary sewer pump station and related infrastructure including, but not limited to the following: three-phase submersible duplex pump station with controls, davit crane, on-site generator, telemetry, lighting, and fencing. The tract on which the pump station is to be located is to be dedicated to the City.
 - b. Sanitary sewer force main from the regional pump station to the existing White Dove pump station.
 - c. Extend the White Dove sanitary sewer force main from NW 23rd Avenue to the pump station at NW 17th Avenue.
 - d. All public improvements shall be constructed within the existing public right-of-way or right-of-way that will be dedicated to the City as part of this development.
16. The Applicant shall provide a traffic study for the development, including peak season and emergency evacuation needs, as well as the intersection of US Highway 101 and Beach Street.



17. The Applicant shall complete a wetland delineation to be reviewed and approved by the Department of State Lands to determine if there is a change in the wetland boundaries and if a wetland removal-fill permit is required. This delineation shall be sufficiently sized to include both Phases 2 and 3. The approval from Department of State Lands must be current (no more than 2 years old).
18. The Applicant shall submit evidence that all necessary permits and approval from the U.S. Army Corps of Engineers and Oregon Department of State Lands have been obtained for impacts to wetlands in accordance with the approval plan.
19. The Applicant shall submit evidence of approval from the State Fire Marshall for all fire hydrant locations, street widths, and applicable Fire Code requirements.
20. Prior to final plat approval, the Applicant shall be responsible for providing and installing all improvements including sewer, water, street, stormwater management facilities, street lights, street name signs, and street trees in accordance with Subdivision Ordinance Section 44 entitled Improvements Required, and in accordance with the City Engineer approved plans.
21. The Applicant shall be responsible for all costs necessary for off-site public infrastructure improvements that are triggered by the proposed development.
22. The Applicant shall establish a homeowner's association for the development, and all open space within the development shall be owned and maintained by the homeowner's association. The required homeowner's association shall be responsible for any and all necessary stormwater maintenance facilities that serve the development. The required homeowner's association shall be responsible for maintaining the storm water quality tracts.

Statement in Regards to Use of 137 S Beacon

My name is Shannon Smith and my wife is Alex Smith. We have lived in Oregon for most of our lives and we have two grown male children, Keegan and Michael. For nearly 15 years I have worked as a psychiatric nurse practitioner at the Veterans Administration and at Multnomah County Health Department. Alex also has had a long career working as a community psychiatric nurse working with homeless youth with mental health & substance use issues in Downtown Portland.

Our family has vacationed in Tillamook County most of our lives enjoying the outstanding camping and beach activities at Cape Lookout. We also fell in love with the town of Rockaway Beach – with its long impressive beach and traditional beach town vibe. Our children intend to remain in Oregon and it our hope after developing this property to eventually open a specialty boutique while living in our residence above the shop full time.

We purchased our home on 137 S. Beacon and fell in love with the possibility of developing a home/business of our own near the downtown boardwalk and so close to the beach! We fully intend to develop our property as residential to the commercial standard with the intention of eventually having a mixed use property on South Beacon. We realize that South Beacon was rezoned commercial under the comprehensive plan with nearly all historical properties on our street being residential developments.

That being said we see ourselves as pioneering a first mixed use development on South Beacon that could potentially encourage further development of mixed use properties on South Beacon in alignment with the vision for the downtown commercial zone. We see this as a win/win for the City in both increasing the stock of new housing while also potentially increasing the number of commercial businesses contributing to the tax base.

The commercial future use we envision is likely a very small retail business selling plants, candles, and essential oils run by my wife. We would be intending to generate mostly foot traffic and would not have a need for additional parking or be impacting traffic on South Beacon.

We request that the planning commission approve our conditional use permit to build our home as residential on a street/lot that has historically been residential only. Our new beautiful home would adhere to current commercial standards and we believe would be a big improvement to the City and in line with its Comprehensive Plan. With this conditional variance approved we will be able to move forward with financing and constructing of our own home/business in Rockaway Beach and finally realize our dream of being residents here on the beautiful Oregon Coast.

**COMPLETE
WRITTEN TESTIMONY
SUBMITTED FOR
JUNE 27, 2024
PLANNING COMMISSION
HEARING**

Planned Unit Development (PUD #24-01)

Susan Norris

Rockaway Beach, OR 97136

June 20, 2024

City Planner
City of Rockaway Beach
275 S Hwy 101
PO Box 5
Rockaway Beach, OR 97136
cityplanner@corb.us
www.corb.us

My questions and thoughts are as follows:

- I would like to receive concurrence/explanation from the Rockaway Beach City Council, that the Nedonna Wave initial application is not subject to the 10 year rule which requires that if a project is not started within 10 years, a new application must be filed. If they are not subject to this rule as noted by Mary Johnson in the meeting on June 20th, I would like to know why not.
- During last week's presentation by the lawyer of Anna Sona, it was stated that the subject development land bordered by Song, Kittiwake and Riley, had a little water in it at the corner of Riley and Kittiwake and that the land had already been filled. I would like to know his definition of "little". Today, I again checked this land and found the following:
 - At North side of Riley and East side of Kittiwake, there is a pool of water that is about 1' deep, 3-4' wide and 14' long.
 - On East side of Kittiwake, about 70' from Riley, there is a pool of water that is about 1' deep, 5-6' wide and 10' long.
 - On East side of Kittiwake, near Song St, there is another pool that is about 1' deep, 10' wide and 25' long.

This sure seems like a lot to me. Would you consider this a little?

In addition, if this has been filled as stated, this property is a prime example of a wetland – a wetland that has been here for hundreds if not thousands of years. Rain works its way down the coast range to this wetland area. The wetland can be filled over and over again, and water will still erode it. Mitigation is a joke and merely a loop-hole that developers and lawyers have invented to build over the top of a wetland.

Just look at the houses that are on Song St, Duke and on Kittiwake looking down Song. All this had been filled in and yet each of these houses has experienced some water encroachment. It is a wetland that should be preserved.

- In addition, this land has a sign on it (now unreadable) that is on the East side of Kittiwake, about 70' North of Riley). It stated that the roped in land was protected and preserved as part

of the State of Oregon wetlands initiative and was donated as such. The roped area starts at the house located at Song and Duke, turns left on Kittiwake, turns left on Riley and goes about 40' East on Riley. What has happened to this? We were all told that this was a donation and that the wetland would be preserved forever, yet now it sounds like Anna Song is taking it back and replacing it with a much smaller parcel if anything at all.

- These developers need to be told that both Tillamook County and the City of Rockaway Beach have implemented a limit on STRs (Short Term Rentals). Old permits will be phased out as ownership changes until the limit is met. Buyers of any such developed houses will not be allowed to rent them unless permits are available.
- This new application by Anna Song, asks for major changes both in the number of houses and size. At this time, the correct decision is to deny the application. Instead of building more houses on one lot, perhaps she should consider combining lots and building fewer houses.

In addition, Rockaway City should be seriously looking at its infrastructure before embarking on massive development plans. It is debatable as to whether there is enough good water to support all the newly planned developments, let alone the existing ones. The water that we do have, periodically reeks of chlorine or something else that is beyond description.

Why can't Rockaway Beach become the ecological gem and leader of the coast, such as shown with the Rockaway Big Tree Trail and future Salmonberry Trail. Please quit building indiscriminately.

Thank-you for listening,

Susan Norris



"Every species is a masterpiece, exquisitely adapted to the particular environment in which it has survived. Who are we to destroy or even diminish biodiversity?" E.O. Wilson, Biologist

Albert LePage, [REDACTED], Eugene, Oregon 97405

June 27th, 2024

City Planning Commission
276 Hwy 101 S.
Rockaway Beach
Oregon, 97136

Comments RE: PUD #24-1:

"Continued Consideration of an Application from Nedonna Development LLC"

Hello:

With Respect and Gratitude I address you as all my relations, for we are all related, we all connected not only in the great web of life, but also with all living beings in the genetic tree of life.

This testimony is submitted to provide information about the wildlife that is apparently associated with the landscape relative to the proposed development, and offer further information for your consideration in decision-making.

The *Oregon Department of Fish and Wildlife (ODFW)* provides an online mapping "**Compass**" tool that generates a brief report of relative to their Oregon Conservation Strategy, and the attached report includes the proposed development area.

Strategy habitats along with both observed and modeled strategy species are the most relevant data relative to the proposed development. As the *ODFW* website notes, "Strategy Habitats are habitats of conservation concern within Oregon that provide important benefits to Strategy Species."

Strategy species of greatest conservation need, strategy habitats, and native habitats of conservation concern, based upon *ODFW*'s overall Oregon Conservation Strategy plan, are detailed, as can be seen in the attached report. (Image: Northern Spotted Owl, BLM)

Since the report generated expanded the area beyond the proposed development area, each species map overlay was specifically analyzed for the approximate proposed development area and at its edges, to more accurately reflect both observed and modeled strategy species for the specific land area.



Highlights of this generated report for the specific area as follows:

- **Strategy Habitats** of conservation concern: **Wetlands** are the dominant native habitat of the landscape

Observed Strategy Wildlife:

- Peregrine Falcon (American)
- **Marbled Murrelet**
- Olive-sided Flycatcher
- Townsend's Big-eared Bat
- Purple Martin

Modeled Strategy Wildlife:

- Peregrine Falcon (American)
- **Marbled Murrelet**
- Olive-sided Flycatcher
- Townsend's Big-eared Bat
- Purple Martin
- Black Oystercatcher

- Northern Spotted Owl

- Coastal Tailed Frog
- Columbia Torrent Salamander
- California Myotis
- Fringed Myotis
- Hoary Bat
- Long-legged Myotis
- Silver-haired Bat

- **Observed Strategy Wildlife:** Among the wildlife species, of note is the **Northern Spotted Owl**, which is listed* as **“threatened,”** and the **Marbled Murrelet** as **endangered by the state or threatened at the federal level.**

Image: Juvenile Marbled Murrelet at sea / Credit: USFWS/R. Macintosh



- Modeled **Strategy Wildlife Habitat****: The report shows the landscape could potentially be home to a variety of strategy species, which are detailed in the report.

*Source: [Threatened, Endangered, and Candidate Fish and Wildlife Species ODFW](#)

**Wildlife species distribution models developed and maintained by the Oregon Biodiversity Information Center (ORBIC) occurring within the area of interest. Note that these models indicate potential “good” or “fair” habitat for these species, and do not necessarily mean that the species occurs within the area of interest.” Source: [ODFW Compass](#) Tool

Finally, in closing, given every inch of land and water, especially at this time in history when natural areas are impacted and continue to disappear . . . given every inch that can be preserved can make a difference in protecting the diversity of species . . . and being aware of the strategy wildlife observed or modeled for the proposed development, **we all have to ask ourselves, what kind of place do we want to live in, what kind of world do we want to leave future generations, what kind of life would we have without wildlife?**

May the information provided in my testimony guide you in regards to these questions, and your decisions relative to the proposed development.

Respectfully,

A handwritten signature in blue ink that reads "Albert LePage" followed by a small circular mark.

Albert LePage, M. Ed. Science, B.S. Biology
Member, Society for Conservation Biology

Attachment: Oregon Conservation Strategy report, generated using the Oregon Department of Fish & Wildlife (ODFW) Compass mapping tool



Proposed Development and Surrounding Areas

Jun 27, 2024



Leaflet | Sources: ESRI, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), © OpenStreetMap contributors, and the GIS User Community

Area mi²: 2

Ecoregions :
Coast Range

Conservation Opportunity Areas :
Nehalem River Estuary, COA 009

Strategy Habitats :
Coastal Dunes
Estuaries
Late Successional Mixed Conifer Forests
Flowing Water and Riparian Habitats
Wetlands

Documented Strategy Fish :
Chinook Salmon - Spring Run
Chum Salmon
Coho Salmon
Green Sturgeon
Pacific Lamprey
White Sturgeon

Observed Strategy Wildlife :

Peregrine Falcon (American)
Brown Pelican (California)
Caspian Tern
Harlequin Duck
Marbled Murrelet
Olive-sided Flycatcher
Townsend's Big-eared Bat
Tufted Puffin
Purple Martin
Western Snowy Plover

Modeled Strategy Wildlife Habitat :

Peregrine Falcon (American)
Black Oystercatcher
California Myotis
Caspian Tern
Clouded Salamander
Coastal Tailed Frog
Columbia Torrent Salamander
Fork-tailed Storm-Petrel
Fringed Myotis
Hoary Bat
Leach's Storm-Petrel
Long-legged Myotis
Marbled Murrelet
Northern Spotted Owl
Olive-sided Flycatcher
Red Tree Vole
Silver-haired Bat
Townsend's Big-eared Bat
Tufted Puffin
Purple Martin
Western Toad

For information on data sources see <http://dfw.state.or.us/maps/compass/reportingtool.asp>



dfw.state.or.us/maps/compass



www.dfw.state.or.us

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MEMORANDUM

To: City of Rockaway Beach

From: Dean N. Alterman
Alterman Law Group PC

Date: June 27, 2024

Re: Nedonna Wave Planned Unit Development – Phase 2 application
City file no. #SPUD 07-19
Our file no. 5701.001

I'm writing this memorandum in response to the staff report and public comments from the June 20 public hearing on the application of Nedonna Development LLC and its principal Anna Song to subdivide Tract F (Tax Lot 10400) and Tax Lot 10500 of Nedonna Wave Phase 1 to be Phase 2 of the planned unit development that the city approved in 2008 in City File No. #SPUD 07-19. I'll take the issues raised in turn.

1. **Excavation has not begun**

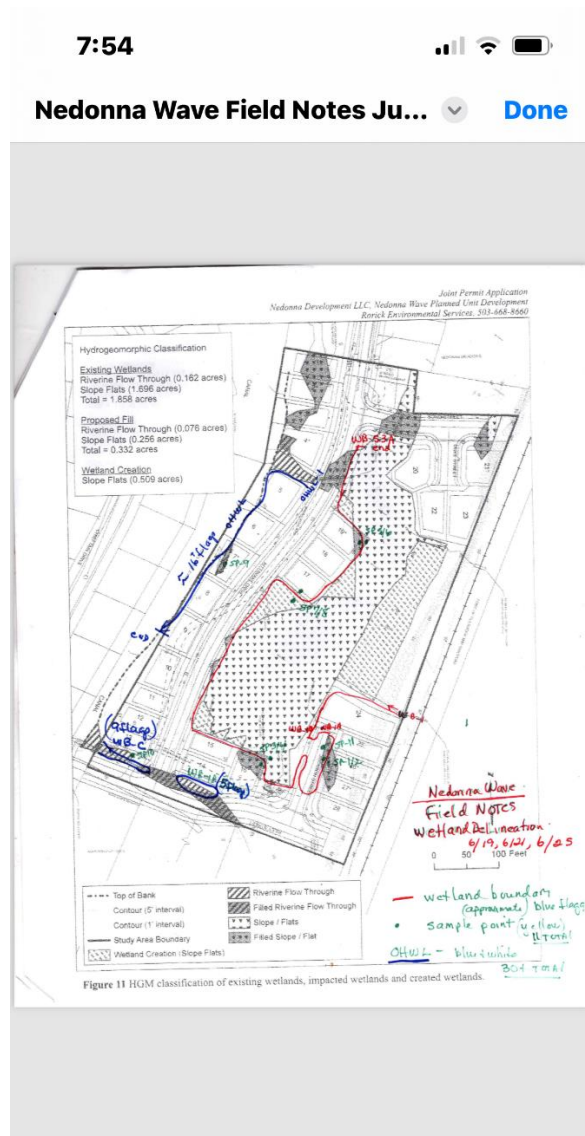
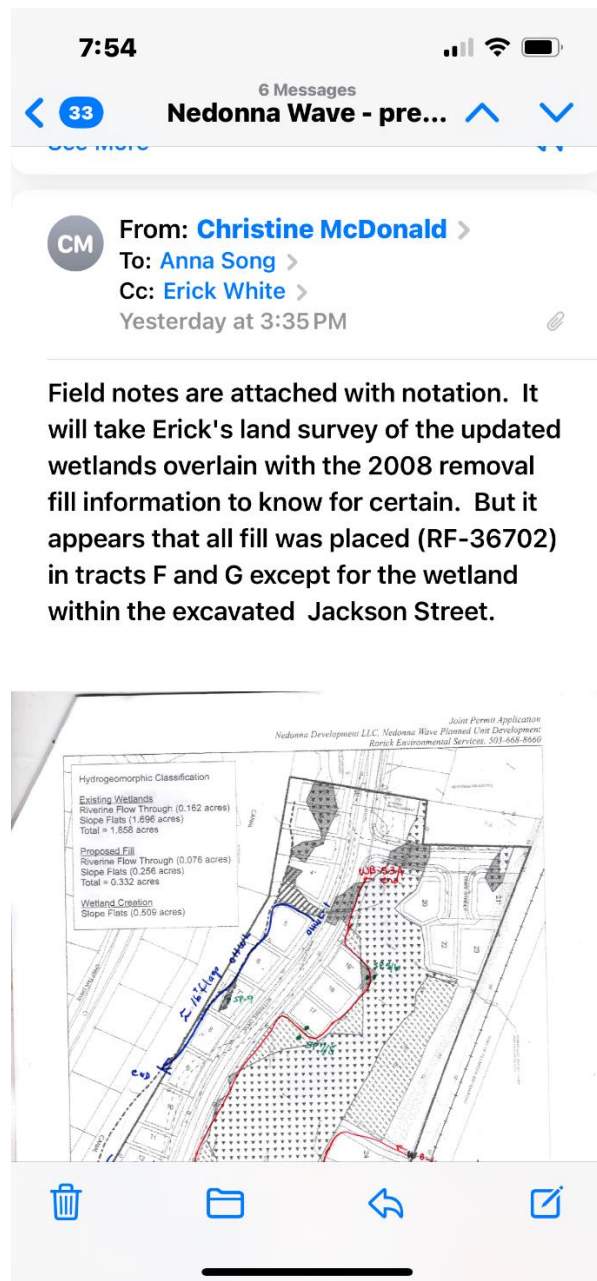
Three persons who testified said that the applicant has already begun to excavate for Phase 2. What they mistook for excavation was the clearing of brush so that Mrs. Song's wetlands consultant could inspect the property, verify the previously-approved fill, and delineate where the wetlands are today. Here are two pictures of areas that were cleared for the inspection.



There aren't any pits. There aren't any dirt piles. All that happened was that Mrs. Song had some of the undergrowth mowed so that the property could be inspected.

2. Current location of the wetlands

Christine McDonald, Mrs. Song's wetlands consultant, inspected the property on June 19 and 21. Ms. McDonald reports that the approved fill appears to have been placed. The only



question here is the status of Jackson Street, part of which is now a wetland. The attached letter from Bill Howard of Earth Works Excavation explains that he completed the approved excavation and the fill of all areas except Jackson Street years ago when the project was approved. He excavated Jackson Street (not then a wetland) to prepare it for rockfill and paving, but did not complete the fill and paving. That's why Jackson Street is now a wetland: as Mr. Howard describes it, the excavation caused "a bathtub effect holding water creating a possible wet land area."

Mr. Howard also confirms that no excavation work has been done since Phase 1 was completed.

3. Tract E and emergency egress (tsunami route)

On Mrs. Song's behalf I went to the property after last week's hearing and looked at the path that now serves as a tsunami route. Mrs. Song is not sure how the path came to be on her property but to remove this issue from consideration at tonight's meeting, she is withdrawing her request related to the potential future vacation of the stub of Riley Street.

Mrs. Song does note that in 2009 the city contemplated that the developer of the property to the south (the future Nedonna Estates) would construct an emergency egress to Highway 101 from the Nedonna Estates property. Nothing in the approval of Mrs. Song's PUD and of Phase 1 suggests that the city was requiring her to provide emergency access to and across the railroad through Tract E.

4. Force main extensions

Staff recommends, based on the report of the city engineer, that the applicant be required to construct a regional pump station on the property, a force main from that pump station to the White Dove pump station, and a force main from the 23rd Street pump station to the 17th Street pump station. The engineer's reason is that the existing sewer lines sometimes overflow and are not adequate to serve existing development.

Mrs. Song does not object to building a pump station on her property and connecting it to the White Dove pump station. She does object to shouldering the entire cost without reimbursement from the other benefited owners. The property to the south, when developed, will benefit from the Riley Street pump station. It will also be placing twice the burden on the sewer system that Mrs. Song's PUD will create.

a. Riley Street pump station and the force main to White Dove

Immediately south of Mrs. Song's property and Riley Street is a tract of 16.73 acres. In 2007 the owner of that property, Nedonna Estates, LLC, applied for permission to subdivide that

tract into 47 residential lots and two tracts with the potential for future development.¹ The staff report recommended that the city require Nedonna Estates to “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. Continue with a new 10” gravity sewer main from 17th Avenue to 14th Avenue to attenuate sewer flows. In lieu of said gravity line, applicant should install a new pump and force main on the east side of Hwy. 101 per sewer facilities plan. This is required to alleviate surcharging of the 23rd Avenue manhole, a current problem at that location.”

If the city requires Mrs. Song to build the pump station and the force main to White Dove, then it should also enter into a reimbursement agreement with her for future development, including Nedonna Estates, to reimburse her for a share of the cost of the pump station and force main proportionate to the number of lots in the future development.

b. Force mains not connected to the project

The city also proposes a condition that would require Mrs. Song to install force mains some distance from the site, to remedy the inadequacy of the present system that serves Nedonna Beach. Based on a Google Earth view, there are about 340 houses in Nedonna Beach. Mrs. Song proposes to add about 20 houses, which when complete would bring the total to about 360 houses. Mrs. Song’s project would account for only about 6% of the demand on the sewer mains in Nedonna Avenue. Under *Dolan v. City of Tigard*, 512 US 374 (1994) and later cases including *Koontz v. St. Johns River Water Management District*, 570 US 595 (2013), a local government may not require a landowner to dedicate property or pay to construct public improvements unless the dedication or payments are approximately proportional to the effects of the proposed land use. In this instance, where Mrs. Song’s project represents about 6% of the impact on the Nedonna Beach sewer mains, it is unreasonable to require her to pay 100% of the cost to remedy their current inadequate incapacity.

5. Conclusion

The applicant is ready to continue the development of the Nedonna Wave PUD and requests your approval of the preliminary plat with the addition of the two lots.

Attachments: Letter from Bill Howard, Earth Works Excavation
2009 staff report for Nedonna Estates (different developer)
Sewer plan, City of Rockaway Beach showing pump stations

¹ Rockaway Beach Application No. #07-09.



24675 Hwy 101 S., Cloverdale, Oregon 97112



June 27, 2024

To All Concerned.

This letter is to clear up any questions on my work completed on Nedonna Wave.

1. My original contract with Anna Song was for a single phase subdivision Nedonna Wave. All mass grading including lot leveling, street excavation, and wet land mitigation was completed. This included a large increased wet land area. All utility installations included sanitary sewer, storm sewer, domestic water, and dry utility conduit for cable and power to all lots was completed. Utilities included all required testing except for two manholes where paving was not complete. Because of an economic downturn the decision was made to divide the project into multiple phases and the work for the sewer pump station and two streets was put on hold.
2. The excavation for Jackson Street was done but the rock fill and paving for the street was not completed causing a bathtub effect holding water creating a possible wet land area.
3. It was noted that we were on site working. There has been no excavation work for the project done since the finish of phase one. There was one day of black berry mowing on Annas lots for the inspection of the wetland mitigation work originally done. This was done for ease of access for Annas wet land expert and a representative of Tillamook County planning department. The mowing work was only done along the wet land boundaries on the private property lines for visual and measuring inspections.



Bill Howard
Earth Works Excavation

BEFORE THE CITY PLANNING COMMISSION OF ROCKAWAY BEACH, OREGON
 Application # 07-09 Nedonna Estates Planned Development Subdivision
 Staff Report Date: October 23, 2007
 Public Hearing Date: (first continued) October 23, 2007

COPY

I. Application Information:

Applicant: Tai Dang, Member, Nedonna Estates, LLC
 Property Owner: Nedonna Estates, LLC
 Engineer / Surveyor: Ron Larson, HLB Otak, Inc.
 Location Description: Within the City Limits of Rockaway Beach; West on Beach Drive,
 North on Nedonna Avenue; East on Riley Street to property
 Assessor's Plat: 2N 10W 20AC, TL 3000, 3100, 3200, 3300, 3400, 3500,
 2N 10W 20 TL 518
 Legal Description: Partition 1998-09, Parcel 1, 2, 3; Partition 1998-07, Parcel 1, 2, 3
 Development Zone(s): SA Zone, R-1 Zone, FHO Zone, IIO Zone, Wetland Notification
 Overlay Zone
 Property Size (by zone): Total Site Area: ~16.73 acres
 Property Dimensions: ~2,500' (North to South) x 480' (East to West)

II. Description of Request:

The applicant requests the approval of Nedonna Estates Application #07-09, a 47-lot Planned Unit Development Subdivision.

Total Area of Ownership:	16.73 Acres	
R-1 Zone Area:	9.89 acres	[1 lot per 5,000 square feet density]
SA Zone Area:	6.93 Acres	[0 lots per acre residential density]

Proposed Planned Development Subdivision:

Number of Lots: 47 residential development lots and two tracts, Tract 1 and Tract 4 with the potential for future development.

Tract 1: 0.68 acres: 0.6 acres R-1 Zone; 0.08 acres SA Zone
 Tract 4: 3.65* acres: 2.11 acres R-1 Zone; 1.54 acres SA Zone
 *Tract 4 will be reduced in area by the extension of Egress Road as a public right-of-way.

Open Space Tracts: Two Tracts: Tract 2: 1.8 acres; Tract 3: 4.36 acres

Rights-of-way: Kittiwake Drive, extension of an existing 40' right-of-way to a 50' right-of-way.
 Western Street, extension of an existing 50' right-of-way
 Riley Street, extension of an existing 50' right-of-way
 Egress Road**, new 40' right-of-way, name subject to approval

BEFORE THE CITY PLANNING COMMISSION OF ROCKAWAY BEACH, OREGON
Application # 07-09 Nedonna Estates Planned Development Subdivision
Staff Report Date: October 23, 2007
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- with City Standards. At the time development of Tract 4 is proposed, the property owner shall extend and construct the Egress Road right of way for vehicular access consistent with City Standards.
6. The property owner shall dedicate to the City and shall construct to City Standards the extension of Kittiwake Drive, a 40' wide public right of way increased to a 50' right of way.
 7. The property owner shall ensure that the final plat provides a minimum 25' access width for each lot. The property owner shall install access to flag lots at the time of street construction.

On-site improvements:

1. The property owner shall comply with RBZO Article 13, Section 43 Improvement Standards and Approval.
2. Improvements required by RBZO Article 13, Section 44 Improvement requirements shall be installed at the expense of the property owner.
3. Geotechnical engineering shall be provided for all site development plans to address identified hazards.
4. The property owner shall dedicate an 8' wide Public Utility Easement that is located in the first 8 feet of property parallel to the front property line.
5. The property owner shall be financially responsible for submitting engineered construction plans 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.
6. The property owner shall work with the power company, Tillamook PUD, and other utilities to serve the site and shall comply with all requirements necessary for provision of services.
7. Easements shall provided by the property owner where they required in writing by applicable regulatory agencies for the installation of required utilities.
8. The property owner shall record and file with the City a non-remonstrance agreement as a deed restriction on each property proposed for development to ensure participation in any LID process intended to provide improvements to transportation to and within the Nedonna Beach area.

Off-Site Improvements:

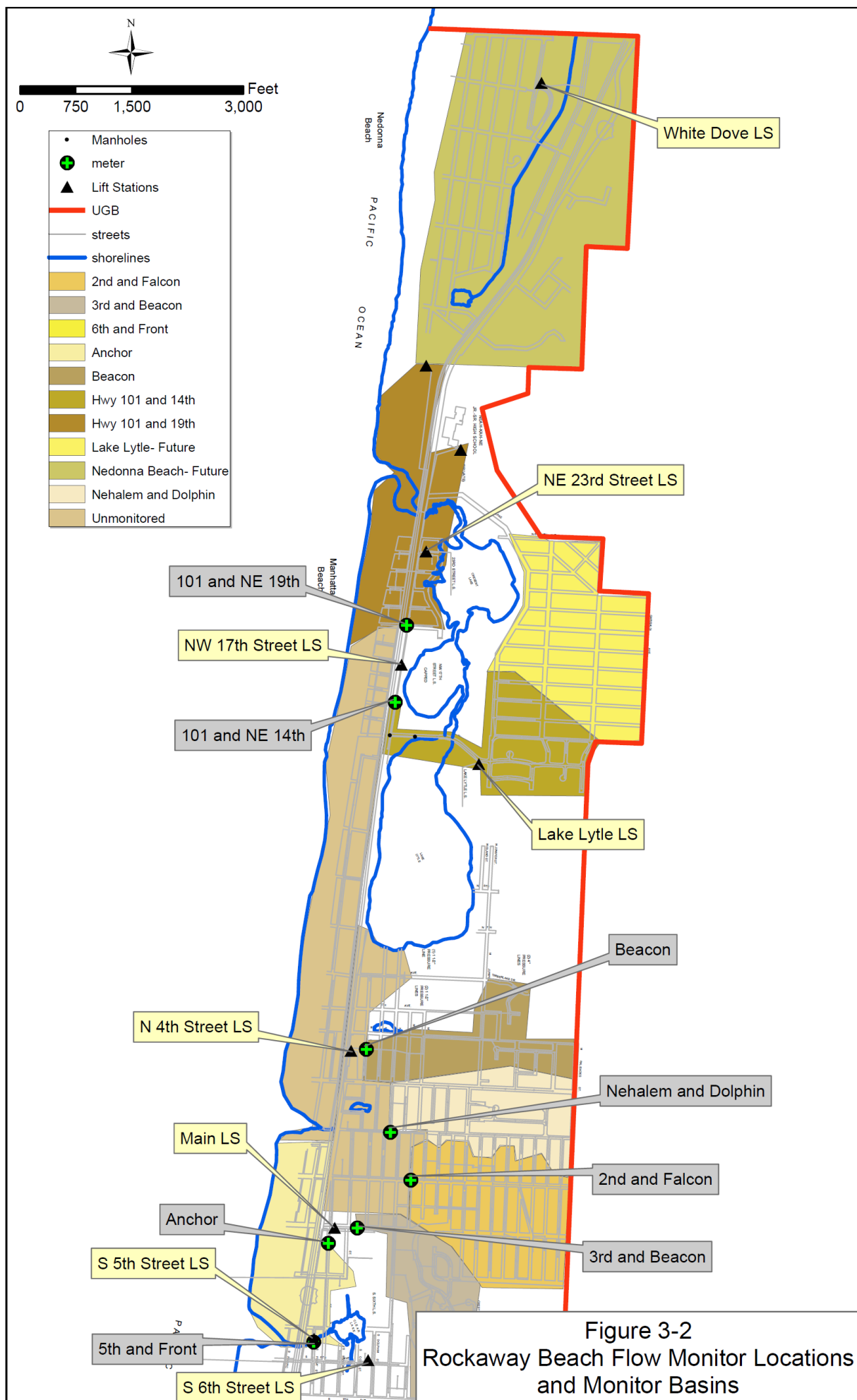
1. Engineer and install to City Standards a regional sewer pump station and related housing including, but not limited to: 3-phase duplex station with controls, divot crane, on-site generator, telemetry, lighting and fencing.
2. Engineer and install to City Standards a sewer force main from the regional pump station to White Dove pump station.
3. Engineer and install to City Standards the construction Riley Street and Western Street crossing of McMillan Creek. Staff would recommend a box culvert be utilized in lieu of a bridge crossing due to future maintenance issues. Should the applicant request bonding of the crossing, the bond cost should be based on the highest cost option.

BEFORE THE CITY PLANNING COMMISSION OF ROCKAWAY BEACH, OREGON
Application # 07-09 Nedonna Estates Planned Development Subdivision
Staff Report Date: October 23, 2007
Public Hearing Date: (first continued) October 23, 2007

4. Engineer and install to City Standards a connection into the existing water mains on Kittiwake Drive and on the west side of McMillan Creek on Riley Street to provide a looped water system.
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. Continue with a new 10" gravity sewer main from 17th Avenue to 14th Avenue to attenuate sewer flows. In lieu of said gravity line, applicant should install a new pump and force main on the east side of Hwy. 101 per sewer facilities plan. This is required to alleviate surcharging of the 23rd Avenue manhole, a current problem at that location.
6. Improvements required by the Tillamook County Road Department, require the property owner to be financially responsible for paving Western Street to Nedonna Avenue; for applying dust treatments; and for road maintenance to the County Road system where necessary to an identified construction access route for the construction traffic.
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 Estates subdivision will not remonstrate against the formation of the Local Improvement District (LID) for road improvements to benefit the Nedonna Beach area. Improvements to access to the Nedonna Beach area may include:
 1. The installation of a second emergency egress to US Highway 101 suitable for use by pedestrians and emergency vehicles which will include the installation of a culvert at Nedonna Creek and shall be subject to the approval of applicable regulatory agencies.
 2. Improvements to the existing access at Beach Street and US Highway 101 including a south bound right turn lane which will include the installation of a culvert at McMillan Creek and shall be subject to the approval of applicable regulatory agencies.
 3. Improvements to the existing access at Beach Street and US Highway 101 to increase the stacking distance for vehicles waiting to enter the highway during a train crossing and may include a right turn acceleration lane which will include the installation of a culvert at McMillan Creek and shall be subject to the approval of applicable regulatory agencies.

Building Permits:

1. With application for building permit, as a condition of approval, an engineered stormwater drainage plan for each lot shall be installed at the expense of the property owner.
2. Prior to building permit approval, a suitable screen, such as a split rail fence and engineered erosion control measures shall be installed on the upland boundary at the expense of the property owner.
3. Site development plans for each lot shall be evaluated for compliance with the criteria of applicable criteria including the Rockaway Beach Zoning Ordinance Hazard Overlay Zone, Flood Hazard Overlay Zone and Wetland Land Use Notification Zone at the time of application for building permit. Due to the presence of wetlands, local, state, and federal permits may be required.



From: [nancy webster](#)
To: [City Planner](#)
Cc: [nancy webster](#)
Subject: Nedonna Wave PUD 24-01
Date: Thursday, June 27, 2024 2:30:10 PM
Attachments: [11-November-2023newsletter.pdf](#)

Attention: Mary Johnson, City Planner for Rockaway Beach

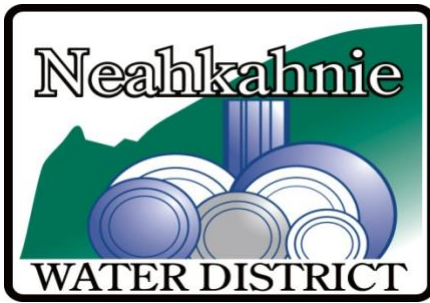
A comprehensive moratorium on new construction in the Nedonna Beach neighborhood needs to be enacted, since there are issues regarding both public safety and public health that need to be resolved. The primary public safety concern is the fact that there is only one way to drive into, and one way to drive out of, this neighborhood of over 400 dwelling units. The neighborhood is in a tsunami zone. Eventually, there will be a major earthquake that will generate a tsunami large enough to wipe out every house. With only about twenty minutes after the earthquake to escape the oncoming deadly waves, most long-term residents know to walk as fast as they can towards higher ground; the many short-term rental occupants probably will not, and, therefore, they will try to drive out. With only one exit, that will compound the disaster. The City has ignored this potentially lethal situation for decades. The Oregon Fire Code requires two access points for emergency vehicles. A major fire here could be catastrophic for lack of proper access. It is long past time for a solution to this problem. The Rockaway Beach City Council has the authority to enact a moratorium on more development until it resolves the issue of evacuation safety.

Nedonna Beach lies within the boundaries of the groundwater source-protection area for the wells below the neighborhood that provide drinking water for Rockaway Beach. Additional development in Nedonna Beach will be detrimental to providing safe and clean drinking water from those wells. We are already experiencing water shortages at the Coast during the summer. (Please see the attachment concerning summer water shortages in the nearby Neahkahnie water district.) How many more water users can be supported by Jetty Creek and the backup wells? This is yet another reason that a moratorium on development needs to be enacted.

Finally, from an ecological point of view, there should be no more degradation of the few remaining wetlands in Nedonna Beach. These wetlands provide habitat for many animals. They support native plants. They help to filter the water and lessen the possibility of flooding.

The permit to build the Nedonna Wave development should be denied or rescinded for all of the above-mentioned reasons.

Thank you.
Robert A. Larson
[REDACTED] White Dove Ave.
Rockaway Beach, Oregon



NOVEMBER 2023 NEWSLETTER

Office hours: 10:30AM to 3:00PM, Monday through Friday

Other times by appointment

Phone (503) 368-7309 Fax: (503) 368-6900

Email: nwdmanager@nehalemtnet.net

WATER EMERGENCY CONTACT PROCEDURE

If you have a water pressure problem/emergency call the office number (503) 368-7309 and if no one answers, be sure to leave a message as the line might be in use when you call and will kick you over to messaging. If you don't reach anyone at the office, then call (503) 804-4649 and if no answer, also leave a message. You can also come to the office, 9155 Nehalem Rd. during regular hours.

November Update 2023

The recent rainfall has stabilized the flow from our springs, and the flow is expected to increase as our watershed gets more rainfall. Due to the dry summer our area experienced, the District had requested that customers voluntarily conserve water as reflected in the signs that the District posted.

Unfortunately, looking at the July/August period, the water usage in 2023 was 18% higher than during the same period in 2022. As in the past, a relatively small number of customers used much of the water. The top 25% used over 60% of the water billed, averaging over 28,000 gallons for the 2-month period. The middle 50% used 32% of water billed, averaging 7,248 gallons. Check your July/August water bill to see how much water you used and how you compare to others.

This lopsided use of Neahkahnie water presents a real challenge to the District Board...and to ratepayers. We have only the water nature provides, and if the recent summer trends continue, our options for sustainability narrow to two: conservation, especially by the heavy users, or very expensive new infrastructure with even higher water rates. Let's plan to make conservation our top priority in the summer months.

Thank you,

The Neahkahnie Water District & The Neahkahnie Water Conservation Committee

From: [nancy webster](#)
To: [City Planner](#)
Cc: [nancy webster](#)
Subject: Nedonna Wave Proposed Development PUD 24-01
Date: Thursday, June 27, 2024 4:18:22 PM
Attachments: [NKN WD DALE Timmons Two Application Reviews June 2020 EXH B copy.pdf](#)
[Timmons Comments July 10 Workshop 7-25-18 copy 2.pdf](#)

Rockaway Beach City Planning Department,

The City of Rockaway Beach's drinking water is sourced from both Jetty Creek (surface water) and wells located within the Nedonna Beach Neighborhood (ground water.) These drinking water sources are used sometimes together and sometimes separately. The entire Nedonna Beach neighborhood is listed by DEQ as within the surface water source protection area.

The western section of Nedonna Beach is still under county jurisdiction and on septic systems. The wells within the Nedonna Beach neighborhood are subject to both septic intrusion, salt water intrusion, and chemical contaminants.

The proposed Nedonna Wave development is within the DEQ surface source water protection area. **Although this new construction would be on sewer, this construction and new residences would result in further contaminants in our ground water source area.**

Please read the attached reports commissioned by the Neahkahnie Water District regarding potential surface and ground drinking water contaminants. This report includes information about both septic tanks and neighborhood chemical usage. It appears that a substantial part of these reports data would apply to the Nedonna Beach surface drinking water source.

Summary from 7-25-2018. Report Commissioned by Neakhanle Water District. Dale M. Timmons, Registered Professional Geologist. RG 23252. (see second attachment summary pages 5 and 6.

"The developer's representatives failed to reveal important information to the stakeholders and to the District. The explanations regarding monitoring of the proposed septic systems was woefully inadequate. The only conclusion that can be taken away from the Developer's presentations is that once the systems are sold and installed, it will be up to the homeowners to properly operate, monitor, maintain and repair, and police these systems. There is no way a home owners association will be able to police these systems. As we all know, most people will forgo septic maintenance or concern as long as the toilets flush and the sinks drain. Beyond that, "out of sight, out of mind". Once the developer has sold the lots, he will be gone. There are no proposed financial safeguards or financial assurances being offered by the developer to address contamination of the District's water supply that is likely to occur in the future from the proposed development."

"The potential for contaminating the District's water supply with contaminants other than biological effluent is very real. Homeowners cannot be trusted to keep stored chemicals in secondary spill containment facilities. It will be impossible to prevent homeowners from using fertilizers, herbicides, pesticides or other chemical gardening products. Their automobiles, lawnmowers and other power equipment will leak oil and other fluids like gasoline, diesel, power steering fluid, brake fluid, antifreeze and grease. Pharmaceuticals will exit their septic systems along with everything else that should not be discharged down drains leading to septic systems. The septic system and soil infiltration of effluent will effectively treat only the biological portion of the effluent contaminants. The rest will enter the ground and migrate. There is no way to tell how long it will take for contaminants to begin showing up in the water supply but is virtually guaranteed that they will."

"The contamination may or may not ever exceed regulatory drinking water standards. But is that what the stakeholders want? Do they want to allow their drinking water to be tainted at all? Keep in mind that EPA's carcinogenic risk assessment process "is a process to estimate the nature and probability of adverse health effects in humans who may be exposed to chemical in contaminated media"

(<https://www.epa.gov/risk/human-health-risk-assessment>). This process is imperfect, complicated, and is often based on animal studies. In addition, as science improves, new risks are being discovered and allowable exposure levels are continually being revised. Many cancers are caused by chronic exposure to low concentrations of carcinogens and new carcinogens are being discovered every day. What is certified safe by the EPA today may very well not be safe tomorrow."

Today Oregon Coastal Communities are facing a drinking water crisis. We need to place a moratorium on development until we can ensure both safe and abundant water.

Thank you,

Respectfully Nancy Webster

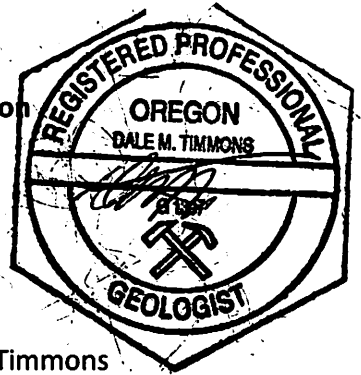
POBox 1291, Rockaway Beach, Oregon 97136

Neahkahnie Water District
Review of the Summit at Manzanita Development Application

Dale Timmons, R.G.

June 27, 2019

Introduction



The Neahkahnie Water District NKNWD or "District" engaged the services of Timmons Associates (i.e., Dale Timmons) to review certain documents pertaining to the proposed development called: Summit at Manzanita. Mr. Timmons is a licensed Geologist in Oregon and a licensed Geologist and Hydrogeologist in Washington State. He has spent his career in the management and cleanup of hazardous and radioactive waste including contaminated groundwater.

The proposed development is located in northwest Oregon on the southern slope of Neahkahnie Mountain near the communities of Neahkahnie and Manzanita. The developer/owner is: Pacifica Land Conservation, LLC and Seventeen Enterprises, LLC hereinafter referred to as "Developer" or "Declarant".

The purpose of this review is to assess the Developer's proposed approach for protecting the pristine water quality and quantity of the water supply for the District as presented in an incomplete Application for Land Division (Application) submitted to the Tillamook County Department of Community Development on or around March 29, 2019. The specific sections of the Application that were reviewed include:

- Boeger & Associates memos Dated March 11, 2019 and July 5, 2018
- Horning Geosciences geologic hazard report
- Farallon Technical Memo
- A&B Septic Service O&M contract example
- Septic site evaluations
- Declaration of CC&Rs
- DEQ-DHS Source Water Assessment Report from 2005 (cursory review)
- Drinking Water Protection Plan of 2011
- CwM-H2O report entitled: Neahkahnie Water District Drinking Water Quality Protection Feasibility Study dated February 2018

Additional documents reviewed included:

- The District's Ordinance 2018-1
- The District's Resolution 2018-2019-3
- Multiple scientific and government publications that are referenced throughout and at the end of this document.

In addition to reviewing the above documents for familiarization, completeness and feasibility as appropriate, it was requested that an assessment of alternatives be conducted that have the potential to characterize and define flow mechanisms and fate and transport mechanisms that might contribute to the migration of contaminants to the springs from surface and subsurface sources.

Risks to the District's Water Supply

The District's primary water supply originates from three springs. A fourth spring (Pirate Spring) serves as an emergency backup water source. The three primary springs produce water from what appear to be preferential groundwater pathways in landslide deposits. The water is quality is pristine. Little is known about the sources and groundwater flow pathways that contribute water to the springs with the exception that water emerges at the surface from landslide deposits. Little is known about the subsurface geology beyond the published information on the regional geology and geological history. The geologic map published by the U.S. Geological Survey that is repeatedly referenced in the Application (i.e., Wells, Snively, et.al.) was mapped at a scale of 1:48,000. This scale is not adequate to formulate meaningful groundwater flow models in and surrounding the proposed development nor to predict contaminant flow pathways from potential sources of pollution to the District's springs.

The ground surface in most of the area encompassed by the proposed development consists of shallow soils underlain by landslide deposits of unknown but likely variable thickness. Descriptions of subsurface confining layers that are hypothesized to control groundwater flow are all interpretations based upon sparse data. To summarize, almost nothing is known about where and how groundwater flows in the subsurface in and around the proposed development.

A cursory review of readily available information from credible sources reveals a growing concern regarding how human activities are degrading groundwater. Some of these sources and their notable contained quotes include:

The journal: Environmental Science and Technology in June 2017, an article which states:

<https://pubs.acs.org/doi/10.1021/acs.est.6b04778>

Wastewater effluent is the primary source of pharmaceuticals, hormones, consumer product chemicals, and other organic wastewater compounds (OWCs) commonly detected in surface water, groundwater, and drinking water. ¹⁻⁵

This study was the most comprehensive assessment of septic systems showing them as important sources of emerging contaminants, raising health concerns since many of these chemicals, once discharged, end up in groundwater and drinking water supplies. The study showed that septic systems in the United States routinely discharge

pharmaceuticals, consumer product chemicals, and other potentially hazardous chemicals into the environment.

US Geological Survey: Pesticides in Groundwater

https://www.usgs.gov/special-topic/water-science-school/science/pesticides-groundwater?qt-science_center_objects=0#qt-science_center_objects

“The effects of past and present land-use practices may take decades to become apparent in groundwater. When weighing management decisions for protection of groundwater quality, it is important to consider the time lag between application of pesticides and fertilizers to the land and arrival of the chemicals at a well. This time lag generally decreases with increasing aquifer permeability and with decreasing depth to water. In response to reductions in chemical applications to the land, the quality of shallow groundwater will improve before the quality of deep groundwater, which could take decades.”

EPA: Getting up to Speed, Groundwater Contamination

<https://www.epa.gov/privatewells/potential-well-water-contaminants-and-their-impacts>

“Ground water contamination is nearly always the result of human activity. In areas where population density is high and human use of the land is intensive, ground water is especially vulnerable. Virtually any activity whereby chemicals or wastes may be released to the environment, either intentionally or accidentally, has the potential to pollute ground water. When ground water becomes contaminated, it is difficult and expensive to clean up.”

EPA describes residential sources to groundwater contamination as:

“Fuel oil storage tanks, household chemical storage and use, swimming pool chemical storage, septic tanks and leach fields, sewer lines, floor drains, lawn fertilizer storage and use.”

A comprehensive review of available references pertaining to groundwater contamination sources is beyond the scope of this review. However, even a cursory review of available articles reveals that there is an increasing concern regarding what are referred to as **Emerging Contaminants**. The U.S. Geological Survey and the U.S. EPA have identified the following four groups of contaminants for further study:

<https://www.safewater.org/fact-sheets-1/2017/1/23/emerging-contaminants>

1. Veterinary and human antibiotics
2. Human drugs

3. Industrial and household products (such as insecticides, detergents, fire retardants, fuels)
4. Sex and steroidal hormones

These four groups encompass thousands of compounds. Many of these are not yet regulated. Chronic exposure to and their lasting effect on human health and the environment is not well understood. It is safe to say that some may prove to be innocuous and others may prove to have lasting harmful effects.

Of the documents included in the Application, most of the information dedicated to protecting groundwater revolves around septic system design, septic system operation and maintenance and how these systems can prevent groundwater contamination from bacteria and pathogens derived from human waste. There is very little discussion about the growing concern over Emerging Contaminants or surface contamination caused by human activity in residential areas.

Application for Land Division Review, Comments and Notes

Review of: Declaration of Protective Covenants, Conditions, Restrictions (CCRs) and Easements for Summit at Manzanita

The cover sheet of this document states that it was *“prepared to address the many concerns the Water District called to our attention...”*.

This review is a critical assessment of how these CCRs may or may not protect the pristine water quality currently enjoyed by the NKNWD consumers. It also presents many questions that need to be addressed in order to provide explanations to the District regarding how the CCR's will actually provide the protections claimed.

Section 1.6, Bylaws: Bylaws are referenced but are not present in the document. They are only referenced in Section 8.9 stating that they will be recorded with Tillamook County. Enforceable critical requirements that protect the District's water supply and how they can be effectively monitored should be described.

Section 2.2, Annexation of Additional Property, Subsection c, d & e: These sections state that the Declarant may modify or exclude any existing restrictions and establish new land classifications, uses, restrictions, covenants and conditions as the declarant may deem to be appropriate.

This Section 2.2 essentially allows the Declarant to do anything it wants with the subject property. The primary concern of NKNWD is to preserve its pristine water quality. A relaxation of upgradient restrictions could increase infiltration from septic systems, increase pollution risks from human activity (as evidenced by contamination of Pirate Spring with atrazine) result in significant increases in impervious surfaces (from

driveways, roads and roofs). These conditions would threaten ground water quality, increase runoff and reduce natural infiltration which would also adversely affect ground water quantity.

Section 2.4, Withdrawal of Property: Declarant reserves the right to withdraw all or a portion of the Initial Property at its discretion. If the Declarant exercises withdrawal, what is the effect on ground water protections described in the CCRs? This is not clear.

Section 6.10, Pest and Weed Control and Section 6.27, Exterior Chemicals:

Section 6.10 requires owners to control “noxious insects or vermin” and to control noxious weeds on the Owner’s Lot. At the same time, Section 6.27 prohibits the use of fertilizers, herbicides, insecticides or other chemicals for control of insects, vermin and weeds. These two sections are not consistent with each other. Owners who invest in property, homes and landscaping cannot be relied upon to never apply fertilizers, pesticides or herbicides to their property. It is not reasonable to assume that the restrictions specified in Section 6.2.7 will be followed, monitored or enforced by all property owners and their guests, visitors or renters.

Section 6.29: Water District Protection Plan:

This section places responsibility of compliance with the Protection Plan on the Architectural Control Committee. Because the Declarant has complete control over this committee including its membership (see Section 7.4), there is no basis upon which NKNWD can be assured that any actions taken by the Architectural Control Committee are independent or unbiased. This section would allow the Declarant to take actions for the benefit of the Declarant without regard to water quality. Further, Section 6.29 states that a licensed third party “hydrologist” will review all plans for construction, landscaping, maintenance, drainage and other similar activities submitted to the Architectural Review Committee. There are no “hydrology” licenses offered in the State of Oregon. NKNWD is concerned about ground water quality and potential threats to its quality and quantity. Thus, a hydrologist would not be qualified to assess threats to groundwater. Only a hydrogeologist should be engaged for such an assessment. Unlike Washington, Oregon does not offer a specialty hydrogeology license. Thus, any assessment of ground water should be undertaken by a geologist licensed in Oregon, preferably with experience in hydrogeology and a specialty license in hydrogeology from another state.

Sections 7.1 Architectural Review, 7.4 Membership: Appointment and Renewal, 7.5: Majority Action, & 7.6 Liability:

The Declarant has complete control over the Architectural Review committee including its membership and can take action at its sole discretion without community meetings or community input. This means that the Architectural Review Committee (and the Board of Directors of the Owners Association) are the Declarant. It is not reasonable to

assume that NKNWD can be assured that policy changes, appointments or other actions taken by the Architectural Control Committee or the Board are independent and unbiased or taken solely for the benefit of the Declarant. Furthermore, the Declarant states that all costs incurred in actions taken by the Declarant will be paid for by applicants, but the Declarant accepts no liability for any of its actions even if those actions cause damage to owners, occupants, builders or developers.

In conclusion, the CCRs do not provide meaningful or enforceable policies or assurances for protection of the District's water quality.

Review of CwM-H2O Report: Draft Neahkahnie Water District Drinking Water Quality Protection Feasibility Study

Table E1: Potential impacts to Springs 1, 2, and 3 are characterized as "High" from septic discharge and "Low" from stormwater runoff and "Medium" for risks of development affecting spring yields. For all of these risks, "Mitigation 1" is identified as an effective mechanism for mitigating these risks. Mitigation 1 is identified as:

"Expand residential development exclusion zones to minimize the potential for contaminants to commingle with the groundwater source of the springs or runoff into spring capture boxes via stormwater. Exclusion zone enlargement will also help minimize impacts to spring water yields."

In the Executive Summary, the following statements are made in reference to the four mitigation techniques discussed:

"No other reasonable alternative exists." and,

"The economic and social benefits of the development outweigh the environmental costs of Degradation."

The first statement confirms that groundwater will be impacted by development but ignores the most effective mitigation which is to prevent development altogether. The second statement places a priority on development and relegates the District's fragile and pristine water supply to that of a secondary concern. Considering all of the uncertainties regarding local groundwater flow and transport mechanisms and all of the risks that have been glossed over in the Developer's application, this second statement is shocking. In addition, this statement is not supported by any quantitative comparison between the *"economic and social benefits"* and the *"costs of degradation"*. Appendix F of the Neahkahnie Drinking Water Protection Plan clearly demonstrates that the cost of groundwater remediation or the cost of replacement of the drinking water supply in other localities ranges from hundreds of thousands to many tens of millions of dollars. What is the comparative social and economic benefit of the proposed development to the people who drink, bathe and cook with the District's water supply?

The most reasonable mitigation method discussed in the CwM report is Mitigation 1: *“Expand the residential exclusion zones”*. While having merit, the difficulty with this mitigation method is that the sources and subsurface pathways of the water produced by Springs 1, 2, and 3 have not been conclusively confirmed. In addition, there is no exclusion zone identified. Even if an exclusion zone was identified, it would be based on conjecture of the sources and subsurface pathways of the groundwater produced by the springs.

Section 3.1.4

This section states: *CwM has used this information to refine the geologic and hydrogeologic **conceptual model** of the groundwater source that supplies water to Springs 1, 2, and 3.*

“The geology of the site and area surrounding the District has been mapped at or near the surface...”

It is important to note that there have been no investigations of the subsurface in the area of interest. The limited number of logged wells (there are three, one of which is only 20-ft. deep) is insufficient to characterize the source, transport mechanisms or flow rates of groundwater for Springs 1, 2, and 3. There is no evidence of pump tests or other tests performed to assess hydraulic conductivity with the singular exception of the abandoned Well Till 22, estimated to produce 10 gal/min from bailing.

Well: Till 22: The well location and log indicate the Alsea Formation is penetrated at the surface. The well was bailed, and flow rate was estimated at 10 gal/min. The total depth was 105-ft. and the well was abandoned. This well is approximately 2,000-ft. southeast and downgradient of Spring 3 (the closest spring) and penetrates the Alsea formation (according to Figure 3). Thus, this well has little relevance to the District’s water supply.

Well: Till 362: The log states a pump test was not performed and the well was a dry hole and was abandoned. Depth 102-ft. This well is approximately 600-ft. WNW and upgradient from Spring 2. Since no water was found in this well, it sheds little light on groundwater sources or flow paths. However, the fact that this well is dry supports the hypothesis that the area contains subsurface preferential flow paths instead of a local consistent water table.

Well: Till 50988: This well was drilled to only 20 ft. and the log identifies clay from the surface to the total depth of the well. It is identified as a dry well although the log indicates that water was encountered from 14 to 20 ft. This well does not reveal useful data regarding groundwater flow with the exception that there is no flow at this location as deep as 20 ft. and that it did not penetrate material typically described as landslide deposits.

The logs of all three wells do not provide enough data to draw any reasonable conclusions regarding groundwater fate and transport mechanisms in the area of the proposed development.

It is not reasonable to assume that the upper surface of the aquitard underlying the landslide deposits is planar. This is because landslides are deposited on surface topography and surface topography in a mountainous region is never planar. This buried surface topography could significantly influence groundwater flow paths. Figure 4 in the report shows that the contact between landslide deposits and the underlying Astoria Formation is characterized by a series of question marks. This presumed boundary follows the surface contours and show a consistent thickness for the landslide deposits throughout the cross section. It is not reasonable to assume that the landslide deposits are the same thickness throughout the area of interest or that the depth to the Astoria Formation is consistent or that the contact between the landslide deposits and the Astoria Formation follow the surface topography. Well 362 appears to penetrate basalt at a depth of 43 ft which continues to the total depth of the well. Cross sections shown in the CwM report do not show any basalt near the location of Till 362.

Despite the obvious uncertainties and inconsistencies presented above, the report states:

“The soils and formations logged at these three wells support the conceptual site model and associated geologic units presented here.”

It is uncertain how this conclusion was reached since the cross section in Figure 5 is not consistent with the well log from Till 362. In addition, the report states (Page 6):

“The refined conceptual site model for geology within the District is based on available data and professional interpretation of the visible geologic landforms and features.”

It should be stressed that the available data reveals nothing about the subsurface groundwater flow and the visible geologic features in the proposed development include almost exclusively cover soil and predominantly landslide deposits, all of which are heavily forested.

Further uncertainty is introduced by the inconsistency between Figures 3 and 4. In Figure 3, the line A-A' shows that the Astoria Formation bedrock is exposed at the surface on the eastern 1/3 of this cross-section line. However, Figure 4, which is a cross section of the subsurface along the line A-A', shows the Astoria formation a minimum of 50 ft. below the surface underlying the landslide deposits in all locations.

On Page 7, the report states: *“Stratification near the Spring 1 includes the following units and thicknesses, presented in order of position relative to the ground surface:*

- *Soils of approximately one to five feet thick;*
- *Grande Ronde Basalt approximately 700 feet thick; and*

- *Marine sedimentary structures of the Astoria and Alsea formations with a maximum thickness of 250 feet, and unknown thickness, respectively.”*

An examination of Figure 5 shows that Spring 1 is approximately 400-ft. from the presumed location of the Grand Ronde Basalt formation and that the only statement that can be made about the strata near Spring 1 is that it is located in landslide deposits. The other statements regarding the strata near Spring 1 are conjecture.

On Page 7, the following paragraph states:

“Between the upper reaches of the drainage divide (the peak of Neahkahnie Mountain) and Spring 1, landslides and reverse dip-slip faulting have caused extensive unconformities, dipping, and weathering of the geologic units. In this section of the District, geologic units from the upper portion of the District have been fragmented, weathered, and commingled to create landslide deposits that are highly conducive of groundwater flow due to their compositional isotropy and fracturing. Regional mapping (Figure 3) show an east-west trending fault located approximately 800 to 1,300 feet north of U.S. Route 101 within the District (USGS, 1994). Above this fault, the igneous material of the Grande Ronde Basalt unit surficially dominates (Figure 5), while landslide and marine sedimentary materials dominate on the downthrown side of the fault (Figure 4). Groundwater from the base of the Grande Ronde Basalt unit discharges into these landslide deposits before surfacing at the springs. Stratification in the lower section of the District includes the following units and thicknesses, presented in order of position relative to ground surface: soils, 1 to 10 feet thick; landslide deposits, 50 to 100 feet thick; and marine sedimentary structures of the Astoria (unknown thickness) and Alsea formations (maximum thickness of 250 feet).”

The statements above are, for the most part based upon assumptions and conjecture. The only certainty is that there are extensive landslide deposits down-gradient of the assumed location of the east-west trending fault depicted in Figures 3 & 5, and that groundwater flows through this material somewhere. The depth of the landslide deposits is not known but is likely variable. The report states that the soils in the area of interest are “well drained” (Section 3.1.5). This is confirmed by Pete Adamson who’s observations have confirmed that during periods of heavy rainfall, no ponding of water has been observed. This strongly suggests that contributions to the ground water are also from infiltration from the surface of the landslide deposits; not just from Grand Ronde basalt and could represent significant contribution to the groundwater supply.

The sources of data referenced range from 14 to 56 years old and address regional geological formations that were mapped at a scale of 1:48,000. Mapping at this scale cannot describe the microcosm of geological features that affect groundwater flow in the area of interest.

Section 3.2, Pages 8, 9, & 10

These pages describe the exceptional quality of the water supply for NKNWD. These pages go on to describe how pollutants originating from development and septic systems can be detected and monitored and recommend that monitoring will identify degradation of water quality so that mitigating measures can be taken. What these pages fail to mention is that once pollutants are identified in the drinking water for the District, the pollutants are already in the ground and are not likely to be reduced or eliminated for years or decades even if all upgradient human activity were immediately ceased. Instead of describing how to identify and monitor pollutants entering the water supply, it would be more appropriate and reasonable to determine how to prevent the introduction of pollutants altogether.

Section 4. Assessment of Potential Impacts

The first bullet on Page 11 describes: *“A conceptual residential development within the watershed and groundwater recharge areas of Spring 1, 2, and 3.”* This concept assumes that the groundwater recharge areas are known with certainty. They are not. The paragraph continues to state that *“groundwater flow paths were evaluated to assess the potential risk of contaminants mixing with groundwater and discharging at the springs”*. It is important to stress that groundwater flow paths are simply not known. Thus, any statement to the effect that they were evaluated is erroneous.

Section 4.2.1.1: Groundwater Impacts:

The first sentence in this section clearly states that residential development poses a risk of contaminating and degrading the Neahkahnie water supply. It is further stated without qualification that the ground water originates in the Grand Ronde Basalt and that recharge is **almost** exclusively upgradient of any residentially zoned areas. The fact is that very little is known about the contributing sources to the groundwater and that nothing has been documented regarding the contribution to groundwater from surface infiltration in the landslide deposits.

The section goes on to state: *“The area zoned for residential development is a small portion of the total recharge area to the springs”*. This is not a reasonable statement because the recharge area for the springs is not known. It is assumed.

This section continues on Pages 14 and 15 where “potential” groundwater flow paths are speculated, groundwater drainage divide locations are assumed, recharge areas are assumed, groundwater flow directions are characterized as “likely”, and ground water travel times are based upon assumed data. On Page 14, the report states regarding

Development Area 1: *“DA1 water quality impacts to Spring 2 are possible should a preferential transport pathway exist but are unlikely and not quantifiable.” How can something be not quantifiable and unlikely at the same time?*

All of the assumptions, speculations, conceptual models, projections, scenarios and data used in estimating risks ignore the simple fact that the depth and subsurface topography of the confining layers (which are assumed to be the Astoria Formation and the boundary of the invasive Grand Ronde Basalt units) and the locations and sources of the preferential groundwater pathways are not known. The fact remains that there is no available data upon which to formulate reasonable, prudent or pragmatic recommendations that would preclude the potential for contamination of the water supply by proceeding with a proposed development.

This section concludes with the statement: *“Existing site hydrogeologic data is limited.... To further refine and quantify projected impacts, additional characterization of the site’s hydrogeology should be conducted. Such characterization could include soil sampling, aquifer testing, and hydrogeologic tracer testing.”*

In addition to other methods that could be employed for further site characterization, this statement is correct.

Section 4.3: Risk Mitigation and Alternatives Feasibility

Section 4.3.1.2 states that all the potential impact alternatives carry with them high severity of consequences. This statement clearly leads one to the obvious conclusion that excluding areas to be developed is the most effective for protecting groundwater resources. The section discusses expansion of the “exclusion zone” but the exclusion zone is not defined other than a vague reference to excluding development zones. Given the uncertainties surrounding the groundwater sources, transport mechanisms, recharge locations, groundwater divides and configurations/topographies of the confining boundaries, the only reasonable method for protecting groundwater quality is to preclude development in areas where there is even the smallest chance of impacting the District’s water quality. Studies could be conducted in an attempt to quantify recharge areas and flow pathways, but they would likely take years to complete and require significant funds to execute.

Sections 4.3.1.3 Spring Surface Water Protection Alternatives

This section states:

“Potential impacts from surface water runoff as a result of a conceptual development were determined to be Low.”

It is ironic that the water from Pirate Spring (the District's emergency backup water source) was tested in May 2018 for pollutants and atrazine was detected in the spring water. Atrazine is a restricted use herbicide that is commonly used for agricultural applications and requires a certified pesticide applicator's license. It is also known to infiltrate soil and migrate to groundwater. The fact that atrazine has been detected in Pirate Spring shows conclusively that the herbicide was applied or spilled upgradient of Pirate Spring (specific location unknown).

Water from Springs 1, 2 and 3 were sampled and analyzed at the same time the water from Pirate Spring was sampled and analyzed. No contamination was detected in Springs 1, 2 and 3.

The detection of atrazine in Pirate Spring suggests that potential impacts from surface water runoff for Springs 1, 2, and 3 are significantly higher than "Low".

