

FROM: Jas. Adams, weetristan@gmail.com

TO: **Yachats City Hall & Yachats Planning Commission and the City Planner:**  
[cityhall@yachatsmail.org](mailto:cityhall@yachatsmail.org), [lancebloch1@gmail.com](mailto:lancebloch1@gmail.com), [lorendickinson@gmail.com](mailto:lorendickinson@gmail.com),  
[jac.danos@gmail.com](mailto:jac.danos@gmail.com), [happydogs27@gmail.com](mailto:happydogs27@gmail.com), [corchard@peak.org](mailto:corchard@peak.org),  
[office@yachatsyardscapes.com](mailto:office@yachatsyardscapes.com), & [planner@yachatsmail.org](mailto:planner@yachatsmail.org)

---

October 12, 2021

Re: Public input on Application of Agate Point for a conditional use permit (CUP)

**To: Yachats Planning Commission and City Planner —**

My name is Jas. Adams. My spouse Diane Rosenbaum and I own a home in Yachats looking out on Yachats Ocean Road. I submit the following comments on the application for a conditional use permit (CUP) filed by Agate Point that is under consideration by the Planning Commission.

### **FOCUS IS ON APPLICABLE CUP ORDINANCES**

Comments by others have been submitted questioning approving a CUP for a hotel and also urging that variances be denied. More precisely, the application is for a conditional use permit for a motel consisting of 7 prefabricated cottages sought to be placed on top of a half-acre of wetlands that no has ever attempted to develop for that very reason, as other public comments on the Agate Point application have noted. This comment focuses on the many disconnects between the proposed use and the applicable ordinances.

### **NATURE OF THE PROPOSED USE**

Agate Point wants to develop its  $\frac{1}{2}$  acre lot to generate rental income from rentals without being part of the City's short-term rental accommodations program. And as discussed below, Agate Point has not offered to meet any conditions that would actually mitigate the adverse impacts of its proposed use of its  $\frac{1}{2}$  acre lot. Moreover, a Yachats ordinance provision dictates a density limit of 12 units per acre. Yachats City Ordinance Section 9.24.040(A)(1) ("However, the maximum density in the R-4 zone shall not exceed twelve (12) dwelling units per acre."). Agate Point's application is necessarily limited to a density of 6 cottages, not 7.

The problem is that Agate Point's is that its application for a conditional use permit fails to pass muster under several provisions of the Yachats planning ordinances. The proposed use is nothing more than an attempt to garner maximum profit with the least investment possible on a wetlands lot with little or no regard to the impacts for the Yachats community.

**1. THE FLAWED WETLANDS ASSESSMENT BY AGATE POINT'S CONSULTANT IS MOOTED BY THE OFFICIAL DETERMINATION OF THE ARMY CORPS OF ENGINEERS THAT THIS LOT CONTAINS WATERS OF THE UNITED STATES WITH PERENNIAL FLOWS CONNECTED TO GREGORY CREEK.**

- a. **AGATE POINT'S CONSULTANT REPORT:** The consultant (Schott & Associates) used by the CUP applicant appears to have examined two ditches on the lot that did not then contain standing water (ditches are not natural and drain wetlands), checked some rain tables, and took photographs at ground level that fail to show that this lot is indistinguishable from the surrounding wetlands. The consultant somehow concludes that wetlands constituted only 3% of the lot. Agate Point does not explain why the map of wetland inventory included as Figure 3 in its consultant's report shows wetlands indicated by shading over most of the lot. See attached Figure 3.
- b. In contrast, the official determination by the Army Corps of Engineers determined that the wetlands on this lot comprise .13 acres, which is over 25% of the total lot area, or about 2800 square feet located *in the middle of the lot*. The ACOE found that those wetlands are hydrologically connected to Gregory Creek and experience perennial flows. The ACOE took into account the presence of marsh grasses and plants on the lot identical to those in the adjacent wetlands.
- c. As far as the record shows, the lot property owner did not appeal that official determination, which largely moots the consultant's report. In addition, the consultant report paid for by the applicant mischaracterizes the ACOE official determination that the wetlands in the lot **are** hydrologically connected to Gregory Creek. Accordingly, the Planning Commission should accord the consultant report little or no weight.

**2. THE PROPOSED MOTEL IS ON A CUL DE SAC**, which not only exacerbates the lack of direct highway access but also is an obstacle to granting a CUP for this proposal. Being on a cul-de-sac is specifically mentioned as a reason to deny Agate Point's application for a CUP. See §9.24.040(G) ("Commercial uses and multifamily dwellings shall not have vehicles access to or from a cul-de-sac"). A motel is a commercial form of dwelling, and the proposed parking lot and access to the cottages are accessible only from Shell Road, which currently is a dead-end road and hence is a cul-de-sac.

