

1. 3:00 P.M. Agenda

Documents:

[2022-06-21 Planning Commission Agenda - Public Hearing.pdf](#)

2. 3:00 P.M. Meeting Materials

Documents:

[Yachats Cottages 3-23-22.Pdf](#)
[Agate Point CUP Executed Application.pdf](#)
[Agate Point Plot Plan 3-19-22.Pdf](#)
[Agate Point Project Proposal.pdf](#)
[Army Corps 20210817 AJD Transmittal Letter.pdf](#)
[DSL WD20210294 Agency Decision.pdf](#)
[Agate Point Staff Report.pdf](#)
[REVISED Agate Point Staff Report.pdf](#)
[Agate Point Cottages Floorplans.pdf](#)
[Fall 2021 Public Input \(1\).Pdf](#)
[Fall 2021 Public Input \(2\).Pdf](#)
[Fall 2021 Public Input \(3\).Pdf](#)
[Fall 2021 Public Input \(4\).Pdf](#)
[Fall 2021 Public Input \(5\).Pdf](#)
[Fall 2021 Public Input \(6\).Pdf](#)
[Fall 2021 Public Input \(7\).Pdf](#)
[Spring 2022 Public Input \(1\).Pdf](#)
[Spring 2022 Public Input \(2\).Pdf](#)
[Additional Input On Agate Point Application For CUP.pdf](#)
[ADAMS Public Comment On Agate Point CUP Application-Copy.pdf](#)
[Maggie Marshall Agate Point Letter.pdf](#)
[Ordinance 182.Pdf](#)
[Applicant Zoning Exhibit.pdf](#)
[Spring 2022 Public Input \(3\).Pdf](#)



CITY OF YACHATS
PLANNING COMMISSION MEETING
Yachats OR
Tuesday June 21, 2022 at 3:00 pm
Public Meeting via ZOOM Meeting

Join Zoom Meeting

<https://us02web.zoom.us/j/84950221010>

Meeting ID: 849 5022 1010

One tap mobile

+13462487799,,84950221010# US (Houston)

+16699006833,,84950221010# US (San Jose)

Dial by your location

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

Meeting ID: 849 5022 1010

Find your local number: <https://us02web.zoom.us/j/kcEGFKebH>

Regular Meeting

- I. Call to Order
- II. Announcements and Correspondence
- III. Citizen Concerns
- IV. Public Hearing
 - a. Case File #2-CU-PC-21 Agate Point Residences LLC Conditional Use Permit
- V. New Business
- VI. Old Business
- VII. Planner Report

This meeting is open to the public and all interested persons are invited to attend the ZOOM Meetings. This meeting will be audio taped. All items to be considered by the Commission must be submitted to City Hall prior to the meeting. The minutes of this meeting are the Audio Recordings which will be added to the packet after the meeting within 24 hours. In accordance with ORS 192.630, City of Yachats will make a good faith effort to provide accommodations for any person desiring to attend a public meeting, if the request is made at least 48 hours in advance of the meeting time; a sign language or foreign language interpreter may be available, with advance notice. Call City Hall at 541- 547-3565 or Oregon Relay 1- 800-735-2900 (TDD) two days in advance.

VIII. Other Business

- a. From the Commission
- b. From Staff

This meeting is open to the public and all interested persons are invited to attend the ZOOM Meetings. This meeting will be audio taped. All items to be considered by the Commission must be submitted to City Hall prior to the meeting. The minutes of this meeting are the Audio Recordings which will be added to the packet after the meeting within 24 hours. In accordance with ORS 192.630, City of Yachats will make a good faith effort to provide accommodations for any person desiring to attend a public meeting, if the request is made at least 48 hours in advance of the meeting time; a sign language or foreign language interpreter may be available, with advance notice. Call City Hall at 541- 547-3565 or Oregon Relay 1- 800-735-2900 (TDD) two days in advance.



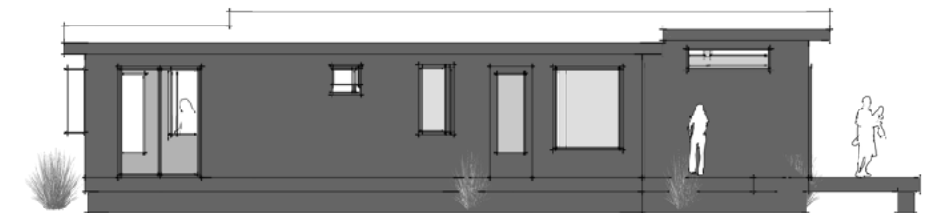
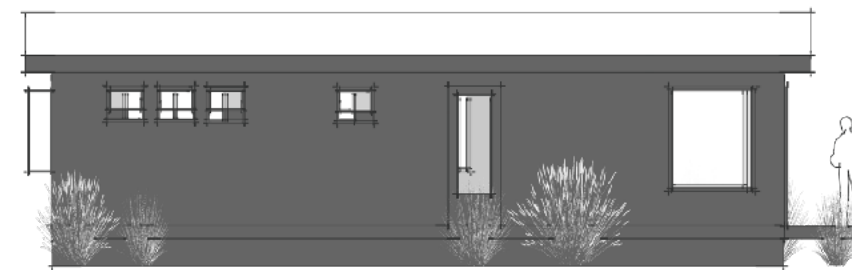
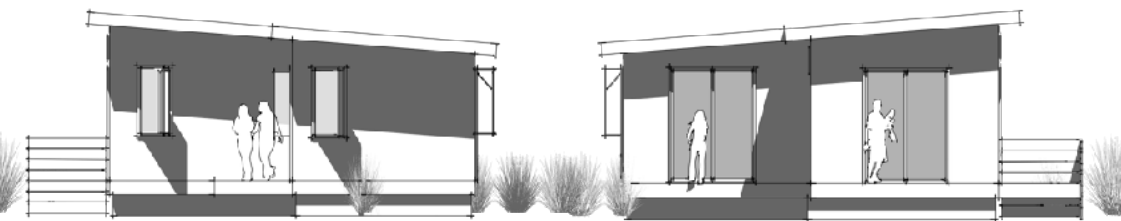
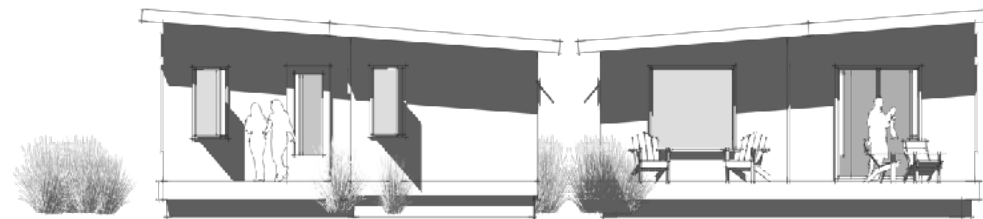
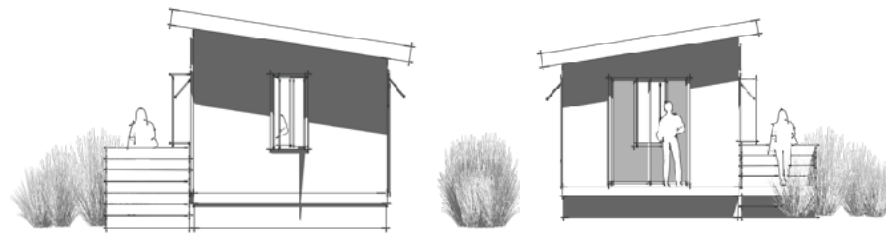
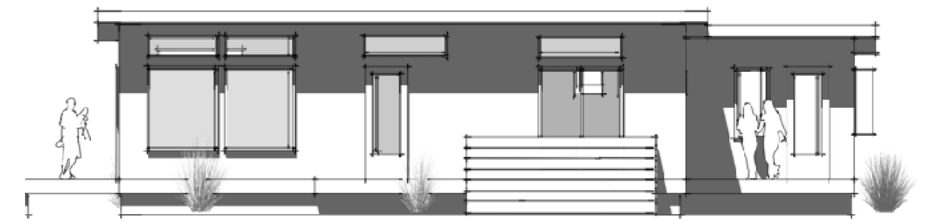
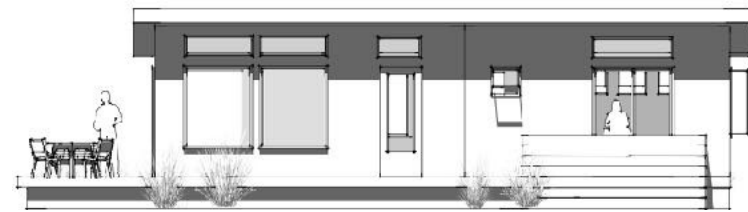
1BR / 1BA / 546 SF



2BR / 2BA / 858 SF



1 BR / 1BA + STUDIO / 1BA +
OFFICE / 1,040 SF

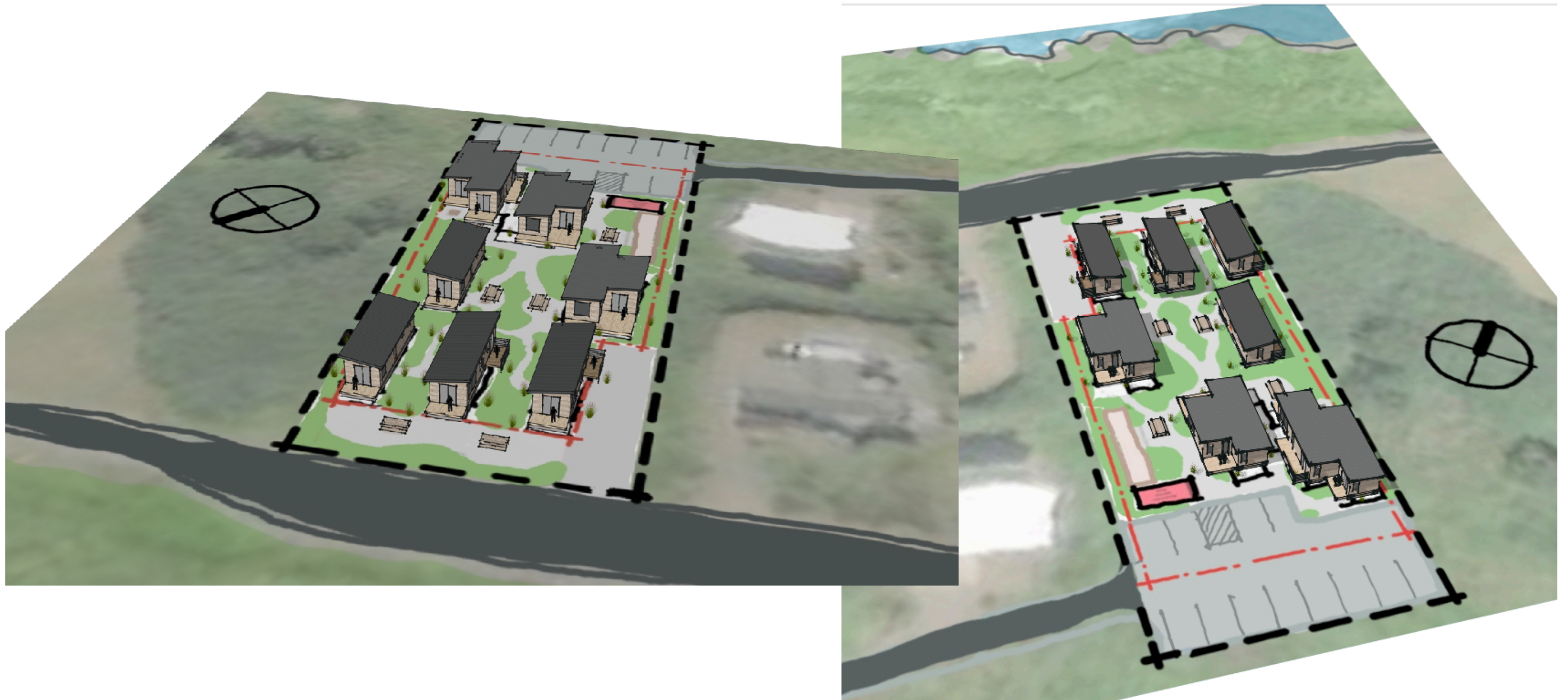


YACHATS COTTAGES - CONCEPT SKETCHES - COTTAGES

MARCH 2022

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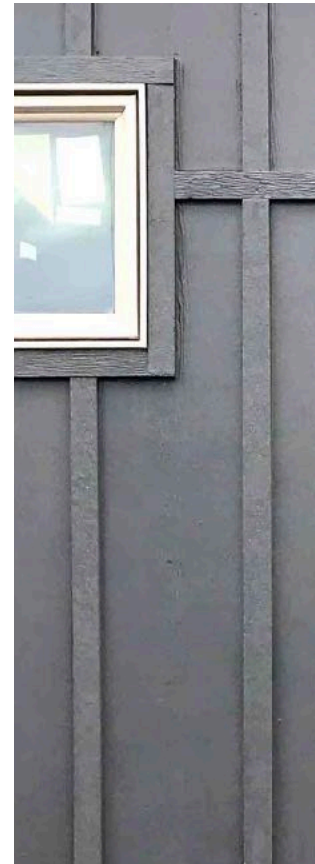




YACHATS COTTAGES - CONCEPT SKETCHES - SITE PLAN

MARCH 2022

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ROOF	MEMBRANE
SIDING - OPTION A	LP SMARTSIDE W/ DIAMOND KOTE PAINT PROCESS - https://diamondkotesiding.com
SIDING - OPTION B	FIBER CEMENT LAP WITH INTEGRATED PAINT -
WINDOWS	PELLA 250 SERIES VINYL FRAME ENERGY STAR - https://www.pella.com/ideas/windows/250-series/

YACHATS COTTAGES - CONCEPT SKETCHES - FINISHES

MARCH 2022

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FLOORING OPTION A	TAS LAMINATE FLOORING - EQUINOX SERIES
FLOORING OPTION B	MANNINGTON LAMINATE - RESTORATION COLLECTION
CABINETS	WOOD CABINETS, HEAVY DUTY SOFT CLOSE HARDWARE, BRUSHED PULLS
COUNTER OPTION A	QUARTZ
COUNTER OPTION B	SOLID SURFACE
APPLIANCES	24" REFRIGERATOR, 24" ELECTRIC RANGE, 24" OVR MICROWAVE, 18" DISHWASHER
TILE	DALTILE KONKRAFT SERIES



YACHATS COTTAGES - CONCEPT SKETCHES - FINISHES

MARCH 2022

Land Use Application

City of Yachats
441 Hwy 101 N
PO Box 345
Yachats OR 97498
(541) 547-3565

Fee:

Date Received: 9/7/21 RECEIVED

JUL 23 2021

CITY OF YACHATS

☒ Conditional Use \$250 ☐ Nonconforming Use \$250 ☐ Variance \$250
Zone Change \$500 Comprehensive Plan Change \$500
Urban Growth Boundary Change \$1000
(Actual expenses in excess of the application fee will be billed.)

Applicant: Agate Point Residences LLC Phone:

Address: 500 – 31st Street

City: Newport Beach State: Ca Zip: 92663

Relationship to property: Owner
(Owner, Contract Purchaser, etc.)

Legal Description: Tax Map Lot # 14-12-34AA-01601-00 Current Zone: R4

Lot Dimensions: 99.98 x 216.30 Area: 21,625.8 s.f. Flood Zone:

Natural Hazard: None Topography: Slight elevation
difference from the front to the back of the property, less than 10'

Directions to Property: Yachats Ocean Road

Previous Planning Actions on Property: None

Reason for Request: Construct a seven (7) cottage hotel

Existing Structures on Property: None

Proposed Use and Structures: Guest accommodations

Current Utilities and Providers: Water and sewer provided by The City of Yachats

Anticipated Date of Development: December 2021

Land Use Application

Supplemental Required Information

Attachments to Application (check all that apply)

- ☒ Plot Plan of subject property showing all property lines
- ☒ Existing and proposed structures and their location in relationship to property lines
- ☒ Total floor area, use and height of all existing and proposed uses
- ☒ Operating characteristics of all proposed commercial use
- ☒ Location, extent, arrangement, and proposed improvements of all off-street parking and loading facilities.
- ☒ Location of access to adjacent arterial or collector
- ☒ State or County Road Approach Permit
- ☒ Narrative which address applicable ordinance standards (required for all land use actions)
- ☐ Other: _____

I have read the above application and hereby certify all information contained therein to be true and complete to the best of my ability. I understand that this application will not be processed until all required information is submitted to the City.



Signature of Applicant

Signature of Property Owner (if other than applicant)

Agate Point

Supplemental Information

We are requesting a Conditional Use Permit for hotel operations of the proposed seven-unit cottage complex.

Section 9.24.020 Permitted Uses allows for a motel, hotel or resort of 1.0 acre with direct access provided from U.S. Highway 101 and only with accessory commercial uses. We are requesting a Conditional Use Permit because the project does not meet the 1.0 acre minimum and does not directly access U.S. Highway 101.

Section 9.72.050 (A) requires hotels and resorts to have a minimum of one thousand five hundred (1,500) square feet of open space per guest unit. The project provides three thousand five hundred twenty-eight (3,528) square feet of open space per unit.

Section 9.64.020 Private Streets. The project proposes to use existing public streets to access the parking lot at the east side of the property.

Section 9.48.010 (L3). Requires one space for each guest accommodation. The project provides 2.28 guest parking spaces for each accommodation or a total of sixteen (16) spaces.

Plot Plan. Provided

Existing and Proposed structures: There are no existing structures on the property. We propose to install Seven (7) high quality prefabricated modular units.

Total Floor Area: 6,342 s.f.

Height: Fourteen (14')

Proposed use for these structures: is cottage rentals

Operating Characteristics: The operation of these cottages will be managed by Sweet Homes. Located in Yachats. These units will be rented for a duration as chosen by the Client. Maid service will be provided. Management will be provided on a 24/7 basis.

Location, extent, arrangements for proposed improvements and loading facilities: All of this is provided on site.

State or County Road Approach Permit: Both permits may be required for the sewer, water connection.

R 4 Ordinance Standards.

1. Minimum Lot Size: 20,000 s.f. requirement met 24,698.97 s.f.
2. Maximum Density: 12 DU per acre. This site is 0.57 acres which allows 6.84 buildings. We propose seven (7) buildings
3. Minimum lot width and depth all comply with the Zoning Code
4. Front Yard setback is twenty (20').
5. Side Yard setback: Five (5').
6. Street Side yard Setback N/A
7. Rear Yard Setback: ten (10').
8. Maximum Building Height: thirty (30'). The proposed buildings have a maximum height of Sixteen (16').
9. Lot Coverage maximum 45%. The proposed project has a lot of coverage of twenty-six (26%).

Environmental review

In May 2021, a Jurisdictional Wetlands Delineation report was prepared by Schott & Associates (copy attached) to determine any areas of Jurisdictional Wetlands. Two areas were identified as potentially sensitive. These areas total 1,743 s.f.

This report was submitted to DSL and Army corps in May 2021.

On July 13, Army Corps was on site to determine the drainage area located along the west boundary of this property, is tributary to Gregory Creek which is located on the north side of the adjacent parcel. It was determined, they were not connected.

DSL is reviewing the report and will make a determination if a site visit is necessary.

The Applicant proposes to offset any environmental impacts with the payment of mitigation fees to a Conservation Bank.

A community meeting was conducted on July 15. Twenty-Four notices were sent to the adjoining neighbors. Thirteen attended the meeting. A presentation of the project was given followed by a question-and-answer session. It was explained to the attendees, we are seeking a CUP approval for hotel operations. Sweet Homes, located in Yachats, will be the day-to-day manager.

The attendees had a few items that need clarification / guidance from the city.

1. Will Shell Street be paved or gravel?
2. Who will maintain the street?
3. What are the limits of the improvements?
4. What are the lighting requirements for the parking lot? Bollards will be used within the cottages.
5. How will overrenting be managed. Sweet Homes check in the renting party to verify there is no overrenting. They also perform daily checks of the cottages.
6. What are the construction hours?

Mar 18, 2022

PLOT PLAN

Agate Point Cottages

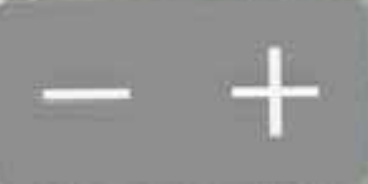
City of Yachats, County of Lincoln, State of Oregon

Mar 18, 2022

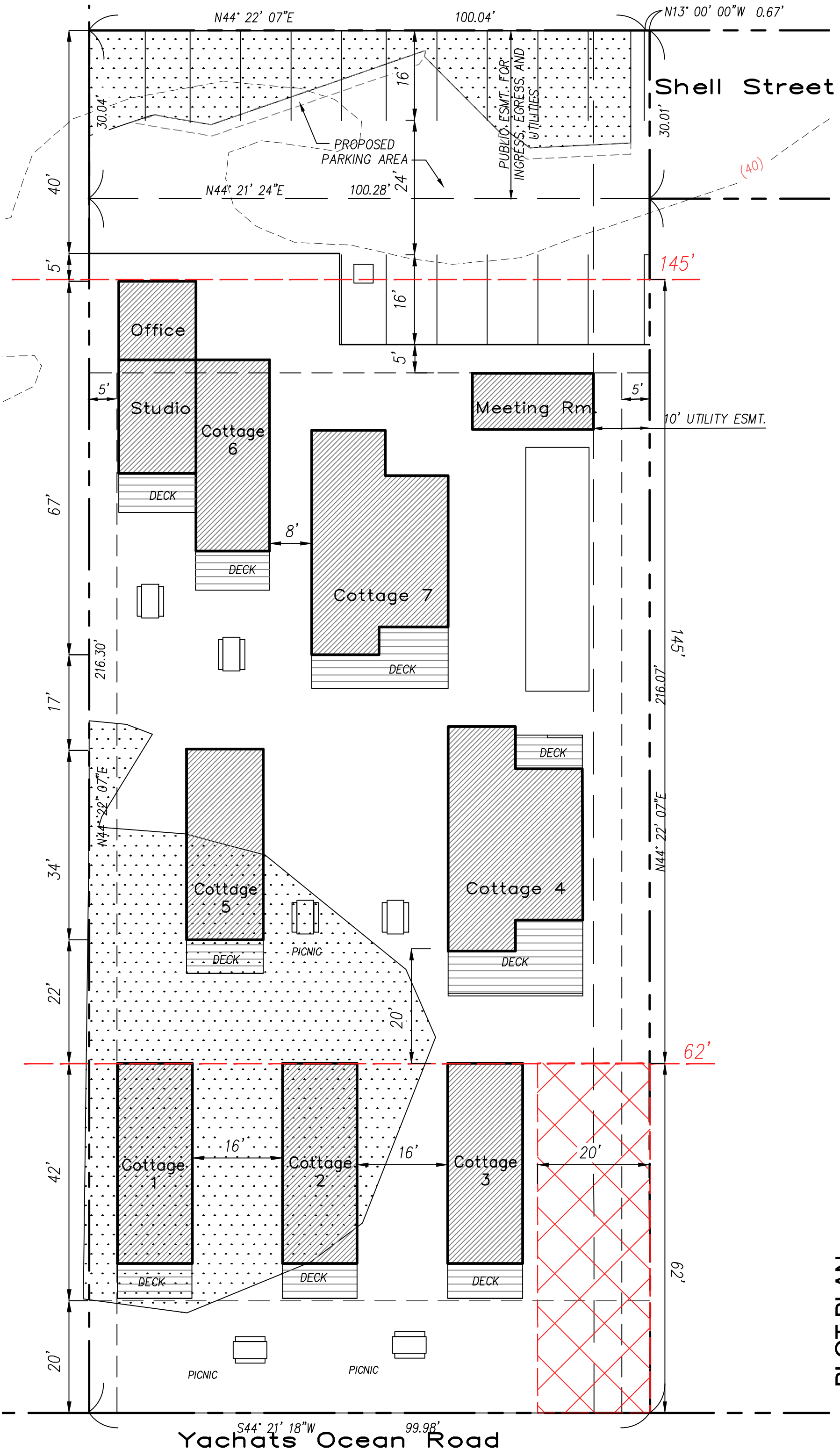


VICINITY PLAN

Scale: 1" = 30'-0"



SHEET 2 of 1



PLOT PLAN

Scale: 1" = 16'-0"

The Cottages at Agate Point Project Proposal

My wife and I purchased a small retirement home here in 2018. Like most residents of Yachats, I came as a visitor, entranced by the peace and natural beauty of this portion of the Oregon coast. Yachats with its access to broad beaches and rugged coastline has drawn vacationers here for nearly a century. In it's Comprehensive Land Use Plan written in 2008 and amended in 2019, Yachats recognized its land use priorities in the introduction of the CLUP when it stated:

Land use policies, procedures and applications shall acknowledge certain economic characteristics of the City, namely, that retirement and tourism are major industries.

We know that Yachats is and has been a tourist destination and that much of the city's fortune derives from year-round visitors. A quick inspection of the lodging options shows that despite continued pressure on the hotel housing stock, there have been no new units built within the city for several decades. In fact, over the past several years, the supply of hotel units has decreased with the loss of the Log Cabins (now Koho development) and the recent conversion of Rock Park Cottages to long term rentals. We believe that most of what is available does not address the needs/desires of a new generation of travelers. Desires have changed, but not the options of hotel lodging.

Within the city limits and its jurisdiction, there are very few opportunities to increase the availability of hotel units. Most R-4 and C-1 property has been built out. Our informal survey indicates that of the 43 R-4 properties within the city limits, the majority have been developed as single-family and multi-family residential leaving only 2 R-4 properties currently undeveloped. As the city becomes more and more popular with travelers, this unfortunately puts more pressure on STR's in neighborhoods not specifically zoned for such use. Add to this the increased pressure on rental units on the horizon due to the passage of Ballot Measure 21-203 and small coastal cities such as Yachats which rely on tourist revenue will have a hard time with economic stability and opportunities.

We realized that our property on Yachats Ocean Road, is quite unique and well suited for a small upscale hotel. It has a stellar location, is within walking distance to shops and restaurants and is appropriately zoned, allowing us to bring travelers out of residential neighborhoods into an area specifically set aside for such uses.

We decided to create a lodging opportunity that enhances Yachats and the coastal Oregon community. We want it to be unique and memorable. To that end:

- We have chosen to use Ideabox from Salem to build our cottages. Long recognized as an innovative leader in pre-fab housing.
- Each cottage will be unique, decorated with art and furnishings from local artists and craftspeople. All art will be available for purchase directly from the artist.

- We will partner with Sparrow Furniture from Salem to manufacture all of the hardwood furniture we will use. Sparrow began as a church outreach program supporting and training refugees for new careers in furniture making in order to facilitate their new lives in Oregon.
- We will make available local Oregon wines and foods.
- All garden landscaping will be native to coastal Oregon.

After extensive research, we have decided to use pre-fabricated units for the Cottages Hotel at Agate Point for several reasons:

- The building practices are much more environmentally friendly and sustainable.
- The construction efficiency creates significantly less waste.
- Building timeframes are shorter and less disrupted by inclement weather since the cottages are built inside and out of the elements.
- They are built to standards that meet and exceed current on-site building standards.
- The final cottages will be of a higher quality and much more durable than stick-built.
- There is an opportunity for far less impact on the property and neighborhood since each cottage is constructed off-site and lifted into place via crane onto a finished foundation.
- The install time is shorter, creating far less local disruption than traditionally stick-built construction.
- Despite popular misconceptions, pre-fab housing is more expensive than on-site construction, but the higher quality and durability leads to cost savings in the long-term. We find this last point especially important due the extreme weather conditions these cottages will endure on Agate Point.

Our cluster of cottages will have a light footprint, taking into consideration the natural beauty of the environment while being respectful of our neighbors.

- Overall lot coverage will be approximately 26% on a lot that allows for 45% coverage.
- Overall height will be approximately 14ft on a lot that has a 30ft height allowance.
- Access will be from Shellmidden rd. rather than Yachats Ocean Rd. in order to keep our visitor impact to a minimum.

We believe that our project is improving the opportunities for tourism by creating a lodging experience that is more in-line with the desires of today's travelers.

Conditional Use Permit Request

We are requesting a Conditional Use Permit for hotel operations of the proposed seven-unit cottage complex.

Section 9.24.020 Permitted Uses allows for a motel, hotel or resort of 1.0 acre with direct access provided from U.S. Highway 101 and only with accessory commercial uses.

- We are requesting a Conditional Use Permit because the project does not meet the 1.0 acre minimum and does not directly access U.S. Highway 101.

Section 9.72.050 (A) requires hotels and resorts to have a minimum of one thousand five hundred (1,500) square feet of open space per guest unit.

- The project provides 18,356 square feet of open space or 2,623 square feet per unit.

Section 9.64.020 Private Streets.

- The project proposes to use existing public streets to access the parking lot at the east side of the property.

Section 9.48.010 (L3). Requires one space for each guest accommodation.

- The project provides 1.7 guest parking spaces for each accommodation or a total of twelve (12) spaces.

Plot Plan

Existing and Proposed structures: There are no existing structures on the property. We propose to install Seven (7) high quality prefabricated modular units.

Total Floor Area: 6,400 sf

Height: Fourteen (14') ft

Proposed use for these structures: Hotel cottage rentals

Operating Characteristics: The operation of these cottages will be managed by a local professional management firm on a 24/7 basis. The project will have an on-site office for use by the manager to ensure compliance to all rules including restrictions on over renting, overparking, noise, behavior and litter.

Location, extent, arrangements for proposed improvements and loading facilities: All of this is provided on site.

State or County Road Approach Permit: Both permits may be required for the sewer, water connection.

R-4 Ordinance Standards.

1. Minimum Lot Size: 20,000 sf minimum. Requirement met. The Lot is 24,698.97 sf
2. Maximum Density: 12 DU per acre. This site is 0.57 acres which allows 6.84 buildings. We propose seven (7) buildings
3. Minimum lot width and depth all comply with the Zoning Code
4. Front Yard setback is twenty (20').
5. Side Yard setback: Five (5').
6. Street Side yard Setback N/A
7. Rear Yard Setback: ten (10').
8. Maximum Building Height: thirty (30'). The proposed buildings have a maximum height of fourteen (14').
9. Lot Coverage maximum 45%. The proposed project has a lot of coverage of twenty-six (26%).

Zoning Comparison.

The proposed project is significantly smaller in both lot coverage and building height than the code allows.

Lot coverage allowed is 45% or 11,114sf.

- *Proposed coverage 26% or 6,400sf. (+-).*

Building Height Allowed is 30'.

- *Proposed fourteen (14') feet.*

Community Meeting

A community meeting was conducted on July 15, 2021. Twenty-Four notices were sent to the adjoining neighbors. Thirteen attended the meeting. A presentation of the project was given followed by a question-and-answer session. It was explained to the attendees, we are seeking a CUP approval for hotel operations.

The attendees had a few items that need clarification / guidance from the city.

1. Will Shellmidden be paved or gravel? *Gravel*
2. Who will maintain the street? *The City since it is in the public Right of Way.*
3. What are the limits of the improvements? *Within the existing 30' Right of Way*
4. What is the lighting requirements for the parking lot? *Bollards will be used within the cottages and along the parking lot edge*
5. How will overrenting be managed. *An onsite manager's office has been added. The manager will check in the renting party to verify there is no overrenting. They also perform daily checks of the cottages. The manager is available 24/7.*
6. What are the construction hours? *7:00 am to 4:00 pm. Monday through Saturday.*

Response to Public Comments and letters

1. The property is a wetland.

No, the entire property is not a wetland. Portions are defined as wetland due to make up of the underlying soils.

On August 17, 2021, The Department of the Army issued its Jurisdictional Determination. A copy is attached.

On April 28, 2022, The Department of State Lands issued its Jurisdictional Determination. A copy is attached.

These determinations calculated a total of 5,662 sf to be wetlands. 4,356 sf in the western area and 1,306.80 sf in the eastern area. A copy of the Wetland Delineation Map is available.

The Applicant proposes to offset the environmental impacts with the payment of mitigation fees to the Wilbur Island Mitigation Bank. This is a common practice and acceptable development practice when small areas of wetlands are disturbed.

2. Access

Shellmidden is a thirty (30) foot recorded public right of way that provides access to the property. Access to the project from Shellmidden creates less of an impact than if access were from Yachats Ocean Road. If the Commission prefers, access can come from Yachats Ocean Road as the adjacent neighbors have.

3. Parking

Parking was reduced to twelve (12) spaces. Code requires one space per building.