Other mitigating strategies listed including Low Impact Development (LID) and pesticide/fertilizer restrictions. These sound good on paper, but considering the high rates of precipitation in the proposed development area, LID may not be very effective. Pesticide/fertilizer restrictions cannot be effectively enforced. Use of septic systems with enhanced design can provide enhanced assurances that biological contaminants are effectively treated (with the possible exception of viruses). However, there is no identified long-term mechanism to effectively police or enforce their proper operation or maintenance. Over time, one or more of these systems would likely fail resulting in releases of raw sewage. In addition, septic systems do little or nothing to prevent the release of chemicals that are not subject to biological degradation such as pharmaceuticals, metals, cleaning chemicals or other compounds (Emerging Contaminants) that will inevitably be flushed down toilets, drains or released to the ground surface.

Slurry walls and permeable reactive barriers can be effective at inhibiting the flow of contaminants. They are sometimes used in ground water remediation projects to prevent subsurface lateral contaminant migration downgradient of where a spill occurred. In addition to being extraordinarily expensive, these strategies require an in-depth knowledge of local groundwater flow mechanisms. Slurry walls must be anchored at their base into a confirmed impermeable or very low permeability stratigraphic unit. Otherwise, tainted water will simply flow around or under the barriers. The Astoria Formation might be a suitable anchor but there is little data that confirms its depth or suitability as an anchor. Reactive barriers allow water to flow through them with the goal of adsorption of contaminants. They also require detailed knowledge of groundwater flow regimes. Thus, with the current lack of understanding of how and where water is flowing in the subsurface, these strategies could not be employed with any level of confidence. Furthermore, such barriers would likely reduce water production rates at the springs (perhaps significantly).

Monitoring is an effective way to identify the arrival of contamination at a source of drinking water. However, once the contamination is in the groundwater, it will be there for a very long time. While monitoring should be continually used to assess groundwater quality, employing it as a strategy to wait for the arrival of contamination after development has taken place is not a reasonable or prudent mitigating approach.

Establishing a sewer connection for an upgradient development would be effective at diverting sewage away from infiltration. Sewers would not eliminate risks from chemicals used by households or from stormwater runoff. In addition, a risk of a sewer line failure would remain, especially in an area where ground movement has been known to take place (landslide deposits and earthquakes).

The demonstrated uncertainties regarding groundwater fate and transport mechanisms in the area of interest coupled with the detection of atrazine in Pirate Spring (which can only be attributed to surface application or spill of this herbicide upgradient of the spring) shows that the District appears to have acted prudently by enacting Emergency Ordinance 2018-1, Water System Regulations and by preparing Resolution 2018-2019-3 To Prepare an Ordinance to Condemn Certain Property. This prudence is further demonstrated by the erroneous belief stated in the CwM report that surface water runoff represents a Low potential impact to groundwater when in fact it appears to represent a much higher risk.

The CwM study correctly states that the most effective mitigating approach is to “expand the exclusion zone”. While no “exclusion zone” is identified to expand, it is reasonable to interpret this mitigating strategy as preventing development in areas where there is any risk of infiltration reaching the District water supply. Considering the lack of knowledge of subsurface groundwater flow mechanisms in and around the proposed development, only the most conservative exclusion zone expansion is reasonable and prudent.

Section 4.3.2: Highway 101

There will always be a risk of a spill on Highway 101 that could impact the water quality of Spring 3. The proposed Summit at Manzanita development would increase traffic at the entrance of the community. During a public workshop that took place on July 10, 2018, the risks of a spill on Highway 101 were represented as minimal. While the chances of an accident in the wrong place by a tanker truck or similar carrier are small, the potential consequences are catastrophic for Spring 3.

At the July 10 workshop, it was stated that no middle turn lane would be constructed to accommodate residential traffic to the new development. The section of Highway 101 where residential traffic would slow or stop to turn into the proposed development often exhibits very challenging visibility, particularly at night during periods of fog or

heavy precipitation (which is often). The combination of poor visibility and slowing or stopped traffic will increase the risks of an accident at or near the locations where vehicles would turn into the proposed development.

During the workshop, Mr. Long of CwM mentioned that a spill on highway 101 would not affect the water quality of Spring #3. He stated that a response would be immediate and that if the spill (let's assume gasoline or diesel) were allowed to flow down the natural drainage, groundwater at Spring #3 would not be affected. This assumes that an accident involving a spill would occur and that the spill would stay entirely in a desired channel or area, and that the spill from a catastrophic accident would all be directed to the desired location. This is unlikely and unreasonable to assume.

If thousands of gallons of fuel were spilled on Highway 101 in the wrong place upgradient of Spring #3, the initial response would be police and/or fire department personnel possessing little or no spill containment equipment or capability. It typically takes hours for meaningful response equipment and personnel to arrive onsite. The fuel would spread down-slope quickly and be readily absorbed into the soil. Because of the steep terrain and dense trees/plant life, access to affected areas and removal of affected soils would be severely complicated if not impossible. The spill would work its way deeper through the soil column until encountering the ground water. The spill would kill all the plants/trees encountered (thus exacerbating soil erosion and risks of slope failure) and leave residual fuel in the soil column which would be re-mobilized with every rainfall. A spill such as this in the wrong place would contaminate Spring #3 for decades.

Horning Geosciences Report:

The Horning Geosciences Report does a good job summarizing the already-published regional and historical geology of the area. In addition, there are detailed descriptions of the soils in the area of interest as observed in multiple shallow excavations. The report describes slope instability, rockslides, rock falls and seismic hazards throughout the area of interest especially in areas where slopes are inclined more than 30%. No soil borings, geotechnical studies or subsurface investigations outside of shallow test pit observations were conducted. It is clearly stated that landslide deposits of unknown thickness obscure the geologic relationships of the bedrock geology and that conclusions are for the most part, interpretive. There is no reference or evidence that past geotechnical studies have been conducted in the area. Since the entire area is known to be or known to have been subject to land movement, it would be reasonable and prudent to conduct geotechnical and slope stability studies as a prerequisite to any development or construction.

The topic of groundwater fate and transport is only casually mentioned by referencing: Source Water Assessment Report (DHS/DEQ, 2005) which speculates upon the source of groundwater and for which there is controversy (see Farallon Technical Memorandum). One statement that stands out and is particularly important for the District is that the soils tend to possess high permeability and have suitable drainage for septic systems. While supporting data is absent, local observations confirm that water readily infiltrates the soil. This means that infiltration of water from the surface to the groundwater will take place in the areas where the test pits were excavated.

In nearly all of the hazard descriptions, words and phrases including: “probably”, “interpreted to be”, “probable”, “possible”, “possibly”, “perhaps”, “likely”, “unlikely”, “suggested”, “may”, “may have”, “may be”, “appears”, “could have”, “believed to be”, “implies”, “expected to”, “uncertain”, “moderate uncertainty”, “commonly”, “variable”, “considerable uncertainty”, “difficult to say”, “odds may be”, “speculate”, “expected”, “tends to be”, “difficult to accurately quantify”, “cannot accurately predict”, “low probabilities” and “unknown” are repeatedly used. The use of these words and phrases coupled with the lack of any subsurface data (with the exception of three well logs which are not referenced in the report and not very relevant anyway) indicates that Horning Geosciences knows as much as anyone about the subsurface movement of water in the region of the development; which is next to nothing.

At the same time, the conclusions of the Horne Geosciences report definitively state that the proposed development will cause no permanent effects on adjacent areas, “*drainage will not change*”, and that “*the proposed development is not expected to have adverse environmental effects.*” It is unclear how such definitive statements can be made based on a lack of data and such inconclusive evidence.

Because the Horning report does not address subsurface groundwater flow characteristics (which is not surprising since there is almost no data), this report is largely irrelevant with respect to threats to the District’s water quality. However, the uncertainties and risks regarding the potential for land movement (which are clearly articulated) raises questions regarding the integrity of septic systems and/or sewer drainage in the likely event of a future landslide or earthquake.

Farallon Consulting Technical Memorandum

The Farallon Technical Memorandum presents a plausible scenario regarding the source and transport mechanisms for groundwater flow in the area of the proposed development. Much of Farallon’s conclusions are based upon historical publications. Farallon interprets the thickness of the landslide deposits to be relatively thin but acknowledges that there is no subsurface data upon which to verify conclusions and assessments.

Farallon interpreted Well: Till 362 as penetrating Grand Ronde Basalt. This is inconsistent with the cross section presented in the CwM report (Figure 5) where the well is shown to penetrate landslide deposits. Well 362 logs show that most of the basalt encountered was broken or with a conglomerate description. Farallon interprets this basalt as invasive Grand Ronde Basalt. The well is located very close to the east-west trending fault which is believed to have truncated portions of the surficial Grand Ronde Basalt. Without additional data, the material penetrated by Till 362 could be interpreted as invasive Grande Ronde Basalt (as described by Farallon), remnants of truncated surficial basalt or deposits disturbed by faulting or landslide deposits consisting of broken basalt. The width of the disturbed zone caused by fault movement could be considerable and whether Till 362 penetrates any part of this disturbed zone is not known. Thus, the geological conclusions reached by Farallon must be questioned.

It is important to keep in mind that Till 22 and Till 362 were both drilled for the purpose of locating water. They were not drilled with the intent of characterizing local geology or for correlating subsurface geological units or strata. There is no reason to believe that the observations of the Water Well Constructors for these two wells are inaccurate but there are no indications that the drillers were geologists either. Thus, descriptions of the lithology of the cores extracted from the drilling activities (it is assumed that descriptions were from cores) may not accurately reflect geologically significant features that could help identify the nature of the geological units penetrated by the wells.

The inconsistencies of the various subsurface interpretations and the uncertainties regarding the small scale subsurface geologic structures that would influence groundwater movement are apparent. These inconsistencies and uncertainties highlight the fact that definitive assurances to protect the District's water quality following land development cannot be made.

The Farallon Technical Memorandum addresses potential impact from septic systems with respect to biological contamination. The memorandum is also clear that septic systems are not effective for wastes other than biological human wastes. The Memorandum also recommends that use of pesticides, herbicides, fertilizers or other chemicals applied to the land should be prohibited. While this is a noble goal, it is not reasonable to expect all property owners (initial and resale owners), their guests, renters or other visitors to be honest, honorable, trustworthy and to obey all rules & regulations and to never flush anything down their sinks or toilets or never apply or spill anything that could contaminate groundwater. There is no effective or reliable method for policing or enforcement of homeowner restrictions or human behavior for perpetuity. Thus, it is also reasonable to predict that contamination will be released to the groundwater and that this contamination will make its way to the District's water supply.

Boeger & Associates Memorandums

July 2018 Boeger Memorandum

The July 2018 Memorandum states on Page 1: *“The goal of this report is to show that the proposed development will not provide a measureable impact to the district's water source.”* This statement raises questions regarding the objectivity of both Boeger Memorandums.

The description of the proposed septic systems includes effectiveness on nitrates and fecal coliforms. On Page 4 of the Memorandum, it states:

“In addition, any virus that may survive the anaerobic environment of the septic tank and the aerobic environment of the AX20 RT treatment unit, will be either be eliminated or permanently trapped in the natural soil environment of the drain field system. In an extreme case where a virus or bacteria may move beyond the drain field limits, only a few feet of soil would be needed to render the virus ineffective. The closest spring to any of the drain field systems is hundreds of feet, and thus there is no viable threat to the springs from possible viruses.”

This statement is in direct contradiction to the EPA Publication: Movement and Longevity of Viruses in the Subsurface:

<https://nepis.epa.gov/Exe/ZyPDF.cgi/1000467W.PDF?Dockey=1000467W.PDF>

which states conclusively that viruses can survive in the soil for weeks or months and can easily be transported a kilometer or more to groundwater sources and wells. On Page 5 of this publication, it states: *“Persistence of enteric viruses in ground water beneath land treatment sites and septic tank discharges has been well documented in a review by Keswick and Gerba (1980) where viral particles were recovered at distances of over 1 kilometer from their source”* The survivability of viruses is dependent on many factors; most importantly temperature. However, it is inappropriate and unreasonable for the Memorandum to offer the above statement as fact.

Furthermore, the Neahkahnie Water Protection Plan developed by the Oregon Association of Water Utilities specifically states on Page 5: *“The Short-term (two year) time frame is used as a conservative estimate of the survival time for viruses.”* And: *“Neahkahnie Water District’s water supply is considered **susceptible to viral contamination**”.*

As with most of the other documents presented in the Application, statements are made pursuant to how drain field locations, pumping system installations, materials of construction, drainage systems, surface runoff control and transfer pipe installations will all maximize the protection of ground water from human-derived bacteria but not contaminants that bypass septic systems. While the described precautions will help, the

discussions omit the fact that groundwater flow characteristics are not understood, groundwater source areas are hypothetical, and capture zones are based upon regional geological data; not small-scale subsurface geology. The Farallon Memorandum is also silent on the potential for landslides which occur from time to time and other ground movement induced by earthquakes (of which a large one is imminent). Even small movements in the ground are enough to crack fiberglass septic tanks and to break plastic transfer pipes (which are the cited materials of construction).

March 2019 Boeger Memorandum

3.0 Existing Conditions Within Critical Area – Existing High-Risk Activities

This Memorandum references two existing homes and a location where an individual appears to have defecated. These are referred to as high risk activities according to the CwM report. The Memorandum further states that there are no restrictions for fertilizer or pesticide use and that all nitrates from the septic system have infiltrated the soil. There are no data that show how much effluent the septic system has released, whether the property owner uses landscaping chemicals or how often the two residences are occupied or for what duration. In addition, there are no data that correlate the residential structures with any preferential groundwater flow pathways (which are believed to exist, but their locations and hydraulic connections are unknown). In addition, the hydraulic conductivity of the subsurface into which septic effluent is discharged is not known. Thus, the distance and expected travel time required for a contaminant plume to reach a preferential flow pathway is not known.

The inclusion of this section of the Memorandum seems to imply that the presence of two residential structures and an isolated instance of human feces on the ground, which have not yet impacted the District's water quality provides assurance that many more such structures (and people) would pose minimal risk to ground water quality. Such an implication is unreasonable.

The Memorandum further describes the operations and maintenance of advanced septic systems, their efficiency and how they enhance protections with respect to nitrates, bacteria and pathogens. There is no discussion of household chemicals, pharmaceuticals, or other chemicals (Emerging Contaminants) that are unaffected by septic treatment.

Pesticides/Fertilizers

The Memorandum agrees with pesticide/fertilizer restrictions recommended by the CwM report. As mentioned earlier, it is not reasonable to assume that all property owners, their renters, guests and visitors will comply with the restrictions and there is

no way to police or enforce the restrictions. The fact remains that the Pirate Spring already exhibits detectable levels of atrazine from it being applied or spilled upgradient of the spring.

Chemical Spills

Chemical spills can and do occur in residential areas due to activities such as pesticide/herbicide use, heavy equipment operation, asphalt work, home construction, household chemical storage yard equipment use and maintenance and do-it-yourself, automobile repairs. The Memorandum assumes that the CCRs (the current version of which does not address chemical spills) will be an effective mechanism for preventing groundwater and surface water contamination. The Memorandum states: *"If a minor spill occurs on the ground, it is expected the natural soils on this site will soak up the liquid and the area will naturally remediate over a short period of time."* And: *"If the spill is considerable, it may be prudent to dig up the impacted soils and either place them in a designated location on the site to allow them to aerate to where they are not hazardous or discard them at the closest landfill or approved location."*

These rather sunny but implausible and, in some cases illegal scenarios ignore federal and state statutes regarding the spill of regulated substances as referenced below. In addition, the process described as "natural remediation" appears to be a new term in environmental cleanup terminology. There is a process called "natural attenuation" which can be employed in the event regulatory approval is granted for small quantity spills that occur in locations where there is no threat of contamination reaching a usable aquifer. This type of approval is granted sparingly and rarely and would not be granted in the proposed development site under any circumstance. "Designated Location" is not identified. Does this mean a covered area inside of a spill containment? Not likely. The remedial remedy of allowing the impacted soils to "aerate" assumes the spill consists of a volatile compound that will promptly evaporate. If the spill were motor oil, the volatility of which is very low, "aeration" could take a very very long time.

The problem with the scenarios described above assume that the person or persons responsible for spills will 1) be aware of the requirements for responding to a spill, 2) will know the reportable quantities for the substance spilled, 3) will know the circumstances under which reporting is required, 4) will have readily available spill control or containment materials and equipment, and 5) know how to effectively use the spill control materials for the substance spilled. For example, would they know that any sheen observed in the waters of the United States is a reportable spill? A sheen on surface water draining into storm water is reportable. These described scenarios assume that a homeowner, visitor, renter or guest will act immediately and employ techniques for remediation to control the spreading of spills, have on hand the proper type of sorbent materials to sequester the contamination and then properly dispose of

the used sorbent materials. The scenarios also assume that the spiller will be able to recognize the difference between impacted soils and non-impacted soils, have proper tools on hand, immediately dig up and properly contain the impacted soils, provide temporary appropriate secondary containment, provide dry temporary storage and then dispose of what could be characterized as hazardous waste appropriately and legally.

The most likely spills that will be caused by homeowners include petroleum hydrocarbons commonly found in and around households (gasoline, diesel, motor oil, hydraulic fluid, solvents, oil-based paint, ethylene glycol etc.). Spills of other compounds (for example lead-tainted sulfuric acid from a leaking lead-acid battery) are certainly possible but would be expected to be less common. It is not reasonable to assume that homeowners will follow all the rules. It is even less likely that any reportable spill will be reported due to fear of liability, fines or other repercussions. The most likely spill response by homeowners, renters, visitors and guests will be to either ignore, hide or cover up the spill. Whatever was spilled, the reportedly high permeability of the soils would result in rapid infiltration of the contamination into the soil column.

Federal Requirements

<https://www.epa.gov/emergency-response/when-are-you-required-report-oil-spill-and-hazardous-substance-release#oil%20spills>

“Any person or organization responsible for a release or spill is required to notify the federal government when the amount reaches a federally-determined limit.”

Oregon Statutes:

<https://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/How-To-Report-A-Spill.aspx>

“You are responsible for the immediate cleanup of your spill, regardless of the quantity involved. The responsibility lies with the person who spills the product, as well as the person owning or having authority over the oil or hazardous material.”

6.0 Concerns to Groundwater Quantity

Loss of Spring Capacity

The Memorandum disagrees with the CwM report on the percentage of impervious surfaces that would divert water away from infiltration to stormwater drainage. The CwM report estimates that development would result in a 50% increase in impervious surface area and the Boeger Memorandum estimates 10%. No surface area calculations or summations accompany either estimate. Regardless of whether either figure is accurate, the presence of any impervious surfaces will reduce infiltration and have the

potential to reduce the quantity of water available to the District. The Memorandum further estimates that impervious surfaces of 10% would result in a reduction of water production at the District's springs by less than 1% or by an undetectable amount. This guess is based on the unproven conclusion that the vast majority of recharge occurs almost exclusively upgradient of any residentially zoned area. While it is likely that most of the recharge occurs in the Grande Ronde Basalt, it is unknown how much infiltration from the proposed development area contributes to spring flow. Thus, any estimates based upon existing data are primarily speculation.

In the end, it will only take one major event (earthquake, landslide, large spill) to damage the District's water supply for decades. It is not reasonable to assume that property owners, their renters, guests and visitors will follow all of the rules and behave in a manner that precludes the possibility of contaminants polluting the District's water supply. Contamination of Pirate Spring supports this statement.

A&B Septic Service Operations and Maintenance Description

The A&B document is described as a contract. However, it is simply a list of services and associated costs for operating and maintaining an A&B septic system. The only paragraph that looks like a contractual clause (General Terms and Conditions) specifies payment terms and indemnification of A&B Septic. There are no federal/state/county or local statutes cited that require the owner of a septic system to renew an operations and maintenance (O&M) agreement after the initial contract has expired. The document states that the county will be notified if the "contract" is not renewed and that an annual report will be submitted to an unidentified "Regulatory Agency" but there is no discussion of how the owner will be compelled to continue to conduct proper O&M of the system following the first two years of operation. There is discussion of a telemetry system that monitors the septic installation but there is no statement demonstrating that telemetry is required to be installed or maintained. The other question is: What if A&B goes out of business?

If an owner decides not to renew their contract with A&B, will the County condemn the property or somehow force the owner to operate the septic system appropriately and monitor the operation? Will a "Regulatory Agency" force an owner to reinstate another contract with A&B or another service provider and how would this be enforced? Is there a statute that prevents the owner from operating and maintaining the septic system themselves? The above uncertainties have not been addressed in any way. These uncertainties represent risks to the District's water quality.

Site Evaluation Report for On-Site Sewage Disposal System Suitability

The site evaluations for the proposed development lots are all identical except for the dates of the site evaluations and the dates on the notifications. There are thirty evaluation letters in three batches of ten each. The dates for each batch are as follows:

1. Ten letters dated September 19, 2017 for evaluations that took place on August 29, 2017
2. Ten letters dated November 21, 2017 for evaluations that took place on October 26, 2017
3. Ten letters dated February 27, 2018 for evaluations that took place on February 7, 2018

The identical documents state that all the evaluations included among other things:

- An assessment of soil types and *“how well they drain and evidence of good soil structure for treatment”*.
- *“Depth to temporary and permanent groundwater tables”*.
- *“Wells located on the site or adjacent sites.”*

The site evaluation reports raise several questions including:

- What methods were used by the County to assess soil drainage characteristics for each of the test pits and what data was collected to support this conclusion?
- What methods were used to assess “soil structure for treatment” and where is recorded data from these assessments?
- What were the depths to the “temporary and permanent groundwater tables”? How were these depths determined?
- What did the county determine from wells in the area? There are only two wells of any significant depth that were both dry, were abandoned long ago and have little relevance to groundwater flow characteristics.

Either all the soils in all of the test pits are identical or the assessment reports are perfunctory in nature and do not reflect an assessment that was conducted in earnest. The letters appear to be form letters and lack site-specific information. No data are provided to support any of the assessments.

Neahkahnie Water District Drinking Water Protection Plan

This plan states: *“The goal of this drinking water protection plan is to alleviate possible impacts to the water system from either a natural catastrophe or a potential contaminant source.”*

The protection plan (Plan) states on Page 2 that the delineation of the water protection area was determined by *“hydrogeological mapping and researching the characteristics of*

the aquifer.” The author; Mike Collier is neither a trained geologist or hydrogeologist so it is difficult to understand how he is qualified to map the hydrogeology of the area or assess the characteristics of the aquifer especially when so little is known about the subsurface. The language in this report is strikingly similar to that presented in the Source Water Assessment Report prepared by the Oregon Department of Health Services and the Oregon Department of Environmental Quality. It is confirmed that the Source Water Assessment Report is the source of the geological and hydrogeological statements that appear in the Protection Plan.

On Page 3, it is stated: *“Groundwater movement in this area is mostly restricted to fracture zones in the Alsea and Astoria Formation, through areas of sandstone/ mudstone in the Grand Ronde Basalt, and through the unconfined Landslide deposits emerging as springs in surface depressions”*. This statement is contrary to conclusions reached by consultants representing the Summit at Manzanita and in the accompanying geological references. In these documents, The Astoria Formation is described as having low permeability acting as the underlying confining surface for groundwater that is believed to migrate in preferential pathways near or at the base of the landslide deposits. Any water movement due to fractures in other than basalt is speculative and most likely minor as evidenced by Well Till 022. The Alsea Formation is described as being much deeper in the area of the proposed development and is not likely to contribute to or influence the District’s water supply in any way.

When water becomes polluted by a toxin and treatment is required, it represents an unanticipated (and very large) cost to the water system and ultimately the water consumers. The Plan correctly states that the least expensive management plan for protecting the water supply is through proactive community action and education. Compared to prevention, the cost of cleanup/remediation/treatment is documented to be between 5 and 200 times the cost of prevention. In the case of the District’s water supply, this figure could be much higher. In the event the District’s water supply were to become contaminated due to development upgradient of the springs, who would pay the remediation or source replacement costs?

In summary, the best and least expensive option for protecting the District’s water supply is prevention of pollution in the first place.

Source Water Assessment Report Prepared by:

Oregon Department of Human Services
Health Services
Drinking Water Program
And
Oregon Department of Environmental Quality

Water Quality Division
Drinking Water Protection

The Source Water Assessment Report makes it clear in the beginning that its conclusions and model are based upon assumptions. Specifically, it states:

“The conceptual model for groundwater flow to the Neahkahnie Water District springs is based on the following assumptions:

- *Most of the groundwater discharging at the springs originates in the Grande Ronde Basalt and discharges to the Landslide Deposits before discharging at the springs.*
- *The contact between the Grande Ronde Basalt and the Invasive Grande Ronde Basalt acts as a barrier to groundwater flow.*
- *The area that falls inside the Necarney Creek watershed does not contribute water to the Neahkahnie Water District Springs.*
- *The base of the Grande Ronde Basalt, where it comes in contact with underlying formations acts as a barrier to groundwater movement.”*

These assumptions are repetitions of historical geological work all of which was conducted at a regional scale. They appear reasonable but have not been confirmed with field data other than surface observations.

The report describes three zones (1, 2, and 3) which represent short, intermediate, and long-term groundwater flow regimes and maps the boundaries of each of these regimes. *“For the Neahkahnie Water District, the areas inside Zone 1 and Zone 2 are considered highly sensitive due to the presence of landslide deposits and shallow bedrock”*. The report specifically states that the regimes are drawn based on assumption of recharge areas. Again, no specific data exists to confirm or to quantify the assumptions used or the conclusions drawn.

Outline of Possible Assessment Alternatives to Characterize Groundwater Flow and Transport Mechanisms that might Contribute to Contaminant Migration

After reviewing the information presented in the Summit at Manzanita Application including the various reports by contributing consultants, it is clear that the groundwater flow mechanisms and fate and transport mechanisms at the proposed development are poorly understood. It is generally believed that the bulk of groundwater recharge (the source of water for the District’s drinking water supply) takes place upgradient of the proposed development in the Grande Ronde Basalt. It is

known that infiltration of precipitation takes place throughout the proposed development but the relative contributions of upgradient recharge and downgradient infiltration have not been quantified.

Based upon how the District's springs emerge at the surface, it appears that groundwater flows along preferential pathways in the subsurface, presumably in landslide deposits. Geologic maps by the U.S. Geological Survey show an east-west trending fault that is described as "concealed, approximately located or inferred". This suspected fault is upgradient of the District's wells. Its zone of disruption and angle of penetration are not described except for "conceptual" cross section B-B' in the CwM report. The influence (if any) that this fault may have on groundwater flow is not known.

The surficial deposits in the proposed development are predominantly landslide deposits. Geologic maps indicate that the Astoria Formation outcrops in the eastern portion of the proposed development and east of Spring 3. There is disagreement regarding the depth of the landslide deposits. The topography of the contact between the landslide deposits and the underlying confining layer is not known. If the groundwater flows through preferential pathways in the landslide deposits, then the topography of its base most likely has a profound influence on the flow pathways.

The severity of the consequences of contaminating the District's water supply cannot be overstated. The Summit at Manzanita application and its contained consulting reports outline a wide variety of mitigations, engineering approaches and assessments as mechanisms to protect the District's water supply. The problem is that nobody knows where the water is in the subsurface. Certainly, there are scenarios that are more probable than others, but with so little known about the subsurface structure, all the engineering and mitigation measures discussed are, for the most part, conjecture.

In order to provide any degree of certainty in protecting the District's fragile drinking water supply, knowledge of the subsurface far beyond what is currently known is necessary. Investigations to identify flow paths and transport mechanisms could include a combination of one or more of:

1. Drilling, coring and logging multiple monitoring wells beginning at or near the springs with additional wells installed progressively upgradient as data suggests. The purpose of these wells would be to determine:
 - a. Thickness of soil, and landslide deposits
 - b. Identification of the depth to the water table and zones of high water flow (preferential flow paths)
 - c. Map the contour of the contact between the landslide deposits and the underlying aquitard
 - d. Determine contour of the water table
 - e. Determine the zone of disruption from the east-west trending fault and determine (if possible) the fault's influence on groundwater transport

- f. Conduct pump tests where appropriate to determine hydraulic conductivity
 - g. Assess possible contribution of infiltration to water supply
 - h. Determine specific sources of recharge
- 2. Assess zones of influence by using tracer studies
 - a. Once wells are installed, they can be used as injection points for tracers
 - b. Tracers will help establish preferential flow pathways and will quantify transport velocity
 - c. Tracers will help quantify the high, intermediate and low risk zones
- 3. Use of Cross-Borehole Ground Penetrating Radar (GPR)
 - a. Recent advances in GPR techniques have shown success in locating groundwater flow paths:
<https://agupubs.onlinelibrary.wiley.com/doi/epdf/10.1002/2016WR019498>
 - b. GPR combined with tracer studies can (under the right conditions) accurately locate preferential groundwater pathways in the proposed development
 - c. Boreholes used to refine geological understanding can also be used for a GPR assessment

A detailed plan for implementing one or more of these types of investigations is beyond the scope of this review. While detailed costs for the alternatives outlined above have not been quantified, it is expected that they would be substantial. In addition, the time required to conduct a comprehensive study of the site aquifer would be measured in months or years.

The cost and time required for a comprehensive assessment of groundwater may be considered by others as unreasonable, however, moving forward with a development with the known risks and lack of understanding of groundwater flow mechanisms is even more unreasonable.

Additional References

1. **Environmental Quality Abstract - Groundwater Quality**
Artificial Sweeteners Reveal Septic System Effluent in Rural Groundwater, Vol. 46 No. 6, p. 1434-1443, October 26, 2017.
<https://dl.sciencesocieties.org/publications/jeq/abstracts/46/6/1434>

2. **US Geological Survey, Fact Sheet 072-03, January 2004, Is Septic Waste Affecting Drinking Water From Shallow Domestic Wells Along the Platte River in Eastern Nebraska?**

<https://pubs.usgs.gov/fs/fs07203/>

Abstract: The quality of drinking water from shallow domestic wells potentially affected by seepage from septic systems was assessed by analyzing water samples for substances derived from septic systems. The effects of septic systems on water from domestic wells was demonstrated using several tracers including bacteria, virus indicators, dissolved organic carbon, nitrogen species, nitrogen and boron isotopes, and organic compounds such as prescription and nonprescription drugs. Domestic wells seemed to be most vulnerable to septic-waste contamination when they were sand-point wells within 100 feet of a septic system and were less than 45 feet deep in a shallow, thin aquifer.

3. **Septic Systems are a Major Source of Emerging Contaminants in Drinking Water**

<https://phys.org/news/2017-06-septic-major-source-emerging-contaminants.html>

Abstract: “A new analysis shows that septic systems in the United States routinely discharge pharmaceuticals, consumer product chemicals, and other potentially hazardous chemicals into the environment. The study, published June 15 in the journal Environmental Science & Technology, is the most comprehensive assessment to date of septic systems as important sources of emerging contaminants, raising health concerns since many of these chemicals, once discharged, end up in groundwater and drinking water supplies.”

Wastewater effluent is the primary source of pharmaceuticals, hormones, consumer product chemicals, and other organic wastewater compounds (OWCs) commonly detected in surface water, groundwater, and drinking water. (References 1-5 below)

(1) Kolpin, D. W.; Furlong, E. T.; Meyer, M. T.; Thurman, E. M.; Zaugg, S. D.; Barber, L. B.; Buxton, H. T. Pharmaceuticals, hormones, and other organic wastewater contaminants in U.S. streams, 1999– 2000: A national reconnaissance. Environ. Sci. Technol. 2002, 36 (6), 1202–1211.

(2) Barnes, K. K.; Kolpin, D. W.; Furlong, E. T.; Zaugg, S. D.; Meyer, M. T.; Barber, L. B. A national reconnaissance of pharmaceuticals and other organic wastewater contaminants in the United States - I) Groundwater. Sci. Total Environ. 2008, 402 (2–3), 192–200.

(3) Focazio, M. J.; Kolpin, D. W.; Barnes, K. K.; Furlong, E. T.; Meyer, M. T.; Zaugg, S. D.; Barber, L. B.; Thurman, M. E. A national reconnaissance for pharmaceuticals and other organic wastewater contaminants in the United

States - II) untreated drinking water sources. Sci. Total Environ. 2008, 402 (2–3), 201–16.

(4) Benotti, M. J.; Trenholm, R. A.; Vanderford, B. J.; Holady, J. C.; Stanford, B. D.; Snyder, S. A. Pharmaceuticals and endocrine disrupting compounds in U.S. drinking water. Environ. Sci. Technol. 2009, 43 (3), 597–603.

(5) Loos, R.; Locoro, G.; Comero, S.; Contini, S.; Schwesig, D.; Werres, F.; Balsaa, P.; Gans, O.; Weiss, S.; Blaha, L.; Bolchi, M.; Gawlik, B. M. Pan-European survey on the occurrence of selected polar organic persistent pollutants in ground water. Water Res. 2010, 44 (14), 4115–4126.

Dale Timmons, R.G.
23252 S.E. 54th Place
Issaquah, WA 98029



October 5, 2019

Neahkahnne Water District
9155 Nehalem Road
Nehalem, Oregon 97131
Attn: Richard Felly, General Manager

Subject: COMMENTS ON SUMMIT AT MANZANITA ADDITIONAL PERMIT SUBMITTAL

Dear Mr. Felly:

Pursuant to your request, please find below my comments on three documents prepared by Morgan Civil Engineering, Inc. and Boeger & Associates. The three documents include:

1. Storm Water Plan for the Summit at Manzanita, Tax Lot 202, Map 3N 10W 20, Parcel 2 of Partition Plat 2018-07, Neah-Kah-Nie, Tillamook County, Oregon #16-12-Sev
2. Engineering Portion of Geologic Hazard Report for Road and Utility Development of Tax Lot 202, Map 03N 10W 20, Parcel 2 of partition Plat 2018-07, Neah-Kah-Nie, Tillamook County, Oregon (The Summit at Manzanita) #16-12-Sev both dated July 23, 2019.
3. Addendum to Geologic Hazard Report: Sanitation Improvements, Boeger & Associates Letter dated August 8, 2019.

These documents provide some information on how storm water will be managed at the proposed development (Summit at Manzanita) and information on engineering and geologic hazards related to construction at the proposed development.

The contents of the above-referenced documents do not change the concerns or conclusions reached in my earlier comments: Review of the Summit at Manzanita Development Application dated June 27, 2019.

The Storm water plan outlined by Morgan Civil Engineering specifically describes how stormwater runoff will be managed in a manner to encourage infiltration. Any contamination contained in the runoff that infiltrates the ground will contaminate ground water. Morgan also encourages the use of fertilizers in the development to accelerate vegetative growth with the intent of reducing erosion. Application of fertilizer is contrary to assurances made by the developer that fertilizers and pesticides would be prohibited in the proposed development. Contamination of Pirate Spring with Atrazine has shown that the Neahkahnne Water District springs are vulnerable to contamination by the land application of chemicals. Suggesting they be used in the proposed development is unreasonable.

The engineering portion of the geologic hazard report relies almost exclusively on a geologic hazard report prepared by Tom Horning. Mr. Horning's report was found to be irrelevant with respect to

groundwater fate and transport and irrelevant with respect to the potential for contamination of ground water. Mr. Horning's report and Morgan's report both emphasize the hazards represented by landslides which are likely to occur in the event of an earthquake. The Morgan report and the Boeger letter both state that the designs outlined will adequately protect development infrastructure from "*reasonably foreseeable ordinary hazards*". The report and letter omit earthquakes as reasonably foreseeable.

For many geographic locations, earthquakes would not be considered reasonably foreseeable. However, the geologic and geophysics community agrees that a large subduction-related earthquake is overdue along the Oregon and Washington Coasts. It is not a question of *if* there will be an earthquake, it is a question of *when*. Thus, an earthquake at the site of the proposed development should be considered reasonably foreseeable and can be expected to cause landslides which will sever sewer lines, drainage lines and would damage other infrastructure including the rupture of fiberglass septic tanks.

It can be reasonably concluded that an earthquake and accompanying landslides will result in the introduction of contamination into the groundwater and consequently contamination of the Neahkahnie Water District water supply. This would be in addition to contamination that will be invariably introduced to the groundwater by septic systems and by surface water that will be contaminated by virtue of development itself.

Sincerely,



Dale M. Timmons, R.G.

Morgan Letter dated July 28, 2019 (Storm Water Plan...)

Page 1, 2nd Paragraph: Paragraph clearly states that storm water will be subject to infiltration. This means that any contaminants in the storm water will infiltrate and be transported to ground water. Likely to be transported to Spring(s).

Page 2, Lots 2-4, and Lot 1: It should be noted that “downslope from these areas” is toward Spring 3.

Page 3, Lots 20-29: Efforts described here and elsewhere to slow the flow of runoff will reduce erosion as designed but will also increase infiltration in these areas. If runoff is contaminated, infiltration will contaminate groundwater.

Page 3, Lots 17-19: The infiltration area described is upgradient of Spring 3. If infiltration is contaminated, groundwater will be contaminated.

Page 5, Berms (Mountain Drive), 2nd Paragraph: This paragraph states that “Longer duration storms have reduced flows”. Why do longer storms have reduced flows? This does not make sense. Longer storms produce more precipitation for longer periods, thus increasing flows. Once the ground is saturated, flows will also increase.

Page 5, Berms (Mountain Drive), 4th Paragraph: What is the basis for the statement: “...a larger storm will pass without causing infrastructure damage.”?

Page 6, Summary: The statement is made that water runoff will be contained for 30 minutes. Storms on the Oregon Coast can last for many days. What happens after 30 minutes?

Morgan Civil Engineering Letter Dated July 23, 2019, Engineering Portion of Geologic Hazard Report...

Page 3, Findings and Hazards Analysis, Third Paragraph: The effects of the seismic activity described will sever buried sewer lines, septic lines and would likely crack or damage the fiberglass septic tanks described in the Application. This would release contamination to the subsurface and result in contamination of groundwater.

Page 4, Localized Slope Instability: This paragraph correctly states that steeper slopes are subject to ongoing soil creep. Soil creep can easily damage septic and sewer lines. Instead of practicing “extra consideration” in these areas, it is more reasonable to avoid developing these areas altogether.

Page 6, B. Road Location and Road Based Support: This and other sections clearly show that all of the topsoil wherever there is a building, road, or structural support will have to be removed. Erosion and silting will occur during excavation activities. In addition, the underlying soils will be compacted in the process. This will reduce infiltration and increase runoff. Also, excavation and transport of this much top soil and subsequent required backfilling will result in heavy construction equipment traffic. All of these activities increase the risks of a spill of hydraulic fluid, diesel fuel, grease, anti-freeze, motor oil and other chemicals used during these activities.

Page 7, Last Paragraph: This paragraph specifies the use of fertilizer to encourage the growth of re-vegetation. The Developer has specifically stated in the Application that fertilizers and pesticides should

not be used under any circumstances. Is the Developer now recommending that fertilizers be applied to the soils in the proposed development?

Page 8, E. Construction of Underground Utility Trenches, 4th Paragraph: The water district does not have wells as stated in this paragraph. In addition, there is no established correlation between drainage channels or routes and subsurface groundwater flow paths. With respect to the reference to the reviews conducted by the "hydrogeologist" and the "County Sanitarian", please see: Neahkahnie Water District Review of the Summit at Manzanita Development Application by Dale Timmons, R.G. dated June 27, 2019.

Page 9, G. Stormwater Management, Runoff and Drainage, 1st Paragraph: This paragraph describes multiple efforts to encourage the infiltration of runoff from the proposed development. If runoff is contaminated from the various sources common in residential communities, it will contaminate groundwater.

Page 11, Summary Findings and Conclusions:

1. It is stated that there are no immediate adverse effects on adjacent properties from future house construction. There is no statement regarding the potential for long term adverse effects. It is stated that there is a potential for decreased runoff quality. Degraded quality means contamination. Infiltration of contaminated runoff (which is encouraged by Morgan Civil Engineering) will contaminate ground water. This represents a very real long term adverse effect to the District's water quality.

5. This paragraph states that the future development is protected from "reasonably foreseeable ordinary hazards" but excludes major earthquakes. It is generally accepted in the geologic and geophysics community that a large earthquake is overdue for the Oregon and Washington coasts. Thus, a large earthquake can be reasonably expected in the not-too-distant future. The Horning and Morgan reports clearly state that a large earthquake will result in ground movement and landslides in the area of the proposed development. Ground movement and landslides are likely to sever sewage lines, drainage lines and rupture septic tanks. This would release large quantities of contaminated sewage directly to the ground and would contaminate groundwater.

6. This paragraph states that the design will minimize adverse environmental effects resulting from the proposed development. It will not eliminate them.

Page 11, Limitation: It is stated:

"The engineering conclusions and recommendations in this engineering portion of the report are based upon the geologic conclusions presented in the geologic report prepared by Mr. Horning".

The Horning report does not address ground water or environmental contamination issues in any way. Thus, the Morgan report should not address groundwater or environmental issues.

Boeger & Associates, LLC Letter Dated August 8, 2019
Addendum to Geologic Hazard Report: Sanitation Improvements

Page 2, Section 2.0: Sanitary Drainfields, Third Paragraph:

This paragraph states:

"Advanced secondary treatment with ultraviolet disinfection will precede all drainfields. This will produce in a very high effluent quality that will result in no measureable degradation to any groundwater sources beneath the drain field systems."

This statement only refers to biological contamination. There is a glaring omission with respect to other contaminants including but not limited to: pharmaceuticals, household chemicals, metals, hormones, other chemicals (collectively Contaminants of Emerging Concern) that will be drained or flushed. It has been shown that viruses can pass through septic systems unaffected and travel up to a kilometer or more in the subsurface. It can be stated with a high level of certainty that ground water quality will be degraded by discharge of chemicals contained in septic effluent. Considering the proximity, downgradient location and lack of knowledge of groundwater fate and transport in the area of the proposed development, the above statement is unreasonable and unsupported by facts.

Page 2, 3.0 Localized Subsurface Conditions, First Paragraph:

This paragraph states:

"It was mentioned in the prior Geo-Hazard reports that the weathered rock layer is considered highly permeable."

This statement is true; it was mentioned. However, there is no recorded data by Horning Geoscience or by Tillamook County that documents the actual permeability of the soils.

The third paragraph in this section further states:

"The loading rate to the soil was developed so that the soil will not have any adverse effect or change. The additional sub-surface flow from these drainfields is very minimal, relatively, to the entire sub-surface flow. There should be little to no perceivable change to groundwater volume and drainage pathways will not be altered."

Aside from the fact that the first sentence in this paragraph has no meaning, there is no scientific, quantitative or reasonable basis for this paragraph. Subsurface flow in the area of the proposed drain fields is not known. The argument seems to conclude that "micro-dosing" of effluent results in no effect. The statement omits the fact that chemicals are still being introduced to the subsurface and that these chemicals will indeed adversely impact groundwater quality.

Page 3, 5.0 Conclusion

(a): The conclusion states that there are no anticipated *adverse effects to the groundwater*. This statement refers only to biological contamination. On the contrary, this statement is blatantly untrue. There will be adverse effects on the ground water quality because septic systems are not effective at eliminating chemical contamination or viruses. It is a certainty that metals, pharmaceuticals, hormones, household chemicals and viruses (Contaminants of Emerging

Concern) will be flushed down drains and toilets and that there will be chemical releases to the surface by virtue of development itself.

(b): It is stated that the drain fields are located downslope of structures and dwellings (thus protecting the occupants). This conclusion fails to mention that the drain fields discharge into the groundwater upgradient of a pristine drinking water source. Discharging septic effluent upgradient represents a *hazard to life, public and private property and the natural environment*.

(c): This conclusion states that groundwater **movements** should not be affected. In fact the author has no idea what the ground water movements are in the proposed development. The author fails to state that groundwater **quality** will most certainly be degraded.

(e): This paragraph states that the future development is protected from “reasonably foreseeable ordinary hazards” and mentions wind erosion, undercutting, ocean flooding and storm waves (none of which represent a risk for this area anyway). The statement fails to mention the hazard represented by major earthquakes. It is generally accepted in the geologic and geophysics community that a large earthquake is overdue for the Oregon and Washington coasts. Thus, a large earthquake **can be reasonably expected in the not-too-distant future**. The Horning and Morgan reports clearly state that a large earthquake will result in ground movement and landslides in the area of the proposed development. Ground movement and landslides are likely to sever sewage lines, drainage lines and rupture septic tanks as well as cause other damage. This would release large quantities of contaminated sewage directly to the ground and would contaminate groundwater.

Dale M. Timmons, R.G.
23252 S.E. 54th Place
Issaquah, WA 98029

July 25, 2018

Mr. Richard Felly
General Manager
Neahkahnie Water District
9155 Nehalem Road
Nehalem, OR 97131



Subject: COMMENTS ON PUBLIC WORKSHOP

Dear Mr. Felly:

Pursuant to and consistent with the Consulting Services Agreement executed between the Neahkahnie Water District (District) and me on July 9, 2018 and the attached scope of work, herein are my comments, input, and impressions of the Public Workshop sponsored by the District that took place on July 10, 2018.

I chose not to speak or ask questions at the Workshop in favor of listening and taking notes. While I can be an assertive advocate in these types of events, I was not confident that this behavior is what the District wishes of me at this time.

Summary of Workshop

The Public Workshop took place at the Hoffman Center in Manzanita, Oregon on July 10, 2018. The meeting started at 7:00 PM and lasted until approximately 9:00 PM. At the start of the meeting, there were 38 attendees including District representatives. The topic of the meeting was sharing information for the proposed development: The Summit at Manzanita including a presentation by the Developer.

Bob Long's Presentation:

In general, Mr. Long's presentation was not effective. He spoke over the heads of the audience; his graphics were not readable and the level of detail that was shared was unnecessary. The details are available in the report and can be read by all. It was clear that attendees were confused about surface and ground water capture zones. No cross-section was shown which could have clearly conveyed a better understanding of the subsurface. The report and the presentation focus on septic effluent, septic treatment, and organic constituents contained in sewage. There is nothing addressing

the potential risks associated with other contaminants such as herbicides, pesticides, pharmaceuticals, automobile-related contaminants, etc. Considering the pristine nature of the District's water quality and its proximity to the proposed development, these types of contaminants should represent a fundamental concern, not a secondary concern.

The presentation would have been more effective if it were simplified. For example, instead of attempting to describe the water quality by describing the chemistry and by using numbers and complex charts with print too small to read, a simple statement would have sufficed. He could have just stated "On a scale of one to ten, the District's water is a 9.8. It is excellent." This would have been much more effective, saved a lot of time, and captured the interest of the attendees. The attendees can easily understand condensed statements like these.

Mr. Long is working for and representing the District. As such he should align himself more assertively with the interests of the District and emphasize the interests of the District and the stakeholders. While Mr. Long has a professional obligation to maintain scientific neutrality, he surely could have more strongly represented the interests of the District without sacrificing scientific integrity. Mr. Long's presentation leaves the impression that the summary shared is fact. This is not the case. Very little is known about the subsurface, capture areas, transport mechanisms and water pathways. It is likely that the Developer will attempt to use Mr. Long's report as a basis to demonstrate that development will not affect the Districts' water quality. This should not be allowed to happen.

While Mr. Long did state that the report was the result of a "desktop study" the lack of information or knowledge about the groundwater system was not emphasized enough. Emphasizing this lack of knowledge will be imperative as the developer continues to attempt to demonstrate that their proposed development poses no risk to District's water quality.

Mr. Long mentioned that a spill on highway 101 would not affect the water quality of Spring #3. He stated that a response would be immediate and that if the spill (let's assume gasoline or diesel) were allowed to flow down the natural drainage, groundwater and Spring #3 would not be affected (this assumes that there is some way to direct the spill from a catastrophic accident to the desired location). As a career hazardous and radioactive waste remediation professional, having responded to dozens of emergency responses (many involving petroleum hydrocarbons), I can say that this statement is blatantly false.

If a spill of thousands of gallons of fuel were spilled on Highway 101 in the wrong place upgradient of Spring #3, the initial response would be police and/or fire department personnel possessing little or no spill containment equipment or capability. It typically takes hours for meaningful response equipment and personnel to arrive onsite. The fuel would spread down-slope quickly and be readily absorbed into the soil. Because of the steep terrain and dense trees/plant life, access to affected areas and removal of affected soils would be severely complicated if not impossible. The spill would work its

way deeper through the soil column until encountering the ground water. The spill would kill all the plants/trees encountered and leave residual fuel in the soil column which would be re-mobilized with every rainfall. A spill such as this in the wrong place would contaminate Spring #3 for decades and the water would not be usable.

The scenario on Highway 101 is exacerbated by the statement that no left or right-turn lanes will be constructed for the two access roads for the development. While it is understood that the Highway Department may have determined that they are not necessary, perhaps they have not driven over Neahkahnie Mountain on a dark rainy or foggy night. At certain times, visibility in this area can be more than challenging. A lack of adequate turn lanes increases risks for an accident upgradient of Spring #3.

Presentation by Developer

Presentation by Pete Adamson

Mr. Adamson started by saying that he was familiar with the concerns of the community and that he would address these concerns. He also stated that there were homes in the groundwater capture zone already, the implication being that 30 additional homes would be fine and would not pose a risk.

Mr. Adamson described the proposed septic systems as “state of the art” and stated that these systems are “monitored 24 hours per day”. Questions from the attendees requesting details on the monitoring system were glossed over. The District and the Stakeholders deserve detailed responses to the following questions:

1. What is the monitoring mechanism?
2. What specific parameter(s) are being monitored and how are they monitored?
3. What constitutes an off-normal or abnormal event or condition of system functionality?
4. What specific condition or conditions will trigger an alarm?
5. How is an off-normal event or condition communicated and to whom?
6. What established procedures are written for remedial action in the event of an off-normal event or abnormal condition?
7. What is the period (minimum and maximum) that can elapse between an alarm being triggered and remedial action being taken?
8. What fail-safe or back-up mechanisms are included in the septic design that assure that an off-normal condition will result in an automated response or notification if the primary alarm is not functional? What is the automated response (if any)?
9. What are the potential risks if an off-normal condition were to remain unaddressed?

10. Can a homeowner bypass or otherwise disable the monitoring or fail-safe systems?
11. What enforcement mechanisms are in place to assure that systems are properly operated and maintained after the developer has departed?

None of these questions were addressed in any way.

Mr. Adamson stated that none of the proposed septic systems were closer than 600 feet from any of the District's springs and that this was not a problem. Mr. Adamson only addressed bacterial effluent. He did not address any concerns regarding chemical, pharmaceutical, hydrocarbon or toxic metal contaminants. He further stated that risks from road drainage would be addressed by appropriate designs that would direct surface water "away from sensitive areas". He did not elaborate on how the design would address severe runoff scenarios.

Presentation by Jerry Marris:

Mr. Marris is the surveyor for the Developer. It is uncertain how his credentials qualify him to address safety, runoff, contamination, or other issues regarding the District's water quality. Mr. Marris stated that geology and hydrology reports would be made available. He further stated that a hydrologist with Farralon and Tom Horning (geologist from Seaside) had developed reports. Farralon employs multiple hydrogeologists so Mr. Marris may have meant that the Farralon "hydrologist" is actually a hydrogeologist. This was not clear. Mr. Horning's available credentials on the Internet do not mention hydrogeology, ground water issues, or contaminant fate and transport mechanisms.

Mr. Marris stated that "test pits" had been excavated and that all of them were "OK" and were the "standard for operations". These terms were not defined. He further stated that the pits were "OK'd by the County". He did not elaborate or provide evidence substantiating this statement or what "OK'd by the County" means.

In one statement, Mr. Adamson stated that the effluent from their septic systems was "drinking water quality". Mr. Marris contradicted this statement by stating that the effluent was "almost drinking water quality" and "good enough to flush". No data was provided regarding effluent water quality other than these qualitative statements. As with Mr. Adamson, Mr. Marris failed to address any potential risk to the District's water from contaminants other than biological constituents of septic effluent.

Mr. Marris mirrored Mr. Adamson's remarks in stating that the proposed septic systems were monitored 24 hours per day and that "flushing is prohibited" if the monitoring system detects an abnormal condition. When asked by an attendee to elaborate, he stated that he could not answer questions on the monitoring system but provided assurances that the proposed systems had been operating for "15 years". He failed to disclose where they were operated, failed to provide references, and failed to provide any effluent data from 15 years of operational history. He further stated that the

“system won’t work without electricity”. His description of safeguards in times of power outage was that toilets would back up and so nobody would use them. He further stated that all homeowners would be required to have back-up generators to maintain septic operability. He did not describe how homeowners would be monitored or forced to purchase, install, operate, or maintain back-up generators.

The developers: Phil Weber and John Rollins were not present for the meeting. There were several questions about the backgrounds and history of the developers. These were not answered.

Mr. Marris pointed out that two drain fields were located in the “sensitive area” defined by Mr. Long’s hydrogeology report. He then stated that these septic systems would be pumped to another location outside of the sensitive area. It may have been unclear, but a pumped system in the sensitive area would not require a drain field. This requires clarification.

Mr. Marris was further pressed regarding the monitoring systems later in the meeting. He was asked general questions about enforcement mechanisms. His response began with “I guess...”. He described “typical” monitoring contracts with a 2-year duration. He did not describe who the parties are for such contracts or the specific terms of the contracts. He further noted that bi-laws would be written into the Homeowners Association Covenants, Conditions & Restrictions (CCRs) but did not define what these bi-laws were.

While CCRs may be effective at regulating landscaping and paint color (which are easily viewed and obvious), there really is no enforcement mechanism for these septic systems. Mr. Marris said that he thought the electronic monitoring system would be inspected every 6 months. He did not say by whom or at whose expense. His statements demonstrate that he does not know.

Summary

The developer’s representatives failed to reveal important information to the stakeholders and to the District. The explanations regarding monitoring of the proposed septic systems was woefully inadequate. The only conclusion that can be taken away from the Developer’s presentations is that once the systems are sold and installed, it will be up to the homeowners to properly operate, monitor, maintain and repair, and police these systems. There is no way a home owners association will be able to police these systems. As we all know, most people will forgo septic maintenance or concern as long as the toilets flush and the sinks drain. Beyond that, “out of sight, out of mind”. Once the developer has sold the lots, he will be gone. There are no proposed financial safeguards or financial assurances being offered by the developer to address contamination of the District’s water supply that is likely to occur in the future from the proposed development.

The potential for contaminating the District's water supply with contaminants other than biological effluent is very real. Homeowners cannot be trusted to keep stored chemicals in secondary spill containment facilities. It will be impossible to prevent homeowners from using fertilizers, herbicides, pesticides or other chemical gardening products. Their automobiles, lawnmowers and other power equipment will leak oil and other fluids like gasoline, diesel, power steering fluid, brake fluid, antifreeze and grease. Pharmaceuticals will exit their septic systems along with everything else that should not be discharged down drains leading to septic systems. The septic system and soil infiltration of effluent will effectively treat only the biological portion of the effluent contaminants. The rest will enter the ground and migrate. There is no way to tell how long it will take for contaminants to begin showing up in the water supply but is virtually guaranteed that they will.

The contamination may or may not ever exceed regulatory drinking water standards. But is that what the stakeholders want? Do they want to allow their drinking water to be tainted at all? Keep in mind that EPA's carcinogenic risk assessment process "is a process to estimate the nature and probability of adverse health effects in humans who may be exposed to chemical in contaminated media"

(<https://www.epa.gov/risk/human-health-risk-assessment>). This process is imperfect, complicated, and is often based on animal studies. In addition, as science improves, new risks are being discovered and allowable exposure levels are continually being revised. Many cancers are caused by chronic exposure to low concentrations of carcinogens and new carcinogens are being discovered every day. What is certified safe by the EPA today may very well not be safe tomorrow.

Right now, the District and its consumers enjoy water quality that is rarely surpassed. There is no tangible benefit to the community by developing land upgradient of the District's water supply and there is no reason to risk the District's water supply by developing the upgradient land. The Developer made a mistake by not conducting due diligence prior to purchasing the property by assuming that the development would have access to sewer service. The Developer's alternative is to assure the District and stakeholders that there is no risk associated with the development without validating the assurances in any way. It is important to remember that the Developer will be long gone when problems arise.

Sincerely,



Dale M. Timmons, R.G.



June 27, 2024

Mary Johnson, City Planner
City of Rockaway Beach
275 S. Highway 101
P.O. Box 5
Rockaway Beach, OR 97136

Re: PUD 24-01, Nedonna Development LLC

Via email: cityplanner@corb.us

Dear Planning Commission,

Oregon Coast Alliance is an Oregon nonprofit corporation whose mission is protection of coastal natural resources and working with coastal communities to enhance livability. We write you today to oppose the changes requested by Nedonna Development LLC for their Nedonna Wave PUD.

Our concern is not with the relatively minor changes proposed in this application: changes in lot configuration or grouping.

Our principal concerns have to do with the larger issues of time lapsed, and the wetlands.

Time Lapse: Rockaway Beach approved this PUD in 2008. Though the city ordinances do not apparently contain a time limit for continuing to develop an approved PUD, state law does, and it supersedes the local ordinance's lack of timeline. ORS 92.040 (3) provides: "A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, in no event shall the time period exceed 10 years, whether or not a time period is established by the local government."

The implication of this is clear. Rockaway Beach cannot approve these minor modifications to the Nedonna Wave PUD and must require the applicants to file a new application if they wish to develop any parts further of the PUD approved in 2008. For the city to do otherwise flouts state law.

Wetlands: this tract of 2.5 acres has wetlands, which were delineated in a wetland report in about 2007. This expired long ago, as wetland delineations are only valid for five years. The associated joint DSL/Corps permit is also expired, and will have to be renewed before any activity may be undertaken. It is clear from photographs submitted by local residents that the area has extensive problems with flooding in and around McMillan Creek. Further houses near it will only exacerbate its problems and its role in the flooding problems. Wetlands are essential to absorb floodwaters. This provides an additional reason, in addition to state law requirements, for Rockaway Beach to deny this permit and require the applicant to submit a new application if they desire to continue developing this property, so that contemporary problems and needs may be assessed – not those of seventeen years ago.

It is clear from testimony of residents that the local infrastructure to handle excess waters from the rains has either failed, never been built or is poorly designed. The role of wetlands in this saga is not well determined, but it needs to be. This can only be done if the application is denied, so that seventeen year old standards are not being considered by current decision-makers.

Conclusion

There are other serious issues, among which we especially note the City Engineer's comment that as the Nedonna Beach area has but a single fire access road, which means that no more dwelling units are allowed in the area under the Oregon Fire Code, unless all dwelling units have automatic sprinklers. This is also an unalterable state requirement.

This application is far from a request for a minor adjustment of an approved PUD. The approval is so old it falls foul of state law, and must be revoked; the wetland delineation has expired, and likewise the permits granted under it; flooding and standing water have not been dealt with, neither in the original approval, nor in this application; and the Oregon Fire Code bars further dwellings in the area unless a specific requirement has been met, concerning which there has been no discussion or investigation whatsoever.

ORCA recommends the planning commission deny this application for all the reasons stated above.

Please place this testimony in the record for this matter.

Sincerely,

/s/ Cameron La Follette

Cameron La Follette
Executive Director

From: [Goldea See](#)
To: [City Planner](#)
Subject: The proposed building site in Nedonna Beach
Date: Thursday, June 27, 2024 12:06:51 PM

Let me begin this entry with expressing gratitude for being included even when I can't be present

So thank you, and, about 2 months ago I observed that the source of Nedonnas and Rockaways water , at Jetty Creek, was many feet below normal for that time of the year.

As I really rely on my water needs being met by water coming out of my home faucets and spigots I have concerns with more houses being built until 'WE' can address and solve our present water quantity risks. Again, Thank you Goldea See. [REDACTED] S. Beacon St.

Nedonna Wave Public Input

Janet Teshima

David and Riley Rockaway

June 27, 2024

1. As a resident of Nedonna Beach I concur with the verbal and written input made by other residents asking to stop or delay this development.
2. Impacts to waterways- Request for clarification as I don't see how McMillan Creek would not be impacted.

2.1.Excerpt from Appendix E. Nedonna Wave- prepared by HLB/OTAK November 2007. Army core of engineering - joint permit application form (no date stamp)

The proposed impacts are to wetlands. There are no proposed impacts to waterways. The only waterway within the project area is McMillan Creek, and there is no work planned in McMillan Creek. The DSL agreed with the wetland determination that all other features on the site were wetlands.

There are three drainages on the project site (figure 5). Two that flow onto the site from the hills to the east and a ditch that flows along the north edge of the entrance road (Riley). The northern creek that flows from the hill east of the slope discharges into the large wetland that covers the site. The south creek that enters the site dissipates in the sand at the base of the hill slope. Neither of these two creeks will be disturbed by the project. The wetland associated with ditch along Riley is 15 to 20 feet wide and has a vegetated bottom. The side slopes of the ditch are covered with Himalayan blackberry (*Rubus discolor* FACU). A portion of this ditch will be culverted to upgrade Riley Street. Riley Street is currently a dirt road and must be widened in order to meet City code.

The document states that the wetland associated with the ditch along Riley is 15-20 ft, and a portion of the ditch will be culverted to upgrade Riley St.

- Where is the water coming from the culvert going?
- Is it going to McMillan Creek?
- As stated by other McMillan Creek commonly overflows and the culvert is usually clogged.
- If the wetland is disrupted, the northern and southern creek have less wetland to

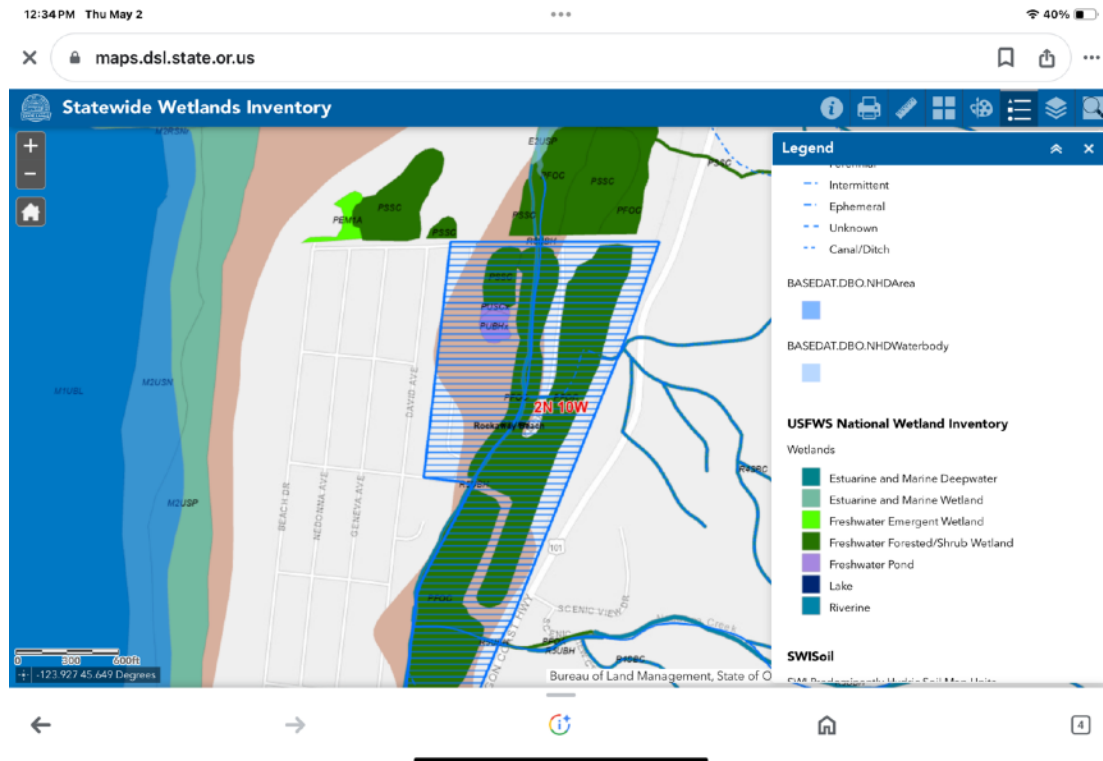


McMillan Creek at Riley (NE)

Nedonna Wave Public Input

dissipate and the outflow will be to McMillan Creek.

- The creek floods now, it will flood more after the development, it doesn't matter what they do to the culvert, the water has to go somewhere.
- Who is responsible for residential flood damage after development?



State Wetlands map showing McMillan Creek

3. Request for Comment.

3.1. The attorney for the applicant mentioned that at the meeting on 6/20/24 the it was a "fait accompli" that the property on the south side of Riley owned by Nedonna Estates LLC. Would at some time be developed. No city official addressed this comment. This area is also wetlands.

4. Request for consideration

- 4.1.As it seems that this development will go forward in some form, I request that the city consider reducing the density requirement for this development



Trees and salal growing along McMillan Creek

- so that citizens working with wetland professionals can work with the developer to save critical wetland areas and trees.
5. Request for response: Install speed bumps be installed Riley St prior to the start of any development
- 5.1.With the development on Kittiwake and increase in short term rentals, we have seen and increase in speeding traffic. I have owned my house since 2003 and know change is inevitable. We now has a mix of pedestrians, cars, trucks, golf carts etc. so it is time to do something about speeding vehicles.



To: City of Rockaway Beach Planning Commission

Re: PUD #24-1

Dear President Hassell and members of the Planning Commission

The Oregon Shores Conservation Coalition (“Oregon Shores”) opposes approval for Nedonna Beach Development LLC’s proposed second phase of a planned unit development first permitted in 2008 (PUD #24-1, 2N1020AB, Tax Lots 10200, 10400, and 10,500). Oregon Shores 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.

This letter is a follow-up to our initial letter sent on June 20th, 2024. Since that time, we have had more time to dig deep into this application and confirm that approval of this proposal would be a clear violation of the statewide planning system and Rockaway Beach’s land use regulations. For the reasons outlined below, we urge the Planning Commission to deny this application and require the developer to resubmit a new full plan for the second phase of development.

