

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 reinitiate 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