

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

3
4 NEDONNA DEVELOPMENT, LLC,
5 *Petitioner,*

6 vs.
7
8

9 CITY OF ROCKAWAY BEACH,
10 *Respondent,*

11 and
12
13

14 OREGON SHORES CONSERVATION COALITION and
15 NORTH COAST COMMUNITIES FOR WATERSHED PROTECTION,
16 *Intervenors-Respondents.*

17
18 LUBA No. 2025-069
19
20

21 FINAL OPINION
22 AND ORDER

23 Appeal from City of Rockaway Beach.
24

25 Dean N. Alterman filed the petition for review and argued on behalf of
26 petitioner. Also on the brief was Alterman Law Group PC.
27

28 Lori J. Cooper filed the respondent's brief and argued on behalf of
29 respondent. Also on the brief were Armand Resto-Spotts and Local Government
30 Law Group, P.C.
31

32 Eric Wriston filed the intervenors-respondents' brief and argued on behalf
33 of intervenors-respondents. Also on the brief was Crag Law Center.
34

35 BASSHAM, Board Member; ZAMUDIO, Board Chair, participated in the
36 decision.
37

38 WILSON, Board Member, did not participate in the decision.

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AFFIRMED

02/06/2026

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

Opinion by Bassham.

NATURE OF THE DECISION

3 Petitioner appeals a city council decision denying petitioner's application
4 to modify a planned unit development (PUD) that the city originally approved in
5 2008, and to authorize construction of modified Phase 2.

6 BACKGROUND

7 The challenged decision is the city's decision on remand from *Oregon*
8 *Shores Conservation Coalition v. City of Rockaway Beach*, LUBA No 2025-001
9 (July 2, 2025) (*Oregon Shores*). We restate the facts and procedural history from
10 our prior opinion, as they are relevant to this opinion:

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

17 “* * * * *

18 “In 2007, the applicant applied to the city to approve a PUD for a
19 28-lot residential development, initially in one phase. Under
20 Rockaway Beach Zoning Ordinance (RBZO) section 10, a PUD
21 application is processed in several steps, with the applicant first
22 seeking preliminary development plan approval. If phased
23 development is proposed, the application must include a schedule.
24 RBZO 10.010(1)(i). The planning commission approves or denies
25 that preliminary plan, based on standards that include a finding that
26 the plan can be ‘completed within a reasonable period of time.’
27 RBZO 10.050(2)(d). Then, within one year of receiving preliminary
28 plan approval, the applicant must obtain final PUD plan approval.
29 RBZO 10.060.

1 “* * * * *

2 “In February 2008, the planning commission approved the
3 preliminary plan for the 28-lot PUD in one phase. A condition in the
4 February 2008 preliminary PUD approval required the developer to
5 complete all improvements within one year, unless the city granted
6 an extension.

7 “In July 2008, the applicant requested modification of the PUD, to
8 allow development in two phases. Phase 1 would consist of lots 1-8
9 in the northern portion of the property, while Phase 2 would consist
10 of lots 9-28, in the southern portion. At the same time, the applicant
11 applied for final PUD approval for the two-phase development
12 application. In August 2008, the planning commission granted final
13 PUD, as modified to allow two phases. * * *

14 “The applicant completed construction of Phase 1 and recorded a
15 final subdivision plat for Phase 1 within one year of the preliminary
16 PUD approval. The applicant also constructed streets and other
17 infrastructure for Phase 2, and completed all wetland fills and
18 mitigation authorized by the 2008 DSL and Corps permits.
19 However, as a consequence of the 2008 economic recession, the
20 applicant suspended further plans to construct Phase 2.