4. Open Space

Section 9.72.050 (A) requires hotels and resorts to have a minimum of one thousand five hundred (1,500) square feet of open space per guest unit. The project open space totals approx 18,000sf or 2,600sf square feet per guest unit.

5. Building Codes

The code allows for a 45% lot coverage or a footprint of 11,114 sf. Maximum height is 30'. A Three (3) story home of over 20,000 square feet can be built on this site without any conditional approval.

6. Shellmidden Improvements

Allowable within the existing 30' Right of Way

7. Lighting requirements for parking

Bollards will be used within the cottages and along the parking lot edge

8. Rental Abuse and Management

An onsite manager office has been added. The manager will check in the renting party to verify there is no overrenting. They also perform daily checks of the cottages. Oversight is available 24/7

9. Accessory Structure

A managers' office and a Meeting Room have been added to the project. The Meeting Room is a separate building available for guests and or the general public to rent for events such as birthdays, weddings. This space can be used for ping pong or other communal recreation activity. Good for rainy days. Useful for meetings or other group activities if several units are rented by the same group of

people. Storage for communal items such as beach chairs, cornhole game, firewood etc. Helps to create a communal focus point.

10. Fire Access

A Fire access plan has been prepared and submitted to the Yachats RFPD. The Access plan has been designed to meet the requirements of Lincoln County Fire Agency. Primary Fire access is located off Yachats Ocean Road. This is consistent with the adjoining neighbors.

Short-Term Rental in Disguise?

We are not trying to skirt the Short-Term Rental issue, we are meeting it head on. We are taking what would be STR's and moving them into an area actually zoned for such a use. Kitchens and complete compact units are simply what people now want. Over the past several years Yachats has lost hotel rentals. This has pushed visitors into Airbnb units in residential neighborhoods. We are trying to alleviate that pressure by creating units in a low-density property zoned for hotels.

Changing Demographics

The hospitality industry has evolved dramatically over the past several years, driven by technology and shifting consumer demands, and the recent pandemic. The Cottages Hotel at Agate Point is trying to create a hotel experience that addresses these changing demands.

1. Leisure travelers require environments that accommodate their flexible work schedules and habits.

- All cottages will include comfortable work spaces
- All cottages will have free WiFi.

2. The new traveling demographic are digitally savvy and manage their own travel needs.

- Travel apps and improved on-line marketing provide for easy search, booking and payments on-line.
- New keyless entry systems allow for more convenient and contact-less check-in and check-out
- Digital communications provide for enhanced 24/7 guest communication.

3. Travelers require personalized, adventurous, and yet minimalist experiences instead of lavish services.

- The Cottages will provide the perfect location facing the beautiful and roaring Oregon Coast
- Comfortable and informal interiors will rely on local craftspeople and artists to provide a custom and relaxed appeal. No two Cottages will be alike.

4. Travelers are demanding more sustainable and eco-friendly surroundings and services.

- Best practices for construction of high quality and efficient prefabricated construction from local builders.
- Elimination of plastic disposables and unnecessary paper products
- Replacement of miniature toiletries with locally sourced dispenser.

- Utilization of organic bedding materials
- Deployment of energy-wise appliances.
- 5. Travelers are more focused on local “stay-cations” over traveling abroad.
 - The Cottages will provide the ideal setting, comfortable interiors and advanced technology to satisfy these needs.
 - Kitchens allow families to prepare coffee, light breakfasts, quick meals for younger travelers and meals for those with special dietary needs.
 - Flexible sleeping arrangements are more family friendly than hotel rooms, especially for those traveling with children.

We believe that The Cottages at Agate Point are positioned in the right place at the right time to attract this new demographic of traveler, whether it be solo travelers, couples or small families. This high-quality community will fill a growing need in this community. Strong management, combined with the low-profile, low-density layout, will help make this high-quality collection of cottages as respectful as possible to our neighbors and larger community. The Cottages Hotel at Agate Point will be unique hotel experience that will benefit the unique character and charm of Yachats.



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PORTLAND DISTRICT
EUGENE FIELD OFFICE
211 E 7TH AVENUE, SUITE 105
EUGENE, OR 97401-2763

August 17, 2021

Regulatory Branch
Corps No. NWP-2021-302

Mr. Jon Fletcher
330 Colleen Place
Costa Mesa, CA 92627

Dear Mr. Fletcher:

The U.S. Army Corps of Engineers (Corps) received your request for an Approved Jurisdictional Determination (AJD) of the waters or water features, including wetlands, within the review area as shown on the enclosed drawings (Enclosure 1). The review area is located along Ocean Road in Yachats, Lincoln County, Oregon at Latitude/Longitude: 44.30413388°, -124.10678227°. Other waters or water features, including wetlands, that may occur on this property or on adjacent properties outside the review area are not the subject of this determination.

The Corps has determined Wetlands 1 and 2 within the review area are waters of the U.S. The enclosed drawings (Enclosure 1) identify the size and boundaries of the delineated waters of the U.S. The enclosed *Approved Jurisdictional Determination Form (Interim)* (Enclosure 2) provides the basis for jurisdiction. A copy of the AJD Form can also be found on our website at <http://www.nwp.usace.army.mil/Missions/Regulatory/Appeals/>.

If you object to the enclosed AJD, you may request an administrative appeal under 33 CFR Part 331 as described in the enclosed *Notification of Administrative Appeal Options and Process and Request for Appeal (RFA)* form (Enclosure 3). To appeal this AJD, you must submit a completed *RFA* form to the Corps Northwestern Division (NWD) office at the address listed on the form. In order for the request for appeal to be accepted, the Corps must determine that the form is complete, that the request meets the criteria for appeal under 33 CFR Part 331.5, and the form must also be received by the NWD office within 60 days from the date on the form. It is not necessary to submit the form to the NWD office if you do not object to the enclosed AJD.

The delineation included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation and/or jurisdictional determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are U.S. Department of Agriculture (USDA) program participants, or

anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center, prior to starting work.

This AJD is valid for a period of five years from the date of this letter unless new information warrants revisions of the determination.

We would like to hear about your experience working with the Portland District, Regulatory Branch. Please complete a customer service survey form at the following address: <https://regulatory.ops.usace.army.mil/customer-service-survey/>.

If you have any questions regarding our Regulatory Program or permit requirements for work in waters of the U.S., please contact Ms. Katharine A. Mott by telephone at (541) 465-6869 or email at katharine.a.mott2@usace.army.mil.

Sincerely,



For: William D. Abadie
Chief, Regulatory Branch

Enclosures

cc with drawings:

Oregon Department of State Lands (Matthew Unitis, matthew.unitis@state.or.us, DSL#WD2021-0294)

Oregon Department of Environmental Quality (401applications@deq.state.or.us)

Schott and Associates (Juniper Tagliabue, juniper@schottandassociates.com)

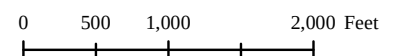


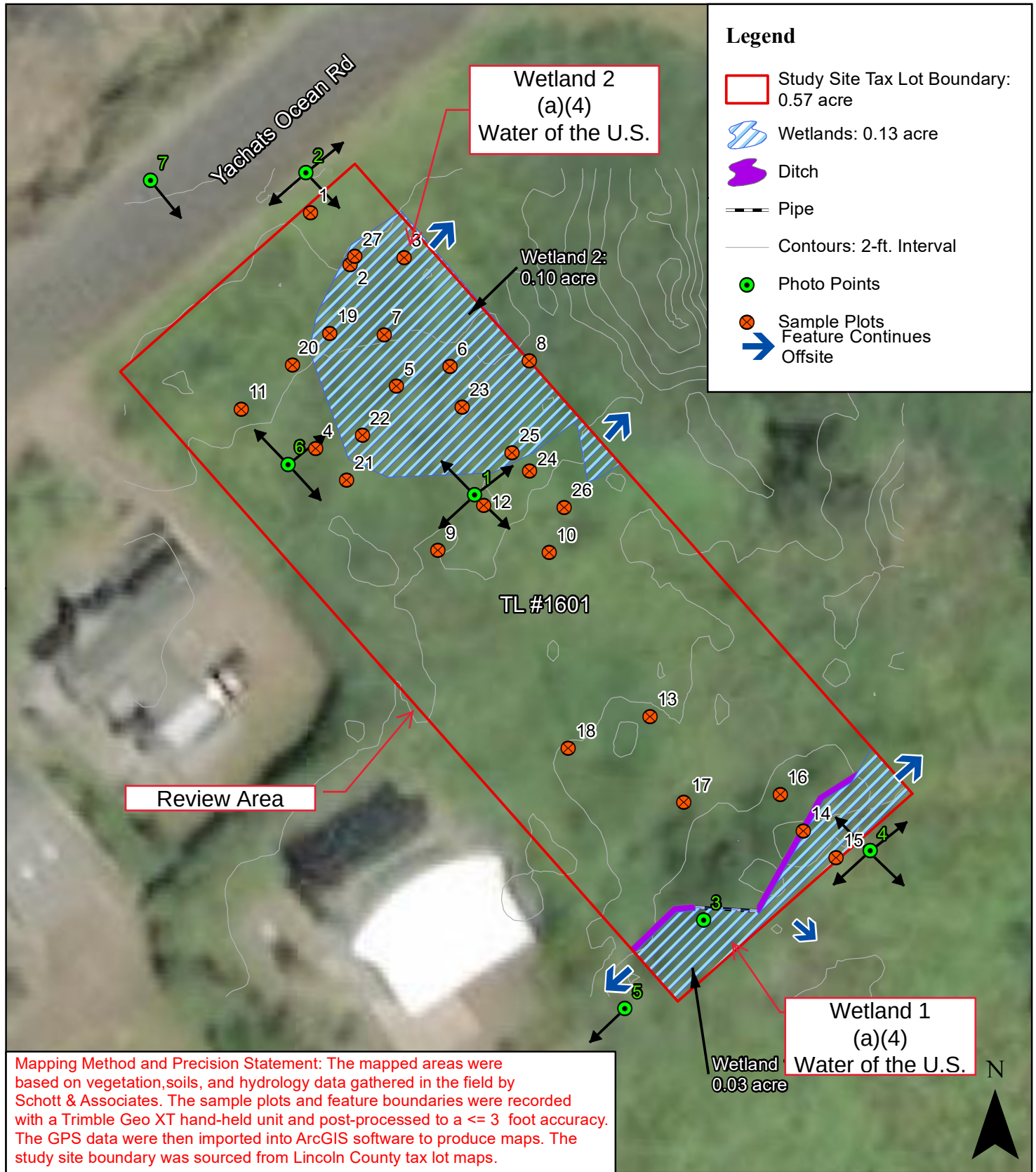
Date: 5/4/2021

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

Figure 1. Location Map

Yachats Ocean Road Project Site: S&A # 2865





Date: 8/9/2021

Data Source: ESRI, 2021; Lincoln County GIS Dept, 2021; DOGAMI, 2012

Figure 6. Wetland Delineation Map



SCHOTT & ASSOCIATES, Inc.
NWP-2021-302

Yachats Ocean Road Project Site: S&A # 2865

0 20 40 80 Feet
Enclosure 1



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 8/17/2021

ORM Number: NWP-2021-302

Associated JDs: N/A.

Review Area Location¹: State/Territory: Oregon City: Yachats County/Parish/Borough: Lincoln

Center Coordinates of Review Area: Latitude 44.30413388° Longitude -124.10678227°

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A.
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- ☒ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- ☐ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³				
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination	
N/A.	N/A.	N/A.	N/A.	

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination	
N/A.	N/A.	N/A.	N/A.	

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination	
N/A.	N/A.	N/A.	N/A.	

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination	
Wetland 1 - Ditch	0.03	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland 1 is located along the southern boundary of the project site and extends offsite to the northeast, southeast, and southwest. During the wetland

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
				delineation, a pipe and small wetland ditch were noted within the northern boundary of Wetland 1. Wetland 1 and the ditch exhibited clear indicators of wetland vegetation, hydrology, and soils. Based on a review of Oregon Department of Geology and Mineral Industries' (DOGAMI) Lidar, Corps site visit, and aerial photographs depicting consistent vegetation from within Wetland 1 to Gregory Creek, Wetland 1 abuts Gregory Creek. Immediately to the northeast of the study area is an (a)(2) perennial stream (known as Gregory Creek) flowing toward the northwest, through a culvert under Yachats Ocean Road, over coastal rocks and into the Pacific Ocean. As evidenced in Google Earth aerial photos and the Corps' 13 July 2021 site visit, the stream produces enough hydrology to visibly discharge into the Pacific Ocean (an (a)(1) water) during the summer dry season (July and August) under normal conditions over multiple years (see Section III. B.). Based on the above information the Corps as determined Wetland 1 abuts an (a)(2) water and is jurisdictional under the Navigable Waters Protection Rule (NWPR).
Wetland 2	0.10	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland 2 is located along the northeastern Review Area boundary and extends out of the Review Area to the northeast toward Gregory Creek. Based on a review of DOGAMI Lidar, National Wetland Inventory (NWI) maps, and the Corps observations during the July 13, 2021 site visit, Wetland 2 slopes downhill to the northeast and abuts Gregory Creek offsite. Furthermore, aerial imagery depicts consistent vegetation from the eastern portions of Wetland 2 to the Gregory Creek Channel. For that reason, Wetland 2 directly abuts an (a)(2) water.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
N/A.	N/A.	N/A.	N/A.	N/A.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



**U.S. ARMY CORPS OF ENGINEERS
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NAVIGABLE WATERS PROTECTION RULE**

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

☒ Information submitted by, or on behalf of, the applicant/consultant: ["Jurisdictional Wetland Delineation Report for Yachats Ocean Road" prepared by Schott & Associates, Inc. dated May 2021 and "Delineation Addendum S&A #2865 Yachats Ocean Road" prepared by Schott & Associates, Inc. dated 9 August 2021.](#)

This information is sufficient for purposes of this AJD.

Rationale: [The provided wetland delineation and delineation addendum adheres to the procedures outlined within the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual and 2010 Western Mountains, Valleys, and Coasts Regional Supplement to determine the boundaries of wetlands.](#)

☐ Data sheets prepared by the Corps: [N/A](#)

☒ Photographs: [Aerial and Other: Aerial photographs dated 18 August 2018 and 24 July 2019 obtained from Google Earth by Corps staff on 15 June 2021. Ground level photographs submitted within the wetland delineation.](#)

☒ Corps site visit(s) conducted on: [13 July 2021](#)

☐ Previous Jurisdictional Determinations (AJDs or PJDs): [N/A](#)

☐ Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

☐ USDA NRCS Soil Survey: [N/A](#)

☒ USFWS NWI maps: [United States Fish and Wildlife Service NWI maps obtained by Corps staff on 7 June 2021 from the Corp's Regulatory WebViewer.](#)

☒ USGS topographic maps: [United States Geologic Survey \(USGS\) topographic maps obtained by Corps staff on 7 June 2021 from <https://ngmdb.usgs.gov/topoview/viewer/#15/44.3053/-124.1067>](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	USGS National Hydrography Dataset (NHD) flowline information obtained by Corps staff on 7 June 2021 from the Corps Regulatory WebViewer. USGS Streamstats RainDrop tool information obtained on 15 June 2021 by Corps staff from https://streamstats.usgs.gov/ss/
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	DOGAMI Lidar information obtained by Corps staff on 7 June 2021 from https://gis.dogami.oregon.gov/maps/lidarviewer/.
Other Sources	N/A.

B. Typical year assessment(s): [On 15 June 2021, the Corps utilized the Antecedent Precipitation Tool \(APT\) to conduct a typical year analysis of the Review Area via a single point method for the dates the wetland delineation field data was collected and of aerial imagery. The APT is an automation tool that evaluates three climatological parameters at a given location to assist in documenting the various determinations required by policy for the execution of the Corps Regulatory Program. The APT analysis determines if the date-specific observation falls within the normal periodic range fro the geographic area based on a rolling thirty-year period. A single point method adequately represents the data sources available via the APT to conduct an appropriate analysis of climatic conditions onsite.](#)

[Specifically, the Corps ran an APT Analysis for the following dates:](#)



**U.S. ARMY CORPS OF ENGINEERS
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18 August 2018 (aerial photograph): "normal conditions:" observations of surface water.
24 July 2019 (aerial photograph): "normal conditions:" observations of surface water.
10 October 2020 (Agent site visit): "normal conditions:" limited offsite investigation.
13 July 2021 (Corps site visit): "normal conditions:" observations of surface water.

In conclusion, the Corps has determined from the use of the APT, the wetland delineation data, aerial imagery, and other sources identified above that the flow of Gregory Creek is perennial.

C. Additional comments to support AJD: N/A.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Mr. Jon Fletcher		File Number: NWP-2021-302	Date: 17 August 2021
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
X	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found in Corps regulations at 33 CFR Part 331, or at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/FederalRegulation.aspx>

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

William D. Abadie, Chief Regulatory Branch
U.S. Army Corps of Engineers, Portland District Office
PO Box 2946
Portland, OR 97208-2946
Telephone: (503)808-4373
Email: William.D.Abadie@usace.army.mil

If you only have questions regarding the appeal process you may also contact:

Melinda M. Larsen, Regulatory Appeals Review Officer
U.S. Army Corps of Engineers, Northwestern Division
1201 NE Lloyd Blvd., Suite 400
Portland, OR 97232
Telephone: (503) 808-3888
Email: Melinda.M.Larsen@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:



Oregon

Kate Brown, Governor

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregon.gov/dsl

State Land Board

April 27, 2022

Attn: Jon Fletcher
330 Colleen Place
Costa Mesa, CA 92627

Kate Brown
Governor

Re: WD # 2021-0294 **Approved with Revisions**
Wetland Delineation Report for Yachats Ocean Road Project
Lincoln County; T14S R12W S34AA TL1601

Shemia Fagan
Secretary of State

Tobias Read
State Treasurer

Dear Jon Fletcher:

The Department of State Lands has reviewed the wetland delineation report prepared by Schott and Associates for the site referenced above. Based upon the information presented in the report, a site visit on January 4, 2022, and additional information submitted upon request, we concur with the wetland boundaries as mapped in revised Figure 6 of the report. Please replace all copies of the preliminary wetland map with this final Department-approved map.

Within the study area, 2 wetlands (Wetland 1 and 2, totaling approximately 0.13 acres) and one ditch were identified. The wetlands and ditch are subject to the permit requirements of the state Removal-Fill Law. Under current regulations, a state permit is required for cumulative fill or annual excavation of 50 cubic yards or more in wetlands or below the ordinary high-water line (OHWL) of the waterway (or the 2-year recurrence interval flood elevation if OHWL cannot be determined).

This concurrence is for purposes of the state Removal-Fill Law only. Federal, other state agencies or local permit requirements may apply as well. The U.S. Army Corps of Engineers will determine jurisdiction under the Clean Water Act, which may require submittal of a complete Wetland Delineation Report.

Please be advised that state law establishes a preference for avoidance of wetland impacts. Because measures to avoid and minimize wetland impacts may include reconfiguring parcel layout and size or development design, we recommend that you work with Department staff on appropriate site design before completing the city or county land use approval process.

This concurrence is based on information provided to the agency. The jurisdictional determination is valid for five years from the date of this letter unless new information necessitates a revision. Circumstances under which the Department may change a determination are found in OAR 141-090-0045 (available on our web site or upon request). In addition, laws enacted by the legislature and/or rules adopted by the Department may result in a change in jurisdiction; individuals and applicants are subject to the regulations that are in effect at the time of the removal-fill activity or complete permit application. The applicant, landowner, or agent may submit a request for reconsideration of this determination in writing within six months of the date of this letter.

Thank you for having the site evaluated. If you have any questions, please contact the Jurisdiction Coordinator for Lincoln County, Matt Unitis, at (503) 986-5262.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Ryan", with a stylized flourish at the end.

Peter Ryan, SPWS
Aquatic Resource Specialist

Enclosures

ec: Jodi Forgione, Schott and Associates
City of Yachats Planning Department (Maps enclosed for updating LWI)
Katharine Mott, Corps of Engineers
Carrie Landrum, DSL
Oregon Coastal Management Program

WETLAND DELINEATION / DETERMINATION REPORT COVER FORM

Fully completed and signed report cover forms and applicable fees are required before report review timelines are initiated by the Department of State Lands. Make checks payable to the Oregon Department of State Lands. To pay fees by credit card, go online at: <https://apps.oregon.gov/DSL/EPS/program?key=4>.

Attach this completed and signed form to the front of an unbound report or include a hard copy with a digital version (single PDF file of the report cover form and report, minimum 300 dpi resolution) and submit to: **Oregon Department of State Lands, 775 Summer Street NE, Suite 100, Salem, OR 97301-1279**. A single PDF of the completed cover form and report may be e-mailed to: **Wetland_Delineation@dsl.state.or.us**. For submittal of PDF files larger than 10 MB, e-mail DSL instructions on how to access the file from your ftp or other file sharing website.

Contact and Authorization Information			
☒ Applicant ☐ Owner Name, Firm and Address:		Business phone # Mobile phone # (optional) E-mail:	
Jon Fletcher 330 Colleen Place Costa Mesa, CA 92627			
☐ Authorized Legal Agent, Name and Address (if different):		Business phone # Mobile phone # (optional) E-mail:	
I either own the property described below or I have legal authority to allow access to the property. I authorize the Department to access the property for the purpose of confirming the information in the report, after prior notification to the primary contact.			
Typed/Printed Name: <u>Jonathan Fletcher</u>		Signature: <u>[Signature]</u>	
Date: <u>5/25/21</u>		Special instructions regarding site access: _____	
Project and Site Information			
Project Name: Yachats Ocean Road Project		Latitude: 44.30413388 Longitude: -124.10678227 decimal degree - centroid of site or start & end points of linear project	
Proposed Use: Residential Development		Tax Map # 14S 12W 34AA Tax Lot(s) 1601	
Project Street Address (or other descriptive location): Yachats Ocean Road		Tax Map # Tax Lot(s)	
City: Yachats County: Lincoln		Township 14S Range 12W Section 34 QQ AA Use separate sheet for additional tax and location information	
		Waterway: River Mile:	
Wetland Delineation Information			
Wetland Consultant Name, Firm and Address: Juniper Tagliabue/Jodi Reed Schott and Associates PO Box 589 Aurora, OR 97002		Phone # 503.678.6007 Mobile phone # (if applicable) E-mail: juniper@schottandassociates.com jodi@schottandassociates.com	
The information and conclusions on this form and in the attached report are true and correct to the best of my knowledge.			
Consultant Signature: <u>[Signature]</u>		Date: 20 May, 2021	
Primary Contact for report review and site access is ☒ Consultant ☐ Applicant/Owner ☐ Authorized Agent			
Wetland/Waters Present? ☒ Yes ☐ No		Study Area size: 0.57ac Total Wetland Acreage: 0.13 ac	
Check Applicable Boxes Below			
☐ R-F permit application submitted		☒ Fee payment submitted \$ 475.00 to be submitted electronically	
☐ Mitigation bank site		☐ Resubmittal of rejected report (\$100)	
☐ EFSC/ODOE Proj. Mgr: _____		☐ Request for Reissuance. See eligibility criteria. (no fee)	
☐ Wetland restoration/enhancement project (not mitigation)		DSL # _____ Expiration date _____	
☐ Previous delineation/application on parcel If known, previous DSL # _____		☐ LWI shows wetlands or waters on parcel Wetland ID code _____	
For Office Use Only			
DSL Reviewer: <u>MU</u>		Fee Paid Date: ____ / ____ / ____	
Date Delineation Received: <u>06 / 01 / 2021</u>		Scanned: ☐ Electronic: ☒	
		DSL WD # <u>2021-0294</u> DSL App.# _____	



Date: 5/4/2021

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

Figure 1. Location Map

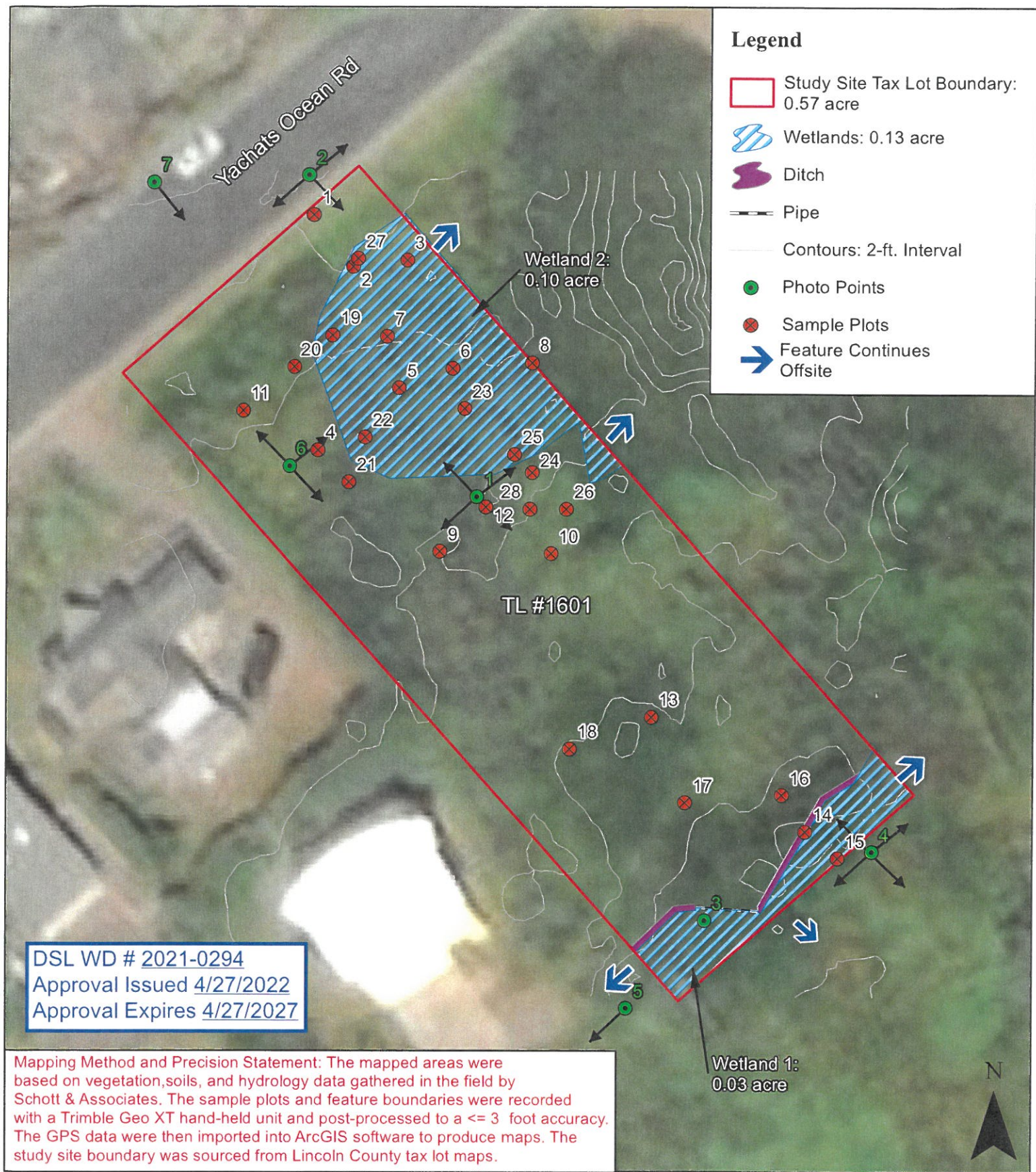
Yachats Ocean Road Project Site: S&A # 2865



Date: 5/4/2021

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

Figure 2. Lincoln County Tax Lot Map-
14S12W34AA



Date: 1/6/2022

Data Source: ESRI, 2021; Lincoln County GIS Dept, 2021; DOGAMI, 2012

Figure 6. Wetland Delineation Map

STAFF REPORT

Conditional Use Application

APPLICANT: Agate Point Residences LLC

A. REPORT OF FACTS

1. Property Location: The subject site is located at 358 Yachats Ocean Road and described on the Lincoln County Assessor's Map 14-12-34-AA as Tax Lot 1601.
2. Applicant's Request: The applicant is requesting a conditional use permit for development of a hotel in the R-4 Residential Zone on less than 1 acre with no direct access from Highway 101. The proposed development consists of 7 detached single-level lodging units. Two of the units are duplexes, making for a potential total of 9 guest units. Following submission of the original application, an office and meeting room have been added to the proposal.
3. Zoning: R-4 Residential
4. Plan Designation: Multi-family Residential
5. Lot Size and Dimensions: The Lincoln County Assessor's Office property tax information states that the subject property totals 0.57 acre, or 24,829.2 square feet. The Lincoln County Assessor's Office map shows the subject property with dimensions of approximately 100 x 246 feet, or 24,600 square feet. The applicant's narrative states that the lot size is 24,698.97 square feet. For purposes of this report, the lot size used for all calculations is 0.57 acre, or 24,829 square feet. No calculations are close enough to be affected by the discrepancy.
6. Existing Structures: None.
7. Topography: The subject site is generally flat.
8. Surrounding Land Use: Surrounding land uses include a mix of vacant land, single-family residential dwellings, condominium developments and a hotel (Yachats Inn). The Yachats Ocean Road State Natural Site is directly to the west.
9. Utilities:
Water & Sewer: City of Yachats
Electricity: Central Lincoln PUD
10. Development Constraints: The Oregon Statewide Wetlands Inventory identifies PEM1C and PSS1A wetlands on and adjacent to the site. Any development shall be in accordance with the guidelines dictated by Oregon Department of State Lands (DSL) and Army Corps of Engineers.

B. EVALUATION OF REQUEST

1. **Applicant's Proposal:** The applicant submitted the required application form and fee and the following information:
 - Site Plan
 - Floor Plans and Building Elevations
 - Aerial Photograph
 - Narrative describing the request and addressing some relevant Yachats Municipal Code Standards
 - Conceptual Exterior Design Photographs
 - Wetland Delineation Report as submitted to and approved by DSL

The applicant provided the following description, taken verbatim, of the proposal. Staff comments are shown in italics.

We are requesting a Conditional Use Permit for hotel operations of the proposed seven-unit cottage complex.

Staff Response: Cottages 6 and 7 each have 2 kitchens. YMC Section 9.04.030 (Definitions) defines a single family dwelling as "a building designed or used exclusively for the occupancy of one family and having kitchen facilities for only one family". Under the same section, "Two-family dwelling" means one building containing two (2) dwelling units (duplex). For the purposes of this report, the application will be considered to be seven structures comprised of nine guest units.

Section 9.24.020 Permitted Uses allows for a motel, hotel or resort of 1.0 acre with direct access provided from U.S. Highway 101 and only with accessory commercial uses. We are requesting a Conditional Use Permit because the project does not meet the 1.0 acre minimum and does not directly access U.S. Highway 101.

Staff Response: YMC Section 9.24.030 (P) (Conditional Uses) allows for a "motel, hotel or resort on less than 1.0 acre with accessory commercial uses".

Section 9.72.050 (A) requires hotels and resorts to have a minimum of one thousand five hundred (1,500) square feet of open space per guest unit. The project provides three thousand five hundred twenty-eight (3,528) square feet of open space per unit.

Staff Response: This standard does not address open space. A minimum lot area per guest unit of one thousand five hundred is required. Open space requirements are governed by lot coverage standards. In the R-4 zone, 55% of the property is required to remain as open space.

Section 9.64.020 Private Streets. The project proposes to use existing public streets to access the parking lot at the east side of the property.

Section 9.48.010 (L3). Requires one space for each guest accommodation. The project provides 2.28 guest parking spaces for each accommodation or a total of sixteen (16) spaces.

Staff Response: This calculation is based on the assumption of seven guest units. Two of the proposed units are duplexes, making for a total of nine units.

Plot Plan. Provided

Existing and Proposed structures: There on no existing structures on the property. We propose to install Seven (7) high quality prefabricated modular units.

Total Floor Area: 6,342 s.f.

Staff Response: This total does not include the proposed office and meeting room, but setbacks and lot coverage standards are still met.

Height: Fourteen (14')

Proposed use for these structures: is cottage rentals

Operating Characteristics: The operation of these cottages will be managed by Sweet Homes. Located in Yachats. These units will be rented for a duration as chosen by the Client. Maid service will be provided. Management will be provided on a 24/7 basis.

Location, extent, arrangements for proposed improvements and loading facilities: All of this is provided on site.

State or County Road Approach Permit: Both permits may be required for the sewer, water connection.

R 4 Ordinance Standards.

1. Minimum Lot Size: 20,000 s.f. requirement met 24,698.97 s.f.

Staff Response: Not relevant. Refers to minimum lot size when an R-4 lot is not served by City water or sewer.