I. The Original 2008 Approval of the Plan for this Development Has Expired

The original approval for the full 28-lot Nedonna Wave Development on February 11, 2008, conditioned approval on the basis that “the developer shall complete the improvements within one year of tentative plan approval unless an extension is granted by the City to complete improvements.”¹ Because the City granted no extension here, the approval for the second phase of this same development has lapsed.

While the applicant had not yet received approval to develop in two phases at the time of initial approval, the City was aware that “the development may be completed in two phases.” Accordingly, it is clear that the City expected the applicant to complete improvements for both phases of the development within the year. Regardless, that condition attached to the plan approval for the full development, and when the project was later approved to be developed in two phases, the City made clear that all “conditions of approval [from the earlier approval] continue to apply in their entirety except where amended specifically in these findings of fact

¹ Findings of Fact, Application # SPUD 2007-19, Exhibit A: Findings of Fact, Page 12 (February 11, 2008). Further, In the 2007 project justification for this development, the City stated that “[t]he development of this property will be completed in this calendar year.” Likewise, they estimated that construction would be completed by “Spring of 2008.” The City setting a schedule was necessary for the need to find under RBZO 10.050 that “the plan can be completed within a reasonable period of time.”

In Oregon, the beaches belong to the people.

and this modification does not relieve them of the responsibility imposed during these previous public hearing processes.” And the City did nothing to alter that condition.

Thus, the City must deny this application and make clear to the applicant that the 16-year old approval is no longer valid.

II. ORS 92.040(2) Requires the Applicant to Resubmit its Initial Application for this Development

As we addressed in our prior comment, even if the City believes this application has not expired, ORS 92.040(3) requires that it be reviewed from the start for compliance with the City’s current regulations. ORS 92.040(3) provides that all subsequent stages of subdivision development must be reviewed for compliance with current local regulations when more than 10 years has passed. The Oregon Court of Appeals explained the operation of ORS 92.040: “92.040(2) allows applicants who request approval to develop a subdivision lot to choose to apply to all subsequent construction on the lot the local government laws in effect at the time that the subdivision application was made *However, the protection provided to developers by subsection (2) may not exceed a period of 10 years.*”²

Because the applicant here has reapplied for a modification of their initial approval in order to start construction on the property, this is a subsequent phase of construction and the City must determine now whether the development still fully complies with current regulations. This is especially true since by asking to split the development up into two phases, the applicant has effectively reopened the entire project.

If the City does not apply ORS 92.040(3) at this time, granting the approval would be a significant waste of resources because under ORS 92.040(3), the applicant will not be able to get a final plat or building permits for this subdivision without a full review of the current City Code. And, as discussed in the sections below, this development, as proposed, would not be allowed under Rockaway Beach’s current regulations.

The City originally agreed with this position and denied the application on these grounds, but evidently the City has changed its interpretation. Despite the City denying the application on this ground, there is no mention of the provision in the Staff Report. The City must explain in writing how it is interpreting ORS 92.040(3) to not apply here so that the public has an opportunity to respond to it.

The Planning Commission must deny the application and make clear to the applicant that they will need to get full approval of the development before moving forward with construction.

III. RBZO 3.080 Prohibits Residential Development in a Special Area Wetlands Zone

Much of the proposed development is in the City’s Special Area Wetlands Zone (SA). This Zone is distinct from the City’s Wetland Notification Overlay, which only requires notification to state agencies about wetland development. The SA zone is its own base zone, the purpose of which is

² *The Athletic Club of Bend, Inc. v. City of Bend*, 239 Ore App 89, 97 (2010).

to “conserve significant freshwater wetlands and the shoreland and aquatic environment of Rockaway Beach’s lakes.” RBZO 3.080(1).

Residential development is not an allowed use within the SA zone. RBZO 3.080(2)-(3). The fact that there is an existing PUD overlay over this property does not change the underlying uses allowed in the SA zone. The PUD overlay only allows the density allowed in the parent zone. RBZO 10.030. Thus, because the SA zone does not allow any residential development, any approval of development in these SA zones would clearly violate the RBZO regardless of the PUD overlay.

The boundaries of the SA zone are fixed, unless “at such time that a development is proposed in the vicinity of an area designated Special Area Wetlands” the City requires a site investigation from “a qualified agent such as a biologist from the U.S. Army Corps of Engineers or the Division of State Lands.” Accordingly, because no such investigation has happened yet, and much of the proposed development, including the new lots that are a part of the modification, are in the SA zone, the City must deny the application.

IV. RBZO 3.142 Requires the Applicant Develop Evacuation Measures and Improvements

RBZO 3.142 provides that: “[e]xcept single family dwellings on existing lots and parcels, all new development, substantial improvements and land divisions in the Tsunami Hazard Overlay Zone shall incorporate evacuation measures and improvements, including necessary vegetation management, which are consistent with and conform to the adopted Tsunami Evacuation Facilities Improvement Plan.”

This project is going to have detrimental impacts on the City’s Tsunami Evacuation plan by both adding more people to and blocking already constrained evacuation routes. In order to “conform to the adopted Tsunami Evacuation Facilities Improvement Plan,” the developer would need to make improvements that make sure the evacuation routes are maintained and that additional capacity is added to them through the creation of new routes .

In the initial hearing, the applicant claimed that such an action was the City’s responsibility. However, RBZO 3.142 makes clear that is not the case, as the improvements developers need to make can include both on-site improvements and off-site improvements, meaning the developers can both improve access on the property they own or provide funding for the City to make off-site improvements in other areas to adjust for the detrimental effect of the development.

Conducting a traffic-impact study is not an “improvement” to evacuation routes, which is what RBZO 3.142 requires. The applicant must make actual improvements to alleviate the detriment this development will impose on existing evacuation routes.

V. RBZO 4.150 Requires the City to Enforce its Riparian Setback for McMillan Creek Pre-Approval

Riparian vegetation within 15 feet of McMillan Creek must be maintained per RBZO 4.150(1)(a). The Staff Report suggests that post-approval, the applicant coordinate with Oregon Department of Fish and Wildlife (ODFW) to develop a plan to mitigate those impacts where compliance is not feasible. However, that is not the standard laid out in RBZO 4.150.

RBZO 4.150(5) provides that “the City may approve the removal of riparian vegetation when vegetation removal and a plan to re-vegetate the riparian area has been approved by [ODFW].” This provision clearly only envisions temporary removal of riparian vegetation within setback areas that can then be “re-vegetate[d].” It clearly does not allow any kind of development within the riparian area, regardless of whether those impacts are mitigated.

The provision is also forward-looking. The applicant must make clear prior to approval what impacts will be in the setback areas and then get a plan for that removal approved by ODFW, so that the Planning Commission can review the plan in deciding on the application. Accordingly, approving the application without even knowing the extent of riparian vegetation removal that will occur is plainly contrary to the RBZO.

The City cannot approve this application until the applicant makes clear whether there will be vegetation removal in the 15-foot setback area and, if so, submits a plan approved by ODFW for how that removal will occur and how the area will be re-vegetated.

Thank you for your consideration of these comments.

Sincerely,

Phillip Johnson, Shoreline and Land Use Manager
Oregon Shores Conservation Coalition
(503) 754-9303



Oregon Shores Conservation Coalition

To: City of Rockaway Beach Planning Commission

Re: PUD #24-1

Dear President Hassell and members of the Planning Commission

The Oregon Shores Conservation Coalition (“Oregon Shores”) opposes approval for Nedonna Beach Development LLC’s proposed second phase of a planned unit development first permitted in 2008 (PUD #24-1, 2N1020AB, Tax Lots 10200, 10400, and 10,500). Oregon Shores 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. We are commenting on this matter at the request of our local members.

Oregon Shores requests that the record be left open for any additional evidence, arguments or testimony the participants wish to submit for at least seven days pursuant to ORS 197.797(6). Please also notify us of any further decisions, reports, or notices issued in relation to these concurrent applications. Oregon Shores will provide additional comments as appropriate and allowed within the open record period.

The Rockaway Beach City Council’s initial approval of the plan for this subdivision in 2008 is no longer effective. Because the proposed modification is for a Planned Unit Development (PUD) approval that is more than ten years old, the City Council is obligated to reconsider the whole project, applying the land use regulations that are currently in effect. ORS 92.044(2) provides that after the initial application for a subdivision, subsequent phases of the development are only subject to the rules in effect at the time of that application. However, “in no event shall the time period [of that protection] exceed 10 years.” Accordingly, ORS 92.044 places a clear bar on local governments acting on a subsequent phase of an initial subdivision application that is more than 10 years old without reviewing the development from the beginning for compliance with the existing code. We are concerned that the proposed development would not be allowable under the current law.

We also do not believe the agenda packet, staff report, or application have all of the necessary information to understand this decision and request that the Planning Department provide those to the public and the Planning Commission prior to the close of the record. The applicant only includes one final order approving the PUD. Notably, the applicant left out the additional approvals originally attached as exhibits to that final order. This includes the final plan approval for this development and later modified plan approval that allowed for the development to be split into two phases.

Sincerely, Phillip Johnson, Shoreline and Land Use Manager

In Oregon, the beaches belong to the people.

June 26th, 2024

To: City of Rockaway Beach
City of Rockaway Beach Planning Committee
City of Rockaway Beach City Planner, Mary Johnson

From: Delta Holderness
[REDACTED] Song St.
Rockaway Beach, OR 97136
[REDACTED]

Re: Additional written public comments regarding PUD-24-1

Thank you for taking the time to listen to the residents of Nedonna Beach last Thursday, June 20th, 2024. I would like to provide additional comments concerning the safety of our neighborhood.

First comment:

As I emphasized in my oral testimony last week, the influx of tourists to Nedonna Beach each year poses significant safety risks, especially in the event of a tsunami evacuation. With only one exit available, tourists would likely rush to their cars, creating a bottleneck at our single point of egress.

This singular access point also presents a critical issue regarding fire safety. Each summer, the coastal area has experienced increasingly hot and dry conditions, elevating the risk of fire. The dense trees and underbrush lining Nedonna Beach near Highway 101 exacerbate this risk. Should a fire ignite at our only entrance/exit, it could rapidly spread through the foliage, threatening homes within city limits. The Rockaway Beach Fire Department would face severe challenges in reaching and extinguishing fires within the community if they are first required to combat a fire blocking their access.

Notably, the Oregon Fire Code, Appendix D, Section D107.1, mandates that developments with more than 30 single-family dwellings must have two separate and approved fire apparatus access roads. It is concerning that the City and County has allowed this situation to persist for decades without rectifying it.

To ensure the safety of current residents and structures, it is imperative to halt further housing developments until an additional entrance/exit is established. Although creating a new access point may take years, the potential lives saved will be well worth the effort. Furthermore, addressing this issue proactively would mitigate the risk of legal actions against the city.

Please be aware that the State Fire Marshal has also been contacted regarding these concerns. We are hopeful that this will prompt a more comprehensive review and swift action to address the fire safety risks in Nedonna Beach.

Second comment:

In the approved Nedonna Wave PUD document, available on the City's website, I observed a specific requirement under Article 7 Architectural Design Standards, section 7.2.1. It states, "All houses shall have a minimum of a one-car garage (not a mere carport) which must be attached or incorporated as part of the house."

Upon reviewing the maps within this document, I found that only Lot #4 features a single-car garage. The other developed lots—numbers 1, 2, 20, 21, and 23 (referencing the old numbering system from the document)—do not have garages. Additionally, I did not find any variances for this requirement.

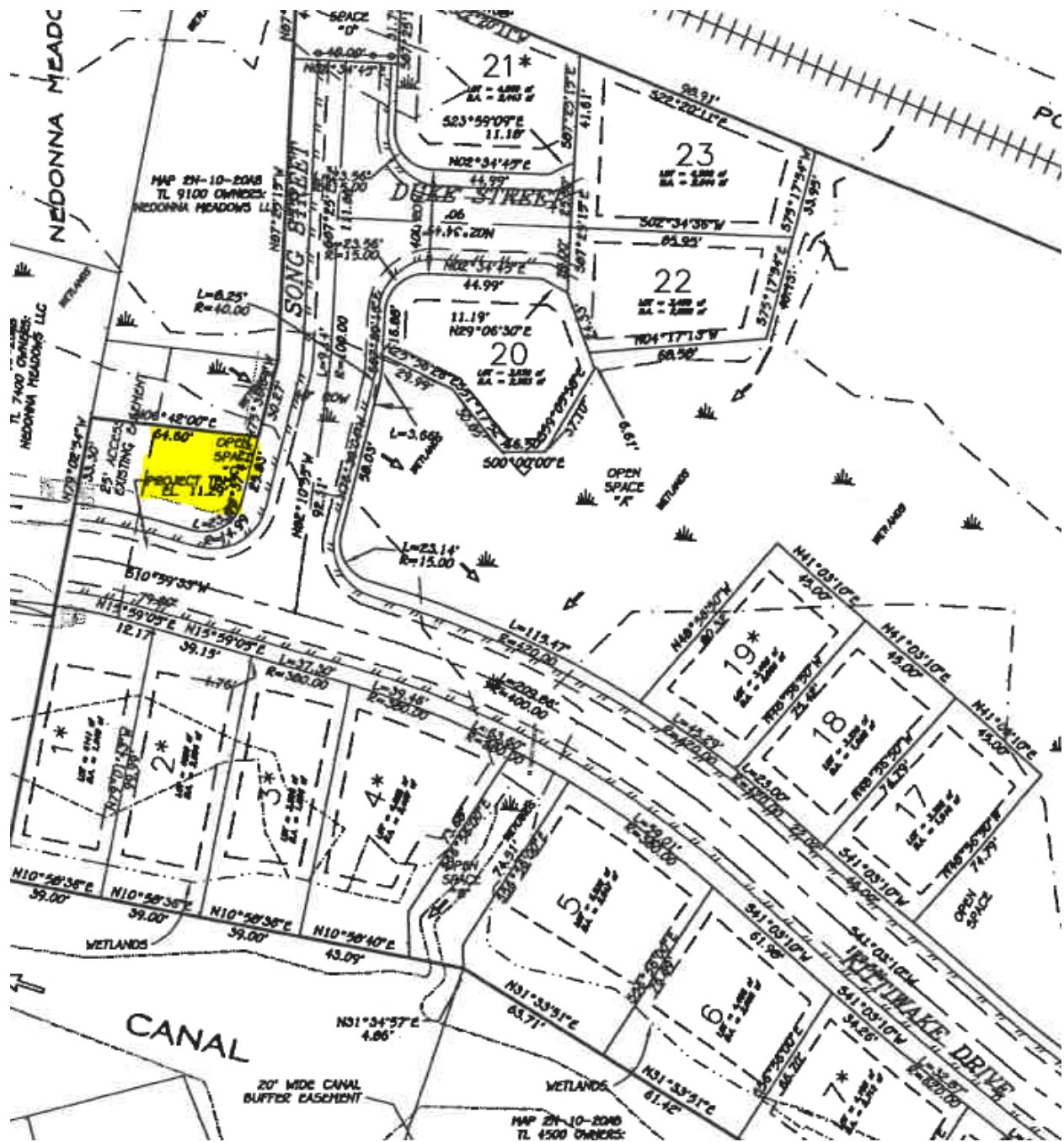
Given the absence of garages in these five houses, it appears that the developer has not adhered to the architectural design standards outlined in the approved planned housing development. This deviation raises serious concerns about compliance with the agreement established with the city. Consequently, the approval of this development should be revoked, and the developer should be required to restart the project in accordance with the current laws.

Third Comment:

Additionally, while reviewing the maps, I observed an "open space" highlighted in yellow (see map below). Interestingly, the developer and her contractor constructed a house on this small parcel of land. I am curious whether there was ever any approval from the City, State, Wetlands experts, or other relevant authorities to build a house in this location, as it is not included in the original PUD. Furthermore, if approval was granted, I would like to note that this house does not have a garage. If approval was not granted for construction in this location, the PUD should be revoked due to a direct violation of the contract established with the City.

Please let me know the outcome of your research regarding this matter.

Thank you for your attention to these issues. I look forward to your response and to learning about any actions you plan to take to address these concerns.



From: [Gary Corbin](#)
To: [City Planner](#); stephwinches@gmail.com; umazee73@comcast.net; olsonrl@centurylink.net; s.l.johnson2021@gmail.com; billh@billhassell.com; nancy.lanyon@gmail.com; g_and_j@charter.net
Cc: [City Planner](#)
Subject: Comments on PUD-24-1
Date: Tuesday, June 25, 2024 11:14:20 AM

June 25th, 2024

To: City of Rockaway Beach
City of Rockaway Beach Planning Commission
City of Rockaway Beach City Planner, Mary Johnson

Re: Additional written public comments regarding PUD-24-1

Thank you for taking the time to listen to the concerns residents of Nedonna Beach last Thursday, June 20th, 2024. I would like to provide additional comments concerning this matter.

First, I would ask you to note that of all the individuals who took the time to present testimony on this matter on June 20, every person who spoke either opposed approving the development or raised serious concerns about the plan—except for three individuals, each of whom stand to gain financially should the project move forward. Every resident of the area spoke against.

Second, the proponents revealed a disingenuous strategy at the meeting that needs to be called out. Once the city planner's recommendation to disapprove the vacation of the Riley Street stub, the developers backpedaled and claimed that they are not asking for a decision on this matter at this time. This, despite the fact that it is one of the four specific modifications they requested in their proposal.

Clearly they want to develop that stub. Seeing how the wind currently blows, they're asking for "no decision" right now and hope to get their camel's nose under the tent to be able to claim later that the city implicitly approved the vacation by not disapproving it in 2024.

However, Riley Street is the gateway to a much-needed evacuation route. Vacating that section would eliminate that route and negatively impact the emergency evacuation and safety situation in Nedonna Beach.

It is imperative that the Planning Commission and City Council do not defer on this question and that the City makes a clear, unequivocal decision to disapprove this request. Failure to act definitively on this matter now will encourage the developer to try to claim this modification is effectively "grandfathered in" by the City's decision not to act now.

Third, the developers are trying to use the same sleight-of-hand tactic here that they did regarding the wetlands in the proposed development area. In that case, they filled in areas that were once wetlands and are now claiming that "circumstances changed." This is their justification for being able to develop the former wetlands areas. Then, upon discovery that the proposed Jackson Street segment is now wetlands, they wave that off with a vague claim to "mitigate." In other words, what they're claiming is: "What were wetlands are no longer, so it's okay to build; what is now wasn't then, so it's still okay to build."

Fourth, as I noted in my testimony on June 20, the impact of developing these wetlands on

wildlife is potentially devastating. Not least is the presence of bald eagles nesting in this area—an endangered species. While it has been noted that the City has requested rulings by the Department of State Lands on wildlife and wetland impacts, the impact on an endangered species requires federal review to ensure the development does not destroy or negatively impact the eagles’ habitat. I see nothing in any of the materials provided to citizens thus far that indicates such a review has been requested, much less taken place. It is my understanding that no development may proceed without such a review.

Fifth, the idea that the decisions made in 2008 stand in perpetuity is nonsense. Oregon law (ORS 92.040) and common sense dictate otherwise. This is because, as even the developers noted (with regard to the condition of the wetlands) at the meeting, “circumstances change.” Since the ten-year time limit for the original plan has long since expired, the City is empowered to, and charged with, the responsibility to consider this as a new development proposal, divorced from the 2008 decision.

And with that understanding of the law and current circumstances, we urge you to reject and disapprove of the entire development proposal as it currently stands, and as modified, and require the developer to apply anew with a plan that addresses specific development intentions, better suits the community’s needs, ensures public safety, and proceeds in good faith and transparency.

Sincerely,

Gary Corbin and Renee Faddis
[REDACTED] Kittiwake Drive
Rockaway Beach, OR 97136
[REDACTED]

Gary Corbin

Author, Valorie Dawes Thrillers

Look for my new release, [Under the Banner of Valor](#), coming out May 7!

To: City of Rockaway Beach

City of Rockaway Beach Planning Commission

City of Rockaway Beach City Planner Mary Johnson

JUN25 '24 2:21PM

From: Kathie Raisler

████████ White Dove Ave

Rockaway Beach, OR 97136

██████████

Subject: Written public comments regarding PUD-24-1

Summary For City Planning Board

Prioritizing Public Safety in Urban Development

Ensuring public safety is paramount for the City and its planning commission, particularly concerning new building projects. Approved in 2008, this project requires a thorough review under updated city regulations and ordinances, such as ORS 92.040, which mandates re-evaluation after ten years.

Public Safety Precedence

Addressing public safety concerns must precede any advancements in new building projects, as highlighted in LUBA No. 2008-064. Notably, the absence of a secondary egress point at Nedonna Beach for 16 years violates ORS 106.1 and D107.1. Enforcement of these regulations by the State Fire Marshall is essential.

Impact on Emergency Services

Increased residential density strains volunteer public safety workers' capacity to respond effectively, Particularly with inadequate emergency access points like the sole entry to Nedonna Beach. This poses significant risks during emergencies, including natural disasters like tsunamis.

Consideration Beyond Density

While the project meets density standards, concerns persist regarding the adequacy of [proposed lot sizes in compliance with current city standards, especially in ensuring sufficient vehicle parking without obstructing streets.

Parking Challenges

Proposed small lot sizes in new developments threaten parking availability on Kittiwake, potentially impeding emergency services.

Changing Environmental Landscape

Since 2008, significant environmental changes have evolved, necessitating updated considerations in new developments, especially concerning stormwater management and flood hazards. (City of Rockaway Beach, Article 13 Section 41)

Impact of Short-Term Rentals (STRs)

The rise in Short-Term Rentals (STRs) has disrupted neighborhood dynamics, increasing traffic and safety hazards, exemplified by recent incidents such as the Riley and Nedonna intersection accident involving a child.

Necessity of Comprehensive Studies

No project should proceed without comprehensive studies and stakeholder assessments to evaluate their full impact. Approving a project based on outdated circumstances from 16 years ago undermines due diligence by the City of Rockaway Beach.

Urgency for Resolution

It's critical to resolve these issues promptly rather than delaying decisions further, ensuring adherence to state and city regulations.

Conclusion

This summary emphasizes the critical need for prioritizing public safety, addressing environmental concerns, and adhering to legal obligations, ensuring responsible urban development in our community.

This structured approach should effectively communicate the main concerns and recommendations to the city planning board, facilitating a focused discussion on the project's implications.

Thank you for your consideration in this matter.

Kathie Raisler



6-24-24

ROCKAWAY BEACH PLANNING COMMISSION

NOTICE OF DECISION

August 1, 2024

IN THE MATTER OF:

CASE FILE: # PUD-24-1

Applicant: Nedonna Development LLC
(c/o Anna Song)

Agent: Dean N. Alterman

Location: Unimproved real property in Rockaway
Beach (Tillamook County Assessor's Map
2N1020AB as Tax Lots 10200, 10400, and 10500)

REQUEST: The Applicant is requesting a modification to the Planned Unit Development that was approved by the City in 2008 to be named Nedonna Wave Phase 2, on land zoned R1 (single-family residential) and SA (special area wetlands). Details of the request are included on the submitted application materials and are available for inspection at Rockaway Beach City Hall.

DECISION: The record and findings support the conclusion that substantive evidence in the record demonstrates that the Applicant's request to (1) create two lots instead of one lot at the north end of Jackson Street, identified as lots 21 and 22 on the plans submitted with the application and (2) to create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street, identified as lots 13, 14, 15, and 16 on the plans submitted with the application, can be developed in accordance with the applicable standards of the Rockaway Beach Zoning Ordinance.

Insufficient evidence exists to support the Applicant's request to plat Phase 2 as two separate sub-phases – Phase 2 and Phase 3.

Future review and necessary approval of the Applicant's detailed engineering plans for streets and utilities by the City Engineer is necessary. Such review and approval, prior to development, will ensure that the required improvements are in accordance with applicable City of Rockaway Beach Technical Specifications and Design Standards.

The Nedonna Wave PUD #24-1 request to develop Phase 2 in two sub-phases, instead of one phase, is **DENIED**.

The Nedonna Wave PUD #24-1 request to create two lots instead of one lot at the north end of Jackson Street, identified as lots 21 and 22 on the plans submitted with the Application; and create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street, identified as lots 13, 14, 15 and 16 on the plans submitted with the Application, is **APPROVED WITH CONDITIONS**, subject to the application as submitted and findings.

FINDINGS: The Planning Commission finds:

1. In 2008, the Applicant submitted Planned Unit Development Application #SPUD-07-19 for the creation of a phased, 28-lot development, with PUD overlay. The City approved the preliminary development plan in early 2008. The Applicant applied for and received final approval for the first phase of the PUD within one year after receiving final approval of the preliminary plan. The Applicant recorded the plat of Nedonna Wave Phase 1 on February 2, 2009 (Plat C-573, Tillamook County Plat Records).
2. The Applicant constructed 8-lots during Phase 1 and completed many of the improvements for Phase 2 during the construction phase. Appropriate conditions of approval will ensure that the infrastructure improvements completed during the Phase 1 construction for Phase 2 are tested and accepted by the City Engineer.
3. In 2010, Baumgart Construction LLC requested an amendment to the Nedonna Wave PUD and Minor Partition (Case File #PUD-10-05, #MP-10-06) and the request was approved by the Planning Commission to allow for the creation of the additional building lot.
4. The Applicant is now ready to plat Phase 2 and requests modifications to the approved final plan, (1) to plat Phase 2 as two separate sub-phases – Phase 2 and Phase 3, (2) to create two lots instead of one lot at the north end of Jackson Street, identified as lots 21 and 22 on the plans submitted with the application, (3) to create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street, identified as lots 13, 14, 15, and 16 on the plans submitted with the application, and (4) to provide that when the owner of the land to the South extends Jackson Street South into that property, the City will vacate the East stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot (Case File #PUD-24-1).
5. The property consists of approximately 2.56 acres of land zoned R1 (single-family residential) and SA (special area wetlands).
6. The property contains wetlands that were delineated by a professional wetlands consultant prior to the 2008 approval. The former delineation is no longer valid and expired after a period of five years. At the time of the 2008 approval, the Applicant provided a joint permit form the Department of State Lands and the U.S. Army Corps of Engineers. These permits have now expired and will need to be renewed before any disturbance or impacts to the wetlands takes place.
7. The property is located on Kittiwake Drive north of Riley Street and south Song Street in Nedonna Beach. The property is identified as on Tillamook County Assessor's Map 2N1020AB as Tax Lots 10200, 10400, and 10500.
8. The overall density of the PUD does not exceed the 33-lot density of the provision of the R-1 (single-family residential) zone.
9. More than 50% of the total area has been devoted to open space. Common open spaces withing the development include wetlands and other natural vegetation, and other areas below the 100-year

floodplain elevation. A homeowner's association is necessary to take responsibility of the ownership and management of these natural open space areas.

10. Public hearings were held on June 20, 2024 and June 27, 2024. During the public hearing, the Applicant withdrew the request to provide that when the owner of the land to the South extends Jackson Street South into that property, the City will vacate the East stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.
11. The Applicant has submitted materials in support of the request, including the application and Memorandum document, which provide specific responses to the applicable criteria under review. These responses, attached as Exhibit "A" and Exhibit "B" respectively, and Staff Reports, attached as Exhibit "C", demonstrate that the applicable criteria for land-use approval are met, and serve as findings to support the decision.

APPEAL: The decision of the Planning Commission is final unless it is appealed to the City of Rockaway Beach City Council within 15 days of this notice. See §11.070 Request for Review of a Decision (Appeals) within the City of Rockaway Beach Zoning Ordinance. Appeals must only be filed concerning criteria that were addressed at the initial public hearing.

A copy of the complete case, including the final order, is available for inspection at no cost during regular business hours at Rockaway Beach City Hall located at 276 Highway 101 S, Rockaway Beach, Oregon 97136. Copies of the final order are also available for purchase at a reasonable cost.

Date: August 1, 2024



William Hassell, Planning Commission Chair

EXHIBIT “A”



City of Rockaway Beach, Oregon

276 S. Highway 101, PO Box 5
Rockaway Beach, OR 97136
(503) 374-1752
www.corb.us

____ - ____

PLANNED UNIT DEVELOPMENT APPLICATION

APPLICANT INFORMATION:

Project Contact Name: Dean N. Alterman Company: Alterman Law Group PC

Mailing Address: 805 SW Broadway, Suite 1580 Portland, Oregon 97205

Phone Number: (503) 517-8201 Email: dean@alterman.law

PROPERTY OWNER INFORMATION:

Name(s): Nedonna Development, LLC (c/o Anna Song)

Mailing Address: 2848 SW Sam Jackson Park Road, Portland, Oregon 97201

Phone Number: (503) 706-1930 Email: kebsinc@yahoo.com

PROPERTY LOCATION:

Tracts E and F, Nedonna Wave Phase 1

Map and Tax Lot(s): TL 10200, 10400, and 10500, Map 2N1020AB

Subdivision Name: Nedonna Wave Phase 1 (10400 and 10500 will be Phase 2; TL 10200 will be Phase 3)

Land Use Zone(s): SA and R1 with PUD overlay

Consisting of 2.56 acres divided into 22 lots, proposed in two * phases.

* The application is to split the remainder of the approved plan for the Nedonna Wave PUD into **

Included with this application must be the information required in the Rockaway Beach Zoning Ordinance, Article 10, Planned Unit Development.

DocuSigned by:

Applicant Signature: Dean N. Alterman Date: March 4, 2024

Dean N. Alterman, attorney for applicant

If the Applicant is other than the Property Owner, the Owner hereby grants authority for the Applicant to act on his/her/their behalf.

DocuSigned by:

Property Owner Signature(s): Anna Song Date: March 4, 2024

Anna Song, for Nedonna Development, LLC

** two phases instead of one. The first phase would create the 13 lots east of Kittiwake Drive and a tract for a sewer pump station. The second phase would create the 9 lots west of Kittiwake Drive.

CITY OF ROCKAWAY BEACH ZONING ORDINANCE

Article 10. Planned Unit Development (PUD)

Section 10.010. Intent. This article is intended to provide for developments incorporating a single type or variety of housing types and related uses which are planned and developed as a unit. Such developments may consist of individual lots as part of a larger holding or as common building sites. Commonly owned land which is an essential and major element of the plan should be related to and preserve the long-term value of the homes and other development. It is the intent of this section to foster a more innovative approach to land development than is possible under the traditional lot by lot methods.

Section 10.020. Purpose. The purpose of this article is to provide a more desirable environment through the application of flexible and diversified land development standards following an overall comprehensive site development plan.

Section 10.030. Permitted Buildings and Uses. The following buildings and uses may be permitted as hereinafter provided. Buildings and uses may be permitted either singly or in combination provided the overall density of the Planned Unit Development does not exceed the density of the parent zone as provided in this ordinance.

1. Single-family dwellings including detached, attached, or semi-detached units, row houses, atrium or patio houses, provided each has its own separate plot.
2. Duplexes and multiple-family dwellings.
3. Accessory buildings and uses.
4. Commercial uses only when supported mainly by the PUD and only when economic feasibility can be shown.
5. Buildings or uses listed as permitted outright or conditionally in the parent zone on which the PUD is located.

Section 10.040. Development Standards.

1. Minimum Lot Size. Planned Unit Developments shall be established only on parcels of land which are suitable for the proposed development and are determined by the planning commission to be in keeping with the intent of this ordinance. (This says 'site size' in 143, not 'lot size')
2. Open Spaces. In all residential developments, or in combination residential-commercial developments, 50% of the total area should be devoted to open space. Of this area, 25% of said open space may be utilized privately by individual owners or users of the PUD; however, 75% of this area should be common or shared open space. The Planning Commission may increase or decrease the open space requirement depending on the particular site and the needs of the development. In no case should the open space be less than 40% of the site.
3. Density. The density of a planned development shall not exceed the density of the parent zone, except as more restrictive regulations may be prescribed as a condition of the PUD permit. When calculating density, the gross area is used (total area including street dedications). Areas of public uses may be included in calculating allowable density.
4. Subdivision of Lot Sizes. Minimum area, width, depth, and frontage requirements for subdivision lots in a PUD may be less than the minimums set forth elsewhere in City ordinances, provided that the overall density is in conformance, and that lots conform to the approved preliminary development plan.

5. Off-Street Parking. Parking spaces shall conform to all provisions of this ordinance, except that the Planning Commission may authorize exceptions where warranted by unusual circumstances.
6. Signs. All signs of any type within a PUD are subject to design review and approval of the Planning Commission. They shall consider each sign on its merits based on its aesthetic impact on the area, potential traffic hazards, potential violation of property and privacy rights of adjoining property owners, and need for said sign.
7. Height Guidelines. The same restrictions shall prevail as permitted outright in the zone in which such development occurs, except that the Planning Commission may allow a variance of heights where it is determined that surrounding property will not be harmed.
8. Streets and Roads. Necessary streets and roads within the PUD shall be dedicated to the public and constructed to City standards or shall be private roads maintained by an owner's association and constructed to standards as determined by the Planning Commission and City Engineer.
9. Dedication and Maintenance of Facilities. The Planning Commission, or on appeal, the City Council may, as a condition of approval for a PUD require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated to the following uses:
 - a. Recreation Facilities: The Planning Commission may require that suitable area for parks or playgrounds be set aside, improved, or permanently reserved for the owners, residents, employees or patrons of the PUD.
 - b. Common Area: Whenever common area is provided, the Planning Commission or City Council may require that an association of owners or tenants be created into a non-profit corporation under the laws of the State of Oregon, which shall adopt such Articles of Incorporation and By-Laws and adopt and impose such Declaration of Covenants and Restrictions on such common areas that are acceptable to the Planning Commission. Said association, if required, may undertake other functions. It shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessments levied to maintain said common areas for the purposes intended. The period of existence of such association shall not be less than 20 years, and it shall continue thereafter and until a majority vote of the members shall terminate it.
 - c. Easements: Easements necessary to the orderly extension of public utilities may be required as a condition of approval.
10. Approvals. The Planning Commission shall submit the preliminary development plan to the Fire District, City Engineer, County Sanitarian, power company, and other utilities which will serve the PUD and shall consider their recommendations in regard to approval of the proposal.

Section 10.050. Procedure - Preliminary Development Plan.

1. The applicant shall submit four copies of the preliminary development plan to the Planning Commission prior to formal application for rezoning. Applications shall be accompanied by a fee prescribed in Section 11.050 of this ordinance. This plan and any written statements shall contain at least the following information:
 - a. Proposed land uses and densities.
 - b. Location and approximate dimensions and heights of structures.
 - c. Plan of open spaces or common spaces.
 - d. Map showing existing features of site and topography.
 - e. Proposed method of utilities service and drainage.
 - f. Road and circulation plan including off-street parking.
 - g. Relation of the proposed development to the surrounding area and the Comprehensive Plan.
 - h. Lot layout.

- i. A schedule, if it is proposed that the final development plan will be executed in stages.
2. The Planning Commission shall consider the preliminary development plan at a public meeting, at which time they shall determine whether the proposal conforms to City ordinances. In addition, in considering the plan, the Planning Commission shall seek to determine that:
 - a. There are special physical conditions or objectives of development which the proposal will satisfy to warrant a departure from the standard ordinance requirements.
 - b. Resulting development will not be inconsistent with the Comprehensive Plan provisions or zoning objectives of the area.
 - c. The proposed development will be in substantial harmony with the surrounding area, including vegetation and topography and any important natural areas such as marshes or wildlife habitats.
 - d. The plan can be completed within a reasonable period of time.
 - e. Any proposed commercial development can be justified economically.
 - f. The streets are adequate to support the anticipated traffic and the development will not overload the streets outside the planned area.
 - g. Proposed utility and drainage facilities are adequate for the population densities and type of development proposed.
3. The Planning Commission shall notify the applicant whether, in its opinion, the foregoing provisions have been satisfied and, if not, whether they can be satisfied with further plan revision.
4. Following this preliminary meeting, the applicant may proceed with his/her request for approval of the planned development by filing an application for an amendment to this ordinance with the City Recorder.

Section 10.060. Procedure - Final Approval.

1. Within one year after concept approval or modified approval of a preliminary development plan, the applicant shall file a final plan for the entire development or, when submission in stages has been authorized, for the first unit of the PUD, with the Planning Commission. The final plan shall conform in all respects with the approved preliminary development plan. The final plan shall include all information included in the preliminary plan, plus the following:
 - a. Contour map showing at least 2-foot intervals.
 - b. Grading plan showing future contours if existing grade is to be changed more than two feet.
 - c. Existing and proposed utility lines.
 - d. Preliminary subdivision plan if property is to be subdivided.
 - e. Location and dimensions of pedestrian ways, roads, malls, common open space, recreation area and parks.
 - f. Location, dimensions, and arrangement of off-street parking including width of aisles, spaces, and other design criteria.
 - g. Preliminary planting and landscaping plan.
 - h. Preliminary architectural plans and elevations of typical structures.
 - i. The applicant shall also submit drafts of appropriate deed restrictions or protective covenants to provide for the maintenance of common areas and to assure that the objectives of the PUD shall be followed.
2. Upon receipt of the final development plan, the Planning Commission shall examine such plan and determine whether it conforms to all applicable criteria and standards and whether it conforms in all substantial respects to the previously approved preliminary development plan, or require such changes in the proposed development or impose such conditions of approval as are, in its judgment, necessary to insure conformity to the applicable criteria and standards. In so doing, the Planning Commission may permit the applicant to revise the plan and resubmit it as a final development plan within 30 days.

Section 10.080. Adherence to Approved Plan and Modification Thereof.

1. Building permits in a PUD shall be issued only on the basis of the approved plan. Any changes in the approved plan shall be submitted to the Planning Commission for processing as an amendment to this ordinance.

2. A performance bond may be required, in an amount to be determined by the Planning Commission, to insure that a development proposal is completed as approved and within the time limits agreed to.
3. The developer shall show to the satisfaction of the Planning Commission that the proposal will be carried out in such a way that no significant damage will be done to the lakes, streams, beaches or wetlands in the City. Special attention will be paid to the impact of the PUD on slide-prone hillsides to insure that the damage will not be caused to surrounding property.

EXHIBIT “B”



MEMORANDUM

To: City of Rockaway Beach

From: Dean N. Alterman
Alterman Law Group PC

Date: February 20, 2024

Re: Nedonna Wave Planned Unit Development – Phase 2 application
City file no. #SPUD 07-19
Our file no. 5701.001

I'm writing this memorandum to accompany the application of Nedonna Development LLC and its principal Anna Song to subdivide Tract F (Tax Lot 10400) and Tax Lot 10500 of Nedonna Wave Phase 1 to be Phase 2 of the planned unit development that the city approved in 2008 in City File No. #SPUD 07-19. Nedonna Development requests a modification of the prior approval to allow the applicant to develop Phase 2 in two sub-phases instead of in one phase.

Phase 2 will be a subdivision of Tract F, Nedonna Wave, and will include eleven lots east of Kittiwake Drive.

The applicant also owns Tract G of Nedonna Wave Phase 1. Tract G is not part of this application and will continue to be reserved for future development. The future Phase 3 will be a subdivision of Tract G, and will include nine lots west of Kittiwake Drive and south of the wetland and drainage area (Tract B) next to Lot 4 of Phase 1.

I. History

On May 27, 2008 the city issued a final plan approval for the application of Nedonna Development, LLC and its principal Anna Song to build a 28-lot phased planned unit development (PUD) that extended Kittiwake Drive south to Riley Street. The staff report indicates that the maximum allowed density at the time was 33 lots.

By final order dated September 15, 2008 and signed by Mayor Lisa M. Phipps on September 19, 2008, the city applied the PUD designation to the entire site, and approved Nedonna Development's request to develop the PUD in two stages with up to 28 lots. The first stage had 8 lots and three parcels. The eight lots were numbered 1 to 8 on the plat. They

corresponded to the lots numbered 1, 2, 3, 4, 20, 21, 22, and 23 on the plans submitted for the final plan approval.

Section 10.060 of the zoning code requires the applicant to file a “final plan for the entire development or, when submission in stages has been authorized, for the first unit of the PUD” within one year after the city approves a preliminary development plan. The code does not set any time limit on when the applicant must apply for subsequent units or stages of the PUD.

In this case, the city approved the preliminary development plan in early 2008. Nedonna Development applied for and received final approval for the first unit of the PUD within one year after it received final approval of the preliminary plan.

The applicant recorded the plat of Nedonna Wave Phase 1 on February 2, 2009 as Plat C-573, Tillamook County Plat Records. The plat included dedications of Kittiwake Drive, Song Street, Duke Street, Riley Street, and Jackson Street. In addition to the eight numbered lots, the plat included common area as Tracts A, B, and D, and areas for potential future development as Tracts C, E, F, and G.

Nedonna Development built Kittiwake Drive, Song Street, Duke Street, and the portion of Riley Street from Kittiwake Drive west to Chieftain Drive. Only Song Street, Duke Street, and the north 150 feet of Kittiwake Drive were required to provide public street access to the eight lots in Phase 1. Riley Drive and the south 450 feet of Kittiwake Drive were to provide street access to the lots in Phase 2 when subdivided and platted.

Nedonna Development suspended the project during the recession, before Nedonna Development was ready to build Phase 2, though it had constructed most of the public improvements for Phase 2 in accordance with plans that the city engineer approved on July 22, 2008.

II. Application to plat Phase 2 with three modifications

Nedonna Development is now ready to plat Phase 2. Nedonna Development asks for one modification to the approved final plan, which is to plat Phase 2 in two separate pieces. Phase 2 would be the eleven lots east of Kittiwake Drive, which would be numbered from 9 to 19 and would be taken from what is now Tract F. Phase 3 would be the nine lots west of Kittiwake Drive, which would be numbered from 20 to 28. The number and location of the lots would conform to the final plan approval that the city issued in 2008.

The applicant requests three modifications to the PUD approval as part of the Phase 2 request:

1. Create two lots instead of one lot at the north end of Jackson Street, out of the lot that was numbered as Lot 24 on the approved plan. The two proposed lots are numbered as 21 and 22 on the plan submitted with this application.

2. Create four lots instead of three lots out of the lots numbered as 14, 15, and 16 on the approved plan, at the northeast corner of Kittiwake Drive and Riley Street. The four proposed lots are numbered as 13, 14, 15, and 16 on the plan submitted with this application.

3. Provide that when the owner of the land to the south extends Jackson Street south into that property, the city will vacate the east stub of Riley Street so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.

If the city grants all three modifications then the total number of lots in Nedonna Wave would increase beyond the 28 lots originally approved, but not beyond the limit of 33 that the city identified as applicable in the original PUD approval.

Rockaway Beach regulates PUDs through Article 10 of the zoning code. Because the city has already issued its final approval of the final development plan under Section 10.060 and has approved the entire project as a 28-lot PUD, the only current questions are whether the city will allow Nedonna Development, LLC to plat the remaining lots in two phases instead of in one phase, and whether the city will allow a small increase in the number of lots in Nedonna Wave.

III. General Standards for Subdivisions

The following general standards in the Rockaway Beach Subdivision Ordinance apply:

SECTION 5 Procedure For Review

(1) Prior to the filing of a tentative plan, a subdivider shall submit to the City Recorder plans and other information concerning a proposed or contemplated development. The City Recorder shall then, within thirty-five (35) days, schedule a conference with the subdivider, City Engineer, and City Planner on such plans and other data, and make recommendations to the subdivider as shall seem proper regarding such plans or other data, and shall recommend consultation by the subdivider with other public or private agencies as may be disclosed by the plans to be interested. This subdivision conference is an optional procedure which may be elected by the subdivider and is not required by this ordinance.

(2) The applicant shall submit ten (10) copies of a tentative plan, a completed application form and a fee as required by Section 49. The tentative plan shall follow the format outlined in Sections 6 and 7.

(3) The City shall review the submitted tentative plan to determine whether the application is complete. If the application is complete, a public hearing before the Planning Commission shall be scheduled. If the application is incomplete, the applicant

will be informed of the additional information that is required. Upon submission of that information, a public hearing will be scheduled.

(4) Public notice shall be mailed to property owners within 200 feet of the boundary of the proposed subdivision. The content of the public notice shall be in accordance with Section 11.040(1) of the Zoning Ordinance.

(5) The City Recorder shall transmit one (1) copy of the tentative subdivision plan to the City Engineer, all affected special districts and any county, state or federal agency that may have an interest in the proposed subdivision. Written comments will be incorporated into the record of the public hearing.

(6) The City Recorder shall notify the subdivider of the requirement to file a statement of water rights and if a water rights is appurtenant, a copy of the acknowledgment from the Water Resources Department must be attached before the county recording officer may accept the plat of the subdivision for recording pursuant to ORS 92.120.

(7) The Planning Commission shall hold a public hearing on the tentative subdivision plan in accordance with Section 11.060 of the Zoning Ordinance.

(8) The Planning Commission shall make a decision on the tentative subdivision plan in accordance with Section 11.060 of the Zoning Ordinance.

Response: As Rockaway Beach has already approved the overall plan for Nedonna Wave, the applicant is submitting 10 copies of the plan for the proposed Phase 2 of the subdivision that reflect the first two requested modifications. The applicant is also submitting the application form and the application fee. The applicant acknowledges being informed of the requirement to file a statement of water rights. No water rights are known to be appurtenant to the property.

SECTION 9

Information Statement

The statement to accompany the tentative plan shall contain the following information:

- A general explanation of the improvements and public utilities, including water supply and sewage disposal proposed to be installed.
- Deviations from subdivision ordinance, if any.
- Public areas proposed, if any.
- A preliminary draft of restrictive covenants proposed, if any.

Improvements and public utilities: The applicant has already dedicated and constructed most of the public streets and public utilities for the subdivision in accordance with the approval of the Nedonna Wave PUD. The applicant will extend public water and sewer lines to the property to serve each of the lots. As part of the approval, the applicant will construct the remaining portion of Riley Street and the stub of Jackson Court.

Deviations from the subdivision ordinance: Except for the deviations that the city approved in 2008 to allow Nedonna Wave to develop the property as a PUD, the applicant proposes no deviations from the subdivision ordinance.

Public areas proposed: As part of Phase 1 of the PUD, Nedonna Development imposed covenants on Tracts A, B, and D to reserve them as common area and open space for the Nedonna Wave subdivision. The proposed subdivision of Tract F in accordance with the prior approval will allocate about half of Tract F to the individual lots and the other half as common area and open space for the subdivision. Nedonna Development has already dedicated all public streets required for all phases of the PUD and has built all streets except for Jackson Street and the east portion of Riley Street.

Restrictive covenants proposed: The applicant proposes to apply substantially the same covenants to Phases 2 and 3 as the applicant applied to Phase 1.

SECTION 10

Supplemental Proposals with Tentative Plan

Any of the following may be required to [sic] the Planning Commission to supplement the plan of a subdivision.

- (1) Approximate center line profiles with extensions for a reasonable distance beyond the limits of the proposed subdivision showing the finished grade of streets and the nature and extent of street construction.
- (2) A plan for domestic water supply lines and related water service facilities.
- (3) Proposals for sewage disposal, storm water drainage and flood control, including profiles of proposed drainageways.
- (4) If lot areas are to be graded, a plan showing the nature of the cuts and fills and information on the character of the soil.
- (5) Proposals for other improvements such as electric utilities and sidewalks.
- (6) Site investigations as required by the Hazards Overlay Zone provisions of the Zoning Ordinance. Where such an investigation indicates the potential for erosion, an erosion control plan shall also be submitted.
- (7) If an area is to be graded, a plan showing the nature of the cuts and fills and evidence provided in a site investigation that such a grading will be stable.

Response: The finished grades of the streets were approved as part of the initial PUD, including the extension of Riley Street beyond the limits of the subdivision to connect to the west. The applicant built that extension in 2008 or 2009 and the city accepted it as a public street. No other streets extend to connect to any other property. Domestic water lines have been installed. Sewage disposal has been provided in accordance with the construction plan that the

City Engineer approved on July 22, 2008. No substantial grading is proposed.

SECTION 11

Procedure For Review

(1) Within one (1) year after approval of the preliminary plat, or such extension as may have been granted by the City, the subdivider shall cause the proposed subdivision, or any part thereof to be surveyed and a plat thereof prepared in conformance with the preliminary plat as approved or conditionally approved.

An original reproducible drawing and five (5) blueline or blackline prints of the plat shall be submitted to the City. The tracing and prints are in addition to those required by Oregon Statutes.

The final plat shall conform to the requirements of Section 12 - 15.

No subdivider shall submit a plat of a subdivision for record, until all the requirements of ORS 209.250 and the plat requirements of the subdivision have been met.

(2) The City Recorder shall forward a copy of the plat and other data submitted to the City Engineer who shall examine it to determine that the subdivision as shown is substantially the same as it appeared on the tentative plan, as approved; that all provisions of the law and this ordinance applicable at the time of approval of the tentative plan have been complied with; and that the plan is technically correct.

The City Engineer may make checks in the field as he may desire to verify that the map is sufficiently correct on the ground and he may enter the property for this purpose.

If the City Engineer determines that full conformity has not been made, the City shall advise the subdivider of the changes or additions that must be made for these purposes, and shall afford the subdivider an opportunity to make the changes or additions. If the City Engineer determines that full conformity has been made, he shall so certify on the plat and shall transmit the plat to the City for further review.

(3) The Planning Commission shall review the final plat to determine that it conforms with the preliminary plat and with changes permitted and all requirements imposed as a condition of its acceptance.

If the Planning Commission determines that the plat submitted does not conform to the tentative plan or applicable conditions, the subdivider shall be afforded an opportunity to make corrections.

(4) Prior to the approval of the final plat by the Planning Commission, the subdivider shall complete improvements as proposed or enter into an agreement for improvements together with a bond, pursuant to the provisions of Sections 21 & 22.

(5) If the final plat conforms to the preliminary plat and applicable conditions have been met, the Chairman of the Planning Commission shall sign and date the final plat.

(6) The applicant shall deliver the final plat to the County Surveyor for review according to the requirements of ORS 92. Approval of the plat shall be null and void if the plat is not recorded within 90 days after the date the last required approving signature has been obtained.

Response: Nedonna Development will construct the few remaining improvements in conformance to the approved PUD plan and the tentative subdivision plan when approved, prepare and submit a final plat, and provide a bond or other assurance upon approval that the improvements will be constructed.

(7) The subdivision is considered complete after the final plat is recorded by the County Clerk.

Response: The applicant will record the final plat with the County Clerk in conformance to this standard.

SECTION 32

Principles of Acceptability

A land division whether by a subdivision, creation of a street, or a partitioning, shall conform to any development plans, shall take into consideration any preliminary plans made in anticipation thereof, and shall conform to the design standards established by this ordinance. The City Engineer shall prepare and submit to the City Council specifications to supplement the standards of this ordinance, based on standard engineering practices, concerning streets, drainage facilities, sidewalks, sewer and water systems.

Response: The proposed subdivision conforms to all design standards in the land division ordinance. The tract to be subdivided, now known as Tract F of Nedonna Wave, was laid out with the intention that eleven lots would eventually be created by further subdividing it. The proposal conforms to the plans that the city has already approved.

SECTION 33

Streets

(1) The location, width and grade of streets shall be considered in their relation to existing and planned streets, to topographical conditions, to public convenience and safety, and to the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system with intersection angles, grades, tangents and curves appropriate for the traffic to be carried considering the

terrain. Where location is not shown in a development plan, the arrangement of streets shall either:

- a. Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
- b. Conform to a plan for the neighborhood approved or adopted by the Planning Commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.

Response: The applicant provided for the continuation of Kittiwake Drive from its prior terminus south to Riley Street, and for the connection of Riley Street to the land to the west. The applicant has built Kittiwake Drive and Riley Street west from Kittiwake Drive. The streets have already been dedicated in conformance to the plan that the City approved before the applicant developed Phase 1. The proposal complies with this standard.

(2) **Street Widths.** Street widths shall conform with City standards, except where it can be shown by the land divider, to the satisfaction of the Planning Commission, that the topography or the small number of lots or parcels served and the probable future traffic development are such as to unquestionably justify a narrower width. Increased widths may be required where streets are to serve commercial property, or where probable traffic conditions warrant. Approval or determination of street and area classification shall be made by the Planning Commission taking into consideration the zoning designations imposed by the Comprehensive Plan and the Development Code, the present use and development of the property in the area, the logical and reasonable prospective development of the area based upon public needs and trends, and the public safety and welfare.

Response: The applicant has built Kittiwake Drive and the west portion of Riley Street to City standards. The application will construct Jackson Street and the east portion of Riley Street to City standards.

(3) **Alignment.** As far as is practical, streets other than minor streets shall be in alignment with existing streets by continuations of the center lines thereof. Staggered street alignment resulting in "T" intersections shall, wherever practical, leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction, and in no case, shall be less than 150 feet.

Response: The applicant proposes no change to the existing and approved street pattern.

(4) Future Street Extension. Where necessary to give access to, or permit a satisfactory future division of adjoining land, streets shall extend to the boundary of the subdivision or partition, and the resulting dead-end streets may be approved without a turn-around. Reserve strips including street plugs may be required to preserve the objectives of street extensions.

Response: All adjoining land has already been subdivided. The railroad blocks any potential extension of Riley Street to the east of Phase 2. No adjoining land requires a street extension through this subdivision. The proposal complies with this standard.

(5) Intersection Angles. Streets shall intersect at angles as practical except where topography requires a lesser angle, ¹ but in no case shall the acute angle be less than 60 degrees unless there is a special intersection design. An arterial or collector street intersecting with another street shall have at least 100 feet of tangent adjacent to the intersection unless topography requires a lesser distance. Other streets, except alleys, shall have at least 50 feet of tangent adjacent to the intersection unless topography requires a lesser distance. Intersections which contain an acute angle of less than 80 degrees or which include an arterial street shall have a minimum corner radius sufficient to allow for a roadway radius of 20 feet and maintain a uniform width between the roadway and the right-of-way line. Ordinarily, the intersection of more than two streets at any one point will not be approved.

Response: The existing streets conform to this standard. The applicant does not propose any new streets.

(6) Existing Streets. Whenever existing streets adjacent to or within a tract are of adequate width, additional right-of-way shall be provided at the time of the land division.

Response: The existing streets are all of the width that the city approved for this PUD. The applicant previously dedicated land to widen Riley Street to city standards.

(7) Reserved Strips. No reserved strips controlling the access to public ways will be approved unless the strips are necessary for the protection of the public welfare, and in these cases they may be required. The control and disposal of the land comprising the strips shall be placed within the jurisdiction of the City under conditions approved by the Planning Commission.

¹ This text is from the city's website. It was likely intended to read "Streets shall intersect at angles as near to right angles as practical except where topography requires a lesser angle"

Response: The proposed subdivision will not extend any public streets to undeveloped adjoining parcels and no reserved strips are necessary.

(8) **Half Streets.** Half streets shall be prohibited except they may be approved where essential to the reasonable development of the subdivision or partitions when in conformity with the other requirements of these regulations, and when the Planning Commission finds it will be practical to require the dedication of the other half when the adjoining property is divided. Whenever a half street is adjacent to a tract to be divided, the other half of the street shall be platted within the tract. Reserve strips may be required to preserve the objectives of half streets.

Response: No half-street is necessary or proposed. No half-street is adjacent to the property.

(9) **Cul-de-Sac.** A cul-de-sac shall be as short as possible and shall have a maximum length of four hundred feet (400') and serve building sites for not more than eighteen (18) dwelling units. A cul-de-sac shall terminate with a circular turnaround.

Response: Riley Street and Jackson Street are essentially a cul-de-sac to serve six lots. They do not terminate in a circular turnaround. They do serve as a hammerhead turnaround and were approved by the city as part of the PUD. When the Nedonna Estates property to the south is developed, a second connection to Riley Street can be provided on that property to reduce the cul-de-sac and the stub of Riley Street in front of Tract E will no longer be needed as a turnaround.

(10) **Alleys.** When any lots or parcels are proposed for commercial or industrial usage, alleys at least 20 feet in width may be required at the rear thereof with adequate ingress and egress for truck traffic unless alternative commitments for off-street service truck facilities without alleys are approved. Intersecting alleys shall not be permitted.

Response: No commercial or industrial usage is proposed. No alleys are proposed. This standard does not apply to this subdivision.

(11) **Grades and Curves.** Grades shall not exceed 6% on arterials, 10% on collector streets, or 12% on other streets. Center line radii of curves shall not be less than 300 feet on major arterials, 200 feet on secondary arterials, or 100 feet on other streets, and shall be to an even 10 feet. Where existing conditions, particularly the topography, make it otherwise impractical to provide buildable sites, the Planning Commission may

accept steeper grades and sharper curves. In flat areas, allowance shall be made for finished street grades having a minimum slope, preferably, of at least .5%.

Response: The platted streets are essentially flat. No grade exceeds 6% . No road curve has a radius of less than 100 feet.

(12) **Marginal Access Streets.** Where a land division abuts or contains an existing or proposed arterial street, the Planning Commission may require marginal access streets, reverse frontage lots with suitable depth, screen planting contained in a nonaccess reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic.

Response: The property does not abut or contain an existing or proposed arterial street. This standard does not apply to this proposal.

(13) **Street Names.** All street names shall be approved by the Planning Commission for conformance with established pattern and to avoid duplication and confusion.

Response: The city has already approved the existing street names. No new streets or street names are proposed.

(14) **Private Streets.** The design and improvement of any private street shall be subject to all requirements prescribed by this ordinance for public streets. The land divider shall provide for the permanent maintenance of any street required for access to property in a private street subdivision or major partition.

Response: The applicant has already dedicated all required streets as public streets. The applicant does not propose to build any private streets and this standard does not apply to this application.

SECTION 34

Utility Easements

Easements for sewer, drainage, water mains, public utility installations, including overhead or underground systems, and other like public purposes, shall be dedicated, reserved or granted by the land divider in widths not less than five feet (5') on each side of the rear lot or parcel lines, alongside lot or parcel lines and in planting strips wherever

necessary, provided that easements of [lesser]² width, such as for anchorage, may be allowed when the purposes of easements may be accomplished by easements of lesser width as approved by the City.

Response: Nedonna Development dedicated 5-foot easements along the public streets when it platted Phase 1. The plat of Phase 1 does not indicate any easements along the side and rear lot lines of the individual lots, possibly because the open space (including wetlands) is at the rear of most of the lots. In this instance Nedonna Development suggests that utility easements along the side and rear lot lines would serve no purpose and the requirement should be waived.

SECTION 35

Building Sites

(1) **Size and Shape.** The size, width, shape and orientation of building sites shall be consistent with the residential lot size provisions of the Development Code with the following exceptions:

(a) In areas that will not be served by a public sewer, minimum lot and parcel sized shall permit compliance with the requirements of the Department of Environmental Quality and shall take into consideration problems of sewage disposal, particularly problems of soil structure and water table as related to sewage disposal by septic tank.

Response: The lots will be served by a public sewer. This standard applies only to lots that will not be served by a public sewer and does not apply to the plat.

(b) Where property is zoned and planned for business or industrial use, other widths and areas may be permitted at the discretion of the Planning Commission. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.

Response: The property is zoned for residential use, not for business or industrial use. This standard does not apply to the plat.

(2) **Access.** Each lot and parcel shall abut upon a street other than an alley for a width of at least 25 feet.

² This word appears to have been inadvertently omitted from the code.

Response: Each lot and parcel abuts on a street other than an alley for a width of at least 25 feet. The plat complies with this standard.

(3) **Through Lots and Parcels.** Through lots and parcels shall be avoided except where they are essential to provide separation of residential development from major traffic arteries or adjacent non-residential activities or to overcome specific disadvantages or topography orientation. A planting screen easement at least ten (10) feet wide and across which there shall be no right of access may be required along the line of building sites abutting such a traffic artery or other incompatible use.

Response: The plat has no through lots and no through parcels. The plat complies with this standard.

(4) **Lot and Parcel Side Lines.** The lines of lots and parcels, as far as is practicable, shall run at right angles to the street upon which they face, except that on curved streets they shall be radial to the curve.

Response: Ten of the eleven lots in Phase 2 as originally approved comply with this standard. The exception is the lot at the north end of Jackson Street, which in the approved plan fronts on the end of Jackson Street and runs east to the railroad track. It has no other practicable layout.

Twelve of the fourteen lots in Phase 2 as modified comply with this standard. The applicant requests to modify the approved plan to make two lots out of the one lot at the north end of Jackson Street, each of which will front on the end of Jackson Street. Those two lots have no other reasonable layout that would not impinge on the wetlands. The plat complies with this standard as far as practicable.

SECTION 36

Blocks

(1) **General.** The length, width and shape of blocks shall take into account the need for adequate building site size and street width and shall recognize the limitations of the topography.

Response: Tract F includes some wetlands areas that restricted how Nedonna Development could lay out the PUD. The location of the wetlands made it impracticable to lay out short cul-de-sacs east of Kittiwake Drive similar to how Song Street was laid out in Phase 1. The eleven building lots in Phase 2 as originally approved, and the fourteen lots in Phase 2 as proposed to be modified, were laid out to minimize disturbance of the wetlands. The plat complies with this standard.

(2) Size. No block shall be more than 1,000 feet in length between street corner lines unless it is adjacent to an arterial street or unless the topography or the location of adjoining streets justifies an exception. The recommended minimum length of blocks along an arterial street is 1,800 feet. A block shall have sufficient width to provide for two tiers of building sites unless topography or the location of adjoining streets justifies an exception.

Response: No new streets are proposed. Kittiwake Drive is approximately 600 feet long from Song Street to Riley Street. The area that would ordinarily provide a second tier of lots between Kittiwake Drive and Jackson Street is wide enough to provide for two tiers of lots, but it includes a substantial wetland that will remain as open space. The plat complies with this standard.

(3) Walkways. The subdivider may be required to dedicate and improve ten (10) foot walkways across blocks over 600 feet in length or to provide access to school, park, or other public areas.

Response: Kittiwake Drive is about 600 feet long from Song Street to Riley Street. Jackson Street is less than 200 feet long. A walkway from the north end of Jackson Street to the midpoint of the Kittiwake Drive block would have to cross the protected wetlands and would not shorten the walking distance from Phase 2 to the beach. The City should not require a walkway through the wetlands.

SECTION 37

Large Building Sites

In dividing tracts into large lots or parcels which at some future time are likely to be redivided, the Planning Commission may require that the blocks be of such size and shape, be so divided into building sites and contain such site restrictions as will provide for extension and opening of streets at intervals which will permit a subsequent division of any tract into parcels of smaller size.

Response: The only large parcel proposed is the wetland in the center of what is now Tract F. The wetland area will serve as the required permanent open space for Phase 2 of the PUD and is not intended to be redivided.

SECTION 38

Water Courses

The land divider shall, subject to riparian rights, dedicate a right-of-way for storm drainage purposes, conforming substantially with the lines of any natural water course or channel, stream or creek that traverses the subdivision or partitions, or, at the option of the land divider, provide, by dedication, further and sufficient easements or construction, or both to dispose of the surface and storm waters.

Response: In Phase 1, Nedonna Development declared an easement for storm drainage over Tracts A, B, and D. Nedonna Development will declare a similar easement for storm drainage over the common area wetland that is now part of Tract F. The plat complies with this standard.

SECTION 39 Land For Public Purposes

(1) The Planning Commission may require the reservation for public acquisition, at a cost not to exceed acreage values in the area prior to subdivision, or appropriate areas within the subdivision for a period not to exceed one year providing the City has an interest or has been advised of interest on the part of the State Highway Commission, school district or other public agency to acquire a portion of the area within the proposed subdivision for a public purpose, including substantial assurance that positive steps will be taken in the reasonable future for acquisition.

Response: The applicant is not aware of any public body that wishes to acquire land in the subdivision for a public purpose.

(2) The Planning Commission may require the dedication of suitable areas for the parks and playgrounds that will be required for the use of the population which is intended to occupy the subdivision.

Response: The property in Phase 2 is a five-minute walk from the public beach, which is akin to “the parks and playgrounds” required for the use of the residents of Phase 2. The property is adequately served by land for outdoor recreation, and complies with this standard without any dedication of additional parkland.

SECTION 40 Unsuitable Land

The Planning Commission may refuse to approve a subdivision or partition when the only practical use which can be made of the property proposed to be subdivided or partitioned

is a use prohibited by this code or law, or, if the property is deemed unhealthful or unfit for human habitation or occupancy by the county or state health authorities.

Response: The property can practicably be put to residential use, which this code allows and which Rockaway Beach has approved. No county or state authority has declared the property or the general area unfit for human habitation, and in fact many of the nearby parcels are in residential use. The plat complies with this standard.

SECTION 41 Land Subject to Inundation

If any portion of land proposed for development is subject to overflow, inundation or flood hazard by, or collection of, storm waters, an adequate system of storm drains, levees, dikes and pumping systems shall be provided.

Response: As part of developing Phase 1, the applicant installed storm drain culverts from the wetland area under Kittiwake Drive to Tract B and thence to McMillan Creek to provide storm drainage from Tract F. The applicant believes the existing wetland and drainage facility to be adequate. The plat complies with this standard.

SECTION 42 Proposed Name of Subdivision

No tentative subdivision plat or subdivision plan or subdivision shall be approved which bears a name approved by the County Surveyor or County Assessor, which is the same as [or] similar to or pronounced the same as the name of any other subdivision in Tillamook County unless the land platted is contiguous to and platted by the same party that platted the subdivision bearing that name, or unless the party files and records the consent of the party that platted the contiguous subdivision bearing that name. All subdivision plats must continue the lot numbers and, if used, the block numbers of the subdivision plat of the same name last filed.