**3. DIRECT ACCESS TO HWY 101 IS REQUIRED FOR THIS MOTEL**

- a. No CUP is needed if a motel has direct access to HWY 101, because that is a permitted use outright. See § 9.24.020(K) (uses permitted outright in an R-4 zone): "Motel, hotel or resort on a minimum of 1.0 acre with direct access provided from U.S. Highway 101 **only** and with accessory commercial uses." (Emphasis added).
- b. But § 9.88.160 shows that HWY 101 access is disfavored if it would require additional cuts onto HWY 101: "Cuts on Highway 101 shall be allowed only if no other alternative

is available." As a practical matter, then, only sites with existing highway access not requiring additional cuts onto HWY 101 are likely to be granted a CUP. Even in the unlikely event that the Planning Commission indicated it would require a new access be constructed onto HWY 101 for the 6-cottage motel being proposed, Agate Point would be even less likely to agree to undertake the considerable expense so entailed, since the nature of this project is to extract maximum profit with minimum outlay.

- c. Direct access to HWY 101 is impliedly still required for a CUP for a motel on less than an acre, because being on less than an acre is the only change mentioned in §9.24.030., and no condition listed in §9.72.010 would serve to mitigate for the inability to provide direct access or to offset the cul de sac issue. See §9.24.010; §9.24.040(G).
- d. Only one condition listed in § 9.72.010 would offset the increased traffic created by 6 cottages that would add up to 16 vehicles to daily traffic along Yachats Ocean Road. That is a condition that the road be widened. Along much of its length, especially on its northern portion, Yachats Ocean Road can barely accommodate two cars going in opposite directions, because the road is so narrow, which makes traffic more dangerous for pedestrians. But it is evident to anyone who walks along that road that there is not sufficient room to widen the road without cutting into the setbacks for adjoining properties, due to erosion on the ocean side of the road. Again, it is unlikely this Applicant would be willing to cover any significant portion of the cost of widening Ocean View Road.

#### **4. ANYTHING NOT COVERED IN TITLE 9 REQUIRES THAT A CUP MUST BE UNANIMOUSLY APPROVED BY THE YACHATS CITY COUNCIL AFTER AN ADDITIONAL PUBLIC HEARING**

- a. Agate Point has offered only one condition: to buy mitigation credits to be used elsewhere, not necessarily in Yachats. That condition would be utterly ineffective for this development project, because it would do nothing to offset the problems posed by adding 6 houses on a wetland in a cul-de-sac without direct access to HWY 101 exacerbating the traffic problems on Yachats.
- b. In addition, the mitigation credits that Agate is willing to buy in an undisclosed amount to be used elsewhere is something that is not covered by Title 9. Hence, the Planning Commission could not grant a CUP on that basis. See § 9.88.140 ("Anything not covered by this title shall be permitted only by *unanimous* agreement of the City Council after a public hearing." The Planning Commission has authority to deny the application for a CUP, but it itself cannot issue a CUP conditioned on purchase of mitigation credits to be used elsewhere. Only the City Council is authorized to permit "anything" not contemplated by Title 9, and it would have to do so *unanimously*).

**5. WHEN A LOT HAS AN AREA DEFICIENCY, RESIDENTIAL USE IS LIMITED TO A SINGLE FAMILY DWELLING UNIT.**

- a. § 9.72.150 provides that "if a lot \* \* \* has an area or dimension which does not meet the lot size requirements of the zone in which the property is located, the holding(s) may be occupied by a use permitted in the zone subject to the other requirements of the zone, provided that is there is an area deficiency, residential use shall be limited to a single-family dwelling unit consistent with the density and meeting sanitary requirement of the zone." (Emphasis added).
- b. Because the Agate Point proposal is on a  $\frac{1}{2}$  acre lot instead of a one-acre lot, this application for a CUP constitutes an area deficiency. On its face, this provision would appear to preclude grant of a CUP to Agate Point, unless the motel is deemed to constitute a residential use. But the definitions in § 9.04.030 do not contain a definition of "residential use" that limits it to long-term occupation. The proposed cottages are a type of residence, albeit designed for short-term occupation, because they are equipped with kitchens, bathrooms and bedrooms. .