21 “Fast forward fifteen years. In February 2024, the applicant filed an
22 application seeking to modify the 2008 final PUD plan, to include
23 two additional lots, among other changes. The planning commission
24 approved the two additional lots, but the other requested
25 modifications were withdrawn or denied. * * *

26 “[Oregon Shores] appealed the planning commission approval to the
27 city council, arguing that because Phase 2 had not been constructed
28 within one year of approval, as required by the [February 2008
29 preliminary PUD approval] condition of approval, the [August]
30 2008 PUD approval had expired. Further, [Oregon Shores] argued
31 that the applicant proposed to construct the Phase 2 residential lots,
32 including the two additional lots, within areas mapped as part of the
33 SA zone, which does not allow any residential uses.” *Oregon*
34 *Shores*, LUBA No 2025-001 (slip op at 2-6).

1 The city council, after a hearing, denied the appeal and approved the
2 requested PUD modification. Oregon Shores appealed that decision to LUBA,
3 arguing, among other things, that the city erred in approving residential
4 development on parts of the property that are zoned SA, which does not permit
5 residential development. We held that the city's decision did not squarely address
6 the apparent conflict with the SA zone or adopt findings or interpretations
7 explaining the city's inherent conclusion that the modified Phase 2 approval was
8 consistent with the SA zone, and remanded for more adequate findings on that
9 issue. *Oregon Shores v. City of Coos Bay, 2025-001*

10 Oregon Shores also argued that a condition of approval in the February
11 2008 preliminary PUD approval, which required that “[t]he developer shall
12 complete the improvements within one year of preliminary plan approval unless
13 an extension is granted by the City to complete improvements,” (Condition of
14 Approval 1), was carried forward under the final PUD, which approved
15 development in two phases. *Oregon Shores*, LUBA No 2025-001 (slip op at 12).

16 Oregon Shores argued that because the applicant did not complete all of the Phase
17 2 infrastructure or apply for Phase 2 subdivision plat approval within one year of
18 preliminary plan approval, the 2008 PUD approval had expired. *Id.* We held that
19 the city's findings on this point were inadequate because they failed to explain
20 whether and how that condition of approval impacted the schedule for Phase 2 of
21 the PUD, and remanded the decision for the city to consider and resolve those
22 questions in the first instance. *Id.* (slip op at 14).

1 The city council held a remand hearing on September 9, 2025. On October
2 7, 2025, the city council issued its decision denying the requested PUD
3 modification, on two grounds discussed below.

4 This appeal followed.

5 **SECOND ASSIGNMENT OF ERROR**

6 Petitioner's second assignment of error is that the city erred in determining
7 that the 2008 PUD approval had expired.

8 **A. Standard of Review**

9 The challenged decision denies petitioner's application to modify a PUD
10 that the city originally approved in 2008, and to authorize construction of Phase
11 2 of the modified PUD. The decision denies the application on two bases: (1) that
12 a condition of approval in the 2008 decision caused that approval, on which the
13 present application relied, to expire; and (2) that the proposed, modified Phase 2
14 includes buildable lots within the SA zone, which does not allow residential
15 development. Where a local government denies a land use application on multiple
16 grounds, LUBA will affirm the decision on appeal if at least one basis for denial
17 survives all challenges. *Wal-Mart Stores, Inc. v. Hood River County*, 47 Or
18 LUBA 256, 266, *aff'd*, 195 Or App 762, 100 P3d 218 (2004), *rev den*, 338 Or 17,
19 107 P3d 27 (2005).

20 Petitioner argues that the city's "determination that its approval for the
21 final plan of the Nedonna Wave PUD had expired in 2009 is contrary to the plain
22 language of its land use regulations and conflicts with its past decisions on the

1 property.” Petition for Review 23. Petitioner argues that the city’s “interpretation
2 of its code is inconsistent with the express language of the code and with the
3 underlying policy that provides the basis for the code, and is therefore not entitled
4 to deference from LUBA under ORS 197.829.” Petition for Review 24.
5 Intervenors respond that the city did not interpret its code in making its
6 determination that the PUD approval had expired. Instead, intervenors argue, the
7 city interpreted the 2008 PUD approval’s Condition of Approval 1 without regard
8 to any provision of the RBZO, and, thus, petitioner’s argument does not provide
9 a basis for remand or reversal. Intervenor-Respondent’s Brief 6. Intervenors
10 further argue that the city’s interpretation that Condition of Approval 1 applies to
11 Phase 2 is correct.