2. Maximum Density: 12 DU per acre. This site is 0.57 acres which allows 6.84 buildings. We propose seven (7) buildings

Staff Response: Not relevant. Refers to maximum density for multifamily development. Hotel, motel or resort is 1,500 square feet per unit.

3. Minimum lot width and depth all comply with the Zoning Code

Staff Response: Not relevant. Only applies to lots platted after adoption of the YMC.

4. Front Yard setback is twenty (20').

5. Side Yard setback: Five (5').

Staff Response: Proposed structures may be up to 15 feet in height with a 5 foot side yard setback. #8 below suggests a maximum proposed height of 16 feet. Difference in the required side yard setbacks would be a matter of inches.

6. Street Side yard Setback N/A
7. Rear Yard Setback: ten (10').
8. Maximum Building Height: thirty (30'). The proposed buildings have a maximum height of Sixteen (16').
9. Lot Coverage maximum 45%. The proposed project has a lot of coverage of twenty-six (26%).

Staff Response: With the addition of an office and meeting room, lot coverage is slightly higher than 26%, but still well below the 45% allowed in the R4 zone.

Environmental review

In May 2021, a Jurisdictional Wetlands Delineation report was prepared by Schott & Associates (copy attached) to determine any areas of Jurisdictional Wetlands. Two areas were identified as potentially sensitive. These areas total 1,743 s.f.

This report was submitted to DSL and Army corps in May 2021.

On July 13, Army Corps was on site to determine the drainage area located along the west boundary of this property, is tributary to Gregory Creek which is located on the north side of the adjacent parcel. It was determined, they were not connected.

DSL is reviewing the report and will make a determination if a site visit is necessary.

The Applicant proposes to offset any environmental impacts with the payment of mitigation fees to a Conservation Bank.

A community meeting was conducted on July 15. Twenty-Four notices were sent to the adjoining neighbors. Thirteen attended the meeting. A presentation of the project was given followed by a question-and-answer session. It was explained to the attendees, we are seeking a CUP approval for hotel operations. Sweet Homes, located in Yachats, will be the day-to-day manager.

The attendees had a few items that need clarification / guidance from the city.

Will Shell Street be paved or gravel?

Who will maintain the street?

What are the limits of the improvements?

What are the lighting requirements for the parking lot? Bollards will be used within the cottages.

How will overrenting be managed. . Sweat Homes check in the renting party to verify there is no overrenting. They also perform daily checks of the cottages.

What are the construction hours?

2. **Relevant Yachats Municipal Code Criteria:**

Relevant Yachats Municipal Code (YMC) criteria are identified below by title only. Complete descriptions of relevant criteria are provided in the Analysis section of this staff report.

YMC Chapter 4 Business Licenses and Regulations

YMC Chapter 9.04.030 Definitions

YMC Chapter 9.24 R-4 Residential Zone

YMC Chapter 9.48 Off-Street Parking and Loading

YMC Chapter 9.72 Conditional Uses

3. **Public Testimony Received:** At the time this staff report was prepared the City had received over 100 letters regarding the conditional use request.

4. **Public Agency Comments:**

The City of Yachats Public Works Department has reviewed the request and confirmed that water and sewer service is available to the subject property. At the time a building permit is submitted, the Public Works Department request review and approval of street, water, sewer and storm drainage improvement.

The Yachats Rural Fire Protection District (YRFPD) will likely require an additional hydrant. The State Fire Marshal, in conjunction with the YRFPD, will have to approve the proposed access, turning radius and water flow. The Oregon Fire Code allows for access roads at 20 feet minimum when there is no parking allowed in the roadway. Required turning radius is typically a minimum of 28 feet.

C. **ANALYSIS**

The following analysis of the relevant YMC criteria is offered to guide the Planning Commission's deliberations.

1) Is the proposed use a hotel, motel or vacation rental(s)?

The Yachats Municipal Code provides the definitions below. The code provides two slightly conflicting definitions for "hotel". When considering the two, note that one definition is intended for zoning and land use decisions and the other for business licensing.

YMC Section 9.04.030 Definitions. (Zoning and Land Use)

"Hotel" means any building containing guest rooms which are rented or hired out to be occupied for sleeping purposes for guests, excluding any facility which meets the definition of "bed and breakfast facility."

"Motel" means a series of sleeping units, each having a separate entrance, composed of one or more bedrooms and bathroom, excluding any facility which meets the definition of "bed and breakfast facility."

YMC Section 4.04.020 Definitions. (Business Licenses Generally)

“Hotel” and “motel” includes any single structure or multiple combination of two (2) or more structures, operated as a single business venture where one or more units, rooms or apartments are hired out to the public for rent on less than a monthly rental basis, exclusive of any unit, room or apartment that is occupied by the owner, contract vendee or manager.

YMC Section 4.08.020 Definitions. (Business Licenses and Regulations)

“Vacation rental” means a single-family dwelling, duplex or triplex which is rented, or held out as available for rent, for periods of less than thirty (30) days, such as by the day or week. The dwelling may consist of individual units or be in a contiguous form to be considered a vacation rental dwelling; however, each individual unit is to be considered separately for licensing and regulation purposes. A dwelling which is listed with an agent as a vacation rental, advertised, available by referral, word of mouth, commendation and reputation are some of, but not limited to, the ways of identifying a vacation rental. It shall be a rebuttable presumption that a dwelling unit is a vacation rental if it is visited overnight by at least four (4) different vehicles over the course of a month, for three (3) consecutive months. The exchange of consideration is not necessary to meet the definition of a vacation rental if the dwelling otherwise is held out as available for occupancy for periods of less than thirty (30) days.

2) If the proposed use is a hotel/motel, does it meet the R4 standards?

A) Hotel/motel as a Conditional Use in the R-4 Zone

YMC Section 9.24.020 Permitted uses. (R-4 Residential Zone)

K. 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.

YMC Section 9.24.030 Conditional uses. (R-4 Residential Zone)

P. Motel, hotel or resort on less than 1.0 acre with accessory commercial uses.

Staff Analysis: A motel, hotel or resort on less than 1.0 acre is not an outright permitted use in the R-4 zone, but it is an allowed conditional use.

B) Density

YMC Section 9.24.040 Standards. (R-4 Residential Zone)

4. The minimum lot area per resort, hotel or motel guest unit shall be one thousand five hundred (1,500) square feet with a public water and sewer system.

YMC Section 9.72.050 Standards and procedures governing conditional uses.

A. Hotels or resorts in an R-4 zone shall have a minimum lot area per guest unit of one thousand five hundred (1,500) square feet.

Staff Analysis: The subject property is 0.57 acre or 24,829 square feet. The applicant is proposing 9 guest units or 1 guest unit per 2,758 square feet. This standard is met.

However, if the conditional use is discontinued and the property reverts to multifamily use, the proposed structures would be nonconforming. Per YMC Section

9.24.040 A1, Cottages 1 through 5 would require 6000 square feet of lot area each and Cottages 6 and 7 would require 7500 square feet each.

C) Lot Coverage

YMC Section 9.24.040 Standards. (R-4 Residential Zone)

D. Lot Coverage. Structures, including, but not limited to, buildings, porches and decks shall not occupy more than forty-five (45) percent of the total lot area.

Staff Analysis: Total lot coverage allowed is 11,173 square feet. The site plan shows:

Cottages 1, 2, 3 and 5 at 558.6 square feet each for a total of 2234.4 square feet

Cottage 4 at 1412.2 square feet

Cottages 6 and 7 at 1244.6 square feet each for a total of 2489.2 square feet

Total shown = 6135.9 sf vs applicant's 6,342 sf

*Dimensions for decks, the office and the meeting room are not shown on the site plan but **this standard has or can be met.***

D) Setbacks

YMC Section 9.24.040 Standards. (R-4 Residential Zone)

B. Yards. The minimum yard requirements in the R-4 zone shall be as follows:

1. Front yard shall be a minimum of twenty (20) feet.
2. Each side yard shall be a minimum of either five (5) feet or one foot for each three (3) feet of building height, whichever requirement is greater. Corner side yards shall not be used for clotheslines, incinerators, permanent storage of trailers, boats and recreational vehicles nor shall said yard be used for the regular or constant parking of automobiles or other vehicles.
3. The street side yard shall be a minimum of twenty (20) feet.
4. The rear yard shall be a minimum of ten (10) feet, except that on a corner lot it shall be a minimum of either five (5) feet or one foot for each three (3) feet of building height whichever requirement is the greater.
5. All patio structures and swimming pools shall be a minimum of five (5) feet from any side or rear property line.

*Staff Analysis: **This standard is met.***

E) Building Height

YMC Section 9.24.040 Standards. (R-4 Residential Zone)

C. Building Height. No building in the R-4 zone shall exceed a height of thirty (30) feet from finished grade or from natural grade, see Chapter 9.52.180.

*Staff Analysis: All proposed structures are under 16 feet in height. **This standard is met.***

F) Off-Street Parking

YMC Section 9.48.010 General requirements. (Off-Street Parking and Loading)

L3. Motel, hotel or resort: one space for each guest accommodation.

*Staff Analysis: Nine parking spaces are required at a minimum. The YRFPD is requesting a reasonable turning radius in the parking area. Based on the site plan, **this standard has not but could be met.***

G) Vehicular Access

YMC Section 9.24.040 Standards. (R-4 Residential Zone)

G. Vehicle Access. Ingress or egress to a multifamily dwelling or to a motel shall not be allowed from less than a thirty-five (35) foot right-of-way and a twenty-five (25) foot all weather travel surface, accessible to emergency vehicles. In the event that a thirty-five (35) foot right-of-way is not possible, a minimum of ten (10) foot easement (five (5) feet on each side of the travel surface) shall be dedicated to the City for utility purposes and pedestrian use. Commercial uses and multifamily dwellings shall not have vehicles access to or from a cul-de-sac.

*Staff Analysis: Shellmidden Way is the proposed access. The platted right-of-way is 30' wide and dead ends at the subject property. **If the Planning Commission determines that the proposed use falls under the definition of "motel" or determines that "hotel" is synonymous with "motel", the 35' standard has not been met. If the Planning Commission determines that Shellmidden is a cul-de-sac, this standard has not been met.***

From YMC Section 9.04.030 (Definitions):

"Minor street" means a street designed to provide access to abutting residential property with only incidental service to through traffic.

"Cul-de-sac or dead end street" means a minor street with only one outlet which provides a vehicular turn-a-round.

3) Does the proposed use satisfy other standards for a conditional use permit?

Section 9.72.010 Authorization to grant or deny conditional use permits.

Conditional uses listed in this title may be permitted, enlarged, altered or denied by the Planning Commission in accordance with the standards and procedures set forth in this chapter.

A. In taking action on a conditional use permit application, the Planning Commission may either permit or deny the application. The Planning Commission's action must be based on findings addressing the requirements of the comprehensive plan and zoning ordinance, as addressed in Chapter [9.88](#).

B. In permitting a conditional use or the modification of a conditional use, other than a manufactured dwelling, manufactured dwelling park or multifamily dwelling, the Planning Commission may impose, in addition to those standards and requirements expressly specified by this title, additional conditions which are considered necessary to

protect the best interests of the surrounding City as a whole. These conditions may include, but are not limited to, the following:

1. Increasing the required lot size or yard dimensions;
2. Limiting the height of buildings;
3. Controlling the location and number of vehicle access points;
4. Increasing the street width;
5. Increasing the number of required off-street parking spaces;
6. Limiting the number, size, location and lighting of signs;
7. Requiring fencing, screening, landscaping, walls, drainage or other facilities to protect adjacent or nearby property;
8. Designating sites for open space;
9. Setting a time limit for which the conditional use is approved;
10. Regulation of noise, vibration, odors and sightliness;
11. Requiring surfacing of parking areas;
12. Regulation of hours of operation and duration of use or operation;
13. Such other conditions as will make possible the development of the City in an orderly and efficient manner and in conformity with the intent and purpose of the Yachats comprehensive plan;
14. If at any time the standards or requirements for conditional use approval are not followed, a zoning violation will be considered to exist.

C. In the case of a use existing prior to the effective date of the ordinance codified in this title and classified in this title as a conditional use or a nonconforming use, a change in use or in lot area or an alteration of structure shall conform with the requirements for conditional use.

D. The Planning Commission may require that the applicant for a conditional use furnish the City with a performance bond of up to the value of the cost of the improvement to be guaranteed by such bond, in order to assure that the conditional use is completed according to the plans as approved by the Planning Commission.

D. CONCLUSIONS

If the request is denied, the Planning Commission should state the general reasons and facts relied on, and direct staff to prepare findings for adoption at the next meeting. If the request is approved, staff offers the following recommended conditions of approval, which may be added to or amended at the Commission's discretion:

- 1) Any development shall be in accordance with the guidelines dictated by the Department of State Lands and the Army Corps of Engineers..
- 2) The final plan shall be subject to review and approval of the Yachats Rural Fire Protection District, the State Marshal and Yachats Public Works.

3) A minimum of 9 off-street parking places shall be provided.

Submitted by,

Katherine Guenther
City Planner

STAFF REPORT

Conditional Use Application

APPLICANT: Agate Point Residences LLC

A. REPORT OF FACTS

1. Property Location: The subject site is located at 358 Yachats Ocean Road and described on the Lincoln County Assessor's Map 14-12-34-AA as Tax Lot 1601.
2. Applicant's Request: The applicant is requesting a conditional use permit for development of a hotel in the R-4 Residential Zone on less than 1 acre with no direct access from Highway 101. The proposed development consists of 7 detached single-level lodging units. ~~Two of the units are duplexes~~ One of the units is a duplex, making for a potential total of 9-8 guest units. Following submission of the original application, an office and meeting room have been added to the proposal.
3. Zoning: R-4 Residential
4. Plan Designation: Multi-family Residential
5. Lot Size and Dimensions: The Lincoln County Assessor's Office property tax information states that the subject property totals 0.57 acre, or 24,829.2 square feet. The Lincoln County Assessor's Office map shows the subject property with dimensions of approximately 100 x 246 feet, or 24,600 square feet. The applicant's narrative states that the lot size is 24,698.97 square feet. For purposes of this report, the lot size used for all calculations is 0.57 acre, or 24,829 square feet. No calculations are close enough to be affected by the discrepancy.
6. Existing Structures: None.
7. Topography: The subject site is generally flat.
8. Surrounding Land Use: Surrounding land uses include a mix of vacant land, single-family residential dwellings, condominium developments and a hotel (Yachats Inn). The Yachats Ocean Road State Natural Site is directly to the west.
9. Utilities:
Water & Sewer: City of Yachats
Electricity: Central Lincoln PUD
10. Development Constraints: The Oregon Statewide Wetlands Inventory identifies PEM1C and PSS1A wetlands on and adjacent to the site. Any development shall be in accordance with the guidelines dictated by Oregon Department of State Lands (DSL) and Army Corps of Engineers.

B. EVALUATION OF REQUEST

1. **Applicant's Proposal:** The applicant submitted the required application form and fee and the following information:
 - Site Plan
 - Floor Plans and Building Elevations
 - Aerial Photograph
 - Narrative describing the request and addressing some relevant Yachats Municipal Code Standards
 - Conceptual Exterior Design Photographs
 - Wetland Delineation Report as submitted to and approved by DSL

The applicant provided the following description, taken verbatim, of the proposal. Staff comments are shown in italics.

We are requesting a Conditional Use Permit for hotel operations of the proposed seven-unit cottage complex.

Staff Response: Cottages 6 and 7 each have has 2 kitchens. YMC Section 9.04.030 (Definitions) defines a single family dwelling as "a building designed or used exclusively for the occupancy of one family and having kitchen facilities for only one family". Under the same section, "Two-family dwelling" means one building containing two (2) dwelling units (duplex). For the purposes of this report, the application will be considered to be seven structures comprised of nine eight guest units.

Section 9.24.020 Permitted Uses allows for a motel, hotel or resort of 1.0 acre with direct access provided form U.S. Highway 101 and only with accessory commercial uses. We are requesting a Conditional Use Permit because the project does not meet the 1.0 acre minimum and does not directly access U.S. Highway 101.

Staff Response: YMC Section 9.24.030 (P) (Conditional Uses) allows for a "motel, hotel or resort on less than 1.0 acre with accessory commercial uses".

Section 9.72.050 (A) requires hotels and resorts to have a minimum of one thousand five hundred (1,500) square feet of open space per guest unit. The project provides three thousand five hundred twenty-eight (3,528) square feet of open space per unit.

Staff Response: This standard does not address open space. A minimum lot area per guest unit of one thousand five hundred is required. Open space requirements are governed by lot coverage standards. In the R-4 zone, 55% of the property is required to remain as open space.

Section 9.64.020 Private Streets. The project proposes to use existing public streets to access the parking lot at the east side of the property.

Section 9.48.010 (L3). Requires one space for each guest accommodation. The project provides 2.28 guest parking spaces for each accommodation or a total of sixteen (16) spaces.

Staff Response: This calculation is based on the assumption of seven guest units. ~~Two~~ One of the proposed units ~~are duplexes~~ is a duplex, making for a total of ~~nine~~ eight units.

Plot Plan. Provided

Existing and Proposed structures: There on no existing structures on the property. We propose to install Seven (7) high quality prefabricated modular units.

Total Floor Area: 6,342 s.f.

Staff Response: This total does not include the proposed office and meeting room, but setbacks and lot coverage standards are still met.

Height: Fourteen (14')

Proposed use for these structures: is cottage rentals

Operating Characteristics: The operation of these cottages will be managed by Sweet Homes. Located in Yachats. These units will be rented for a duration as chosen by the Client. Maid service will be provided. Management will be provided on a 24/7 basis.

Location, extent, arrangements for proposed improvements and loading facilities: All of this is provided on site.

State or County Road Approach Permit: Both permits may be required for the sewer, water connection.

R 4 Ordinance Standards.

1. Minimum Lot Size: 20,000 s.f. requirement met 24,698.97 s.f.

Staff Response: Not relevant. Refers to minimum lot size when an R-4 lot is not served by City water or sewer.

2. Maximum Density: 12 DU per acre. This site is 0.57 acres which allows 6.84 buildings. We propose seven (7) buildings

Staff Response: Not relevant. Refers to maximum density for multifamily development. Hotel, motel or resort is 1,500 square feet per unit.

3. Minimum lot width and depth all comply with the Zoning Code

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4. Front Yard setback is twenty (20').

5. Side Yard setback: Five (5').

Staff Response: Proposed structures may be up to 15 feet in height with a 5 foot side yard setback. #8 below suggests a maximum proposed height of 16 feet. Difference in the required side yard setbacks would be a matter of inches.

6. Street Side yard Setback N/A
7. Rear Yard Setback: ten (10').
8. Maximum Building Height: thirty (30'). The proposed buildings have a maximum height of Sixteen (16').
9. Lot Coverage maximum 45%. The proposed project has a lot of coverage of twenty-six (26%).

Staff Response: ~~With the addition of an office and meeting room, lot coverage is slightly higher than 26%, but still well below the 45% allowed in the R4 zone.~~

Environmental review

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What are the construction hours?

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YMC Chapter 9.04.030 Definitions

YMC Chapter 9.24 R-4 Residential Zone

YMC Chapter 9.48 Off-Street Parking and Loading

YMC Chapter 9.72 Conditional Uses

3. **Public Testimony Received:** At the time this staff report was prepared the City had received over 100 letters regarding the conditional use request.

4. **Public Agency Comments:**

The City of Yachats Public Works Department has reviewed the request and confirmed that water and sewer service is available to the subject property. At the time a building permit is submitted, the Public Works Department request review and approval of street, water, sewer and storm drainage improvement.

The Yachats Rural Fire Protection District (YRFPD) will likely require an additional hydrant. The State Fire Marshal, in conjunction with the YRFPD, will have to approve the proposed access, turning radius and water flow. The Oregon Fire Code allows for access roads at 20 feet minimum when there is no parking allowed in the roadway. Required turning radius is typically a minimum of 28 feet.

C. **ANALYSIS**

The following analysis of the relevant YMC criteria is offered to guide the Planning Commission's deliberations.

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The Yachats Municipal Code provides the definitions below. The code provides two slightly conflicting definitions for "hotel". When considering the two, note that one definition is intended for zoning and land use decisions and the other for business licensing.

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"Hotel" means any building containing guest rooms which are rented or hired out to be occupied for sleeping purposes for guests, excluding any facility which meets the definition of "bed and breakfast facility."

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2) If the proposed use is a hotel/motel, does it meet the R4 standards?

A) Hotel/motel as a Conditional Use in the R-4 Zone

YMC Section 9.24.020 Permitted uses. (R-4 Residential Zone)

K. 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.

YMC Section 9.24.030 Conditional uses. (R-4 Residential Zone)

P. Motel, hotel or resort on less than 1.0 acre with accessory commercial uses.

Staff Analysis: A motel, hotel or resort on less than 1.0 acre is not an outright permitted use in the R-4 zone, but it is an allowed conditional use.

B) Density

YMC Section 9.24.040 Standards. (R-4 Residential Zone)

4. The minimum lot area per resort, hotel or motel guest unit shall be one thousand five hundred (1,500) square feet with a public water and sewer system.

YMC Section 9.72.050 Standards and procedures governing conditional uses.

A. Hotels or resorts in an R-4 zone shall have a minimum lot area per guest unit of one thousand five hundred (1,500) square feet.

*Staff Analysis: The subject property is 0.57 acre or 24,829 square feet. The applicant is proposing 9.8 guest units or 1 guest unit per 2,758 3,103 square feet. **This standard is met.***

However, if the conditional use is discontinued and the property reverts to multifamily use, the proposed structures would be nonconforming. Per YMC Section

9.24.040 A1, Cottages 1 through 5 and 7 would require 6000 square feet of lot area each and Cottages 6 ~~and 7~~ would require 7500 square feet ~~each~~.

C) Lot Coverage

YMC Section 9.24.040 Standards. (R-4 Residential Zone)

D. Lot Coverage. Structures, including, but not limited to, buildings, porches and decks shall not occupy more than forty-five (45) percent of the total lot area.

Staff Analysis: Total lot coverage allowed is 11,173 square feet. The site plan shows:

Cottages 1, 2, 3 and 5 at 558.6 square feet each for a total of 2234.4 square feet

Cottage 4 and 7 at 1412.2 square feet each for a total of 2824.4 square feet

Cottages 6 and office 7 at ~~1244.6~~ 1117.2 square feet ~~each for a total of 2489.2~~ square feet

Total shown = ~~6135.9~~ 6176 sf vs applicant's 6,342 sf

Dimensions for decks, ~~the office~~ and the meeting room are not shown on the site plan but this standard has or can be met.

D) Setbacks

YMC Section 9.24.040 Standards. (R-4 Residential Zone)

B. Yards. The minimum yard requirements in the R-4 zone shall be as follows:

1. Front yard shall be a minimum of twenty (20) feet.
2. Each side yard shall be a minimum of either five (5) feet or one foot for each three (3) feet of building height, whichever requirement is greater. Corner side yards shall not be used for clotheslines, incinerators, permanent storage of trailers, boats and recreational vehicles nor shall said yard be used for the regular or constant parking of automobiles or other vehicles.
3. The street side yard shall be a minimum of twenty (20) feet.
4. The rear yard shall be a minimum of ten (10) feet, except that on a corner lot it shall be a minimum of either five (5) feet or one foot for each three (3) feet of building height whichever requirement is the greater.
5. All patio structures and swimming pools shall be a minimum of five (5) feet from any side or rear property line.

Staff Analysis: This standard is met.

E) Building Height

YMC Section 9.24.040 Standards. (R-4 Residential Zone)

C. Building Height. No building in the R-4 zone shall exceed a height of thirty (30) feet from finished grade or from natural grade, see Chapter 9.52.180.

Staff Analysis: All proposed structures are under 16 feet in height. This standard is met.

F) Off-Street Parking

YMC Section 9.48.010 General requirements. (Off-Street Parking and Loading)

L3. Motel, hotel or resort: one space for each guest accommodation.

*Staff Analysis: Nine parking spaces are required at a minimum. The YRFPD is requesting a reasonable turning radius in the parking area. Based on the site plan, **this standard has not but could be met.***

G) Vehicular Access

YMC Section 9.24.040 Standards. (R-4 Residential Zone)

G. Vehicle Access. Ingress or egress to a multifamily dwelling or to a motel shall not be allowed from less than a thirty-five (35) foot right-of-way and a twenty-five (25) foot all weather travel surface, accessible to emergency vehicles. In the event that a thirty-five (35) foot right-of-way is not possible, a minimum of ten (10) foot easement (five (5) feet on each side of the travel surface) shall be dedicated to the City for utility purposes and pedestrian use. Commercial uses and multifamily dwellings shall not have vehicles access to or from a cul-de-sac.

*Staff Analysis: Shellmidden Way is the proposed access. The platted right-of-way is 30' wide and dead ends at the subject property. **If the Planning Commission determines that the proposed use falls under the definition of "motel" or determines that "hotel" is synonymous with "motel", the 35' standard has not been met. If the Planning Commission determines that Shellmidden is a cul-de-sac, this standard has not been met.***

From YMC Section 9.04.030 (Definitions):

"Minor street" means a street designed to provide access to abutting residential property with only incidental service to through traffic.

"Cul-de-sac or dead end street" means a minor street with only one outlet which provides a vehicular turn-a-round.

3) Does the proposed use satisfy other standards for a conditional use permit?

Section 9.72.010 Authorization to grant or deny conditional use permits.

Conditional uses listed in this title may be permitted, enlarged, altered or denied by the Planning Commission in accordance with the standards and procedures set forth in this chapter.

A. In taking action on a conditional use permit application, the Planning Commission may either permit or deny the application. The Planning Commission's action must be based on findings addressing the requirements of the comprehensive plan and zoning ordinance, as addressed in Chapter 9.88.

B. In permitting a conditional use or the modification of a conditional use, other than a manufactured dwelling, manufactured dwelling park or multifamily dwelling, the Planning Commission may impose, in addition to those standards and requirements expressly specified by this title, additional conditions which are considered necessary to

protect the best interests of the surrounding City as a whole. These conditions may include, but are not limited to, the following:

1. Increasing the required lot size or yard dimensions;
2. Limiting the height of buildings;
3. Controlling the location and number of vehicle access points;
4. Increasing the street width;
5. Increasing the number of required off-street parking spaces;
6. Limiting the number, size, location and lighting of signs;
7. Requiring fencing, screening, landscaping, walls, drainage or other facilities to protect adjacent or nearby property;
8. Designating sites for open space;
9. Setting a time limit for which the conditional use is approved;
10. Regulation of noise, vibration, odors and sightliness;
11. Requiring surfacing of parking areas;
12. Regulation of hours of operation and duration of use or operation;
13. Such other conditions as will make possible the development of the City in an orderly and efficient manner and in conformity with the intent and purpose of the Yachats comprehensive plan;
14. If at any time the standards or requirements for conditional use approval are not followed, a zoning violation will be considered to exist.

C. In the case of a use existing prior to the effective date of the ordinance codified in this title and classified in this title as a conditional use or a nonconforming use, a change in use or in lot area or an alteration of structure shall conform with the requirements for conditional use.

D. The Planning Commission may require that the applicant for a conditional use furnish the City with a performance bond of up to the value of the cost of the improvement to be guaranteed by such bond, in order to assure that the conditional use is completed according to the plans as approved by the Planning Commission.

D. CONCLUSIONS

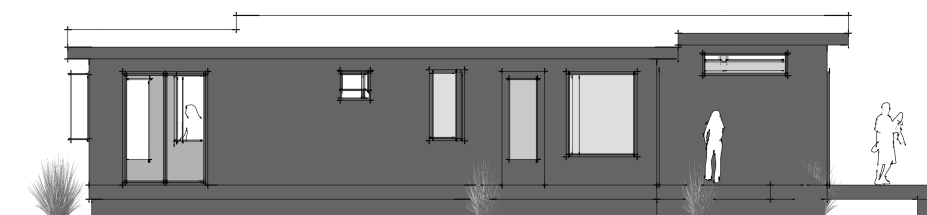
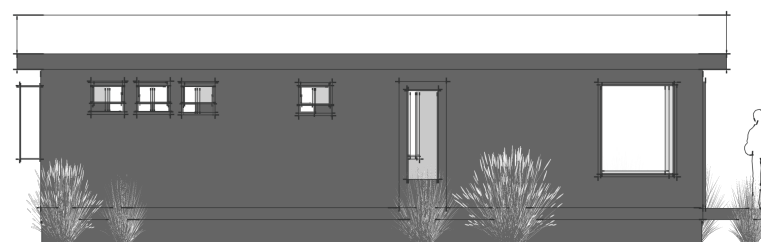
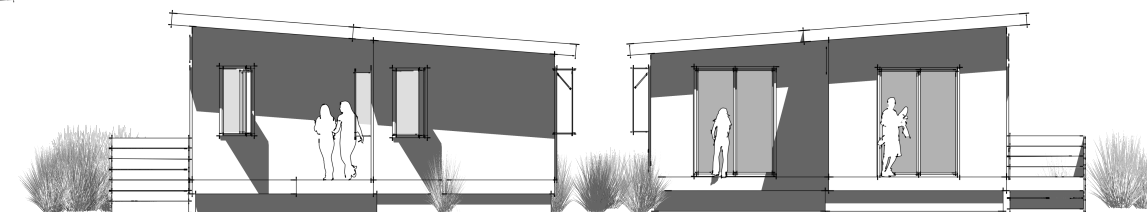
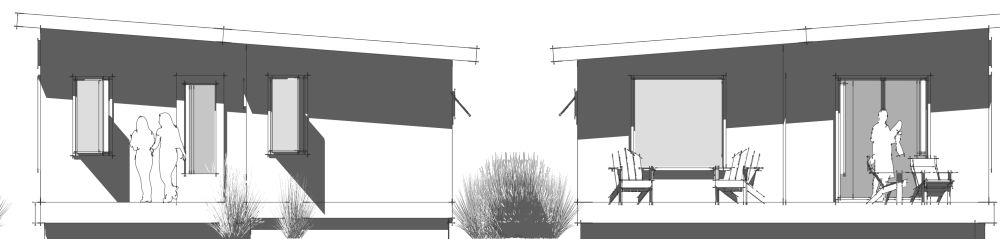
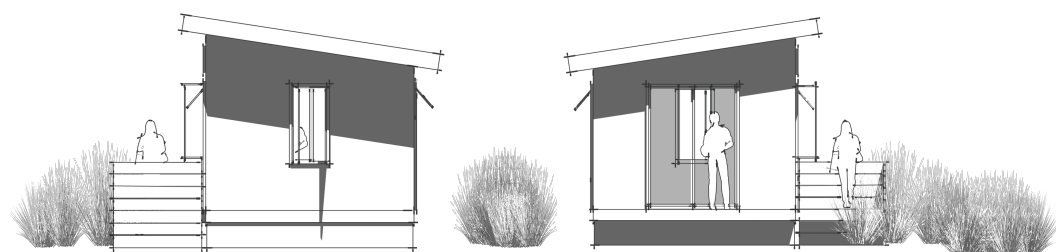
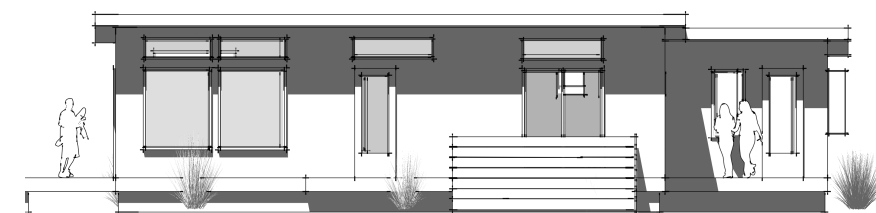
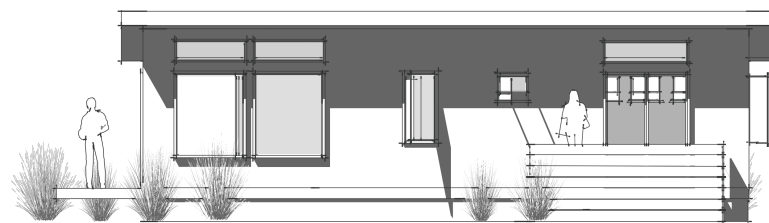
If the request is denied, the Planning Commission should state the general reasons and facts relied on, and direct staff to prepare findings for adoption at the next meeting. If the request is approved, staff offers the following recommended conditions of approval, which may be added to or amended at the Commission's discretion:

- 1) Any development shall be in accordance with the guidelines dictated by the Department of State Lands and the Army Corps of Engineers..
- 2) The final plan shall be subject to review and approval of the Yachats Rural Fire Protection District, the State Marshal and Yachats Public Works.

- 3) A minimum of 9 off-street parking places shall be provided.