Response: The property is already part of the Nedonna Wave subdivision and is being platted by the same party that platted Phase 1. The final plat of Phase 2 will continue the lot numbers from Phase 1, starting with Lot 10.³

IV. Specific standards for planned unit developments

Rockaway Beach regulates planned unit developments (PUDs) in Article 10 of the city zoning ordinance. Here are the relevant standards and the applicant's response.

³ The proposed plat submitted with this application numbers the lots from 1 upward. The lots will be renumbered on the final plat to conform to this standard.

Section 10.030. Permitted Buildings and Uses. The following buildings and uses may be permitted as hereinafter provided. Buildings and uses may be permitted either singly or in combination provided the overall density of the Planned Unit Development does not exceed the density of the parent zone as provided in this ordinance.

1. Single-family dwellings including detached, attached, or semi-detached units, row houses, atrium or patio houses, provided each has its own separate plot.
2. Duplexes and multiple-family dwellings.
3. Accessory buildings and uses.
4. Commercial uses only when supported mainly by the PUD and only when economic feasibility can be shown.
5. Buildings or uses listed as permitted outright or conditionally in the parent zone on which the PUD is located.

Response: The proposed lots will be for detached single-family dwellings, and related accessory buildings such as garages and storage sheds. Subsections 1 and 3 permit these uses. The application complies with this standard.

Section 10.040. Development Standards.

(1) Minimum Lot Size. Planned Unit Developments shall be established only on parcels of land which are suitable for the proposed development and are determined by the planning commission to be in keeping with the intent of this ordinance. (This says 'site size' in 143, not 'lot size')

Response: Rockaway Beach has already approved this parcel of land as suitable for the proposed development of a residential PUD in keeping with the intent of the zoning ordinance. The proposed modifications do not substantially change the nature and character of Nedonna Wave. The parcel is suitable for the proposed development, and the application complies with this standard.

(2) Open Spaces. In all residential developments, or in combination residential-commercial developments, 50% of the total area should be devoted to open space. Of this area, 25% of said open space may be utilized privately by individual owners or users of the PUD; however, 75% of this area should be common or shared open space. The Planning Commission may increase or decrease the open space requirement depending on the particular site and the needs of the development. In no case should the open space be less than 40% of the site.

Response: Nedonna Wave Phase 1 included common area as Tract A, Tract B, and Tract D, all of which is open space. The eight numbered lots and Tract C in Phase 1 totaled 35,028

square feet according to the plat. The three common area tracts totaled 65,528 square feet, which is 65.16% of the total area of 100,556 square feet in Phase 1. Phase 1 provided a surplus of common open space.

The 22 lots in Phase 2 and the proposed Phase 3 total 69,840 square feet. The common open space in Phases 2 and 3 consists of the remainder of Tract F (75,358 SF) and Tract G (71,859 SF) minus the portion allocated to the 22 proposed building lots (71,859 SF) and Tract E (2,019 SF), which yields 37,476 SF. Phases 1, 2, and 3 together contain 106,887 square feet in numbered lots plus Tracts C and E, and 103,004 SF of common open space. The common open space is 49.1% of the total project.

In addition to the common open space, the setback requirements on each lot will provide approximately 35,000 SF of additional open area, bringing the total open area for the project when complete to about 138,000 SF in a total area of about 209,891 SF, well above the 50% requirement. With or without the requested modifications, the plat will comply with this standard.

(3) Density. The density of a planned development shall not exceed the density of the parent zone, except as more restrictive regulations may be prescribed as a condition of the PUD permit. When calculating density, the gross area is used (total area including street dedications). Areas of public uses may be included in calculating allowable density.

Response: The findings of fact in the city's approval of February 11, 2008 indicate that the R-1 portion of the overall site was 3.9 acres, which is about 169,884 SF. The minimum lot size in the R-1 zone is 5,000 SF. Property approved for a PUD may be subdivided into lots smaller than 5,000 SF as long as the overall density does not exceed the density of the parent zone. Streets and common areas count toward the land area for this purpose.

A tract of 169,884 square feet divided by 5,000 square feet will allow 33 lots. The proposed density with the requested modifications will not exceed the density of the parent zone. The application and the modifications comply with this standard.

(4) Subdivision of Lot Sizes. Minimum area, width, depth, and frontage requirements for subdivision lots in a PUD may be less than the minimums set forth elsewhere in City ordinances, provided that the overall density is in conformance, and that lots conform to the approved preliminary development plan.

Response: The overall density of Nedonna Wave is in conformance to the zoning. If the City does not grant the requested modifications, the proposal will conform exactly to the approved development plan. If the City does grant the requested modifications, the proposed density, street layout, open space, and circulation will still conform to the approved plan.

(5) Off-Street Parking. Parking spaces shall conform to all provisions of this ordinance, except that the Planning Commission may authorize exceptions where warranted by unusual circumstances.

Response: Each lot will provide parking to conform to code requirements.

(6) Signs. All signs of any type within a PUD are subject to design review and approval of the Planning Commission. They shall consider each sign on its merits based on its aesthetic impact on the area, potential traffic hazards, potential violation of property and privacy rights of adjoining property owners, and need for said sign.

Response: No permanent signs are proposed except for street signs and any no-parking signs that the City may require.

(7) Height Guidelines. The same restrictions shall prevail as permitted outright in the zone in which such development occurs, except that the Planning Commission may allow a variance of heights where it is determined that surrounding property will not be harmed.

Response: On February 11, 2008 in File No. #VAR 2007-21 the planning commission approved a height variance for building heights of 36 feet for Lots 25, 26, 27, and 28 as they were then numbered, which are Lots 17, 18, 19, and 20 on the plans submitted with this application. In File No. #VAR 2007-20 the planning commission approved a height variance for building heights of 29 feet on all other lots in Nedonna Wave. No other height variance is requested.

(8) Streets and Roads. Necessary streets and roads within the PUD shall be dedicated to the public and constructed to City standards or shall be private roads maintained by an owner's association and constructed to standards as determined by the Planning Commission and City Engineer.

Response: The applicant has dedicated all of the streets and constructed most of the streets within the PUD already. As part of Phase 2 the applicant will construct Jackson Street and the east portion of Riley Street in accordance with the engineering plans that the City approved in 2008.

(9) Dedication and Maintenance of Facilities. The Planning Commission, or on appeal, the City Council may, as a condition of approval for a PUD require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated to the following uses:

(a) Recreation Facilities: The Planning Commission may require that suitable area for parks or playgrounds be set aside, improved, or permanently reserved for the owners, residents, employees or patrons of the PUD.

(b) Common Area: Whenever common area is provided, the Planning Commission or City Council may require that an association of owners or tenants be created into a non-profit corporation under the laws of the State of Oregon, which shall adopt such Articles of Incorporation and By-Laws and adopt and impose such Declaration of Covenants and Restrictions on such common areas that are acceptable to the Planning Commission. Said association, if required, may undertake other functions. It shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessments levied to maintain said common areas for the purposes intended. The period of existence of such association shall not be less than 20 years, and it shall continue thereafter and until a majority vote of the members shall terminate it.

(c) Easements: Easements necessary to the orderly extension of public utilities may be required as a condition of approval.

Response: The PUD enjoys excellent pedestrian access to the beach and will include 49% common open space. No further recreation facilities are required. The common area will be under the control of an owners' association pursuant to covenants. Because the railroad blocks extension to the east and all adjoining properties are either already developed or have direct access to improved public streets with utilities, no further easements for extensions of public utilities are required. A portion of the open area has been set aside for a sewer pump facility.

V. Conclusion

The applicant is ready to continue the development of the Nedonna Wave PUD and requests your approval of the preliminary plat, including the ability to separate Phase 2 into Phases 2 and 3, and to add two lots as described. If the city should turn down the request to modify the PUD by adding the two lots, then the applicant requests that you simply approve Phase 2.

EXHIBIT “C”



**CITY OF ROCKAWAY BEACH
PLANNING COMMISSION ACTION**

STAFF REPORT

Case File #PUD-24-1
Hearing Date: June 20, 2024

APPLICANT: Nedonna Development LLC

AGENT FOR APPLICANT: Dean N. Alterman

REQUEST: The Applicant is requesting a modification to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008. The Applicant seeks the following modifications to Phase 2 of the 2008 approval:

1. To develop Phase 2 in two sub-phases, instead of one phase;
2. To create two lots instead of one lot at the north end of Jackson Street (identified as lot 24 on the 2008 approved plan), identified as lots 21 and 22 on the plans submitted with the Application;
3. To create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street (identified as Lots 14, 15, and 16 on the 2008 approved plan), identified as lots 13, 14, 15 and 16 on the plan submitted with the Application; and
4. Provide that when the owner of the land to the south extends Jackson Street south into that property, the City will vacate the east stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.

A. REPORT OF FACTS

1. Property Location: The subject property is located on Kittiwake Drive north of Riley Street and South of Song Street in Nedonna Beach. The property is identified as Tillamook County Assessor's Map #2N1020AB Lots # 10200, 10400, and 10500.
2. Lot Size: approximately 2.56 acres.
3. Zoning Designation: R-1 (Single Family Residential Zone), SA (Special Area Wetlands Zone), and PUD (Planned Unit Development) Overlay.
4. Surrounding Land Use: Adjacent to the north is the existing Nedonna Wave Planned Unit Development Phase 1. To the east is undeveloped private land zoned R-1 (Single Family Residential Zone) and Highway 101. To the south is undeveloped private land zoned R-1 (Single Family Residential) and SA (Special Area Wetlands). To the west is White Dove Estates neighborhood, which is zoned R-1 (Single Family Residential).



5. Existing Structures: None, except for utilities installed by the Applicant during the construction of Phase 1, for Phase 2.
6. Utilities: The following utilities serve the subject property:
 - a. Sewer: City of Rockaway Beach
 - b. Water: City of Rockaway Beach
 - c. Electricity: Tillamook P.U.D.
7. Development Constraints: The property contains wetlands that were delineated by a professional wetlands consultant prior to the 2008 approval. As wetlands are not stagnant, according to the Department of State Lands (DSL), the former delineation is no longer valid and expire after a period of five years. At the time of the 2008 approval, the Applicant provided a joint permit from the DSL and the U.S. Army Corps of Engineers. These permits have now expired and will need to be renewed before any disturbance or impacts to the wetlands takes place. If the request is approved, the Applicant will be required to obtain and provide copies of necessary permits from these agencies prior to initiating construction.

In addition, a portion of the subject property is located within the 100-year floodplain as identified on the Flood Insurance Rate Map Panel Number 41057C0218F.

B. EVALUATION OF THE REQUEST

1. General Description of the Proposal: The Applicant is requesting a modification to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008. The Applicant seeks the following modifications to Phase 2 of the 2008 approval: (1) To develop Phase 2 in two sub-phases, instead of one phase; (2) To create two lots instead of one lot at the north end of Jackson Street (identified as lot 24 on the 2008 approved plan), identified as lots 21 and 22 on the plans submitted with the Application; (3) To create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street (identified as Lots 14, 15, and 16 on the 2008 approved plan), identified as lots 13, 14, 15 and 16 on the plan submitted with the Application; and (4) Provide that when the owner of the land to the south extends Jackson Street south into that property, the City will vacate the east stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.
2. Agency Comments:
 - a. City of Rockaway Beach Engineer: See attached letter from HBH Engineering which identifies issues that will need to be addressed through the more formal engineering review if the request is approved.
 - b. Department of State Lands: See attached Wet Land Use Notice Response which identifies additional reporting and permitting that will need to be completed and obtained prior to any disturbance of the wetland areas.



3. Ordinance Standards: The following substantive criteria apply to this request. To facilitate review, staff comments are in *italicized font*.

Rockaway Beach Zoning Ordinance Section 3.010, Single Family Residential Zone (R-1). In the R-1 zone the following regulations shall apply:

- a. The minimum lot size shall be 3,500 square feet for lots existing at the time of the adoption of Ordinance 235. Lots platted after the adoption of Ordinance 235 shall have a minimum lot size of 5,000 square feet.

The Applicant was approved for a PUD overlay in 2008, allowing for the development of lots lesser than the minimum lot size requirement for the R-1 zone. The Applicant is currently seeking to create two lots instead of one lot at the north end of Jackson Street (identified as lot 24 on the 2008 approved plan), identified as lots 21 and 22 on the plans submitted with the Application, and to create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street (identified as Lots 14, 15, and 16 on the 2008 approved plan), identified as lots 13, 14, 15 and 16 on the plan submitted with the Application. These additional lots the Applicant seeks to include, which were not included in the original PUD approval, do not meet the minimum lot size requirements for the R-1 zone. It should also be noted that the lots the Applicant seeks to amend which are identified as Lots 14, 15, and 16 on the 2008 approved plan, are also below the minimum lot size requirement. Lot 24 on the 2008 approved plan did meet the minimum lot size requirement for the R-1 zone.

- b. The density of duplexes shall be: for lots existing prior to the adoption of Ordinance 235, a duplex is permitted on a lot with a minimum size of 3,500 square feet, for lots platted after the adoption of Ordinance 235, a duplex is permitted on a lot with a minimum size of 5,000 square feet.

The Applicant intends to construct single-family dwellings, therefore this standard is not applicable.

- c. Minimum lot width is 50 feet, except for lots between 3,500 and 4,999 square feet, the minimum lot width shall be 35 feet.

The Applicant was approved for a PUD overlay in 2008, allowing for the development of lots lesser than the minimum depth requirement for the R-1 zone. The additional lots the Applicant seeks to add to through this modification are also lesser than the minimum width requirement.

- d. Minimum lot depth is 70 feet, except for lots between 3,500 and 4,999 square feet, the minimum lot depth shall be 60 feet.

The Applicant was approved for a PUD overlay in 2008, allowing for the development of lots lesser than the minimum depth requirement for the R-1 zone. The additional lots the Applicant seeks to add to through this modification are also lesser than the minimum depth requirement.

- e. The minimum front yard shall be 15 feet, unless subsection 3.010(3)(h) applies.



This standard is typically reviewed for conformance and applied at the time a building permit is required.

- f. The minimum side yard shall be 5 feet, except that on the street side of a corner lot it shall be 15 feet.

This standard is typically reviewed for conformance and applied at the time a building permit is required.

- g. The minimum rear yard shall be 20 feet, except that on a corner lot it may be a minimum of 5 feet unless subsection 3.010(3)(h) applies. Oceanfront structures shall conform to Section 5.060(1)(b).

This standard is typically reviewed for conformance and applied at the time a building permit is required.

- h. For lots of less than 5,000 square feet in size, but more than 3,500 square feet, the minimum front yard shall be 15 feet and the minimum rear yard shall be 10 feet, except that on a corner lot the rear yard may be a minimum of 5 feet. For lots of 3,500 square feet in size or less, the minimum front yard and rear yard shall be ten feet, except that on a corner lot the rear yard may be a minimum of 5 feet. Notwithstanding the above, oceanfront structures shall conform to Section 5.060(1)(b).

This standard is typically reviewed for conformance and applied at the time a building permit is required. However, it should be noted that the Applicant was approved for a PUD overlay in 2008, allowing for the development of lots lesser than the minimum lot size outlined for the R-1 zone.

- i. The maximum building height shall be 20 feet on the oceanfront and 24 feet elsewhere except east of Highway 101 it shall be 29 feet.

This standard is typically reviewed for conformance and applied at the time a building permit is required.

- j. A minimum of 30% of the lot will be maintained in natural vegetation or landscaping.

This standard is typically reviewed for conformance and applied at the time a building permit is required.

Rockaway Beach Zoning Ordinance Section 3.080, Special Wetlands Area (SA). In the SA zone the following regulations shall apply:

- a. All activities involving construction or alteration in wetlands or aquatic areas shall be reviewed by the Oregon Division of State Lands and the US Army Corps of Engineers to determine permit applicability.

The Application has been provided to DSL for review. The DSL response is attached to this application, outlining additional reporting and permitting necessary for this Application.



- b. The Shorelands Siting Criteria in Section 4.041 shall be applicable to all activities in the SA zone. Nothing in the Shorelands Siting Criteria shall be interpreted to permit uses which are not otherwise allowed in (2) or (3) above.

The Shoreland Siting Criteria applies to developments taking place within 50 feet of the shore of any lake, therefore this criteria does not apply.

- c. Every effort shall be made to use common or community docking facilities prior to construction of an individual, single- purpose dock. Generally, there should be a maximum of one dock every 250 feet. Docks shall not include covered structures or boathouses.

No docks are proposed in this Application, therefore this criteria does not apply.

- d. Access to the water area through wetlands may be constructed in the form of raised walkways on pilings, posts or piers. Where the affected resource agencies (e.g. Oregon Department of Fish & Wildlife) determine the activity to have minimal environmental impacts, trails or paths consisting of clean gravel, bark chips, or other material may be placed through wetlands. Such walkways shall not be wider than eight (8) feet. Wherever possible, trails or walkways shall be constructed for the common usage of a development or group of structures.

The Application does not propose any access to the water areas, therefore this criteria is not applicable.

- e. Removal or control of aquatic vegetation may be permitted, where allowed by the Oregon Department of Fish and Wildlife, in order to provide angler access, or other valid purpose.

The subject property does not provide angler access, therefore this criteria is not applicable.

- f. Dredging shall be allowed only: (i) If a need (i.e., a substantial public benefit) is demonstrated, and; (ii) If the use or alteration does not unreasonably interfere with public trust rights, and; (iii) If no feasible alternative upland locations exist, and; (iv) If adverse impacts are minimized.

Dredging is not proposed as part of this Application, therefore this criteria is not applicable.

- g. When dredging is permitted, the dredging shall be the minimum necessary to accomplish the proposed use.

Dredging is not proposed as part of this Application, therefore this criteria is not applicable.

- h. The timing of dredging operations shall be coordinated with state and federal resource agencies, to protect aquatic and shoreland resources, and minimize interference with recreational fishing.

Dredging is not proposed as part of this Application, therefore this criteria is not applicable.



- i. Piling installation may be allowed only if all of the following criteria are met: (i) A substantial public benefit is demonstrated, and; (ii) The proposed use does not unreasonably interfere with public trust rights, and; (iii) Feasible alternative upland locations do not exist, and; (iv) Potential adverse impacts are minimized.

Piling installation is not proposed as part of this Application, therefore this criteria is not applicable.

- j. Shoreline stabilization measures shall meet the criteria of Section 4.120.

Shoreline stabilization is not proposed as part of this Application, therefore this criteria is not applicable.

- k. Fill may be permitted only if all of the following criteria are met: (i) If required for a water-dependent use requiring an aquatic location, or if specifically allowed in the SA zone, and; (ii) A substantial public benefit is demonstrated, and; (iii) The proposed fill does not unreasonably interfere with public trust rights, and; (iv) Feasible upland alternative locations do not exist, and; (v) Adverse impacts are minimized.

Fill is not proposed as part of this Application, therefore this criteria is not applicable.

- l. Fill shall cover no more area than the minimum necessary to accomplish the proposed use.

Fill is not proposed as part of this Application, therefore this criteria is not applicable.

- m. Projects involving fill may be approved only if the following alternatives are examined and found to be infeasible: (i) Construct some or all of the project on piling; (ii) Conduct some or all of the proposed activity on existing upland areas; (iii) Approve the project at a feasible alternative site where adverse impacts are less significant.

Fill is not proposed as part of this Application, therefore this criteria is not applicable.

- n. Zone Boundary Determination. At such time that a development is proposed in the vicinity of an area designated Special Area Wetlands, the City may require a site investigation to determine the exact location of the zone boundary. The site investigation shall be performed by a qualified agent such as a biologist from the U.S. Army Corps of Engineers or the Division of State Lands.

The Application has been provided to DSL for review. The DSL response is attached to this report, outlining the requirement for an updated site investigation to be conducted by a qualified agent to determine the exact location of the zone boundary.



Rockaway Beach Zoning Ordinance Section 3.092, Flood Hazard Overlay Zone (FHO). In the FHO zone the following regulations shall apply:

- a. All subdivision proposals shall provide engineered plans consistent with the need to minimize flood damage.

The Application has been provided to the City Engineers for review. Comments from the City Engineers are attached this report, outlining all public improvements be constructed within the public right of way. The public right of way is located outside of the flood zone and therefore are consistent with the requirements of minimizing flood damage.

- b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

The Application has been provided to the City Engineers for review. Comments from the City Engineers are attached this report, outlining all public improvements be constructed within the public right of way. The public right of way is located outside of the flood zone and therefore are consistent with the requirements of minimizing flood damage.

- c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

The Application has been provided to the City Engineers for review. Comments from the City Engineers are attached this report, directing the Applicant to submit an acceptable storm drainage report prior to the final design of the storm drainage system.

- d. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

The Application is less than 50 lots and 5 acres, therefore this criteria is not applicable.

Rockaway Beach Zoning Ordinance Section 3.132, Wetland Notification Overlay Zone. In the Wetland Notification Overlay zone the following regulations shall apply:

1. No person shall do any site preparation work in conjunction with a use permitted in the underlying zoning district in which the property is located, without first notifying the City of the proposed action. Site preparation work is defined as any grading, filling, drainage, excavation or tree removal on the subject property.

The Applicant has not taken any site preparation action, with the exception of the approved site preparation completed during Phase 1.



2. The required notification shall take the form of a description of the location of the property and a sketch describing the site preparation work to be undertaken.

The Applicant has not yet applied for any site preparation work with this Application.

3. Upon receipt of the notification, the City shall meet with the applicant and inform him/her that the subject property and proposed site preparation activities may be subject to the jurisdiction of the Department of State Lands and the US Army Corps of Engineers.

As noted in the response from the DSL, additional permitting and review are necessary prior to site preparation work.

4. The applicant shall contact the Department of State Lands and the US Army Corps of Engineers and seek a determination of whether the subject property and proposed site preparation activities are subject to their jurisdiction.

The DSL has noted in their response that permitting from DSL is required and permitting from the U.S. Army Corps of Engineers may be required before site preparation work may begin.

5. If the US Army Corps of Engineers and/or the Department of State Lands determines that it has jurisdiction, the applicant shall receive a permit from these agencies before site preparation work may begin.

The DSL has noted in their response that permitting from DSL is required and permitting from the U.S. Army Corps of Engineers may be required before site preparation work may begin.

6. If the Department of State Lands and/or the US Army Corps of Engineers determines that it does not have jurisdiction, the applicant may begin site preparation work upon presenting the City with a written confirmation of such a determination, and subject to applicable City requirements.

Based upon the response received from DSL on the initial review of the Application, the DSL has determined that it does have jurisdiction, therefore this standard does not apply.

Rockaway Beach Zoning Ordinance Section 3.140 (6), Tsunami Hazard Overlay Zone (TH). In the TH zone the following regulations shall apply:

Evacuation Route Improvement Requirements. Except single family dwellings on existing lots and parcels, all new development, substantial improvements and land divisions in the Tsunami Hazard Overlay Zone shall incorporate evacuation measures and improvements, including necessary vegetation management, which are consistent with and conform to the adopted Tsunami Evacuation Facilities Improvement Plan. Such measures may include:

- a. On-site improvements: (i) Improvements necessary to ensure adequate pedestrian access from the development site to evacuation routes designated in the Evacuation Route Plan in all



weather and lighting conditions. (ii) Frontage improvements to designated evacuation routes that are located on or contiguous to the proposed development site, where such improvements are identified in the Tsunami Evacuation Facilities Improvement Plan. Such improvements shall be proportional to the evacuation needs created by the proposed development.

The Application does not address on-site evacuation route improvements. The current tsunami evacuation route is located at the termination of Riley Street, past Jackson Street. The Applicant has request the City vacate the eastern portion of Riley Street to allow for the future development of an additional lot, which would block the current evacuation route.

- b. Off-site improvements: Improvements to portions of designated evacuation routes that are needed to serve, but are not contiguous to, the proposed development site, where such improvements are identified in the Tsunami Evacuation Facilities Improvement Plan. Such improvements shall be proportional to the evacuation needs created by the proposed development.

The Application does not address off-site evacuation route improvements. The current tsunami evacuation route is located at the termination of Riley Street, past Jackson Street. The Applicant has request the City vacate the eastern portion of Riley Street to allow for the future development of an additional lot, which would block the current evacuation route.

- c. Evacuation route signage consistent with the standards set forth in the Tsunami Evacuation Facilities Improvement Plan. Such signage shall be adequate to provide necessary evacuation information consistent with the proposed use of the site.

The Application does not address tsunami evacuation route signage.

- d. Evacuation route improvements and measures required by this subsection may include the following: (i) Improved streets and/or all-weather surface paths of sufficient width and grade to ensure pedestrian access to designated evacuation routes in all lighting conditions; (ii) Improved streets and paths shall provide and maintain horizontal clearances sufficient to prevent the obstruction of such paths from downed trees and structure failures likely to occur during a Cascadia earthquake; and (iii) Such other improvements and measures identified in the Evacuation Route Plan.

The Application does not provide for evacuation route improvements.

Rockaway Beach Zoning Ordinance Article 10, Planned Unit Development (PUD). The following regulations apply for PUDs:

- 1. Minimum Lot Size. Planned Unit Developments shall be established only on parcels of land which are suitable for the proposed development and are determined by the planning commission to be in keeping with the intent of this ordinance.



In the 2008 approval of the Nedonna Wave Planned Unit Development, the Planning Commission allowed for the creation of minimum lot sizes which were lesser than the parent R-1 zone.

2. Open Spaces. In all residential developments, or in combination residential-commercial developments, 50% of the total area should be devoted to open space. Of this area, 25% of said open space may be utilized privately by individual owners or users of the PUD; however, 75% of this area should be common or shared open space. The Planning Commission may increase or decrease the open space requirement depending on the particular site and the needs of the development. In no case should the open space be less than 40% of the site.

The Application provides for the required open space, most of which is maintained wetlands and public roadways.

3. Density. The density of a planned development shall not exceed the density of the parent zone, except as more restrictive regulations may be prescribed as a condition of the PUD permit. When calculating density, the gross area is used (total area including street dedications). Areas of public uses may be included in calculating allowable density.

As noted in the Applicant's Memorandum, the with the addition of the proposed two additional lots, the density requirement is still met.

4. Subdivision of Lot Sizes. Minimum area, width, depth, and frontage requirements for subdivision lots in a PUD may be less than the minimums set forth elsewhere in City ordinances, provided that the overall density is in conformance, and that lots conform to the approved preliminary development plan.

As noted previously in this report, the minimum area, width, depth and frontage requirements are lesser than the parent R-1 zone. Density is in conformance with the R-1 zone.

5. Off-Street Parking. Parking spaces shall conform to all provisions of this ordinance, except that the Planning Commission may authorize exceptions where warranted by unusual circumstances.

This standard is typically reviewed for conformance and applied at the time a building permit is required.

6. Signs. All signs of any type within a PUD are subject to design review and approval of the Planning Commission. They shall consider each sign on its merits based on its aesthetic impact on the area, potential traffic hazards, potential violation of property and privacy rights of adjoining property owners, and need for said sign.

The Applicant submitted sign approval with the original PUD application. The Applicant is not seeking modification to these signs.



7. Height Guidelines. The same restrictions shall prevail as permitted outright in the zone in which such development occurs, except that the Planning Commission may allow a variance of heights where it is determined that surrounding property will not be harmed.

The Applicant had previously sought and been approved for variances for height for the PUD. Copies of the Variance request are included in the original application materials.

8. Streets and Roads. Necessary streets and roads within the PUD shall be dedicated to the public and constructed to City standards or shall be private roads maintained by an owner's association and constructed to standards as determined by the Planning Commission and City Engineer.

The City Engineer comments attached to this application direct the Applicant to construct all streets to meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications.

9. Dedication and Maintenance of Facilities. The Planning Commission, or on appeal, the City Council may, as a condition of approval for a PUD require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated to the following uses:

- a. Recreation Facilities: The Planning Commission may require that suitable area for parks or playgrounds be set aside, improved, or permanently reserved for the owners, residents, employees or patrons of the PUD.

No recreation facilities are proposed in the Application.

- b. Common Area: Whenever common area is provided, the Planning Commission or City Council may require that an association of owners or tenants be created into a non-profit corporation under the laws of the State of Oregon, which shall adopt such Articles of Incorporation and By-Laws and adopt and impose such Declaration of Covenants and Restrictions on such common areas that are acceptable to the Planning Commission. Said association, if required, may undertake other functions. It shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessments levied to maintain said common areas for the purposes intended. The period of existence of such association shall not be less than 20 years, and it shall continue thereafter and until a majority vote of the members shall terminate it.

The Applicant has provided common open space and CC&Rs included in the Application for the Planning Commission to consider.

- c. Easements: Easements necessary to the orderly extension of public utilities may be required as a condition of approval.



The comments provided by the City Engineer direct all public improvements to be constructed within the existing public right of way or right of way to be dedicated to the City as part of the development.

C. STAFF SUMMARY

The Applicant has requested approval of modifications to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008. The requested modifications would allow the Applicant to develop Phase 2 in two sub-phases and to create two additional lots. In addition to these modifications, the Applicant has also requested the City vacate the east stub of Riley Street to form an additional future building lot.

The Memorandum provided with the Application materials contains history of the previously approved application, reasons for the requested modifications, and responses to some of the criteria of the Rockaway Beach Zoning Ordinance.

Staff have solicited comments from other affected agencies and stakeholders, and those comments have been included in the record. Most notably, the City Engineer has identified necessary permitting and improvements to existing City sewer facilities.

In general, necessary public infrastructure improvements that are triggered by a proposed development must be provided by the developer of the project. If approved, conditions of approval related to infrastructure improvements can be attached, which must be met prior to final plat approval.

Staff have identified the substantive criteria for review of the request by the Planning Commission, and included the criteria in this report, along with comments where appropriate. However, at the public hearing any party may provide testimony addressing these criteria or other criteria the party believes is applicable to the request.

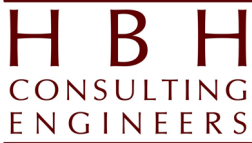
D. CONCLUSION

The Planning Commission should carefully consider the request, including all oral and written testimony on record and presented at the public hearing, including comments from the City Engineer, government agencies, and other interested parties. After considering testimony as it relates to this applicable criteria, the Planning Commission will need to make a decision on the request.

If the Commission determines that the modifications to the Nedonna Wave Planned Unit Development meet the standards of the Rockaway Beach Zoning Ordinances, it can make a motion to approve the request, including a statement that generally reflects the facts and rationale relied upon to reach the decision. The motion should also direct staff to prepare findings, conclusions, and a final order to implement the decision.

A motion to deny the request should set forth the general facts and rationale for the decision and direct staff to prepare the final order.

A decision to approve or deny the request will be subject to a 15-day appeal period that will begin after written findings to support the decision have been signed by the Planning Commission Chair.



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June 12, 2024

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276 S Hwy 101
Rockaway Beach, OR 97136

Re: Nedonna Wave PUD Phase II – City Engineer Conditions of Approval

Dear Mary,

The following conditions of approval should be included as part of the staff report for Nedonna Wave PUD Phase II.

- 1) All public improvements, not limited to sewer, water, storm and street design, and construction shall meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications.
- 2) The applicant shall submit an acceptable storm drainage report prior to the final design of the storm drainage system.
- 3) The applicant shall obtain a 1200-C permit from Oregon DEQ for the erosion control plans.
- 4) All sanitary sewer design shall obtain written approval by DEQ, including a pre-design report for the new regional pump station to serve the development.
- 5) All public underground utilities including, but not limited to, water, gravity sanitary sewer, sanitary sewer force main, and storm drainage, installed on Phase 2 or for future use by Phase 2 or have not been in use since constructed, shall be tested at the expense of the owner and accepted by the City Engineer of Record.
- 6) The following off-site improvements shall be provided by the applicant/owner:
 - a) Regional sanitary sewer pump station and related infrastructure including but not limited to the following: three-phase submersible duplex pump station with controls, davit crane, on-site generator, telemetry, lighting, and fencing. It is not clear if the proposed sanitary sewer pump station site at the corner of Riley Street and Jackson Street will be sufficient to house the necessary infrastructure improvements. Finally, the tract on which the pump station will be located is to be dedicated to City.
 - b) Sanitary sewer force main from the regional pump station to the existing White Dove pump station.
 - c) Extend the White Dove sanitary sewer force main from NW 23rd Ave to the pump station at NW 17th Ave.
 - d) All public improvements shall be constructed within existing public ROW or ROW that will be dedicated to the City as part of this development. It is our understanding the southern half of Riley Street was constructed on the neighboring property without ROW dedication or a public easement.

Additional comments are as follows, while not necessarily conditions of approval, are in regard to the proposed modification request:

- A. Per Section D103.4 of the Oregon Fire Code, a fire truck turnaround is required when access roads exceed 150-feet in length. The fire truck turnaround at the intersection of Riley Street and Jackson Street shall remain as previously approved and the ROW is not to be vacated as requested by the applicant as part of the modification request to add an additional lot. If Jackson Street is extended south in the future, ROW vacation can be looked into at that time, if a fire truck turnaround is no longer necessary depending on the future road layout.
- B. Per Section D107.1 of the Oregon Fire Code, “Developments of one- or two-family dwellings where the number of dwelling units exceeds 30 shall be provided with two separate and approved fire apparatus access roads. Exceptions:
 - a. Where there are more than 30 dwelling units on a single public or private fire apparatus access road and all dwelling units are equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1, 903.3.1.2, 903.3.1.3, access from two directions shall not be required.
 - b. The number of dwelling units on a single fire apparatus access road shall not be increased unless fire apparatus access roads will connect with future development, as determined by the fire code official.”

It appears that Beach Street is the only fire apparatus access road serving the entire Nedonna Beach area, which far exceeds 30 dwelling units. Therefore, unless all dwelling units in the Nedonna Beach area are equipped with an approved automatic sprinkler system, no additional dwelling units could be allowed per the Oregon Fire Code.

- C. Based on civil engineering drawings prepared by Morgan Civil Engineering dated 11/8/2020, proposed lot #22 and #15 do not have the minimum required 25-foot of ROW frontage required per City of Rockaway Beach subdivision ordinance Section 35(2), as only approximately 15-feet of frontage is provided at the north end of Jackson Street for lot #22 and approximately 14-feet for lot #15 along Riley Street.

Should you have any questions, please contact me.

Sincerely,
HBH Consulting Engineers, Inc.

Andrey Chernishov, PE, CWRE
Assistant City Engineer



Wetland Land Use Notice Response

Response Page

Department of State Lands (DSL) WN# *

WN2024-0351

Responsible Jurisdiction

Staff Contact

Mary Johnson

Jurisdiction Type

City

Municipality

Rockaway Beach

Local case file

PUD-24-01

County

Tillamook

Activity Location

Township	Range	Section	QQ section	Tax Lot(s)
02N	10W	20	AB	10200,104 00,10500

Street Address

Address Line 2

City

State / Province / Region

Postal / Zip Code

Country

Tillamook

Latitude

45.649567

Longitude

-123.934048

Wetland/Waterway/Other Water Features

- ☒ There are/may be wetlands, waterways or other water features on the property that are subject to the State Removal-Fill Law based upon a review of wetland maps, the county soil survey and other available information.
- ☒ The county soil survey shows hydric (wet) soils on the property. Hydric soils indicate that there may be wetlands.
- ☒ This property includes a compensatory mitigation.

Your Activity

- ☒ It appears that the proposed project **will** impact wetlands and **requires** a State Permit.

- An onsite inspection by a qualified wetland consultant is recommended prior to site development to determine if the site has wetlands or other waters that may be regulated. The determination or delineation report should be submitted to DSL for review and approval. Approved maps will have a DSL stamp with approval date and expiration date.

Applicable Oregon Removal-Fill Permit Requirement(s)

- A state permit is required for 50 cubic yards or more of fill removal or other ground alteration in wetlands, below ordinary high water of waterways, within other waters of the state, or below highest measured tide.

DSL Review

Wetland Ecologist Comments

There is an expired wetland delineation WD2004-0008 for the Phase 2-3 Nedonna Wave PUD site. That delineation supported the permit for wetland fill, APP36702, approved for Phases 1-3, but is now expired, . The accompanying Compensatory Wetland Mitigation for that permit, RGL 2928, was approved as completed.

A review of best available information, including aerial imagery and LiDAR does not appear to show fill in all of the locations authorized in APP36702. APP36702 was annually renewed, which is typical for an application that has not completed its fill, until the year that the Compensatory Wetland Mitigation was approved, in 2012-2013.

A new wetland delineation, reviewed and approved by DSL, is required in order to determine if there is a change in wetland boundaries and if a wetland removal-fill permit is required. DSL recommends that this delineation be sufficiently sized to include both Phases 2 and 3. It may be renewed for another 5 years if there are no changes before it expires in 5 years after approval.

The applicant/consultant should coordinate with the DSL permitting specialist for Tillamook County prior to submitting a permit application due to the complexity of the permitting record. If incomplete fill from APP36702 is proposed for completion for Phases 2-3, Compensatory Wetland Mitigation may not be required.

This is a preliminary jurisdictional determination and is advisory only.

This report is for the State Removal-Fill law only. City or County permits may be required for the proposed activity.

- A Federal permit may be required by The Army Corps of Engineers: (503)808-4373

Contact Information

- For information on permitting, use of a state-owned water, wetland determination or delineation report requirements please contact the respective DSL Aquatic Resource, Proprietary or Jurisdiction Coordinator for the site county. The current list is found at: <http://www.oregon.gov/dsl/ww/pages/wwstaff.aspx>
- The current Removal-Fill permit and/or Wetland Delineation report fee schedule is found at: <https://www.oregon.gov/dsl/WW/Documents/Removal-FillFees.pdf>

Response Date

6/13/2024

Response by:

Daniel Evans

Response Phone:

503-428-8188



**CITY OF ROCKAWAY BEACH
PLANNING COMMISSION ACTION**

**STAFF REPORT
SUPPLEMENTAL NO. 1**

Case File #PUD-24-1
Hearing Date: June 20, 2024

STAFF RECOMMENDATION

Approval of the Applicants requests to (1) develop Phase 2 in two sub-phases, instead of one phase, (2) create two lots instead of one lot at the north end of Jackson Street, numbered as lots 21 and 22 on the plans submitted with this application, and to (3) create four lots instead of three lots out of the lots numbered as 13, 14, 15, and 16 on the plans submitted with this application, with conditions as identified below; and

Denial of the Applicants request to vacate the east stub of Riley Street at Jackson Street.

In the event of an approval, staff offer the following conditions for the Commissioner's consideration:

1. Approval is based upon the submitted plan. Any substantial change in the approved plan shall be submitted to the City of Rockaway Beach as a new application for a PUD amendment.
2. The Applicant shall submit drafts of appropriate deed restrictions or protective covenants to provide for the maintenance of common areas and to assure that the objectives of the PUD shall be followed.
3. The Applicant shall record a deed restriction or other covenant applicable to each lot in the subdivision, in a form acceptable to the State of Oregon Fish and Wildlife Department, that indemnifies ODFW for any damage or inconvenience to persons, real property, or personal property caused by big game and furbearing animals.
4. The Applicant shall submit evidence that all required improvements of Section 44 of the Rockaway Beach Subdivision Ordinance have been met.
5. The Applicant shall submit evidence that the requirements for monuments and survey as identified in Section 45 and 46 of the Rockaway Beach Subdivision Ordinance have been met.
6. Within one year the Applicant shall submit a final portion plat in conformance with the approved plan and Sections 30 and 31 of the Rockaway Beach Subdivision Ordinance. The Planning Commission, upon written request by the Applicant, may grant an extension of the tentative plan approval for a period of one year. Failure to obtain a time extension or final plat approval prior to expiration of the tentative plan shall render the tentative plan approval void. Such yearly time extensions will be necessary until all phases of the development have been granted final plat approval.
7. Any utilities serving the development shall be installed underground.
8. All public underground utilities including, but not limited to, water, gravity sanitary sewer, sanitary sewer force main, and storm drainage, installed on Phase 2 or for future use by Phase 2 or have not been used since constructed, shall be tested at the expense of the Applicant and accepted by the City Engineer.



9. All stream crossings, including utilities, are to comply with fish passage requirements. The Oregon Department of Fish and Wildlife shall approve in advance any stream crossing.
10. The development shall avoid entering City designated riparian setback of 15' for McMillan Creek. If site constraints will not allow for this, the Applicant coordinate with Oregon Department of Fish and Wildlife to develop a plan to mitigate for these impacts and shall provide evidence of approval. Any development within these areas which could result in a loss of fish and wildlife habitat would require that the impact be mitigated consist with current habitat mitigation standards.
11. The Applicant shall construct all public improvements, not limited to sewer, water, storm and street design, and construction shall meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications. The cost for plan review by the City Engineer shall be the responsibility of the Applicant/Developer.
12. The Applicant shall submit an acceptable storm drainage report prior to final design of the storm drainage system, including basin map and flow rates, for review by the City Engineer.
13. The Applicant shall provide evidence that a 1200C Permit has been obtained from the Oregon Department of Environmental Quality for erosion control prior to grading and construction of the development.
14. The Applicant shall provide evidence that all sanitary sewer designs have received written approval from the Department of Environmental Quality, including a pre-design report for the new regional pump station to serve the development.
15. The Applicant shall provide the following off-site improvements:
 - a. Regional sanitary sewer pump station and related infrastructure including, but not limited to the following: three-phase submersible duplex pump station with controls, davit crane, on-site generator, telemetry, lighting, and fencing. The tract on which the pump station is to be located is to be dedicated to the City.
 - b. Sanitary sewer force main from the regional pump station to the existing White Dove pump station.
 - c. Extend the White Dove sanitary sewer force main from NW 23rd Avenue to the pump station at NW 17th Avenue.
 - d. All public improvements shall be constructed within the existing public right-of-way or right-of-way that will be dedicated to the City as part of this development.
16. The Applicant shall provide a traffic study for the development, including peak season and emergency evacuation needs, as well as the intersection of US Highway 101 and Beach Street.
17. The Applicant shall complete a wetland delineation to be reviewed and approve by the Department of State Lands to determine if there is a change in the wetland boundaries and if a wetland removal-fill permit is



required. This delineation shall be sufficiently sized to include both Phases 2 and 3. The approval from Department of States Lands must be current (no more than 2 years old).

18. The Applicant shall submit evidence that all necessary permits and approval from the U.S. Army Corps of Engineers and Oregon Department of State Lands have been obtained for impacts to wetlands in accordance with the approval plan.
19. The Applicant shall submit evidence of approval from the State Fire Marshall for all fire hydrant locations, street widths, and applicable Fire Code requirements.
20. Prior to final plat approval, the Applicant shall be responsible for providing and installing all improvements including sewer, water, street, stormwater management facilities, street lights, street name signs, and street trees in accordance with Subdivision Ordinance Section 44 entitled Improvements Required, and in accordance with the City Engineer approved plans.
21. The Applicant shall be responsible for all costs necessary for off-site public infrastructure improvements that are triggered by the proposed development.
22. The Applicant shall establish a homeowner's association for the development, and all open space within the development shall be owned and maintained by the homeowner's association. The required homeowner's association shall be responsible for any and all necessary stormwater maintenance facilities that serve the development. The required homeowner's association shall be responsible for maintaining the storm water quality tracts.



**CITY OF ROCKAWAY BEACH
PLANNING COMMISSION ACTION**

STAFF REPORT

Case File #PUD-24-1

Meeting Date: July 18, 2024

APPLICANT: Nedonna Development LLC

AGENT FOR APPLICANT: Dean N. Alterman

REQUEST: The Applicant is requesting a modification to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008. The Applicant seeks the following modifications to Phase 2 of the 2008 approval:

1. To develop Phase 2 in two sub-phases, instead of one phase;
2. To create two lots instead of one lot at the north end of Jackson Street (identified as lot 24 on the 2008 approved plan), identified as lots 21 and 22 on the plans submitted with the Application; and
3. To create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street (identified as Lots 14, 15, and 16 on the 2008 approved plan), identified as lots 13, 14, 15 and 16 on the plan submitted with the Application.

At the public hearing, the Applicant withdrew the request to provide that when the owner of the land to the south extends Jackson Street south into that property, the City will vacate the east stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.

STAFF RECOMMENDATION

Approval of the Applicants requests to (1) develop Phase 2 in two sub-phases, instead of one phase, (2) create two lots instead of one lot at the north end of Jackson Street, numbered as lots 21 and 22 on the plans submitted with this application, and to (3) create four lots instead of three lots out of the lots numbered as 13, 14, 15, and 16 on the plans submitted with this application, with conditions as identified below.

In the event of an approval, Staff offer the following conditions for the Commissioner's consideration:

1. Approval is based upon the submitted plan. Any substantial change in the approved plan shall be submitted to the City of Rockaway Beach as a new application for a PUD amendment.
2. The Applicant shall submit drafts of appropriate deed restrictions or protective covenants to provide for the maintenance of common areas and to assure that the objectives of the PUD shall be followed.



3. The Applicant shall record a deed restriction or other covenant applicable to each lot in the subdivision, in a form acceptable to the State of Oregon Fish and Wildlife Department, that indemnifies ODFW for any damage or inconvenience to persons, real property, or personal property caused by big game and furbearing animals.
4. The Applicant shall submit evidence that all required improvements of Section 44 of the Rockaway Beach Subdivision Ordinance have been met.
5. The Applicant shall submit evidence that the requirements for monuments and survey as identified in Section 45 and 46 of the Rockaway Beach Subdivision Ordinance have been met.
6. Within one year the Applicant shall submit a final portion plat in conformance with the approved plan and Sections 30 and 31 of the Rockaway Beach Subdivision Ordinance. The Planning Commission, upon written request by the Applicant, may grant an extension of the tentative plan approval for a period of one year. Failure to obtain a time extension or final plat approval prior to expiration of the tentative plan shall render the tentative plan approval void. Such yearly time extensions will be necessary until all phases of the development have been granted final plat approval.
7. Any utilities serving the development shall be installed underground.
8. All public underground utilities including, but not limited to, water, gravity sanitary sewer, sanitary sewer force main, and storm drainage, installed on Phase 2 or for future use by Phase 2 or have not been used since constructed, shall be tested at the expense of the Applicant and accepted by the City Engineer.
9. All stream crossings, including utilities, are to comply with fish passage requirements. The Oregon Department of Fish and Wildlife shall approve in advance any stream crossing.
10. The development shall avoid entering City designated riparian setback of 15' for McMillan Creek. If site constraints will not allow for this, the Applicant coordinate with Oregon Department of Fish and Wildlife to develop a plan to mitigate for these impacts and shall provide evidence of approval. Any development within these areas which could result in a loss of fish and wildlife habitat would require that the impact be mitigated consist with current habitat mitigation standards.
11. The Applicant shall construct all public improvements, not limited to sewer, water, storm and street design, and construction shall meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications. The cost for plan review by the City Engineer shall be the responsibility of the Applicant/Developer.
12. The Applicant shall submit an acceptable storm drainage report prior to final design of the storm drainage system, including basin map and flow rates, for review by the City Engineer.
13. The Applicant shall provide evidence that a 1200C Permit has been obtained from the Oregon Department of Environmental Quality for erosion control prior to grading and construction of the development.\



14. The Applicant shall provide evidence that all sanitary sewer designs have received written approval from the Department of Environmental Quality, including a pre-design report for the new regional pump station to serve the development.
15. The Applicant shall provide the following off-site improvements:
 - a. Regional sanitary sewer pump station and related infrastructure including, but not limited to the following: three-phase submersible duplex pump station with controls, davit crane, on-site generator, telemetry, lighting, and fencing. The tract on which the pump station is to be located is to be dedicated to the City.
 - b. Sanitary sewer force main from the regional pump station to the existing White Dove pump station.
 - c. Shall pay their proportional share to extend the White Dove sanitary sewer force main from NW 23rd Avenue to the pump station at NW 17th Avenue.
16. All public improvements shall be constructed within the existing public right-of-way or right-of-way that will be dedicated to the City as part of this development.
17. The Applicant shall provide a traffic study for the development, including peak season and emergency evacuation needs, as well as the intersection of US Highway 101 and Beach Street.
18. The Applicant shall complete a wetland delineation to be reviewed and approved by the Department of State Lands to determine if there is a change in the wetland boundaries and if a wetland removal-fill permit is required. This delineation shall be sufficiently sized to include both Phases 2 and 3. The approval from the Department of States Lands must be current (no more than 2 years old).
19. The Applicant shall submit evidence that all necessary permits and approval from the U.S. Army Corps of Engineers and Oregon Department of State Lands have been obtained for impacts to wetlands in accordance with the approval plan.
20. The Applicant shall submit evidence of approval from the State Fire Marshall for all fire hydrant locations, street widths, and applicable Fire Code requirements.
21. The Applicant shall submit evidence that tsunami evacuation routes are sufficient to meet the proportional evacuation needs created by the proposed development.
22. Prior to final plat approval, the Applicant shall be responsible for providing and installing all improvements including sewer, water, street, stormwater management facilities, street lights, street name signs, and street trees in accordance with Subdivision Ordinance Section 44 entitled Improvements Required, and in accordance with the City Engineer approved plans.
23. The Applicant shall be responsible for all costs necessary for off-site public infrastructure improvements that are triggered by the proposed development.



24. The Applicant shall establish a homeowner's association for the development, and all open space within the development shall be owned and maintained by the homeowner's association. The required homeowner's association shall be responsible for any and all necessary stormwater maintenance facilities that serve the development. The required homeowner's association shall be responsible for maintaining the storm water quality tracts.

BEFORE THE PLANNING COMMISSION

OF

ROCKAWAY BEACH, OREGON

Applicant: Nedonna Development LLC
(c/o Anna Song)
Agent: Dean N. Alterman

) Case File: PUD-24-1
) Findings, Conclusions, and Final Order

Nature of the Application

In 2008, the Applicant submitted Planned Unit Development Application #SPUD-07-19 for the creation of a phased, 28-lot development, with PUD overlay. The City approved the preliminary development plan in early 2008. The Applicant applied for and received final approval for the first phase of the PUD within one year after receiving final approval of the preliminary plan. The Applicant recorded the plat of Nedonna Wave Phase 1 on February 2, 2009 (Plat C-573, Tillamook County Plat Records).

The Applicant is now ready to plat Phase 2 and requests modifications to the approved final plan, as follows:

1. To plat Phase 2 as two separate sub-phases – Phase 2 and Phase 3. Phase 2 would consist of the 11-lots east of Kittiwake Drive, numbered from 9 to 19 and would be taken from what is now Tract F. Phase 3 would be the 9-lots west of Kittiwake Drive, numbered 20 to 28.
2. To create two lots instead of one lot at the north end of Jackson Street, identified as lots 21 and 22 on the plans submitted with the application.
3. To create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street, identified as lots 13, 14, 15, and 16 on the plans submitted with the application.
4. Provide that when the owner of the land to the South extends Jackson Street South into that property, the City will vacate the East stub of Riley Street, so that Riely Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.

Relevant Facts

The following is a summary of the facts and testimony found to be relevant to this decision:

1. The property is located on Kittiwake Drive north of Riley Street and south Song Street in Nedonna Beach. The property is identified as on Tillamook County Assessor's Map 2N1020AB as Tax Lots 10200, 10400, and 10500.
2. The property is zoned R1 (single-family residential) and SA (special area wetlands).

3. The property is approximately 2.56 acres.
4. Adjacent to the north is the existing Nedonna Wave Planned Unit Development Phase 1. To the east is undeveloped private land zoned R-1 (single family residential) and Highway 101. To the south is undeveloped private land zoned R-1 (single family residential) and SA (special area wetlands). To the west is White Dove Estates neighborhood, which is zoned R-1 (single family residential).
5. The property contains wetlands that were delineated by a professional wetlands consultant prior to the 2008 approval. As wetlands are not stagnant, according to the Department of State Lands, the former delineation is no longer valid and expired after a period of five years. At the time of the 2008 approval, the Applicant provided a joint permit form the Department of State Lands and the U.S. Army Corps of Engineers. These permits have now expired and will need to be renewed before any disturbance or impacts to the wetlands takes place. If the request is approved, the Applicant will be required to obtain and provide copies of necessary permits from these agencies prior to initiating construction.
6. A portion of the property is located within the 100-year floodplain as identified on the Flood Insurance Rate Map Panel Number 41057C0218F.
7. Details of the Applicant's proposal can be found in the staff's report and evidence submitted by the Applicant, which is incorporated into the record herein. Included in the application materials is the Memorandum document, which provides responses to the applicable criteria.
8. A public hearing was held before the Rockaway Beach Planning Commission on Thursday, June 20, 2024. All interested parties were given an opportunity to attend the public hearing and to present written and oral testimony.
9. Written comments from the City Engineer are on record and have been provided to the Applicant. These comments indicate that public infrastructure improvements will necessary for the development to occur, and the that Applicant will be required to bear the costs of these improvements, both on and off-site.
10. Dean Alterman, on behalf of the Applicant, gave testimony on the request, summarizing the proposal. Mr. Alterman explained the modifications to the 2008 approval were minor and that with the additional building lots requested, the entire project remained under the density limitation set for the PUD in the original approval. In response to the written testimony received opposing the application, Mr. Alterman addressed concerns regarding emergency evacuation routes, wetlands, traffic congestion, and the potential need for a second connection to Highway 101. Additionally, Mr. Alterman requested that the record be left open an additional seven days to submit additional evidence.
11. Testimony in support of the request was presented as follows:
 - a. Bill Howard stated he was the original contractor who built Phase 1 of the PUD. During Phase 1, he completed mass grading of the entire project site, installed 90% of the utilities,

and filled the wetlands. As far as he is aware and can provide, the Applicant completed this work as required.

12. Testimony in opposition to the request was presented as follows:

- a. Mark Magistrale did not believe the 2008 approval was still valid and expressed concerns regarding evacuation routes.
- b. Tom Heckenberg stated the evacuation route through Riley is longstanding and is identified on DOGAMI's maps and is therefore opposed to the vacation of the stub of Riley Street.
- c. Danny Wilhelmi stated he had an issue with the Applicant's statement that the storm drain system is adequate and maintained. He further stated that flooding is an issue and that an adequate storm drainage plan is needed for this development.
- d. Ken Bragg expressed concern regarding evacuation areas potentially being blocked by the development and through the vacation of the stub of Riley. He would like to see ADA compliant emergency evacuation route provided.
- e. Nancy Webster shared opposition to the application regarding the need for a second exit from the Nedonna Beach neighborhood to Highway 101, concerns regarding developing close to McMillan Creek, and concerns regarding the City's water capacity to serve additional homes and potential impacts to the City's wells in the Nedonna Beach neighborhood. Ms. Webster further stated that there are flooding issues in Nedonna Beach already and that the culverts have not been maintained.
- f. Gary Corbin stated he felt the development is moving forward in bad faith. He further stated that wetland impacts cannot be mitigated, and that the area of proposed development is home to wildlife, including nesting eagles.
- g. Delta Holderness expressed concerns about vehicular speeding in Nedonna Beach and that the homes would be used as short-term rentals.
- h. Jerry Lyslo did not believe the application met Oregon Fire Code standards. He also believed that there was precedent to require the Applicant to provide a second egress onto Highway 101.
- i. Sue Sharp expressed concerns about the City's water supply to support the proposed development.
- j. Frank Imbrie stated he believed the Applicant purchased this property at auction.

13. Witten testimony in opposition to the request was received from Susan Norris, Nancy Webster, Danny Wilhelmi, Darrell and Diane DeJong, Donna Locke, Gary Corbin, Karl Nulton, Mary and Dan Erwert, Paul Thompson, Thomas Heckenberg, Delta Holderness, Frank and Catherine Imbrie, Lydia Anderson, Charyl Looper, Josh Parkinson, Sue Sharp, Cheryl Bland as Chair of the Nedonna Beach Neighborhood Association, and Kathy Tysinger.

14. In rebuttal to the opposing testimony, Dean Alterman, on behalf of the Applicant, addressed the concerns raised by the public. Mr. Alterman stated that requiring a second access to Highway 101 was an impossible condition to impose on any single application, as it would require coordination and approval from multiple agencies and property owners. He stated that he would be providing written comments to address the other concerns raised by the public which were subject to the criteria for approving this application.
15. Questions were raised by the Planning Commission as follows:
 - a. Commissioner Johnson asked staff if the ORS cited in Ms. Webster's written testimony was applicable to the application. Planner Johnson responded that she had consulted with the City's legal counsel who advised that there was no case law to support an application expired after a ten-year period unless explicitly stated in the City's code.
16. The Planning Commission moved to continue the public hearing to June 27, 2024.
17. The continued public hearing was held before the Rockaway Beach Planning Commission on Thursday, June 27, 2024.
18. Testimony that is neutral to the request or questions regarding the application were presented as follows:
 - a. Thomas Holderness asked if land deemed open space can be developed and if any open space land were to be developed, what would the consequence be? Planner Johnson responded that open spaces would not be allowed to be developed. Mr. Holderness responded that there was open space land developed during Phase 1. Planner Johnson responded that she was unfamiliar with any open space land being developed but would review the previous approval regarding this concern.
19. Testimony in opposition to the request was presented as follows:
 - a. Nancy Webster shared concerns about the water quality and wells in Nedonna Beach.
 - b. Gary Corbin stated there are bald eagles nesting in the development area, that Jackson Street is a wetland and that the Applicant did not provide garages on the homes that are already built. For these reasons, he believed the application should be denied.
20. In rebuttal to the opposing testimony, Dean Alterman, on behalf of the Applicant, addressed the concerns raised by the public. Mr. Alterman stated that the public seems to have a misconception of ORS 194.040. He continued that this ORS applied to subdivision applications and that it did not apply to the revision to the PUD application the Applicant is seeking. Mr. Alterman clarified that the Applicant has not done any recent excavation work, but that areas had been cleared to allow the wetland expert to view the property and determine where wetlands are located. He further stated that the Applicant is not proposing to fill any wetlands with this application, but that the City had previously approved the filling of wetlands with the original approval and that work had been completed. In response to the testimony that had been received regarding bald eagles nesting, Mr.

Alterman stated that is regulated by the Federal government, not by the City's land use code and therefore is not criteria subject to this application. Mr. Alterman addressed testimony regarding the City's sewer and water systems potentially being inadequate, stating that the City's engineer had addressed these concerns in their comments, which the City staff had incorporated into the staff report conditions. Mr. Alterman stated that the Applicant would be addressing these conditions, however the Applicant was only willing to make the improvements to the sewer force main for the development's portion of the impacts and would not be willing to take on the full cost of this improvement. Other than the cost of the sewer force main improvement, all other recommended conditions were acceptable to the Applicant.

21. Written testimony in support of the request was received by Dean N. Alterman.
22. Written testimony in opposition to the request was received from Susan Norris, Albert LePage, Robert A. Larson, Nancy Webster, Cameron La Follette as Executive Director of Oregon Coast Alliance, Goldea See, Janet Teshima, Phillip Johnson as Shoreline and Land Use Manager of Oregon Shores Conservation Coalition, Delta Holderness, Gary Corbin, and Kathie Raisler.
23. Commissioner Lanyon and Commissioner Johnson both expressed that they needed additional time to consider the written testimony that was received.
24. Questions were raised by the Planning Commission and comments were made as follows:
 - a. Commissioner Umholtz asked why the Applicant is requesting to complete Phase 2 in two sub-phases instead of one. Mr. Alterman responded that the sub-phasing would allow the Applicant to create two smaller developments, instead of one larger one at the same time. This development style would allow the Applicant to front the development costs in phases, instead of all up front. Commissioner Winchester further questioned what advantage the sub-phasing would bring. Mr. Alterman responded the sub-phased would dictate how much capital the Applicant needed to expend at one time. He elaborated that the Applicant had made a substantial amount of the required improvements for Phase 2 during the construction of Phase 1.
 - b. Commissioner Umholtz noted that the City's engineers did not comment on emergency evacuation routes and stated she would like an expert to comment on the application as part of the conditions of approval.
 - c. Commissioner Umholtz asked questions of staff regarding ownership and maintenance responsibility of culverts and utilities. Planner Johnson confirmed that all the proposed homes within the PUD would be connected to City sewer and water services.
 - d. Commissioner Winchester asked questions of staff regarding road frontage being reduced from the original application. Planner Johnson confirmed that the application had been reviewed by the City's Public Works Department, who had no concerns regarding the road frontages.
 - e. Commissioner Umholtz asked staff if a recommendation for a traffic study is included as a recommended condition. Planner Johnson confirmed this was included as a recommended

condition, noting that the traffic study should include peak and summer impacts. Commissioner Johnson asked further questions regarding how a traffic study's findings would be implemented.

- f. Chair Hassell noted that the Applicant has withdrawn the request for the vacation of the stub of Riley Street.
25. Mr. Alterman stated he would be submitting final written arguments. The Planning Commission moved to close the public hearing and to leave the record open until July 4, 2024 for final written arguments from the Applicant.
26. The Rockaway Beach Planning Commission met on Thursday, July 18, 2024, asked questions of staff, and deliberated on the application.
- a. Commissioner Winchester asked questions of staff regarding how to assess the request to allow Phase 2 to be completed in two sub-phases. Planner Johnson responded that there little in the code to assess this request, however the PUD code states that a schedule be provided if the development is to be completed in stages. In this case, no such schedule had been provided by the Applicant. Commissioner Lanyon stated that it would be challenging for the Applicant to provide a schedule, considering the amount of work that would need to be completed before final plat approval. Commissioner Johnson asked if a condition of approval could be added to provide a timeline in which the requested sub-phases were to be completed. Planner Johnson responded the approval could be conditioned in such a manner to require the Applicant complete the sub-phasing in a reasonable timeframe. She further elaborated that many of the required permits also have their own expirations which would dictate how quickly the Applicant needed to complete the sub-phases or obtain new permits, should they expire. Planner Johnson did note that the City's code does not provide any deadlines after the first phase had been completed.
 - b. Commissioner Umholtz stated that she believed many of the concerns shared by the public would be addressed by the reports required to be completed prior to final plat approval.
 - c. Commissioner Zedrick asked questions of staff regarding how the final plat approval would happen for the sub-phases. Planner Johnson responded that the Applicant could bring forth both sub-phases for final plat approval at the same time or the Applicant could bring forth the first sub-phase for approval, followed by the second sub-phase at a later time.
 - d. Commissioner Johnson asked staff to explain what the purpose of a PUD is. Planner Johnson responded that a PUD is an overlay to the underlying subdivision. PUDs allow developers more flexibility to build housing that does not need to meet the standards of the underlying zoning designation, with the exception of density of the parent zone. This type of development style requires more open space than the underlying subdivision and allows developers to avoid impacts to sensitive areas, such as wetlands.
 - e. Commissioner Winchester stated that the Applicant did not provide a schedule of the phasing, as required by our code, nor did the Applicant provide an adequate response to this question when she asked questions regarding the phasing during the hearing as to why

this request was needed. For these reasons, she felt this request should be denied. She continued that due to the density of the PUD not yet having been met during the previous approval, she believed they were obligated to allow the Applicant to create an additional two lots. Commissioner Umholtz asked Commissioner Winchester to elaborate on why she would not support the requested sub-phasing. Commissioner Winchester responded that the Applicant had been granted a phased PUD in 2008 and that since this old approval is carrying over, she did not want to see the application continued out even further through the granting of additional sub-phases. She did not want to see the granting of the sub-phasing, since the Applicant provided no schedule for the phasing, as the Applicant could simply apply for final approval of the first sub-phase, then wait another fifteen-years before seeking final approval for the second sub-phase. Commissioner Umholtz agreed with Commissioner Winchester's comments, however she did not see the harm in allowing the phasing, as it would simply allow the current open space to remain undeveloped for a longer period of time and that the Applicant would likely have higher regulatory standards to adhere to as time passed. Commissioner Umholtz further commented that she understood the Applicant had made the request for the sub-phasing for financial reasons, but that was not something they could take into their assessment.

- f. Commissioner Johnson stated that she had reviewed the ORS mentioned in the public comment and agreed with the City's attorney that it did not give the Planning Commission authority to deny the application based upon a ten-year statute of limitations. She stated that this was a good example of why the City should amend its code to put time limitations on all phases of PUD approvals, as none currently exist. She further commented that based upon the criteria, she believed the request for the additional building lots would need to be approved. Commissioner Johnson asked staff if the request for the additional building lots could be denied based on those lots not meeting the minimum lot size of the underlying zone. Planner Johnson responded that due to the PUD overlay, the only criteria of the underlying zone that needed to be maintained was density.
- g. Commissioner Johnson asked questions of staff regarding how CC&Rs are enforced. Planner Johnson responded that the City does not enforce CC&Rs and that they are enforceable by private property owners or through a HOA.
- h. Commissioner Johnson asked questions of staff regarding developing wetland properties. Planner Johnson responded that whenever a building application is received for a property with potential wetlands, she submits a wetland use notification to the Department of State Lands for review and comment. DSL has 30 days to respond and inform the City if additional permitting or other restrictions are necessary to avoid or mitigate wetland impacts.