12 As we have previously explained:

13 “ORS 197.829(1) requires LUBA to affirm a governing body’s
14 interpretation of its own comprehensive plan provision or land use
15 regulation unless the interpretation is inconsistent with the provision
16 or regulation’s express language, purpose, or underlying policy.
17 ORS 197.829(1) generally does not require LUBA to affirm a local
18 government’s interpretation of a prior land use decision or
19 conditions of approval attached to a prior land use decision. *M & T*
20 *Partners, Inc. v. City of Salem*, 80 Or LUBA 221, 230 (2019), *aff’d*
21 *sub nom, M & T Partners, Inc. v. Miller*, 302 Or App 159, 170, 460
22 P3d 117 (2020). To a ‘limited extent,’ LUBA will defer to plausible
23 interpretations of local land use regulations that the governing body
24 made in the course of interpreting a condition of approval. *Kuhn v.*
25 *Deschutes County*, 74 Or LUBA 190, 194 (2016). The deference
26 question ‘reduces to whether the city was interpreting a land use
27 regulation,’ and a condition of approval is not a land use regulation.
28 *M & T Partners*, 302 Or App at 170.” *Gould v. Deschutes County*,
29 LUBA No 2020-095, June 11, 2021, *aff’d*, 314 Or App 636, 494,

1 P3d 357 (2021), *rev den*, 369 Or 211 (2022).

2 We agree with intervenors that, in interpreting Condition of Approval 1,
3 the city did not interpret any provision of the RBZO. Although petitioner argues
4 that nothing in the city's code or subdivision ordinance causes the 2008 approval
5 to expire under the circumstances presented here, we do not understand petitioner
6 to argue that the city made any interpretation of its code in interpreting Condition
7 of Approval 1. Thus, the city's interpretation of Condition of Approval 1 is not
8 entitled to the deferential standard of review under ORS 197.829(1). The
9 question, then, is under what standard do we review the city's interpretation of
10 that condition?

11 Petitioner characterizes the challenged decision as a "limited land use
12 decision." ORS 197.015(12).¹ Petitioner argues that under ORS 197.828(2)(b),

¹ ORS 197.015(12) defines "limited land use decision" as:

“(a) “Limited land use decision” means a final decision or determination made by a local government pertaining to a site within an urban growth boundary that concerns:

“(A) The approval or denial of a tentative subdivision or partition plan, as described in ORS 92.040(1).

“(B) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

“(C) The approval or denial of an application for a replat.

1 LUBA will reverse or remand a limited land use decision if the decision “does
2 not comply with applicable provisions of the land use regulations.” Petition for
3 Review 23. No party disputes petitioner’s characterization of the decision as a
4 “limited land use decision.” Accordingly, we review petitioner’s challenge to the
5 city’s interpretation of Condition of Approval 1 under our standard of review set
6 out at ORS 197.828(2).²

“(D) The approval or denial of an application for a property line adjustment.

“(E) The approval or denial of an application for an extension, alteration or expansion of a nonconforming use.

“(b) ‘Limited land use decision’ does not mean a final decision made by a local government pertaining to a site within an urban growth boundary that concerns approval or denial of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan.”

² Although intervenors do not dispute petitioner’s characterization of the challenged decision as a “limited land use decision,” intervenors, elsewhere in the intervenor-respondent’s brief, cite ORS 197.835(9), and our implementing rule at OAR 661-010-0071, which set out our standard of review for “land use decisions.” ORS 197.828(2)(b) authorizes LUBA to reverse or remand a limited land use decision that “does not comply with applicable provisions of the land use regulations[.]” Similarly, but differently, ORS 197.835(9)(a)(D) authorizes LUBA to reverse or remand a land use decision that “[i]mproperly construed the applicable law[.]” We assume that circumstances exist in which application of these somewhat differently worded standards of review could yield different results. However, in the present case we do not see that application of one standard of review over another would change the outcome. Because no party

1 **B. Analysis**

2 ORS 197.828(2)(b) provides that we will reverse or remand a limited land
3 use decision if “[t]he decision does not comply *with applicable provisions of the*
4 *land use regulations.*” (Emphasis added.)