Submitted by,

Katherine Guenther
City Planner



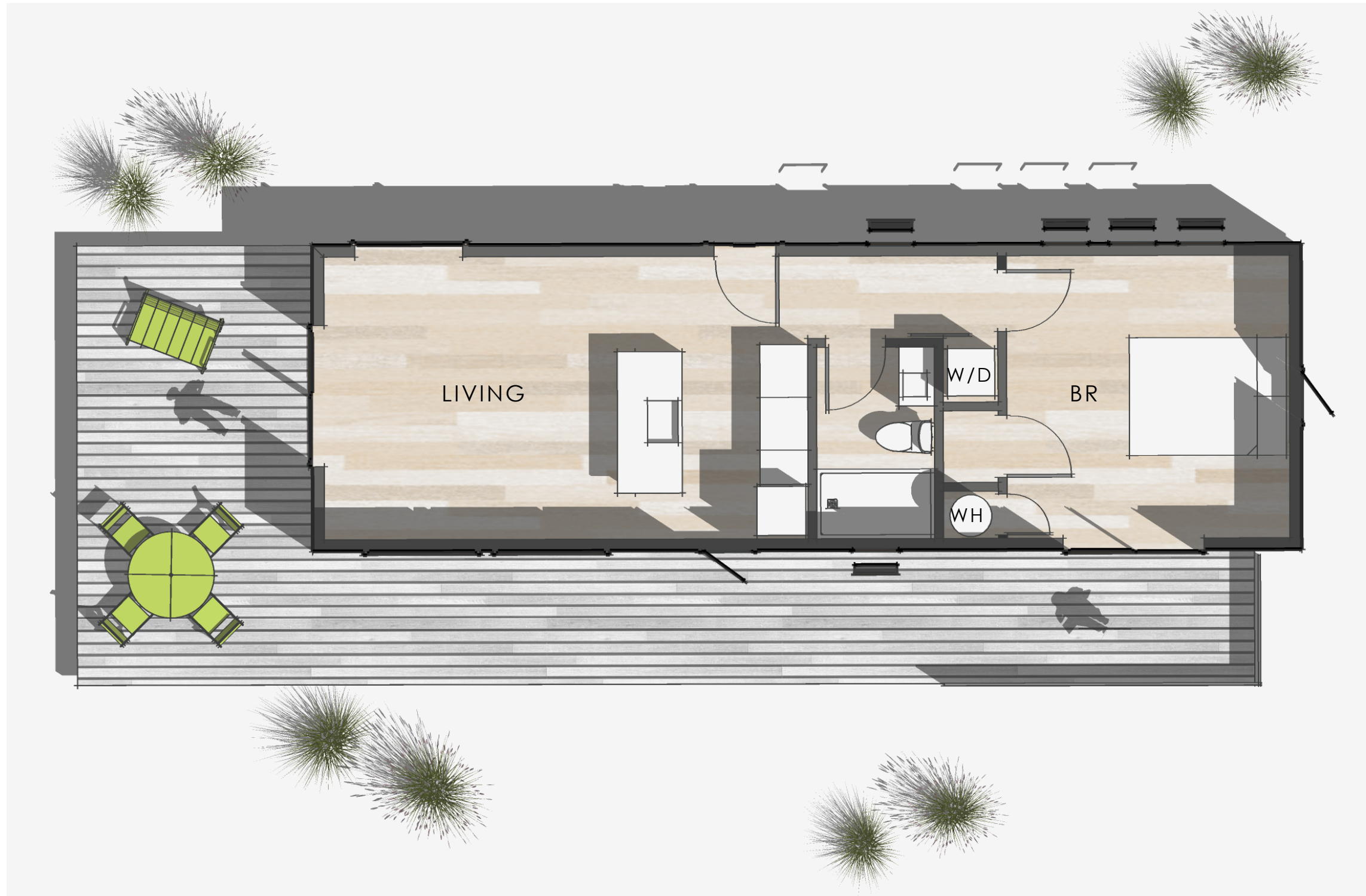
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1BA/ OFFICE

AGATE POINT COTTAGES

CONCEPT DESIGN



AGATE POINT COTTAGES - CONCEPT DESIGN

1 BR / 1 BA

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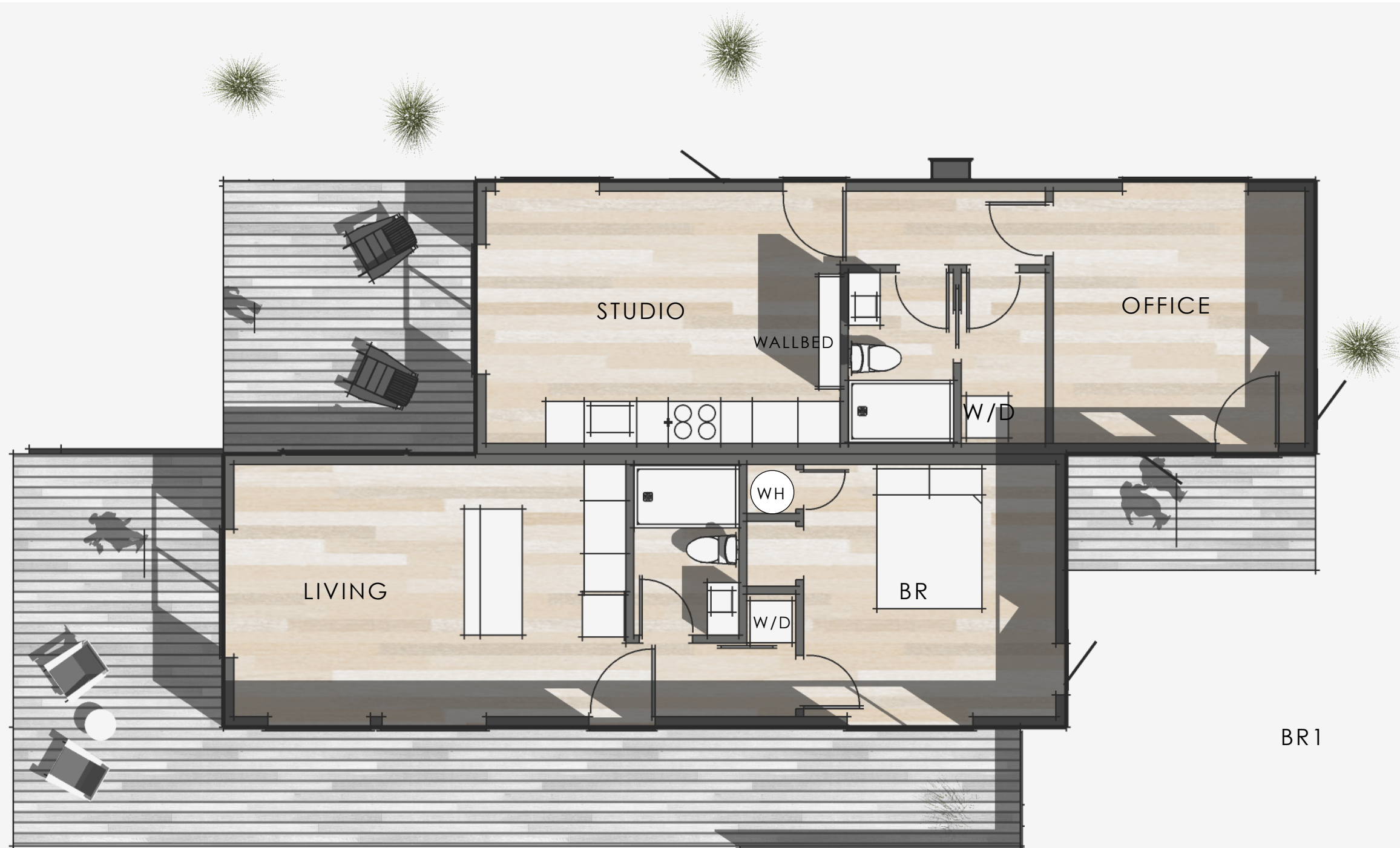
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AGATE POINT COTTAGES - CONCEPT DESIGN

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Kimmie Jackson

From: Maureen Barber <maureen.barber@att.net>
Sent: Thursday, October 14, 2021 5:55 PM
To: City Hall
Subject: Planning Commission Public Hearing October 19, 2021 @ 3:00 p.m.

Dear Commissioners,

As a regular visitor to the Lincoln County coast and especially Yachats since 1982, and a resident of Palm Beach County Florida where numerous out-of-state developers have overbuilt most of our coastline, I wish to persuade you to take the long view and maintain the charm that Yachats continues to offer by protecting its wetlands and voting "NO" to allow paving over designated wetland on Yachats Ocean Road.

Shellmidden Street would not meet our access requirements for a commercial development, and if it meets yours, I encourage you to strengthen your requirements! Having lived along the Florida coast for 35 years, I have seen what aggressive developers have manage to wrangle, with no consideration for the long-term effects of their proposals; gaining approvals by appealing to greed, and waiving large sums of cash before local planning commissions.

The essential attraction of Yachats is its "small town feel" and approving a project requiring waiving the minimum acreage requirements, the access requirements, and the vacation rental requirements will only open the door for more "get rich quick and leave" proposals on your agenda. The result will be an overbuilt, unsafe community that will lose residents and tourists, as the runoff from this development erodes other infrastructure, including water and sewer systems.

I implore you to sit back and take the long view - what is the master plan for Yachats? Does it include retaining the essence that has made Yachats so attractive for so many years? You have the opportunity to ensure that this vibrant community continues to be a beacon for business and tourism. Please make the choice that will benefit your children and grandchildren, and not just "hold your nose" and take the money.

Looking forward to spending two weeks in Yachats in September, 2022.

Sincerely,

Maureen Barber
4970 Arena Way
Lake Worth FL 33463-7242

Kimmie Jackson

From: Jas. Adams <weetristan@gmail.com>
Sent: Thursday, October 14, 2021 4:15 PM
To: From: Jas. Adams; City Hall; lancebloch1@gmail.com; lorendickinson@gmail.com; jac.danos@gmail.com; happydogs27@gmail.com; corchard@peak.org; office@yachatsyardscapes.com; Yachats City Planner
Subject: REVISED PUBLIC COMMENT OF JAS ADAMS
Attachments: Public Comment ADAMS on Agate Point CUP application FINAL 10-14-21.pdf

TO: YACHATS PLANNING COMMISSION AND STAFF

PLEASE REPLACE ALL EARLIER SUBMISSIONS FROM ME ON THIS MATTER WITH THE ATTACHED PUBLIC COMMENT FROM ME.

THANK YOU!

JAS. ADAMS

FROM: Jas. Adams, weetristan@gmail.com

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

October 15, 2021

Re: Public comment 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 and under consideration by the Planning Commission. I focus on what appear to be several disconnects between the proposed use, the proposed conditions, and applicable ordinances.

NATURE OF THE PROPOSED USE: This application is for a conditional use permit for a motel consisting of 7 prefabricated cottages sought to be plopped on top of a half-acre of wetlands that no has attempted to develop for that very reason, as other public comments on the Agate Point application have noted. Agate Point apparently hopes 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. The proposed use is evidently an attempt to garner maximum profit with the least investment possible on a wetlands lot with little or no regard for the traffic and environmental impacts on the Yachats community.

1. THE PLANNING COMMISSION DOES NOT HAVE THE AUTHORITY TO IMPOSE A CONDITION NOT COVERED IN TITLE 9

The only condition that Agate Point has offered is to purchase mitigation credits from a conservation bank as stated in its Application supplement: "The Applicant proposes to offset any environmental impacts with the payment of mitigation fees to a Conservation Bank." But Agate Point does not specify an amount, and it is highly likely that the credits would be used elsewhere, which would not ensure that the proposed use is either desirable or necessary in an R-4 zone under §9.24.010.

Mitigation credits in a conservation bank are NOT covered in Title 9. Hence, the Planning Commission cannot 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."

2. NONE OF THE CONDITIONS RECOMMENDED BY THE CITY PLANNER DIRECTLY MITIGATE TRAFFIC AND OTHER ENVIRONMENTAL IMPACTS OF THE PROPOSAL

The Staff Report recommends 4 other conditions:

If the request is denied, the Planning Commission should state the general reasons and facts relied on, and direct staff to prepare findings for adoption at the next meeting. If the request is approved, staff offers the following recommended conditions of approval, which may be added to or amended at the Commission's discretion:

- 1) No development shall commence until completion of the review by Department of State Lands and the Army Corps of Engineers. Any development shall be in accordance with the guidelines dictated by these agencies.
- 2) The final plan shall be subject to review and approval of the Yachats Rural Fire Protection District and the State Marshal.
- 3) All setbacks shall meet the requirements of the R-4 Residential Zone.
- 4) A minimum of 9 off-street parking places shall be provided.

The problem is that the staff's recommended conditions do nothing to address the impact of increased vehicular traffic on pedestrian use of Yachats Ocean Road, where pedestrians and pets on leash use already have to contend with streams of vehicles on that narrow road, or the inadequacy of the access roads at the site of the proposed motel complex. And by punting the wetlands issue to DSL and ACOE, the recommended conditions do not guarantee protection of livability or the environment.

3. BECAUSE ROAD ACCESS TO THE DEVELOPMENT (SHELLMIDDEN) IS NARROW AND A CUL-DE-SAC, CONDITIONS SHOULD INCLUDE WIDENING

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 Shellmidden Road, which currently is not only a dead-end cul-de-sac, but also is too narrow to allow turn-around, as noted in the staff report:

Staff Analysis: Shellmidden Way is the proposed access. The platted right-of-way is 30' wide. If the Planning Commission determines that the proposed use falls under the definition of "motel" or determines that "hotel" is synonymous with "motel", this standard has not been met.

But the term "hotel" does not have to be synonymous with "motel" in order for the width, turn-around and cul-de-sac provisions to apply. Their definitions are similar but different:

"Motel" means a series of sleeping units, each having a separate entrance, composed of one or more bedrooms and bathroom, excluding any facility which meets the definition of "bed and breakfast facility; "Hotel" means any building containing guest rooms which are rented or hired out to be occupied for sleeping purposes for guests, excluding any facility which meets the definition of "bed and breakfast facility. §9.04.030

All that is required is that the proposed development be *either* a hotel or a motel; it does not have to be both. Because Shellmidden is clearly a cul-de-sac and too narrow, this standard cannot be met unless this Planning Council requires Agate Point to widen and pave the adjacent portions of Shellmidden.

4. APPLICANT MISREPRESENTED THE FINDING BY THE ARMY CORPS OF ENGINEERS THAT THIS LOT CONTAINS WATERS OF THE UNITED STATES WITH PERENNIAL FLOWS CONNECTED TO GREGORY CREEK.

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.

The consultant report misrepresented in its Application what the ACOE had concluded:

"On July 13, Army Corps was on site to determine the drainage area located along the west boundary of this property, is tributary to Gregory Creek which is located on the north side of the adjacent parcel. It was determined, they were not connected."

But the ACOE had actually concluded that the wetlands within the lot were hydrologically connected with Gregory Creek:

"There are 'waters of the United States' within Clean Water Act jurisdiction within the review area . . . Wetland 1 is located along the southern boundary of the project site and extends offsite to the northeast, southeast, and southwest. During the wetland delineation, a pipe and small wetland ditch were noted within the northern boundary of Wetland 1. Wetland 1 and the ditch exhibited clear indicators of wetland vegetation, hydrology, and soils.

Based on a review of Oregon Department of Geology and Mineral Industries' (DOGAMI) Lidar, Corps site visit, and aerial photographs depicting consistent vegetation from within Wetland 1 to Gregory Creek, **Wetland 1 abuts Gregory Creek**. Immediately to the northeast of the study area is an (a)(2) perennial stream (known as Gregory Creek) flowing toward the northwest, through a culvert under Yachats Ocean Road, over coastal rocks and into the Pacific Ocean. As evidenced in Google Earth aerial photos and the Corps' 13 July 2021 site visit, the stream produces enough hydrology to visibly discharge into the Pacific Ocean (an (a)(1) water) during the summer dry season (July and August) under normal conditions over multiple years (see Section III. B.).

"Based on the above information the Corps has determined Wetland 1 abuts an (a)(2) water and is jurisdictional under the Navigable Waters Protection Rule (NWPR)."

The Applicant's misrepresentation goes directly to the extent of wetland on the lot, a major issue in this case. Applicant would have this Planning Commission operate under a false impression that the wetlands on Applicant's lot are separate from the wetlands to the north

and east. Simply deferring to the ACOE and DSL does not adequately protect others in this zone from the possibility of floods or having prefabricated cottages flow onto Yachats Creek Road and block the major access and egress to HWY 101. This is yet another reason to deny the Applicant a conditional use permit. The proposal is clearly one designed only to reap maximum revenues with the least possible investment in the liveability of the community and vitality of the wetlands abutting onto the marshy lot.

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

§9.88.130 provides that a CUP cannot be granted on terms less restrictive than usual:

"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."

The conditions recommended by the Planner appear to be extremely generous with nothing firmly in place to protect either livability or the environment in Yachats.

If the Planning Commission is motivated to grant the CUP application because of the tax revenue it might generate for the City, that should be disclosed in its decision:

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. §9.88.100.

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

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. 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.)"). See attached page from the National Park Service regarding tribal artifacts often found in shell middens on the Oregon Coast.

The Planning Commission should deny this 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.

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 prove 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." Moreover, purchase of mitigation credits in an undisclosed amount to be applied elsewhere is a condition not covered in Title 9, and hence it appears only the Yachats City Council could impose that condition, and even then, if and only if its vote were **unanimous**.

In sum, there are several disconnects between the Application, the proposed conditions, and the applicable land use ordinances that the Applicant has either shrugged aside or failed to address: wetlands covering 25% of the lot;; the cul-de-sac problem; mitigation credits outside Title 9 as a condition requiring a separate hearing before the City Council plus a **unanimous** vote; an area deficiency requiring only single-family dwellings; the constraint that conditions imposed cannot be less restrictive than usual; and the likelihood that an archeological permit would be required for excavation in a shell midden with likely tribal cultural artifacts.

The Planning Commission should resist the temptation to impose only the most lenient possible conditions for this motel complex in order to benefit from tax revenue that might accrue to the City. Given the multiplicity of concerns related to traffic congestion, adequate vehicle access, protection of wetlands and tribal concerns, the Planning Commission should recognize that this motel complex is neither desirable or necessary in the area proposed, and act upon that recognition by denying the application for a conditional use permit.

Respectfully submitted,

Jas. Adams
10 Beargrass Court
Yachats, Oregon 97498



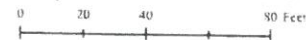
Date: 5/4/2021

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

Figure 3. Wetland Inventory Map



Yachats Ocean Road Project Site: S&A # 2865



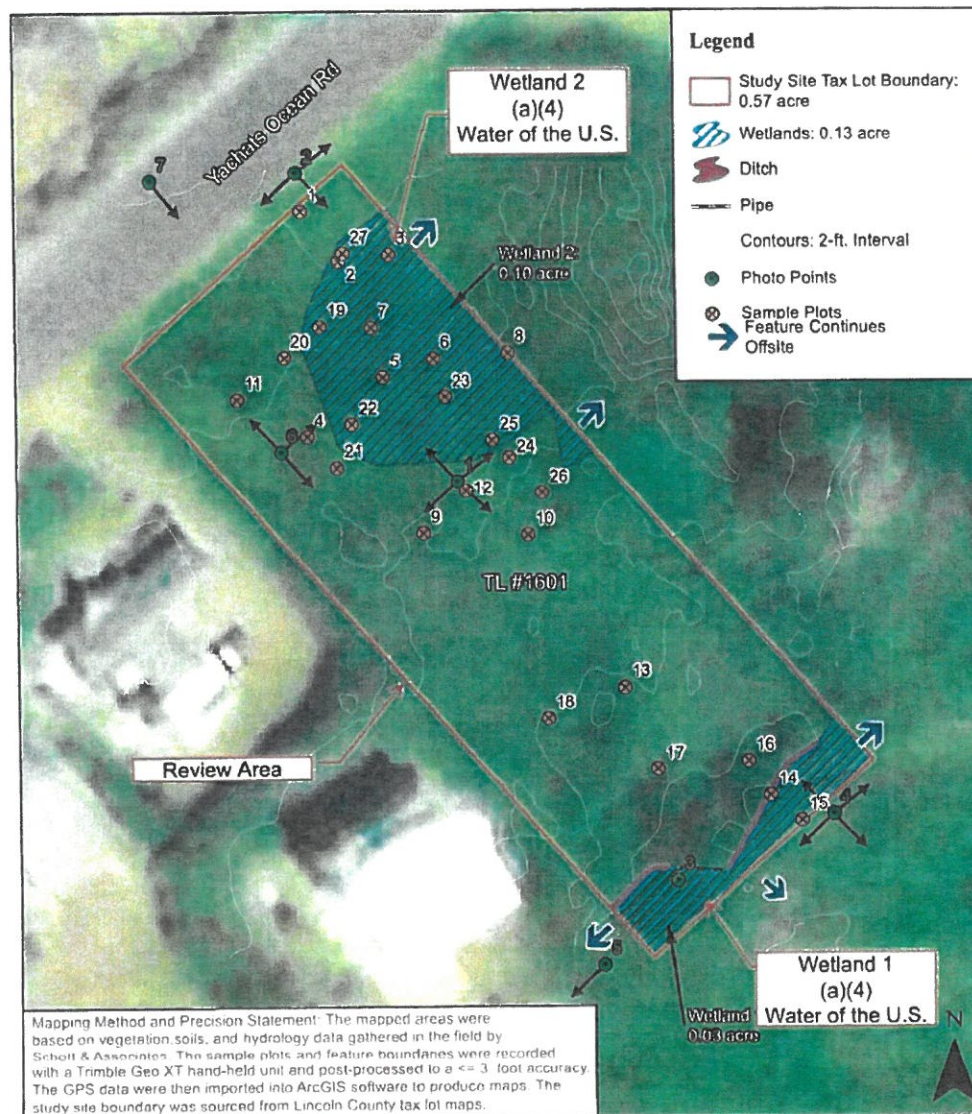


Figure 6. Wetland Delineation Map

Date: 8/9/2021

Data Source: ESRI, 2021; Lincoln County GIS Dept, 2021; DOGAMI, 2012

NPS Form 10-900-a

OMB No. 1024-0018 (8-86)

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.

Kimie Jackson

From: Lance Bloch <lancebloch1@gmail.com>
Sent: Wednesday, October 13, 2021 7:37 AM
To: Kimie Jackson; Yachats City Planner
Subject: Fwd: Agate Point Conditional Use Public Hearing - 10/19/2021 - Objection to Variances Requested by Developer

Kimie,
You may have received this email directly, but, if not, it is another one for the Planning Commission packet.
Thank you,
Lance

----- Forwarded message -----

From: Desiree La Maggiore <desiree.lamaggiore.yachats@gmail.com>
Date: Tue, Oct 12, 2021, 2:16 PM
Subject: Re: Agate Point Conditional Use Public Hearing - 10/19/2021 - Objection to Variances Requested by Developer
To: Greg@yachatsmail.org <greg@yachatsmail.org>
Cc: Lance Bloch <lancebloch1@gmail.com>

Greg,

Thank you so much for taking the time to respond to my email and explaining the roles of Planning Commission vs. City Council and the appeal process, should it become necessary. There were many conflicting messages circulating on where to send public comments to have properly logged - directly to the planning commission and city council vs. a centralized email. Finally received the single email address.

I very much appreciate the efforts and time you all are taking to hear and respond to the many messages you are receiving.

Kind regards,
Desiree (and Vince and Isabella)

On Mon, Oct 11, 2021 at 4:15 PM Greg@yachatsmail.org <greg@yachatsmail.org> wrote:

While I am not permitted to answer your questions directly, I encourage you to direct your concerns to the chair of the planning commission. I have copied him on this message. I have prepared some background information that I believe will be helpful in understanding the city's response to the land request in question.

Please understand that any discussion about a conditional use permit is a finely structured legal process where the governing body's role (city council) is as a judge in the event there is an appeal of the Planning Commission's decision. Council members are admonished not to attend planning discussions or to express an opinion on a topic where they may have to render a judicial ruling.

Conditional Use Permits

State statutes delegate to Planning Commissions the authority to make land use decisions. This is the only commission that has that authority. In the event a planning decision is appealed, the hearing is held by the governing body. In Yachats that would be the city council were they are acting in a judicial capacity. Generally, council members are discouraged from attending Planning Commission hearings about

conditional use permits to avoid forming an opinion about the topic. The council's only role is to determine if the Planning Commission followed existing ordinances and State Statutes. Any decision the city council makes may be appealed to the State Land Use Board of Appeals (LUBA) who are the final authority on conditional use permits.

Any failure on the part of the Planning Commission or the city council to follow the law will likely result in a reversal by LUBA.

The final authority for wetland decisions is the Department of State Lands. They are aware of the Yachats wetlands inventory. The city has no authority to enforce wetland protections.

A copy of the Yachats municipal code is on-line and the relevant section for this topic is Chapter 9.72.
<http://www.qcode.us/codes/yachats/>

State Statute for limited land use decisions: Note section (5) for local appeals.

https://oregon.public.law/statutes/ors_197.195

Oregon Land Use Board of Appeals (LUBA) frequently asked questions:

<https://www.oregon.gov/luba/Pages/Frequently-Asked-Questions.aspx>

On Oct 11, 2021, at 1:12 PM, Desiree La Maggiore <desiree.lamaggiore.yachats@gmail.com> wrote:

Dear members of the Yachats Planning Commission and all others concerned,

We are writing to object to the proposed development, Agate Point Cottages, on parcel 14-12-34AA-01601-00, adjacent to Yachats Ocean Road. The developer has applied for a conditional use permit requesting several variances. Our objections are:

- Undersized lot size and building on wetlands – This lot is already less than the 1-acre parcel size required for hotel development. It is made even smaller given a significant percentage is made up of invaluable, documented wetlands. Consider the impact on the environment - do not allow further encroachment on this shrinking habitat.
- Inadequate Access – Shell Street is an underdeveloped road for this type of use and level of traffic, and it is accessed from Yachats Ocean Road - an already busy, narrow thoroughfare shared by pedestrians and automobiles. As one of the most accessible access points to the beach, this small road system is already the subject of much debate on how to make it safer for the local community and the many out-of-town visitors it serves – especially during peak summer months and holidays. We see no reason to award a variance, only more demand for why the regulation exists in the first place – safety!! All other multi-unit developments - residential and rental - are appropriately accessed via Highway 101, per city ordinance.
- Short-term rental regulations - This project bears no resemblance to a hotel but instead a thinly veiled attempt to skirt the city's existing rules around short-term vacation rentals. A hotel would have full-time staffing on-site. The proposal suggests this development will be managed offsite by a known local short-term home rental management company.

We urge you to consider the overall Yachats Village plan and abide by the city's vision and ordinances

put in place - disapprove the developer's requested conditional use application and variances to undo the work this small village has thoughtfully undertaken to manage development within the carrying capacity of the surrounding land and resources.

Respectfully,
Vince, Desiree, and Isabella Maggiore
25 Koho Loop/PO Box 532
Yachats, OR 97498

Kimie Jackson

From: Paula D'Alfonso <pdalfo@gmail.com>
Sent: Tuesday, October 12, 2021 1:54 PM
To: City Hall
Cc: Paula D
Subject: Agate Point Conditional Use Permit

I strongly oppose approval of the requested Conditional Use Permit requested by Agate Point Residences, LLC due to the following reasons:

The developer is designating the proposed development a Hotel and is requesting a Conditional Use Permit due to the lot size being less than the required minimum of 1.0 acre without direct access provided from Highway 101 as stated in the Yachats Municipal Code for R-4 Zoning

Section 9.24.020 Permitted uses.

K. 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.

The following Section of the Municipal includes the possibility of allowing a Conditional Use Permit to the R-4 Zoning for a Hotel on less than 1.0 acre but it **does not include allowing a variance to the requirement for direct access from Highway 101 only**

Section 9.24.030 Conditional uses.

P. Motel, hotel or resort on less than 1.0 acre with accessory commercial uses.

The Yachats City Council Vision begins with "Our village is a place where natural resources are valued and protected..." This proposed development does not fit into this part of the City's Vision.

This lot is currently used by many species of animals and at least part of the lot is designated wetlands. The developer is removing or filling the existing habitat in its entirety.

There are existing lots to the north and east that are also heavily covered by vegetation and used by wildlife. Runoff of leaking oil, grease, gas, etc. from the 20-space parking lot and limited permeable land due to so much of the ½ acre mostly covered by structures and pavement, along with people and pet noise, litter, and smoke and potential fire danger from the fire pits will all have a negative effect on the adjoining wetland lots.

The developer registered his business with the Oregon Secretary of State Office on April 26, 2021 as Agate Point Residences, LLC. This does not sound like a Hotel. Allowing access from Yachats Ocean Road and Shellmidden would add to the congestion and danger on an already heavily traveled (pedestrians, runners, pets, bikes, cars), mostly one-lane Yachats Ocean Road. Having this development managed by an off-site vacation rental company would most likely put an added strain on the already insufficient code enforcement of the City. I would hate to see the City of Yachats approve this Conditional Use Permit and set a precedent in allowing developers to circumvent the Vacation Rental rules and overdevelop a ½ acre lot.

Paula D'Alfonso
PO Box 1063
Yachats

Kimmie Jackson

From: Cameron Ruddell <cameronruddell@gmail.com>
Sent: Tuesday, October 12, 2021 1:45 PM
To: City Hall
Subject: Agate Point Residences, LLC Notice of Public Hearing
Attachments: Yachats Public Hearing 358 Ocean Rd.pdf

Hello -- I have attached a letter of opposition from The Dwellings HOA. Please let me know if you have any questions or need it in a different format. Confirmation of receipt would be greatly appreciated.

Thank you --

Cameron Ruddell
Pres. The Dwellings HOA

October 5, 2021

City of Yachats
cityhall@yachatsmail.org
Attn: Katherine Guenther, City Planner

**RE: Notice of Public Hearing for Applicant Agate Point Residences, LLC, 358 Yachats Ocean Road,
Tax Lot 1601**

Dear Ms. Guenther,

I am writing in response to the Notice of Public Hearing for Agate Point Residences, LLC. The applicant has requested a conditional use permit for the development of seven separate single-level lodging units. As HOA President representing The Dwellings, located directly to the east of the property in question, I am formally communicating we oppose their permit request. The plan presented to us has varied effects on the surrounding property, none of which are beneficial to the land or homeowners.

Tax lot 1601 (358 Yachats Ocean Rd.) is approximately 0.57 acres with 0.13 acres being deemed wetlands by the U.S. Army Corps of Engineers (August 17, 2021). The lot to the north (358 Yachats Ocean Rd) was recently purchased by our HOA to preserve the wetlands and open space. We also own the two-acre section to the east, which was developed around the wetlands so as not to disturb the natural ecosystem. Agate Point Residences, LLC's submitted plot plan dated June 25, 2021, places 9 rental units with approximately 20 parking spaces, 7 picnic tables, 2 hot tubs, 2 fire pits, 9 decks, beach access paths, and a utility/storage unit. For the entire surrounding neighborhood, the following are of the largest concern:

1. Poor Access

Obviously, no driveway can be created from Highway 101 for the "hotel" they are proposing. The only access is down a single lane, gravel road (Shellmidden, referred to as Shell Street on their application) off Yachats Ocean Road. Our neighborhood is on Village Lane, which connects to Shellmidden Way, and is also a dead-end road. Not only are these used for home access, but pedestrian traffic is also high. Agate Point Residences, LLC is proposing to allow parking for 20 automobiles, which obviously creates a massive amount of traffic. This would effectively triple the amount of auto activity instantaneously. Pedestrian versus motor vehicle accidents are bound to happen.

2. Light Pollution and Parking

With the poor access comes a flood of cars from guests and the staff tasked with maintaining the rental units. When looking at the submitted plan, it is obvious this will impact all surrounding properties. Being landlocked with no ability to install fencing or light mitigation landscaping, we are sure to endure beaming headlights at all hours. Because of the need for so many spots, we have noticed the size of each spot is too narrow. This will cause the ever-popular full size truck to park elsewhere. I am sure we can all guess they will be along Yachats Ocean Drive as well as up and down Shellmidden.

2. Land Fill

The proposed development is placed directly on top of an active wetlands. Furthermore, the plan heavily relies on using easements for the parking lot and fill dirt to level the property. As stated previously, The Dwellings owns the wetland to the east as well as the north of their property. Flooding is inevitable on the roadway, not to mention the act of leveling a very active wildlife habitat. Beyond the wildlife aspect, other adverse affects include limiting the protection of improved water quality, floodwater storage, and maintaining surface water flow during dry periods. Relying solely on the surrounding wetlands will inevitably divert water to the Dwellings property as well as neighboring houses and the Yachats Inn.