Relevant Criteria

1. Rockaway Beach Zoning Ordinance Section 3.010, Single Family Residential Zone (R-1). In the R-1 zone the following regulations shall apply:

- a. The minimum lot size shall be 3,500 square feet for lots existing at the time of the adoption of Ordinance 235. Lots platted after the adoption of Ordinance 235 shall have a minimum lot size of 5,000 square feet.
 - b. The density of duplexes shall be: for lots existing prior to the adoption of Ordinance 235, a duplex is permitted on a lot with a minimum size of 3,500 square feet, for lots platted after the adoption of Ordinance 235, a duplex is permitted on a lot with a minimum size of 5,000 square feet.
 - c. Minimum lot width is 50 feet, except for lots between 3,500 and 4,999 square feet, the minimum lot width shall be 35 feet.
 - d. Minimum lot depth is 70 feet, except for lots between 3,500 and 4,999 square feet, the minimum lot depth shall be 60 feet.
 - e. The minimum front yard shall be 15 feet, unless subsection 3.010(3)(h) applies.
 - f. The minimum side yard shall be 5 feet, except that on the street side of a corner lot it shall be 15 feet.
 - g. The minimum rear yard shall be 20 feet, except that on a corner lot it may be a minimum of 5 feet unless subsection 3.010(3)(h) applies. Oceanfront structures shall conform to Section 5.060(1)(b).
 - h. For lots of less than 5,000 square feet in size, but more than 3,500 square feet, the minimum front yard shall be 15 feet and the minimum rear yard shall be 10 feet, except that on a corner lot the rear yard may be a minimum of 5 feet. For lots of 3,500 square feet in size or less, the minimum front yard and rear yard shall be ten feet, except that on a corner lot the rear yard may be a minimum of 5 feet. Notwithstanding the above, oceanfront structures shall conform to Section 5.060(1)(b).
 - i. The maximum building height shall be 20 feet on the oceanfront and 24 feet elsewhere except east of Highway 101 it shall be 29 feet.
 - j. A minimum of 30% of the lot will be maintained in natural vegetation or landscaping.
2. Rockaway Beach Zoning Ordinance Section 3.080, Special Wetlands Area (SA). In the SA zone the following regulations shall apply:
- a. All activities involving construction or alteration in wetlands or aquatic areas shall be reviewed by the Oregon Division of State Lands and the US Army Corps of Engineers to determine permit applicability.
 - b. The Shorelands Siting Criteria in Section 4.041 shall be applicable to all activities in the SA zone. Nothing in the Shorelands Siting Criteria shall be interpreted to permit uses which are not otherwise allowed in (2) or (3) above.

- c. Every effort shall be made to use common or community docking facilities prior to construction of an individual, single- purpose dock. Generally, there should be a maximum of one dock every 250 feet. Docks shall not include covered structures or boathouses.
- d. Access to the water area through wetlands may be constructed in the form of raised walkways on pilings, posts or piers. Where the affected resource agencies (e.g. Oregon Department of Fish & Wildlife) determine the activity to have minimal environmental impacts, trails or paths consisting of clean gravel, bark chips, or other material may be placed through wetlands. Such walkways shall not be wider than eight (8) feet. Wherever possible, trails or walkways shall be constructed for the common usage of a development or group of structures.
- e. Removal or control of aquatic vegetation may be permitted, where allowed by the Oregon Department of Fish and Wildlife, in order to provide angler access, or other valid purpose.
- f. Dredging shall be allowed only: (i) If a need (i.e., a substantial public benefit) is demonstrated, and; (ii) If the use or alteration does not unreasonably interfere with public trust rights, and; (iii) If no feasible alternative upland locations exist, and; (iv) If adverse impacts are minimized.
- g. When dredging is permitted, the dredging shall be the minimum necessary to accomplish the proposed use.
- h. The timing of dredging operations shall be coordinated with state and federal resource agencies, to protect aquatic and shoreland resources, and minimize interference with recreational fishing.
- i. Piling installation may be allowed only if all of the following criteria are met: (i) A substantial public benefit is demonstrated, and; (ii) The proposed use does not unreasonably interfere with public trust rights, and; (iii) Feasible alternative upland locations do not exist, and; (iv) Potential adverse impacts are minimized.
- j. Shoreline stabilization measures shall meet the criteria of Section 4.120.
- k. Fill may be permitted only if all of the following criteria are met: (i) If required for a water-dependent use requiring an aquatic location, or if specifically allowed in the SA zone, and; (ii) A substantial public benefit is demonstrated, and; (iii) The proposed fill does not unreasonably interfere with public trust rights, and; (iv) Feasible upland alternative locations do not exist, and; (v) Adverse impacts are minimized.
- l. Fill shall cover no more area than the minimum necessary to accomplish the proposed use.
- m. Projects involving fill may be approved only if the following alternatives are examined and found to be infeasible: (i) Construct some or all of the project on piling; (ii) Conduct some or all of the proposed activity on existing upland areas; (iii) Approve the project at a feasible alternative site where adverse impacts are less significant.

- n. Zone Boundary Determination. At such time that a development is proposed in the vicinity of an area designated Special Area Wetlands, the City may require a site investigation to determine the exact location of the zone boundary. The site investigation shall be performed by a qualified agent such as a biologist from the U.S. Army Corps of Engineers or the Division of State Lands.
3. Rockaway Beach Zoning Ordinance Section 3.092, Flood Hazard Overlay Zone (FHO). In the FHO zone the following regulations shall apply:
- a. All subdivision proposals shall provide engineered plans consistent with the need to minimize flood damage.
 - b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
 - c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
 - d. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).
4. Rockaway Beach Zoning Ordinance Section 3.132, Wetland Notification Overlay Zone. In the Wetland Notification Overlay zone the following regulations shall apply:
- 1. No person shall do any site preparation work in conjunction with a use permitted in the underlying zoning district in which the property is located, without first notifying the City of the proposed action. Site preparation work is defined as any grading, filling, drainage, excavation or tree removal on the subject property.
 - 2. The required notification shall take the form of a description of the location of the property and a sketch describing the site preparation work to be undertaken.
 - 3. Upon receipt of the notification, the City shall meet with the applicant and inform him/her that the subject property and proposed site preparation activities may be subject to the jurisdiction of the Department of State Lands and the US Army Corps of Engineers.
 - 4. The applicant shall contact the Department of State Lands and the US Army Corps of Engineers and seek a determination of whether the subject property and proposed site preparation activities are subject to their jurisdiction.
 - 5. If the US Army Corps of Engineers and/or the Department of State Lands determines that it has jurisdiction, the applicant shall receive a permit from these agencies before site preparation work may begin.

6. If the Department of State Lands and/or the US Army Corps of Engineers determines that it does not have jurisdiction, the applicant may begin site preparation work upon presenting the City with a written confirmation of such a determination, and subject to applicable City requirements.
5. Rockaway Beach Zoning Ordinance Section 3.140 (6), Tsunami Hazard Overlay Zone (TH). In the TH zone the following regulations shall apply:

Evacuation Route Improvement Requirements. Except single family dwellings on existing lots and parcels, all new development, substantial improvements and land divisions in the Tsunami Hazard Overlay Zone shall incorporate evacuation measures and improvements, including necessary vegetation management, which are consistent with and conform to the adopted Tsunami Evacuation Facilities Improvement Plan. Such measures may include:

- a. On-site improvements: (i) Improvements necessary to ensure adequate pedestrian access from the development site to evacuation routes designated in the Evacuation Route Plan in all weather and lighting conditions. (ii) Frontage improvements to designated evacuation routes that are located on or contiguous to the proposed development site, where such improvements are identified in the Tsunami Evacuation Facilities Improvement Plan. Such improvements shall be proportional to the evacuation needs created by the proposed development.
 - b. Off-site improvements: Improvements to portions of designated evacuation routes that are needed to serve, but are not contiguous to, the proposed development site, where such improvements are identified in the Tsunami Evacuation Facilities Improvement Plan. Such improvements shall be proportional to the evacuation needs created by the proposed development.
 - c. Evacuation route signage consistent with the standards set forth in the Tsunami Evacuation Facilities Improvement Plan. Such signage shall be adequate to provide necessary evacuation information consistent with the proposed use of the site.
 - d. Evacuation route improvements and measures required by this subsection may include the following: (i) Improved streets and/or all-weather surface paths of sufficient width and grade to ensure pedestrian access to designated evacuation routes in all lighting conditions; (ii) Improved streets and paths shall provide and maintain horizontal clearances sufficient to prevent the obstruction of such paths from downed trees and structure failures likely to occur during a Cascadia earthquake; and (iii) Such other improvements and measures identified in the Evacuation Route Plan.
6. Rockaway Beach Zoning Ordinance Article 10, Planned Unit Development (PUD). The following regulations apply for PUDs:

Section 10.040. Development Standards.

1. Minimum Lot Size. Planned Unit Developments shall be established only on parcels of land which are suitable for the proposed development and are determined by the planning commission to be in keeping with the intent of this ordinance.
2. Open Spaces. In all residential developments, or in combination residential-commercial developments, 50% of the total area should be devoted to open space. Of this area, 25% of said open space may be utilized privately by individual owners or users of the PUD; however, 75% of this area should be common or shared open space. The Planning Commission may increase or decrease the open space requirement depending on the particular site and the needs of the development. In no case should the open space be less than 40% of the site.
3. Density. The density of a planned development shall not exceed the density of the parent zone, except as more restrictive regulations may be prescribed as a condition of the PUD permit. When calculating density, the gross area is used (total area including street dedications). Areas of public uses may be included in calculating allowable density.
4. Subdivision of Lot Sizes. Minimum area, width, depth, and frontage requirements for subdivision lots in a PUD may be less than the minimums set forth elsewhere in City ordinances, provided that the overall density is in conformance, and that lots conform to the approved preliminary development plan.
5. Off-Street Parking. Parking spaces shall conform to all provisions of this ordinance, except that the Planning Commission may authorize exceptions where warranted by unusual circumstances.
6. Signs. All signs of any type within a PUD are subject to design review and approval of the Planning Commission. They shall consider each sign on its merits based on its aesthetic impact on the area, potential traffic hazards, potential violation of property and privacy rights of adjoining property owners, and need for said sign.
7. Height Guidelines. The same restrictions shall prevail as permitted outright in the zone in which such development occurs, except that the Planning Commission may allow a variance of heights where it is determined that surrounding property will not be harmed.
8. Streets and Roads. Necessary streets and roads within the PUD shall be dedicated to the public and constructed to City standards or shall be private roads maintained by an owner's association and constructed to standards as determined by the Planning Commission and City Engineer.
9. Dedication and Maintenance of Facilities. The Planning Commission, or on appeal, the City Council may, as a condition of approval for a PUD require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated to the following uses:

- a. Recreation Facilities: The Planning Commission may require that suitable area for parks or playgrounds be set aside, improved, or permanently reserved for the owners, residents, employees or patrons of the PUD.
 - b. Common Area: Whenever common area is provided, the Planning Commission or City Council may require that an association of owners or tenants be created into a non-profit corporation under the laws of the State of Oregon, which shall adopt such Articles of Incorporation and By-Laws and adopt and impose such Declaration of Covenants and Restrictions on such common areas that are acceptable to the Planning Commission. Said association, if required, may undertake other functions. It shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessments levied to maintain said common areas for the purposes intended. The period of existence of such association shall not be less than 20 years, and it shall continue thereafter and until a majority vote of the members shall terminate it.
 - c. Easements: Easements necessary to the orderly extension of public utilities may be required as a condition of approval.
10. Approvals. The Planning Commission shall submit the preliminary development plan to the Fire District, City Engineer, County Sanitarian, power company, and other utilities which will serve the PUD and shall consider their recommendations in regard to approval of the proposal.

Section 10.050. Procedure – Preliminary Development Plan.

- 1. The applicant shall submit four copies of the preliminary development plan to the Planning Commission prior to formal application for rezoning. Applications shall be accompanied by a fee prescribed in Section 11.050 of this ordinance. This plan and any written statements shall contain at least the following information:
 - a. Proposed land uses and densities.
 - b. Location and approximate dimensions and heights of structures.
 - c. Plan of open spaces or common spaces.
 - d. Map showing existing features of site and topography.
 - e. Proposed method of utilities service and drainage.
 - f. Road and circulation plan including off-street parking.
 - g. Relation of the proposed development to the surrounding area and the Comprehensive Plan.

- h. Lot layout.
 - i. A schedule, if it is proposed that the final development plan will be executed in stages.
- 2. The Planning Commission shall consider the preliminary development plan at a public meeting, at which time they shall determine whether the proposal conforms to City ordinances. In addition, in considering the plan, the Planning Commission shall seek to determine that:
 - a. There are special physical conditions or objectives of development which the proposal will satisfy to warrant a departure from the standard ordinance requirements.
 - b. Resulting development will not be inconsistent with the Comprehensive Plan provisions or zoning objectives of the area.
 - c. The proposed development will be in substantial harmony with the surrounding area, including vegetation and topography and any important natural areas such as marshes or wildlife habitats.
 - d. The plan can be completed within a reasonable period of time.
 - e. Any proposed commercial development can be justified economically.
 - f. The streets are adequate to support the anticipated traffic and the development will not overload the streets outside the planned area.
 - g. Proposed utility and drainage facilities are adequate for the population densities and type of development proposed.
- 3. The Planning Commission shall notify the applicant whether, in its opinion, the foregoing provisions have been satisfied and, if not, whether they can be satisfied with further plan revision.
- 4. Following this preliminary meeting, the applicant may proceed with his/her request for approval of the planned development by filing an application for an amendment to this ordinance with the City Recorder.

The above criteria are found in the Applicant's application, which is attached to this document as Exhibit "A", the Applicant's Memorandum, which is attached to this document as Exhibit "B", and the Staff Reports for the public hearing on June 20, 2024, which is attached to this document as Exhibit "C".

Findings

The Planning Commission finds:

- 1. In 2008, the Applicant submitted Planned Unit Development Application #SPUD-07-19 for the creation of a phased, 28-lot development, with PUD overlay. The City approved the preliminary

development plan in early 2008. The Applicant applied for and received final approval for the first phase of the PUD within one year after receiving final approval of the preliminary plan. The Applicant recorded the plat of Nedonna Wave Phase 1 on February 2, 2009 (Plat C-573, Tillamook County Plat Records).

2. The Applicant constructed 8-lots during Phase 1 and completed many of the improvements for Phase 2 during the construction phase. Appropriate conditions of approval will ensure that the infrastructure improvements completed during the Phase 1 construction for Phase 2 are tested and accepted by the City Engineer.
3. In 2010, Baumgart Construction LLC requested an amendment to the Nedonna Wave PUD and Minor Partition (Case File #PUD-10-05, #MP-10-06) and the request was approved by the Planning Commission to allow for the creation of the additional building lot.
4. The Applicant is now ready to plat Phase 2 and requests modifications to the approved final plan, (1) to plat Phase 2 as two separate sub-phases – Phase 2 and Phase 3, (2) to create two lots instead of one lot at the north end of Jackson Street, identified as lots 21 and 22 on the plans submitted with the application, (3) to create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street, identified as lots 13, 14, 15, and 16 on the plans submitted with the application, and (4) to provide that when the owner of the land to the South extends Jackson Street South into that property, the City will vacate the East stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot (Case File #PUD-24-1).
5. The property consists of approximately 2.56 acres of land zoned R1 (single-family residential) and SA (special area wetlands).
6. The property contains wetlands that were delineated by a professional wetlands consultant prior to the 2008 approval. The former delineation is no longer valid and expired after a period of five years. At the time of the 2008 approval, the Applicant provided a joint permit from the Department of State Lands and the U.S. Army Corps of Engineers. These permits have now expired and new permits will need to be obtained before any disturbance or impacts to the wetlands takes place.
7. The property is located on Kittiwake Drive north of Riley Street and south Song Street in Nedonna Beach. The property is identified as on Tillamook County Assessor's Map 2N1020AB as Tax Lots 10200, 10400, and 10500.
8. The overall density of the PUD does not exceed the 33-lot density of the provision of the R-1 (single-family residential) zone.
9. More than 50% of the total area has been devoted to open space. Common open spaces within the development include wetlands and other natural vegetation, and other areas below the 100-year floodplain elevation. A homeowner's association is necessary to take ownership and management responsibilities of these natural open space areas.
10. Public hearings were held on June 20, 2024, and June 27, 2024. During the public hearing, the Applicant withdrew the request to provide that when the owner of the land to the South extends

Jackson Street South into that property, the City will vacate the East stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.

11. The Applicant submitted materials in support of the request, including the application and Memorandum document, which provide specific responses to the applicable criteria under review. These responses, attached as Exhibit “A” and Exhibit “B” respectively, and Staff Reports, attached as Exhibit “C”, demonstrate that the applicable criteria for land-use approval are met, and serve as findings to support the decision.

Conclusion

The record and findings support the conclusion that:

1. Substantive evidence in the record demonstrates that the Applicant’s request to (1) create two lots instead of one lot at the north end of Jackson Street, identified as lots 21 and 22 on the plans submitted with the application and (2) to create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street, identified as lots 13, 14, 15, and 16 on the plans submitted with the application, can be developed in accordance with the applicable standards of the Rockaway Beach Zoning Ordinance.
2. Insufficient evidence exists to support the Applicant’s request to plat Phase 2 as two separate sub-phases – Phase 2 and Phase 3.
3. During the public hearing, the Applicant withdrew the request to provide that when the owner of the land to the South extends Jackson Street South into that property, the City will vacate the East stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.
4. Future review and necessary approval of the Applicant’s detailed engineering plans by the City Engineer is necessary. Such review and approval, prior to development, will ensure that the required improvements are in accordance with applicable City of Rockaway Beach Technical Specifications and Design Standards.

Order

It is ORDERED by the Rockaway Beach Planning Commission that Case File #PUD-24-1:

1. The Applicant’s request to develop Phase 2 in two sub-phases, instead of one phase, is DENIED, and
2. The Applicant’s request to:
 - a. Create two lots instead of one lot at the north end of Jackson Street, identified as lots 21 and 22 on the plans submitted with the Application; and

- b. Create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street, identified as lots 13, 14, 15 and 16 on the plan submitted with the Application.

is APPROVED, subject to the following conditions:

- a. Approval is based upon the submitted plan. Any substantial change in the approved plan shall be submitted to the City of Rockaway Beach as a new application for a PUD amendment.
- b. The Applicant shall submit drafts of appropriate deed restrictions or protective covenants to provide for the maintenance of common areas and to assure that the objectives of the PUD shall be followed.
- c. The Applicant shall record a deed restriction or other covenant applicable to each lot in the subdivision, in a form acceptable to the State of Oregon Fish and Wildlife Department, that indemnifies ODFW for any damage or inconvenience to persons, real property, or personal property caused by big game and furbearing animals.
- d. The Applicant shall submit evidence that all required improvements of Section 44 of the Rockaway Beach Subdivision Ordinance have been met.
- e. The Applicant shall submit evidence that the requirements for monuments and survey as identified in Section 45 and 46 of the Rockaway Beach Subdivision Ordinance have been met.
- f. Within one year the Applicant shall submit a final portion plat in conformance with the approved plan and Sections 30 and 31 of the Rockaway Beach Subdivision Ordinance. The Planning Commission, upon written request by the Applicant, may grant an extension of the tentative plan approval for a period of one year. Failure to obtain a time extension or final plat approval prior to expiration of the tentative plan shall render the tentative plan approval void. Such yearly time extensions will be necessary until all phases of the development have been granted final plat approval.
- g. Any utilities serving the development shall be installed underground.
- h. All public underground utilities including, but not limited to, water, gravity sanitary sewer, sanitary sewer force main, and storm drainage, installed on Phase 2 or for future use by Phase 2 or have not been used since constructed, shall be tested at the expense of the Applicant and accepted by the City Engineer.
- i. All stream crossings, including utilities, are to comply with fish passage requirements. The Oregon Department of Fish and Wildlife shall approve in advance any stream crossing.
- j. The development shall avoid entering City designated riparian setback of 15' for McMillan Creek. If site constraints will not allow for this, the Applicant coordinate with Oregon Department of Fish and Wildlife to develop a plan to mitigate for these impacts and shall provide evidence of approval. Any development within these areas which could result in a loss of fish and wildlife habitat would require that the impact be mitigated consist with current habitat mitigation standards.

- k. The Applicant shall construct all public improvements, not limited to sewer, water, storm and street design, and construction shall meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications. The cost for plan review by the City Engineer shall be the responsibility of the Applicant/Developer.
- l. The Applicant shall submit an acceptable storm drainage report prior to final design of the storm drainage system, including basin map and flow rates, for review by the City Engineer.
- m. The Applicant shall provide evidence that a 1200C Permit has been obtained from the Oregon Department of Environmental Quality for erosion control prior to grading and construction of the development.
- n. The Applicant shall provide evidence that all sanitary sewer designs have received written approval from the Department of Environmental Quality, including a pre-design report for the new regional pump station to serve the development.
- o. The Applicant shall provide the following off-site improvements:
 - i. Regional sanitary sewer pump station and related infrastructure including, but not limited to the following: three-phase submersible duplex pump station with controls, davit crane, on-site generator, telemetry, lighting, and fencing. The tract on which the pump station is to be located is to be dedicated to the City.
 - ii. Sanitary sewer force main from the regional pump station to the existing White Dove pump station.
 - iii. Shall pay their proportional share to extend the White Dove sanitary sewer force main from NW 23rd Avenue to the pump station at NW 17th Avenue.
- b. All public improvements shall be constructed within the existing public right-of-way or right-of-way that will be dedicated to the City as part of this development.
- p. The Applicant shall provide a traffic study for the development, including peak season and emergency evacuation needs, as well as the intersection of US Highway 101 and Beach Street.
- q. The Applicant shall complete a wetland delineation to be reviewed and approved by the Department of State Lands to determine if there is a change in the wetland boundaries and if a wetland removal-fill permit is required. This delineation shall be sufficiently sized to include both Phases 2 and 3. The approval from the Department of States Lands must be current (no more than 2 years old).
- r. The Applicant shall submit evidence that all necessary permits and approval from the U.S. Army Corps of Engineers and Oregon Department of State Lands have been obtained for impacts to wetlands in accordance with the approval plan.
- s. The Applicant shall submit evidence of approval from the State Fire Marshall for all fire hydrant locations, street widths, and applicable Fire Code requirements.

- t. The Applicant shall submit evidence that tsunami evacuation routes are sufficient to meet the proportional evacuation needs created by the proposed development.
 - u. Prior to final plat approval, the Applicant shall be responsible for providing and installing all improvements including sewer, water, street, stormwater management facilities, street lights, street name signs, and street trees in accordance with Subdivision Ordinance Section 44 entitled Improvements Required, and in accordance with the City Engineer approved plans.
 - v. The Applicant shall be responsible for all costs necessary for off-site public infrastructure improvements that are triggered by the proposed development.
 - w. The Applicant shall establish a homeowner's association for the development, and all open space within the development shall be owned and maintained by the homeowner's association. The required homeowner's association shall be responsible for any and all necessary stormwater maintenance facilities that serve the development. The required homeowner's association shall be responsible for maintaining the storm water quality tracts.
3. The Planning Commission further noted that the Applicant withdrew the request to vacate the East stub of Riley Street during the public hearing and this request was not subject to consideration.

EXHIBIT “A”



City of Rockaway Beach, Oregon

276 S. Highway 101, PO Box 5
Rockaway Beach, OR 97136
(503) 374-1752
www.corb.us

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PLANNED UNIT DEVELOPMENT APPLICATION

APPLICANT INFORMATION:

Project Contact Name: Dean N. Alterman Company: Alterman Law Group PC

Mailing Address: 805 SW Broadway, Suite 1580 Portland, Oregon 97205

Phone Number: (503) 517-8201 Email: dean@alterman.law

PROPERTY OWNER INFORMATION:

Name(s): Nedonna Development, LLC (c/o Anna Song)

Mailing Address: 2848 SW Sam Jackson Park Road, Portland, Oregon 97201

Phone Number: (503) 706-1930 Email: kebsinc@yahoo.com

PROPERTY LOCATION:

Tracts E and F, Nedonna Wave Phase 1

Map and Tax Lot(s): TL 10200, 10400, and 10500, Map 2N1020AB

Subdivision Name: Nedonna Wave Phase 1 (10400 and 10500 will be Phase 2; TL 10200 will be Phase 3)

Land Use Zone(s): SA and R1 with PUD overlay

Consisting of 2.56 acres divided into 22 lots, proposed in two * phases.

* The application is to split the remainder of the approved plan for the Nedonna Wave PUD into **

Included with this application must be the information required in the Rockaway Beach Zoning Ordinance, Article 10, Planned Unit Development.

DocuSigned by:

Applicant Signature: Dean N. Alterman Date: March 4, 2024

Dean N. Alterman, attorney for applicant

If the Applicant is other than the Property Owner, the Owner hereby grants authority for the Applicant to act on his/her/their behalf.

DocuSigned by:

Property Owner Signature(s): Anna Song Date: March 4, 2024

Anna Song, for Nedonna Development, LLC

** two phases instead of one. The first phase would create the 13 lots east of Kittiwake Drive and a tract for a sewer pump station. The second phase would create the 9 lots west of Kittiwake Drive.

CITY OF ROCKAWAY BEACH ZONING ORDINANCE

Article 10. Planned Unit Development (PUD)

Section 10.010. Intent. This article is intended to provide for developments incorporating a single type or variety of housing types and related uses which are planned and developed as a unit. Such developments may consist of individual lots as part of a larger holding or as common building sites. Commonly owned land which is an essential and major element of the plan should be related to and preserve the long-term value of the homes and other development. It is the intent of this section to foster a more innovative approach to land development than is possible under the traditional lot by lot methods.

Section 10.020. Purpose. The purpose of this article is to provide a more desirable environment through the application of flexible and diversified land development standards following an overall comprehensive site development plan.

Section 10.030. Permitted Buildings and Uses. The following buildings and uses may be permitted as hereinafter provided. Buildings and uses may be permitted either singly or in combination provided the overall density of the Planned Unit Development does not exceed the density of the parent zone as provided in this ordinance.

1. Single-family dwellings including detached, attached, or semi-detached units, row houses, atrium or patio houses, provided each has its own separate plot.
2. Duplexes and multiple-family dwellings.
3. Accessory buildings and uses.
4. Commercial uses only when supported mainly by the PUD and only when economic feasibility can be shown.
5. Buildings or uses listed as permitted outright or conditionally in the parent zone on which the PUD is located.

Section 10.040. Development Standards.

1. Minimum Lot Size. Planned Unit Developments shall be established only on parcels of land which are suitable for the proposed development and are determined by the planning commission to be in keeping with the intent of this ordinance. (This says 'site size' in 143, not 'lot size')
2. Open Spaces. In all residential developments, or in combination residential-commercial developments, 50% of the total area should be devoted to open space. Of this area, 25% of said open space may be utilized privately by individual owners or users of the PUD; however, 75% of this area should be common or shared open space. The Planning Commission may increase or decrease the open space requirement depending on the particular site and the needs of the development. In no case should the open space be less than 40% of the site.
3. Density. The density of a planned development shall not exceed the density of the parent zone, except as more restrictive regulations may be prescribed as a condition of the PUD permit. When calculating density, the gross area is used (total area including street dedications). Areas of public uses may be included in calculating allowable density.
4. Subdivision of Lot Sizes. Minimum area, width, depth, and frontage requirements for subdivision lots in a PUD may be less than the minimums set forth elsewhere in City ordinances, provided that the overall density is in conformance, and that lots conform to the approved preliminary development plan.

5. Off-Street Parking. Parking spaces shall conform to all provisions of this ordinance, except that the Planning Commission may authorize exceptions where warranted by unusual circumstances.
6. Signs. All signs of any type within a PUD are subject to design review and approval of the Planning Commission. They shall consider each sign on its merits based on its aesthetic impact on the area, potential traffic hazards, potential violation of property and privacy rights of adjoining property owners, and need for said sign.
7. Height Guidelines. The same restrictions shall prevail as permitted outright in the zone in which such development occurs, except that the Planning Commission may allow a variance of heights where it is determined that surrounding property will not be harmed.
8. Streets and Roads. Necessary streets and roads within the PUD shall be dedicated to the public and constructed to City standards or shall be private roads maintained by an owner's association and constructed to standards as determined by the Planning Commission and City Engineer.
9. Dedication and Maintenance of Facilities. The Planning Commission, or on appeal, the City Council may, as a condition of approval for a PUD require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated to the following uses:
 - a. Recreation Facilities: The Planning Commission may require that suitable area for parks or playgrounds be set aside, improved, or permanently reserved for the owners, residents, employees or patrons of the PUD.
 - b. Common Area: Whenever common area is provided, the Planning Commission or City Council may require that an association of owners or tenants be created into a non-profit corporation under the laws of the State of Oregon, which shall adopt such Articles of Incorporation and By-Laws and adopt and impose such Declaration of Covenants and Restrictions on such common areas that are acceptable to the Planning Commission. Said association, if required, may undertake other functions. It shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessments levied to maintain said common areas for the purposes intended. The period of existence of such association shall not be less than 20 years, and it shall continue thereafter and until a majority vote of the members shall terminate it.
 - c. Easements: Easements necessary to the orderly extension of public utilities may be required as a condition of approval.
10. Approvals. The Planning Commission shall submit the preliminary development plan to the Fire District, City Engineer, County Sanitarian, power company, and other utilities which will serve the PUD and shall consider their recommendations in regard to approval of the proposal.

Section 10.050. Procedure - Preliminary Development Plan.

1. The applicant shall submit four copies of the preliminary development plan to the Planning Commission prior to formal application for rezoning. Applications shall be accompanied by a fee prescribed in Section 11.050 of this ordinance. This plan and any written statements shall contain at least the following information:
 - a. Proposed land uses and densities.
 - b. Location and approximate dimensions and heights of structures.
 - c. Plan of open spaces or common spaces.
 - d. Map showing existing features of site and topography.
 - e. Proposed method of utilities service and drainage.
 - f. Road and circulation plan including off-street parking.
 - g. Relation of the proposed development to the surrounding area and the Comprehensive Plan.
 - h. Lot layout.

- i. A schedule, if it is proposed that the final development plan will be executed in stages.
2. The Planning Commission shall consider the preliminary development plan at a public meeting, at which time they shall determine whether the proposal conforms to City ordinances. In addition, in considering the plan, the Planning Commission shall seek to determine that:
 - a. There are special physical conditions or objectives of development which the proposal will satisfy to warrant a departure from the standard ordinance requirements.
 - b. Resulting development will not be inconsistent with the Comprehensive Plan provisions or zoning objectives of the area.
 - c. The proposed development will be in substantial harmony with the surrounding area, including vegetation and topography and any important natural areas such as marshes or wildlife habitats.
 - d. The plan can be completed within a reasonable period of time.
 - e. Any proposed commercial development can be justified economically.
 - f. The streets are adequate to support the anticipated traffic and the development will not overload the streets outside the planned area.
 - g. Proposed utility and drainage facilities are adequate for the population densities and type of development proposed.
3. The Planning Commission shall notify the applicant whether, in its opinion, the foregoing provisions have been satisfied and, if not, whether they can be satisfied with further plan revision.
4. Following this preliminary meeting, the applicant may proceed with his/her request for approval of the planned development by filing an application for an amendment to this ordinance with the City Recorder.

Section 10.060. Procedure - Final Approval.

1. Within one year after concept approval or modified approval of a preliminary development plan, the applicant shall file a final plan for the entire development or, when submission in stages has been authorized, for the first unit of the PUD, with the Planning Commission. The final plan shall conform in all respects with the approved preliminary development plan. The final plan shall include all information included in the preliminary plan, plus the following:
 - a. Contour map showing at least 2-foot intervals.
 - b. Grading plan showing future contours if existing grade is to be changed more than two feet.
 - c. Existing and proposed utility lines.
 - d. Preliminary subdivision plan if property is to be subdivided.
 - e. Location and dimensions of pedestrian ways, roads, malls, common open space, recreation area and parks.
 - f. Location, dimensions, and arrangement of off-street parking including width of aisles, spaces, and other design criteria.
 - g. Preliminary planting and landscaping plan.
 - h. Preliminary architectural plans and elevations of typical structures.
 - i. The applicant shall also submit drafts of appropriate deed restrictions or protective covenants to provide for the maintenance of common areas and to assure that the objectives of the PUD shall be followed.
2. Upon receipt of the final development plan, the Planning Commission shall examine such plan and determine whether it conforms to all applicable criteria and standards and whether it conforms in all substantial respects to the previously approved preliminary development plan, or require such changes in the proposed development or impose such conditions of approval as are, in its judgment, necessary to insure conformity to the applicable criteria and standards. In so doing, the Planning Commission may permit the applicant to revise the plan and resubmit it as a final development plan within 30 days.

Section 10.080. Adherence to Approved Plan and Modification Thereof.

1. Building permits in a PUD shall be issued only on the basis of the approved plan. Any changes in the approved plan shall be submitted to the Planning Commission for processing as an amendment to this ordinance.

2. A performance bond may be required, in an amount to be determined by the Planning Commission, to insure that a development proposal is completed as approved and within the time limits agreed to.
3. The developer shall show to the satisfaction of the Planning Commission that the proposal will be carried out in such a way that no significant damage will be done to the lakes, streams, beaches or wetlands in the City. Special attention will be paid to the impact of the PUD on slide-prone hillsides to insure that the damage will not be caused to surrounding property.

EXHIBIT “B”



MEMORANDUM

To: City of Rockaway Beach

From: Dean N. Alterman
Alterman Law Group PC

Date: February 20, 2024

Re: Nedonna Wave Planned Unit Development – Phase 2 application
City file no. #SPUD 07-19
Our file no. 5701.001

I'm writing this memorandum to accompany the application of Nedonna Development LLC and its principal Anna Song to subdivide Tract F (Tax Lot 10400) and Tax Lot 10500 of Nedonna Wave Phase 1 to be Phase 2 of the planned unit development that the city approved in 2008 in City File No. #SPUD 07-19. Nedonna Development requests a modification of the prior approval to allow the applicant to develop Phase 2 in two sub-phases instead of in one phase.

Phase 2 will be a subdivision of Tract F, Nedonna Wave, and will include eleven lots east of Kittiwake Drive.

The applicant also owns Tract G of Nedonna Wave Phase 1. Tract G is not part of this application and will continue to be reserved for future development. The future Phase 3 will be a subdivision of Tract G, and will include nine lots west of Kittiwake Drive and south of the wetland and drainage area (Tract B) next to Lot 4 of Phase 1.

I. History

On May 27, 2008 the city issued a final plan approval for the application of Nedonna Development, LLC and its principal Anna Song to build a 28-lot phased planned unit development (PUD) that extended Kittiwake Drive south to Riley Street. The staff report indicates that the maximum allowed density at the time was 33 lots.

By final order dated September 15, 2008 and signed by Mayor Lisa M. Phipps on September 19, 2008, the city applied the PUD designation to the entire site, and approved Nedonna Development's request to develop the PUD in two stages with up to 28 lots. The first stage had 8 lots and three parcels. The eight lots were numbered 1 to 8 on the plat. They

corresponded to the lots numbered 1, 2, 3, 4, 20, 21, 22, and 23 on the plans submitted for the final plan approval.

Section 10.060 of the zoning code requires the applicant to file a “final plan for the entire development or, when submission in stages has been authorized, for the first unit of the PUD” within one year after the city approves a preliminary development plan. The code does not set any time limit on when the applicant must apply for subsequent units or stages of the PUD.

In this case, the city approved the preliminary development plan in early 2008. Nedonna Development applied for and received final approval for the first unit of the PUD within one year after it received final approval of the preliminary plan.

The applicant recorded the plat of Nedonna Wave Phase 1 on February 2, 2009 as Plat C-573, Tillamook County Plat Records. The plat included dedications of Kittiwake Drive, Song Street, Duke Street, Riley Street, and Jackson Street. In addition to the eight numbered lots, the plat included common area as Tracts A, B, and D, and areas for potential future development as Tracts C, E, F, and G.

Nedonna Development built Kittiwake Drive, Song Street, Duke Street, and the portion of Riley Street from Kittiwake Drive west to Chieftain Drive. Only Song Street, Duke Street, and the north 150 feet of Kittiwake Drive were required to provide public street access to the eight lots in Phase 1. Riley Drive and the south 450 feet of Kittiwake Drive were to provide street access to the lots in Phase 2 when subdivided and platted.

Nedonna Development suspended the project during the recession, before Nedonna Development was ready to build Phase 2, though it had constructed most of the public improvements for Phase 2 in accordance with plans that the city engineer approved on July 22, 2008.

II. Application to plat Phase 2 with three modifications

Nedonna Development is now ready to plat Phase 2. Nedonna Development asks for one modification to the approved final plan, which is to plat Phase 2 in two separate pieces. Phase 2 would be the eleven lots east of Kittiwake Drive, which would be numbered from 9 to 19 and would be taken from what is now Tract F. Phase 3 would be the nine lots west of Kittiwake Drive, which would be numbered from 20 to 28. The number and location of the lots would conform to the final plan approval that the city issued in 2008.

The applicant requests three modifications to the PUD approval as part of the Phase 2 request:

1. Create two lots instead of one lot at the north end of Jackson Street, out of the lot that was numbered as Lot 24 on the approved plan. The two proposed lots are numbered as 21 and 22 on the plan submitted with this application.

2. Create four lots instead of three lots out of the lots numbered as 14, 15, and 16 on the approved plan, at the northeast corner of Kittiwake Drive and Riley Street. The four proposed lots are numbered as 13, 14, 15, and 16 on the plan submitted with this application.

3. Provide that when the owner of the land to the south extends Jackson Street south into that property, the city will vacate the east stub of Riley Street so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.

If the city grants all three modifications then the total number of lots in Nedonna Wave would increase beyond the 28 lots originally approved, but not beyond the limit of 33 that the city identified as applicable in the original PUD approval.

Rockaway Beach regulates PUDs through Article 10 of the zoning code. Because the city has already issued its final approval of the final development plan under Section 10.060 and has approved the entire project as a 28-lot PUD, the only current questions are whether the city will allow Nedonna Development, LLC to plat the remaining lots in two phases instead of in one phase, and whether the city will allow a small increase in the number of lots in Nedonna Wave.

III. General Standards for Subdivisions

The following general standards in the Rockaway Beach Subdivision Ordinance apply:

SECTION 5 Procedure For Review

(1) Prior to the filing of a tentative plan, a subdivider shall submit to the City Recorder plans and other information concerning a proposed or contemplated development. The City Recorder shall then, within thirty-five (35) days, schedule a conference with the subdivider, City Engineer, and City Planner on such plans and other data, and make recommendations to the subdivider as shall seem proper regarding such plans or other data, and shall recommend consultation by the subdivider with other public or private agencies as may be disclosed by the plans to be interested. This subdivision conference is an optional procedure which may be elected by the subdivider and is not required by this ordinance.

(2) The applicant shall submit ten (10) copies of a tentative plan, a completed application form and a fee as required by Section 49. The tentative plan shall follow the format outlined in Sections 6 and 7.

(3) The City shall review the submitted tentative plan to determine whether the application is complete. If the application is complete, a public hearing before the Planning Commission shall be scheduled. If the application is incomplete, the applicant

will be informed of the additional information that is required. Upon submission of that information, a public hearing will be scheduled.

(4) Public notice shall be mailed to property owners within 200 feet of the boundary of the proposed subdivision. The content of the public notice shall be in accordance with Section 11.040(1) of the Zoning Ordinance.

(5) The City Recorder shall transmit one (1) copy of the tentative subdivision plan to the City Engineer, all affected special districts and any county, state or federal agency that may have an interest in the proposed subdivision. Written comments will be incorporated into the record of the public hearing.

(6) The City Recorder shall notify the subdivider of the requirement to file a statement of water rights and if a water rights is appurtenant, a copy of the acknowledgment from the Water Resources Department must be attached before the county recording officer may accept the plat of the subdivision for recording pursuant to ORS 92.120.

(7) The Planning Commission shall hold a public hearing on the tentative subdivision plan in accordance with Section 11.060 of the Zoning Ordinance.

(8) The Planning Commission shall make a decision on the tentative subdivision plan in accordance with Section 11.060 of the Zoning Ordinance.

Response: As Rockaway Beach has already approved the overall plan for Nedonna Wave, the applicant is submitting 10 copies of the plan for the proposed Phase 2 of the subdivision that reflect the first two requested modifications. The applicant is also submitting the application form and the application fee. The applicant acknowledges being informed of the requirement to file a statement of water rights. No water rights are known to be appurtenant to the property.

SECTION 9

Information Statement

The statement to accompany the tentative plan shall contain the following information:

- A general explanation of the improvements and public utilities, including water supply and sewage disposal proposed to be installed.
- Deviations from subdivision ordinance, if any.
- Public areas proposed, if any.
- A preliminary draft of restrictive covenants proposed, if any.

Improvements and public utilities: The applicant has already dedicated and constructed most of the public streets and public utilities for the subdivision in accordance with the approval of the Nedonna Wave PUD. The applicant will extend public water and sewer lines to the property to serve each of the lots. As part of the approval, the applicant will construct the remaining portion of Riley Street and the stub of Jackson Court.

Deviations from the subdivision ordinance: Except for the deviations that the city approved in 2008 to allow Nedonna Wave to develop the property as a PUD, the applicant proposes no deviations from the subdivision ordinance.

Public areas proposed: As part of Phase 1 of the PUD, Nedonna Development imposed covenants on Tracts A, B, and D to reserve them as common area and open space for the Nedonna Wave subdivision. The proposed subdivision of Tract F in accordance with the prior approval will allocate about half of Tract F to the individual lots and the other half as common area and open space for the subdivision. Nedonna Development has already dedicated all public streets required for all phases of the PUD and has built all streets except for Jackson Street and the east portion of Riley Street.

Restrictive covenants proposed: The applicant proposes to apply substantially the same covenants to Phases 2 and 3 as the applicant applied to Phase 1.

SECTION 10

Supplemental Proposals with Tentative Plan

Any of the following may be required to [sic] the Planning Commission to supplement the plan of a subdivision.

- (1) Approximate center line profiles with extensions for a reasonable distance beyond the limits of the proposed subdivision showing the finished grade of streets and the nature and extent of street construction.
- (2) A plan for domestic water supply lines and related water service facilities.
- (3) Proposals for sewage disposal, storm water drainage and flood control, including profiles of proposed drainageways.
- (4) If lot areas are to be graded, a plan showing the nature of the cuts and fills and information on the character of the soil.
- (5) Proposals for other improvements such as electric utilities and sidewalks.
- (6) Site investigations as required by the Hazards Overlay Zone provisions of the Zoning Ordinance. Where such an investigation indicates the potential for erosion, an erosion control plan shall also be submitted.
- (7) If an area is to be graded, a plan showing the nature of the cuts and fills and evidence provided in a site investigation that such a grading will be stable.

Response: The finished grades of the streets were approved as part of the initial PUD, including the extension of Riley Street beyond the limits of the subdivision to connect to the west. The applicant built that extension in 2008 or 2009 and the city accepted it as a public street. No other streets extend to connect to any other property. Domestic water lines have been installed. Sewage disposal has been provided in accordance with the construction plan that the

City Engineer approved on July 22, 2008. No substantial grading is proposed.

SECTION 11

Procedure For Review

(1) Within one (1) year after approval of the preliminary plat, or such extension as may have been granted by the City, the subdivider shall cause the proposed subdivision, or any part thereof to be surveyed and a plat thereof prepared in conformance with the preliminary plat as approved or conditionally approved.

An original reproducible drawing and five (5) blue-line or black-line prints of the plat shall be submitted to the City. The tracing and prints are in addition to those required by Oregon Statutes.

The final plat shall conform to the requirements of Section 12 - 15.

No subdivider shall submit a plat of a subdivision for record, until all the requirements of ORS 209.250 and the plat requirements of the subdivision have been met.

(2) The City Recorder shall forward a copy of the plat and other data submitted to the City Engineer who shall examine it to determine that the subdivision as shown is substantially the same as it appeared on the tentative plan, as approved; that all provisions of the law and this ordinance applicable at the time of approval of the tentative plan have been complied with; and that the plan is technically correct.

The City Engineer may make checks in the field as he may desire to verify that the map is sufficiently correct on the ground and he may enter the property for this purpose.

If the City Engineer determines that full conformity has not been made, the City shall advise the subdivider of the changes or additions that must be made for these purposes, and shall afford the subdivider an opportunity to make the changes or additions. If the City Engineer determines that full conformity has been made, he shall so certify on the plat and shall transmit the plat to the City for further review.

(3) The Planning Commission shall review the final plat to determine that it conforms with the preliminary plat and with changes permitted and all requirements imposed as a condition of its acceptance.

If the Planning Commission determines that the plat submitted does not conform to the tentative plan or applicable conditions, the subdivider shall be afforded an opportunity to make corrections.

(4) Prior to the approval of the final plat by the Planning Commission, the subdivider shall complete improvements as proposed or enter into an agreement for improvements together with a bond, pursuant to the provisions of Sections 21 & 22.

(5) If the final plat conforms to the preliminary plat and applicable conditions have been met, the Chairman of the Planning Commission shall sign and date the final plat.

(6) The applicant shall deliver the final plat to the County Surveyor for review according to the requirements of ORS 92. Approval of the plat shall be null and void if the plat is not recorded within 90 days after the date the last required approving signature has been obtained.

Response: Nedonna Development will construct the few remaining improvements in conformance to the approved PUD plan and the tentative subdivision plan when approved, prepare and submit a final plat, and provide a bond or other assurance upon approval that the improvements will be constructed.

(7) The subdivision is considered complete after the final plat is recorded by the County Clerk.

Response: The applicant will record the final plat with the County Clerk in conformance to this standard.

SECTION 32

Principles of Acceptability

A land division whether by a subdivision, creation of a street, or a partitioning, shall conform to any development plans, shall take into consideration any preliminary plans made in anticipation thereof, and shall conform to the design standards established by this ordinance. The City Engineer shall prepare and submit to the City Council specifications to supplement the standards of this ordinance, based on standard engineering practices, concerning streets, drainage facilities, sidewalks, sewer and water systems.

Response: The proposed subdivision conforms to all design standards in the land division ordinance. The tract to be subdivided, now known as Tract F of Nedonna Wave, was laid out with the intention that eleven lots would eventually be created by further subdividing it. The proposal conforms to the plans that the city has already approved.

SECTION 33

Streets

(1) The location, width and grade of streets shall be considered in their relation to existing and planned streets, to topographical conditions, to public convenience and safety, and to the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system with intersection angles, grades, tangents and curves appropriate for the traffic to be carried considering the

terrain. Where location is not shown in a development plan, the arrangement of streets shall either:

- a. Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
- b. Conform to a plan for the neighborhood approved or adopted by the Planning Commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.

Response: The applicant provided for the continuation of Kittiwake Drive from its prior terminus south to Riley Street, and for the connection of Riley Street to the land to the west. The applicant has built Kittiwake Drive and Riley Street west from Kittiwake Drive. The streets have already been dedicated in conformance to the plan that the City approved before the applicant developed Phase 1. The proposal complies with this standard.

(2) **Street Widths.** Street widths shall conform with City standards, except where it can be shown by the land divider, to the satisfaction of the Planning Commission, that the topography or the small number of lots or parcels served and the probable future traffic development are such as to unquestionably justify a narrower width. Increased widths may be required where streets are to serve commercial property, or where probable traffic conditions warrant. Approval or determination of street and area classification shall be made by the Planning Commission taking into consideration the zoning designations imposed by the Comprehensive Plan and the Development Code, the present use and development of the property in the area, the logical and reasonable prospective development of the area based upon public needs and trends, and the public safety and welfare.

Response: The applicant has built Kittiwake Drive and the west portion of Riley Street to City standards. The application will construct Jackson Street and the east portion of Riley Street to City standards.

(3) **Alignment.** As far as is practical, streets other than minor streets shall be in alignment with existing streets by continuations of the center lines thereof. Staggered street alignment resulting in "T" intersections shall, wherever practical, leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction, and in no case, shall be less than 150 feet.

Response: The applicant proposes no change to the existing and approved street pattern.

(4) Future Street Extension. Where necessary to give access to, or permit a satisfactory future division of adjoining land, streets shall extend to the boundary of the subdivision or partition, and the resulting dead-end streets may be approved without a turn-around. Reserve strips including street plugs may be required to preserve the objectives of street extensions.

Response: All adjoining land has already been subdivided. The railroad blocks any potential extension of Riley Street to the east of Phase 2. No adjoining land requires a street extension through this subdivision. The proposal complies with this standard.

(5) Intersection Angles. Streets shall intersect at angles as practical except where topography requires a lesser angle, ¹ but in no case shall the acute angle be less than 60 degrees unless there is a special intersection design. An arterial or collector street intersecting with another street shall have at least 100 feet of tangent adjacent to the intersection unless topography requires a lesser distance. Other streets, except alleys, shall have at least 50 feet of tangent adjacent to the intersection unless topography requires a lesser distance. Intersections which contain an acute angle of less than 80 degrees or which include an arterial street shall have a minimum corner radius sufficient to allow for a roadway radius of 20 feet and maintain a uniform width between the roadway and the right-of-way line. Ordinarily, the intersection of more than two streets at any one point will not be approved.

Response: The existing streets conform to this standard. The applicant does not propose any new streets.

(6) Existing Streets. Whenever existing streets adjacent to or within a tract are of adequate width, additional right-of-way shall be provided at the time of the land division.

Response: The existing streets are all of the width that the city approved for this PUD. The applicant previously dedicated land to widen Riley Street to city standards.

(7) Reserved Strips. No reserved strips controlling the access to public ways will be approved unless the strips are necessary for the protection of the public welfare, and in these cases they may be required. The control and disposal of the land comprising the strips shall be placed within the jurisdiction of the City under conditions approved by the Planning Commission.

¹ This text is from the city's website. It was likely intended to read "Streets shall intersect at angles as near to right angles as practical except where topography requires a lesser angle"

Response: The proposed subdivision will not extend any public streets to undeveloped adjoining parcels and no reserved strips are necessary.

(8) **Half Streets.** Half streets shall be prohibited except they may be approved where essential to the reasonable development of the subdivision or partitions when in conformity with the other requirements of these regulations, and when the Planning Commission finds it will be practical to require the dedication of the other half when the adjoining property is divided. Whenever a half street is adjacent to a tract to be divided, the other half of the street shall be platted within the tract. Reserve strips may be required to preserve the objectives of half streets.

Response: No half-street is necessary or proposed. No half-street is adjacent to the property.

(9) **Cul-de-Sac.** A cul-de-sac shall be as short as possible and shall have a maximum length of four hundred feet (400') and serve building sites for not more than eighteen (18) dwelling units. A cul-de-sac shall terminate with a circular turnaround.

Response: Riley Street and Jackson Street are essentially a cul-de-sac to serve six lots. They do not terminate in a circular turnaround. They do serve as a hammerhead turnaround and were approved by the city as part of the PUD. When the Nedonna Estates property to the south is developed, a second connection to Riley Street can be provided on that property to reduce the cul-de-sac and the stub of Riley Street in front of Tract E will no longer be needed as a turnaround.

(10) **Alleys.** When any lots or parcels are proposed for commercial or industrial usage, alleys at least 20 feet in width may be required at the rear thereof with adequate ingress and egress for truck traffic unless alternative commitments for off-street service truck facilities without alleys are approved. Intersecting alleys shall not be permitted.

Response: No commercial or industrial usage is proposed. No alleys are proposed. This standard does not apply to this subdivision.

(11) **Grades and Curves.** Grades shall not exceed 6% on arterials, 10% on collector streets, or 12% on other streets. Center line radii of curves shall not be less than 300 feet on major arterials, 200 feet on secondary arterials, or 100 feet on other streets, and shall be to an even 10 feet. Where existing conditions, particularly the topography, make it otherwise impractical to provide buildable sites, the Planning Commission may

accept steeper grades and sharper curves. In flat areas, allowance shall be made for finished street grades having a minimum slope, preferably, of at least .5%.

Response: The platted streets are essentially flat. No grade exceeds 6% . No road curve has a radius of less than 100 feet.

(12) **Marginal Access Streets.** Where a land division abuts or contains an existing or proposed arterial street, the Planning Commission may require marginal access streets, reverse frontage lots with suitable depth, screen planting contained in a nonaccess reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic.

Response: The property does not abut or contain an existing or proposed arterial street. This standard does not apply to this proposal.

(13) **Street Names.** All street names shall be approved by the Planning Commission for conformance with established pattern and to avoid duplication and confusion.

Response: The city has already approved the existing street names. No new streets or street names are proposed.

(14) **Private Streets.** The design and improvement of any private street shall be subject to all requirements prescribed by this ordinance for public streets. The land divider shall provide for the permanent maintenance of any street required for access to property in a private street subdivision or major partition.

Response: The applicant has already dedicated all required streets as public streets. The applicant does not propose to build any private streets and this standard does not apply to this application.

SECTION 34

Utility Easements

Easements for sewer, drainage, water mains, public utility installations, including overhead or underground systems, and other like public purposes, shall be dedicated, reserved or granted by the land divider in widths not less than five feet (5') on each side of the rear lot or parcel lines, alongside lot or parcel lines and in planting strips wherever

necessary, provided that easements of [lesser]² width, such as for anchorage, may be allowed when the purposes of easements may be accomplished by easements of lesser width as approved by the City.

Response: Nedonna Development dedicated 5-foot easements along the public streets when it platted Phase 1. The plat of Phase 1 does not indicate any easements along the side and rear lot lines of the individual lots, possibly because the open space (including wetlands) is at the rear of most of the lots. In this instance Nedonna Development suggests that utility easements along the side and rear lot lines would serve no purpose and the requirement should be waived.

SECTION 35 **Building Sites**

(1) **Size and Shape.** The size, width, shape and orientation of building sites shall be consistent with the residential lot size provisions of the Development Code with the following exceptions:

(a) In areas that will not be served by a public sewer, minimum lot and parcel sized shall permit compliance with the requirements of the Department of Environmental Quality and shall take into consideration problems of sewage disposal, particularly problems of soil structure and water table as related to sewage disposal by septic tank.

Response: The lots will be served by a public sewer. This standard applies only to lots that will not be served by a public sewer and does not apply to the plat.

(b) Where property is zoned and planned for business or industrial use, other widths and areas may be permitted at the discretion of the Planning Commission. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.

Response: The property is zoned for residential use, not for business or industrial use. This standard does not apply to the plat.

(2) **Access.** Each lot and parcel shall abut upon a street other than an alley for a width of at least 25 feet.

² This word appears to have been inadvertently omitted from the code.

Response: Each lot and parcel abuts on a street other than an alley for a width of at least 25 feet. The plat complies with this standard.

(3) **Through Lots and Parcels.** Through lots and parcels shall be avoided except where they are essential to provide separation of residential development from major traffic arteries or adjacent non-residential activities or to overcome specific disadvantages or topography orientation. A planting screen easement at least ten (10) feet wide and across which there shall be no right of access may be required along the line of building sites abutting such a traffic artery or other incompatible use.

Response: The plat has no through lots and no through parcels. The plat complies with this standard.

(4) **Lot and Parcel Side Lines.** The lines of lots and parcels, as far as is practicable, shall run at right angles to the street upon which they face, except that on curved streets they shall be radial to the curve.

Response: Ten of the eleven lots in Phase 2 as originally approved comply with this standard. The exception is the lot at the north end of Jackson Street, which in the approved plan fronts on the end of Jackson Street and runs east to the railroad track. It has no other practicable layout.

Twelve of the fourteen lots in Phase 2 as modified comply with this standard. The applicant requests to modify the approved plan to make two lots out of the one lot at the north end of Jackson Street, each of which will front on the end of Jackson Street. Those two lots have no other reasonable layout that would not impinge on the wetlands. The plat complies with this standard as far as practicable.

SECTION 36

Blocks

(1) **General.** The length, width and shape of blocks shall take into account the need for adequate building site size and street width and shall recognize the limitations of the topography.

Response: Tract F includes some wetlands areas that restricted how Nedonna Development could lay out the PUD. The location of the wetlands made it impracticable to lay out short cul-de-sacs east of Kittiwake Drive similar to how Song Street was laid out in Phase 1. The eleven building lots in Phase 2 as originally approved, and the fourteen lots in Phase 2 as proposed to be modified, were laid out to minimize disturbance of the wetlands. The plat complies with this standard.

(2) Size. No block shall be more than 1,000 feet in length between street corner lines unless it is adjacent to an arterial street or unless the topography or the location of adjoining streets justifies an exception. The recommended minimum length of blocks along an arterial street is 1,800 feet. A block shall have sufficient width to provide for two tiers of building sites unless topography or the location of adjoining streets justifies an exception.

Response: No new streets are proposed. Kittiwake Drive is approximately 600 feet long from Song Street to Riley Street. The area that would ordinarily provide a second tier of lots between Kittiwake Drive and Jackson Street is wide enough to provide for two tiers of lots, but it includes a substantial wetland that will remain as open space. The plat complies with this standard.

(3) Walkways. The subdivider may be required to dedicate and improve ten (10) foot walkways across blocks over 600 feet in length or to provide access to school, park, or other public areas.

Response: Kittiwake Drive is about 600 feet long from Song Street to Riley Street. Jackson Street is less than 200 feet long. A walkway from the north end of Jackson Street to the midpoint of the Kittiwake Drive block would have to cross the protected wetlands and would not shorten the walking distance from Phase 2 to the beach. The City should not require a walkway through the wetlands.

SECTION 37

Large Building Sites

In dividing tracts into large lots or parcels which at some future time are likely to be redivided, the Planning Commission may require that the blocks be of such size and shape, be so divided into building sites and contain such site restrictions as will provide for extension and opening of streets at intervals which will permit a subsequent division of any tract into parcels of smaller size.

Response: The only large parcel proposed is the wetland in the center of what is now Tract F. The wetland area will serve as the required permanent open space for Phase 2 of the PUD and is not intended to be redivided.

SECTION 38

Water Courses

The land divider shall, subject to riparian rights, dedicate a right-of-way for storm drainage purposes, conforming substantially with the lines of any natural water course or channel, stream or creek that traverses the subdivision or partitions, or, at the option of the land divider, provide, by dedication, further and sufficient easements or construction, or both to dispose of the surface and storm waters.

Response: In Phase 1, Nedonna Development declared an easement for storm drainage over Tracts A, B, and D. Nedonna Development will declare a similar easement for storm drainage over the common area wetland that is now part of Tract F. The plat complies with this standard.

SECTION 39 Land For Public Purposes

(1) The Planning Commission may require the reservation for public acquisition, at a cost not to exceed acreage values in the area prior to subdivision, or appropriate areas within the subdivision for a period not to exceed one year providing the City has an interest or has been advised of interest on the part of the State Highway Commission, school district or other public agency to acquire a portion of the area within the proposed subdivision for a public purpose, including substantial assurance that positive steps will be taken in the reasonable future for acquisition.

Response: The applicant is not aware of any public body that wishes to acquire land in the subdivision for a public purpose.

(2) The Planning Commission may require the dedication of suitable areas for the parks and playgrounds that will be required for the use of the population which is intended to occupy the subdivision.

Response: The property in Phase 2 is a five-minute walk from the public beach, which is akin to “the parks and playgrounds” required for the use of the residents of Phase 2. The property is adequately served by land for outdoor recreation, and complies with this standard without any dedication of additional parkland.

SECTION 40 Unsuitable Land

The Planning Commission may refuse to approve a subdivision or partition when the only practical use which can be made of the property proposed to be subdivided or partitioned

is a use prohibited by this code or law, or, if the property is deemed unhealthful or unfit for human habitation or occupancy by the county or state health authorities.

Response: The property can practicably be put to residential use, which this code allows and which Rockaway Beach has approved. No county or state authority has declared the property or the general area unfit for human habitation, and in fact many of the nearby parcels are in residential use. The plat complies with this standard.

SECTION 41 Land Subject to Inundation

If any portion of land proposed for development is subject to overflow, inundation or flood hazard by, or collection of, storm waters, an adequate system of storm drains, levees, dikes and pumping systems shall be provided.

Response: As part of developing Phase 1, the applicant installed storm drain culverts from the wetland area under Kittiwake Drive to Tract B and thence to McMillan Creek to provide storm drainage from Tract F. The applicant believes the existing wetland and drainage facility to be adequate. The plat complies with this standard.

SECTION 42 Proposed Name of Subdivision

No tentative subdivision plat or subdivision plan or subdivision shall be approved which bears a name approved by the County Surveyor or County Assessor, which is the same as [or] similar to or pronounced the same as the name of any other subdivision in Tillamook County unless the land platted is contiguous to and platted by the same party that platted the subdivision bearing that name, or unless the party files and records the consent of the party that platted the contiguous subdivision bearing that name. All subdivision plats must continue the lot numbers and, if used, the block numbers of the subdivision plat of the same name last filed.

Response: The property is already part of the Nedonna Wave subdivision and is being platted by the same party that platted Phase 1. The final plat of Phase 2 will continue the lot numbers from Phase 1, starting with Lot 10.³

IV. Specific standards for planned unit developments

Rockaway Beach regulates planned unit developments (PUDs) in Article 10 of the city zoning ordinance. Here are the relevant standards and the applicant's response.

³ The proposed plat submitted with this application numbers the lots from 1 upward. The lots will be renumbered on the final plat to conform to this standard.

Section 10.030. Permitted Buildings and Uses. The following buildings and uses may be permitted as hereinafter provided. Buildings and uses may be permitted either singly or in combination provided the overall density of the Planned Unit Development does not exceed the density of the parent zone as provided in this ordinance.

1. Single-family dwellings including detached, attached, or semi-detached units, row houses, atrium or patio houses, provided each has its own separate plot.
2. Duplexes and multiple-family dwellings.
3. Accessory buildings and uses.
4. Commercial uses only when supported mainly by the PUD and only when economic feasibility can be shown.
5. Buildings or uses listed as permitted outright or conditionally in the parent zone on which the PUD is located.

Response: The proposed lots will be for detached single-family dwellings, and related accessory buildings such as garages and storage sheds. Subsections 1 and 3 permit these uses. The application complies with this standard.

Section 10.040. Development Standards.

(1) Minimum Lot Size. Planned Unit Developments shall be established only on parcels of land which are suitable for the proposed development and are determined by the planning commission to be in keeping with the intent of this ordinance. (This says 'site size' in 143, not 'lot size')

Response: Rockaway Beach has already approved this parcel of land as suitable for the proposed development of a residential PUD in keeping with the intent of the zoning ordinance. The proposed modifications do not substantially change the nature and character of Nedonna Wave. The parcel is suitable for the proposed development, and the application complies with this standard.

(2) Open Spaces. In all residential developments, or in combination residential-commercial developments, 50% of the total area should be devoted to open space. Of this area, 25% of said open space may be utilized privately by individual owners or users of the PUD; however, 75% of this area should be common or shared open space. The Planning Commission may increase or decrease the open space requirement depending on the particular site and the needs of the development. In no case should the open space be less than 40% of the site.

Response: Nedonna Wave Phase 1 included common area as Tract A, Tract B, and Tract D, all of which is open space. The eight numbered lots and Tract C in Phase 1 totaled 35,028

square feet according to the plat. The three common area tracts totaled 65,528 square feet, which is 65.16% of the total area of 100,556 square feet in Phase 1. Phase 1 provided a surplus of common open space.

The 22 lots in Phase 2 and the proposed Phase 3 total 69,840 square feet. The common open space in Phases 2 and 3 consists of the remainder of Tract F (75,358 SF) and Tract G (71,859 SF) minus the portion allocated to the 22 proposed building lots (71,859 SF) and Tract E (2,019 SF), which yields 37,476 SF. Phases 1, 2, and 3 together contain 106,887 square feet in numbered lots plus Tracts C and E, and 103,004 SF of common open space. The common open space is 49.1% of the total project.

In addition to the common open space, the setback requirements on each lot will provide approximately 35,000 SF of additional open area, bringing the total open area for the project when complete to about 138,000 SF in a total area of about 209,891 SF, well above the 50% requirement. With or without the requested modifications, the plat will comply with this standard.

(3) Density. The density of a planned development shall not exceed the density of the parent zone, except as more restrictive regulations may be prescribed as a condition of the PUD permit. When calculating density, the gross area is used (total area including street dedications). Areas of public uses may be included in calculating allowable density.

Response: The findings of fact in the city's approval of February 11, 2008 indicate that the R-1 portion of the overall site was 3.9 acres, which is about 169,884 SF. The minimum lot size in the R-1 zone is 5,000 SF. Property approved for a PUD may be subdivided into lots smaller than 5,000 SF as long as the overall density does not exceed the density of the parent zone. Streets and common areas count toward the land area for this purpose.

A tract of 169,884 square feet divided by 5,000 square feet will allow 33 lots. The proposed density with the requested modifications will not exceed the density of the parent zone. The application and the modifications comply with this standard.

(4) Subdivision of Lot Sizes. Minimum area, width, depth, and frontage requirements for subdivision lots in a PUD may be less than the minimums set forth elsewhere in City ordinances, provided that the overall density is in conformance, and that lots conform to the approved preliminary development plan.

Response: The overall density of Nedonna Wave is in conformance to the zoning. If the City does not grant the requested modifications, the proposal will conform exactly to the approved development plan. If the City does grant the requested modifications, the proposed density, street layout, open space, and circulation will still conform to the approved plan.

(5) Off-Street Parking. Parking spaces shall conform to all provisions of this ordinance, except that the Planning Commission may authorize exceptions where warranted by unusual circumstances.

Response: Each lot will provide parking to conform to code requirements.

(6) Signs. All signs of any type within a PUD are subject to design review and approval of the Planning Commission. They shall consider each sign on its merits based on its aesthetic impact on the area, potential traffic hazards, potential violation of property and privacy rights of adjoining property owners, and need for said sign.

Response: No permanent signs are proposed except for street signs and any no-parking signs that the City may require.