5 The 2008 PUD approval’s Condition of Approval 1 required that “[t]he
6 developer shall complete the improvements within one year of preliminary plan
7 approval unless an extension is granted by the City to complete improvements.”
8 Record 356. As explained above, our remand required the city to consider and
9 resolve the question of whether the city intended, in adopting the final PUD plan,
10 to carry forward and apply preliminary PUD plan Condition of Approval 1 to
11 both Phases 1 and 2. *Oregon Shores*, LUBA No 2025-001 (slip op at 14).

12 On remand, the city interpreted Condition of Approval 1 to conclude that
13 the city intended that condition to apply to Phase 2 and, because the condition
14 was not met by July 22, 2009, the PUD had thus expired. Record 39-43. In so
15 doing, the city found that the tentative plan for all 28 lots was approved on May
16 27, 2008; that when the project was later modified on July 22, 2008, to allow two
17 phases, that decision expressly stated that all prior conditions “continue to apply
18 in their entirety except where amended specifically;” that the findings attached
19 to that decision (Exhibit D) postponed which improvements could be constructed
20 with each phase, but did not amend the one-year timing requirement; and that

disputes petitioner’s contention that ORS 197.828(2)(b) applies, and because our ultimate conclusion is the same under either standard of review, we apply ORS 197.828(2)(b).

1 nothing in the phasing approval created a new deadline, eliminated the existing
2 deadline, or limited the timing condition to only Phase 1.

3 Based on those findings, the city ultimately concluded:

4 "4. Exhibit D applied Exhibit B: Final Plat condition 1 to Phase
5 Two of the PUD.

6 "5. The one-year period began when the city issued its approval
7 for #2007-19 Modification of Tentative Plan and Final Plan
8 Approval for a Two-Phase Development for the Nedonna Wave 28-
9 Lot Planned Unit Development Subdivision and the application
10 condition was not met by July 22, 2009."

11 "6. Therefore, because the above condition of approval was not
12 timely met, #2007-19 Modification of Tentative Plan and Final Plan
13 Approval for a Two-Phase Development for the Nedonna Wave 28-
14 Lot Planned Unit Development Subdivision has expired." Record
15 43.

16 As framed, petitioner's arguments do not meaningfully challenge the city's
17 interpretation, nor does petitioner identify a specific provision of the RBZO or
18 subdivision ordinance that the city's interpretation allegedly violates. Instead,
19 petitioner's theory is essentially that, because nothing in RBZO 10.060
20 (procedures for final plan approval of PUD) or Section 11 of the city's
21 subdivision ordinance (procedures for final plat approval) provides for expiration
22 of a final PUD approval under the circumstances presented here, the city had no
23 authority to treat the approval as expired. According to petitioner, because those
24 provisions establish only limited one-year deadlines for filing a final plan or for

1 approval of a final plat, the city lacked authority to treat the 2008 approvals as
2 expired.

3 Intervenors respond that petitioner's arguments do not address the city's
4 actual basis for concluding that the 2008 approvals had expired. According to
5 intervenors, the city did not conclude that the 2008 approvals expired by
6 operation of RBZO 10.060 or Section 11 of the subdivision ordinance. Instead,
7 the city concluded that the approvals expired based on its interpretations of
8 Condition of Approval 1 and the city's prior approvals, and its conclusion that
9 the condition applied to both phases of the development and was not amended
10 when the project was later approved to proceed in two phases. Accordingly,
11 intervenors argue, petitioner's arguments provide no basis for reversal or remand.