3. Zoning & Rental Regulation

With nine units housed in seven separate buildings and 0.57 acres, the proposed plot plan does not meet R-4 Zone permitted uses (Chapter 9.24). A minimum one acre is necessary for a reason. In addition, each of the nine units should require a vacation rental license, like with every other free standing, single unit in Yachats. Agate Point Residences, LLC calling the development a hotel by no means makes the regulation for rentals go away. Not to mention everyone else in the city, not just R-4 zones, having to abide by the rental cap rules.

In the end, we feel it is very easy to see these plans maximize Agate Point Residences, LLC's profit at the expense of our neighborhood with little regard for impact. Many Yachats Municipal Code chapters' reference *"not adversely affecting the residential character of the neighborhood"*. With the applicant's desire to go around the rules with conditional use, we can all see the adverse affects we would be left with if approved. We encourage the Council to vote against allowing this permit to move forward.

Sincerely,



Cameron P. Ruddell
President, The Dwellings HOA
503.910.7163

Kimmie Jackson

From: VR Garage <vintagerollerscc@gmail.com>
Sent: Tuesday, October 12, 2021 1:42 PM
To: City Hall
Subject: Agate Point Residences opposition letter
Attachments: 358 Ocean Rd opposition letter.pdf

Hello -- I sent this letter to Kimmie, did not receive confirmation it was received so I am sending to this email address. My opposition letter is attached.

Thank you

Cameron Ruddell
390 Village Ln Yachats OR

October 5, 2021

City of Yachats
cityhall@yachatsmail.org
Attn: Katherine Guenther, City Planner

**RE: Notice of Public Hearing for Applicant Agate Point Residences, LLC, 358 Yachats Ocean Road,
Tax Lot 1601**

Dear Ms. Guenther,

I am writing this letter in opposition of the above-mentioned application for conditional use. While I have communicated the wishes of my HOA, this letter is from me personally, as a homeowner and part-time resident of Yachats. I cannot properly express to you how personally gratifying Agate Point Residences, LLC's plan is for them, and only them.

In a normal situation, I would reference municipal code, regulations, rules etc., that were being brought into focus. For their egregious attempt to "pull the wool" over the people of little ol' Yachats, Oregon, I have a hard time not stating the obvious. Big plans from the out of state developers, trying to fast track construction by pushing a conditional use permit through the inundated system BEFORE the Department of State Lands has even ruled whether or not they have the right to fill a wetlands full of dirt is utterly preposterous. Every aspect of their plan has problems. Every problem they intend to solve by throwing money at it.

To many units on a tiny chunk of land. Wetlands involved, no worries, fill it up and write a check. Cars everywhere, no onsite management to try and mitigate the problem of noisy or disrespectful guests. I am sure we can make a phone call, great that is available, but it shouldn't happen at all! With a regular hotel, onsite management is there to take care of the problems. Without, the policing is left for the surrounding citizens.

There is really no end to the bad aspects of the plan they have submitted. It only serves the applicant, not the citizens of Yachats, or even the people here to enjoy our town. Every code they want exception to is in place for a reason, to stop developers from doing exactly what they are trying to do. Please join me in opposition to this proposed conditional use.

Sincerely,



Cameron P. Ruddell
Yachats Homeowner
503.910.7163

Kimmie Jackson

From: Michael Collins <midacoll@gmail.com>
Sent: Tuesday, October 12, 2021 1:19 PM
To: City Hall
Subject: Notice of Public Hearing for Applicant Agate Point Residences, LLC, 358 Yachats Ocean Road, Tax Lot 1601

Dear Ms. Guenther,

We are writing in response to the Notice of Public Hearing for Agate Point Residences. We oppose their request for a conditional permit because their plans will negatively affect the adjoining neighborhood areas and the established 0.13 acres of wetlands on the property.

Agate Point Residences' (APR's) parking lot and several units are built directly on top of wetlands and heavily use easements from Shellmidden Way and The Dwellings. Our primary concern is building on top of wetlands. Wetlands are essential features in the landscape that provide numerous beneficial ecosystem services.

These services include protecting and improving water quality, providing wildlife habitats, storing floodwaters, and maintaining surface water flow during dry periods. APR's proposed parking lot and structures will heavily disrupt this valuable resource and divert water to unexpected surrounding areas, including neighboring houses and the Yachats Inn. The city should work with state and federal governments to protect our remaining wetlands.

In addition, the only access to APR is from Yachats Ocean Road to Shellmidden Way, a narrow dead-end, gravel road leading into a residential neighborhood. Moreover, Village Lane connects to Shellmidden Way and is a dead-end road leading into The Dwellings community. These two roads are often used by pedestrians coming in and out of the neighborhoods. They are also commonly used in conjunction with the popular 804 trail. The addition of APR will substantially increase motor vehicle congestion and worsen pedestrian versus motor vehicle confrontations.

Finally, with nine rentable units and 0.56 acres, the proposed plot plan for APR does not meet R-4 Residential Zone permitted uses (Chapter 9. 24). It is not on a minimum of a 1.0-acre lot with direct access provided from U. S. Highway 101 only and with accessory commercial uses.

Yachats Municipal Code chapters reference "not adversely affecting the residential character of the neighborhood." APR's current plans will adversely affect our community's character due to the reasons mentioned above. These plans maximize Agate Point Residences, LLC's profit at the expense of our wetlands, wildlife, and people. As such, we oppose their request for conditional use and encourage the City of Yachats to decide against their application.

Sincerely,
Michael and Lindsay Collins
350 Village Lane, Yachats
503-983-8210

Kimmie Jackson

From: Sandy Rutherford <snrth1@gmail.com>
Sent: Tuesday, October 12, 2021 1:18 PM
To: City Hall
Subject: OBJECTION TO PLANNED EXEMPTION YACHATS OCEAN ROAD

TO: Yachats Planning Commission:

We would like to express our objection to the exemptions requested for the property on Yachats Ocean Road. The proposed 'hotel' with 7-8 small homes on 1/2 acre should not be built on this property.

We are full-time residents at 23 Windy Way and frequently walk our dog along that road. It is challenging enough with the existing traffic during the tourist season, especially in the narrower areas. The last thing we need is more cars crowding that road.

Even if the development uses Shellmidden as access, that southern curve is a blind one. There are no shoulders for pedestrians, and it's just a dangerous curve.

Please do not grant the requested exemptions. It is not in the best interest of Yachats residents. Our quality of life would be directly impacted by this development. The zoning restrictions exist for a reason, and they should be enforced.

Thank you.

Sandy Rutherford
Kathy Kuck
23 Windy Way
Yachats, OR 97498

Kimie Jackson

From: Elaine Pelletier <elaine@hathawaylarson.com>
Sent: Tuesday, October 12, 2021 12:30 PM
To: Admin; City Hall
Cc: Chris Koback
Subject: Agate Point Conditional Use Application
Attachments: Planning Commission Letter.pdf

Dear Planning Commission Commissioners:

On behalf of Chris Koback, attached please find written testimony in connection with the above-referenced matter. A hard copy will follow via First-Class mail.

Thank you,

Elaine Pelletier | Legal Assistant

Hathaway Larson LLP | 1331 NW Lovejoy St., Ste. 950, Portland, OR 97209

Direct: +1.503.303.3113 | Main: +1.503.303.3101

elaine@hathawaylarson.com | www.hathawaylarson.com



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October 12, 2021

VIA EMAIL & FIRST-CLASS MAIL

City of Yachats
Planning Commission Commissioners:
Lance Bloch, Chair
Loren Dickinson, Vice Chair
Ariana Carlson
Christine Orchard
Helen Anderson
Jacqueline Danos
Yachats City Hall
501 Hwy. 101 N
Yachats, OR 97498
Email: admin@yachatsmail.org and cityhall@yachatsmail.org

Re: Agate Point Conditional Use Application

Dear Commissioners:

This firm represents Jo Dee Moine who owns real property at 390 Yachats Ocean Drive that is affected by the development proposed in the above-referenced matter. This letter is to provide the Planning Commission with written testimony opposing the proposed development.

The application misrepresents the nature of the proposal to circumvent important development standards adopted to protect the citizens of Yachats.

One could easily characterize the applicant's proposal as a bait and switch. On the one hand, the proposal clearly illustrates seven single-family dwellings with separate bedrooms, living area, full kitchens, and private outdoor areas. Indeed, the applicant describes the structures not as rooms or sleeping quarters, but rather rental cottages. Yet, in a transparent attempt to avoid important development standards designed to preserve the livability of Yachats and to get around the lottery for short-term rentals, the applicant attempts to gain approval of its independent rental cottages as a "hotel." By so characterizing its proposal, the applicant is attempting to get approval for seven single-family dwellings on a 21,000 square foot parcel that, under the appropriate development standards, would accommodate three dwellings.

Christopher P. Koback
1331 NW Lovejoy Street, Suite 950
Portland, OR 97209
chris@hathawaylarson.com
(503) 303-3107 direct
(503) 303-3101 main

As noted above and plainly reflected in the application, the applicant is proposing to construct seven single-family dwellings on one lot. Each proposed structure has every element of a single-family detached dwelling unit. A single-family dwelling is defined as a building designed or used, in whole or part, as a residence or sleeping place, either permanently or temporarily, by one or more families, but excluding hotels, motels, and tourist courts. By defining a single-family dwelling to include temporary places for sleeping, the rental cottages fall squarely within that definition.

On the other hand, a hotel is defined as any building containing guest rooms, which are rented or hired out, to be occupied for sleeping purposes for guests. Thus, a hotel is a single building with multiple guest rooms, which do not have full kitchens. The rooms are for sleeping. A motel is defined as a series of sleeping units, each having a separate entrance composed of one or more bedrooms and bathroom. Again, a motel does not have accommodations with full kitchens. Thus, under the city's definitions, a defining characteristic that separates a single-family dwelling from a hotel or motel room is the existence of a full kitchen.

The city's use provisions are also informative. We will address this more below, but in Yachats Zoning Code ("YZC") Sections 9.24.020 and 9.24.030, hotels and motels are allowed in the R4 zone only if they have accessory commercial uses. In most settings involving hotels and motels, the accessory commercial use is a restaurant or some form of eatery because, as noted above, hotel/motel rooms do not have full kitchens.

The proposal is in reality a single-family short-term rental development that fails to meet the required minimum lot area standard.

Because the proposed single-family cottages can never meet the definition of a hotel or motel, they must either be reviewed as single-family dwellings, the definition of which they clearly fall within, or multi-family dwellings on a single lot. Indeed, as one commentor noted in written comments, at least two of the proposed buildings have a main dwelling unit and a separate area that can be rented out separately as an independent living area.

Correctly characterizing the proposal is critical because the city must apply the proper development standards to assure the property is not over loaded. It is obvious the applicant labels its proposal as a hotel because it is trying to avoid the lot area requirement for single-family development. YZC Section 9.24.040 contains the development standards for the R4 zone. The minimum lot area for a single-family dwelling is 6,000 square feet. The minimum lot area for a two-family dwelling is 7,500 square feet. For multi-family dwellings over two units, the minimum lot area is 5,000 square feet for the first unit and 2,500 square feet for each additional unit.

Applying the above provision to the subject site, which is 21,625 square feet, the applicant would only be able to propose three, or possibly four dwellings. Accounting for access issues and other constraints, it would appear that three dwellings would be the maximum allowed.

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In an effort to circumvent the applicable single-family dwelling standards, the applicant placed a hotel label on its proposal simply because it plans to continuously rent the dwellings. As a hotel, the applicant asserts that it only needs 1,500 square feet for each hotel unit and, thus, the site can accommodate seven units in addition to the required parking lot.

The applicant's characterization is a transparent attempt to circumvent the applicable development standards in the R4 zone. As noted above, the application material patently demonstrates that the structures being proposed are not hotel units but rather single-family dwellings. When one examines the load placed on the site and the impacts on surrounding properties, there is a market difference between seven single-family dwellings on a 21,000-foot site and seven hotel rooms. Each dwelling can accommodate many more people than a hotel room. For example, the three-bedroom units could easily accommodate two families with at least two cars.

If the city reviews the application as a proposal to develop a multi-family development with multiple units on a single parcel, there is another fatal flaw. Under YZC Section 9.24.040.F, the minimum separation between multi-family buildings shall be 30 feet, unless the buildings are arranged end-to-end. As proposed, the seven multi-family buildings are not end-to-end.

In any case, the proposal is not a hotel or motel under the city's definitions or applying any common logic. It is a proposal for seven single-family dwellings that will be rented for a profit, or a proposal for a multi-dwelling development. Either way, the city must apply to correct development standards and cannot apply the development standards for a hotel or motel.

Another aspect of this is the character of the proposed use. The applicant acknowledges that the plan is to continuously rent the single-family cottages to visitors. Thus, they are short-term rental units. This appears to be a transparent effort to avoid the city's limits on short-term rental units and avoid having to go through the same lottery system as all other owners who wish to make short-term rentals of their homes.

The proposal cannot meet mandatory approval criteria even if one accepts the applicant's mischaracterization of the proposal.

Perhaps the most telling evidence of the applicant's plan to circumvent the lot area requirement is that there are no other uses proposed on the site. The plans include only seven single-family structures. As the applicant concedes, a hotel is not a permitted use on the site because it is below the one-acre minimum, and it does not have direct access to Highway 101.

Section 9.24.020 Permitted Uses allows for a motel, hotel, or resort of 1.0 acre with direct access provided from (sic) U.S. Highway 101 and only with accessory commercial uses. We are requesting a Conditional Use Permit because the project does not meet the 1.0 acre minimum and does not directly access U.S. Highway 101.

As the applicant recites, YZC Section 9.24.030 allows the city to approve, as a conditional use, a hotel that is on a parcel less than one acre and that does not have direct access to Highway 101. However, that code section, just as YZC Section 9.24.020 recites, expressly requires that hotels on less than one acre and without direct access can only be approved as a conditional use if they also have accessory commercial uses. YZC Section 9.24.030 Conditional Uses at subsection P allows:

Motel hotel or resort on less than 1.0 acres with accessory commercial uses.
(Emphasis added).

The application material does not reveal any proposed accessory commercial uses. In the context of a hotel, an accessory commercial use would most commonly be a restaurant or bar, or both. Thus, even if one ignores the applicant's obvious effort to mischaracterize its proposal as a hotel to avoid mandatory development standards, the proposal cannot be approved even conditionally because it does not have accessory commercial uses. There is no provision in either YZC Section 9.24.020 or 9.24.030 that allows the city to approve a motel or hotel that does not have accessory commercial uses.

The applicant has made no demonstration that it will ever be able to fill two jurisdictional wetlands and the proposal is dependent on filling them.

There are two wetlands in the site comprising approximately .13 acres. The applicant's proposal depends upon its ability to fill two wetlands and mitigated for that by simply paying a fee. To support its requests, the applicant submitted a study from Scotts and Associates that concludes that neither wetland is connected to navigable waters and, thus, are not jurisdictional wetlands. The August 17, 2021, response from the Army Corp of Engineers ("Army Corp") is inconsistent with that submission. The Army Corp determined that both wetlands on site are "waters of the U.S.", which means they are jurisdictional. As a result, the application cannot proceed unless and until the applicant appeals that determination and succeeds or applies for and obtains approval from the EPA to fill the wetlands. While a local government has some ability under ORS 197.522, to approve an application based on conditions, the applicant must make some demonstration that the condition is feasible and will assure compliance with the approval criteria. *Gould v. Deschutes County*, 227 Or App 601, 206 P3d 1106 (2009). The application has no information that demonstrates feasibility of prevailing on an appeal of the Army Corp determination or, in the alternative, obtaining an EPA permit to fill the wetlands.

The applicant has not adequately addressed relevant access/safety issues.

YZC Section 9.24.040.I requires that vehicle and pedestrian access to the site be safely and efficiently provided. A critical component of safe access has to be adequate access for fire and other emergency vehicles. The proposed site plan illustrates that there is no such safe access proposed. There is a single road, Shellmidden Way, that enters the site in the proposed parking lot. That road is a narrow, dead end, gravel road. As the parking lot is configured with 20 spaces

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to accommodate up to nine dwelling units, there will be no room for a fire truck to maneuver on the site. If the lot is full of vehicles owned by those renting the seven/nine units, it is doubtful that a fire truck could even get onto the site. Yachats Ocean Drive does not provide a reasonable alternative for emergency access to the proposed buildings located in the southern quadrant of the site. The only way to get efficient access to those structures is through Shellmidden Way where the access can be impeded by vehicles in the parking lot.

Conclusion

As explained above and reinforced by other comments you will review, the applicant has not met its burden to show that its proposal meets all of the applicable standards. For that reason, the application should be denied.

Very truly yours,

HATHAWAY LARSON LLP



Christopher P. Koback

CPK/ep

cc: Client

Kimmie Jackson

From: Elaine Pelletier <elaine@hathawaylarson.com>
Sent: Tuesday, October 12, 2021 12:28 PM
To: admin@yachatsmail.or; City Hall
Cc: Chris Koback
Subject: Agate Point Conditional Use Application
Attachments: Planning Commission Letter.pdf

Dear Planning Commission Commissioners:

On behalf of Chris Koback, attached please find written testimony in connection with the above-referenced matter. A hard copy will follow via First-Class mail.

Thank you,

Elaine Pelletier | Legal Assistant

Hathaway Larson LLP | 1331 NW Lovejoy St., Ste. 950, Portland, OR 97209

Direct: +1.503.303.3113 | Main: +1.503.303.3101

elaine@hathawaylarson.com | www.hathawaylarson.com



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October 12, 2021

VIA EMAIL & FIRST-CLASS MAIL

City of Yachats

Planning Commission Commissioners:

Lance Bloch, Chair

Loren Dickinson, Vice Chair

Ariana Carlson

Christine Orchard

Helen Anderson

Jacqueline Danos

Yachats City Hall

501 Hwy. 101 N

Yachats, OR 97498

Email: admin@yachatsmail.org and cityhall@yachatsmail.org

Re: Agate Point Conditional Use Application

Dear Commissioners:

This firm represents Jo Dee Moine who owns real property at 390 Yachats Ocean Drive that is affected by the development proposed in the above-referenced matter. This letter is to provide the Planning Commission with written testimony opposing the proposed development.

The application misrepresents the nature of the proposal to circumvent important development standards adopted to protect the citizens of Yachats.

One could easily characterize the applicant's proposal as a bait and switch. On the one hand, the proposal clearly illustrates seven single-family dwellings with separate bedrooms, living area, full kitchens, and private outdoor areas. Indeed, the applicant describes the structures not as rooms or sleeping quarters, but rather rental cottages. Yet, in a transparent attempt to avoid important development standards designed to preserve the livability of Yachats and to get around the lottery for short-term rentals, the applicant attempts to gain approval of its independent rental cottages as a "hotel." By so characterizing its proposal, the applicant is attempting to get approval for seven single-family dwellings on a 21,000 square foot parcel that, under the appropriate development standards, would accommodate three dwellings.

Christopher P. Koback
1331 NW Lovejoy Street, Suite 950
Portland, OR 97209
chris@hathaway-larson.com
(503) 303-3107 direct
(503) 303-3101 main

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On the other hand, a hotel is defined as any building containing guest rooms, which are rented or hired out, to be occupied for sleeping purposes for guests. Thus, a hotel is a single building with multiple guest rooms, which do not have full kitchens. The rooms are for sleeping. A motel is defined as a series of sleeping units, each having a separate entrance composed of one or more bedrooms and bathroom. Again, a motel does not have accommodations with full kitchens. Thus, under the city's definitions, a defining characteristic that separates a single-family dwelling from a hotel or motel room is the existence of a full kitchen.

The city's use provisions are also informative. We will address this more below, but in Yachats Zoning Code ("YZC") Sections 9.24.020 and 9.24.030, hotels and motels are allowed in the R4 zone only if they have accessory commercial uses. In most settings involving hotels and motels, the accessory commercial use is a restaurant or some form of eatery because, as noted above, hotel/motel rooms do not have full kitchens.

The proposal is in reality a single-family short-term rental development that fails to meet the required minimum lot area standard.

Because the proposed single-family cottages can never meet the definition of a hotel or motel, they must either be reviewed as single-family dwellings, the definition of which they clearly fall within, or multi-family dwellings on a single lot. Indeed, as one commentor noted in written comments, at least two of the proposed buildings have a main dwelling unit and a separate area that can be rented out separately as an independent living area.

Correctly characterizing the proposal is critical because the city must apply the proper development standards to assure the property is not over loaded. It is obvious the applicant labels its proposal as a hotel because it is trying to avoid the lot area requirement for single-family development. YZC Section 9.24.040 contains the development standards for the R4 zone. The minimum lot area for a single-family dwelling is 6,000 square feet. The minimum lot area for a two-family dwelling is 7,500 square feet. For multi-family dwellings over two units, the minimum lot area is 5,000 square feet for the first unit and 2,500 square feet for each additional unit.

Applying the above provision to the subject site, which is 21,625 square feet, the applicant would only be able to propose three, or possibly four dwellings. Accounting for access issues and other constraints, it would appear that three dwellings would be the maximum allowed.

In an effort to circumvent the applicable single-family dwelling standards, the applicant placed a hotel label on its proposal simply because it plans to continuously rent the dwellings. As a hotel, the applicant asserts that it only needs 1,500 square feet for each hotel unit and, thus, the site can accommodate seven units in addition to the required parking lot.

The applicant's characterization is a transparent attempt to circumvent the applicable development standards in the R4 zone. As noted above, the application material patently demonstrates that the structures being proposed are not hotel units but rather single-family dwellings. When one examines the load placed on the site and the impacts on surrounding properties, there is a market difference between seven single-family dwellings on a 21,000-foot site and seven hotel rooms. Each dwelling can accommodate many more people than a hotel room. For example, the three-bedroom units could easily accommodate two families with at least two cars.

If the city reviews the application as a proposal to develop a multi-family development with multiple units on a single parcel, there is another fatal flaw. Under YZC Section 9.24.040.F, the minimum separation between multi-family buildings shall be 30 feet, unless the buildings are arranged end-to-end. As proposed, the seven multi-family buildings are not end-to-end.

In any case, the proposal is not a hotel or motel under the city's definitions or applying any common logic. It is a proposal for seven single-family dwellings that will be rented for a profit, or a proposal for a multi-dwelling development. Either way, the city must apply to correct development standards and cannot apply the development standards for a hotel or motel.

Another aspect of this is the character of the proposed use. The applicant acknowledges that the plan is to continuously rent the single-family cottages to visitors. Thus, they are short-term rental units. This appears to be a transparent effort to avoid the city's limits on short-term rental units and avoid having to go through the same lottery system as all other owners who wish to make short-term rentals of their homes.

The proposal cannot meet mandatory approval criteria even if one accepts the applicant's mischaracterization of the proposal.

Perhaps the most telling evidence of the applicant's plan to circumvent the lot area requirement is that there are no other uses proposed on the site. The plans include only seven single-family structures. As the applicant concedes, a hotel is not a permitted use on the site because it is below the one-acre minimum, and it does not have direct access to Highway 101.

Section 9.24.020 Permitted Uses allows for a motel, hotel, or resort of 1.0 acre with direct access provided from (sic) U.S. Highway 101 and only with accessory commercial uses. We are requesting a Conditional Use Permit because the project does not meet the 1.0 acre minimum and does not directly access U.S. Highway 101.

As the applicant recites, YZC Section 9.24.030 allows the city to approve, as a conditional use, a hotel that is on a parcel less than one acre and that does not have direct access to Highway 101. However, that code section, just as YZC Section 9.24.020 recites, expressly requires that hotels on less than one acre and without direct access can only be approved as a conditional use if they also have accessory commercial uses. YZC Section 9.24.030 Conditional Uses at subsection P allows:

Motel hotel or resort on less than 1.0 acres with accessory commercial uses.
(Emphasis added).

The application material does not reveal any proposed accessory commercial uses. In the context of a hotel, an accessory commercial use would most commonly be a restaurant or bar, or both. Thus, even if one ignores the applicant's obvious effort to mischaracterize its proposal as a hotel to avoid mandatory development standards, the proposal cannot be approved even conditionally because it does not have accessory commercial uses. There is no provision in either YZC Section 9.24.020 or 9.24.030 that allows the city to approve a motel or hotel that does not have accessory commercial uses.

The applicant has made no demonstration that it will ever be able to fill two jurisdictional wetlands and the proposal is dependent on filling them.

There are two wetlands in the site comprising approximately .13 acres. The applicant's proposal depends upon its ability to fill two wetlands and mitigated for that by simply paying a fee. To support its requests, the applicant submitted a study from Scotts and Associates that concludes that neither wetland is connected to navigable waters and, thus, are not jurisdictional wetlands. The August 17, 2021, response from the Army Corp of Engineers ("Army Corp") is inconsistent with that submission. The Army Corp determined that both wetlands on site are "waters of the U.S.," which means they are jurisdictional. As a result, the application cannot proceed unless and until the applicant appeals that determination and succeeds or applies for and obtains approval from the EPA to fill the wetlands. While a local government has some ability under ORS 197.522, to approve an application based on conditions, the applicant must make some demonstration that the condition is feasible and will assure compliance with the approval criteria. *Gould v. Deschutes County*, 227 Or App 601, 206 P3d 1106 (2009). The application has no information that demonstrates feasibility of prevailing on an appeal of the Army Corp determination or, in the alternative, obtaining an EPA permit to fill the wetlands.

The applicant has not adequately addressed relevant access/safety issues.

YZC Section 9.24.040.I requires that vehicle and pedestrian access to the site be safely and efficiently provided. A critical component of safe access has to be adequate access for fire and other emergency vehicles. The proposed site plan illustrates that there is no such safe access proposed. There is a single road, Shellmidden Way, that enters the site in the proposed parking lot. That road is a narrow, dead end, gravel road. As the parking lot is configured with 20 spaces

October 12, 2021
Page 5

to accommodate up to nine dwelling units, there will be no room for a fire truck to maneuver on the site. If the lot is full of vehicles owned by those renting the seven/nine units, it is doubtful that a fire truck could even get onto the site. Yachats Ocean Drive does not provide a reasonable alternative for emergency access to the proposed buildings located in the southern quadrant of the site. The only way to get efficient access to those structures is through Shellmidden Way where the access can be impeded by vehicles in the parking lot.

Conclusion

As explained above and reinforced by other comments you will review, the applicant has not met its burden to show that its proposal meets all of the applicable standards. For that reason, the application should be denied.

Very truly yours,

HATHAWAY LARSON LLP

A handwritten signature in blue ink, appearing to read "Christopher P. Koback", with a long horizontal flourish extending to the right.

Christopher P. Koback

CPK/ep

cc: Client

Kimmie Jackson

From: Marc A. <macourtenay@gmail.com>
Sent: Tuesday, October 12, 2021 11:59 AM
To: City Hall
Cc: Leslie Vaaler; Greg@yachatsmail.org; Mary Ellen O'Shaughnessey; Ann@yachatsmail.org; Anthony Muirhead
Subject: To PLANNING COMMISSION RE: Development of Wetlands Near Yachats Ocean Road,
Attachments: Yachats Community Values Statement.pdf

Dear Planning Commission and Yachats City Council:

In all due respect, the idea regarding the proposed development requesting multiple exemptions to install prefab vacation rental units is not only, in my household's opinion, a crime against Nature, but it contradicts the Yachats City Council Vision Statement Adopted: April 2, 2009 "Our village is a place where natural resources are valued and protected..."

I've attached the 1996 "Yachats 20/20 Community Values Statement (Final Draft)" which defines the so-called "natural resources" as the "NATURAL ENVIRONMENT" which deserves our protection.

Please read it all carefully before allowing any further development or exploitation of our natural environment and natural resources.

Thank You,
Marc Courtenay
900 Hanley Drive
Yachats,OR 97498

Yachats 20/20 Community Values Statement

(Final Draft)

5/21/96

SENSE OF PLACE. WE value our sense of place and the distinct perspective it gives us as a community. We view this sense of place as a common bond and a bridge of understanding between our differences.

NATURAL ENVIRONMENT. WE value the natural environment and beauty of our surroundings – the ocean, forests, rivers, hills and beaches. We strive to protect and restore our physical environment and the natural and human habitat it provides.

SMALL TOWN ATMOSPHERE. WE value our small town atmosphere and the friendly, slower-paced quality of life it offers. We see our community as a "coastal village" and seek to maintain and enhance its village character and scale.

WELCOMING SPIRIT. WE value our welcoming spirit. We openly invite visitors to share in our community's natural beauty and attractions, while encouraging them to respect the character and values that distinguish us from other places.

INDEPENDENCE. WE value independence of thought, mind and creativity. We cherish our privacy, individuality and rights as individuals, but balance them with respect for the rights of others and a sense of responsibility to the community as a whole.

COOPERATION. WE value our community's spirit of cooperation. We believe in lending a hand to neighbors in need, volunteering our time and energy for the betterment of our community, and working together for the common good.

UNIQUENESS. WE value our uniqueness as a community. We honor the diverse backgrounds and talents of those who live here, the unique values and perspectives we share, and our ability to develop creative solutions to the challenges that face us.

Kimmie Jackson

From: McKenzie Purdom <mpurdom32@gmail.com>
Sent: Tuesday, October 12, 2021 8:26 AM
To: City Hall
Subject: Please Deny Yachats Ocean Road Development Exceptions

Dear Yachats Planning Commission,

As a South County resident for 24 years and frequent local visitor to Yachats, I urge you to deny the development exceptions proposed for Yachats Ocean Road. Not only will such a development place unnecessary burden on the city's infrastructure (water, fire, ambulance, roads, etc.), increase traffic in an area not designed for heavy use, but it will also add stress to Yachats' natural resources.

Destroying a wetland is completely out of character for Yachats' vision. Additionally, the proposed development will bring thousands of extra visitors to Yachats beaches, putting undue stress on these precious habitats. Yachats is my son's favorite beach because of the diverse animals that we can respectfully observe: Bald Eagles, Harbor Seals, Dungeness Crabs, Anemones, Sea Stars, Shorebirds, and most exciting, Sand Dollars. All of these animals would be at risk for disturbance if this development was approved.

The city's regulations and codes were set with vision and purpose. An exception to them is not in the best interest of the city, surrounding residents, or natural resources. I ask you to deny the proposed exceptions.

Sincerely,
McKenzie

Kimmie Jackson

From: Shelly <shelly@deanshrock.com>
Sent: Tuesday, October 12, 2021 9:30 AM
To: Kimmie Jackson
Subject: Please say NO

Dear city officials,
Please do not allow developers to build in the wetlands area along Yachats Ocean Drive. Please preserve this beautiful natural land. We Do Not need more vacation rentals! Or people who would attempt to disguise their real motives in building here. Our beautiful city is not for sale to those who could care less about our special community.
Thank you for your consideration,
Shelly and Dean Shrock

Sent from my iPad

Kimmie Jackson

From: Kimberley & Bret Parzuchowski <parzfamily@comcast.net>
Sent: Tuesday, October 12, 2021 9:33 AM
To: City Hall
Subject: Agate Point

This is a terrible idea!! The value of the town of Yachats and Ocean Road in particular is the peacefulness. It preserves the natural spaces for animals and humans.

Do not let outsiders destroy Yachats with a multiplex that will damage habitat, air quality, and pedestrian spaces that make Yachats the gem that it is.

There's a reason the Northwest is a getaway for Non-Oregonians—it's not over populated like CA. and East Coast beaches.

Grow small and with beauty and quality.

Parzuchowski
432 Shellmidden Drive
Yachats

Dr. KD Parzuchowski (Dr. Parz)
Pro-Tempore Instructor, Lundquist Business School,
University of Oregon; chowski@uoregon.edu
Adjunct Instructor, Lane Community College; parzk@lanecc.edu
Adjunct Professor, Philosophy Department, Bushnell University; kparzuchowski@bushnell.edu

Kimmie Jackson

From: Joan Henkens <joanhenkens@gmail.com>
Sent: Tuesday, October 12, 2021 11:02 AM
To: City Hall
Subject: Agate Point Development

I am a Yachats resident and I have been coming here for 60 years. We've had enough change in this town, and we don't need any more.

So please leave the "Gem of the Oregon Coast" alone. I oppose the Yachats Ocean Road development project.