(7) Height Guidelines. The same restrictions shall prevail as permitted outright in the zone in which such development occurs, except that the Planning Commission may allow a variance of heights where it is determined that surrounding property will not be harmed.

Response: On February 11, 2008 in File No. #VAR 2007-21 the planning commission approved a height variance for building heights of 36 feet for Lots 25, 26, 27, and 28 as they were then numbered, which are Lots 17, 18, 19, and 20 on the plans submitted with this application. In File No. #VAR 2007-20 the planning commission approved a height variance for building heights of 29 feet on all other lots in Nedonna Wave. No other height variance is requested.

(8) Streets and Roads. Necessary streets and roads within the PUD shall be dedicated to the public and constructed to City standards or shall be private roads maintained by an owner's association and constructed to standards as determined by the Planning Commission and City Engineer.

Response: The applicant has dedicated all of the streets and constructed most of the streets within the PUD already. As part of Phase 2 the applicant will construct Jackson Street and the east portion of Riley Street in accordance with the engineering plans that the City approved in 2008.

(9) Dedication and Maintenance of Facilities. The Planning Commission, or on appeal, the City Council may, as a condition of approval for a PUD require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated to the following uses:

(a) Recreation Facilities: The Planning Commission may require that suitable area for parks or playgrounds be set aside, improved, or permanently reserved for the owners, residents, employees or patrons of the PUD.

(b) Common Area: Whenever common area is provided, the Planning Commission or City Council may require that an association of owners or tenants be created into a non-profit corporation under the laws of the State of Oregon, which shall adopt such Articles of Incorporation and By-Laws and adopt and impose such Declaration of Covenants and Restrictions on such common areas that are acceptable to the Planning Commission. Said association, if required, may undertake other functions. It shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessments levied to maintain said common areas for the purposes intended. The period of existence of such association shall not be less than 20 years, and it shall continue thereafter and until a majority vote of the members shall terminate it.

(c) Easements: Easements necessary to the orderly extension of public utilities may be required as a condition of approval.

Response: The PUD enjoys excellent pedestrian access to the beach and will include 49% common open space. No further recreation facilities are required. The common area will be under the control of an owners' association pursuant to covenants. Because the railroad blocks extension to the east and all adjoining properties are either already developed or have direct access to improved public streets with utilities, no further easements for extensions of public utilities are required. A portion of the open area has been set aside for a sewer pump facility.

V. Conclusion

The applicant is ready to continue the development of the Nedonna Wave PUD and requests your approval of the preliminary plat, including the ability to separate Phase 2 into Phases 2 and 3, and to add two lots as described. If the city should turn down the request to modify the PUD by adding the two lots, then the applicant requests that you simply approve Phase 2.

EXHIBIT “C”



**CITY OF ROCKAWAY BEACH
PLANNING COMMISSION ACTION**

STAFF REPORT

Case File #PUD-24-1

Hearing Date: June 20, 2024

APPLICANT: Nedonna Development LLC

AGENT FOR APPLICANT: Dean N. Alterman

REQUEST: The Applicant is requesting a modification to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008. The Applicant seeks the following modifications to Phase 2 of the 2008 approval:

1. To develop Phase 2 in two sub-phases, instead of one phase;
2. To create two lots instead of one lot at the north end of Jackson Street (identified as lot 24 on the 2008 approved plan), identified as lots 21 and 22 on the plans submitted with the Application;
3. To create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street (identified as Lots 14, 15, and 16 on the 2008 approved plan), identified as lots 13, 14, 15 and 16 on the plan submitted with the Application; and
4. Provide that when the owner of the land to the south extends Jackson Street south into that property, the City will vacate the east stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.

A. REPORT OF FACTS

1. Property Location: The subject property is located on Kittiwake Drive north of Riley Street and South of Song Street in Nedonna Beach. The property is identified as Tillamook County Assessor's Map #2N1020AB Lots # 10200, 10400, and 10500.
2. Lot Size: approximately 2.56 acres.
3. Zoning Designation: R-1 (Single Family Residential Zone), SA (Special Area Wetlands Zone), and PUD (Planned Unit Development) Overlay.
4. Surrounding Land Use: Adjacent to the north is the existing Nedonna Wave Planned Unit Development Phase 1. To the east is undeveloped private land zoned R-1 (Single Family Residential Zone) and Highway 101. To the south is undeveloped private land zoned R-1 (Single Family Residential) and SA (Special Area Wetlands). To the west is White Dove Estates neighborhood, which is zoned R-1 (Single Family Residential).



5. Existing Structures: None, except for utilities installed by the Applicant during the construction of Phase 1, for Phase 2.
6. Utilities: The following utilities serve the subject property:
 - a. Sewer: City of Rockaway Beach
 - b. Water: City of Rockaway Beach
 - c. Electricity: Tillamook P.U.D.
7. Development Constraints: The property contains wetlands that were delineated by a professional wetlands consultant prior to the 2008 approval. As wetlands are not stagnant, according to the Department of State Lands (DSL), the former delineation is no longer valid and expire after a period of five years. At the time of the 2008 approval, the Applicant provided a joint permit from the DSL and the U.S. Army Corps of Engineers. These permits have now expired and will need to be renewed before any disturbance or impacts to the wetlands takes place. If the request is approved, the Applicant will be required to obtain and provide copies of necessary permits from these agencies prior to initiating construction.

In addition, a portion of the subject property is located within the 100-year floodplain as identified on the Flood Insurance Rate Map Panel Number 41057C0218F.

B. EVALUATION OF THE REQUEST

1. General Description of the Proposal: The Applicant is requesting a modification to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008. The Applicant seeks the following modifications to Phase 2 of the 2008 approval: (1) To develop Phase 2 in two sub-phases, instead of one phase; (2) To create two lots instead of one lot at the north end of Jackson Street (identified as lot 24 on the 2008 approved plan), identified as lots 21 and 22 on the plans submitted with the Application; (3) To create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street (identified as Lots 14, 15, and 16 on the 2008 approved plan), identified as lots 13, 14, 15 and 16 on the plan submitted with the Application; and (4) Provide that when the owner of the land to the south extends Jackson Street south into that property, the City will vacate the east stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.
2. Agency Comments:
 - a. City of Rockaway Beach Engineer: See attached letter from HBH Engineering which identifies issues that will need to be addressed through the more formal engineering review if the request is approved.
 - b. Department of State Lands: See attached Wet Land Use Notice Response which identifies additional reporting and permitting that will need to be completed and obtained prior to any disturbance of the wetland areas.



3. Ordinance Standards: The following substantive criteria apply to this request. To facilitate review, staff comments are in *italicized font*.

Rockaway Beach Zoning Ordinance Section 3.010, Single Family Residential Zone (R-1). In the R-1 zone the following regulations shall apply:

- a. The minimum lot size shall be 3,500 square feet for lots existing at the time of the adoption of Ordinance 235. Lots platted after the adoption of Ordinance 235 shall have a minimum lot size of 5,000 square feet.

The Applicant was approved for a PUD overlay in 2008, allowing for the development of lots lesser than the minimum lot size requirement for the R-1 zone. The Applicant is currently seeking to create two lots instead of one lot at the north end of Jackson Street (identified as lot 24 on the 2008 approved plan), identified as lots 21 and 22 on the plans submitted with the Application, and to create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street (identified as Lots 14, 15, and 16 on the 2008 approved plan), identified as lots 13, 14, 15 and 16 on the plan submitted with the Application. These additional lots the Applicant seeks to include, which were not included in the original PUD approval, do not meet the minimum lot size requirements for the R-1 zone. It should also be noted that the lots the Applicant seeks to amend which are identified as Lots 14, 15, and 16 on the 2008 approved plan, are also below the minimum lot size requirement. Lot 24 on the 2008 approved plan did meet the minimum lot size requirement for the R-1 zone.

- b. The density of duplexes shall be: for lots existing prior to the adoption of Ordinance 235, a duplex is permitted on a lot with a minimum size of 3,500 square feet, for lots platted after the adoption of Ordinance 235, a duplex is permitted on a lot with a minimum size of 5,000 square feet.

The Applicant intends to construct single-family dwellings, therefore this standard is not applicable.

- c. Minimum lot width is 50 feet, except for lots between 3,500 and 4,999 square feet, the minimum lot width shall be 35 feet.

The Applicant was approved for a PUD overlay in 2008, allowing for the development of lots lesser than the minimum depth requirement for the R-1 zone. The additional lots the Applicant seeks to add to through this modification are also lesser than the minimum width requirement.

- d. Minimum lot depth is 70 feet, except for lots between 3,500 and 4,999 square feet, the minimum lot depth shall be 60 feet.

The Applicant was approved for a PUD overlay in 2008, allowing for the development of lots lesser than the minimum depth requirement for the R-1 zone. The additional lots the Applicant seeks to add to through this modification are also lesser than the minimum depth requirement.

- e. The minimum front yard shall be 15 feet, unless subsection 3.010(3)(h) applies.



This standard is typically reviewed for conformance and applied at the time a building permit is required.

- f. The minimum side yard shall be 5 feet, except that on the street side of a corner lot it shall be 15 feet.

This standard is typically reviewed for conformance and applied at the time a building permit is required.

- g. The minimum rear yard shall be 20 feet, except that on a corner lot it may be a minimum of 5 feet unless subsection 3.010(3)(h) applies. Oceanfront structures shall conform to Section 5.060(1)(b).

This standard is typically reviewed for conformance and applied at the time a building permit is required.

- h. For lots of less than 5,000 square feet in size, but more than 3,500 square feet, the minimum front yard shall be 15 feet and the minimum rear yard shall be 10 feet, except that on a corner lot the rear yard may be a minimum of 5 feet. For lots of 3,500 square feet in size or less, the minimum front yard and rear yard shall be ten feet, except that on a corner lot the rear yard may be a minimum of 5 feet. Notwithstanding the above, oceanfront structures shall conform to Section 5.060(1)(b).

This standard is typically reviewed for conformance and applied at the time a building permit is required. However, it should be noted that the Applicant was approved for a PUD overlay in 2008, allowing for the development of lots lesser than the minimum lot size outlined for the R-1 zone.

- i. The maximum building height shall be 20 feet on the oceanfront and 24 feet elsewhere except east of Highway 101 it shall be 29 feet.

This standard is typically reviewed for conformance and applied at the time a building permit is required.

- j. A minimum of 30% of the lot will be maintained in natural vegetation or landscaping.

This standard is typically reviewed for conformance and applied at the time a building permit is required.

Rockaway Beach Zoning Ordinance Section 3.080, Special Wetlands Area (SA). In the SA zone the following regulations shall apply:

- a. All activities involving construction or alteration in wetlands or aquatic areas shall be reviewed by the Oregon Division of State Lands and the US Army Corps of Engineers to determine permit applicability.

The Application has been provided to DSL for review. The DSL response is attached to this application, outlining additional reporting and permitting necessary for this Application.



- b. The Shorelands Siting Criteria in Section 4.041 shall be applicable to all activities in the SA zone. Nothing in the Shorelands Siting Criteria shall be interpreted to permit uses which are not otherwise allowed in (2) or (3) above.

The Shoreland Siting Criteria applies to developments taking place within 50 feet of the shore of any lake, therefore this criteria does not apply.

- c. Every effort shall be made to use common or community docking facilities prior to construction of an individual, single- purpose dock. Generally, there should be a maximum of one dock every 250 feet. Docks shall not include covered structures or boathouses.

No docks are proposed in this Application, therefore this criteria does not apply.

- d. Access to the water area through wetlands may be constructed in the form of raised walkways on pilings, posts or piers. Where the affected resource agencies (e.g. Oregon Department of Fish & Wildlife) determine the activity to have minimal environmental impacts, trails or paths consisting of clean gravel, bark chips, or other material may be placed through wetlands. Such walkways shall not be wider than eight (8) feet. Wherever possible, trails or walkways shall be constructed for the common usage of a development or group of structures.

The Application does not propose any access to the water areas, therefore this criteria is not applicable.

- e. Removal or control of aquatic vegetation may be permitted, where allowed by the Oregon Department of Fish and Wildlife, in order to provide angler access, or other valid purpose.

The subject property does not provide angler access, therefore this criteria is not applicable.

- f. Dredging shall be allowed only: (i) If a need (i.e., a substantial public benefit) is demonstrated, and; (ii) If the use or alteration does not unreasonably interfere with public trust rights, and; (iii) If no feasible alternative upland locations exist, and; (iv) If adverse impacts are minimized.

Dredging is not proposed as part of this Application, therefore this criteria is not applicable.

- g. When dredging is permitted, the dredging shall be the minimum necessary to accomplish the proposed use.

Dredging is not proposed as part of this Application, therefore this criteria is not applicable.

- h. The timing of dredging operations shall be coordinated with state and federal resource agencies, to protect aquatic and shoreland resources, and minimize interference with recreational fishing.

Dredging is not proposed as part of this Application, therefore this criteria is not applicable.



- i. Piling installation may be allowed only if all of the following criteria are met: (i) A substantial public benefit is demonstrated, and; (ii) The proposed use does not unreasonably interfere with public trust rights, and; (iii) Feasible alternative upland locations do not exist, and; (iv) Potential adverse impacts are minimized.

Piling installation is not proposed as part of this Application, therefore this criteria is not applicable.

- j. Shoreline stabilization measures shall meet the criteria of Section 4.120.

Shoreline stabilization is not proposed as part of this Application, therefore this criteria is not applicable.

- k. Fill may be permitted only if all of the following criteria are met: (i) If required for a water-dependent use requiring an aquatic location, or if specifically allowed in the SA zone, and; (ii) A substantial public benefit is demonstrated, and; (iii) The proposed fill does not unreasonably interfere with public trust rights, and; (iv) Feasible upland alternative locations do not exist, and; (v) Adverse impacts are minimized.

Fill is not proposed as part of this Application, therefore this criteria is not applicable.

- l. Fill shall cover no more area than the minimum necessary to accomplish the proposed use.

Fill is not proposed as part of this Application, therefore this criteria is not applicable.

- m. Projects involving fill may be approved only if the following alternatives are examined and found to be infeasible: (i) Construct some or all of the project on piling; (ii) Conduct some or all of the proposed activity on existing upland areas; (iii) Approve the project at a feasible alternative site where adverse impacts are less significant.

Fill is not proposed as part of this Application, therefore this criteria is not applicable.

- n. Zone Boundary Determination. At such time that a development is proposed in the vicinity of an area designated Special Area Wetlands, the City may require a site investigation to determine the exact location of the zone boundary. The site investigation shall be performed by a qualified agent such as a biologist from the U.S. Army Corps of Engineers or the Division of State Lands.

The Application has been provided to DSL for review. The DSL response is attached to this report, outlining the requirement for an updated site investigation to be conducted by a qualified agent to determine the exact location of the zone boundary.



Rockaway Beach Zoning Ordinance Section 3.092, Flood Hazard Overlay Zone (FHO). In the FHO zone the following regulations shall apply:

- a. All subdivision proposals shall provide engineered plans consistent with the need to minimize flood damage.

The Application has been provided to the City Engineers for review. Comments from the City Engineers are attached this report, outlining all public improvements be constructed within the public right of way. The public right of way is located outside of the flood zone and therefore are consistent with the requirements of minimizing flood damage.

- b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

The Application has been provided to the City Engineers for review. Comments from the City Engineers are attached this report, outlining all public improvements be constructed within the public right of way. The public right of way is located outside of the flood zone and therefore are consistent with the requirements of minimizing flood damage.

- c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

The Application has been provided to the City Engineers for review. Comments from the City Engineers are attached this report, directing the Applicant to submit an acceptable storm drainage report prior to the final design of the storm drainage system.

- d. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

The Application is less than 50 lots and 5 acres, therefore this criteria is not applicable.

Rockaway Beach Zoning Ordinance Section 3.132, Wetland Notification Overlay Zone. In the Wetland Notification Overlay zone the following regulations shall apply:

1. No person shall do any site preparation work in conjunction with a use permitted in the underlying zoning district in which the property is located, without first notifying the City of the proposed action. Site preparation work is defined as any grading, filling, drainage, excavation or tree removal on the subject property.

The Applicant has not taken any site preparation action, with the exception of the approved site preparation completed during Phase 1.



2. The required notification shall take the form of a description of the location of the property and a sketch describing the site preparation work to be undertaken.

The Applicant has not yet applied for any site preparation work with this Application.

3. Upon receipt of the notification, the City shall meet with the applicant and inform him/her that the subject property and proposed site preparation activities may be subject to the jurisdiction of the Department of State Lands and the US Army Corps of Engineers.

As noted in the response from the DSL, additional permitting and review are necessary prior to site preparation work.

4. The applicant shall contact the Department of State Lands and the US Army Corps of Engineers and seek a determination of whether the subject property and proposed site preparation activities are subject to their jurisdiction.

The DSL has noted in their response that permitting from DSL is required and permitting from the U.S. Army Corps of Engineers may be required before site preparation work may begin.

5. If the US Army Corps of Engineers and/or the Department of State Lands determines that it has jurisdiction, the applicant shall receive a permit from these agencies before site preparation work may begin.

The DSL has noted in their response that permitting from DSL is required and permitting from the U.S. Army Corps of Engineers may be required before site preparation work may begin.

6. If the Department of State Lands and/or the US Army Corps of Engineers determines that it does not have jurisdiction, the applicant may begin site preparation work upon presenting the City with a written confirmation of such a determination, and subject to applicable City requirements.

Based upon the response received from DSL on the initial review of the Application, the DSL has determined that it does have jurisdiction, therefore this standard does not apply.

Rockaway Beach Zoning Ordinance Section 3.140 (6), Tsunami Hazard Overlay Zone (TH). In the TH zone the following regulations shall apply:

Evacuation Route Improvement Requirements. Except single family dwellings on existing lots and parcels, all new development, substantial improvements and land divisions in the Tsunami Hazard Overlay Zone shall incorporate evacuation measures and improvements, including necessary vegetation management, which are consistent with and conform to the adopted Tsunami Evacuation Facilities Improvement Plan. Such measures may include:

- a. On-site improvements: (i) Improvements necessary to ensure adequate pedestrian access from the development site to evacuation routes designated in the Evacuation Route Plan in all



weather and lighting conditions. (ii) Frontage improvements to designated evacuation routes that are located on or contiguous to the proposed development site, where such improvements are identified in the Tsunami Evacuation Facilities Improvement Plan. Such improvements shall be proportional to the evacuation needs created by the proposed development.

The Application does not address on-site evacuation route improvements. The current tsunami evacuation route is located at the termination of Riley Street, past Jackson Street. The Applicant has request the City vacate the eastern portion of Riley Street to allow for the future development of an additional lot, which would block the current evacuation route.

- b. Off-site improvements: Improvements to portions of designated evacuation routes that are needed to serve, but are not contiguous to, the proposed development site, where such improvements are identified in the Tsunami Evacuation Facilities Improvement Plan. Such improvements shall be proportional to the evacuation needs created by the proposed development.

The Application does not address off-site evacuation route improvements. The current tsunami evacuation route is located at the termination of Riley Street, past Jackson Street. The Applicant has request the City vacate the eastern portion of Riley Street to allow for the future development of an additional lot, which would block the current evacuation route.

- c. Evacuation route signage consistent with the standards set forth in the Tsunami Evacuation Facilities Improvement Plan. Such signage shall be adequate to provide necessary evacuation information consistent with the proposed use of the site.

The Application does not address tsunami evacuation route signage.

- d. Evacuation route improvements and measures required by this subsection may include the following: (i) Improved streets and/or all-weather surface paths of sufficient width and grade to ensure pedestrian access to designated evacuation routes in all lighting conditions; (ii) Improved streets and paths shall provide and maintain horizontal clearances sufficient to prevent the obstruction of such paths from downed trees and structure failures likely to occur during a Cascadia earthquake; and (iii) Such other improvements and measures identified in the Evacuation Route Plan.

The Application does not provide for evacuation route improvements.

Rockaway Beach Zoning Ordinance Article 10, Planned Unit Development (PUD). The following regulations apply for PUDs:

- 1. Minimum Lot Size. Planned Unit Developments shall be established only on parcels of land which are suitable for the proposed development and are determined by the planning commission to be in keeping with the intent of this ordinance.



In the 2008 approval of the Nedonna Wave Planned Unit Development, the Planning Commission allowed for the creation of minimum lot sizes which were lesser than the parent R-1 zone.

2. Open Spaces. In all residential developments, or in combination residential-commercial developments, 50% of the total area should be devoted to open space. Of this area, 25% of said open space may be utilized privately by individual owners or users of the PUD; however, 75% of this area should be common or shared open space. The Planning Commission may increase or decrease the open space requirement depending on the particular site and the needs of the development. In no case should the open space be less than 40% of the site.

The Application provides for the required open space, most of which is maintained wetlands and public roadways.

3. Density. The density of a planned development shall not exceed the density of the parent zone, except as more restrictive regulations may be prescribed as a condition of the PUD permit. When calculating density, the gross area is used (total area including street dedications). Areas of public uses may be included in calculating allowable density.

As noted in the Applicant's Memorandum, the with the addition of the proposed two additional lots, the density requirement is still met.

4. Subdivision of Lot Sizes. Minimum area, width, depth, and frontage requirements for subdivision lots in a PUD may be less than the minimums set forth elsewhere in City ordinances, provided that the overall density is in conformance, and that lots conform to the approved preliminary development plan.

As noted previously in this report, the minimum area, width, depth and frontage requirements are lesser than the parent R-1 zone. Density is in conformance with the R-1 zone.

5. Off-Street Parking. Parking spaces shall conform to all provisions of this ordinance, except that the Planning Commission may authorize exceptions where warranted by unusual circumstances.

This standard is typically reviewed for conformance and applied at the time a building permit is required.

6. Signs. All signs of any type within a PUD are subject to design review and approval of the Planning Commission. They shall consider each sign on its merits based on its aesthetic impact on the area, potential traffic hazards, potential violation of property and privacy rights of adjoining property owners, and need for said sign.

The Applicant submitted sign approval with the original PUD application. The Applicant is not seeking modification to these signs.



7. Height Guidelines. The same restrictions shall prevail as permitted outright in the zone in which such development occurs, except that the Planning Commission may allow a variance of heights where it is determined that surrounding property will not be harmed.

The Applicant had previously sought and been approved for variances for height for the PUD. Copies of the Variance request are included in the original application materials.

8. Streets and Roads. Necessary streets and roads within the PUD shall be dedicated to the public and constructed to City standards or shall be private roads maintained by an owner's association and constructed to standards as determined by the Planning Commission and City Engineer.

The City Engineer comments attached to this application direct the Applicant to construct all streets to meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications.

9. Dedication and Maintenance of Facilities. The Planning Commission, or on appeal, the City Council may, as a condition of approval for a PUD require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated to the following uses:

- a. Recreation Facilities: The Planning Commission may require that suitable area for parks or playgrounds be set aside, improved, or permanently reserved for the owners, residents, employees or patrons of the PUD.

No recreation facilities are proposed in the Application.

- b. Common Area: Whenever common area is provided, the Planning Commission or City Council may require that an association of owners or tenants be created into a non-profit corporation under the laws of the State of Oregon, which shall adopt such Articles of Incorporation and By-Laws and adopt and impose such Declaration of Covenants and Restrictions on such common areas that are acceptable to the Planning Commission. Said association, if required, may undertake other functions. It shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessments levied to maintain said common areas for the purposes intended. The period of existence of such association shall not be less than 20 years, and it shall continue thereafter and until a majority vote of the members shall terminate it.

The Applicant has provided common open space and CC&Rs included in the Application for the Planning Commission to consider.

- c. Easements: Easements necessary to the orderly extension of public utilities may be required as a condition of approval.



The comments provided by the City Engineer direct all public improvements to be constructed within the existing public right of way or right of way to be dedicated to the City as part of the development.

C. STAFF SUMMARY

The Applicant has requested approval of modifications to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008. The requested modifications would allow the Applicant to develop Phase 2 in two sub-phases and to create two additional lots. In addition to these modifications, the Applicant has also requested the City vacate the east stub of Riley Street to form an additional future building lot.

The Memorandum provided with the Application materials contains history of the previously approved application, reasons for the requested modifications, and responses to some of the criteria of the Rockaway Beach Zoning Ordinance.

Staff have solicited comments from other affected agencies and stakeholders, and those comments have been included in the record. Most notably, the City Engineer has identified necessary permitting and improvements to existing City sewer facilities.

In general, necessary public infrastructure improvements that are triggered by a proposed development must be provided by the developer of the project. If approved, conditions of approval related to infrastructure improvements can be attached, which must be met prior to final plat approval.

Staff have identified the substantive criteria for review of the request by the Planning Commission, and included the criteria in this report, along with comments where appropriate. However, at the public hearing any party may provide testimony addressing these criteria or other criteria the party believes is applicable to the request.

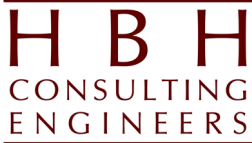
D. CONCLUSION

The Planning Commission should carefully consider the request, including all oral and written testimony on record and presented at the public hearing, including comments from the City Engineer, government agencies, and other interested parties. After considering testimony as it relates to this applicable criteria, the Planning Commission will need to make a decision on the request.

If the Commission determines that the modifications to the Nedonna Wave Planned Unit Development meet the standards of the Rockaway Beach Zoning Ordinances, it can make a motion to approve the request, including a statement that generally reflects the facts and rationale relied upon to reach the decision. The motion should also direct staff to prepare findings, conclusions, and a final order to implement the decision.

A motion to deny the request should set forth the general facts and rationale for the decision and direct staff to prepare the final order.

A decision to approve or deny the request will be subject to a 15-day appeal period that will begin after written findings to support the decision have been signed by the Planning Commission Chair.



501 E First Street
Newberg, Oregon 97132
phone 503-554-9553
fax 503-537-9554

June 12, 2024

Mary Johnson
City Planner
PO Box 5
276 S Hwy 101
Rockaway Beach, OR 97136

Re: Nedonna Wave PUD Phase II – City Engineer Conditions of Approval

Dear Mary,

The following conditions of approval should be included as part of the staff report for Nedonna Wave PUD Phase II.

- 1) All public improvements, not limited to sewer, water, storm and street design, and construction shall meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications.
- 2) The applicant shall submit an acceptable storm drainage report prior to the final design of the storm drainage system.
- 3) The applicant shall obtain a 1200-C permit from Oregon DEQ for the erosion control plans.
- 4) All sanitary sewer design shall obtain written approval by DEQ, including a pre-design report for the new regional pump station to serve the development.
- 5) All public underground utilities including, but not limited to, water, gravity sanitary sewer, sanitary sewer force main, and storm drainage, installed on Phase 2 or for future use by Phase 2 or have not been in use since constructed, shall be tested at the expense of the owner and accepted by the City Engineer of Record.
- 6) The following off-site improvements shall be provided by the applicant/owner:
 - a) Regional sanitary sewer pump station and related infrastructure including but not limited to the following: three-phase submersible duplex pump station with controls, davit crane, on-site generator, telemetry, lighting, and fencing. It is not clear if the proposed sanitary sewer pump station site at the corner of Riley Street and Jackson Street will be sufficient to house the necessary infrastructure improvements. Finally, the tract on which the pump station will be located is to be dedicated to City.
 - b) Sanitary sewer force main from the regional pump station to the existing White Dove pump station.
 - c) Extend the White Dove sanitary sewer force main from NW 23rd Ave to the pump station at NW 17th Ave.
 - d) All public improvements shall be constructed within existing public ROW or ROW that will be dedicated to the City as part of this development. It is our understanding the southern half of Riley Street was constructed on the neighboring property without ROW dedication or a public easement.

Additional comments are as follows, while not necessarily conditions of approval, are in regard to the proposed modification request:

- A. Per Section D103.4 of the Oregon Fire Code, a fire truck turnaround is required when access roads exceed 150-feet in length. The fire truck turnaround at the intersection of Riley Street and Jackson Street shall remain as previously approved and the ROW is not to be vacated as requested by the applicant as part of the modification request to add an additional lot. If Jackson Street is extended south in the future, ROW vacation can be looked into at that time, if a fire truck turnaround is no longer necessary depending on the future road layout.
- B. Per Section D107.1 of the Oregon Fire Code, “Developments of one- or two-family dwellings where the number of dwelling units exceeds 30 shall be provided with two separate and approved fire apparatus access roads. Exceptions:
 - a. Where there are more than 30 dwelling units on a single public or private fire apparatus access road and all dwelling units are equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1, 903.3.1.2, 903.3.1.3, access from two directions shall not be required.
 - b. The number of dwelling units on a single fire apparatus access road shall not be increased unless fire apparatus access roads will connect with future development, as determined by the fire code official.”

It appears that Beach Street is the only fire apparatus access road serving the entire Nedonna Beach area, which far exceeds 30 dwelling units. Therefore, unless all dwelling units in the Nedonna Beach area are equipped with an approved automatic sprinkler system, no additional dwelling units could be allowed per the Oregon Fire Code.

- C. Based on civil engineering drawings prepared by Morgan Civil Engineering dated 11/8/2020, proposed lot #22 and #15 do not have the minimum required 25-foot of ROW frontage required per City of Rockaway Beach subdivision ordinance Section 35(2), as only approximately 15-feet of frontage is provided at the north end of Jackson Street for lot #22 and approximately 14-feet for lot #15 along Riley Street.

Should you have any questions, please contact me.

Sincerely,
HBH Consulting Engineers, Inc.

Andrey Chernishov, PE, CWRE
Assistant City Engineer



Wetland Land Use Notice Response

Response Page

Department of State Lands (DSL) WN# *

WN2024-0351

Responsible Jurisdiction

Staff Contact

Mary Johnson

Jurisdiction Type

City

Municipality

Rockaway Beach

Local case file

PUD-24-01

County

Tillamook

Activity Location

Township	Range	Section	QQ section	Tax Lot(s)
02N	10W	20	AB	10200,104 00,10500

Street Address

Address Line 2

City

State / Province / Region

Postal / Zip Code

Country

Tillamook

Latitude

45.649567

Longitude

-123.934048

Wetland/Waterway/Other Water Features

- ☒ There are/may be wetlands, waterways or other water features on the property that are subject to the State Removal-Fill Law based upon a review of wetland maps, the county soil survey and other available information.
- ☒ The county soil survey shows hydric (wet) soils on the property. Hydric soils indicate that there may be wetlands.
- ☒ This property includes a compensatory mitigation.

Your Activity

- ☒ It appears that the proposed project **will** impact wetlands and **requires** a State Permit.

- An onsite inspection by a qualified wetland consultant is recommended prior to site development to determine if the site has wetlands or other waters that may be regulated. The determination or delineation report should be submitted to DSL for review and approval. Approved maps will have a DSL stamp with approval date and expiration date.

Applicable Oregon Removal-Fill Permit Requirement(s)

- A state permit is required for 50 cubic yards or more of fill removal or other ground alteration in wetlands, below ordinary high water of waterways, within other waters of the state, or below highest measured tide.

DSL Review

Wetland Ecologist Comments

There is an expired wetland delineation WD2004-0008 for the Phase 2-3 Nedonna Wave PUD site. That delineation supported the permit for wetland fill, APP36702, approved for Phases 1-3, but is now expired, . The accompanying Compensatory Wetland Mitigation for that permit, RGL 2928, was approved as completed.

A review of best available information, including aerial imagery and LiDAR does not appear to show fill in all of the locations authorized in APP36702. APP36702 was annually renewed, which is typical for an application that has not completed its fill, until the year that the Compensatory Wetland Mitigation was approved, in 2012-2013.

A new wetland delineation, reviewed and approved by DSL, is required in order to determine if there is a change in wetland boundaries and if a wetland removal-fill permit is required. DSL recommends that this delineation be sufficiently sized to include both Phases 2 and 3. It may be renewed for another 5 years if there are no changes before it expires in 5 years after approval.

The applicant/consultant should coordinate with the DSL permitting specialist for Tillamook County prior to submitting a permit application due to the complexity of the permitting record. If incomplete fill from APP36702 is proposed for completion for Phases 2-3, Compensatory Wetland Mitigation may not be required.

This is a preliminary jurisdictional determination and is advisory only.

This report is for the State Removal-Fill law only. City or County permits may be required for the proposed activity.

- A Federal permit may be required by The Army Corps of Engineers: (503)808-4373

Contact Information

- For information on permitting, use of a state-owned water, wetland determination or delineation report requirements please contact the respective DSL Aquatic Resource, Proprietary or Jurisdiction Coordinator for the site county. The current list is found at: <http://www.oregon.gov/dsl/ww/pages/wwstaff.aspx>
- The current Removal-Fill permit and/or Wetland Delineation report fee schedule is found at: <https://www.oregon.gov/dsl/WW/Documents/Removal-FillFees.pdf>

Response Date

6/13/2024

Response by:

Daniel Evans

Response Phone:

503-428-8188



**CITY OF ROCKAWAY BEACH
PLANNING COMMISSION ACTION**

**STAFF REPORT
SUPPLEMENTAL NO. 1**

Case File #PUD-24-1
Hearing Date: June 20, 2024

STAFF RECOMMENDATION

Approval of the Applicants requests to (1) develop Phase 2 in two sub-phases, instead of one phase, (2) create two lots instead of one lot at the north end of Jackson Street, numbered as lots 21 and 22 on the plans submitted with this application, and to (3) create four lots instead of three lots out of the lots numbered as 13, 14, 15, and 16 on the plans submitted with this application, with conditions as identified below; and

Denial of the Applicants request to vacate the east stub of Riley Street at Jackson Street.

In the event of an approval, staff offer the following conditions for the Commissioner's consideration:

1. Approval is based upon the submitted plan. Any substantial change in the approved plan shall be submitted to the City of Rockaway Beach as a new application for a PUD amendment.
2. The Applicant shall submit drafts of appropriate deed restrictions or protective covenants to provide for the maintenance of common areas and to assure that the objectives of the PUD shall be followed.
3. The Applicant shall record a deed restriction or other covenant applicable to each lot in the subdivision, in a form acceptable to the State of Oregon Fish and Wildlife Department, that indemnifies ODFW for any damage or inconvenience to persons, real property, or personal property caused by big game and furbearing animals.
4. The Applicant shall submit evidence that all required improvements of Section 44 of the Rockaway Beach Subdivision Ordinance have been met.
5. The Applicant shall submit evidence that the requirements for monuments and survey as identified in Section 45 and 46 of the Rockaway Beach Subdivision Ordinance have been met.
6. Within one year the Applicant shall submit a final portion plat in conformance with the approved plan and Sections 30 and 31 of the Rockaway Beach Subdivision Ordinance. The Planning Commission, upon written request by the Applicant, may grant an extension of the tentative plan approval for a period of one year. Failure to obtain a time extension or final plat approval prior to expiration of the tentative plan shall render the tentative plan approval void. Such yearly time extensions will be necessary until all phases of the development have been granted final plat approval.
7. Any utilities serving the development shall be installed underground.
8. All public underground utilities including, but not limited to, water, gravity sanitary sewer, sanitary sewer force main, and storm drainage, installed on Phase 2 or for future use by Phase 2 or have not been used since constructed, shall be tested at the expense of the Applicant and accepted by the City Engineer.



9. All stream crossings, including utilities, are to comply with fish passage requirements. The Oregon Department of Fish and Wildlife shall approve in advance any stream crossing.
10. The development shall avoid entering City designated riparian setback of 15' for McMillan Creek. If site constraints will not allow for this, the Applicant coordinate with Oregon Department of Fish and Wildlife to develop a plan to mitigate for these impacts and shall provide evidence of approval. Any development within these areas which could result in a loss of fish and wildlife habitat would require that the impact be mitigated consist with current habitat mitigation standards.
11. The Applicant shall construct all public improvements, not limited to sewer, water, storm and street design, and construction shall meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications. The cost for plan review by the City Engineer shall be the responsibility of the Applicant/Developer.
12. The Applicant shall submit an acceptable storm drainage report prior to final design of the storm drainage system, including basin map and flow rates, for review by the City Engineer.
13. The Applicant shall provide evidence that a 1200C Permit has been obtained from the Oregon Department of Environmental Quality for erosion control prior to grading and construction of the development.
14. The Applicant shall provide evidence that all sanitary sewer designs have received written approval from the Department of Environmental Quality, including a pre-design report for the new regional pump station to serve the development.
15. The Applicant shall provide the following off-site improvements:
 - a. Regional sanitary sewer pump station and related infrastructure including, but not limited to the following: three-phase submersible duplex pump station with controls, davit crane, on-site generator, telemetry, lighting, and fencing. The tract on which the pump station is to be located is to be dedicated to the City.
 - b. Sanitary sewer force main from the regional pump station to the existing White Dove pump station.
 - c. Extend the White Dove sanitary sewer force main from NW 23rd Avenue to the pump station at NW 17th Avenue.
 - d. All public improvements shall be constructed within the existing public right-of-way or right-of-way that will be dedicated to the City as part of this development.
16. The Applicant shall provide a traffic study for the development, including peak season and emergency evacuation needs, as well as the intersection of US Highway 101 and Beach Street.
17. The Applicant shall complete a wetland delineation to be reviewed and approve by the Department of State Lands to determine if there is a change in the wetland boundaries and if a wetland removal-fill permit is



required. This delineation shall be sufficiently sized to include both Phases 2 and 3. The approval from Department of States Lands must be current (no more than 2 years old).

18. The Applicant shall submit evidence that all necessary permits and approval from the U.S. Army Corps of Engineers and Oregon Department of State Lands have been obtained for impacts to wetlands in accordance with the approval plan.
19. The Applicant shall submit evidence of approval from the State Fire Marshall for all fire hydrant locations, street widths, and applicable Fire Code requirements.
20. Prior to final plat approval, the Applicant shall be responsible for providing and installing all improvements including sewer, water, street, stormwater management facilities, street lights, street name signs, and street trees in accordance with Subdivision Ordinance Section 44 entitled Improvements Required, and in accordance with the City Engineer approved plans.
21. The Applicant shall be responsible for all costs necessary for off-site public infrastructure improvements that are triggered by the proposed development.
22. The Applicant shall establish a homeowner's association for the development, and all open space within the development shall be owned and maintained by the homeowner's association. The required homeowner's association shall be responsible for any and all necessary stormwater maintenance facilities that serve the development. The required homeowner's association shall be responsible for maintaining the storm water quality tracts.



**CITY OF ROCKAWAY BEACH
PLANNING COMMISSION ACTION**

STAFF REPORT

Case File #PUD-24-1

Meeting Date: July 18, 2024

APPLICANT: Nedonna Development LLC

AGENT FOR APPLICANT: Dean N. Alterman

REQUEST: The Applicant is requesting a modification to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008. The Applicant seeks the following modifications to Phase 2 of the 2008 approval:

1. To develop Phase 2 in two sub-phases, instead of one phase;
2. To create two lots instead of one lot at the north end of Jackson Street (identified as lot 24 on the 2008 approved plan), identified as lots 21 and 22 on the plans submitted with the Application; and
3. To create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street (identified as Lots 14, 15, and 16 on the 2008 approved plan), identified as lots 13, 14, 15 and 16 on the plan submitted with the Application.

At the public hearing, the Applicant withdrew the request to provide that when the owner of the land to the south extends Jackson Street south into that property, the City will vacate the east stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.

STAFF RECOMMENDATION

Approval of the Applicants requests to (1) develop Phase 2 in two sub-phases, instead of one phase, (2) create two lots instead of one lot at the north end of Jackson Street, numbered as lots 21 and 22 on the plans submitted with this application, and to (3) create four lots instead of three lots out of the lots numbered as 13, 14, 15, and 16 on the plans submitted with this application, with conditions as identified below.

In the event of an approval, Staff offer the following conditions for the Commissioner's consideration:

1. Approval is based upon the submitted plan. Any substantial change in the approved plan shall be submitted to the City of Rockaway Beach as a new application for a PUD amendment.
2. The Applicant shall submit drafts of appropriate deed restrictions or protective covenants to provide for the maintenance of common areas and to assure that the objectives of the PUD shall be followed.



3. The Applicant shall record a deed restriction or other covenant applicable to each lot in the subdivision, in a form acceptable to the State of Oregon Fish and Wildlife Department, that indemnifies ODFW for any damage or inconvenience to persons, real property, or personal property caused by big game and furbearing animals.
4. The Applicant shall submit evidence that all required improvements of Section 44 of the Rockaway Beach Subdivision Ordinance have been met.
5. The Applicant shall submit evidence that the requirements for monuments and survey as identified in Section 45 and 46 of the Rockaway Beach Subdivision Ordinance have been met.
6. Within one year the Applicant shall submit a final portion plat in conformance with the approved plan and Sections 30 and 31 of the Rockaway Beach Subdivision Ordinance. The Planning Commission, upon written request by the Applicant, may grant an extension of the tentative plan approval for a period of one year. Failure to obtain a time extension or final plat approval prior to expiration of the tentative plan shall render the tentative plan approval void. Such yearly time extensions will be necessary until all phases of the development have been granted final plat approval.
7. Any utilities serving the development shall be installed underground.
8. All public underground utilities including, but not limited to, water, gravity sanitary sewer, sanitary sewer force main, and storm drainage, installed on Phase 2 or for future use by Phase 2 or have not been used since constructed, shall be tested at the expense of the Applicant and accepted by the City Engineer.
9. All stream crossings, including utilities, are to comply with fish passage requirements. The Oregon Department of Fish and Wildlife shall approve in advance any stream crossing.
10. The development shall avoid entering City designated riparian setback of 15' for McMillan Creek. If site constraints will not allow for this, the Applicant coordinate with Oregon Department of Fish and Wildlife to develop a plan to mitigate for these impacts and shall provide evidence of approval. Any development within these areas which could result in a loss of fish and wildlife habitat would require that the impact be mitigated consist with current habitat mitigation standards.
11. The Applicant shall construct all public improvements, not limited to sewer, water, storm and street design, and construction shall meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications. The cost for plan review by the City Engineer shall be the responsibility of the Applicant/Developer.
12. The Applicant shall submit an acceptable storm drainage report prior to final design of the storm drainage system, including basin map and flow rates, for review by the City Engineer.
13. The Applicant shall provide evidence that a 1200C Permit has been obtained from the Oregon Department of Environmental Quality for erosion control prior to grading and construction of the development.\



14. The Applicant shall provide evidence that all sanitary sewer designs have received written approval from the Department of Environmental Quality, including a pre-design report for the new regional pump station to serve the development.
15. The Applicant shall provide the following off-site improvements:
 - a. Regional sanitary sewer pump station and related infrastructure including, but not limited to the following: three-phase submersible duplex pump station with controls, davit crane, on-site generator, telemetry, lighting, and fencing. The tract on which the pump station is to be located is to be dedicated to the City.
 - b. Sanitary sewer force main from the regional pump station to the existing White Dove pump station.
 - c. Shall pay their proportional share to extend the White Dove sanitary sewer force main from NW 23rd Avenue to the pump station at NW 17th Avenue.
16. All public improvements shall be constructed within the existing public right-of-way or right-of-way that will be dedicated to the City as part of this development.
17. The Applicant shall provide a traffic study for the development, including peak season and emergency evacuation needs, as well as the intersection of US Highway 101 and Beach Street.
18. The Applicant shall complete a wetland delineation to be reviewed and approved by the Department of State Lands to determine if there is a change in the wetland boundaries and if a wetland removal-fill permit is required. This delineation shall be sufficiently sized to include both Phases 2 and 3. The approval from the Department of States Lands must be current (no more than 2 years old).
19. The Applicant shall submit evidence that all necessary permits and approval from the U.S. Army Corps of Engineers and Oregon Department of State Lands have been obtained for impacts to wetlands in accordance with the approval plan.
20. The Applicant shall submit evidence of approval from the State Fire Marshall for all fire hydrant locations, street widths, and applicable Fire Code requirements.
21. The Applicant shall submit evidence that tsunami evacuation routes are sufficient to meet the proportional evacuation needs created by the proposed development.
22. Prior to final plat approval, the Applicant shall be responsible for providing and installing all improvements including sewer, water, street, stormwater management facilities, street lights, street name signs, and street trees in accordance with Subdivision Ordinance Section 44 entitled Improvements Required, and in accordance with the City Engineer approved plans.
23. The Applicant shall be responsible for all costs necessary for off-site public infrastructure improvements that are triggered by the proposed development.



24. The Applicant shall establish a homeowner's association for the development, and all open space within the development shall be owned and maintained by the homeowner's association. The required homeowner's association shall be responsible for any and all necessary stormwater maintenance facilities that serve the development. The required homeowner's association shall be responsible for maintaining the storm water quality tracts.



NEDONNA WAVE PLANNED UNIT DEVELOPMENT PHASE 2

WHY ARE WE HERE?

In 2008, the Rockaway Beach City Council approved the Nedonna Wave Planned Unit Development (PUD), a 29-lot, phased development. The Applicant is now seeking to make modifications to previously approved PUD, and is seeking tentative plan approval for these modifications.

The City's role is to ensure that both public and private development are aligned with the standards set out in the City's guiding documents, such as the Comprehensive Plan, Zoning Ordinance and Subdivision Ordinance. The City provides a forum for public hearings and guidance to property owners to ensure compliance with City standards.



PLANNING COMMISSION'S ROLE

The City of Rockaway Beach Planning Commission conducts quasi-judicial and legislative public hearings on certain land use applications, such as this one.

As the decision-making body, the Planning Commission, must base its review and decision of the criteria established within the City's Ordinances.

They may not ignore applicable criteria or make decisions based on factors or arguments not related to the applicable criteria.

The Applicant is requesting a modification to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008. The Applicant seeks the following modifications to Phase 2 of the 2008 approval:

- (1) To develop Phase 2 in two sub-phases, instead of one phase;
- (2) To create two lots instead of one lot at the north end of Jackson Street (identified as lot 24 on the 2008 approved plan), identified as lots 21 and 22 on the plans submitted with the Application; and
- (3) To create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street (identified as Lots 14, 15, and 16 on the 2008 approved plan), identified as lots 13, 14, 15 and 16 on the plan submitted with the Application.

The Applicant withdrew the request regarding the vacation of the east stub of Riley Street.

(4) Provide that when the owner of the land to the south extends Jackson Street south into that property, the City will vacate the east stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.

If the City grants the three modification requests, then the total number of lots in Nedonna Wave would increase above the 29-lots originally approved, but not above the 33-lot density limit that the City identified as applicable in the 2008 PUD approval.

Since the city already issued its final approval of the final development plan under Section 10.060 and has approved the entire project as a 29-lot PUD , the only current questions are:

- Will the City allow the Applicant to plat the remaining lots in two phases instead of in one?
- Will the City allow an increase in the number of lots in Nedonna Wave from 29-lots, to 31-lots?

STAFF RECOMMENDATION

Based on the applicable criteria, Staff recommend:

Approval of the Applicant's requests to modify Phase 2 of the 2008 approval with the conditions noted in the Staff Report.

For clarity, Staff recommend noting that the Applicant has withdrawn the request to vacate the east end of Riley Street.

CONCLUSION

If the Commission determines that the modifications to the Nedonna Wave Planned Unit Development meet the standards of the Rockaway Beach Zoning Ordinances, it can make a motion to approve the request, including a statement that generally reflects the facts and rationale relied upon to reach the decision. The motion should also direct staff to prepare findings, conclusions, and a final order to implement the decision.

A motion to deny the request should set forth the general facts and rationale for the decision and direct staff to prepare the final order.

A decision to approve or deny the request will be subject to a 15-day appeal period that will begin after written findings to support the decision have been signed by the Planning Commission Chair.



DEAN N. ALTERMAN
ATTORNEY

D: (503) 517-8201
DEAN@ALTERMAN.LAW

July 4, 2024

By e-mail only (cityplanner@corb.us)

Rockaway Beach Planning Commission
C/o Mary Johnson, City Planner
276 Highway 101 South
Rockaway Beach, Oregon 97136

Re: Application of Nedonna Development, LLC (Anna Song)
Phase 2 approval for Nedonna Wave planned unit development
Your file no. PUD #24-1
Our File No. 5701.001

Dear Chair Hassell and Commission Members:

I'm submitting this letter on behalf of Nedonna Development, LLC (Anna Song), the applicant for the approval of Phase 2 of Nedonna Wave, with modifications. This letter is the applicant's final legal argument.

Compliance with the city zoning code

None of the public comment was directed toward any of the applicable criteria from the Rockaway Beach zoning code. As your city planner stated in the public hearing, the city must make its decision based solely on the applicable criteria of the city code.

Compliance with private covenants

Two commenters said that several of the houses in Phase 1 did not comply with a private covenant that required each house to have a garage. Private covenants are not land use ordinances and are not land use criteria.

Cities and counties are not required to enforce private covenants, and in any case whether the individual houses in Phase 1 comply with the private

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covenants for Phase 1 is a matter for the homeowners in Phase 1 to enforce against their neighbors, if they should so choose.

Wetlands questions

Four or five commenters said that Phase 2 will reduce the wetlands that Mrs. Song was required to build as part of her approval of Phase 1.

Mrs. Song completed the wetland mitigation for all phases of the property when she built Phase 1. She has submitted evidence from her excavation contractor, Bill Howard, and from her wetlands consultant, Christine McDonald, to show that Phase 2 won't reduce any wetlands except for the accidental wetland area in Jackson Street, which is an unimproved public street and not part of the applicant's property.

One commenter, Susan Norris, described three pools of water, which based on her estimated measurements have a total surface area of about 350 square feet or less. She said that one is on the north side of Riley Street east of Kittiwake Drive, one is on the east side of Kittiwake about 70 feet from (north of) Riley Street, and one is on the east side of Kittiwake near Song Street. (Susan Norris letter of June 20, 2024.)

You may compare Ms. Norris's description to the wetlands delineation of Christine McDonald that I included in my memorandum to you of June 27. Ms. Norris's first area, at Riley and Kittiwake, corresponds to the area that Ms. McDonald circled in blue. It lies between Riley Street and the two southernmost lots on the east side of Riley Street (Lots 13 and 14), not in the area to be developed.

Ms. Norris describes the second pool as being about 70 feet north of Riley Street, which would put it on the north side of proposed Lot 13, in the common open space.

Ms. Norris described the third pool as being east of Kittiwake near Song Street. That area is also common open space, and is not included in any of the proposed lots.

Nesting eagles

One commenter said that bald eagles nest in the wetland area. Mrs. Song does not propose to alter the wetland area.

The ten-year time limit of ORS 92.040

Several commenters suggested that the city's approval of the Nedonna Wave planned unit development is no longer valid because the city approved the PUD more than ten years ago, and in their view ORS 92.040(3) sets a ten-year time limit before approvals of PUDs expire.

ORS 92.040 applies only to subdivisions and partitions. The present application is an application to subdivide property in accordance with the current zoning of the property, which includes the PUD overlay, and in accordance with the current zoning code.

Summary

Mrs. Song and her company have demonstrated compliance with the applicable criteria from your zoning code. She and I ask that you approve her application for Phase 2 of the Nedonna Wave PUD.

Very truly yours,

ALTERMAN LAW GROUP PC

Dean N. Alterman

Dean N. Alterman

Copy: Mrs. Anna Song (e-mail only)



City of Rockaway Beach

Planning Commission Meeting Minutes

Date: Thursday, July 18, 2024

Location: Rockaway Beach City Hall, 276 HWY 101 - Civic Facility

1. CALL TO ORDER

Planning Commission President Hassell called the meeting to order at 5:03 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Start time: [05:03:18 PM \(00:03:14\)](#)

[Position #2 - Stephanie Winchester: Present](#)

[Position #3 - Pat Olson: Present \(arrived at 5:21:42 p.m.\)](#)

[Position #7 - Georgeanne Zedrick: Present](#)

[Position #5 - Bill Hassell: Present](#)

[Position #1 - Zandra Umholtz: Present](#)

[Position #4 - Sandra Johnson: Present](#)

[Position #6 - Nancy Lanyon: Present](#)

President: Bill Hassell

Commissioners: Sandra Johnson, Nancy Lanyon, Pat Olson, Zandra Umholtz, Stephanie Winchester and Georgeanne Zedrick

Council Members: Charles McNeilly, Mayor

Staff: Luke Shepard, City Manager; and Mary Johnson, City Planner

4. APPROVAL OF MINUTES

Start time: [05:04:01 PM \(00:03:57\)](#)

Umholtz noted a correction to the June 20, 2024 meeting minutes.

Johnson made a **motion**, seconded by Umholtz, to amend the June 20, 2024 minutes as corrected.

The **motion carried** unanimously.

Johnson made a **motion**, seconded by Umholtz, to approve the June 20, 2024 minutes as amended.

The **motion carried** unanimously.

5. PRESENTATIONS, GUESTS & ANNOUNCEMENTS

a. Presentation: Strategic Plan – SSW Consulting

Sara Singer Wilson, SSW Consulting, gave a presentation providing an overview of the Strategic Plan. Wilson encouraged all to take the Strategic Plan survey. Shepard noted that there were nearly 400 survey responses thus far. Wilson answered clarifying questions.

6. STAFF REPORTS

Start time: [05:14:09 PM \(00:14:05\)](#)

City Planner Johnson provided updates on a zoning permit issued in June, the Salmonberry Trail project, and the FEMA Biological Opinion (BiOp).

7. PUBLIC HEARING – None Scheduled

8. CITIZEN INPUT ON NON-AGENDA ITEMS

Start time: [05:21:20 PM \(00:21:16\)](#)

Ross Dodge referred to his submitted written testimony and expressed concerns regarding zoning permit #23-56 approving use of a food cart.

9. OLD BUSINESS

Start time: [05:27:06 PM \(00:27:02\)](#)

McNeilly recused himself from the meeting room.

a. PUD #24-1: Consideration of an Application from Nedonna Development LLC, for a modification to the Planned Unit Development (PUD) that was approved by the City in 2008 for the property identified on Tillamook County Assessor's Map as 2N1020AB Tax Lots 10200, 10400, and 10500.

Hassell explained that the Commission held a Public Hearing on this matter on June 20, 2024, and after the staff report, receipt of correspondence, applicant's presentation, public testimony, applicant rebuttal, the Commission moved to continue the Public Hearing until June 27, 2024.

Hassell stated the commission held a continued Public Hearing on this matter on June 27, 2024, and after the receipt of correspondence, public testimony, applicant rebuttal, and Commission questions, the Commission moved to close the Public Hearing and keep the record open until July 4, 2024 to allow for final written arguments from the applicant. Hassell reviewed the order of business.

Hassell invited Commissioners to declare any conflicts of interest. None were declared.

Hassell invited Commissioners to declare any ex-parte contact since the last hearing. Lanyon reported that she visited the site that day and she identified herself to a homeowner who inquired, indicating that she was looking at the land as it related to the maps. Commissioners Johnson, Umholtz, Lanyon and Hassell disclosed that they attended the July 17, 2024 City Council meeting and heard comments from two people who had previously testified at the Planning Commission meeting regarding the application. None of the Commissioners spoke with the people who testified.

City Planner Johnson provided an overview of the application and the Staff Report with a PowerPoint presentation. (A copy of the presentation is included in the hearing record.) It was noted that the Staff Report was available on the website.

Winchester asked questions of staff regarding how to assess the request to allow Phase 2 to be completed in two sub-phases. City Planner Johnson responded that there is little in the code to assess this request, however the PUD code states that a schedule be provided if the development is to be completed in stages. In this case, no such schedule had been provided by the Applicant. Lanyon stated that it would be challenging for the Applicant to provide a schedule, considering the amount of work that would need to be completed before final plat approval. Commissioner Johnson asked if a condition of approval could be added to provide a timeline in which the requested sub-phases were to be completed. City Planner Johnson responded the approval could be conditioned in such a manner to require the Applicant complete the sub-phasing in a reasonable timeframe. She further elaborated that many of the required permits also have their own expirations which would dictate how quickly the Applicant needed to complete the sub-phases or obtain new permits, should they expire. City Planner Johnson did note that the City's code does not provide any deadlines after the first phase had been completed.

Umholtz stated that she believed many of the concerns shared by the public would be addressed by the reports required to be completed prior to final plat approval.

Zedrick asked questions of staff regarding how the final plat approval would happen for the sub-phases. City Planner Johnson responded that the Applicant could bring forth both sub-phases for final plat approval at the same time or the Applicant could bring forth the first sub-phase for approval, followed by the second sub-phase at a later time.

Commissioner Johnson asked staff to explain what the purpose of a PUD is. City Planner Johnson responded that a PUD is an overlay to the underlying subdivision. PUDs allow developers more flexibility to build housing that does not need to meet the standards of the underlying zoning designation, with the exception of density of the parent zone. This type of development style requires more open space than the underlying subdivision and allows developers to avoid impacts to sensitive areas, such as wetlands.

Zedrick stated that she thought the requests to create two lots instead of one, and four lots instead of three should be denied.

Winchester stated that the Applicant did not provide a schedule of the phasing, as required by our code, nor did the Applicant provide an adequate response to this question when she asked questions regarding the phasing during the hearing as to why this request was needed. For these reasons, she felt this request should be denied. She continued that due to the density of the PUD not yet having been met during the previous approval, she believed they were obligated to allow the Applicant to create an additional two lots. Umholtz asked Winchester to elaborate on why she would not support the requested sub-phasing. Winchester responded that the Applicant had been granted a phased PUD in 2008 and that since this old approval is carrying over, she did not want to see the application continued out even further through the granting of additional sub-phases. She did not want to see the

granting of the sub-phasing, since the Applicant provided no schedule for the phasing, as the Applicant could simply apply for final approval of the first sub-phase, then wait another fifteen-years before seeking final approval for the second sub-phase. Umholtz agreed with Winchester's comments, however she did not see the harm in allowing the phasing, as it would simply allow the current open space to remain undeveloped for a longer period of time and that the Applicant would likely have higher regulatory standards to adhere to as time passed. Umholtz further commented that she understood the Applicant had made the request for the sub-phasing for financial reasons, but that was not something they could take into their assessment.

Lanyon commented that the PUD had to be honored. Commissioner Johnson clarified for Lanyon that if the application was denied, the Applicant could proceed with their original approval, but would still be subject to final approval.

Commissioner Johnson stated that she had reviewed the ORS mentioned in the public comment and agreed with the City's attorney that it did not give the Planning Commission authority to deny the application based upon a ten-year statute of limitations. She stated that this was a good example of why the City should amend its code to put time limitations on all phases of PUD approvals, as none currently exist. She further commented that based upon the criteria, she believed the request for the additional building lots would need to be approved. There was further Commissioner discussion regarding the request to modify lots and concerns expressed that there wasn't criteria to support denial. Commissioner Johnson asked staff if the request for the additional building lots could be denied based on those lots not meeting the minimum lot size of the underlying zone. City Planner Johnson responded that due to the PUD overlay, the only criteria of the underlying zone that needed to be maintained was density.

Commissioner Johnson asked questions of staff regarding how CC&Rs are enforced. City Planner Johnson responded that the City does not enforce CC&Rs and that they are enforceable by private property owners or through a HOA.

Commissioner Johnson asked questions of staff regarding developing wetland properties. City Planner Johnson responded that whenever a building application is received for a property with potential wetlands, she submits a wetland use notification to the Department of State Lands (DSL) for review and comment. DSL has 30 days to respond and inform the City if additional permitting or other restrictions are necessary to avoid or mitigate wetland impacts.

After discussion of desired action, Shepard suggested a recess for staff to draft a motion.

Hassell called for a recess at 6:29 p.m.

Hassell called the meeting back to order at 6:37 p.m.

Commissioner Johnson made a **motion**, seconded by Olson, that, based on the facts and evaluations presented in the City Staff Report, and testimony received, the Planning Commission approve modifications requested in the Planned Unit Development Application Number 24-01 to the following with the conditions outlined in the Staff Report:

- (1) Create two lots instead of one lot at the north end of Jackson Street, identified as lots 21 and 22 on the plans submitted with the Application; and

- (2) Create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street, identified as lots 13, 14, 15 and 16 on the plan submitted with the Application.

I further move that the Applicant's request to Develop Phase 2 in two sub-phases, instead of one phase be denied and direct staff to prepare findings and conclusions, and authorize the Chair to sign an order to that effect.

The Applicant's request to vacate the East stub of Riley Street was withdrawn by the Applicant during the public hearing and is not subject to consideration in this request.

The **motion carried** by the following vote:

[Position #4 - Sandra Johnson: Motion](#)

[Position #3 - Pat Olson: 2nd](#)

[Position #2 - Stephanie Winchester: Approve](#)

[Position #3 - Pat Olson: Approve](#)

[Position #7 - Georgeanne Zedrick: Approve](#)

[Position #5 - Bill Hassell: Approve](#)

[Position #1 - Zandra Umholtz: Approve](#)

[Position #4 - Sandra Johnson: Approve](#)

[Position #6 - Nancy Lanyon: Approve](#)

10. NEW BUSINESS

a. Election of Planning Commission President and Vice-President

Start time: [06:39:43 PM \(01:39:39\)](#)

Zedrick made a **motion**, seconded by Johnson, to continue with Bill Hassell as President and Zandra Umholtz as Vice-President.

The **motion carried** unanimously.

b. Discussion Regarding Updates to Mobile Food Unit Pods

Start time: [06:40:40 PM \(01:40:36\)](#)

City Planner Johnson gave a presentation on suggested administrative updates for mobile food unit pods (multiple food trucks), explaining that the code needed to be clarified to address permitting challenges. She noted there was also an opportunity to better align the City's ordinance with the requirements of the Health Department to help streamline the process for applicants. Johnson stated that staff will prepare a draft of the proposed updates which will be presented at an upcoming Planning Commission meeting for consideration.

City Planner Johnson commented that the public testimony received regarding a mobile food unit that was permitted on Highway 101 and Hollyhock Street. She explained that the City had no jurisdiction over the traffic concerns and only provided zoning oversight in the UGB.

Shepard thanked the Planning Commission for their work, noting that have had to make difficult decisions in the past six months based on the regulations in place. Shepard explained that the Commission was in a good position to address any concerns in the ordinances and recommend changes.

City Planner Johnson noted that since the amendments to the sign regulations were within the Zoning Ordinance, it required a notice to DLCD and public hearing, so the Sign Ordinance would come before the Commission again.

11. PLANNING COMMISSION COMMENTS & CONCERNS

Start time: [06:53:08 PM \(01:53:04\)](#)

Umholtz commented that she loved the new Anchor Street parking lot and playground, and thanked everyone for their hard work.

Commissioner Johnson shared that it was great that the City heard and considered everyone's concerns about the PUD application and she appreciated the community for providing comments even though they might not agree with the decision.

Zedrick concurred with Johnson's comments. She inquired about recycling changes. City Planner Johnson confirmed that the DEQ survey was submitted.

Winchester expressed interest in working with staff and the Fire Department to evaluate tsunami evacuation routes. Shepard indicated that the City had tools the Fire Department could use in their analysis. Winchester reiterated that the PUD code and probably others needed attention.

Lanyon agreed that tsunami evacuation routes should be reviewed. Lanyon inquired how the Strategic Plan related to possible code updates. Shepard replied that all should be encouraged to take the Strategic Plan survey as the Strategic Plan would guide how resources are allocated in the next five years. He confirmed that updates to the Comprehensive Plan and Zoning Ordinance were likely to be a large focus.

Hassell concurred with comments to review tsunami evacuation routes. He shared that he was working with an Oregonian reporter who is working on an article on accessibility on the coast, which would include recent and future City projects.

12. ADJOURNMENT

Start time: [07:01:29 PM \(02:01:25\)](#)

Umholtz made a **motion**, seconded by Zedrick, to adjourn the meeting at 7:01 p.m.

The **motion carried** unanimously.

MINUTES APPROVED THE
15TH DAY OF AUGUST 2024


William Hassell, President

ATTEST


Melissa Thompson, City Recorder



Crag Law Center

LEGAL AID FOR THE ENVIRONMENT SINCE 2001

August 14, 2024

Rockaway Beach City Council
City of Rockaway Beach
276 Hwy 101
Rockaway Beach, OR 97136

**Re: Appeal of Findings, Conclusions, and Final Order in Case File # PUD 24-1,
Nedonna Wave Planned Unit Development Application, dated August 1, 2024**

Decision Sought to be Review

A decision of the Planning Commission may be appealed to the City Council by a party to the hearing by filing an appeal pursuant to Rockaway Beach Zoning Ordinance 11.070(2)-(3). The Oregon Shores Conservation Coalition (“Oregon Shores”) is filing this appeal to oppose the Planning Commission’s decision, dated August 1, 2024, approving Applicant’s request to modify the approved final plan for Planned Unit Development Application #SPUD-07-19, allowing Applicant to create two lots instead of one lot at the north end of Jackson Street, identified as lots 21 and 22 on the plans submitted with the Application; and to create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street, identified as lots 13, 14, 15 and 16 on the plan submitted with the Application.

Statement of Interest

Oregon Shores is a non-profit organization, with members in Rockaway Beach, that works to protect Oregon’s coastal environment and employ Oregon’s land use planning system to its best possible effect in preserving coastal communities. Oregon Shores opposes approval for Nedonna Development LLC’s proposed second phase of a planned unit development first permitted in 2008 (PUD #24-1, 2N1020AB, Tax Lots 10200, 10400, and 10,500). Oregon Shores was a party to the initial proceedings, submitting two comments to the Planning Commission below. This appeal is based on the following issues that Oregon Shores also raised in the proceedings below:

- A. The original 2008 approval of the plan for this development has expired.