**6. ALLOWING A CONDITIONAL USE PERMIT FOR THIS MOTEL CANNOT BE LESS RESTRICTIVE THAN OTHER CONDITIONAL USE PERMITS.**

- a. §9.88.130 provides that a CUP cannot be granted on terms less restrictive than other CUPs: "Where the conditions imposed by any provision of this title are less restrictive than comparable conditions imposed by any other provisions of this title or of any other ordinance, resolution or regulation, the provisions which are more restrictive shall govern, except in a planned unit development."
- b. Were the Planning Commission inclined to grant the CUP application primarily because of the tax revenue it might generate, it would be required to explain its reasoning under §9.88.100: "Approval or denial of a permit application shall be based upon and accompanied by a brief statement (findings of fact) that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth."
- c. This provision is a check on the exercise of unbridled discretion in imposing conditions. On its face, Agate Point's application does not advance the underlying purpose of the CUP process, which is to permit "compatible" uses that are "desirable or necessary." See § 9.24.010.

**7. THE SITE IS PART OF AN HISTORIC SHELL MIDDEN, AS NOTED IN OTHER PUBLIC COMMENTS, AND THERE ARE LIKELY TO BE TRIBAL ARTIFACTS PRESENT**

- a. Agate Point has not addressed the likelihood that the shell midden in the location of the lot contains items of cultural significance, requiring a permit for excavation or removal of archeological material.
- b. See ORS 358.920 (1)(a): ("A person may not excavate, injure, destroy or alter an archaeological site or object or remove an archaeological object located on public or private lands in Oregon unless that activity is authorized by a permit issued under ORS 390.235 (Permits and conditions for excavation or removal of archaeological or historical material.)").
- c. See attached page from the National Park Service regarding tribal artifacts often found in shell middens on the Oregon Coast.
- d. The Planning Commission should deny the application for a conditional use permit because it does not include any consideration of protecting excavation of tribal cultural artifacts in an area known to contain a large shell midden.