Joan Henkens
Yachats Resident

To Planning Commission

From Douglas Conner, Yachats Action Alliance

Date 12/22/2021

Re Conditional use permits

According to YMC 9.04.030, a hotel is a building containing guest rooms which are rented or hired out to be occupied for sleeping purposes. In contrast, YMC 4.08.020 defines a “vacation rental” as a dwelling held out as available for rent, for periods of less than thirty (30) days. Additionally YMC 4.08.20 establishes as a rebuttable presumption that a dwelling unit is a vacation rental if it is visited overnight by at least four (4) different vehicles over the course of a month, for three (3) consecutive months. In short, hotels rent rooms while vacation rentals rent dwellings.

The recent proposal by Agate Point LLC for a conditional use permit to build a “hotel” in Yachats proposes, not renting rooms, but instead, renting dwellings. Furthermore, the dwellings would be advertised and managed by a local vacation rental management company. The only thing that distinguishes these proposed dwellings from existing vacation rentals is the proposed density.

Most vacation rentals in Yachats are residential dwellings, with one dwelling per tax lot. What Agate Point LLC proposes is a high density cluster of dwellings on a single tax lot – a vacation rental pod masquerading as a “hotel”.

The Yachats community limits the number of vacation rental licenses available to protect the livability of our residential neighborhoods, and there is currently a waiting list to acquire a vacation rental license.

Yachats has been very successful in marketing itself as a vacation destination, and that success will and does attract venture capital looking to make a profit from that success. If we allow a high density pod of short term rental dwellings to circumvent our vacation rental cap by simply calling itself a “hotel”, then we not only render that cap moot, but we will encourage others to follow suit.

Douglas Conner

490 Lemwick Ln

Yachats, OR. 97498

Admin

From: John Phillips <jspchmst@gmail.com>
Sent: Tuesday, October 12, 2021 11:36 AM
To: Admin
Subject: Proposed development of wetland on Yachats Ocean Drive

Yachat Administration:

I am opposed to the proposed development of the Shellmiddens wetland area. This is not only environmentally reckless, it will also spoil the nature of one of the most beautiful spots in Yachats. Let's not tarnish the gem.

John Phillips
75 Greenhill Dr
Yachats, OR 97498

Admin

From: Joan Henkens <joanhenkens@gmail.com>
Sent: Tuesday, October 12, 2021 11:02 AM
To: City Hall
Subject: Agate Point Development

I am a Yachats resident and I have been coming here for 60 years. We've had enough change in this town, and we don't need any more.

So please leave the "Gem of the Oregon Coast" alone. I oppose the Yachats Ocean Road development project.

Joan Henkens
Yachats Resident

October 7, 2021

CITY OF YACHATS

PLANNING DEPARTMENT
PO BOX 345, YACHATS, OR 97498

Dear Planning Commission,

I am joining my fellow neighbors in objecting to the proposed development at Agate Point on Yachats Ocean Road. I do not believe the City should grant the four requested variances listed below for this project; because, I do not believe the project is in the best interest of the Yachats Community at large. Please oppose this Development at the upcoming Planning Commission meeting.

1. I oppose the request to build on invaluable "wetlands" as determined by Pacific Habitat Services Inc., a professional wetland consulting firm hired by the City in 2011.
2. I oppose the variance to develop rental property without direct access to Highway 101. This will overburden the narrow Yachats Ocean Road, which is heavily used by pedestrians.
3. I oppose the variance to develop rental property on a half-acre lot as opposed to the one-acre requirement. This over development will exacerbate the current water shortage problem.
4. I oppose the variance to develop individual rental units without going through the City Lottery system. Calling it a "hotel" to skirt the requirement is not legitimate.

Please act in the interest of the residents of Yachats and vote "No" on this development.

SINCERELY,



JOELYN GROPP

Admin

From: Dave Cowden <dmcjlp@gmail.com>
Sent: Tuesday, October 12, 2021 10:15 AM
To: Admin
Subject: Fwd: Agate Point Residences

----- Forwarded message -----

From: **Dave Cowden** <dmcjlp@gmail.com>
Date: Sun, Oct 10, 2021 at 2:53 PM
Subject: Agate Point Residences
To: <cityhall@yachatsmail.org>

Vacationing here for ten years and then buying/moving to Yachats over 8 years ago, I am truly concerned about the proposed development of this plot. This beautiful coastal village is slowly losing it's charm to the corporate dollar.

The community has approved municipal codes for land use and now the developers want the city to grant exceptions to the will of the government and citizens. What will the next one be, McDonalds, a theme park? We love this small village and it is disappearing so slowly and sometimes, seemingly covertly, that it escapes notice.

I **soundly** oppose this exception for the development. The infrastructure of Yachats commercial businesses; restaurants, shops, vacation rentals AND street/roads are maxed out. It is apparent that a cap must be maintained or we will lose the quiet small village loved by all.

Dave Cowden
Yachats

Admin

From: Cowden/Prince <jlpdmc@gmail.com>
Sent: Tuesday, October 12, 2021 10:14 AM
To: Admin
Subject: Fwd: Agate Point Project/Planning Commission Hearing

"Music expresses that which cannot be said and on which it is impossible to be silent."
- Victor Hugo

----- Forwarded message -----

From: **Cowden/Prince** <jlpdmc@gmail.com>
Date: Sun, Oct 10, 2021 at 2:31 PM
Subject: Agate Point Project/Planning Commission Hearing
To: <cityhall@yachatsmail.org>

10/10/21

Dear Members of the Planning Commission,

I am writing to express my **strong opposition** to the proposed Agate Cove development. I know that you must be well aware of the issues surrounding this project as they have been extensively and eloquently detailed in the many letters and emails you've received.

Much time and talent has been put into the development of land use planning, including specific stipulations to protect our natural resources and quality of life. The proposed Agate Cove development is not consistent with and seeks to override the plan our citizens have worked hard to develop. The out of state business is asking for exceptions and variances to our plan to protect our community for their financial gain, not for the benefit of our ecosystem or our citizens.

I strongly request that you honor the spirit and work of this community and **deny the variances**, which are not to the benefit of our citizens or the land on which we are blessed to live and for which we bear responsibility.

I implore you to do the right thing.

Respectfully,

Johnni Prince
3501 Highway 101 N
Yachats, OR 97498

"Music expresses that which cannot be said and on which it is impossible to be silent."

- Victor Hugo

Admin

From: Maxine Sheets-Johnstone <msj@uoregon.edu>
Sent: Monday, October 11, 2021 10:33 PM
To: City Hall
Subject: Re Agate Point development

The proposed development is an insult if not a travesty of the city of Yachats's self-description. The "Yachats City Council Vision" was first formulated in 1996 (See <https://yachatsoregon.org/DocumentCenter/View/1050/Yachats-Area-An-Active-Vision-to-Create-Community>). The Vision is printed on every Yachats Newsletter and was inscribed on the wall in the City Council meeting room in the Commons. Its very first sentence reads as follow: "Our village is a place where natural resources are valued and protected."

If natural resources are indeed valued and protected, then Yachats is definitely not a place where greedy developers can ransack the environment, destroying trees and wildlife in order to enrich their pockets. We have already seen, and now have to live with, one such horrific destruction of our village, its trees and wildlife utterly destroyed in the Koho housing development. We do not want nor do we need another such destruction of our village. Its flora and fauna are absolutely natural resources to be valued and protected.

Maxine Sheets-Johnstone and Albert Johnstone (fulltime residents of Yachats for 28 years)

Admin

From: Yachats City Planner
Sent: Monday, October 11, 2021 9:36 PM
To: City Hall
Subject: Fw: Agate Point Cottage Hotel Cottages Variance Request

Katherine Guenther
City Planner

EMAIL:
Planner@Yachatsmail.org

OFFICE PHONE:
541-547-3565, Ext. 104

From: JAB and MKB - <jamkb@peak.org>
Sent: Monday, October 11, 2021 8:52 PM
To: Yachats City Planner <Planner@YachatsMail.org>
Subject: Agate Point Cottage Hotel Cottages Variance Request

MEMO 10/11/2021

TO: CITY OF YACHATS PLANNING COMMISSION
FROM: JOHN and MARGARET BENDER (205 Shell Street, Yachats)
SUBJECT: AGATE POINT HOTEL COTTAGES VARIANCE REQUEST

We respectfully request that the Commission **vote NO** on granting a conditional use variance as requested by Agate Point Hotel Cottages. Granting a variance would set a very frightful precedent that could be very harmful to the livability and beauty of Yachats.

The area in question is a designated jurisdictional wetland and should be protected and certainly not be available for commercial development.

PLEASE **DENY** THE REQUEST FOR A CONDITIONAL USE PERMIT.

Thank You.

John and Margaret Bender

Admin

From: Yachats City Planner
Sent: Monday, October 11, 2021 9:20 PM
To: Admin
Subject: Fw: Agate Point Conditional Use Public Hearing October 19, 2021

Katherine Guenther
City Planner

EMAIL:
Planner@Yachatsmail.org

OFFICE PHONE:
541-547-3565, Ext. 104

From: Ruth Bass <ruth@ruthmbass.com>
Sent: Monday, October 11, 2021 9:02 PM
To: Yachats City Planner <Planner@YachatsMail.org>
Subject: Agate Point Conditional Use Public Hearing October 19, 2021

I am a Yachats resident.
I live at 60 E 7th Street, Yachats, OR 97498

I object to any variance being given to Agate Point.

1. The site is not large enough for a hotel. Less than 1 acre of land.
2. The site does not have direct access to Highway 101.
3. Though they call it a "hotel", it appears to be a means to get around the short-term rental lottery.
4. The property is definitely a wetland.
5. The property is in a tsunami zone.

I hope the Planning Commission will follow the city code in this instance and any instance.
We have developed the codes for a reason. Please follow the codes.

Sincerely,
Ruth Bass

Admin

From: Maryann Candito <maryanncandito@yahoo.com>
Sent: Monday, October 11, 2021 9:16 PM
To: office@yachatsyardscapes.com; corchard@peak.org; happydogs27@gmail.com; jac.danos@gmail.com; lancebloch1@gmail.com; 20lorendickinson@gmail.com; City Hall
Subject: Opposition to Applegate Project

Dear Planning Commissioners and City Hall Administration,

We would like to express our extreme opposition to the Applegate project. First of all, regulations were made to preserve Yachats' natural beauty and wetlands, and this is why most of us live here. This project would undermine all of these safeguards meant to protect our wetlands and natural resources.

The increased traffic which would result from seven plus vacation rentals units (it's not a motel, let's call it what it is) on Yachats Ocean Rd would adversely affect the surrounding neighborhoods and would require road improvements. The city of Yachats would most likely have to pay for a portion of these improvements, which we are very opposed to our tax dollars being used to destroy the wetlands and surrounding area.

Adding more vacation rental units would significantly increase the demand for water. Every summer Yachats goes into, at least, Phase One water restrictions. This project would put more burden on the residents of Yachats, we are the only ones who have water restrictions placed upon us. The vacation rentals have no such restrictions. Once again, it's the residents who suffer when big money comes into Yachats and wants to change our rules for their profits.

Please don't allow this project to move forward.

Thank you,

Dana Bleckinger and Maryann Candito

1045 Driftwood Ln.

Yachats, OR 97498

541-547-3181

Admin

From: Meg Simans <megsimans@gmail.com>
Sent: Monday, October 11, 2021 9:11 PM
To: City Hall
Subject: Agate Point Development

I am a full time Yachats resident and have been enjoying this Gem of the Oregon Coast for over 50 years since my grandparents first brought me here.

I am an environmentalist and a natural health care physician and I strive to keep our oceans, forests, and wetlands clean. The health of the Yachats environment directly impacts the health of its citizens, animals, and landscapes. The developers who wish to pave over and build on protected wetlands on Yachats Ocean Road should be denied all desired exceptions to the municipal code.

I am opposed to this development and all of the negative impacts it will have on the residents and the entire ecosystem of this precious town.

Meg Simans
Yachats resident

Sent from my iPhone

Admin

From: Ann Fisler <fislerann@gmail.com>
Sent: Monday, October 11, 2021 7:26 PM
To: City Hall
Cc: Yachats City Planner
Subject: To: Members of Yachats Planning Commission;

To: Members of Yachats Planning Commission;

We are writing in response to the Commission's plan to consider exceptions to Yachats Municipal Code specific to designated wetland on Yachats Ocean Rd.

The proposed Agate Cove development seeks exceptions to the Yachats municipal code, which specifically states that a hotel can only be built on an acre or more and there must be direct access to HWY 101. The Agate Cove Development wouldn't meet either of these.

Our question is " Why are exceptions even being considered?" The code is designed to protect the the citizens of Yachats and the land that we are the guardians of.

Commission members, please review the Yachats City Mission Statement as a reminder of what our goals as a community are.

Thank you for your consideration.

Sincerely
Ann Fisler and Toni Trauman

Sent from my iPad

Admin

From: Jason Huck Lewis <cloverfoot@protonmail.com>
Sent: Monday, October 11, 2021 6:50 PM
To: City Hall
Subject: Fw: Planning Commission RE: Proposed Vacation Rentals on YOR

Sent with [ProtonMail](#) Secure Email.

----- Original Message -----

On Monday, October 11th, 2021 at 6:48 PM, Jason Huck Lewis <cloverfoot@protonmail.com> wrote:

I'm writing this letter to you in order to express my concerns over the proposed exceptions to the municipal code intended to allow construction of vacation rentals on Yachats Ocean Road on an important wetland area.

I hope that you can see to it that no exceptions are made at this time and that this development is not allowed to proceed for the following reasons:

- 1) Our wetland areas are an important feature that should be preserved in perpetuity for current and future generations to enjoy. Our natural surroundings and their associated plant and animal species are an important part of our region that add to the attractiveness of our community and to the biodiversity needs of the coast in general. Any development in these delicate areas can only serve to detract from this valuable resource
- 2) This proposed development will create safety concerns for local residents by increasing traffic on an already dangerous curve and narrow roadway
- 3) Our region is flush with vacation rentals that don't require exceptions to existing code. I'm sure alternative plots can be located for this venture that fall within established guidelines for development. I don't see this as a necessary addition to our economy and i feel that it would detract from, rather than supplement our charm and attractiveness to visitors

Please consider these concerns as you consider the concerns of other members of our community and see to it that this development is stopped in it's tracks before it does any damage to our wonderful and special community.

Thank you so much for your consideration and please, have a great day!

Jason Lewis
Waldport, Oregon

Sent with [ProtonMail](#) Secure Email.

Admin

From: Yachats City Planner
Sent: Monday, October 11, 2021 6:03 PM
To: City Hall
Subject: Fw: No!! Conditional Use Variance--Agate Point
Attachments: Yachats Memo.docx

Katherine Guenther
City Planner

EMAIL:
Planner@Yachatsmail.org

OFFICE PHONE:
541-547-3565, Ext. 104

From: Melinda Bender <BENDERME@uvu.edu>
Sent: Monday, October 11, 2021 10:29 AM
To: Yachats City Planner <Planner@YachatsMail.org>
Cc: Jfishbri <Jfishbri@yahoo.com>
Subject: No!! Conditional Use Variance--Agate Point

Hi Katherine!

We hope you are doing well! We wanted to voice our opinions (Hanley Dr. property owners) on the Agate Point Hotel Cottage Variance request. My memo is attached, and Brian will be sending an additional No vote from his email.

Thank you! Hope you are having a beautiful day!

Best wishes,
Melinda

Admin

From: Yachats City Planner
Sent: Monday, October 11, 2021 6:03 PM
To: City Hall
Subject: Fw: Vote

Katherine Guenther
City Planner

EMAIL:
Planner@Yachatsmail.org

OFFICE PHONE:
541-547-3565, Ext. 104

From: Brian Fish <jfishbri@icloud.com>
Sent: Monday, October 11, 2021 10:59 AM
To: Yachats City Planner <Planner@YachatsMail.org>
Subject: Vote

MEMO 10/10/2021

TO: CITY OF YACHATS PLANNING COMMISSION

FROM: Brian Fish (Hanley Drive property)

SUBJECT: AGATE POINT HOTEL COTTAGES VARIANCE REQUEST

We respectfully request you (the Planning Commission) **vote NO** on granting a conditional use variance as requested by Agate Point Hotel Cottages.

Granting a variance (allowing commercial hotel use in a residential area) would impact livability for Yachats residents and impact wildlife (as this is a wetland).

Allowing this variance request would be harmful to the beauty of Yachats.

PLEASE **DENY** THE REQUEST FOR A CONDITIONAL USE PERMIT.

Sincerely,
Brian J. Fish

Sent from my iPhone

Admin

From: Craig Hogan <craighogan@uchicago.edu>
Sent: Monday, October 11, 2021 6:01 PM
To: City Hall
Cc: antheahogan@gmail.com
Subject: Comment on planning application

Dear Commissioners,

I'm writing to comment on the land use application filed by Agate Point Residences LLC for a development near Yachats Ocean Road.

I have read their application and would like to register my strong opposition to approval of their application.

Yachats has sensible regulations to protect our most valuable treasure, our coastline. This proposed development is exactly what the regulations are designed to avoid. I can see no good reason to make an exception in this case.

Sensible planning puts hotel type developments along the already-developed highway, not adjacent to coastal wetlands and unique pedestrian footways along the coast.

This is all common sense.

Please view this application in the light of the big picture, the long term best interests of our community.

Thanks for your kind attention,

Craig Hogan
924 Hanley Drive
Yachats

Admin

From: CC Horton <cchorton830@gmail.com>
Sent: Monday, October 11, 2021 4:21 PM
To: City Hall; Yachats Yardscapes; corchard@peak.org; happydogs27@gmail.com; Loren Dickinson; jac.danos@gmail.com
Cc: Leslie Vaaler; Mary Ellen O'Shaughnessey; greg@yahatsmail.org; Anthony Muirhead; Ann@yachatsmail.org
Subject: Proposed Agate Point development

Dear Members of the Planning Commission,

We are writing to express our strong opposition to granting any variances relating to the proposed Agate Point development project. We live near the Yachats Ocean Road and are very familiar with the area. We have yet to find any local residents in favor of this proposed development, especially when it involves granting the developers special exemptions to our code in order to enable them to do it.

We've surveyed the comments that have already been submitted to the City online, which describe the many ways in which granting a variance would not be in the interest of the community. We agree with those comments and will not repeat them here.

As we understand it, this is not a situation where the developers are legally entitled to move forward with the project and there's nothing the City can do to stop it, notwithstanding the needs and wishes of the community.

So please, just say "no."

Thanks for the opportunity for input,

Creight and Jo Horton

Admin

From: Dan Sterling <dansterling@gmail.com>
Sent: Monday, October 11, 2021 2:55 PM
To: City Hall
Subject: variance request for new hotel on YOR

Dear Folks,

I'm writing about the variance request from Agate Point Residences LLC that will permit them to build a hotel complex on Yachats Ocean Road.

Being a new resident in Yachats (and a visitor and lover of the area for over 40 years) I was interested to hear of the proposed hotel construction for the reason that a new high-density dwelling on Yachats Ocean Road didn't sound like a natural fit for the community. In addition to the need for a variance to construct a hotel on less than an acre lot as per city code, a portion of the construction will impact wetlands, automobile traffic on a very narrow and pedestrian-heavy Yachats Ocean Road will be increased, and the proposed use of Shellmidden Street as an entryway off of YOR to the hotel seems like it would negatively impact the character of the immediate neighborhood. The reason for having a planning commission, of course, is to ensure that the values of the community retain their integrity and that their expression remains congruent with (desirable) historical and current preferences of its citizens. Wetlands preservation and livability are important, often competitive, features of today's urban landscape. The Yachats community is attuned to having a complimentary balance of natural beauty and human habitation, which is one reason it continues to be such a special place. Therefore, careful consideration should be given when variance requests impact the natural world and livability (based upon strong values of conservation and neighborly consideration). Too, the urgency for concentrated habitation options should be considered, including whether they ought to be oriented toward visitors or toward residents, including those who make a living in and around Yachats.

While there might be some generic benefits from having another hotel in Yachats (mainly in the form of increased income for the city and another hospitality option for vacationers), the cultural costs of hotel construction on a property with unique natural features would seem to be high. The perception of livability is always impacted by new construction, but *where a variance is required*, the burden of convincingly establishing the benefit of approval should be as high as are the standards of stewardship of the surrounding community. Here, we have a proposal for construction in a designated wetland area, where traffic patterns and a concentration of hospitality-related activity will negatively impact neighbors and pedestrians alike, and where a variance from established practice is needed to allow said construction to proceed. Based upon the proposal from Agate Point Residences LLC, it's not crystal clear that the positive benefits of their proposal outweigh the burdens.

Sincerely,

Dan Sterling

October 11, 2021

Attention: Planning Department
City of Yachats
PO Box 345
Yachats, OR 97498

Project Name: Yachats Planning Commission Yachats Ocean Road Development

Subject: Yachats Ocean Road Development

Dear Planning Commission

My name is Joseph Danko, and I am a Yachats resident currently living at 370 Hill CT. I am writing as both a Yachats community member and professional engineer who has been leading urban development projects for more than 30 years across the globe.

I am writing to you today to Aggressively Oppose the Yachats Ocean Road Development. Throughout my professional career, I have been focused on implementing community supported, sustainable and resilient developments that strive to include all members of the community. This planned development violates all of the tenets that I have been involved in throughout my career including:

This is not supported by the Community. The neighborhood and community around this exact development area are opposed to this development. It is not in their interest and provides no benefits to their well-being. First and foremost, we must listen carefully to our communities' voice when we conceive new developments. The community is saying "NO" to this development. We need to listen.

The development is not Inclusive. The next developments in and around Yachats need to be focused on affordable housing to support members of our community who work in this community. Our planning commission should focus first and foremost on housing that workers can afford who support the services, health and well being of all Yachats Citizens.

This is not Sustainable or Resilient. This development is planned on an existing wetland. This is not only a violation of the law it is harming to the environment and ecosystem. Wetlands provide

Joseph Danko
370 Hill CT
Yachats, OR
97498
541.547.3618 (D)
541.740.4611 (M)

October 11, 2021
Subject: Yachats Ocean Road Development

ecosystem services to all of us as well as supporting a diversity of life that we all cherish as Yachats Residents. Granting an exemption that will permanently eliminate valuable wetlands is not environmentally unsustainable and it also impacts the overall resiliency of our community.

Destroys the unique Yachats Ocean Road experience. Yachats ocean road provides a unique experience to walk safely with minimal vehicular traffic. I am down there at least once per week and cherish the fresh exposure to the ocean and environment and interactions with other pedestrians. We do not need to add more vehicles that will move Yachats Ocean Road to a more congested type of road increasing the risk of accidents. This will also devastate the "special experience" that is currently offered to the main users who are pedestrians and their pets.

Violates Municipal Code. Hotels are supposed to have direct access to Highway 101. This development violates that code and again granting the Developer an exception is unacceptable. It will also put all of that vehicular traffic onto Yachats Ocean Road. Secondly, the code is clear that hotel developments should be on a minimum of 1 acre. This planned development is only ½ acre. Again, we do not need to make exceptions to our own municipal code when the community is opposed to this development for all of the reasons I have already listed above.

Yours sincerely

Joseph Danko P.E.

Yachats Resident at 370 Hill CT

Managing Director, City Solutions

Jacobs Engineering Group
541.740.4611
jo.danko@jacobs.com

Admin

From: Jude Toler <judestile@yahoo.com>
Sent: Monday, October 11, 2021 2:28 PM
To: City Hall
Cc: Yachats City Planner
Subject: Attn. Planning Commission (revised)

Yachats Planning Commission.

RE: Agate Cove Development.

We are permanent residents of Yachats and wish to register our objections to the proposed Agate Cove 'hotel' as follows.

1. The Municipal Code clearly states that a hotel must be on at least one acre or more. This development described as a 'hotel' is actually seven vacation rental cabins on a half-acre. The designation 'hotel' is a poorly disguised effort to avoid vacation rental regulations.

The fact that there will be no onsite management is irresponsible. There will be no control over **noise, trespass, fire pits** (perhaps you can imagine people dragging driftwood up the cliff to burn) what about **smoke, fire danger, Fireworks**. There are frequently more people in a rental than are allowed and this is difficult to regulate. Experience shows that offsite management available 24/7 is a pipe dream!

Trash is already an issue. Residents who daily walk on the road, bring bags to collect trash, everything from cigarette butts to plastic bags, plastic coffee cup lids and not to mention bagged dog poop.

The west side of Yachats Ocean Road will likely become an extension of this development and overflow parking for this development.

2. The Municipal Code clearly states that all hotels/motels must have direct access to US Hwy 101.

Don't all hotels and motels in Yachats actually have direct access for vehicular traffic to US HWY 101 and why should this development be any different?

The requested exclusion proposes a parking lot for 20 vehicles with access through Shellmidden Way to Hwy 101. **Increased traffic is an understatement**. Has the State Park System weighed in on this aspect?

Shellmidden Way is a narrow, gravel road access to a residential area with single family homes. This proposal would have an enormous impact on the residents in terms of noise, lights, dust and pedestrian safety. Shellmidden Way joins Yachats

Ocean Road close to the junction with US Hwy 101 and the Amanda Trail, so sightseers, pedestrians, and hikers on Yachats Ocean Road will be affected. There is a blind curve at that junction with Hwy 101 and the area is heavily used, especially during the tourist season. Increased traffic from such a development will exacerbate the problem. ***This is a major safety issue. Is the State Park HQ in Salem aware of this?***

3. This development is the very opposite of the noble aspirations proposed by the Comprehensive Plan which includes, *Protection of Natural Resources, Protection of Shore land Resources and Protection from Natural Hazards and Disasters.*

Wetland Protection is supported by the community and should be a consideration. This area was surveyed but not formally adopted apparently because it slipped through the cracks due to staffing and administration issues. (Please review Joanne Kittel's letter to the Yachats News of September 2021)

In conclusion, there seem to be absolutely no redeeming features to this development. Based on the facts, the requested exclusions should be denied. If these exclusions are not denied, this will set a precedent and open the door to future exclusion requests by developers.

Change is inevitable. The regulations controlling development and emphasizing preservation have been crafted over time by people who serve the community like all of you. Please deny these exclusion requests which serve only to erode those regulations, and by extension our community.

Why do we even have a municipal code if it is not going to be followed by everyone?

Respectfully,

Judith Toler P.O.Box 61 Rheychol Paris P.O.Box 686

74 Greenhill Dr. 521 Overlook Dr.

Yachats, OR 97498

Admin

From: Mary Zukin <maryhz723@gmail.com>
Sent: Monday, October 11, 2021 1:09 PM
To: Yachats City Planner; Kimmie Jackson; City Hall; Anthony Muirhead; Ann@yachatsmail.org; Greg@yachatsmail.org; Mary Ellen O'Shaughnessey; Leslie Vaaler
Subject: Agate Point Residences

Dear Kimmie, Yachats city planners, council members, and all.
I beg forgiveness for anyone I've not listed.

I am a relatively new resident of Yachats, and have lived at 518 Oceanview Drive since December 2020.

I am writing in response to the new development proposal called the Agate Point Residences, LCC. I am opposed to this development being allowed to proceed at this time because of unresolved and not yet sought answers to the questions this development proposal raises.

I am concerned about the following issues which I have **not listed in order of importance**:

- The segment of the property that is designated wetland. What are the rules around the wetland and who is the regulating agency for this wetland?
- Yachats has a pre-existing housing situation. My understanding is that there is not currently enough affordable housing to house the housekeepers and postal service employees we need!
- When tourists forget their manners things can get crazy around these parts since we don't have anyone other than the fire marshal who can tell anyone else how to behave. This is the best and the worst situation! I don't think we need more enforcers, but I do think we could develop a service (based on the model of CAHOOTS in Eugene) some way to communicate effectively with misbehaving tourists. I just don't think we're set up to safely host more unsupervised tourists.
- I am concerned about any and all nearby archeological sites that would be affected by this development. Who are the local, state, and federal agencies that could advise us on this aspect of this request for development.
- Yachats has at least one other pre-existing housing situation. There is currently a cap on vacation rentals! What are the Agate Point Residences anyway? I understand that if they classify themselves as a hotel then they could conceivably do this. I believe the ins and outs of this issue needs to be addressed. How do we define Hotel here in Yachats?

In summary, I am new here and know little about the answers to the questions I have posed.

I believe Yachats might be an easy target for a developer with a development plan that might not be accepted elsewhere, again I haven't researched this and I'm not exactly sure how to begin asking the right questions.

I would like to be involved in developing a safe and happy community here.

Thanks,
Mary Zukin

Admin

From: Susan Stevens <susanstevens222@icloud.com>
Sent: Monday, October 11, 2021 12:40 PM
To: City Hall
Subject: Agate Point Development Application

Yachats Planning Director and Commission
Re: Agate Point Development Application

The land use CU application for this seven cottage hotel should be denied. It fails to meet key community protections and provisions of the Comprehensive Plan and Municipal Code. The application is unable to meet wetlands jurisdictional priorities of avoidance and mitigation. As of yet, it lacks a Wetlands 404 Permit under the Federal Clean Waters Act which renders premature any Planning Commission decision.

This plan violates the provisions of our Comp Plan, which call on any and all proposed development to preserve, protect and enhance our local natural resources. The most glaring and compelling reason for denial stems from the applicants' inability to provide direct access to U.S. Highway 101, as required.

Yachats interests can only be served by denying this Conditional Use Application.

Sincerely,

Peter and Susan Stevens
22 Catkin Loop
Koho - Yachats

①

From: Paul Thompson & Elida Canales on Oct 11th, 2021 in the morning

To: Yachats Planning Commission, Yachats Interim City Manager, Yachats City Planner, and Yachats City Council

ALATE POINT

Subject: Our total and complete belief that this project should be rejected for all the reasons we are listing below

Our city has developed a City Code over the years to manage & define how we would like our city to be for the future. Approving the requested variances undermines this principal. The owners of said property should be required to COMPLY WITH THE CODE AS IS ! Approval of this project and the variances the project owners are requesting will clearly degrade the quality of life for residents and visitors alike in south Yachats.

Yachats Ocean Road is 1 & ½ lanes wide and can't reasonably support more traffic. More traffic on this narrow road is a safety hazard to all the people that use it as a walking and biking trail. Shell Midden Way is a narrow dirt/gravel road not made/designed for increased daily usage from the project's cabin renters.

Paving over wetlands is uncalled for and simply disgusting for the environment. This will cause runoff problems for adjacent landowners and destroy animal and insect habitat not to mention destroying vegetation that feeds and houses birds.

Calling this a "mini hotel" is nothing more than a way to get around the code for "vacation rentals" and the waiting list for a vacation rental

②

license. We have huge problems from vacation rentals, i.e., increased noise due to large parties, parking issues, garbage issues, and just general noncompliance with reasonable standards for staying in our community.

They have proposed NO on-site manager and are planning a vacation rental company to manage their seven mini hotels. Sounds like this is a vacation rental project.

Due to global warming and its associated degradation of our city water supply we should not approve this project for a lack of water supply for the future. This project will cause an increased burden on our very limited water supply NOW and for the future.

Please DON'T APPROVE THESE VARIANCES for this "mini hotel" project in south Yachats.

We have lived permanently in Yachats for the last 11 years and feel that the Yachats City Code defines the city we want to live in NOW and for the future.

Thank you for your work on this issue,


Paul Thompson


Elida Canales

Admin

From: Judy H Day <judydayconnections@gmail.com>
Sent: Monday, October 11, 2021 10:35 AM
To: City Hall
Subject: Proposed Development of hotel on Shellmidden Way

October 10, 2021

Planning Department
City of Yachats
Yachats, OR 97498

I am a resident in the City of Yachats. I am opposed to the proposed hotel on Shellmidden Way. I walk Yachats Ocean Road frequently and can tell you from experience that we do not need additional traffic on that very narrow road. Locals and visitors alike enjoy strolling along Yachats Ocean Road, with cars traveling both ways, which already has safety concerns.

I am also concerned about the 'Wetlands Variance'.

Please do not approve this developer's request. It will set a precedence that could be detrimental to our community in the future.

Please do what is right for the people living on Shellmidden Way and for the residents of Yachats that want to protect Yachats Ocean Road for future generations.

Sincerely,
Judy Day
412 Marine Drive
Yachats, Or 97498

Admin

From: Mindy Parsons <mindysueparsons@gmail.com>
Sent: Monday, October 11, 2021 6:09 AM
To: City Hall
Cc: Leslie Vaaler; Mary Ellen O'Shaughnessey; Greg@yachatsmail.org; Anthony Muirhead; Ann@yachatsmail.org
Subject: Agate Cove development

Dear City council and planning commission, I want to voice my objection to the proposed Agate Cove development. My family and I would be directly affected by such a huge development on our beautiful Ocean Rd. Daily I walk my two small children along Ocean Rd. From one end to the other. My four year old runs free as I tote our baby around. There already seems to be more than enough traffic on the road and it seems to grow every year. Not being able to walk and enjoy our our Ocean Rd, without constant fear, would be horrible. It is honestly one of our favorite parts of living here. The intersection of Ocean Rd and Shellmidden st is already a very narrow spot on the road, more traffic there would be downright dangerous.