- B. ORS 92.040 requires the Applicant to resubmit its initial application for this development.
- C. RBZO 3.080 prohibits residential development in a Special Area Wetlands Zone.
- D. RBZO 3.142 requires the Applicant develop evacuation measures and improvements.
- E. RBZO 4.150 requires the City to enforce its riparian setback for McMillan Creek pre-approval.
- F. The Planning Commission failed to adequately address each of these legal concerns.

Issues and Grounds for Review

The following is a breakdown of those issues apparent in the proposed application that were not adequately remedied or considered below, and should be reviewed by the City Council.

I. The Original 2008 Approval of the Plan for this Development Has Expired

The original approval for the full 28-lot Nedonna Wave Development on February 11, 2008 conditioned final plat approval on the basis that “[t]he developer shall complete the improvements within one year of tentative plan approval unless an extension is granted by the City to complete improvements.”¹ The City never granted an extension, nor was this condition rescinded. When the developer failed to complete all planned improvements within a year, the approval for the second phase of the project lapsed.

While the Applicant had not yet received approval to develop in two phases at the time of this initial approval, the City was aware that “the development may be completed in two phases.”² Accordingly, it is evident that the City expected the Applicant to complete all necessary on-site improvements for both phases of the development within that specified one-year period, prior to final plat approval.³ That condition attached to the final plan approval for the full development and when the project was later approved to be developed in two phases, the City made clear that all “conditions of approval [from the earlier decisions] continue to apply in their entirety except where amended specifically in these findings of fact and this modification

¹ Application # SPUD 2007-19, Exhibit A: Findings of Fact, p. 12 (Feb. 11, 2008); Application # SPUD 2007-19, Final Order: Exhibit B: Conditions of Approval, p. 6 (Feb. 11, 2008). Further, in the 2007 project justification for this development, it’s explained that “[t]he development of this property will be completed in this calendar year.” Project Justification for Nedonna Wave PUD, p. 1 (Nov. 2007). Likewise, it is estimated that construction would be completed by “Spring of 2008.” *Id.*

² Application # SPUD 2007-19, Exhibit A: Findings of Fact, p. 23 (Feb. 11, 2008).

³ See Application #07-19, Exhibit C: Findings of Fact: Final Plan Approval, p. 13-14 (July 22, 2008); *see also* RBZO Article 13, Section 16, Agreement for Improvements.

does not relieve them of the responsibility imposed during these previous public hearing processes.”⁴ And the City never explicitly altered that original condition. The modified final approval now specifically clarified that “[p]rior to approval of the final plat, all improvements for Phase One shall be installed,”⁵ however, this is not in conflict with the original condition of approval that required all improvements for the full subdivision to be completed within one year of tentative plan approval. This condition remained in effect, and the Applicant failed to meet it.

Regardless, even if the modification of the development plan allowing the project to move forward in two phases was intended to free the Applicant from this one-year requirement, this still would not excuse the Applicant from completing improvements and finalizing the development plans for Phase II in a timely manner, or meeting other requirements of the Rockaway Beach Zoning Ordinance (RBZO). Timing is a crucial component of the Planned Unit Development (PUD) proposal and permitting process. When a final development plan will be executed in stages, applicants are required to submit a proposed schedule for the execution of each stage, pursuant to RBZO 10.050(1)(i). Further, the RBZO specifically requires that a proposed plan be able to be “completed within a reasonable period of time,” RBZO 10.050(2)(d). The Planning Commission failed to make such a determination about the second phase of this project in 2008, or to otherwise find that special physical conditions or objectives of development existed that warranted a departure from the standard ordinance requirements. *Id.*; RBZO 10.050(2)(a).

In its most recent decision on the modification, the Planning Commission found that there was insufficient evidence to support the Applicant’s request to plat the proposed next stage of development as two separate subphases.⁶ During the July 18, 2024 meeting of the Commission and staff, it was noted that “the PUD code states that a schedule be provided if the development is to be completed in stages . . . [and] no such schedule had been provided by the Applicant.”⁷ In 2008, just like now, the Planning Commission should have determined there was insufficient evidence to support the Applicant’s request to develop the site in two stages due to its failure to provide a schedule as required by the PUD code. While RBZO 10.060(1) does include another

⁴ Application # 2007-19, Exhibit D: Modified Preliminary and Final Approval for a Two Phase Development, p. 3 (July 29, 2008).

⁵ *Id.* at 4.

⁶ Application # PUD 24-1, Findings, Conclusions, and Final Order, p. 16 (Aug. 1, 2024).

⁷ *Id.* at 6.

important distinction between staged and non-staged projects, requiring applicants to file a “final plan for the entire development or, when submission in stages has been authorized, for the first unit of the PUD” within one year after the city approves a preliminary development plan, this does not change the fact that the Commission’s 2008 decision to authorize the two-phase development plan was improper.

Further, while the code does not set a specific time limit on when an applicant must apply for subsequent units or stages of the PUD, as noted above, during the preliminary steps of the PUD planning process it still must be determined that the proposed plan can be completed within a reasonable period of time. RBZO 10.050(1)(i), (2)(d). Even if the Applicant had provided a schedule, and there was sufficient evidence for multi-stage development, that would not absolve the Applicant from meeting this timing requirement. It cannot be reasonably argued that taking a more-than-15-years-long break between planning and construction is a “reasonable period of time” in which to execute a project of this kind and scope.

The Applicant applied for and received final plat approval for the first phase of the Planned Unit Development within one year after receiving final plan approval, and recorded the plat of Nedonna Wave Phase I on February 2, 2009 (Plat C-573, Tillamook County Plat Records). At that time, the Commission plainly understood that Phase II of the project would timely follow. When the project was approved to be developed in two phases, the Planning Commission made clear that all “conditions of approval [from the earlier approval order] continue to apply in their entirety except where amended specifically in these findings of fact and this modification does not relieve them of the responsibility imposed during these previous public hearing processes.”⁸ The Planning Commission did nothing to alter that condition, or extend the time permitted between preliminary planning and execution, as to allow Phase II of the Applicant’s development plan to remain in limbo for more than 15 years.

For any of the reasons explained above, the City Council should find that the 2008 approval is no longer valid, and reverse the Planning Commission’s unreasonable decision on this application.

II. ORS 92.040 Requires the Applicant to Resubmit its Initial Application for this Development

⁸ Application # SPUD 2007-19, Exhibit D: Modified Preliminary and Final Approval for a Two Phase Development, p. 3 (July 29, 2008).

Even if this Council believes that this application has not expired, ORS 92.040(3) requires that the proposed development be reviewed for compliance with the City's current regulations. ORS 92.040(3) provides that all subsequent stages of subdivision development must be reviewed for compliance with current local regulations when more than 10 years has passed since the initial land use decision. The Oregon Court of Appeals explained the operation of ORS 92.040: "92.040(2) allows applicants who request approval to develop a subdivision lot to choose to apply to all subsequent construction on the lot the local government laws in effect at the time that the subdivision application was made *However, the protection provided to developers by subsection (2) may not exceed a period of 10 years.*"⁹ At bottom ORS 92.040(3) sets a ten-year time limit before a PUD approval expires, after which any further development must be approved under a new application, based on contemporary standards and regulations.

Because the Applicant here has reapplied for a modification of their initial approval in order to begin construction on the property after a significant lapse in time, this is a subsequent phase of construction which now compels the City to determine whether the development still fully complies with current regulations. This is especially true given that the Applicant is requesting to develop additional lots that were not included in the original 2008 proposal and development plan. Since the 10-year window has long since closed, the City must require the Applicant to file a new application if they wish to reinitiate site development. Allowing the Applicant to do otherwise defies state law.

The Applicant argues that ORS 92.040 is not relevant here, because this statute "applies only to subdivisions and partitions," whereas the present application is to "subdivide property in accordance with the current zoning of the property, which includes the PUD overlay, and in accordance with the current zoning code."¹⁰ However, this misconstrues the legal framework, as made clear by the original PUD approval at issue in this matter. Nedonna Wave, as a subdivision, is governed by ORS Chapter 92 and RBZO Article 13, which both concern subdivisions and partitions. The particular development project at issue is further regulated by RBZO Article 10, which specifically concerns Planned Unit Developments.¹¹ The Findings of

⁹ *The Athletic Club of Bend, Inc. v. City of Bend*, 239 Ore App 89, 97 (2010) (emphasis added).

¹⁰ Alterman Memo, p. 3 (July 4, 2024).

¹¹ A tentative PUD approval is a combination of both types of "[l]imited land use decision[s]", as defined by ORS 197.015(12), meaning the approval or denial of "a tentative subdivision or partition plan" or "an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but

Fact dated February 11, 2008 specifically state, “The project proposes the subdivision of a Planned Unit Development. The standards of the City Subdivision Ordinance and Oregon Revised Statutes Chapter 92 shall apply to approval of the final plat.”¹² In a section of the Findings of Fact considering improvement requirements and final plat approval, it is also specified that, “The Final Survey Plat shall be submitted consistent [with] ORS Chapter 92, with RBZO Article 13, Section 46, and applicable conditions of approval.”¹³ The original PUD approval makes it abundantly clear that the requirements of ORS Chapter 92 apply to the Nedonna Wave Planned Unit Development Subdivision project, including those sections that concern the review and approval of tentative plans and plats of subdivisions, like ORS 92.040. Due to this fact, any development within this PUD that occurs after 2018 must be reviewed anew, through an entirely separate application process, not merely a modification request.

If the City does not apply ORS 92.040(3) at this time, granting the approval would be a significant waste of resources because under this statute, the Applicant will not be able to get a final plat or building permits for this subdivision without a full review of the current City Code. And as discussed in the sections below, this development, as proposed, would not be allowed under Rockaway Beach’s current regulations.

The City Council must deny the application and make clear to the Applicant that it will need to get full approval of the proposed “Phase II” development before moving forward with construction.

III. RBZO 3.080 Prohibits Residential Development in a Special Area Wetlands Zone

Much of the proposed development, including the lots that are newly created by this modification, is in the City’s Special Area Wetlands Zone (SA). RBZO 3.080. This zone is distinct from the City’s Wetland Notification Overlay, which only requires notification to state agencies about wetland development. RBZO 3.080. In contrast, the SA zone is its own base zone, the purpose of which is to “conserve significant freshwater wetlands and the shoreland and aquatic environment of Rockaway Beach’s lakes.” RBZO 3.080(1).

not limited to site review and design review.” *Willamette Oaks, LLC v. City of Eugene*, 248 Or App 212, 226 n 4, 273 P3d 219, 227 (2012).

¹² Application # SPUD 2007-19, Exhibit A: Findings of Fact, p. 5 (Feb. 11, 2008).

¹³ *Id.* at p. 32-33.

Residential development is not an allowed use within the SA zone. RBZO 3.080(2)-(3). Only recreational, restoration, and stabilization uses are allowed there, and all activities involving construction or alteration must be reviewed by the Oregon Division of State Lands and the U.S. Army Corps of Engineers. RBZO 3.080(2)-(4). The fact that there is an existing PUD overlay over this property does not change this fact or impact the underlying uses allowed in the SA zone; the PUD overlay only allows for the same density of the parent zone. RBZO 10.030. Given the firm limitations on development in the SA zone, any approval of residential development in these areas within the Nedonna Wave subdivision would clearly violate the RBZO, regardless of the PUD overlay.

When “development is proposed in the vicinity of an area designated Special Area Wetlands” the City requires a site investigation from “a qualified agent such as a biologist from the U.S. Army Corps of Engineers or the Division of State Lands” to delineate the extent of the zone prior to approval. RBZO 3.080(5). No such investigation has occurred, even though much of the proposed development, including the new lots that are requested as part of the modification, are in the SA zone. As explained above, the City cannot approve these modifications and allow new construction to move forward without assessing the proposed development within the context of the current local regulations and site conditions.

Due to the lack of site investigation, and the failure of the Applicant to demonstrate compliance with the requirements of RBZO 3.080, the City Council must deny this application.

IV. RBZO 3.142 Requires the Applicant Develop Evacuation Measures and Improvements

RBZO 3.142(6) provides that: “[e]xcept single family dwellings on existing lots and parcels, all new development, substantial improvements and land divisions in the Tsunami Hazard Overlay Zone shall incorporate evacuation measures and improvements, including necessary vegetation management, which are consistent with and conform to the adopted Tsunami Evacuation Facilities Improvement Plan.” This requires improvements be made that “ensure adequate pedestrian access from the development site to evacuation routes designated in the Evacuation Route Plan in all weather and lighting conditions.” RBZO 3.142(6)(a)(i).

This project will have a detrimental impact on the City’s Tsunami Evacuation plan by blocking access to and increasing the number of people using the already constrained evacuation routes. In order to “conform to the adopted Tsunami Evacuation Facilities Improvement Plan,” the developer would need to make improvements to the evacuation routes, and ensure that they

are maintained and that additional capacity is added to them through the creation of new routes. RBZO 3.142(6). However, the application does not address evacuation route improvements. In fact, during the initial hearing the Applicant claimed that such an action was the City's responsibility, but RBZO 3.142 makes clear that is not the case. The improvements developers need to make can include both on-site improvements and off-site improvements, and therefore developers can both improve access on the property they own or provide funding for the City to make off-site improvements in other areas to adjust for the detrimental effect of the development.

The Findings, Conclusions, and Final Order still do not sufficiently address this issue, or the inadequacy of the existing routes to serve a larger population. While the Applicant is ordered to conduct a traffic study,¹⁴ doing so is not an "improvement" to evacuation routes, as RBZO 3.142 requires. And while the Applicant has also been ordered to submit evidence that the tsunami evacuation routes are sufficient to the proportional needs of the proposed development, the Final Order does not include any discussion about what actual findings or improvements would serve as evidence that the standard has been adequately met. The Applicant must make actual improvements to alleviate the detriment this development will have on existing evacuation routes, however, there are no consequences or mechanisms of enforcement included in the conditions of approval to ensure that sufficient improvements are actually carried out.

The record does not clearly support a determination of compliance with the approval criteria in regards to the evacuation route issue, and the City should not find otherwise. *See Deal v. City of Hermiston*, 35 Or LUBA 16 (1998). The City cannot defer matters for later review or action when it has no meaningful ability to subsequently enforce a requirement, or where public input will not be possible. *See Citizens Against LNG v. Coos County*, 63 Or LUBA 162 (2011). After final approval the City can no longer add conditions requiring specific improvements necessary to address the issues that might be identified during the traffic study. Accordingly, this issue should be fully interrogated at this early stage in the process, while the City is able to meaningfully act.

V. RBZO 4.150 Requires the City to Enforce its Riparian Setback for McMillan Creek Pre-Approval

¹⁴ PUD # 24-1, Findings, Conclusions, and Final Order, p. 18 (Aug. 1, 2024).

Under RBZO 4.150 riparian vegetation within 15 feet of McMillan Creek must be maintained and protected, and likewise, no development is allowed within the setback. The Final Order suggests that the Applicant coordinate with Oregon Department of Fish and Wildlife (ODFW) to develop a plan to mitigate impacts when the setback cannot be maintained due to “site constraints.”¹⁵ However, that is not the standard laid out in RBZO 4.150.

RBZO 4.150(5) provides that “the City may approve the removal of riparian vegetation when vegetation removal and a plan to re-vegetate the riparian area has been approved by [ODFW].” This provision clearly only envisions temporary removal of riparian vegetation within setback areas that can then be “re-vegetate[d],” while the ordinance clearly does not allow any kind of development within the riparian area, regardless of whether those impacts are mitigated. Additionally, this provision is forward-looking, requiring the Applicant to consider the impacts that will occur in the setback area and then have a plan for vegetation removal approved by ODFW that is to be decided on by the City during the application review process. RBZO 4.150(5). Approving the application without actually knowing the impact on riparian vegetation and the extent of removal that will occur, and consequently before coordination with ODFW had occurred, is plainly contrary to the RBZO.

The City cannot approve this application until the Applicant makes clear that the development plan can meet the requirements of the 15-foot setback area, and if vegetation removal will occur, the Applicant must submit a plan approved by ODFW for how that removal will occur and how the area will be re-vegetated. The City should not approve development based on a hypothetical mitigation and regeneration plan, without having thoroughly considered the extent of the expected impact on McMillan Creek and whether the standards in RBZO 4.150 can be realistically achieved based on that information.

Request for Review

Review of this application and the decision of the Planning Commission dated August 1, 2024 is requested under RBZO 11.070(2).

Respectfully submitted,

¹⁵ *Id.* at 17.

/s/ Eric Wriston

Alexandria E. Dolezal (OSB #223924)

Eric M. Wriston (OSB #226130)

Attorneys for Oregon Shores Conservation Coalition

Crag Law Center

3141 E Burnside St.

Portland OR 97214

alexandria@crag.org | 503.234.0788

eric@crag.org | 360.773.7265

**PUBLIC TESTIMONY
SUBMITTED FOR
NOVEMBER 20, 2024
CITY COUNCIL HEARING
Land Use Appeal # 24-1
Nedonna Wave Planned Unit
Development - Phase 2**

(Received as of 12:00 pm on 11/13/2024)

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October 2, 2024

Rockaway Beach Planning Department
P.O. Box 5
Rockaway Beach, OR 97136

OCT 10 '24 11:25AM

RE: August 1, 2024 decision on Planned Unit Development Application #24-1

I am writing in response to the Rockaway Beach Planning Department's August 1, 2024 decision to revive a 16 year old approval, conditioned on the basis that "the developer shall complete the improvements within one year of tentative plan approval unless an extension is granted by the City to complete improvements." The deadline passed in 2009 without improvements.

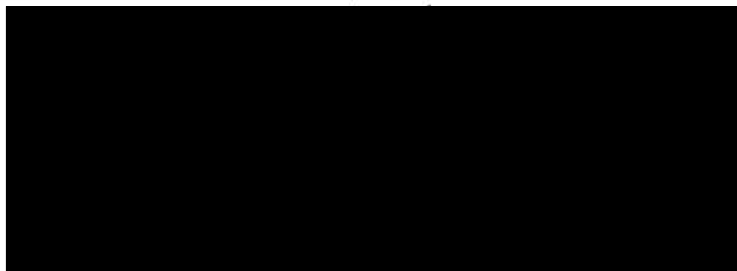
Since 2009, I have walked in the neighborhood on numerous occasions with muck boots on. As the planning department notes, "wetlands are not stagnant." This location has not just special wetlands zoning, it is in the tsunami zone, 100 year floodplain, and is in close proximity to the holey jetty. The wetlands operate as the lungs of an area. Paving will just create more flooding and more risk to people trying to get out in an emergency.

Yet in case of flood or other emergency, there is only one vehicle exit. Locals are aware of these hazards and take precautions, but VRBO visitors have no idea what they are in for, and most of these homes will end up being vacation rentals, filled like the others on holidays, but empty much of the remaining time. Some of us have practiced evacuations hiking up the trail at the north end of the development, but surprisingly it sounds like that exit route might be lost with this Phase 2 plan new special variance request to vacate the east stub of Riley Street.

These wetlands are also home to many species meant to be protected by the city's Special Area Wetlands Zone (SA), the purpose of which is to "conserve significant freshwater wetlands and the shoreland and aquatic environment of Rockaway Beach's lakes." Nedonna Marsh and McMillian Creek provide habitat for over 93 identified species of birds and a range of other wildlife. The creek flows right past the proposed development.

While I live in Garibaldi, work for Oregon Shores, and don't have standing as a Rockaway resident, I speak up when I hear a safety issue that will impact my neighbors. The applicant wants to revive a plan, create additional lots, vacate land, and ignore lapsed deadlines by creating more "phases" of a project. There are plenty of reasons to deny the requests of Nedonna Development LLC and it is the right thing to do. Thank you for your consideration of these concerns.

Denise Harrington
PO Box [REDACTED]
Garibaldi, OR 97118
[REDACTED]



Kathie Raisler

██████ White Dove Ave

Rockaway Beach Or 97136

Rockaway Beach City Council

Dear Members of the City Council,

I am writing to formally express my opposition to the proposed Nedonna Wave development project. While I understand the importance of new housing initiatives, I am deeply concerned that this development will have adverse impacts on public safety, neighborhood livability, and environmental sustainability, especially given the context of recent regulatory requirements and community needs. I also am concerned that this development falls outside of the applicant's argument regarding ORS 92.040(3). By my math this development proposal is now 16 years outside of the original LUBA approval process.

Public Safety and Secondary Egress

As highlighted in Land Use Board of Appeals (LUBA) case 2008-064, there are critical safety concerns related to the absence of a secondary egress point for public safety purposes. This omission is particularly troubling given the reliance of local emergency services on prompt access, which will further be strained by increased residential density. Without this critical secondary access, there is a heightened risk of compromised emergency response times during incidents, such as fires, floods, or other emergencies. Enforcement of these regulations by the State Fire Marshall is essential to avoid potential loss of life or property.

Strain on Local Emergency Services

The increased residential density that the Nedonna Wave development would bring is likely to further strain local volunteer emergency services. As we know, our community's emergency services are already under pressure, and the addition of many new residences in a concentrated area will only exacerbate the problem. Local infrastructure and emergency response capacities should be carefully evaluated before approval of such developments.

Parking and Neighborhood Livability

Another issue associated with this development is parking. With small lot sizes, the availability of adequate parking spaces is in question, and this will only impact day-to-day livability of the neighborhood but could also impede emergency vehicle access. If residents and visitors are forced to park on narrow streets, it could create a hazardous situation in which fire trucks or ambulances are unable to navigate effectively. This poses an additional treat to public safety.

Environmental Concerns and Stormwater Management

Significant environmental changes have evolved over time, and they necessitate updated considerations for stormwater management and flood hazards. According to Article, Section 41 of the Rockaway Beach Zoning Ordinance (RBZO), developments in areas susceptible to flooding must meet stringent requirements. As storm patterns become more severe and unpredictable, it is essential that the potential impact of this development on stormwater management and the surrounding environment be re-evaluated with the most current data and guidelines. The current proposal does not appear to fully address these evolving challenges, which could lead to increased flood risks for nearby properties.

Conclusion

In conclusion, I urge the City Council to reconsider the approval of the Nedonna Wave development. The absence of a secondary egress point, the increased strain on emergency services, parking challenges, and significant environmental concerns make this development untenable in its current form. I ask that you prioritize the safety, livability, and sustainability of our community by either requiring major modifications to the proposal or denying the project all together.

Sincerely,

Kathie Raisler

From: Selma Annala <[REDACTED]>
Sent: Monday, October 7, 2024 5:57 PM
To: Melissa Thompson
Subject: Nedonna Beach Development

My husband and I have owned a home in Nedonna Beach for over 30 years. We were present when White Dove Estates was built and were shocked at the complete disregard for the environmental protections which were in place at the time. Macmillan Creek was negatively impacted by the construction at the time and hasn't recovered to this day.

The current planned development is once again impacting a wetland area which should be protected not mitigated as was done with White Dove.

We also have the issue of one point of entry and exit to our neighborhood off of 101 which will be negatively impacted by additional housing.

Living on Nedonna Ave we are subject daily to drivers speeding making our neighborhood a dangerous environment for the many walkers, bikers and children who are on the streets.

The number of rental homes which we were assured by the county would be limited has appeared to increase impacting the livability of our neighborhood.

We don't deserve another influx of homes which will negatively impact our community and environment.

Sincerely,

Mike Kinne and Selma Annala

Sent from my iPhone



"Every species is a masterpiece, exquisitely adapted to the particular environment in which it has survived. Who are we to destroy or even diminish biodiversity?" E.O. Wilson, Biologist

Albert LePage, [REDACTED] Eugene, OR 97405

October 10th, 2024

Rockaway Beach Planning Department
P.O. Box 5
Rockaway Beach, OR 97136

RE: Opposition to Nedonna Wave Planned Unit Development #Appeal-24-1

Respectfully:

I am writing to express my opposition to the proposed Nedonna Wave Planned Unit Development (PUD) and to support the appeal filed by the Oregon Shores Conservation Coalition.

The proposed development poses apparent risks to the community and environment, particularly in relation to wetlands preservation and groundwater protection.

1. Violation of Wetlands Protection Regulations

- The proposed PUD is located within a Special Area Wetlands Zone as defined by the Rockaway Beach Zoning Ordinance (RBZO) 3.080, which explicitly prohibits residential development in these sensitive areas. This regulation is crucial for conserving significant freshwater wetlands and protecting the shoreland and aquatic environments that are vital for local wildlife, including resident beavers and other species dependent on these habitats.

2. Groundwater Protection Concerns

- The entire Nedonna Beach neighborhood is designated as a groundwater drinking water protected area. The groundwater wells used by the City as a secondary drinking water source are situated directly beneath this neighborhood. Any additional development could lead to contamination of these wells, jeopardizing public health and safety. The potential for increased impervious surfaces will exacerbate flooding risks and further threaten our already vulnerable water supply.



Riparian setbacks protect the natural areas along rivers, streams, and wetlands, from construction and other damaging activities.

3. Inadequate Consideration of Legal Issues by Planning Commission

- The Planning Commission's approval of this development did not adequately address critical legal concerns raised in the appeal. Specifically, RBZO 4.150 mandates that the City enforce its riparian setback for McMillan Creek pre-approval. The failure to uphold these regulations undermines community trust in local governance and sets a dangerous precedent for future developments.

In conclusion, I urge you to consider these critical points as you deliberate on this matter. The **potential environmental impacts and risks to the community drinking water supply must take precedence over development interests**.

Thank you for your attention to this urgent issue.

Respectfully,

Albert J LePage, M. Ed. Science, B.S. Biology
Member, *Society for Conservation Biology*

From: Karen Small <[REDACTED]>
Sent: Tuesday, October 8, 2024 6:24 PM
To: City Hall <cityhall@corb.us>
Subject: appeal 24-1

Time to build up the hill.

The beautiful habitat that is now part of the song (Development Nedonna Wave PUD-24) filters water as it flows down the hill and feeds Mc Millan creek. Septic systems and wells dot the area. The pacific ocean is right there.

We didn't know when the current houses were built that in a few decades the sea level will be higher and land will begin where the hill begins. If we were intelligent creatures we would be dismantling the current structures or moving them up the hill. As the water rises pollution from sea level structures will become part of the ocean.

At the very least we should do no more development in this area. Let's establish it as the sacred natural habitat which it is.

Karen LaGrave Small
Mother, grandmother
PO Box [REDACTED]
Manzanita, OR
[REDACTED]

Appeal - 24-1

Dear Rockaway Beach City Council:

As a concerned community member and visitor, I support the appeal of the Nedonna Wave Planned Unit Development (PUD-24-1) for the following reasons:

- The aquifer at Nedonna Beach, is part of a groundwater system that supplies fresh water to the city. It is vital for the community's water supply, and its management is key to ensuring a reliable and safe source of water for residents. Development could lead to pollution and over extraction of wells needed for the city's water system.
- These wells are particularly susceptible to adverse effects from nearby septic systems of varying ages, as well as surface activities such as fertilizing and pesticide application for yard maintenance. Moreover, their proximity to the ocean has resulted in noticeable saltwater intrusion, as indicated by elevated sodium levels in water samples from the wells. Any further development is likely to intensify these negative impacts.
- Much of the proposed development is now in the city's Special Area Wetlands Zone (SA), the purpose of which is to "conserve significant freshwater wetlands and the shoreland and aquatic environment of Rockaway Beach's lakes."
- At risk are wetlands and the health of McMillan Creek, which flows past the area to be developed, and provides habitat for a range of wildlife including river otters, coyotes, beavers, deer and many species of birds.
- There are also risks to the community. Emergency evacuation via the one road outlet for the area is currently questionable as to effectiveness and safety. Adding more homes to the area, increasing the number of people needing to evacuate in the case of an emergency, would be highly irresponsible.
- The area is already at risk of flooding, and adding more impervious surface would make this worse. For comparison, the ongoing filling and development in the south Rockaway Beach area of Washington Street has resulted in significant flooding issues. The existing neighborhood in Nedonna Beach relies on the flood mitigation properties of the wetlands, which must be preserved and not filled or developed, as was done in the Washington Street area.
- This neighborhood is bordered both by the ocean and the Nehalem River Bay and Jetty and has flooded from high tides and high river levels. McMillan Creek has flooded the banks numerous times in the last ten years. This creek has sometimes flooded a parallel street David, over 100 feet from banks.
- State law requires the project to be reviewed under current regulatory standards. ORS 92.040 provides a temporary safe harbor for developers, while also making clear that all subsequent stages of subdivision development must be reviewed for compliance with current local regulations when more than 10 years has passed since the initial land use decision. The statute sets a ten-year time limit before approval of a Planned Unit Development (PUD) expires, after which any further development must be approved under a new application, based on contemporary

please see note on reverse →

OCT 22 '24 10:07AM

OCT 22 '24 10:07AM

standards and regulations. Thus, the original 2008 approval of the plan for this development has expired.

*

- This neighborhood faces several significant fire hazards, such as inadequately maintained fire pits, beach fires positioned too close to driftwood, highly combustible dune grass, the wooded area south of the jetty, and the use of illegal fireworks on the Fourth of July. In the event of a major fire, the limited access points—only one entrance and exit—would severely hinder evacuation efforts. Adding more dense housing in this area would be highly irresponsible.
- This is about developers making money at the expense of residents, who are already concerned about water and wetlands.

Considering all of this, I sincerely hope you will choose to reject the proposed Planned Unit Development in order to protect these vital wetlands. This decision will help safeguard our community's safety, fresh water supply, and natural resources, for ourselves and future generations.

Thank you,

Jane Anderson

Name

P.O. Box [REDACTED]

Caribaldi, OR

City, Or

[REDACTED]
Email address [REDACTED]

* Wetlands are one of our best defenses against the threat of wild fires.

I'm not a resident of Rockaway Beach, but I am here often to visit friends and participate in tourist-related events and eateries. I sincerely hope that the city will see this proposed development as a serious mistake and an unnecessary burden on the city's current residents. Thank you, [REDACTED]

From: Kate Crump! <[REDACTED]>
Sent: Tuesday, November 5, 2024 10:07 AM
To: Melissa Thompson
Cc: Nancy Webster
Subject: file number #Appeal-24-1 and Nedonna Wave PUD Application

Dear City Recorder Melissa Thompson,
My email is in regards to file number #Appeal-24-1 and Nedonna Wave PUD Application. As a landowner in the Nedonna Beach neighborhood I highly disagree with the Rockaway Beach Planning Commission approving the Nedonna Beach Development LLC's proposed second phase of a planned unit development (PUD).

This development, as proposed, would not be allowed under Rockaway Beach's current regulations. Much of the proposed development is now in the city's Special Area Wetlands Zone (SA), the purpose of which is to "conserve significant freshwater wetlands and the shoreland and aquatic environment of Rockaway Beach's lakes." Residential development is not allowed in the SA zone in the city's current plan. At risk are wetlands and the health of McMillan Creek, which flows past the area to be developed and provides habitat for a range of wildlife.

As a resident, I have used this area consistently and witnessed salmon, and much wildlife utilizing the area. In a coastal environment where estuaries are more and more important it is a disservice to our future to allow this development. I support the appeal of this approval done by the Commission and believe the Commission has done so without regards to the opinions of the public.

Sincerely,
Kate and Justin Crump
[REDACTED] Geneva Ave Rockaway Beach, OR 97136
[REDACTED]
[REDACTED]m

Kate Crump, *she/her*

[REDACTED]

THE LODGE AT
58[★] NORTH
[Frigate Adventure Travel](#)

To: Rockaway Beach Mayor and City Council,

Re: PUD-24-1

While the Planning Commission was tasked with determining the outcome of the modification to this subdivision, my neighbors and I assert that the modification should not have been approved, as the original subdivision application is over 10 years old, outdated, and non-compliant with the requirements of ORS 92.040.

In a recent Planning Commission Staff Report, it was stated: “After consultation with the City’s legal counsel, no direct case law or authority could be found to support the claim that a PUD/subdivision approval cannot exceed 10 years. Instead, the case law suggests that ORS 92.040(3) pertains to the standards applicable to a PUD/subdivision approval, not the approval itself.”

This interpretation, however, underscores the very issue at hand. Any subsequent building cannot proceed under outdated 2008 local standards, which have undoubtedly evolved since then. While ORS 92.040(2) permits developers to apply more current regulations if they choose, this option is likely to be exercised only when favorable to the developer. Furthermore, this advantage is limited to a 10-year period as prescribed by ORS 92.040(3) and local governments retain the discretion to shorten this period.

To provide some historical context, prior to 1995, developers in Oregon did not have protections from local government rule changes that occurred during the course of their developments. These mid-stream regulatory changes often led to significant delays, loss of land, and substantial financial losses. Furthermore, land developers advocated for these changes. In response, subsections (2) and (3) of ORS 92.040 were added to address these concerns.

While the law provides protections to developers from being subjected to new regulations enacted after the initial approval of a subdivision, the legislature clearly recognized the need for a reasonable limitation on this protection. Accordingly, this safeguard is not indefinite but is clearly capped at a 10-year period under state law, ensuring that developers do not have carte blanche to develop under outdated regulations indefinitely.

It is reasonable to assert that most residential projects are completed within a 10-year timeframe. If a project extends beyond that period, the developer assumes the inherent risks associated with prolonged timelines.

Given that more than 10 years have passed since the initial approval of this subdivision, it is essential to ensure that the developer is held to the most current standards and regulations. The public must have confidence that the developer will comply with all laws currently in effect. Reliance on the developer’s assurances or the city planning staff’s oversight is insufficient to guarantee full compliance with the law.

Therefore, the only appropriate and legally sound course of action is for the developer to submit a new application, duly authorized by the City, which conforms to the latest standards and regulations, including but not limited to those governing water safety, wetland protection, wildlife, street safety, and fire and tsunami evacuation measures. A new, authorized application is the only means to ensure full compliance with all applicable laws and to provide a solid legal foundation for addressing any potential violations by the developer if challenged in court.

Thank you for your time,

Delta Holderness

[REDACTED]

Rockaway Beach, OR 97136

**ADDITIONAL
PUBLIC TESTIMONY
SUBMITTED FOR
NOVEMBER 20, 2024
CITY COUNCIL HEARING
Land Use Appeal # 24-1
Nedonna Wave Planned Unit
Development - Phase 2**

(Received as of 3:45 pm on 11/18/2024)

From: joel bradach <[REDACTED]>
Sent: Monday, November 18, 2024 10:03 AM
To: Melissa Thompson; Marymcginniscitycouncil@gmail.com; Tmartine13719@gmail.com; Kristineforrockaway@gmail.com; Alesiafrankenrbcitycouncil@gmail.com
Subject: Nedonna home owner opposition to Nedonna Wave Development - Support for Appeal 24-1

I strongly oppose the approval of the Nedonna Wave Development and am in clear support of the appeal of that decision - #Appeal-24-1

Joel Bradach
Nedonna Homeowner
Rockaway, OR

From: Riley <[REDACTED]>
Sent: Monday, November 18, 2024 12:35 PM
To: Melissa Thompson
Subject: Nedonna home owner opposition to Nedonna Wave Development - Support for Appeal 24-1

As Trustee to the Nedonna residence owned by the Joel E. Bradach 2018 Trust I am writing to express my strong opposition to the approval of the Nedonna Wave Development and clear support of the appeal of that decision - #Appeal-24-1.

Respectfully,
Riley Bradach - Trustee Joel E. Bradach 2018 Trust

Send to:
Cityrecorder@corb.us
Charlesforrockawaybeachmayor.org
Pennycheek@live.com
Marymcginniscitycouncil@gmail.com
Tmartine13719@gmail.com
Kristineforrockaway@gmail.com
Alesiafrankenrbcitycounsil@gmail.com

From: Jessie Rose <[REDACTED]>
Sent: Monday, November 18, 2024 3:26 PM
To: Melissa Thompson
Subject: written comments: file number #Appeal-24-1

Dear Commissioners,

This letter is to support the above-referenced appeal of the City's August 1, 2024 decision to approve a request to modify the final plan for Planned Unit Development (PUD) Application #SPUD-07-19.

Chapter 10 of the Rockaway Beach Zoning Ordinance relates generally to PUDs and requires that:

- proposed development "must be completed within a reasonable period of time" – 10.050(2d)
- final plan is due within one year after concept approval – 10.060(1)
- any revisions are due within 30 days after that – 10.060(2)
- resulting development must not be "inconsistent with the Comprehensive Plan provisions or zoning objectives of the area" – 10.050(2c)

As approved in **2008**, this plan acknowledged applicability of **ORS 92.040** which, in Section 2, states "when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise." Section 3 goes on to clarify that a "local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, in no event shall the time period exceed 10 years, **whether or not a time period is established by the local government.**"

In light of both the local ordinance regulating PUDs and the state statute regulating local government land use applications, I believe **the Planning Commission would be acting *within its discretion* to require the applicant to resubmit their entire application for this development for review against contemporary standards and regulations** which include, but are not limited to:

- RBZO 3.080, prohibiting residential development in a Special Area Wetlands Zone.
- RBZO 3.142, requiring the incorporation of evacuation measures and improvements.
- RBZO 4.150, requiring the City to protect the riparian setback on McMillan Creek.

RBZO 4.150 specifically states "all structures and uses shall be located outside" the designated setback, and any re-vegetation plans must be reviewed and approved in advance by Oregon Department of Fish and Wildlife. With impacts from drinking-water quality to protection against wildfire damage, wetland preservation benefits the public. I urge the Commission to affirm this appeal, advocate for the public trust, and require the developer to follow our community's documented contemporary development standards.

Thank you for your consideration,

J. Hooker
[REDACTED] Neptune St.
Rockaway Beach, OR 97136

From: Ernie Niemi <ernie.niemi@nreconomics.com>
Sent: Sunday, November 17, 2024 3:28 PM
To: Melissa Thompson
Cc: nancy webster; Lyndsey; April Clark
Subject: Appeal-24-1 Nedonna Wave PUD
Attachments: NedonnaWave PUD 2024-1117A.pdf

To:
City Recorder, Rockaway Beach, Oregon

Dear Melissa Thompson;

Will you please forward the attached file, which contains comments on the potential economic costs to society from the proposed Nedonna Wave PUD-24, to members of the City Council prior to their hearing of Appeal-24-1 for Nedonna Wave PUD-24.

If you or Council Members have questions, please contact me:

Email: ernie.niemi@nreconomics.com

Phone: 541-505-2704

Mail: Natural Resource Economics
82311 Hanna Road
Dexter, Oregon USA 97431

Thank you.

Ernie Niemi
President, Natural Resource Economics

17 November 2024

TO: Rockaway Beach City Council
cc: North Coast Communities for Watershed Protection
FROM: Ernie Niemi, President
SUBJECT: Appeal -24-1 against the Proposed Nedonna Wave PUD-24

Please accept and consider the following information as you consider Appeal-24-1 against the proposed Nedonna Wave PUD.

A decision to allow the proposed Nedonna Wave PUD will generate both benefits and costs. The benefits will be measured by the established markets: for land, public services, etc. The costs will include economic damage imposed on society as a whole. Economists commonly apply the term “external costs” to describe these costs because they accrue to workers, families, businesses, the community, and future generations who lie outside the pool of individuals and institutions that exert decision-making authority over the development or directly receive revenues therefrom. The external costs from the proposed development will materialize in many ways. I recommend that the City Council examine and weigh these external costs as you consider the appeal to determine if the external costs outweigh the potential economic benefits.

One useful way to sort through and understand their scope and scale looks closely at those associated with (a) the climate crisis, and (b) the biodiversity/ecosystem crisis.

External Costs Related to the Climate Crisis

Approval of the proposed development will lead to disturbance of the coastal wetland and other actions that will intensify climate change by increasing the amounts of carbon dioxide and other greenhouse gases in the atmosphere. The following sections summarize research that describes some of the external costs that will result from these increases. They include:

- A. External costs climate change imposes on Oregonians
- B. External costs per ton of carbon dioxide
- C. Human deaths that result from climate pollution
- D. External Costs to Children

A. External Costs to Oregonians

Disturbance of coastal wetlands can result in substantial increases in atmospheric carbon dioxide, and these increases will impose economic costs on society for the foreseeable future. These costs will be felt in Rockaway Beach and throughout Oregon. By increasing the frequency and intensity of heatwaves, wildfires, droughts, flooding and other impacts, climate change imposes costs on Oregon’s economy, on every Oregonian, every year. A few examples of costs include (2023 dollars):¹

- Oregonians risk losing over \$450 million in ecosystem services each year from salt marshes depending on the degree of sea level rise.
- The economic costs to Oregonians from heat-related deaths during the 2021 heatwave total between \$1.3 billion and \$4.6 billion.
- Including both short-term and long-term costs, Oregon's 2018 fire season may have generated \$6.8 billion in costs, or \$3,900 per household.
- The average Oregonian could lose roughly \$12,000 in personal income per year due to changes in the climate that have already been set in motion due to past greenhouse gas emissions.
- Oregonians will also likely see increases in the cost of food and other goods and services.
- Douglas fir die-off (traced clearly to climate change) in southern Oregon is eliminating carbon sequestration services worth over \$100 million per year.
- Current global analyses looking over the next several decades suggest that climate change may reduce Oregon's gross domestic product by \$7,500 per Oregonian per year.
- Wildfire smoke was responsible for an average of 411 deaths in Oregon per year over the past decade. Under our planet's current trajectory, the number of deaths will increase to around 600 per year by the 2050s so that the mortality costs of wildfire smoke in Oregon will grow by more than \$7.9 billion dollars per year, or by \$4,500 per household relative to today."

B. External Costs per Ton of Carbon Dioxide

Every ton of carbon dioxide added to the atmosphere because of the planned development will increase the economic damage. Federal agencies currently estimate that the damage, known as the social cost of carbon dioxide, will be \$200 per metric ton. The actual damage will be higher; one study concluded that the social cost of carbon dioxide is perhaps \$3,319 per metric ton.² But even this number does not capture the real costs. Distinguished scientists, led by researchers at Oregon State University, warn that the climate, ecological, and social changes and impacts from continued emission of greenhouse gases will become far more severe without prompt steps are taken to prevent actions that would increase emissions.

*"We are on the brink of an irreversible climate disaster. This is a global emergency beyond any doubt. Much of the very fabric of life on Earth is imperiled. We are stepping into a critical and unpredictable new phase of the climate crisis. For many years, scientists, including a group of more than 15,000, have sounded the alarm about the impending dangers of climate change driven by increasing greenhouse gas emissions and ecosystem change."*³

C. Climate-Related Human Deaths

Research shows it is reasonable to anticipate that every 3,700 tons of carbon dioxide (or equivalent for other pollutants) added to the atmosphere likely will lead to the death of one person.⁴ Extensive evidence suggests that actual death rate will be much higher in the future.⁵

D. External Costs to Children

An analysis published earlier this year focused on the costs changes in climate will impose on America's children, by reducing their incomes and increasing their cost of living. It concludes that, for a typical child born in 2024, the costs will total least \$500,000 over the course of their lifetime—and possibly as much as \$1 million.⁶ These costs will potentially wipe out perhaps 25 years of annual income (using today's median income for comparison) over each lifetime.

External Costs Related to the Biodiversity/Ecosystem Services Crisis

Nature provides numerous, valuable benefits for humans. Economists apply the label, ecosystem services, to these benefits. The multiplicity and overall value of these benefits depends on local and global biodiversity—the diversity of life. Human actions, especially over the past century, have seriously diminished biodiversity, and the ability of ecosystems to continue providing valuable ecosystem services. This curtailment of ecosystem services imposes costs on all humans, including the Residents of Rockaway Beach.

The best science currently available strongly suggests it would be prudent for the City Council to expect that approval of the proposed development will curtail the production of ecosystem services, with value of the costs far exceeding the development's potential economic benefits. The following sections look at these costs from several perspectives:

- A. External costs: recent research
- B. External costs: default estimate
- C. External costs: estimates from FEMA
- D. External Costs: impacts on water
- E. External costs: impacts on salmon

A. External Costs: Recent Research

A recent review of global research reached these conclusions:⁷

*“Our analysis shows that both conservation and ecological restoration bring considerable net benefits in terms of public goods and common pool resources, regardless of the habitat or type of ecosystem state change being considered. [so that], within the broad habitat and geographic range present in our data, **we have typically passed the point where the benefits of further change from nature towards human-modified uses exceed the costs to society.**”¹ [bold emphasis added]*

B. External Costs: Default Estimate

A 2021 landmark analysis of the economic importance of biodiversity and ecosystem services, found that, because ecosystems have been degraded so extensively, the economic importance of each remaining unit (e.g., acre) is growing exponentially.⁸ The threats of climate change boost the values even more rapidly. As a result, while the average rate of return on investments that degrade biodiversity, such as the proposed development, tends to be about 5% per year, the rate of return on investments that conserve/restore biodiversity/ecosystems has recently been about 4 times greater, and this is growing rapidly. Thus, whatever the alleged economic benefits from the proposed development, it is reasonable for the City Council to adopt a default assumption that the external economic costs from ecological harms will be 4+ times larger, unless the proponent can provide compelling evidence to the contrary.

C. External Costs: Estimates from the Federal Emergency Management Agency (FEMA)

In 2022, FEMA acknowledged that, rather than pay communities and landowners to rebuild after a disaster, only to see the property damaged again, it often would be more efficient to invest in ecosystem conservation/restoration. To facilitate analysis of the benefits and costs of this approach, the agency

1

published estimates of the value of ecosystem services derived annually from different ecosystems. Here are the numbers:⁹

Table 4. Summary of Proposed Land Cover Categories and Ecosystem Service Values

Ecosystem Service	Value by Land Cover Category (2021 USD/acre/year)								
	Urban Green Open Space	Rural Green Open Space	Riparian	Forest	Coastal Wetland	Inland Wetland	Coral Reefs	Shellfish Reefs	Beaches and Dunes
Aesthetic Value	7,010	7,505	767	1,477	1,648	1,303	327	-	223,840
Air Quality	201	-	254	711	-	-	-	-	-
Biological Control	-	-	199	-	-	-	-	-	-
Climate Regulation	54	77	96	199	125	56	-	-	-
Erosion Control	78	78	13,823	1,672	-	-	-	-	-
Existence Value	-	-	-	7,531	-	-	-	-	-
Flood and Storm Hazard Reduction	316	-	6,052	368	1,035	1,264	3,269	-	-
Food Provisioning	-	-	736	-	-	-	18	1,905	-
Habitat	5,890	2,021	2,547	-	2,420	1,416	2,222	-	-
Pollination	350	350	-	-	-	-	-	-	-
Recreation/Tourism	1,642	601	6,215	94	1,624	1,906	1,261	253	76,809
Research and Education	-	-	-	-	-	-	23	-	-
Water Filtration	-	-	6,239	435	1,558	1,584	-	600	-
Water Supply	-	-	272	103	544	643	-	-	-
Total Estimated Benefits	15,541	10,632	37,199	12,589	8,955	8,171	7,120	2,757	300,649

Note that the “Total Estimated Benefits” for coastal wetland is \$8.995 per acre per year. Also note that the number is incomplete, insofar as FEMA could not find research adequate to fill-in the gaps for Air Quality, Biological Control, Erosion Control, Existence Value, Food Provisioning, Pollination, and Research and Education. Moreover, FEMA’s climate-related estimate fails to account for all the social costs from carbon dioxide emissions. Nonetheless, it may be useful for the City Council to use this information to conduct a preliminary assessment of the potential external costs of the proposed development and to show that the proponents have not accounted for the adverse impacts on ecosystem values.

D. External Costs: Impacts on Water

In 2023, WWF published the “First ever annual estimate of economic value of water and freshwater ecosystems is \$58 trillion - equivalent to 60% of global GDP” and concluded that “Degradation of rivers,

lakes, wetlands and aquifers threatens their economic value and their irreplaceable role in sustaining human and planetary health.”¹⁰ These findings might be useful for demonstrating that the area’s water resources have great economic value and the proposed development will destroy the value insofar as it degrades the water quality, the reliability of water quantity, and the ecosystem services supported by the wetland. All else equal, the economic loss solely from the degradation of water would equal 60% of the development’s contribution to GDP. Thus, it would be reasonable for the City Council to hold the developer accountable for these costs and provide commensurate compensation.

E. External Costs: Impacts on Salmon

OSU research has examined the economic importance of Coastal Coho Salmon threatened with extinction. “Our results show that a program aimed at increasing numbers of returning salmon can generate sizable benefits of up to \$518 million/y for an extra 100,000 returning fish.... Moreover, while conservation investment strategies expected to achieve relatively rapid results are likely to have higher up-front costs, our results show that the public attaches substantial additional value of up to \$277 million/y for achieving conservation goals quickly.”¹¹ Note that the value per one-fish increase in the annual population is \$5,180–\$7,950. The same or larger value would apply per one-fish decrease in the annual population. Climate and other factors probably are increasing these values. Given these estimates, it would be reasonable for the City Council to require that the developer account fully for these values, accept all risk that the development could have an adverse impact, and provide full compensation if an adverse impact occurs. Note also that these findings, for salmon, indicate that similar values apply to other species, but research has not yet quantified the values.

Respectfully submitted,



Ernie Niemi
President, Natural Resource Economics.

Ernie Niemi prepared this report for Natural Resource Economics, a consultancy in Dexter, Oregon USA, which is solely responsible for its contents. The report draws on currently available data and research findings, and on more than four decades of research on the economic importance of ecosystems,

¹ Miller, K. and others. 2024. [The Economic Costs of Climate Change for Oregonians: A First Look](#). Forum on Oregon Climate Economics.

² Kikstra, J., P. Waidelich, J. Rising, and others. 2021. [The Social Cost of Carbon Dioxide Under Climate-Economy Feedbacks and Temperature Variability](#).

³ Ripple, W.J., and others. 2024. [The 2024 State of the Climate Report: Perilous Times on Planet Earth](#).

⁴ Pearce, J.M., and R. Parncutt. 2023. [Quantifying Global Greenhouse Gas Emissions in Human Deaths to Guide Energy Policy](#).

⁵ See, for example: Hansen, J., M. Sato, L. Simons, and others. 2023. [Global Warming in the Pipeline](#); British Medical Journal and others. 2023. [Time to Treat the Climate and Nature Crisis as One Indivisible Global Health Emergency](#); Newman, R., and I.

Noy. 2023. [The Global Costs of Extreme Weather that Are Attributable to Climate Change](#); Lenton, T.M., and others. 2023. [The Global Tipping Points Report 2023](#); and He, H., R.J. Kramer, B.J Soden, and N. Jeevanjee. 2023. [State Dependence of CO₂ Forcing and Its Implications for Climate Sensitivity](#).

⁶ ICF. 2024. [Cost of Climate Change to an American Born in 2024](#).

⁷ Bradbury, R.B., S.H.M. Butchart, B. Fisher, and others. 2021. [The Economic Consequences of Conserving or Restoring Sites for Nature](#).

⁸ Dasgupta, P. 2021. [The Economics of Biodiversity: The Dasgupta Review](#). Her Majesty's Treasury.

⁹ FEMA. 2022. [FEMA Ecosystem Service Value Updates](#).

¹⁰ WWF. 2023. [WWF Report: Water Crisis Threatens US\\$58 Trillion in Economic Value, Food Security, and Sustainability](#).

¹¹ Lewis, D.J., and others. 2019. [The Non-Market Benefits of Early and Partial Gains in Managing Threatened Salmon](#).

From: Elaine Busby Thompson <[REDACTED]>
Sent: Friday, November 15, 2024 4:47 PM
To: Melissa Thompson
Subject: #Appeal-24-1

To whom it may concern,

I am writing in opposition to the proposed development in Nedonna Beach on two counts.

1. I am a homeowner on Nedonna Avenue. I have owned the home for 24 years. It is an STR, and we visit year round to enjoy and work on the property. We plan to locate here when we retire within a year or so.

I know that our street is the only way in/out of Nedonna. I assume there are no speed bumps so that emergency vehicles can get in and out safely.

However, because the area has so many rentals, and few full time homeowners, people drive very fast in front of my home. Lake Nedonna, which is stocked so kids can fish, is right across the street. Kids and all tourists love to ride bikes, use skateboards and walk their dogs to the beach via this street. Many people, despite vacationing in the area themselves, drive very fast down the street, ignoring all signage.

And the traffic is constant in the summer months especially.

Do we really need more short term rentals in the area without a second access road? I doubt they would become affordable homes or even primary residences.

Which I would not particularly object to if there weren't the road access issue and another issue I consider even more important.

2. Protecting wildlife habitat

I know that many tourists come to our area and this is a tourist based economy. I myself have benefitted from that economy as I have always used my home, with full STR compliance on all regulations, as a rental.

I now live in Hood River, in the middle of a protected area because of the gorge scenic act. I see how the efforts to protect the environment have benefitted the tourism economy here.

Most of the people who vacation at my home are from the Pacific Northwest. People from this region by and large respect and advocate for protecting wildlife habitat.

It could be another wonderful feature of this scenic and special part of the Oregon coast that visitors to Nedonna Beach could be made aware of.

Or it could result in more devastation and degradation of our environment and loss of habitat for some animals that I have seen for years in the area. I love seeing the wildlife. We even saw a cougar one day walking down Nedonna Avenue. I've seen river otters, beavers and deer. Neighbors have seen bears. They are ALL a part of what makes this area so very precious to me.

It is their home, too.

It's up to you to deny this appeal.

Thank you for your consideration in this matter.

Sincerely,

Elaine Thompson

██████ Nedonna Avenue
Rockaway Beach, OR 97136

Mailing address:

████████████████████

████████████████████████████████

████████████████████

██

From: Mark Overmyer-Velazquez <[REDACTED]>
Sent: Monday, November 18, 2024 3:14 PM
To: Melissa Thompson
Cc: charlesforrockawaybeachmayor@gmail.com; pennychick@live.com;
marymcginniscitycouncil@gmail.com; tmartine13719@gmail.com;
kristineforrockaway@gmail.com; alesiafrankenrbcitycouncil@gmail.com;
rockawaycitizen.water@gmail.com
Subject: Save Our Nedonna Wetlands! #Appeal-24-1

Planning Department
P.O. Box 5 Rockaway Beach, OR 97136

Dear Planning Commissioners,

I am a homeowner in Tillamook County and a Rockaway neighbor who lives on Neahkahnie Mountain. I am writing to urge you to **oppose** the construction of homes in a sensitive wetland area that is vital to the wellbeing of people and the local ecosystem and **support** the appeal of the planned subdivision. The Nedonna Marsh is an intact remnant of the original native coast. Within this wild area is a native saltwater marsh, spruce/willow wetlands, and a dune area with many native plants. Coyotes, river otters, beavers, deer, and other wildlife call this area home. Migratory birds use it to rest and refuel. Two streams, Jetty Creek and McMillan Creek, flow through this estuary and into the Nehalem River. The marsh is currently under threat. It is privately owned and part of it is in immediate danger of being developed. If this happens, Oregon will lose this special place forever.

In July 2024, the Rockaway Beach Planning Commission approved the Nedonna Wave Development, which would allow for a new housing subdivision within the Nedonna Marsh. In response to this approval, the Oregon Shores Conservation Coalition has submitted an appeal to the Rockaway Beach City Council. Oregon Shores is being represented by the Crag Law Center. Here are some reasons for supporting the appeal:

- The aquifer at Nedonna Beach is part of a groundwater system that supplies fresh water to the City of Rockaway Beach. It is vital for the community's water supply, and its management is key to ensuring a reliable and safe source of water for residents. Development could lead to pollution and over extraction of wells needed for the City's water system.
- These wells are particularly susceptible to adverse effects from nearby septic systems of varying ages and conditions, as well as surface activities such as fertilizing and pesticide application for yard maintenance. Moreover, their proximity to the ocean has resulted in noticeable saltwater intrusion as indicated by elevated sodium levels in water samples from the wells. Any further development is likely to intensify these negative impacts.
- Much of the proposed development is now in the City's Special Area Wetlands Zone (SA), the purpose of which is to "conserve significant freshwater wetlands and the shoreland and aquatic environment of Rockaway Beach's lakes."
- The would-be developer is trying to utilize the original approval for the project that is 16 years old. Both State and local laws have provisions that prohibit

such an old approval from being revived without further review based on current conditions. In those 16 years, the City has grown and changed, applicable regulations have evolved, and wetlands have shifted position. The City Council must deny this application, because the 16-year-old approval is no longer valid.

- The issues with the outdated approval are demonstrated by the fact that much of this proposed PUD is now in a protected wetland zone that does not allow any residential development. Clearly, the City Council would be violating its own standards for protecting sensitive wetlands if it approves this development.
- At risk are wetlands and McMillan Creek, which flows past the area to be developed. They both provide habitat for a range of wildlife including river otters, coyotes, beavers, deer, and many species of birds.
- There are also risks to the community. Emergency evacuation via the one road outlet for the area is currently questionable as to effectiveness and safety. Adding more homes to the area would be highly irresponsible.
- The City has not done enough to mitigate the risk this development poses to its tsunami evacuation plan. To protect its residents, the City's code requires developments, such as this one, to have improvements made to evacuation routes, including adding capacity by creating new routes. The developer of this PUD will not be required to make any improvements to the evacuation routes, but will instead only have to conduct a "traffic study." That "traffic study" does nothing to improve the community's safety, and after it is conducted the City will no longer have any ability to require *actual* improvements from the developer based on the findings of the study.
- The area is already at risk of flooding and adding more impervious surfaces would make this worse. For comparison, the ongoing filling and development in the Rockaway Beach area near Washington Street has resulted in significant flooding issues. The neighborhood in Nedonna Beach relies on the flood mitigation properties of the wetlands which must be preserved and not filled or developed as was done in the Washington Street area.
- This neighborhood faces several significant fire hazards, such as inadequately maintained fire pits, beach fires positioned too close to driftwood, highly-combustible dune grass, the large wooded area south of the jetty, and the use of illegal fireworks on the Fourth of July. In the event of a major fire, the only access/egress point—only one way into or out of the area—would severely hinder evacuation efforts. Adding more dense housing in this area would be highly irresponsible.
- This is about developers making money at the expense of residents, who are already concerned about water and wetlands.
- Everyone should have to play by the rules. The residents of the area have purchased or built their homes in good faith compliance with the land use laws and the City's plan. This developer should not be allowed to evade those regulations, including those protecting wetlands and the rule setting an expiration date for PUD approvals.
- Effective December 1, 2024, regulations for development in the Special Flood Hazard Area (commonly known as the "floodplain") will be changing. These changes are mandated by FEMA for jurisdictions that participate in the National Flood Insurance Program (NFIP).

Please consider the future of this beautiful place and the legacy we leave to our kids and grandkids: save the wetlands!

Sincerely,

Mark Overmyer-Velázquez

Beulah Reed Road

Neahkahnie OR 97131

From: Rebecca Overmyer-Velázquez <[REDACTED]>
Sent: Sunday, November 17, 2024 9:21 PM
To: Melissa Thompson
Cc: charlesforrockawaybeachmayor@gmail.com; pennychick@live.com;
marymcginniscitycouncil@gmail.com; tmartine13719@gmail.com;
kristineforrockaway@gmail.com; alesiafrankenrbcitycouncil@gmail.com;
rockawaycitizen.water@gmail.com
Subject: Save Our Nedonna Wetlands! #Appeal-24-1

Planning Department
P.O. Box 5 Rockaway Beach, OR 97136

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- The City has not done enough to mitigate the risk this development poses to its tsunami evacuation plan. To protect its residents, the City's code requires developments, such as this one, to have improvements made to evacuation routes, including adding capacity by creating new routes. The developer of this PUD will not be required to make any improvements to the evacuation routes, but will instead only have to conduct a "traffic study." That "traffic study" does nothing to improve the community's safety, and after it is conducted the City will no longer have any ability to require *actual* improvements from the developer based on the findings of the study.
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Please consider the future of this beautiful place and the legacy we leave to our kids and grandkids: save the wetlands!

Sincerely,

Rebecca Overmyer-Velázquez
 [REDACTED] Beulah Reed Road
 Neahkahnne OR 97131
 [REDACTED]

From: Yandle, Jeffrey <[REDACTED]>
Sent: Saturday, November 16, 2024 12:24 PM
To: Melissa Thompson
Subject: Nedonna Wave Development

We are vehemently against the approval of the Nedonna Wave Development and, as homeowners, are firmly in support of the appeal of that decision.

Jeff Yandle
Rockaway, OR

From: Molly Moran-Yandle <[REDACTED]>
Sent: Saturday, November 16, 2024 12:38 PM
To: Melissa Thompson
Subject: Nedonna Wave Development

As residents of a nedonna beach home, we are vehemently opposed to the Nedonna Wave development. We are firmly in support of the appeal of the development #Appeal-24-1

Sincerely
Molly Moran-Yandle
Rockaway, Oregon
[REDACTED]

**ADDITIONAL
PUBLIC TESTIMONY
SUBMITTED FOR
NOVEMBER 20, 2024
CITY COUNCIL HEARING
Land Use Appeal # 24-1
Nedonna Wave Planned Unit
Development - Phase 2**

(Received as of 3:00 pm on 11/19/2024)

From: Lucy Brook <[REDACTED]>
Sent: Monday, November 18, 2024 11:21 AM
To: City Hall <cityhall@corb.us>
Subject: Nedonna Wave PUD development

To City of Rockaway,

*Planning Commission
City Council*

There are many residences already in the wetland where this development is proposed.

These residences all have septic systems.

I think it is an insane idea to add any number of new residences to a wetland that is already compromised by the present septic systems.

For these reasons I oppose the proposed Nedonna Wave PUD development.

Each of us deserves clean, uncontaminated drinking water.

Respectfully,

*Lucile W. Brook
Nehalem, Tillamook County resident*

To: Rockaway Beach City Council

From: Danny J. Wilhelmi

██████ Chieftain Dr

Rockaway Beach, OR 97136

Date: 11/18/2024

Subject: Written public comments regarding #Appeal-24-1

Dear Rockaway Beach City Council,

As the fall rain sets in and I watch McMillan Creek rise to uncomfortably high levels behind my house, I am compelled to submit public comments regarding Appeal-24-1 (PUD-24-1).

Given that to my knowledge no action is being taken by the City to remediate this significant flood risk (despite my written complaints regarding violations of 94.042 by the property owner of this section of the creek) and that proceeding with this PUD will only amplify this risk, its imperative that the City Council consider the appeal with the intent of protecting existing homeowners in Nedonna Beach.

The issues raised by Oregon Shores Conservation Coalition are very clearly presented and it seems impossible to conclude that errors have not been made throughout this process, dating back to original PUD approval. Errors of the past should not prevent the Council from taking the right decisions today.

Issue1 is very clear to me. There was no schedule submitted as was required. Additionally, 16yrs have elapsed since the 2008 application and the plan has not been completed yet. If the City Council views 16yrs as acceptable, I must suggest the council consider what amount of time is not acceptable? 25yrs, 50yrs, 100yrs, 200yrs? If a clear limit of reasonable time cannot be defined, then the council should conclude that 16yrs has already exceeded this threshold.

Thank you for your consideration of my comments toward this appeal.

Sincerely,
Danny J. Wilhelmi

From: Daniel Howlett <[REDACTED]>
Sent: Tuesday, November 19, 2024 9:54 AM
To: Melissa Thompson
Subject: Opposition to Proposed Nedonna Wave Development

Dear Members of the Council,

I am writing to express my strong opposition to the proposed Nedonna Wave Development. While I recognize the need for additional housing in Rockaway Beach, this particular project poses significant issues:

1. **Threat to Water Quality:** Leaking septic tanks and other contaminants risk compromising the backup water supply.
2. **Outdated Approvals:** The project's approval is 16 years old and does not align with current standards.
3. **Wetland Protection:** The development would destroy protected wetlands, impacting wildlife habitats.
4. **Safety Concerns:** Nedonna Beach has a single access point, creating a safety risk in emergencies.
5. **Flood Risk:** The area is prone to flooding, and displacing wetlands would exacerbate this issue.
6. **Regulatory Concerns:** Allowing developers to bypass wetland protections sets a troubling precedent.
7. **Litigation Risks:** This project could lead to costly and prolonged legal challenges.
8. **Conflict with Comprehensive Plan:** The city's plan emphasizes conserving natural resources, which this project contradicts.

The recent housing needs study identified two priorities: *commercial buildings* and *multi-family housing* to support the local workforce. Building more luxury single-family homes does not address these needs.

To encourage appropriate development, I recommend lowering development fees and water connection fees for downtown. This would incentivize the creation of mixed-use buildings, with storefronts on the ground floor and apartments above. Such projects would utilize existing infrastructure and avoid the need for costly expansions.

A few years ago, I proposed starting an urban renewal agency to revitalize downtown, similar to Garibaldi's successful program since 2006. Currently, downtown Rockaway Beach is subject to the same regulations as other areas, which stifles redevelopment. Adjustments, such as reducing parking requirements to one space per unit and lowering fees, could help fill vacant storefronts and revitalize the downtown corridor.

I urge the council to reconsider the proposed development and focus on sustainable, community-aligned growth that preserves our natural resources and enhances our city's future.