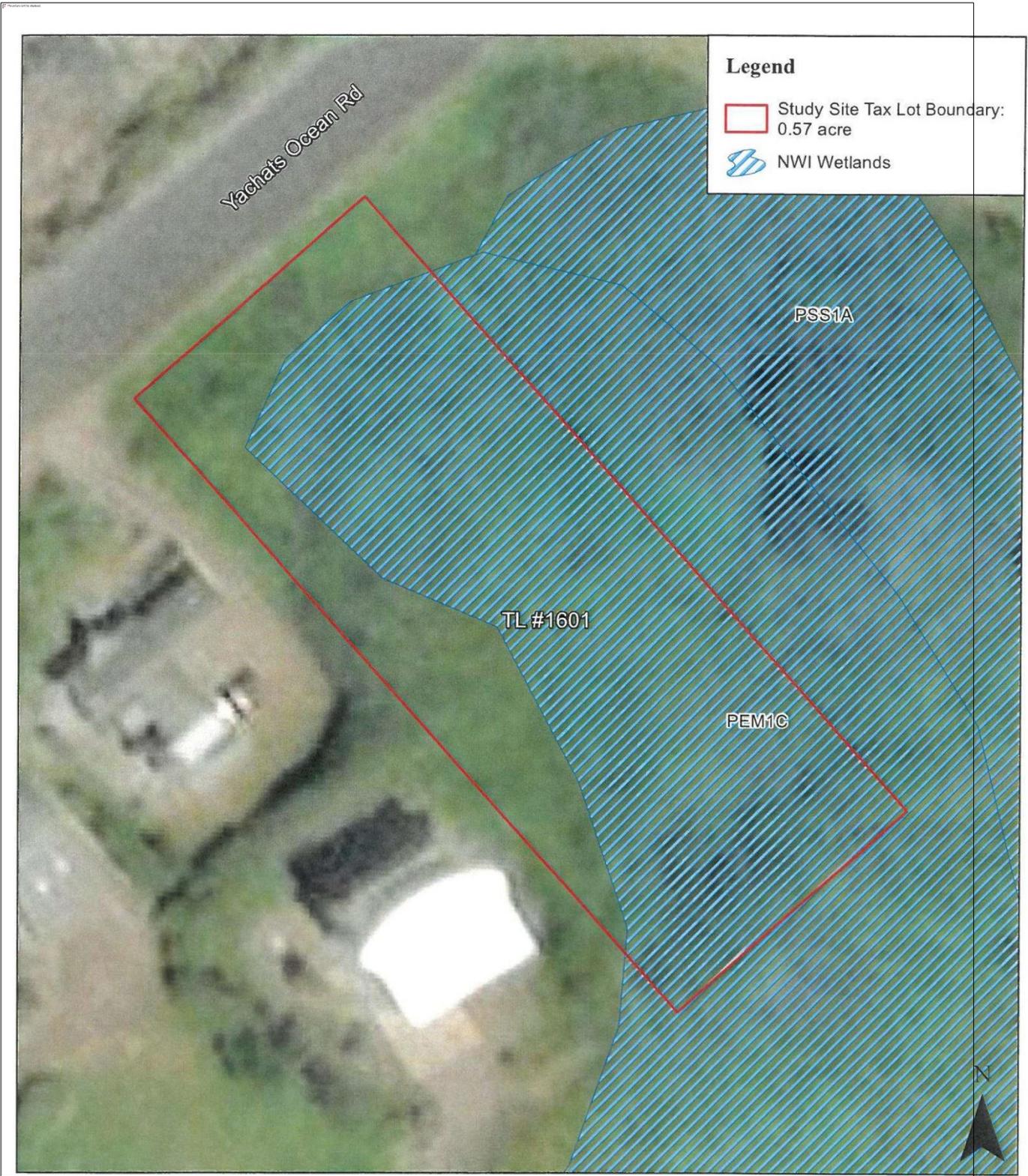
**8. CONCLUSION**

What Agate Point proposes as its only condition - buying mitigation credits that would be applied elsewhere - does not further the purpose of the R-4 zone "to provide a quality environment for high density, urban, residential, resort and motel uses together with other compatible land uses determined to be desirable and/or necessary." Purchase of mitigation credits is a condition not covered in Title I, and hence it appears only the Yachats City Council could impose that condition if and only if its vote is unanimous.

In sum, there are multiple adverse impacts of this motel complex proposal squeezed onto half an acre of wetlands. There are many inconsistencies between the Application and the applicable land use ordinances that the Applicant has either shrugged aside or failed to address: wetlands covering 25% of the lot; lack of HWY 101 access; the cul-de-sac problem; mitigation credits outside Title 9 as a condition would require a separate hearing before the City Council plus a unanimous vote;

On the basis of all the foregoing, I urge the Planning Commission to deny Agate Point's application for a conditional use permit.

Jas. Adams  
10 Beargrass Court  
Yachats, Oregon 97498



Date: 5/4/2021

Data Source: ESRI, 2021; Lincoln County GIS Dept, 2021; USFWS, NWI, 2021

Figure 3. Wetland Inventory Map

**United States Department of the Interior  
National Park Service**

**NATIONAL REGISTER OF HISTORIC PLACES  
CONTINUATION SHEET**

Section **E** Page **14** **Native American Archaeological Sites of the Oregon Coast**

=====

- (5) possesses a minimum level of integrity or intactness. A site must retain its essential horizontal or vertical integrity, or be demonstrably derived from a discrete site deposit.
- (6) demonstrates the potential to address one or more of the research problems outlined in Table 5 in *Research Significance*.

In addition to being found eligible to the National Register under Criterion D, some Oregon Coast archaeological sites may also be eligible based on their association with events that have made significant contributions to broad patterns of history (Criterion A). Occasionally, a site may be found eligible because it embodies distinctive characteristics of a type, period or method of construction, possesses high artistic values, or represents a significant distinguishable entity whose components may lack individual distinction (Criterion C). In these cases, justification for eligibility under Criteria A and/or C will be included on individual sites forms.

***PROPERTY TYPES***

Native American property types found on the Oregon Coast include shell middens, lithic sites, villages, ethnographic/ethnohistorical places, burial sites, intertidal fishing structures, quarries, and rock art sites. These property types were defined on the basis of variations in the physical structure and contents of individual sites, reference to previously defined archaeological site types utilized by Oregon Coast Native Americans, and the recognition that for those sites classified solely on the basis of archaeological attributes it is often difficult to differentiate between site types (e.g., village vs. campsite) commonly defined by archaeologists. These eight property types are not mutually exclusive. Theoretically, a single archaeological site might contain a shell midden, an ethnographic/ethnohistorical place, housepits indicating that it was once a village, isolated burials or a cemetery, rock art, and the remnants of a fishing weir in the intertidal zone. Most of these property types can also be described with reference to the nature of their deposits (as stratified sites, surface scatters, erosional exposures, redeposited sites, or submerged sites) or by the environmental context (estuarine, rocky outer coast, sandy outer coast, pericoastal, riverine, lacustrine, etc.) they are found in.

**Shell Middens** - Although there has been recent debate about the diversity of shell middens (Claassen 1991) and attempts to classify many subtypes (Widmer 1989), the definition used here is inclusive of any shell-bearing archaeological deposit. Oregon Coast shell middens are often conspicuous in erosional exposures because of the presence of dense shell (usually white) against dark surface soils. Shell middens often contain dark organic soils, charcoal, burned rock, vertebrate remains, and artifacts. Shell middens may vary from a localized, thin, and low-density stratum exposed in a seacliff profile or soil probe, to a large mound of accumulated refuse. This is the most common site type on the Oregon Coast, and occurs within the territories of all ethnographic groups.