I'm not even going to go into the wetlands right there and the size of this proposal that seems to be breaking municipal codes. I am just making a plea not to move forward with this project and protect our Ocean Rd.

Mindy Parsons
541.270.7934
504 Lily Ct
Yachats, OR

Sent from my iPhone

Dear Yachats Planning Commission/Board:

I am writing to express my objections to the proposed new development on 358 Yachats Ocean Drive on several grounds. I have been an owner on 370 Village Lane for nearly 8 years now; it's a part of the Dwellings HOA community which sits directly to the east of the proposed development. I am usually one to defend individual property owners rights, however, in this particular case, I feel that the owners plans to develop this property are not neighborly, not good for Yachats, if not just plain egregious.

- (1) It's doubtful that the 7 prefab housing units planned for this property will be built to the standards and precedents set by pre-existing neighboring homes; what stands out is that there are so many structures (not just a single one) condensed onto a single swath of land, and that they are not custom architected. To add insult to injury, these units won't be squirrelled away sight unseen on some backroad, but they will be in plain sight on what is one of the most beautiful stretches of road along the Oregon coast. Really? Is this what we want?
- (2) Per the developer's plan, a parking lot to hold 20 cars will be built on the plot of land. As a point of comparison, this is nearly as large as the parking lot in front of the Yachats grocery store in the middle of town. You want to try and squeeze that kind of traffic into what is currently a quiet residential community? And also so very close to a fragile wetland supporting wildlife habitat?
- (3) In recent years, Yachats instituted a cap on the number of short term rental units allowed in the municipality of Yachats, and that was done for good reasons; to prevent the town from being overrun with tourists, to allow more full time residents to live here, and other reasons. If these 7 units were under the jurisdiction of the Yachats short term regulation, then they'd need 7 permits. The last I checked there was a waiting line to obtain a short term rental permit. A developer would not be this aggressive if s/he had to wait in line for a rental permit, right? So it is my feeling that either they need just a single permit, or because they are a commercial venture, the regulation does not apply to them. But either way and regardless of the legalese, it goes against Yachatsian's intentions to cap short term rental activity. If this development is allowed to go forward, it might just have the undesired affect of inviting other developers to follow suit, thus making even further mockery of Yachats short term rental policy.

There are many red flags here, and I hope you pay them all very close consideration when making a decision about the property.

Donald Maffly, 370 Village Lane

Admin

From: Patty Hodgins <phodg1@gmail.com>
Sent: Sunday, October 10, 2021 9:53 PM
To: City Hall
Subject: Agate Point Cottages

10/10/21

To: Yachats Planning Commission
Yachats City Council
From: Patty Hodgins, 433 E. 2nd St.
Re: Proposed Agate Point development

Since many others have made a variety of strong arguments against allowing the developers of Agate Point Cottages to proceed, I'd like instead to pose a few questions.

What would the City *gain* by granting variances to code as regards the one-acre minimum and direct access to 101?

What would be the advantage to the City of going along with the developer's claim that seven cottages constitute a hotel?

What unmet needs in the community would the development fill?

I hope these sorts of questions have occurred to you too. Personally, I can't come up with satisfactory answers.

Thank you all for volunteering your time and energy in service to the community.

To all it may concern:

I write to join the opposition already expressed by many others to the proposed development on wetlands adjacent to Yachats Ocean Road. The municipal code exceptions sought by the developers are unsupportable and should be rejected by any and all agencies with authority over the project.

First, the effort to call 6-7 vacation rentals a "hotel" on half the required acreage for such a development is farcical and a thinly veiled attempt to circumvent the short-term rental limitations and restrictions put in place by the Yachats Council.

Second, adding density of the sort proposed contributes nothing to the surrounding community, adds to already existing concerns about traffic safety on Yachats Ocean Road, and negatively impacts the sensitive environment and resources which are already under stress by the increase in population (permanent and temporary). We just came out of water rationing because of reduced water flow in the feeder creeks. How is it good municipal management to add more demand for this precious natural resource?

Third, except for the desire to make money, there is nothing in the development proposal which justifies waiving the requirement for direct access to a hotel from Highway 101; or the requirement to build a hotel on nothing less than one acre; or the requirement that a "hotel" meet the statutory definitions.

Fourth, in addition to high density housing without on-site management, I understand the development plans envision, not one, but two firepits. This has the potential for short-term vacationers to raid the driftwood off agate beach for their "pits" and fireplaces and increases the already significant fire risk all Oregonians have been living with the past three + years.

Fifth, I am stunned that the Planning commission, presumably made up of my neighbors and friends in the community, is even contemplating the number of variances this project will require to support its construction. I am not anti-vacation rentals. I am opposed to having a rental policy and licensure process, which endured marathon discussion sessions and community input over months and months, be completely ignored for reasons that are not clear to me.

I implore the Planning Commission to reject all request for special variances associated with this project and require any development on the wetlands property to be subject to all federal, state, county, and city requirements.

Thank you,

Karen L. Hawkins

30 Catkin Loop

Yachats

To Yachats Planning Commission

I am writing to express my concerns with the proposed Agate Point Residences

I believe that the Planning Commission should deny the requested variances because runoff from the proposed development will impact the adjacent, contiguous wetlands, and the project is in violation of Yachats's short-term rental policy.

First, nature is not as rigid as straight lines on a plat map. Whether or not the development is officially a wetland, the amount of impervious surface required for the units and parking will significantly impact the adjacent wetlands. Yachats has ordinances to avoid these deleterious environmental impacts.

I would ask that the Planning Commission members review Ordinance 9.52.052, especially H1, H2, H4, and H5. The proposed development is not in compliance with this Ordinance. To comply, there would have to be less density or engineered runoff controls. Because the proposal includes no mitigation, the Commission should not grant a variance for density or lot size.

Second, I believe that calling this project a hotel is, at best, a cynical ploy and, at worst, a disingenuous attempt to circumvent Yachats's limits on Short Term Rentals (STR). There is no material difference between these units and other STR that Sweet Homes manages— no on-site staff, office space, daily cleaning and laundry service, restaurant, or other amenities. The project is nothing other than seven non-grandfathered additional STR.

The city is at the maximum number of STR licenses making it is difficult to understand the economic viability of this project. If it is a hotel, where are the (costly) on-site amenities and shared interior spaces? If it is seven new STR, how long before the units receive licenses and are available for rental? Rather, it feels very much like the development is an end-run around Yachats's STR Ordinances or an attempt to create a planned development/time-share community without going through the proper approvals including density requirements. The Commission should not approve the requested variances.

Craig Berdie
319 East 3rd Street
Yachats, OR 97498

To all it may concern:

I write to join the opposition already expressed by many others to the proposed development on wetlands adjacent to Yachats Ocean Road. The municipal code exceptions sought by the developers are unsupportable and should be rejected by any and all agencies with authority over the project.

First, the effort to call 6-7 vacation rentals a “hotel” on half the required acreage for such a development is farcical and a thinly veiled attempt to circumvent the short-term rental limitations and restrictions put in place by the Yachats Council.

Second, adding density of the sort proposed contributes nothing to the surrounding community, adds to already existing concerns about traffic safety on Yachats Ocean Road, and negatively impacts the sensitive environment and resources which are already under stress by the increase in population (permanent and temporary). We just came out of water rationing because of reduced water flow in the feeder creeks. How is it good municipal management to add more demand for this precious natural resource?

Third, except for the desire to make money, there is nothing in the development proposal which justifies waiving the requirement for direct access to a hotel from Highway 101; or the requirement to build a hotel on nothing less than one acre; or the requirement that a “hotel” meet the statutory definitions.

Fourth, in addition to high density housing without on-site management, I understand the development plans envision, not one, but two firepits. This has the potential for short-term vacationers to raid the driftwood off agate beach for their “pits” and fireplaces and increases the already significant fire risk all Oregonians have been living with the past three + years.

Fifth, I am stunned that the Planning commission, presumably made up of my neighbors and friends in the community, is even contemplating the number of variances this project will require to support its construction. I am not anti-vacation rentals. I am opposed to having a rental policy and licensure process, which endured marathon discussion sessions and community input over months and months, be completely ignored for reasons that are not clear to me.

I implore the Planning Commission to reject all request for special variances associated with this project and require any development on the wetlands property to be subject to all federal, state, county, and city requirements.

Thank you,

Karen L. Hawkins

30 Catkin Loop

Yachats

Admin

From: Alex Cox <tombstone@fastmail.com>
Sent: Sunday, October 10, 2021 1:27 PM
To: City Hall
Subject: Please say no to variance for Agate Point Residences

Hi there

I live at 315 Radar Road in Yachats, and am writing to oppose a variance for the Agate Point Residences development. There is no benefit to Yachats in this variance. The land in question is valuable wetlands with a gravel road in a single-family residence area. Seven vacation rentals on ½ acre, pretending to be a hotel, is not appropriate. The City of Yachats should not approve any more short-term rentals, here or elsewhere. Yachats needs long-term rental space for people who work here and currently have to live in Waldport, Florence or even further away. The City should prioritize homes where people who work here can afford to live -- not more short-term rentals.

A variance should not be approved.

Thank you
Alex Cox

Admin

From: mary hoskins <lam34274@gmail.com>
Sent: Sunday, October 10, 2021 12:25 PM
To: City Hall
Subject: YACHATS OCEAN ROAD

please except this email to present at the meeting about the developing on Yachats Ocean Rd. As a resident I would not like to see the wetlands disturbed also do not like giving exceptions by developers to the municipal code, it was there of put there for a reason. Please present my vote as a protest to building at this meeting. Thank Lynn Pfeiffer (3505 Hwy. 101 N., Yachats)

Sent from my iPhone

Admin

From: Morgen Brodie <silvercrone47@gmail.com>
Sent: Sunday, October 10, 2021 12:22 PM
To: City Hall
Subject: Comments for Planning Commission meeting on October19, 2021

Dear Members of the Planning Commission:

I am writing in opposition to the variances requested for the proposed Agate Cove development.

While I leave it to my learned friends to cite chapter and verse of the variances and their potential negative outcome (both in the short run and as we continue to be surprised and horrified by the unfolding consequences of global warming), I wish to take a broad view. (The pun's a bonus there.)

Yachats operates on the labor and good will of citizen volunteers such as yourselves-people who are willing to devote huge amounts of time to familiarize themselves with the issues facing our community and to draft and review plans, ordinances and motions that will reflect our community vision, the first part of which is "Our village is a place where natural resources are valued and protected...."

To that end we have had much energy and skill devoted to the development of land use planning, including specific stipulations to protect our natural resources and quality of life. The proposed Agate Cove development is not consistent with and seeks to override the plan our citizens have worked hard to develop, and the out of state business is asking for exceptions and variances to our plan to protect our community-for their financial gain, not for the benefit of our ecosystem or our citizenry.

I strongly request that you honor the work, spirit and intent of our community, recognize that we are temporary stewards of this beautiful land, and deny the variances, which are not to the benefit of our citizens or the land on which we are blessed to live.

Thank you for your consideration.

Morgen Brodie
258 W. 2nd Street

--

Sent from Gmail Mobile

Admin

From: maryann cherrier <maryanncherrier@gmail.com>
Sent: Sunday, October 10, 2021 12:18 PM
To: City Hall
Subject: Agate Cove Development

To: Yachats Planning Commission

Subject: Agate Cove Development Concerns/Objection

Dear Commissioners,

It has come to our attention that you are reviewing a proposal for development near Agate Cove accessed by Shellmidden Street. Reference the proposal of several homes/cabins to be placed on a 1/2 acre parcel and will operate as a hotel. Also a location that we had thought designated a wetland.

Concerns:

This proposal does not appear to follow our Municipal Code, i.e: one acre of land for hotel, and direct access to HWY 101.

If the land is truly a wetland it is both foolish and irresponsible to build. In addition we need to be considering the eco system and how it will be affected.

Questions:

Who would overseeing the "hotel?"

How will this affect traffic on an already busy Yachats Ocean Road?

Are we considering all factors of the environment? How will plants, animals and people be changed if this proposal is allowed to proceed?

We have been full time residents since 2007 and support the healthy development of Yachats. But due to the most likely negative impact to the community we must take serious caution and raise objection to the Agate Cove Development proposal.

You are in a tender position having to decide the future of our town, and you do make the difference. In your deliberation please remember: **great communities don't just happen — they are planned!**

Respectfully Submitted,
MaryAnn Cherrier
Ellison Glattly
47 Greenhill Drive
PO Box 527
Yachats, OR 97498
tel: 541-261-4475

Admin

From: Tod Davies <tod.davies@gmail.com>
Sent: Sunday, October 10, 2021 11:50 AM
To: City Hall
Subject: Fwd: Concerns about Agate Point Development

----- Forwarded message -----

From: **Tod Davies** <tod.davies@gmail.com>
Date: Sun, Oct 10, 2021 at 11:48 AM
Subject: Concerns about Agate Point Development
To: <cityhall@yachatsmail.com>

Hello,

I am a permanent two year resident of Yachats and a visitor for the previous four decades.

My name is Tod Davies, and I live on Radar Road in Yachats.

I am very concerned about, and opposed to, the proposed Agate Point Residences for the following reasons.

Wetlands.

This is clearly a wetland and should be protected; not paved over or developed. It is an important ecosystem providing habitat for birds, amphibians and mammals. Once removed it can never be replaced.

Traffic

Shell Midden Street is a private graveled road. Traffic impact will create dust and a danger in a pedestrian friendly area. The same can be said for Ocean Road which already suffers from a lot of traffic on its narrow surface: cars, people, pets and bikes. Please don't approve a variance that will increase the likelihood of accidents or injury due to increased traffic.

Infrastructure

Yachats does not have the capability to support more traffic, tourists or parking. Also to be considered is the strain on the sewer system and the impact on our water supply--likely to worsen with climate change. We can clearly see that local businesses are struggling with staff shortages due to the lack of affordable housing.

A Cottage Hotel

This is primarily a single family residential neighborhood. Seven vacation rentals on ½ acre thinly disguised as a hotel to get around short term rental license requirements is out of place in this location. A variance should not be approved. I have had concerns about how short term rentals are monitored for fire danger etc. already. There is no onsite management proposed here that would answer these concerns.

The decision you make can set a precedent for future developments in Yachats. I urge you to not to approve the variances. Consider the good of Yachats. How is this development of benefit? It is not the “highest and best use” for this small ½ acre lot regardless of the R4 zoning.

Fire Pits

Smoke pollution, impact on neighbors not to mention a fire hazard. Again no onsite manager.

Supplemental Information

There is a good reason for a hotel/resort required to have direct access to 101 and be on at least an acre. As an example the Yachats Inn has direct access from 101, is clearly on sufficient acreage and has onsite management. Agate Point has none of these. Private street access via Ocean Road does not make sense, and a variance should not be allowed. . Once again it's clearly a wetland area. Once removed it cannot be replaced. We should tread very carefully before allowing growth that is potentially undoable and unsustainable.

Lighting

Additional abundant lighting will obviously create more light pollution.

Noise

More vacationers mean more nighttime noise, as well as increased fire danger from legal and illegal fireworks.

Trash

There's already been an increased amount of trash in the last year or so. We'll see more dog poop, bagged and not, cigarette butts, plastic and food and beverage containers.

I sincerely hope you will all consider stopping this development.

Thank you for your attention, and for all your work here,

Tod Davies

--

Tod Davies
editorial director
Exterminating Angel Press
exterminatingangel.com
"Creative Solutions for Practical Idealists"

join us on [FACEBOOK](#)
[Twitter @EAPress](#)
& now on [LinkedIn](#)

--

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& now on [LinkedIn](#)

Admin

From: Ron Simans <ronbodoc@live.com>
Sent: Sunday, October 10, 2021 9:02 AM
To: City Hall
Subject: Proposed Yachats Ocean Road Development

RE: Proposed Variances for "Hotel" development along Yachats Ocean Road

Yachats Planning Commissioners:

We have owned our home south of the bridge in Yachats for over 20 years. We regularly walk into town on Yachats Ocean Road and, given the narrow road (which really should be a one-way street), it is already challenging to do so, especially when there are cars passing in both directions. Besides posing significant risk for pedestrians, the idea of using a gravel, local access road (Shellmidden) to enter this development, it is also untenable for the residents as they strive to preserve the quiet, residential character of their neighborhood.

Wetlands are precious for many reasons, and the plan to develop the area in question raises many concerns for the preservation not only of habitat, but also with regards to the actual diversion of water. How and where to would this water be diverted? What are the potential impacts on other local water systems?

I agree with other residents that it does appear that the developer is using the term "hotel" to get around the vacation rental restrictions. But a hotel must be on at least 1 acre and must have direct access to Hwy 101. This project does not meet either of those requirements.

As we have witnessed in Yachats over the last couple years, more new property owners with deep pockets have chosen to build oversized homes along the waterfront, significantly effecting the views of longtime owners. The impact of these buildings cannot be overstated. Preventing this development is another opportunity for us, as a community, to preserve the character of Yachats village along this stretch of road.

Honestly, my biggest question is WHY WOULD THE PLANNERS EVEN CONSIDER THESE VARIANCES? WHAT UPSIDE IS THERE FOR YACHATS OR ITS RESIDENTS? Other than the developers and possibly the future managers of this property, who will benefit if this project is granted the variances needed to move forward?

I strongly oppose this project and changing local codes or granting variances to allow it!

Ron Simans

10-9-21

Yachats Planning Commission,

As a full-time resident of Yachats living on Windy Way, I would like to strongly object to the building request for Yachats Ocean Road. The building request to build 7-8 rental units/cottages. My objections are the following:

1. The rentals will not have direct access from Hwy 101, the access will come from Yachats Ocean Road. Yachats Ocean Road is already highly used by both pedestrians and vehicles and is a narrow road.
2. Individual rental properties are not a "Hotel", that exception should not be made.
3. In 2011 that 1/2 acre was determined as "Invaluable" wetlands by a professional wetland consulting firm, has that changed? If so, when?
4. As it stands now the city is putting water restrictions on current residents. This building allowance will contribute to the water shortage.

I sincerely request this building allowance not be granted, it is not in the best interest of the City of Yachats. City codes and restrictions exist for a reason and need to be enforced.

Thank you,

Diana Couey
43 Windy Way
Yachats, Oregon

Admin

From: Paul Pardi <oregonpardi@aol.com>
Sent: Saturday, October 9, 2021 10:57 AM
To: City Hall
Subject: Exception to Code - Yachats Ocean Road

Sir,

As a full time resident of the Yachats community for the last 9 years I'm appalled by the Agate Point development. Several times a week I walk the 804 trail to the Yachats River bridge and across to the Ocean Road. Walking along this narrow lane is hazardous as it is. The limited traffic must trail walkers, bikers and especially old folks in wheelchairs. Errors in building this road have made it incompatible with two-way traffic.

Building a dozen or so units at the Agate Point site will probably double traffic on this lane. Increasing the risk of serious accidents. I strongly urge the planning commission to reject any change in ordinance to allow this construction.

Paul Pardi
41 NW Salmon St.
Yachats, OR 97498

Admin

From: Gail Pardi <par2pa@aol.com>
Sent: Saturday, October 9, 2021 10:52 AM
To: City Hall
Subject: Comment for Yachats Planning Commission on Agate Point

I am a full time resident of Yachats and run Yachats Ocean Road every other day. Considering there is not even room for two cars at most spots it is really more of a lane than a road. It is used by dog walkers, families with strollers, bikers and even some who rely on walkers to navigate. It is inconceivable that the Planning Commission would grant a variance to a hotel to use this as its only access. It would be dangerous to all involved and borders on negligence. Please do not approve the code exception.

Thank you,
Gail Pardi
41 NW Salmon St
Yachats

Admin

From: Brendan MacGuire <brendangmacguire@gmail.com>
Sent: Friday, October 8, 2021 8:16 PM
To: City Hall
Subject: Yachts Ocean Road New Development

I live locally and walk Yachats Ocean Road road daily with my dog. Shellmidden will be the access to these 7 or 8 homes from Yachats Ocean Road. The traffic that will be created on two very narrow roads will really impact a residential area. I don't think an easement overlooking access from 101 should be allowed. Fourteen cars or SUV;s and all support vehicles at all hours of the day and night is an accident waiting to happen, Thanks for your consideration. Brendan G MacGuire
664 Pacific View Dr. Yachats, OR 97498

Admin

From: Jill McLean <mistandjewel@gmail.com>
Sent: Friday, October 8, 2021 7:38 PM
To: City Hall
Subject: Agate Point Development

This is in regards to the Agate Point Development debate going on.

I want to express that I am opposed to the new development.

I hope that the deciding powers will remember our city vision statement, Which used to be on the wall in the civic room, and is printed monthly in the newsletter. which begins with:

"Yachats is a place where natural resources are valued and protected"....

Allowing our small patch of paradise here on the coast, to become **overdeveloped**, is not conducive to protecting the environment,

nor is it pleasant for anyone, when the area is as busy and car dense as it is, during much of the year now.

Even the tourists were complaining this year, about the traffic, overcrowding and lack of ease moving through the businesses, restaurants and town.

I would like to see Yachats take the very best care of what we already have, and find reasons to put the brakes on all new building and development.

Less is More.... would be a good philosophy for humans to adopt now that our planet is struggling to keep up with the endless human "needs" and wants.

Thank You for considering my opinion.

Jill McLean

Admin

From: Deirdre Allen <ddallen48@yahoo.com>
Sent: Friday, October 8, 2021 6:14 PM
To: City Hall
Subject: Ocean Road development

Yachats City Hall
Yachats, Oregon
97498

To whom It May Concern,

Please abstain from approving the proposed development of 7-8 units/hotel on Ocean Road. Paving and/or damaging the wetland habitat is incongruent with the principles that Yachats residents hold dear. As someone who uses Ocean Road almost daily to walk my dog, I would like to express how much the undeveloped space increases the health and natural beauty of the area for wild animals and humans alike. Hearing and watching the red winged blackbirds, watching the willow trees bloom, and hearing the water trickle it's way to the ocean from the hill is a joy that enriches my soul.

Please consider preserving the natural habitat. Once it is gone, it is gone forever.
Thank you for your consideration.

Best regards,
Deirdre Swansen

Sent from my iPad

October 8, 2021

Dear Members of the Yachats Planning Commission

We wish to object to the proposed exception to the municipal code allowing development of a hotel on ½ acre of wetland on Yachats Ocean Road. At you fully know, we need to protect climate through protection of our existing wetlands. Yachats Ocean Road allows access to so many visitors to Yachats to ocean and the river, a truly special and unique place. In recent years, it has become increasingly congested with traffic. Adding additional hotel space that is an exception to the municipal code will further exacerbate traffic issues and parking and reduce access to the ocean and to the river.

As homeowners in Yachats for 21 years, we are grateful for many of the thoughtful decisions made by the Yachats Planning Commission in which as a commission you weigh water, sewer, traffic, environment and statute as you collectively make your final decisions. This decision is irreversible; once this type of exception is made, changes that impact the environment on Yachats Ocean Road and the larger Yachats community will have been made that set a course for developers that assigns them a more important role than community at large and statues in existence.

We need housing for many in the community that is affordable and accessible. This hotel does not appear to address the needs of the large and diverse community and its housing needs in Yachats.

Thank you for your consideration.

Sincerely,
Summers Kalishman
E-mail: kalishman@gmail.com
Norty Kalishman
E-mail: nortykalishman@gmail.com
53 Windy Way
Yachats, OR

October 8, 2021

Yachats Planning Commission
Katherine Guenther
Cityhall@yachatsmail.org

William and Shirley Golden
411 Horizon Hill Road
Yachats, OR. 97498

Dear members of the Yachats Planning Commission:

We are against granting the conditional use requested by Agate Point Residences LLC to the zoning restrictions for the property at 358 Yachats Ocean Road referred to as "Agate Point Cottages."

1. The property is not even close to 1 acre as required by current zoning for a "hotel." If the variance is allowed, the units would be compacted onto .57 acres and cause additional stress to the local water and sewer systems. They would also be exceeding the R-4 density standard by putting seven cottages on the property.
2. The property does not have access to Highway 101 as required by current zoning for a "hotel." If the variance is allowed, it would contribute to additional congestion on Yachats Ocean Road and additional danger for the pedestrians and vehicle traffic already using this road.
3. The plans as put forward appear to be to build 7 short term rental units rather than a hotel. A hotel would normally have an on-site manager. These cottages appear to be an attempt to avoid the rental licenses required by the city.

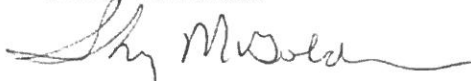
We also object to losing this property as a wetland for our community. Although the owner would contribute to a Wetlands Conservation Fund to compensate for the loss, there is no requirement for a fund like that to conserve property in the city of Yachats. If we allow this use of the property, it is a wetland area lost to our city forever. The area is a rich wildlife habitat and should not be destroyed.

Respectfully submitted,

William T. Golden



Shirley M. Golden



October 8, 2021

Dear Katherine Guenther, Yachats City Planner, and Yachats Planning Commission,

We are long time property owners in Yachats, in the neighborhood of the proposed "Cottage Hotel" development. We are very concerned about the proposed development for several reasons.

As you must be aware, all hotels in Yachats must be accessible directly from HWY 101. Yachats Ocean Road is a one lane road and traffic is very heavy most of the time. We, along with many Yachats residents and visitors, walk this road daily. There is no walking path and at times it becomes dangerous to pedestrians. Granting a variance would only increase the danger for all of us.

Additionally, Shellmidden Way is a small gravel road not suitable for hotel access. All other hotels and vacation rentals are required to provide off street parking, why should this development be any different?

This "Hotel" would be constructed on a designated jurisdictional wetland which is a protected area and should be preserved or at least not destroyed by commercial development.

We are not opposed to the development of our community as long as the existing regulations are followed. The Yachats Inn is an excellent example of a responsible development. They provide off street parking and access directly to HWY 101.

Sincerely,

John Aviani and Linda Siegel

Admin

From: GERALDINE BATTISTOLI <jeri1945@msn.com>
Sent: Friday, October 8, 2021 11:10 AM
To: City Hall; Kimmie Jackson
Cc: Yachats City Planner; Donna Bader
Subject: Re: Agate Point Application dated 7/23/21

The Application by Agate Point of Newport Beach, CA. raises three issues:

1) Decision making power (Jurisdiction) of the Wetlands on this parcel.

[* See the letter below submitted by Donna Bader, an Attorney speaking only as a concerned private citizen and resident, which amply covers this issue.]

Simply stated: By it's failure to act to protect the Yachats Wetlands, the Planning Commission has abrogated it's direct authority over this Application. **

** [though it's duty to demand what is termed "avoidance" and to effect "mitigation" to any and all adjacent wetlands by any abutting building project remains.]

2) Because the Commision lacks jurisdiction, it also lacks authority to approve any building plan **until and unless** permits are in place from the Army Corp of Engineers and the Department of State Lands. It may thus be said that the building plan presented by the Applicant is premature and that therefore any action taken by the Commission would be, in legal parlance, void ab initio, voidable, against public policy, or a combination of all three.

3) The Application presents a third issue that can and should be addressed and ruled upon now by the Commission, both in fairness to the applicant (in order to guide any possible valid future application), and to the people of Yachats who should not be required to return to this issue in any subsequent application as they have been numerous, vocal, and unequivocally in their rejection of the request to, by Conditional Use approval, allow this Applicant, without Route 101 access or one acre of land, to qualify for overnight rentals as a hotel/motel.

"Conditional Uses" arise most frequently in heavily restricted residential areas where the residents desire an exception to **benefit** a majority of the occupants and the grant has a **limited adverse impact** on the community as a whole. (i.e. a church... or a daylight-only operational walk-in clinic in a very rural or commercially distant area)

The Yachats Community has expressly rejected even the suggestion of any benefit by this proposal. In fact, the danger to the entire community by setting such a precedent has been uniformly reiterated.

This Application can and should be voted upon and rejected by the Commission now, as the Application is date-stamped July 23, 2021 and is rapidly approaching the one hundred and twenty (120) day mark by virtue of the postponement requested by the Applicant.

In summation, this Commission should not even entertain and should entirely **reject** the Application's building plan segment as the Applicant lacks the requisite Federal and State approvals and **should** vote to deny the Conditional Use portion of the Application.

Respectfully submitted,

Geraldine Battistoli

*

"Dear Planning Commission,

This letter is written to detail my objections to Agate Point Residences LLC's application for a conditional use permit for the proposed development of a hotel, consisting of seven or eight separate units, along Yachats Ocean Drive. The opinions expressed herein are given as a resident of the City of Yachats and the State of Oregon. This letter is not meant to provide legal advice to any individual and represents my personal opinions.

The owner's application for a conditional use permit is currently pending before the City of Yachats and is scheduled to be heard by this Council on October 19, 2021. I also believe it is pending before three other governmental agencies, including the U.S. Department of the Army, the U.S. Army Corps of Engineers, Portland District, Oregon's Department of State Lands, and the County of Lincoln. I don't believe these three government agencies as of today have approved the owner's delineation plan and application for building permits. Therefore, it may be premature to have the City consider this development without the requisite approvals from these other agencies.

For instance, the Delineation Map dated May 6, 2021, as proposed by the owner, changes the percentage of wetlands from .13 acres to .03 and .007 acres on a .57 acre site, which differs considerably from the present valid Delineation Map. If the owner's Delineation Map was approved by the Delineation Division of the Department of State Lands (DSL) and the Army Corps of Engineers, the owner would still need to apply for a permit. At this point, the DSL is still conducting a review, which is pending with that division.

On August 17, 2021, approximately two months ago, the Department of Army Engineers asserted that the reviewed areas are waters of the United States, and therefore, the federal government has jurisdiction over the approval of any development of wetlands. If the owner disagrees, he may request an administrative appeal under 33 CFR Part 33. Even so, the owner has to submit a completed Registration for Appeal form, which must be complete, meets the criteria for an appeal, and is timely, i.e., received within 60 days from August 17, 2021.

Because the owner's Delineation Map has not been approved, the map prepared by the Army Corps of Engineers is valid, at least for a period of five years, and shows that the site in question consists of .13 acres of wetlands, which is under federal jurisdiction as "waters of the United States."

The County of Lincoln also cannot approve the project without approval by the Army Corp of Engineers and the Oregon Department of State Lands, which shows compliance with Oregon's Removal Fill Law. As a result, the owner would need to get a wetland delineation of the property and the project must show avoidance of the wetlands, which seems unlikely given the wide swath of land that is part of the wetlands.

If the owner intends to impact the wetlands, which seems probable, the owner would need to get a permit from the State of Oregon. The Army Corps of Engineers, the State of Oregon, and the County of Lincoln need to conduct a regulatory review before any building permits are granted. To request one now from the City of Yachats before such actions are taken is premature and should not be allowed to go forward at this time. The City of Yachats, including the Planning Commission, is without authority to approve any plan impacting the wetlands until and unless approval by the DSL is granted.

Can you please confirm receipt of this e-mail? Thank you for your time and attention to this matter.

Very truly yours,
Donna Bader"

Admin

From: Kristin Christiansen <kristin.k.christiansen@gmail.com>
Sent: Friday, October 8, 2021 11:04 AM
To: City Hall
Subject: Letter Opposing Agate Point "Hotel" Conditional Use

Dear Planning Commissioners,

I strongly oppose of the proposed "hotel" on Yachats Ocean Road. If this is passed it will take precedent for other developers to seek exceptions to the municipal code. Below are 4 variances Agate Point is asking for Yachats to ignore for their own financial benefit. Bullet 5 adds some additional reasons as to why I oppose the "hotel".

1 - [REDACTED] variance to build on invaluable wetlands as determined by Pacific Habitat Services Inc., a professional wetland consulting firm who worked for the city in 2011.[REDACTED]

2 - variance to develop rental property without direct access to Highway 101, overburdening narrow Yachats Ocean Road which is heavily used by pedestrians.[REDACTED]

3 - [REDACTED] variance to develop rental property on half acre (undersized, 1 acre required for hotel) lot, which will [REDACTED] exacerbate the current water shortage problem.[REDACTED]. Note our water comes from just a few local streams/rivers.

4 - [REDACTED] variance to develop individual rental units (cottages) without going through city lottery system. They are calling the development a "hotel" to skirt the requirement.[REDACTED]

5 - other reasons to oppose. -the security lighting for the parking area would adversely effect the night's sky. -noise and congestion of 7 rental units. -may cause overflow parking on Yachats Ocean Road. -no on site management to control noise fire pits - just doesn't fit the look and feel of neighborhood. -how much more can our infrastructure handle?