12 We agree with intervenors. As we explained in our prior remand, the
13 dispositive question on remand was whether the city intended Condition of
14 Approval 1 to apply to both phases of the development. The city addressed that
15 question directly, relying on interpretations of Condition of Approval 1 and its
16 prior decisions. Petitioner, instead, focuses its arguments on RBZO 10.060 and
17 Section 11 of the subdivision ordinance, provisions the city did not rely on as the
18 basis for expiration. Petitioner argues at length that nothing in the city's zoning
19 ordinance or subdivision ordinance provides that approval of the final plan for a
20 PUD expires under the circumstances presented here, and therefore the city erred
21 in concluding that the 2008 PUD approval expired in 2009. However, petitioner

1 does not identify any specific provision of the land use regulations with which
2 the city's decision fails to comply.

3 Instead, petitioner's argument is premised on the absence of an express
4 expiration provision in the code and on petitioner's view that the city's
5 interpretation of prior approvals, conditions, and procedural steps is incorrect.

6 While petitioner may disagree with the city's interpretation of the condition, ORS
7 197.828(2)(b) requires more than a showing that the city could have interpreted
8 the condition differently. To prevail, petitioner must demonstrate that the
9 interpretation violates or fails to comply with an applicable provision of the city's
10 land use regulations.

11 Petitioner does not point to any provision of the RBZO or subdivision
12 ordinance that expressly prohibits the city's interpretation of the 2008 conditions
13 of approval, requires the city to treat the final PUD approval as perpetually valid,
14 or otherwise mandates a different outcome. The fact that the code does not
15 expressly address expiration of final PUD approvals does not, by itself, establish
16 that the city's decision is contrary to, or fails to comply with, the city's code.

17 RBZO 10.050(2)(d) requires the city to find that the PUD can be "completed
18 within a reasonable period of time." In the absence of a code provision specifying
19 expiration dates for final PUD approvals, the city apparently relies on conditions
20 of approval to regulate how long PUD approvals are valid, which means that the
21 intent and wording of conditions of approval are the controlling issue.

1 On the issue of the city's intent regarding Condition of Approval 1,
2 petitioner's only argument on that point is to note that in 2010 the city approved
3 a modification to the PUD, to add a building lot. The record does not include a
4 copy or any discussion of that 2010 modification. It is not clear whether that
5 modification affected the PUD with respect to the approved final Phase 1
6 development and partition plat, or Phase 2, which had not yet been applied for.
7 In any case, petitioner argues that the city would not have approved that 2010
8 PUD modification had it believed that the right to seek further development under
9 the 2008 PUD, including Phase 2, had expired in 2009.

10 Petitioner's reliance on the city's 2010 modification of the PUD approval
11 does not establish that the decision challenged in this appeal fails to comply with
12 the city's code, or is not supported by substantial evidence. From the limited
13 record before us, there is no evidence that in approving the 2010 modification the
14 city made any determination regarding Condition of Approval 1, or the expiration
15 of the PUD, or needed to make any such determination, in order to approve the
16 requested modification. Even if the city in 2010 approved the modification under
17 the assumption that the 2008 PUD approval was effective and unexpired,
18 petitioner does not explain why that assumption would control the city council's
19 subsequent interpretation, in the presently challenged decision, that Condition of
20 Approval 1 applied to Phase 2, and thus the right to seek final Phase 2 approvals
21 had expired. That interpretation is supported by the record, and does not conflict

1 with any land use regulations cited to us. Accordingly, petitioner's reliance on
2 the 2010 PUD modification provides no basis for reversal or remand.

3 This assignment of error is denied.

4 **FIRST AND THIRD ASSIGNMENTS OF ERROR**

5 Petitioner argues in the first assignment of error that the city erred in
6 determining that at least some of the Phase 2 lots are within the SA zone.
7 Relatedly, petitioner argues in the third assignment of error that the city erred in
8 concluding that the SA zone does not allow residential uses within the PUD.

9 Because we affirm the city's denial on the basis that the 2008 PUD
10 approval had expired, we do not reach petitioner's first and third assignments of
11 error. *Wal-Mart Stores, Inc.*, 47 Or LUBA at 266.

12 The city's decision is affirmed.