Sincerely,

Daniel Howlett

██████████ Grayling St

Dear Rockaway Beach City Council:

As a concerned community member and visitor, I support the appeal of the Nedonna Wave Planned Unit Development (PUD-24-1) for the following reasons:

- The aquifer at Nedonna Beach, is part of a groundwater system that supplies fresh water to the city. It is vital for the community's water supply, and its management is key to ensuring a reliable and safe source of water for residents. Development could lead to pollution and over extraction of wells needed for the city's water system.
- These wells are particularly susceptible to adverse effects from nearby septic systems of varying ages, as well as surface activities such as fertilizing and pesticide application for yard maintenance. Moreover, their proximity to the ocean has resulted in noticeable saltwater intrusion, as indicated by elevated sodium levels in water samples from the wells. Any further development is likely to intensify these negative impacts.
- Much of the proposed development is now in the city's Special Area Wetlands Zone (SA), the purpose of which is to "conserve significant freshwater wetlands and the shoreland and aquatic environment of Rockaway Beach's lakes."
- The would-be developer is trying to utilize an original approval for the project that is now 16 years old. Both state and local law have protections that prohibit such an old approval from coming back without further review based on current conditions. In those 16 years, the City has grown and changed, applicable regulations have evolved, and wetlands have moved. The City Council must deny this application because the 16-year-old approval is no longer valid.
- The issues with the outdated approval are demonstrated by the fact that much of this PUD is now in a protected wetland zone that does not allow any residential development. The City Council would be clearly violating its own standards for protecting sensitive wetlands if it approves this development.
- At risk are wetlands and the health of McMillan Creek, which flows past the area to be developed, and provides habitat for a range of wildlife including river otters, coyotes, beavers, deer and many species of birds.
- There are also risks to the community. Emergency evacuation via the one road outlet for the area is currently questionable as to effectiveness and safety. Adding more homes to the area, increasing the number of people needing to evacuate in the case of an emergency, would be highly irresponsible.
- The City has not done enough to mitigate the risk this development poses to its tsunami evacuation plan. To protect its residents, the City's code requires developments like this one make improvements to evacuation routes, including adding capacity by creating new routes. The developer here will make no improvements to the evacuation routes, but will instead only have to conduct a

"traffic study." That traffic study does nothing to improve the community's safety, and after it is conducted the City will no longer have any ability to require actual improvements from the developer based on the findings of the study.

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- Everyone should have to play by the rules. The residents of the area have purchased or built their homes in good faith compliance with the land use laws and the city's plan. This developer should not be allowed to evade those regulations, including those protecting wetlands and the rule setting an expiration date for PUD approvals.
- Effective December 1, 2024, regulations for development in the Special Flood Hazard Area (commonly known as the "floodplain") will be changing. These changes are mandated by FEMA for jurisdictions that participate in the National Flood Insurance Program (NFIP).

Considering all of this, I sincerely hope you will choose to reject the proposed Planned Unit Development in order to protect these vital wetlands. This decision will help safeguard our community's safety, fresh water supply, and natural resources, for ourselves and future generations.

Thank you,

Jeff Johns

Name

Tillamook

City, Or

[REDACTED]
Email address

[illegible][illegible]

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Considering all of this, I sincerely hope you will choose to reject the proposed Planned Unit Development in order to protect these vital wetlands. This decision will help safeguard our community's safety, fresh water supply, and natural resources, for ourselves and future generations.

Thank you,

Bonita Lane

Name

Tillamook OR 97141

City, Or

Email address

Dear Rockaway Beach City Council:

As a concerned community member and visitor, I support the appeal of the Nedonna Wave Planned Unit Development (PUD-24-1) for the following reasons:

- The aquifer at Nedonna Beach, is part of a groundwater system that supplies fresh water to the city. It is vital for the community's water supply, and its management is key to ensuring a reliable and safe source of water for residents. Development could lead to pollution and over extraction of wells needed for the city's water system.
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Considering all of this, I sincerely hope you will choose to reject the proposed Planned Unit Development in order to protect these vital wetlands. This decision will help safeguard our community's safety, fresh water supply, and natural resources, for ourselves and future generations.

Thank you,

Cody Newton

Name

Nedonna Beach, OR

City, Or


Email address

Dear Rockaway Beach City Council:

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Thank you,

Amanda Newton A. Newton
Name

Portland & Rockaway Beach
City, Or


Email address

Nov. 16, 2024

Dear Rockaway Beach City Council:

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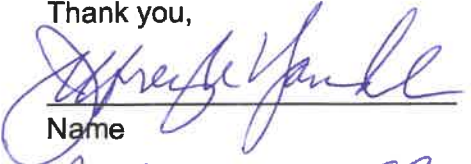
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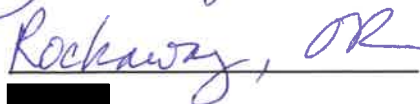
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Thank you,


Name


[REDACTED]


Email address

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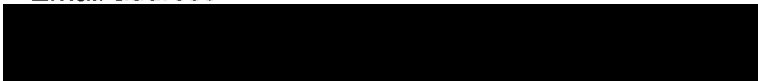
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Thank you,


Name


City, Or


Email address



**ADDITIONAL
PUBLIC TESTIMONY
SUBMITTED FOR
NOVEMBER 20, 2024
CITY COUNCIL HEARING
Land Use Appeal # 24-1
Nedonna Wave Planned Unit
Development - Phase 2**

(Received as of 3:00 pm on 11/20/2024)

From: Jordanna Hertz <[REDACTED]>
Sent: Tuesday, November 19, 2024 3:42 PM
To: Melissa Thompson
Subject: RE: Save Our Nedonna Wetlands! #Appeal-24-1

Dear Planning Commissioners,

I am a homeowner in Tillamook County and a Rockaway neighbor who lives on Neahkahnie Mountain. I am writing to urge you to **oppose** the construction of homes in a sensitive wetland area that is vital to the wellbeing of people and the local ecosystem and **support** the appeal of the planned subdivision. The Nedonna Marsh is an intact remnant of the original native coast. Within this wild area is a native saltwater marsh, spruce/willow wetlands, and a dune area with many native plants. Coyotes, river otters, beavers, deer, and other wildlife call this area home. Migratory birds use it to rest and refuel. Two streams, Jetty Creek and McMillan Creek, flow through this estuary and into the Nehalem River. The marsh is currently under threat. It is privately owned and part of it is in immediate danger of being developed. If this happens, Oregon will lose this special place forever.

In July 2024, the Rockaway Beach Planning Commission approved the Nedonna Wave Development, which would allow for a new housing subdivision within the Nedonna Marsh. In response to this approval, the Oregon Shores Conservation Coalition has submitted an appeal to the Rockaway Beach City Council. Oregon Shores is being represented by the Crag Law Center. Here are some reasons for supporting the appeal:

- The aquifer at Nedonna Beach is part of a groundwater system that supplies fresh water to the City of Rockaway Beach. It is vital for the community's water supply, and its management is key to ensuring a reliable and safe source of water for residents. Development could lead to pollution and over extraction of wells needed for the City's water system.
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- Much of the proposed development is now in the City's Special Area Wetlands Zone (SA), the purpose of which is to "conserve significant freshwater wetlands and the shoreland and aquatic environment of Rockaway Beach's lakes."
- The would-be developer is trying to utilize the original approval for the project that is 16 years old. Both State and local laws have provisions that prohibit such an old approval from being revived without further review based on current conditions. In those 16 years, the City has grown and changed, applicable regulations have evolved, and wetlands have shifted position. The City Council must deny this application, because the 16-year-old approval is no longer valid.
- The issues with the outdated approval are demonstrated by the fact that much of this proposed PUD is now in a protected wetland zone that does not allow any residential development. Clearly, the City Council would be violating its own standards for protecting sensitive wetlands if it approves this development.

- At risk are wetlands and McMillan Creek, which flows past the area to be developed. They both provide habitat for a range of wildlife including river otters, coyotes, beavers, deer, and many species of birds.
- There are also risks to the community. Emergency evacuation via the one road outlet for the area is currently questionable as to effectiveness and safety. Adding more homes to the area would be highly irresponsible.
- The City has not done enough to mitigate the risk this development poses to its tsunami evacuation plan. To protect its residents, the City's code requires developments, such as this one, to have improvements made to evacuation routes, including adding capacity by creating new routes. The developer of this PUD will not be required to make any improvements to the evacuation routes, but will instead only have to conduct a "traffic study." That "traffic study" does nothing to improve the community's safety, and after it is conducted the City will no longer have any ability to require *actual* improvements from the developer based on the findings of the study.
- The area is already at risk of flooding and adding more impervious surfaces would make this worse. For comparison, the ongoing filling and development in the Rockaway Beach area near Washington Street has resulted in significant flooding issues. The neighborhood in Nedonna Beach relies on the flood mitigation properties of the wetlands which must be preserved and not filled or developed as was done in the Washington Street area.
- This neighborhood faces several significant fire hazards, such as inadequately maintained fire pits, beach fires positioned too close to driftwood, highly-combustible dune grass, the large wooded area south of the jetty, and the use of illegal fireworks on the Fourth of July. In the event of a major fire, the only access/egress point—only one way into or out of the area—would severely hinder evacuation efforts. Adding more dense housing in this area would be highly irresponsible.
- This is about developers making money at the expense of residents, who are already concerned about water and wetlands.
- Everyone should have to play by the rules. The residents of the area have purchased or built their homes in good faith compliance with the land use laws and the City's plan. This developer should not be allowed to evade those regulations, including those protecting wetlands and the rule setting an expiration date for PUD approvals.
- Effective December 1, 2024, regulations for development in the Special Flood Hazard Area (commonly known as the "floodplain") will be changing. These changes are mandated by FEMA for jurisdictions that participate in the National Flood Insurance Program (NFIP).

Please consider the future of this beautiful place and the legacy we leave to our kids and grandkids: save the wetlands!

Sincerely,
Jordanna Hertz

From: Seth Thompson <[REDACTED]>
Sent: Tuesday, November 19, 2024 4:10 PM
To: Melissa Thompson; charlesforrockawaybeachmayor@gmail.com; pennycheek@live.com; tmartine13719@gmail.com; kristineforrockaway@gmail.com; marymcginniscitycouncil@gmail.com; alesiafrankenrbcitycouncil@gmail.com
Subject: Appeal #24-1
Importance: High

What are the developers afraid of? If they had not tried to rely on an outdated and legally void ancient approval and submitted their proposal to the normal approval process, the Council would not have had to invest time and energy dealing with an issue that may expose the city to legal liability. If their plans are compatible with modern standards, then they should be approved. If their plans are not up to modern standards, then they need to be revised. Seems to me to be no different than trying to remodel my house and arguing that since I've owned it since 1985 the building code in force then should govern my contractor now.

What are the developers afraid of? The truth about how damaging to the environment the outdated proposal is? The truth about the risk to my friends and neighbors that no additional exit/entrance from Nedonna poses? The fact that the lack of additional access adds several minutes to the response time in a medical emergency when for heart attacks and strokes, every minute literally matters? That a thorough review would reveal just how vulnerable this development would be to flooding or fire? The fact that the bulk of the benefits of the development flow to rich Portlanders and the bulk of the costs are borne by the citizens and taxpayers of Rockaway Beach?

I am very much against the development but maybe a thorough review of the proposal in light of 2024 standards will prove me wrong. I am not afraid of that thorough and careful examination of plans for the development, why are the developers?

Seth Thompson
[REDACTED] David Avenue
Nedonna Beach

From: Suzanne C. Thompson <[REDACTED]>
Sent: Tuesday, November 19, 2024 4:24 PM
To: Melissa Thompson; charlesforrockawaybeachmayor@gmail.com; pennycheek@live.com; tmartine13719@gmail.com; kristineforrockaway@gmail.com; marymcginniscitycouncil@gmail.com; alesiafrankenrbcitycouncil@gmail.com
Subject: #Appeal-24-1

Re: #Appeal-24-1

It is unfortunate that the planning department approved a project in the Nedonna Beach area that will allow development in and close to a wetlands and riverine area. I oppose the approval of this project for several reasons.

One, the original 2008 approval of this development is 16 years old and has expired. Much has changed in those years, including climate change that has led to rising sea levels that threaten our water supply and increased fire danger. Further development will increase these risks.

Two, development with houses built so close to McMillan Creek will endanger salmon, native trout, and beaver habitat. This is a Special Area Wetlands Zone that needs protection, not more development.

Three, increased development is dangerous for the people who live or rent in the Nedonna Area. There is only one road in or out of the Nedonna Beach area and that could be overwhelmed if a tsunami or fire occurred. Building additional housing in an area with only one evacuation exit in the event of a tsunami or fire is reckless.

For public safety and to protect our drinking water and natural environment, I urge the city council to support the appeal and deny the Nedonna Wave development.

Suzanne Thompson, [REDACTED] David Ave, Rockaway Beach, OR
[REDACTED]

From: Matt Caldwell <[REDACTED]>
Sent: Tuesday, November 19, 2024 5:44 PM
To: Melissa Thompson
Subject: #Appeal-24-1 - Public Comments

Hello,
I am a homeowner at 26700 Beach Drive in Nedonna.

I oppose the development and am concerned about the fragile wetlands.

I did extensive research on future flood projections before buying my house in 2020. I worked with a hydro groundwater consultant, mainly to be sure my home won't be flooded with rising sea water.

While it was determined that my home would be fine, the consultant directed my attention to the wetlands on the North and East of Nedonna. He said that these wetlands were the key to long term climate change mitigation. He explained how the wetlands act as a sponge and when flooding or sea level rise contributes huge sums of water, it's these areas that can preserve the higher ground.

This can be seen when simulations are run using federal groundwater simulators.

It would be foolish to chop these up and limit the wetlands further. Instead we should be exploring ways to expand the capacity of these wetlands.

I AM AGAINST THE DEVELOPMENT and frankly wonder how it got approved when it was 16 years old and out of the approval process?

Thanks for your time.

Matthew Caldwell
[REDACTED] Beach Drive
Rockaway Beach, OR

[REDACTED]

Susan Norris
[REDACTED] Beach Dr
Rockaway Beach, OR 97136
Nov. 18, 2024
[REDACTED]
[REDACTED]

Melissa Thompson
City Recorder
cityrecorder@corb.us

Re: #Appeal-24-1

Please accept the following as comments associated with Appeal 24-1.

Previously, I had posted a question regarding the roped off area within the Nedonna Wave project area. I don't believe that my questions were ever addressed or responded to, so I am asking again here with examples and specifics.

The original 2008 Nedonna Wave application included the following under Final Order: Exhibit B:

**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.

Image 1 shows the proposed Sign that was submitted with the 2006 Nedonna Wave application and which satisfied the RBZO requirement. A larger full-color sign of this was placed at two locations in the project site, as depicted in Image 2 of this document. Although, I do not know exactly when these signs were placed or by whom, I know that they have been around for at least 10 years as I frequently walk by them.

Because of the verbiage on this sign, we the people of Nedonna, have been led to believe that the area within the roped boundary was cooperatively reserved for wetlands. It wasn't until we were notified of the Nedonna Wave phase 2 project, that we learned differently.

Question: So, what is going on here? Why were we led to believe that this wetland area was not protected after all I? Is it common practice to reserve part of a wetland area only to later take it back and develop it? Would they be able to take more of the wetland in the future and develop that too?

On **Image 2**, the project or SITE is represented in the lower right-hand corner of the image. The red-line represents a 2-3 inch rope that was used as the barrier/delineation between public right-of-way or private

property line and that of any wetland area. Note that there is a small red loop on the red line. I have walked this area many times; the rope is clearly visible as depicted in image 2.

Please note a small loop on the rope in image 2. This area of the site appears to have already been filled. It is the only portion of the site that borders Kittiwake, that is level with the road and can easily be walked into from Kittiwake. It is higher in elevation than the wetland area adjacent and around it. In addition, PSI's Geotechnical Evaluation and Geologic Hazard Report dated February 20, 2006 and addressed to Anna Song, states in the second paragraph that the subject property has some geologic hazards, including but not limited to **"the presence of undocumented fill"**.

In addition, the wetland boundary including water, extended to the edge of Kittiwake at the end of June, 2024 this month. Water is apparently running under Song St. and entering houses at Song and Kittiwake from the floor. A lot of barriers and planning can be done to try to divert water, but in the end, it is going to win. Wetlands and trees are our largest natural resources that absorb carbon, you know, that stuff that is a product of burning fossil fuels and is filling up our air and atmosphere and causing polar ice to melt, seas to rise and warm, and storms to increase in magnitude. Why aren't we flat out preserving them and not allowing any building on wetland period? Once we build on them, they are gone....well, unless mother nature takes them back.

Question: Is this undocumented fill the same as what I perceive to be a filled area and which is also proposed for the development of Nedonna Wave's lots 17, 18 and 19? If so, the developer needs to provide proof that permission was given and all permits were obtained to fill this area as it is clearly wetlands. If this information is not available or cannot be obtained, I propose that the fill be removed and that the area be restored to wetland as it previously was.

Image 2 continued. The two lime green shapes within the Project/Site area approximately represent where the required signage was located. Up until about 2 years ago, these signs were very readable; however, between then and now, they have faded or the actual sign has been peeled off the platform, leaving only the post and a bare platform. As for delineation, the only land that was delineated or roped off from the wetland, was that associated with lots 17, 18 and 19. I did not bush-wack through the briars though.

Protected Wetland Area

In cooperation between the homeowners association, the local government, and state and federal agencies, these common open space areas have been set aside for protection to conserve wildlife habitat and provide flood control.

All activities involving alteration in a wetland or aquatic area may require local, state or federal permits.

The City of Rockaway Beach (SA Zone) Special Wetland Area Ordinance describes the low intensity uses permitted.

Thank you for protecting this sensitive environment.



CHARACTERISTICS AND FUNCTIONS OF WETLANDS

Isolated Wetlands

1. Waterfowl feeding and nesting habitat
2. Habitat for both upland and wetland species of wildlife
3. Floodwater retention area
4. Sediment and nutrient retention area
5. Area of special scenic beauty

Riverine Wetlands

1. See "isolated wetlands" above
2. Sediment control, stabilization of river banks
3. Flood conveyance area

Estuarine and Coastal Wetlands

1. See "isolated wetlands" above
2. Fish and shellfish habitat and spawning areas
3. Nutrient source for marine fisheries
4. Protection from erosion and storm surges

Image 2: Nedonna Wave Plat Map with Sign Placement and Rope Position

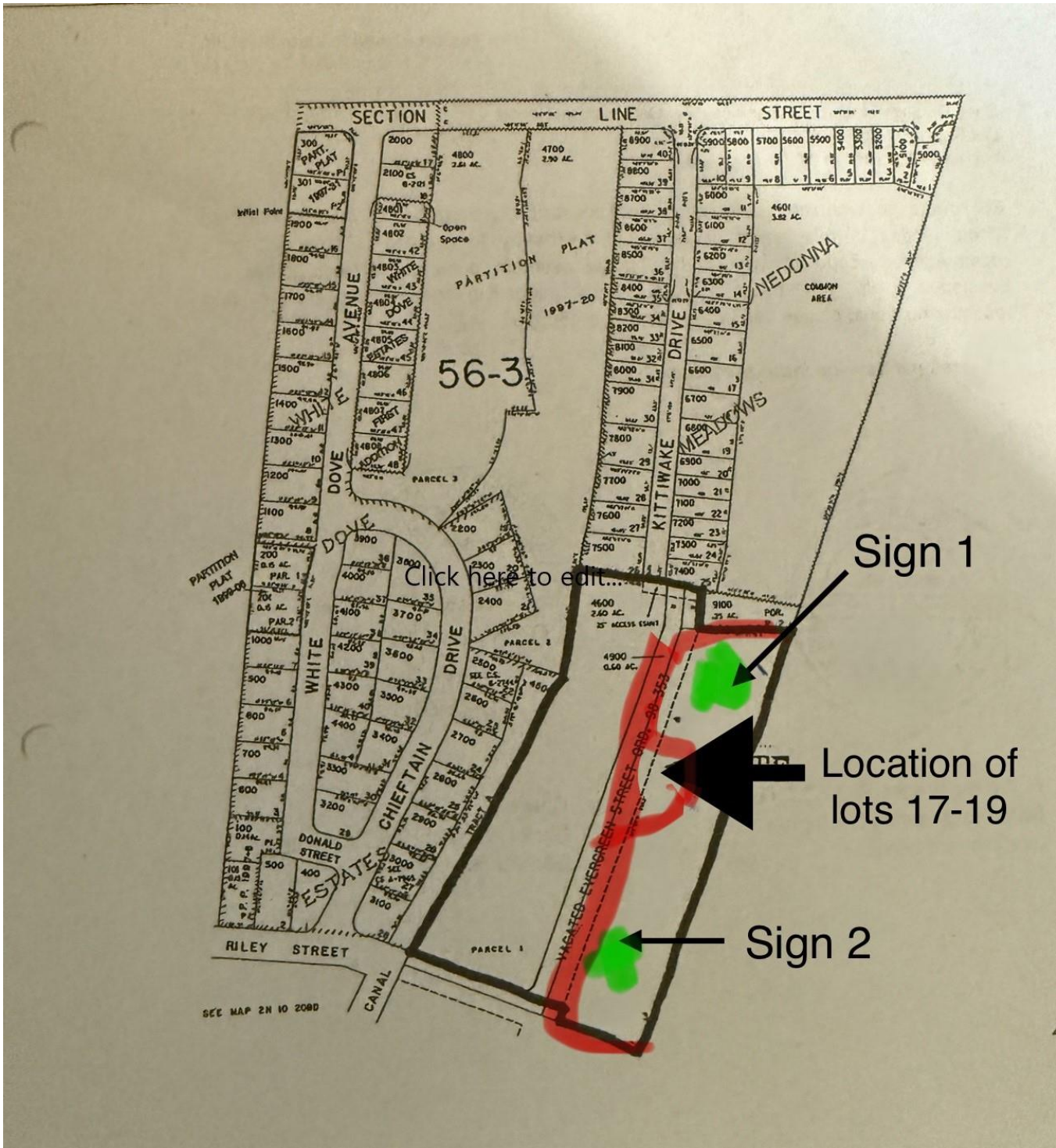


Image 3. Remains of Signs 1 and 2.



Sign 1



Sign 2

From: Xfinity Mobile <[REDACTED]>
Sent: Wednesday, November 20, 2024 7:36 AM
To: Melissa Thompson
Subject: RE: #Appeal-24-1

Regarding Nedonna Wave Planned Unit Development - PUD-24; #Appeal-24-1

From: Kate Sterry [REDACTED] Alton Street Portland, OR 97213
[REDACTED]net

November 19, 2024

City Recorder Melissa Thompson
Planning Department
P.O. Box 5
Rockaway Beach, OR 97136

To members of the Rockaway Beach Planning Commission:
I am writing in support of the appeal being made by North Coast Communities for Watershed Protection against the approval granted the Nedonna Wave Development, creating a new subdivision within the Nedonna Marsh. As a frequent visitor to Nedonna Beach I have enjoyed the variety of wildlife and natural beauty of the marsh.

As a concerned citizen there are many other reasons I support this appeal. I feel we must do all we can to protect our groundwater systems. The Nedonna Marsh is a unique wetland. Additionally, it is important to the community's water supply. Finally, new development would be too much strain on already stretched emergency systems, whether for flooding or fire.

Rather than allow a developer to use a sixteen year old approval which is no longer valid, it would be wise for the Planning Commission to consider doing something like the town of Silverton, where the Oregon Garden was built to protect the watershed and wildlife, showcase Oregon horticulture, and draw tourists to the area.

Kate Sterry

On 11/19/2024 8:51 AM PST Melissa Thompson <cityrecorder@corb.us> wrote:

Kate,

I was unable to open the attachment. You are welcome to type your comments into the body of the email.



Melissa Thompson, CMC

City Recorder

City of Rockaway Beach

p: 503-374-1752 | Direct: 503-374-0459

a: 276 S Hwy 101 | PO Box 5 | Rockaway Beach, OR 97136

w: www.corb.us | e: cityrecorder@corb.us

PUBLIC RECORDS LAW DISCLOSURE: Emails are generally public records and therefore subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. Emails can be sent inadvertently to unintended recipients and contain confidential or privileged information. If you are not the intended recipient (or authorized to receive for the recipient), please advise by return email and delete immediately without reading or forwarding to others.

From: Xfinity Mobile <[REDACTED]>
Sent: Tuesday, November 19, 2024 7:43 AM
To: Melissa Thompson <cityrecorder@corb.us>
Subject: #Appeal-24-1

Attached please find a letter for the hearing tomorrow. Can you let me know if there are any problems opening it?

Thanks very much,

Kate Sterry

From: Jeff J <[REDACTED]>
Sent: Wednesday, November 20, 2024 9:39 AM
To: Melissa Thompson; charlesforrockawaybeachmayor@gmail.com; pennycheek@live.com; marmcginniscitycouncil@gmail.com; tmartine13719@gmail.com; KristineforRockaway@gmail.com; alesiafrankenrbcitycouncil@gmail.com; rockawaycitizen.water@gmail.com; [REDACTED] Jeff J
Subject: #Appeal-24-1

Appeal-24-1 AGAINST the proposed Nedonna Wave Planned Unit Development.

We moved to the Oregon coast from California in June of 2022 We were able to find a small cottage needing to be refurbished, which we did do the improvements.

Our love of Oregon began with our many camping trips to the Oregon coast. After almost three years, we have seen many clear cuts in Netarts, Tillmook and other surrounding areas.

These clear cuts are not replaced by native plants, it impacts wildlife habitats, creates flooding issues and most of all destroys our drinking water.

Nedonna marsh is one of many areas to preserve for the health of all that live here!
Developers do not care about our resources or land.

Please consider against the proposal for the sake of wildlife, residents and visitors.

Jeff Johns [REDACTED] Fir Ave, Tillamook, OR 97141, [REDACTED]
Bonita Lane [REDACTED] Fir Ave, Tillamook, OR 97141, [REDACTED]

From: Carolyn Kinsley <[REDACTED]>
Sent: Wednesday, November 20, 2024 11:54 AM
To: Melissa Thompson
Subject: File #Appeal-24-1 regarding Nedonna Marsh

To Rockaway City Council:

I wish to add my voice to opposition to development of the Nedonna Marsh. The summary of arguments against it are convincing on every point. It caught my eye because we in Neahkahnie bought out a proposed development east of Highway 101 that threatened the springs that provide our drinking water. As a consequence, our water bills are very high. The proposed development in the Nedonna Marsh may be rejected without having to buy out the developer. Alas we have to be ever vigilant.

Carolyn Kinsley
[REDACTED] Beulah Reed Road
Neahkahnie
Nehalem, OR 97131
[REDACTED]



Image Credit: Friends of Nedonna Marsh, Facebook

"Every species is a masterpiece, exquisitely adapted to the particular environment in which it has survived. Who are we to destroy or even diminish biodiversity?" E.O. Wilson, Biologist

Albert LePage, [REDACTED] Cleveland Street, Eugene, OR 97405

November 19th, 2024

Rockaway Beach City Council
276 Hwy 101
Rockaway Beach, Oregon

Council Members:

I am writing to respectfully express my support for the appeal against the proposed Nedonna Wave Planned Unit Development (PUD-24) and to urge you to deny this application. My focus here is relative to environmental concerns, and consistent with past testimony I have submitted, as follows:

1. The implications of this development extend far beyond simple land use; they **pose an apparent threat to the integrity of the Nedonna Marsh**, a vital ecological area that is home to diverse wildlife and essential water resources. Research indicates that wetlands like Nedonna Marsh are crucial for maintaining biodiversity and providing ecosystem services, including water filtration and flood mitigation (Mitsch & Gosselink, 2015)[1].

2. **The Nedonna Marsh is an intact remnant of Oregon's original coastal ecosystem**, characterized by its native saltwater marsh, spruce/willow wetlands, and dune areas. This habitat supports numerous species, including coyotes, river otters, and migratory birds that rely on this area for rest and nourishment. The marsh also plays a crucial role in maintaining the health of Jetty Creek and McMillan Creek, which flow into the Nehalem River. Development in this sensitive area would impact these ecosystems and the wildlife they sustain. Studies show that habitat loss due to development can lead to declines in local wildlife populations (Fischer & Lindenmayer, 2007)[2]



River Otters / Image Credit: Dmitry Azovtsev

3. The Rockaway Beach Planning Commission's **approval of this development disregards** both **current environmental regulations** and the community's well-being. Much of the proposed site is now designated as part of the city's own Special Area Wetlands Zone (SA), which aims to conserve significant freshwater wetlands. Further, the outdated 2008 approval that the developer seeks to revive does not reflect the current environmental or regulatory landscape. Since then, significant changes have occurred in both local regulations and environmental conditions that necessitate a comprehensive review before any development could even potentially proceed. Therefore, approving residential development in this zone would not only appear to violate city regulations but also undermine past conservation efforts. Past assessments highlight that many wetlands designated for protection have been compromised by outdated development approvals (Zedler & Kercher, 2005)[3].

- In conclusion, **I urge you to stand with your community and protect the Nedonna Marsh.**
- This area is not just land; it is a special place close to home that provides a critical habitat supporting the diversity of local wildlife and a vital resource for residents, especially in terms of protecting the water supply.
- Please uphold your commitment to environmental stewardship by denying the Nedonna Wave PUD-24 application.

With Respect and Gratitude,



Albert J. LePage, M. Ed. Science, B.S. Biology
Member, Society for Conservation Biology

References:

1. Mitsch, W.J., & Gosselink, J.G. (2015). *Wetlands*. John Wiley & Sons.
2. Fischer, J., & Lindenmayer, D.B. (2007). *Landscape Modification and Habitat Fragmentation: A Synthesis*. *Global Ecology and Biogeography*, 16(3), 265-280.
3. Zedler, J.B., & Kercher, S. (2005). *Wetland Resources: Status, Trends, Ecosystem Services, and Restorability*. *Annual Review of Environment and Resources*, 30(1), 39-74.



Brown Pelican, Visitor to the Oregon Coast / Image Credit: Michael Lazott

From: April Clark <[REDACTED]>
Sent: Wednesday, November 20, 2024 1:07 PM
To: Melissa Thompson
Subject: Re: Public comment: My appeal against proposed Nedonna Wave Planned Unit Development PUD-24.

I meant to also include this information in my email, for the record:

#Appeal-24-1

Sincerely:

April Clark

[REDACTED] North Street, Nehalem OR 97131
[REDACTED]

On Wed, Nov 20, 2024 at 1:04 PM April Clark <aprilclarkyoga@gmail.com> wrote:

Dear City Recorder Melissa Thompson,

I am local to the area and would like to officially place this public comment on the proposed Nedonna Wave Planned Unit Development PUD-24. I think the planned development should be appealed and should not go through. Here are some of the reasons why:

- The aquifer at Nedonna Beach is part of a groundwater system that supplies fresh water to the City of Rockaway Beach. It is vital for the community's water supply, and its management is key to ensuring a reliable and safe source of water for residents. Development could lead to pollution and over extraction of wells needed for the City's water system.
- These wells are particularly susceptible to adverse effects from nearby septic systems of varying ages and conditions, as well as surface activities such as fertilizing and pesticide application for yard maintenance. Moreover, their proximity to the ocean has resulted in noticeable saltwater intrusion as indicated by elevated sodium levels in water samples from the wells. Any further development is likely to intensify these negative impacts.
- Much of the proposed development is now in the City's Special Area Wetlands Zone (SA), the purpose of which is to "conserve significant freshwater wetlands and the shoreland and aquatic environment of Rockaway Beach's lakes."
- The would-be developer is trying to utilize the original approval for the project that is 16 years old. Both State and local laws have provisions that prohibit such an old approval from being revived without further review based on current conditions. In those 16 years, the City has grown and changed, applicable regulations have evolved, and wetlands have shifted position. The City Council must deny this application, because the 16-year-old approval is no longer valid.

- The issues with the outdated approval are demonstrated by the fact that much of this proposed PUD is now in a protected wetland zone that does not allow any residential development. Clearly, the City Council would be violating its own standards for protecting sensitive wetlands if it approves this development.
- At risk are wetlands and McMillan Creek, which flows past the area to be developed. They both provide habitat for a range of wildlife including river otters, coyotes, beavers, deer, and many species of birds. Also impacted will be Salmonids habitat. As reported by a neighbor, "In the spring the pond (fed by McMillan) behind my house is home to thousands of small Salmon. Adding turbidity to the upstream water will have a negative impact on that habitat." Riparian zones serve similar functions in the estuarine and nearshore environment. Optimal freshwater habitat for salmonids includes clean, cool, well-oxygenated water flowing.
- There are also risks to the community. Emergency evacuation via the one road outlet for the area is currently questionable as to effectiveness and safety. Adding more homes to the area would be highly irresponsible.
- The City has not done enough to mitigate the risk this development poses to its tsunami evacuation plan. To protect its residents, the City's code requires developments, such as this one, to have improvements made to evacuation routes, including adding capacity by creating new routes. The developer of this PUD will not be required to make any improvements to the evacuation routes, but will instead only have to conduct a "traffic study." That "traffic study" does nothing to improve the community's safety, and after it is conducted the City will no longer have any ability to require *actual* improvements from the developer based on the findings of the study.
- The area is already at risk of flooding and adding more impervious surfaces would make this worse. For comparison, the ongoing filling and development in the Rockaway Beach area near Washington Street has resulted in significant flooding issues. The neighborhood in Nedonna Beach relies on the flood mitigation properties of the wetlands which must be preserved and not filled or developed as was done in the Washington Street area.
- This neighborhood faces several significant fire hazards, such as inadequately maintained fire pits, beach fires positioned too close to driftwood, highly-combustible dune grass, the large wooded area south of the jetty, and the use of illegal fireworks on the Fourth of July. In the event of a major fire, the only access/egress point—only one way into or out of the area—would severely hinder evacuation efforts. Adding more dense housing in this area would be highly irresponsible.
- This is about developers making money at the expense of residents, who are already concerned about water and wetlands.
- Everyone should have to play by the rules. The residents of the area have purchased or built their homes in good faith compliance with the land use laws and the City's plan. This developer should not be allowed to evade those

regulations, including those protecting wetlands and the rule setting an expiration date for PUD approvals.

- Effective December 1, 2024, regulations for development in the Special Flood Hazard Area (commonly known as the “floodplain”) will be changing. These changes are mandated by FEMA for jurisdictions that participate in the National Flood Insurance Program (NFIP). **With thanks, April Clark**

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From: City Hall
Sent: Wednesday, November 20, 2024 3:00 PM
To: Melissa Thompson
Subject: FW: Please stop the Nedonna Wave Development

From: Amanda Newton <[REDACTED]>
Sent: Wednesday, November 20, 2024 2:32 PM
To: City Hall <cityhall@corb.us>
Subject: Fwd: Please stop the Nedonna Wave Development

Per Mayor McNeilly, sending my letter to this city hall email address will make my letter part of the public record, supporting the appeal against the Nedonna Wave Development.

Thanks.
Amanda Newton

Begin forwarded message:

From: Charles McNeilly <charlesforrockawaybeachmayor@gmail.com>
Date: November 20, 2024 at 8:19:49 AM PST
To: Amanda Newton <[REDACTED]>
Subject: Re: Please stop the Nedonna Wave Development

Hi Amanda,

Thanks for taking an interest in this Appeal.

For “quasi-judicial” land use hearings, the decision-making body reviews evidence before it against applicable criteria to determine whether an application can be approved. Prior to holding a quasi-judicial land use hearing, the decision-making body must “screen” itself from any potential conflicts, bias, or lack of impartiality.

As such, I am not at liberty to read your material.

I encourage you to attend the Special Council Meeting and share your perspective; or send your input to cityhall@corb.us. In both cases it is made part of the public record.

Charles McNeilly
Mayor
City of Rockaway Beach
small town, big beach
503-641-8437
charlesforrockawaybeachmayor@gmail.com

On Nov 19, 2024, at 6:17 PM, Amanda Newton <[REDACTED]> wrote:

Hello City Council.

Please stop the Nedonna Wave Development. There are so many ways this development breaks laws, codes, and irreversibly harms and threatens the entire community, human and otherwise.

Precious and rare native habitat and wildlife:

I am a homeowner in Nedonna Beach. I live on White Dove Avenue on the pond. I witness countless types of wildlife relying on the stream and wetland system that will be destroyed by the Nedonna Wave Development. I have many pictures and videos of river otter, bald eagles (and their babies), blue heron, white egret, beaver, muskrat, deer, minnows of salmon and steelhead fish, salamanders (newts), kingfisher birds, in fact TONS of bird types, and many many types of rare waterfowl - they ALL relying on McMillan Creek, Nedonna Marsh, the pond at White Dove AND, maybe most crucially, the wetlands on Kittiwake. That strip of wetlands ties this entire ecosystem together with the water that flows through it. If that patch of wetlands is destroyed, it will disconnect the entire system of water for that entire ecosystem. This is just to name the effect on wildlife. As a city council member, what is your justification for this being a positive choice for the environment of your community? There isn't a justification. Your choice is out of GREED.

Human lives at risk:

Let's talk about human lives at risk. The actual lives of Rockaway residents, the people who elected you to represent them, are being put at risk by your choice to approve this development. Nedonna Beach is a high risk Tsunami zone AND a high risk flood zone. There is only one road in and out of the entire neighborhood of over 350 houses. This already breaks the code for the state Fire Marshall guidelines for emergency planning. Adding more houses with no additional ingress and egress is just negligent. This is a huge human safety issue that needs not be ignored! Why put us *your voters* at further risk than we already are by adding 20+ more houses? GREED.

Shoddy procedure:

This developer's permit was issued 16+ years ago. This breaks the state of Oregon code for taking action on an issued development permit. They expire after 10 years. Why is this developer being granted an exception to a state law? Furthermore, why and how does little Rockaway Beach city think they can grant an override of permit law over the higher realm of the state of Oregon? GREED.

DO THE RIGHT THING:

Please do the right thing and STOP the Nedonna Beach Wave Development. No one in Nedonna wants this. Please stand by the community members who elected you. Do not allow this development to irreversibly destroy extremely rare habitat and wildlife. We can never get it back. And to boot, there's barely any native wetlands left along our gorgeous shoreline. Please do not align yourself with destroying wildlife and the land they need to exist. Do not align yourself with the destruction of the Oregon Coast ecosystem. Please do not put us at further risk of flooding. Please do not raise our already extremely high risk of being stranded and stuck in the event of a tsunami.

What will be your legacy as a city council member? What will the youth of this community think about your decision when they are living the result of your choices? Have you explained it to them? Maybe you should. They will be the ones to bear the long term burden of these short-sighted greedy decisions.

Will your children, grandchildren, family members, friends, neighbors, and peers be proud of what you did as a city council member in the choice to save or destroy this land? How about the indigenous peoples who are the real owners of all of our lands? Have you explained your choice to them? You took this office to do the right thing by the community. Please do that now by stopping the Nedonna Wave Development.

With faith in each of you,
Amanda Newton

From: City Hall
Sent: Wednesday, November 20, 2024 3:01 PM
To: Melissa Thompson
Subject: FW: wise land use

From: John Morris <[REDACTED]>
Sent: Wednesday, November 20, 2024 10:31 AM
To: City Hall <cityhall@corb.us>
Subject: wise land use

To whom it may concern,

I write as a local resident to encourage you to rethink planned development in the Nedonna Beach region. Wetlands are essential components of a healthy ecosystem. They contribute to quality of life for humans and other species, whether terrestrial or aquatic. The chain of wetlands and marshy areas that once provided benefits for the entire West Coast have been depleted and degraded. It's past time to rethink short term solutions and preserve what healthy, functioning environment remains.

Others with better qualifications will address detailed considerations of run-off control, groundwater, threatened and endangered species and all the other factors that responsible land use planners take into account. Please listen to them and plan for a sustainable community for all residents, neighbors and descendants.

Thank you,

John Morris
Nehalem



DEAN N. ALTERMAN
ATTORNEY

D: (503) 517-8201
DEAN@ALTERMAN.LAW

November 20, 2024

Via e-mail only to cityplanner@corb.us

The Mayor and Councilors
City of Rockaway Beach
PO Box 5
Rockaway Beach, OR 97136

Re: Application of Nedonna Development / Nedonna Wave PUD, Phase 2
Our File No. 5701.001

Dear Mayor McNeilly and Councilors:

I'm writing this letter on behalf of Anna Song and Nedonna Development LLC in response to the appeal of the approval of Phase 2 of the Nedonna Wave PUD, and specifically to cover the question about the exit path for a tsunami emergency and show compliance with RBZO § 3.140.

Section 3.140(6) of the Rockaway Beach Zoning Ordinance (RBZO) states that land divisions in the Tsunami Hazard Overlay Zone "shall incorporate evacuation measures and improvements, including necessary vegetation management, which are consistent with and conform to the adopted Tsunami Evacuation Facilities Improvement Plan."

A partly marked evacuation route runs east as a trail through the dedicated but unimproved section of Riley Street, and then roughly along the boundary line between Nedonna Wave and the property to the south. It then enters the railroad property, where the trail leads up steps to and across the tracks and then to Highway 101. In wet weather the evacuation route is muddy and likely boggy for the 200+ feet from the end of the pavement to the railroad embankment.

Here's how the city's official map of evacuation routes depicts the route:

805 SW BROADWAY
SUITE 1580
PORTLAND, OREGON 97205

T: (503) 517-8200

WWW.ALTERMAN.LAW

{00210720}



Currently Riley Street is paved only a few feet beyond Kittiwake Drive, though the unimproved right-of-way of Riley Street extends more than 200 feet further toward the railroad. As part of building Phase 2, Mrs. Song would be required to improve Riley Street to city standards, which means paving it eastward to its terminus. The portion of the evacuation route that's now a dirt trail along Riley Street would be paved, which will be a substantial improvement to the existing trail. In case of emergency, pedestrians will be walking on pavement instead of through grass and mud for several hundred feet, and they will be able to get to the railroad's portion of the trail much more readily. If a portion of the trail beyond the end of the public right-of-way is on Mrs. Song's property, she will lay down gravel on that portion to make a 6-foot wide path to continue until the trail leaves her property.

Paving several hundred feet of the existing dirt trail will substantially improve the speed of evacuation. A second benefit will come from widening the trail into a road. How much benefit is hard to quantify, though some data does exist. A Federal Highway Administration report entitled "Capacity Analysis of Pedestrian and Bicycle Facilities: Recommended Procedures for the 'Pedestrians' Chapter of the Highway Capacity Manual"¹ gives some useful data about the relationship between path area and pedestrian capacity. Although the report is oriented mainly toward designers of sidewalks and crosswalks, it contains some useful information to help measure the benefit of the proposed improvements here.

Pedestrian capacity was measured by levels of service ("LOS") from A through F, similarly to how traffic engineers measure levels of service for roadways. Pedestrian speed drops by only about 10% from LOS A to LOS D, then much more rapidly at LOS E and LOS F. The authors cited the Highway Capacity Manual stating that an uninterrupted pedestrian facility can operate at LOS D or better with walking speeds of 225 or more feet/minute or more (2.5

¹ Federal Highway Administration report no. FHWA-RD-98-107 (the "Report"), available online and through the National Technical Information Service, Springfield, Virginia.

miles per hour, or essentially free flow) if each pedestrian has at least 15 square feet of space on the walkway.² Here is an extract of the table:

TABLE 2 Existing HCM walkway Level of Service (LOS) criteria

LOS	Space		Flow Rate		Average Speed	
	(m ² /ped)	(ft ² /ped)	(ped/min/m)	(ped/min/ft)	(m/s)	(ft/min)
A	≥12	≥130	≤7	≤2	≤1.32	≥260
B	3.7-12	40-130	23-Jul	7-Feb	1.27-1.32	250-260
C	2.2-3.7	24-40	23-33	10-Jul	1.22-1.27	240-250
D	1.4-2.2	15-24	33-49	15-Oct	1.14-1.22	225-240
E	0.6-1.4	15-Jun	49-82	15-25	0.76-1.14	150-225
F	≤0.6	≤6	var.	var.	≤0.76	≤150

SOURCE: TRB, 1994.

The planning commission approved Mrs. Song's request to plat 20 residential lots in Phase 2, subject to review of any proposed improvements to the emergency escape route. Mrs. Song's proposed improvements to the evacuation route are more than adequate to handle the increased emergency demand that an additional 20 houses would place on the route.

The 2020 census reported that Rockaway Beach had a population of 1,441 and 1,980 housing units, of which 737 (37.2%) were occupied and 1,243 (62.8%) were "vacant." A house is "vacant" if it's not a primary residence; the census counts a house as vacant if it's a second home or a vacation rental as well as if it's actually empty and unoccupied.

If the demographics of the buyers of the 20 new houses are similar to Rockaway Beach's current demographics, then 7 or 8 of them will be occupied by full-time residents and 12 or 13 will be occupied only part-time. The occupied housing units have an average of 2 occupants. It's fair to assume that the vacation units, when occupied, will have more occupants, perhaps 4 on average, but that they'll be occupied only half the year or less, for an average of about 2 occupants when measured over the year. It follows that the houses in Phase 2 will create a demand for the evacuation route for about 40 persons on average.

Mrs. Song proposes to pave about 6,000 square feet of Riley Street along the evacuation route, an area about 250 feet long and 24 feet wide, which equates to pedestrian space for about 400 persons. She also proposes to widen and improve any remaining dirt trail on her property to be a 6-foot gravel path. If the current trail is at most 3 feet wide toward the east then she is doubling the evacuation capacity of that portion of the trail, which more than covers the

² Report, section 3.1, Table 2.

additional demand that Phase 2 would put on the trail. Her proposed improvements more than offset any increased demand.

With respect to the specific criteria of RBZO 3.140: Each of the lots will enjoy direct access to a paved road that will connect to the existing evacuation route. Mrs. Song will improve the portion of the evacuation route that is on her property either with the new paved portion of Riley Street or with a 6-foot gravel path, which will ensure adequate pedestrian access from the development site to the evacuation route.

The proposal does not create an evacuation need that would require frontage improvements to designated evacuation routes on or contiguous to the development site beyond the improvements that Mrs. Song would make as part of Phase 2.

The rest of the evacuation route is entirely on the private property of others. Mrs. Song is not aware of any publicly-owned portion of the evacuation route other than Riley Street, which she will improve more than proportionally to the evacuation needs of Phase 2.

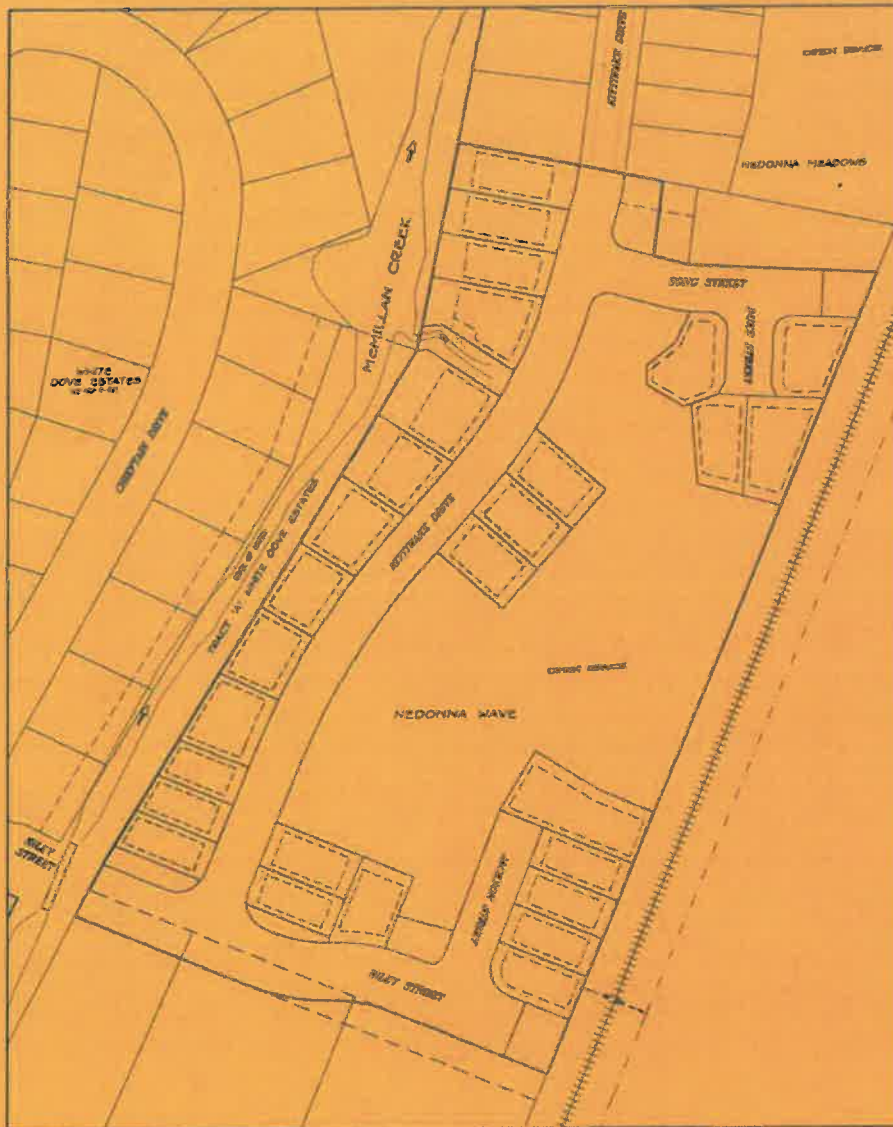
Mrs. Song proposes to install a tsunami-route sign at the beginning of the gravel path, if a sign at that location is consistent with the standards of the Tsunami Evacuation Facilities Improvement Plan. If that plan requires other route signage on her property, she will install the signage.

Thank you for your consideration of Anna Song's application to create Phase 2 of this planned unit development. She meets all of the zoning criteria and looks forward to bringing this project to completion.

Very truly yours,

Dean N. Alterman

Dean N. Alterman



NEDONNA WAVE Subdivision & Planned Unit Development

Prepared for
Nedonna Development LLC

Prepared by



November 2007



PROJECT JUSTIFICATION
for
NEDONNA WAVE PLANNED UNIT DEVELOPMENT

PROPERTY DESCRIPTION: The subject property is located near the north end of the Nedonna Beach area and is situated on the east end of Riley Street and south of the newly created Nedonna Meadows subdivision. The property includes Tax Lots 4600 and 9000 in Section 20AB, Township 2 North, Range 10 West of the Willamette Meridian. The Tentative Plat and PUD Plans are presented in 'Appendix A'. The total area of the property is approximately 6.23 acres. A legal description is included with this submittal as 'Appendix B'.

OWNER / DEVELOPER: The property is owned by Nedonna Development, LLC, a limited liability corporation represented by Anna Song.

FINANCING: The development will be financed by private funds from Nedonna Development, LLC.

DEVELOPMENT SCHEDULE: The development of this property will be completed in this calendar year. In general, development will proceed according to the following schedule:

Summer 2007 Phase I construction with completion by Spring of 2008

QUANTITATIVE DATA:

Total Single Family Residential Structures	28 units
Average Parcel Size	3,655 sq.ft.
Min. Allowable Lot Size in Parent zone	±5,000 sq.ft. per lot
Calculated Net Density	82.38%
Existing Wetlands	±1.82 acres
Created Wetlands	±0.51 acres

Additional details of the lot sizes, lot areas, setbacks and other lot-related quantity calculations are presented in 'Appendix D'.

AGREEMENTS and PERMITS: The use, maintenance, and continued protection of the planned development and common open space will be governed by a "Declaration of Covenants, Conditions, and Restrictions" to be filed at the time of the final plat. A draft copy of this document is included with this submittal as 'Appendix C'.

All required wetlands delineation and mitigation permits have been received by the applicant. The wetlands mitigation plan has been permitted by the Oregon Division of State Lands and by the US Army Corps of Engineers. The wetlands mitigation work has been completed in accordance with a development permit issued by the City of Rockaway Beach. Copies of all wetlands permits are included in 'Appendix E'.

A separate agreement has been executed and is recorded for the easterly extension of Riley Street along the south end of this subdivision. See 'Appendix G' for a copy of the Reciprocal Easement Agreement for Roadway Extending Riley Street.

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

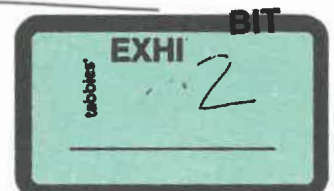
II. Description of Request:

PUD #07-19: The property owner requests approval of a 28 lot planned 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.



7. Improvements required by the Tillamook County Road Department, require the property owner to be financially responsible for paving the unpaved portion of street from Riley Street to Beach Drive, for applying dust treatments; and for road maintenance to the County Road system where necessary to an identified construction access route for the construction traffic.
8. 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 the Local Improvement District (LID) for road improvements to benefit the Nedonna Beach area. Improvements to access to the Nedonna Beach area may include:
 1. The installation of a second access to US Highway 101 suitable for use by pedestrians and vehicles which shall be subject to the approval of applicable regulatory agencies.
 2. When warranted, improvements to the existing access at Beach Street and US Highway 101 which shall be subject to the approval of the applicable regulatory agencies.
 3. When warranted, improvements to the roadways within the area described as Nedonna Beach.

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.

"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



"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"**.

"FINAL ORDER"

CASE RECORD:

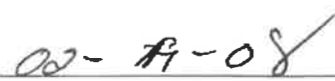
The complete case record including the findings of fact is available for review at City Hall by filing a request during regular business hours.

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

"EXHIBIT A: FINDINGS OF FACT"

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.

"EXHIBIT A: 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.
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.

"EXHIBIT A: 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 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 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, dewatering crane, on-site generator, telemetry, lighting and fencing shall be installed as necessary to serve the project.

"EXHIBIT A: FINDINGS OF FACT"

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.

"EXHIBIT A: FINDINGS OF FACT"

- (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.

"EXHIBIT A: FINDINGS OF FACT"

- (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.*

"EXHIBIT A: FINDINGS OF FACT"

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*

"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.



"FINAL ORDER: EXHIBIT B: CONDITIONS OF APPROVAL"

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.

"FINAL ORDER: EXHIBIT B: CONDITIONS OF APPROVAL"

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:

"FINAL ORDER: EXHIBIT B: CONDITIONS OF APPROVAL"

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.

"FINAL ORDER: EXHIBIT B: CONDITIONS OF APPROVAL"

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.

"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.

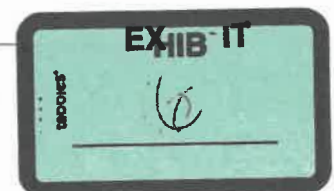
PLANNING COMMISSION DECISION: Approval with Conditions 5 Approval-0 Denial
The applicable criteria and standards against which the application was tested are contained in Exhibit D Findings of Fact. The Planning Commission held a public hearing on the request on July 22, 2008. The Planning Commission 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:

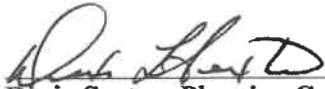
The complete case record including the findings of fact is available for review at City Hall by filing a request during regular business hours.



"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

"EXHIBIT C: Findings of Fact: Final Plan Approval"

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.*



"EXHIBIT C: Findings of Fact: Final Plan Approval"

- 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*
-

"EXHIBIT C: Findings of Fact: Final Plan Approval"

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.*
-

"EXHIBIT C: Findings of Fact: Final 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.*

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.**

"EXHIBIT D: Modified Preliminary and Final Approval for a Two Phase Development"

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



"EXHIBIT D: Modified Preliminary and Final Approval for a Two Phase Development"

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).

"EXHIBIT D: Modified Preliminary and Final Approval for a Two Phase Development"

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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"EXHIBIT D: Modified Preliminary and Final Approval for a Two Phase Development"

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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"EXHIBIT D: Modified Preliminary and Final Approval for a Two Phase Development"

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

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- (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.

"FINAL ORDER (3)"

Property Owner: Nedonna Development, LLC; Representative Member: "Anna" Song
Applicant: Mark Dane, Blue Sky Planning, Inc.
Engineer / Surveyor: HLB Otak, Inc., Ron Larson, PE, PLS
Location Description: South of Section Line Rd., North of Riley St., East of McMillan Canal
Legal Description: Parcel 1 of Partition Plat 1997-20 and Parcel 3 of Partition Plat 1997-57; a portion of vacated Evergreen Street Rockaway Beach Ordinance #98-353
Assessor's Plat Map: 2N 10W 20AB TL 4600, 4900, 9000
Property Size: 6.23 acres
Development Zones: R-1 Zone: 3.9 acres; SA Special Area Wetlands 2.33 acres

APPLICATION REQUEST:

Final Approval of Application #SPUD 07-19 Nedonna Wave, a twenty-eight (28) residential lot Planned Unit Development (PUD) Subdivision, which adds the overlay zone designation P.U.D. to the City of Rockaway Beach Zoning Map and limits site development to that consistent with Final Orders (1), (2), and (3) and Findings of Fact Exhibits A, B, C, D, and E:

CITY COUNCIL DECISION: Approval with Conditions 5-0 Approval
The City Council held a public hearing on August 13, 2008. City Planner Sabrina Pearson presented the findings of fact referenced herein as Exhibit E and explained that final approval of Application #SPUD 07-19 adds the overlay zone designation and limits development to that consistent with Final Orders (1), (2), and (3) and Findings of Fact Exhibits A, B, C, D, and E. A letter of correspondence from Richard and Evelyn Huston was declared by Mayor Phipps to not be applicable to the Council decision. No testimony was received in opposition or support of the application. Councilor Watts made a motion seconded by May to approve the application of P.U.D. to the zoning map for this site. The motion carried with a yes vote from Watts, May, Daugherty, McFarlane, and Swanson.

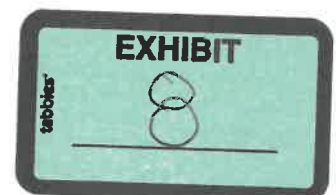
FINDINGS OF FACT:

The City Council relied upon Final Orders (1), (2) and (3) and Findings of Facts attached as Exhibit A, Exhibit B, Exhibit C, Exhibit D, and Exhibit E.

Exhibit A: Preliminary Plan Approval with Conditions on January 29, 2008;
Exhibit B: Preliminary Plan Approval Conditions of Approval on January 29, 2008;
Exhibit C: Final Plan Approval on May 27, 2008, and
Exhibit D: Preliminary Plan and Final Plan Approval for a modification to permit the Subdivision to be developed in two stages, Phase One an eight (8) lot subdivision final plat and Phase Two a twenty (20) lot subdivision final plat.
Exhibit E: August 13, 2008 City Council Final Approval to add P.U.D. to the Zoning Map
Final Order (1) Exhibits A and B
Final Order (2) Exhibits C and D
Final Order (3) Exhibit E

CASE RECORD:

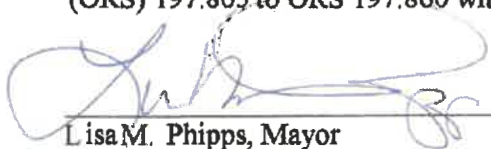
The complete case record including the findings of fact and the official minutes of the meeting is available for review at City Hall by filing a written request during regular business hours.



"FINAL ORDER (3)"

APPEAL PERIOD:

The decision of the City Council to issue final approval for application #SPUD 07-19 to add the overlay zone designation P.U.D. may be appealed to the Land Use Board of Appeals (LUBA) by filing a notice of intent to appeal consistent with the provisions of Oregon Revised Statutes (ORS) 197.805 to ORS 197.860 within 21 days of the date the final order is signed.



Lisa M. Phipps, Mayor

9.18.08

Date

IV. Summa of Findin of Fact:

Rockaway Beach Zoning Ordinance Section 10.060 Procedure - Final Approval (3) requires that after final concept approval by the Planning Commission the PUD application is sent to the City Council for consideration for final approval.

Rockaway Beach Zoning Ordinance Section 10.070 requires that an approved PUD shall be identified on the zoning map with the letters "PUD" in addition to the abbreviated designation of the parent zone.

Rockaway Beach Zoning Ordinance Section 10.080 (1) requires that building permits in a PUD shall be issued only on the basis of the approved plan. Any changes in the approved plan shall be submitted to the Planning Commission for processing as an amendment to this ordinance.

The decisions for Application #07-19 Nedonna Wave a 28-Lot Planned Unit Development Subdivision and concurrent applications #07-20 VAR #07-20 concurrent variance to permit a building height of 29 feet for all lots of "Nedonna Wave" excepting lots 25-28, #07-21 concurrent variance to permit building height of 36 feet for lots 25 - 28, and #07-22 concurrent variance to delete sidewalks from the development are represented by Final Orders and Exhibits A, B, C, and D.

V. Summa of Process:

Application #2007-19 Nedonna Wave, a 28-Lot Planned Unit Development Subdivision is submitted for three public hearing processes, each with a decision from applicable decision body required to complete the Planned Unit Development application process.

- (1) **COMPLETED:** The First Public Hearing Process
Prelimin Develo ment Plan A roval:
The application completed the first public hearing process for Preliminary development plan when Approval with Conditions was granted by the Planning Commission on January 29, 2008 Exhibit A and B and with a modification on July 22, 2008 Exhibit D to the approved tentative plan and final plan at a public hearing before the Planning Commission duly noticed by publication and mailing 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. All approvals shall conform to the approved Preliminary Development Plan as approved by Final Orders Exhibit A, Exhibit B and Exhibit D.
- (2) **COMPLETED:** The Second Public Hearing Process
Plannin Commission Final Plan A roval: pp



The application completed the second public hearing process for Final Plan approval when at a duly noticed public hearing on May 27, 2008, the Planning Commission issued a decision of Approval with Conditions for the request of Final Plan Approval with Exhibit C Findings of Fact which describe conformance of site development plans with the approved Preliminary Development Plan of Final Order and Findings of Fact Exhibit A and Exhibit B and when at a duly notice public hearing on July 22, 2008, the Planning Commission issued a decision of Approval with Conditions for the request for a modification to the approved preliminary plan and final plan approval to permit development in two stages, Phase One, an eight (8) lot subdivision plat and Phase Two, a twenty (20) lot subdivision plat with Exhibit D Findings of Fact which describes conformance with applicable criteria.

- (3) **CURRENT REQUEST:** The Third Public Hearing Process
City Council Final Plan Approval: The Third Public Hearing Process
After Planning Commission approval, the application completes the third public hearing process by submittal to the City Council for final plan approval and to add the letters "PUD" to the Zoning Map. This PUD Zoning Map designation will identify that site development is limited to that consistent with the decision for Application #07-19 Nedonna Wave Planned Unit Development Final Orders and Exhibits A, B, C, and D.
- (4) **ADMINISTRATIVE PROCESS:** Subdivision Final Plat Approval:
The Subdivision Final Plat approval process is an administrative process. Subdivision Final Plat approval will be provided only after all improvements are completed consistent with adopted regulatory standards conditions of approval are met consistent with Final Orders and Exhibits A, B, C, and D.
- (5) **ADMINISTRATIVE PROCESS:** Building Permits:
The process for review and approval of building permits is an administrative process. Building Permits will not be issued until the Subdivision Final Plat recordation is complete and consistent with adopted regulatory standards regulating the issuance of building permits. Building permits shall be only issued consistent with the decision for Application #07-19 Nedonna Wave Planned Unit Development Final Orders and Exhibits A, B, C, and D.

VI. Findings of Fact:

(RBZO) City of Rockaway Beach Zoning Ordinance

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Article 10 Planned Unit Development

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Section 10.060 Procedure - Final Approval

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- (3) *After final concept approval by the Planning Commission, the PUD application will be sent to the City Council for consideration for final approval.*

Findings of Fact:

1. At a duly noticed public hearing on May 27, 2008, the Planning Commission issued a decision of Approval with Conditions for the request of Final Plan Approval with Exhibit C Findings of Fact which describe conformance of site development plans with the approved Preliminary Development Plan of Final Order and Findings of Fact Exhibit A and Exhibit B
2. At a duly notice public hearing on July 22, 2008, the Planning Commission issued a decision of Approval with Conditions for the request for a modification to the approved preliminary plan and final plan approval to permit development in two stages, Phase One, an eight (8) lot subdivision plat and Phase Two, a twenty (20) lot subdivision plat with Exhibit D Findings of Fact which describes conformance with applicable criteria.
3. Having received approval from the Planning Commission, the application is submitted to the City Council for final approval.

Conclusions: The application to the City Council has completed the process for Final Approval.

Section 10.070 Mapping

An approved PUD shall be identified on the zoning map with the letters "PUD" in addition to the abbreviated designation of the parent zone.

Findings of Fact:

1. City Council approval is necessary to add the designation "PUD" to the Zoning Map.
2. After final approvals are provided for the project, the approved PUD shall be identified on the Zoning Map with the letters "PUD" in addition to the abbreviated designation of the Parent Zone.

Conclusions: City Council approval of the application for final approval will add the letters "PUD" to the Zoning Map.

Section 10.080 Adherence to Approved Plan and Modification Thereof

- (1) *Building permits in a PUD shall be issued only on the basis of the approved plan. Any changes in the approved plan shall be submitted to the Planning Commission for processing as an amendment to this ordinance.*

Findings of Fact:

1. No changes to the approved preliminary development plan are requested with this application for Final Approval.
2. Any changes in the approved plan shall be submitted to the Planning Commission for processing as an amendment to this ordinance.
3. The decisions for Application #07-19 Nedonna Wave a 28-Lot Planned Unit Development Subdivision and concurrent applications #07-20 VAR #07-20 concurrent variance to permit a building height of 29 feet for all lots of "Nedonna Wave" excepting lots 25-28, #07-21 concurrent variance to permit building height of 36 feet for lots 25 – 28, and #07-22 concurrent variance to delete sidewalks from the development are represented by Final Orders and Exhibits A, B, C, and D.

Conclusions: The PUD Zoning Map designation will identify that building permits shall be only issued consistent with the decision Final Orders and Exhibits A, B, C, and D for Applications #07-19, #07-20, #07-21, and #07-22 for Nedonna Wave a 28-Lot Planned Unit Development.

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Initial "Nedonna Wave" Timeline