There are a number of emotional points to make against this development as I am sure many have expressed and I am incredibly inspired by the outpouring of concern citizens for the future of Yachats and the beautiful coast. I am surprised and embarrassed that this out-of-State developer feels they can come to our quaint village as do as they please ... I plea to the City to put a stop from this going through.

Please acknowledge receipt by replying. Thank you for your dedication and hard work.

Regards,
Kristin Christiansen
23 Basalt Loop

Admin

From: Donna Bader <Donna@donnabader.com>
Sent: Friday, October 8, 2021 8:33 AM
To: City Hall
Subject: Fwd: Agate Point Development

FYI

----- Forwarded message -----

From: Donna Bader <Donna@donnabader.com>
Date: Wed, Oct 6, 2021 at 4:31 PM
Subject: Agate Point Development
To: Kimmie@Yachatsmail.org <Kimmie@yachatsmail.org>

Dear Planning Commission,

This letter is written to detail my objections to Agate Point Residences LLC's application for a conditional use permit for the proposed development of a hotel, consisting of seven or eight separate units, along Yachats Ocean Drive. The opinions expressed herein are given as a resident of the City of Yachats and the State of Oregon. This letter is not meant to provide legal advice to any individual and represents my personal opinions.

The owner's application for a conditional use permit is currently pending before the City of Yachats and is scheduled to be heard by this Council on October 19, 2021. I also believe it is pending before three other governmental agencies, including the U.S. Department of the Army, the U.S. Army Corps of Engineers, Portland District, Oregon's Department of State Lands, and the County of Lincoln. I don't believe these three government agencies as of today have approved the owner's delineation plan and application for building permits. Therefore, it may be premature to have the City consider this development without the requisite approvals from these other agencies.

For instance, the Delineation Map dated May 6, 2021, as proposed by the owner, changes the percentage of wetlands from .13 acres to .03 and .007 acres on a .57 acre site, which differs considerably from the present valid Delineation Map. If the owner's Delineation Map was approved by the Delineation Division of the Department of State Lands (DSL) and the Army Corps of Engineers, the owner would still need to apply for a permit. At this point, the DSL is still conducting a review, which is pending with that division.

On August 17, 2021, approximately two months ago, the Department of Army Engineers asserted that the reviewed areas are waters of the United States, and therefore, the federal government has jurisdiction over the approval of any development of wetlands. If the owner disagrees, he may request an administrative appeal under 33 CFR Part 33. Even so, the owner has to submit a completed Registration for Appeal form, which must be complete, meets the criteria for an appeal, and is timely, i.e., received within 60 days from August 17, 2021.

Because the owner's Delineation Map has not been approved, the map prepared by the Army Corps of Engineers is valid, at least for a period of five years, and shows that the site in question consists of .13 acres of wetlands, which is under federal jurisdiction as "waters of the United States."

The County of Lincoln also cannot approve the project without approval by the Army Corp of Engineers and the Oregon Department of State Lands, which shows compliance with Oregon's Removal Fill Law. As a result, the owner would need to get a wetland delineation of the property and the project must show avoidance of the wetlands, which seems unlikely given the wide swath of land that is part of the wetlands.

If the owner intends to impact the wetlands, which seems probable, the owner would need to get a permit from the State of Oregon. The Army Corps of Engineers, the State of Oregon, and the County of Lincoln need to conduct a regulatory review before any building permits are granted. To request one now from the City of Yachats before such actions are taken is premature and should not be allowed to go forward at this time. The City of Yachats, including the Planning Commission, is without authority to approve any plan impacting the wetlands until and unless approval by the DSL is granted.

Kimmie, can you please confirm receipt of this e-mail? Thank you for your time and attention to this matter.

Very truly yours,

Donna Bader
Post Office Box 168
Yachats, Oregon 97498

Tel.: (949) 494-7455

--

Donna Bader
Attorney at Law
Post Office Box 168
Yachats, Oregon 97498

Tel.: (949) 494-7455
Fax: (949) 494-1017
www.AnAppealtoReason.com
www.DonnaBader.com

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--

Donna Bader
Attorney at Law
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delivering it to the intended recipient, any use, dissemination, distribution or copying of the information in this e-mail is strictly prohibited. If you received this e-mail in error, please notify me immediately by telephone or e-mail. Thank you.

Admin

From: rheylove@gmail.com
Sent: Thursday, October 7, 2021 9:48 PM
To: City Hall
Subject: Fwd: NO wetlands development

Sent from my iPhone

Begin forwarded message:

From: Fran morse <fran@maxglenn.com>
Date: October 7, 2021 at 8:50:42 PM PDT
To: lancebloch1@gmail.com
Cc: Leslie@yachtsmail.org
Subject: NO wetlands development

I am writing this note against the development of the wetlands bordering Yachats Ocean Road. I am a former resident of the area, living at 21 Shell Street from 2000 until 2013. I know the area well.

A Seven-unit "mini-hotel" would be a disaster, completely altering the nature of the community, and clogging traffic horribly. Seven short-term rental units will bring many more than seven cars at a time. Our experience of short-term vacation rentals has taught us that much.

The narrow road is already a problem, and should be made one-way, yet it is not under the jurisdiction of the City to do so. Car traffic and foot traffic are heavier during tourist season, and barely manageable even during the off-season, when two cars meet, headed in opposite directions.

Then there is the fact that this area is a known wetlands, whether a bureaucratic definition has been recorded, or not! It deserves the common-sense protection that any wetlands deserve. Why allow a mistake in "red-tape" to become a ploy for destroying an unrecoverable piece of nature?

The Planning Commission needs to deny all requests for exemptions to the code, or any "conditional use" permits.

Yachats Ocean Road, with the associated natural wetlands, viewing areas and beach access, is integral to the quiet, peaceful nature of the village which is, in itself, the attraction to Yachats. Why move to destroy our greatest asset?

This attempt at development is a crass attempt to turn Yachats into nothing more than a commodity for investors. The property should not have been sold with this intention in mind. Let us please put a stop to that effort. As a village, as a community, we have always been more than that. It is now up to the Planning Commission to preserve our identity, and our liveability.

Fran Morse

1395 King St.
Yachats, OR

P.S. Please post this letter, as required. I am hearing that such letters are not getting posted.

Get [Outlook for iOS](#)

Admin

From: MaryBeth Selby <selbymb@gmail.com>
Sent: Thursday, October 7, 2021 4:25 PM
To: City Hall
Subject: Proposed Agate Point development

Dear Planning Commission,

As a full time resident of Yachats who lives near the area in question, I am writing to voice my objections to the proposed Agate Point Residences LLC development on Yachats River Rd. The proposed development appears to be requesting several exceptions to multiple municipal and federal regulations related to development on wetlands as well as property zoning use.

1. Hotel vs. Vacation Rental - The description of the development as a "hotel" seems to be a misnomer as they are proposing several modular homes that would be rented out as vacation rentals. As vacation rentals, these should be subject to vacation rental licenses.
2. Zoning - Additionally, their proposed plot plan calls for 7 units on 0.56 acres does not meet R-4 Residential Zone permitted uses (Chapter 9.24) as it is not on a minimum of 1.0 acre with direct access provided from U. S. Highway 101 only and with accessory commercial uses.
3. Wetland Impact - As described, the proposed development appears to require negative impact to wetlands that are under the jurisdiction of the Federal and/or State Government who to my knowledge has not provided an exemption for development on this specific plot of land. Even if the federal and/or state government did approve, I would still object given the climate crisis and our knowledge of the benefits of wetlands for all species of clean drinking water, animals and plant life.

For all of these reasons, I respectfully ask the Planning Commission to deny the conditional use permit request of Agate Point Development, LLC.

Kind Regards,
MaryBeth Selby

Admin

From: Rheychol Paris <rparisrealestate@gmail.com>
Sent: Wednesday, October 6, 2021 4:09 PM
To: City Hall
Subject: Proposed development on Yachats Ocean Rd.

Dear City Planners,

I am writing in response to the proposed development along Yachats Ocean Road asking for a variance to allow a hotel on a 1/2 acre property. There are more than a few reasons I am against this development, below are just a few.

~ It is my understanding that the property is in a designated wetland area, too small a parcel for a hotel, according to codes in place, and is asking for Shellmidden Way to be used as access rather than the stipulated Hwy 101.

~It will negatively impact the surrounding quiet residential area and the nearby wetlands.

~Yachats Ocean Road really cannot handle more traffic, especially the amount created by vacation rentals disguised as a hotel. The south end can be dangerous for pedestrians either on the Amanda Trail or simply walking as cars enter from Hwy 101 around the blind curve that exists at that location.

~Yachats has no way to enforce any challenges or problems that may occur with added rental properties. We have no police nor any active code enforcement personnel on hand.

Please think carefully before allowing this kind of development within the city boundary.

Yachats has been my home for over 30 years and developing this location in my opinion is a very bad idea, not good for residents and not good for visitors.

Thank you for your time.

Rheychol Paris

Admin

From: Gail Brewer <brewerg@peak.org>
Sent: Wednesday, October 6, 2021 4:06 PM
To: City Hall
Subject: Agate Point Development

To the Planning Department:

As a resident of Yachats I am opposed to the hotel proposal on the Yachats Ocean Rd. This road is used by many, both locals and tourists. Putting a "hotel" there would only add to the already busy road. Not only that hotels are supposed to have access from 101 just like the Yachats Inn nearby.

The proposed area is a wetland, filtering run off water before it enters the ocean. It is also the home to various birds and animals.

The proposed buildings are being presented as a hotel when they are separate buildings of questionable aesthetic value built for the purpose of making money. While everyone is entitled to earn a living, it seems like this developer bought the land, knowing that he would have to request permission to change some rules and build what he pleases and being able to do so.

Please do not let this go forward. If we let one developer be able to bypass the rules others will surely follow. Right now Yachats cannot support our workers with affordable housing and this will only make the problem worse. Yachats is known for its charm and natural beauty. Paving it over so close to the ocean will take this away.

Sincerely,
Gail Brewer

Sent from my iPhone

Admin

From: PAUL PETERSON <paulfrancis6189@aol.com>
Sent: Wednesday, October 6, 2021 2:56 PM
To: City Hall
Subject: Yachats Ocean Road development

TO Whom It May Concern,

As a nearby resident I am adamantly opposed to the proposed construction project of 7 rental units on Yachats Ocean Road.

Just the idea that 7 unsupervised rentals could be built in this area with its limited access is completely wrong!

No city restrictions that are in place should be changed or have exceptions made to them.

Paul Francis Peterson
67 Greenhill Road
Yachats OR 97498

Admin

From: Nicole Williams <nikkignoodle@gmail.com>
Sent: Wednesday, October 6, 2021 11:50 AM
To: City Hall
Subject: Regarding Municipal Code

Dear City Hall Members,

As previous visitors and now home owners in Yachats, we have often enjoyed walking Yachats River Road to take in the smells and sights of our beautiful ocean. It is a narrow road, and it can be tricky to navigate as a pedestrian when there are 2 cars going in opposite directions. We can not imagine having even more traffic on that road while maintaining safety of residents and tourists alike.

We are deeply upset that you are considering an exception to the municipal code that is already in place.

Your decision will have far reaching impact on the wetlands, our town, and other tourists who come to enjoy the peace of Yachats. We are asking you to dismiss the developer's request, and not allow a hotel/vacation rentals to be built on this property.

Thank you for taking the time to read and understand our concerns.

Sincerely,
Nicole Williams
Lori Pascarella
415 East Second Street

Admin

From: Lauren Strach <laurenstrach@gmail.com>
Sent: Wednesday, October 6, 2021 10:00 AM
To: City Hall
Subject: Objection: Proposed exemption for property on Yachats Ocean Road

Dear Yachats Planning Commission:

We would like to express our deepest objection to the exemptions requested for the property on Yachats Ocean Road. The proposed 'hotel' with 7-8 small homes on 1/2 acre is not in code, and for good reason.

We are full-time residents at 33 Windy Way and frequently walk our dog along that road. It is challenging enough with the existing traffic during the tourist season, especially in the narrow areas. The last thing we need is increased vehicular traffic.

Even if the development uses Shellmidden as its access, that southern curve is a blind one, and one where the Amanda Trail exits from the dirt path onto the roadway. There are no shoulders for pedestrians. It is a dangerous curve.

Please do not grant the requested exemption. It is not in the best interest of the tax-paying residents of Yachats. Our quality of life would be directly impacted by this development. The zoning restrictions exist for a reason. Please enforce them.

Sincerely,

Lauren Strach
Michel Rose
33 Windy Way

Admin

From: Jeanette Busse <jabusse2015@gmail.com>
Sent: Tuesday, October 5, 2021 7:02 PM
To: City Hall; Kimmie Jackson
Subject: Re: Attention : Planning Commission:Agate Point Residences Development

My email sent on Sept 29 was not included in the agenda info posted on the city website. Please include my comments (below) to be considered for the Agate Point Public Hearing on October 19 at 3pm.

Jeanette Busse
330 Village Lane
Yachats, OR. 97498

On Wed, Sep 29, 2021 at 11:45 AM Jeanette Busse <jabusse2015@gmail.com> wrote:

Dear Katherine Guenther and Planning Commission,

I object to the development of the Agate Point Residences for the following reasons:

1. The proposed development is not similar to any other development along Yachats Ocean Road. The proposed units are much closer together than are the units at the north end of Yachats Ocean Road. No other development has as many single family dwellings (7 homes on .57 acres).
2. The proposed development would put a hotel-like establishment in the middle of an area of single family dwellings. The area along Yachats Ocean Road and Shellmidden Way to the south of the Yachats Inn is composed of single family residences and is separated from noise and traffic from the Yachats Inn by a stand of trees.
3. The proposed use of Shellmidden Way (called Shell St on the map) for entrance to the units will increase traffic on a single lane gravel road. It will increase noise and dust significantly.
4. Having parking right next to protected wetlands means that renters are not likely to view the wetlands as anything other than undeveloped land that they could use for them or their dogs to use as they wish. Dogs poop and chase wildlife.
5. The proposed parking area infringes on a wetland. Yachats has worked hard with previous developers to preserve the wetland. This wetland serves as natural drainage and a wildlife habitat that would be severely impacted or destroyed.
6. The lack of an on-site manager means that problems can't be addressed and resolved quickly.
7. This will end up looking like a mobile home park. Again, high density of homes per small acreage.
8. Traffic on Yachats Ocean Road will increase significantly where much of that road is only single lane with lots of pedestrian traffic.
9. The R-4 zoning includes many single family dwellings in this same zone as the property proposed for Agate Point development project. By allowing this development to be included as a hotel operation to bypass the short term rental lottery, what would prevent other homes, or group of homes to also bypass the STR license lottery that are in R-4 zone?
10. Approval of this development would set a precedent for other developers to build "hotels" on small lots in residential areas of Yachats.

Please include these objections as input in the Public Hearing scheduled for October 19, 2021 at 3pm.

Sincerely,

Jeanette A. Busse
330 Village Lane
Yachats, OR 97498

Admin

From: Bill Thompson <btadvisors@yahoo.com>
Sent: Tuesday, October 5, 2021 2:55 PM
To: City Hall
Subject: Yachats Ocean Road

NO, NO, NO way this ridiculous proposal even got this far! Destroy shrinking wetlands, increase traffic and noise pollution, leave unattended and unmanaged development community catering to just visitors when Yachats is already fighting the increase rental applications due to overcrowding, and not to mention the strain on water, trash, and other limited resources, are but just a few of the glaring reasons to vote NO on this proposal!!

Bill Thompson
Thompson Consulting Group

TO: Yachats Planning Commission, city Council, and Mayor

FROM: Debby and John Phillips, 75 Greenhill Dr., Yachats, 97498

DATE: October 6, 2021

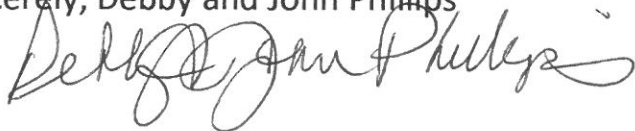
RE: Buying and Developing Yachats Ocean Road wetlands - very concerned

Oregon has historically protected its wetlands and wildlife. It is very disturbing that in our very special community of Yachats someone sold a ½ acre lot of designated wetlands on Yachats Ocean Road to an out of state developer to build a motel and/or vacation rentals. The proposed development violates municipals codes that are in place. It is beyond imaginable that the Yachats Planning Commission would grant exceptions to existing municipal code and allow for this type of development on dwindling designated wetlands.

In addition, this development will negatively impact the Yachats community. For example, Yachats Ocean Road already has heavy car traffic about 8-9 months out of the year. The narrow sections of the road are very dangerous when cars going opposite directions attempt to pass each other- many times driving onto adjacent properties to pass. The car traffic is dangerous for pedestrians and will only worsen with more development.

Please do not make exceptions to the Yachats municipal code to allow this development to go forward. Your responsibility is to Yachats citizens and Oregon not to an out of state developer. Please protect our lands.

Sincerely, Debby and John Phillips

A handwritten signature in black ink, appearing to read "Debby and John Phillips", written in a cursive style.

October 8, 2021

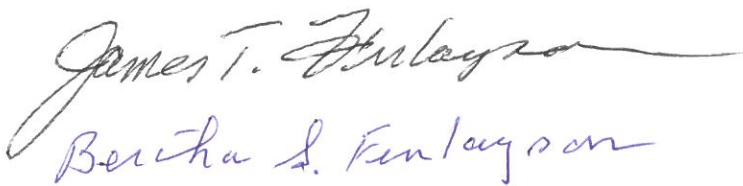
Mr. Lance Bloch, chair and Mr. Loren Dickinson, vice Chair and members of the Yachats Planning Committee.

We are writing to express our concern that variances may be allowed to the Municipal Code to allow the building of a "hotel" on a half-acre lot without direct access to highway 101.

Shell Midden Way and the Yachats Ocean Road are not designed to accommodate heavier traffic than what exists at the present time. Residents and Tourists use the Ocean Road as a walking path as there are no sidewalks. The Road is narrow, with areas that will not allow for passage without one car pulling into a little wider area. Many of the walkers do not hear approaching cars and many cars do not slow their speed. An accident will happen.

It appears that calling it a hotel, without on site management, is a ruse to avoid the Short Term Rentals restrictions.

We see no benefit to the city with the approval of these variances.

The image shows two handwritten signatures in blue ink. The first signature is 'James T. Finlayson' and the second is 'Bertha S. Finlayson'. Both signatures are written in a cursive, flowing style.

James T. and Bertha S Finlayson

303 Horizon Hill Road

Yachats, Oregon.

October 7, 2021

Planning Department
c/o City of Yachats
P.O.Box 345
Yachats, Oregon 97498

Re: Agate Point Residences on Yachats Ocean Road

I am opposed to this development. It does not meet current rules. It will have negative impact on current property owners, the wetlands, and the safety of all who walk or drive on Yachats Ocean Road.

Variance regarding wetlands

If a tradeoff is granted by the State of Oregon that may satisfy the State but does not protect the local wetlands.

Variance regarding one acre requirement

Development is planned for only 1/2 acre rather than 1 acre

Variance re Yachats vacation rental lottery system

This is unfair to people waiting in line for their right under the lottery system.
7 or 8 modular homes are not a "hotel"

Variance re traffic

Municipal code requires direct access to and from Highway 101. There is none.
Use of Shellmidden Street is not sufficient for added traffic. This will negatively impact present homeowners in the neighborhood.

There is presently a serious problem with traffic on Yachats Ocean Road which endangers people, animals, vehicles and residential property. This development will exacerbate this problem.

Developers are not local residents and there will be no on-site manager to address concerns regarding noise, fire, or other concerns.

Local workers need affordable housing. This will not help that problem.

Why do we have laws, codes and regulations if you are not going to enforce them?

Sincerely,



Carol Summers

P. O. Box 745
Yachats, Oregon 97498

Planning Commission
City of Yachats
P.O.Box 345
Yachats, OR 97498

Charlene Mayer
350 Village Lane
Yachats, OR 97498
October 5, 2021

Re: Agate Point Conditional Use Public Hearing

Dear Ladies and Gentlemen:

I am concerned about a proposed development on land historically deemed wetlands adjacent to Yachats Ocean Road (Identified as 358 Yachats Ocean Road). This parcel is one of the last remaining wetlands in Yachats- it absorbs drainage from the hillside East of Highway 101 which is needed to prevent flooding. Obviously, this ground also provides home for unique wildlife.

Is further development of wetlands and natural oceanfront, with a project of this type, the future of Yachats? Is it the plan for Yachats to strive to be another Lincoln City?

I think the city planners must consider the broader consequences of the use of this land, and its impact on the City's image before allowing a use which could harm not only nearby residents, but the "The Gem of the Oregon Coast".

Sincerely,

A handwritten signature in cursive script that reads "Charlene Mayer". The signature is written in dark ink and is positioned above the printed name.

Charlene Mayer

To the Yachats Planning Commission and City Council

The preposed development of a "hotel" on the South side of Yachats is completely inappropriate. It is a blatant attempt to circumvent the established laws and regulations of the City.

The preposed development is also taking valuable wetlands out of existence at a time when our planet is on the verge of collapse from the effects of global warming. Wetlands play a vital role in removing carbon from the atmosphere and cleaning our water before it is discharged into the ocean. This should not be allowed to go forward.

Finally the traffic increase in our neighborhood will be devastating to the people who live and enjoy walking in this area. A one lane road with turnouts will not support this kind of development.

Sincerely,



10/11/2021

Dr Janet Moore Burley

19 Mitchell Lane

Yachats, Oregon 97498

Date: October 11, 2021
Attn: Katherine Guenther, City Planner
Yachats City Planning Commission
Lance Block, Chair, Loren Dickinson, Vice Chair
Members: Ariana Carlson, Christine Orchard,
Helen Anderson, Jacqueline Danos
From: Janet Heightland, Yachats Property Owner
Re: Land Use Application
Agate Point Residences, LLC

I am writing to express the objection and concerns I have in response to a land use application submitted by Agate Point Residences, LLC requesting variances regarding the proposed development of "Agate Point Cottage Hotel".

The out of state developer is seeking multiple variances, including developing a wetland area, and building a "cottage hotel" in a zone that is zoned R4; 1-single family dwelling per lot, 2-family dwelling, multi-family dwelling, and motel. The application indicates that it will be a "cottage hotel". The Yachats City Code requires at a minimum a one-acre site for a motel, not cottage hotel, to be built. This site does not meet that requirement.

Agate Point is being labeled as a "cottage hotel". However, it would more accurately be labeled as transient vacation rental dwellings. Labeling it a "cottage hotel" enables the developers to by-pass and ignore the requirement to apply for a license for a transient vacation rental dwelling. A hotel requires that an onsite manager be available, however this dwelling does not indicate that any such personnel will be available on site, rather that this development will be managed by a Vacation Rental Business, Sweet Home Rentals, from off site.

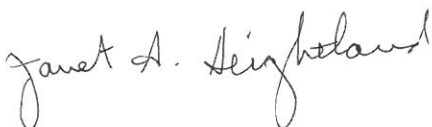
The variance requested by the developer indicates that a large wetland area will be paved over and used as parking spaces, and as dwelling sites. I ask the planning commission to consider this wetland area as a very important habitat for many species which include but is not limited to, insects, birds, amphibians, reptiles, and small mammals. The Oregon Silverspot butterfly, quite possibly found on this wetland area, is federally listed under the Endangered Species Act as threatened.

The impact on Shellmidden Way (incorrectly labeled as Shell Street), and Yachats Ocean Road will increase traffic and parking on both streets. The developers are requesting a variance to the Yachats City Code for hotels and motels to have direct access to Highway 101, which this planned development does not have. The developers have even gone as far as asking the city to consider improvement of Shellmidden Way to accommodate the increased traffic which will be caused by this development. In my opinion that is not fair to the property owners of Yachats to pay for this development's request for improving a road that will be used by the transient occupants of this development when there are roads within Yachats which are in need of repair and improvement.

Finally, a very important concern, that I ask you to consider, is the stress that will be added to the water and sewer system of Yachats. This year as in past years the citizens of Yachats have had a water shortage and have been asked to limit their use of water. The abundance of development in Yachats with new building and increased tourists visiting our beautiful and unique village has already put us into a position of a water shortage. How much more of a burden will this development create on our water and sewage concerns.

Granting a variance to these out of state developers will set a precedent that Yachats will not be able to come back from now and in the future of our little village. I urge you to deny a variance to these out of state developers and listen to your constituents and our concerns for the quality of life in the future of Yachats.

Sincerely,
Janet Heightland
227 Shell Street
Yachats, Oregon



October 9, 2021

To: The Yachats Planning Commission and City Planner

Subject: Agate Point Development Application

The Agate Point Development is wrong on many levels. The developer cannot meet the requirements for a hotel nor can he get short term vacation rental licenses which are maxed out with a sizeable wait list. His solution is a hybrid to avoid our regulations. He is requesting variances and a Conditional Use Permit because the project cannot stand on its own merit.

Yachats Ocean Road is a very busy and highly used stretch of road. The state beach is used extensively by both residents and visitors. This road is also part of the Oregon Coast Trail, and a State Natural Site. Vehicle traffic during sunny days (and many stormy days) is almost always busy. There are groups of people, small children, strollers and dogs having to compete with vehicles. Many of these groups are vacation renters who occupy the many already existing vacation rental units along this road. The road is narrow and with 2-way traffic, the shoulders become quasi road lanes. It can be a dangerous place to walk even without further development.

Please do not let the developer move forward with this plan. The impact on our wetlands is something that cannot be restored once destroyed. Yachats needs to keep all the open space we have to promote a sense of peace and tranquility for its citizens.

Thank you for the opportunity to voice my concerns.

Linda Johnson

21 Catkin Loop

Yachats, OR 97498

26 Basalt Loop
Yachats, OR 97498
October 5, 2021

Planning Department
City of Yachats
P.O. Box 345
Yachats, OR 97498

To whom it may concern:

As a property owner on Yachats Ocean Road, I firmly oppose the proposed development of Agate Point residences in this vicinity for many reasons.

Primarily, Yachats Ocean Road is a recreational area that allows residents and visitors to walk along the ocean road, often with children or a dog. It is already oversubscribed during summer months. Because car traffic is two-way, the road is frequently crowded with cars and recreational vehicles, creating a dangerous environment for walkers. The State Park Service does not regulate traffic so there are many blind spots for drivers and walkers. I have observed numerous "close shaves" numerous times. To allow Agate Point to be developed would only exacerbate the present situation. The potential for more cars traversing this road would create an unimaginable bottleneck and safety issue. It would impact all homeowners in this area.

In addition, these residences will become short-term rentals. This thrusts unsupervised visitors into our city who typically have little regard for the environment. We may expect additional trash along the road, dog droppings, excessive car speed, illegal fireworks, fire pits as well as uncontrolled noise. All of the issues associated with STRs will be visited in greater magnitude on Yachats Ocean Road. The need in Yachats is for affordable housing for our service workers, not more STRs. These residences will not provide affordable housing.

Since Agate Point residences purport to be a hotel, the requirement for a full acre has not been met. Furthermore, since it cannot exit to Highway 101, which also is a requirement, this is a specious exception to the municipal code. Shellmidden Street, which is gravel, is not sufficient to handle the traffic that will result from a hotel or STRs in the area. The impact on homes already in the area will be great. It will change the nature of the neighborhood from residential to transient.

Finally, this proposal destroys part of the wetland, which should be preserved. If this development is allowed, it is likely the developer will chip away at the remaining wetland as well. In short, the proposal is ill advised. I implore the Planning Department to turn it down quickly and conclusively.

James P. O'Brien, Ph.D.

A handwritten signature in black ink, appearing to read "James P. O'Brien". The signature is fluid and cursive, with a large, stylized initial "J" and a long, sweeping underline.

OCT 2021

DEAR PLANNING COMMISSION,

AS A NEARBY RESIDENT I AM
ADAMANTLY OPPOSED TO THE
PROPOSED CONSTRUCTION PROJECT
OF 7 RENTAL UNITS ON YAKHATS
OCEAN ROAD!

JUST THE IDEA THAT 7 UNSUPERVISED
COULD BE BUILT IN THIS AREA WITH
ITS LIMITED ACCESS IS APPALING.

NO CITY RESTRICTIONS THAT ARE
IN PLACE SHOULD BE CHANGED
OR HAVE EXEMPTIONS MADE
TO THEM!

Sincerely

PAUL FRANCIS PETERSON
67 GREEN HILL DRIVE
YAKHATS ON
97498

Yachats Planning Commission
C/O City of Yachats
P O Box 345
Yachats, OR 97498

RE: Yachats Ocean Road Development

We are residents of Yachats and would like to state that we are against the proposed Yachats Ocean Road development which would pave over the designated wetlands.

- We are against paving over the wetlands. Conservation and best use of water and wetland resources are vital to the economy and well-being of Yachats.
- Yachats has had water restrictions for the last few years, this development will only add to the water problem.
- The proposed access of Shellmidden Street is not acceptable. Municipal code states that there must be direct access to and from the development from Highway 101.
- The municipal code states that a hotel can only be build on an acre or more. This proposal is slated for only ½ acre.
- The city has vacation rental regulations, this seems to be an attempt to get around those regulations.
- We walk on Yachats Ocean Road daily and have great concern for our safety, as well as the safety of other walkers.

Once again, we are opposed to allowing exception to the municipal codes. This development seems to be an example of exactly why the municipal codes were created in the first place. We urge the Planning Commission not to bow down to these out-of-state developers. They are only in it for their profits, not for the quality of life here in Yachats.

Thank you.
Larry and Jan Thornton
565 E Second Street
P O Box 288
Yachats, OR 97498-0288

(541) 231-7759
hugstrees@earthlink.net

October 7, 2021

To Whom It May Concern:

I am concerned that some
Municipal Codes may be changed
for a commercial enterprise.

Codes & laws are the benefit for
all concerned and then should
not be changed for just one business.

All our property is in danger if
changed.

Please consider that all
municipal codes stay as
they were intended for protection
of all our property.

Diann E. von Blume
67 Greenhill Drive
PO Box 636
Yachats, Oregon 97498

Property Owner with my Son

David G. Baldwin
633 Pacific View Drive
Yachats, OR 97498
david@brainpip.com

October 11, 2021

To the Yachats Planning Commission,

I've reviewed the application from the Agate Point Development Co. to build a "cottage hotel" on Shellmidden Way. I have strong apprehension about this project. Several aspects concern me, such as the attempt to bypass the need for a Transient Rental license by calling their motel a "hotel," and the request for a variance that would allow them to ignore the Yachats Municipal Code with respect to access from Highway 101.

The problem of building this project on a vibrant wetland is in my area of expertise, however. I have a PhD in ecological genetics. To a biologist a wetland isn't just a small flood — it's an important ecosystem. The wetland we are discussing is home to a great many animals. Some are as small as dragonflies and ladybugs. Others are much more noticeable such as Steller's jays, rabbits, raccoons, and an occasional deer. I often walk along Yachats Ocean Road and when I come to this wetland I stop and look at all the life that makes a living there. Let's not lose that.

Thank you.

A handwritten signature in black ink, appearing to read "David G. Baldwin". The signature is stylized with a large, looped "D" and "B".

David G. Baldwin

Burgundy Featherkile
633 Pacific View Drive
Yachats OR 97498
10 October 2021

Dear members of the Planning Commission,

The application for variance(s) by Agate Point Development in regard to the "cottage hotel" is a serious concern to me.

The restrictions on hotel/motel development in Yachats were designed to protect, preserve, and foster our *community*, and still allow for a healthy level of tourism.

Of those restrictions, the one requiring direct access to Highway 101 is probably the most significant. I'm wondering what Yachats would look like today, if that restriction had not been added?

What might my neighborhood and yours, look like if you don't deny the variance?

Of all the things you have done and will do in the future, the emphatic denial of this request for variance will be by far the most important for the social, economic, and political future of our village.

Optimistically,



Burgundy Featherkile

Dear Members of the Yachats City Council,

One of the first things that attracted me to Yachats was its community-commitment against franchises. Flouting that commitment by the fact that it was a wholly self-owned company rather than a "franchise", the Dollar General invaded our town as it did every town up and down the Oregon Coast.

It is the same kind of corporate arrogance and insensitivity to community values that now motivates outsider intent to build a "hotel" on an established and cherished Wetland, -- a Wetland that local statutes, preferences and customs have always wisely combined to keep untouched by commercial interest and exploitation.

Such plans can only be actualized by securing variances and the setting aside by our city council of the protective regulations put in place to block the very exploitation and misuse this so-called "development" involves.

The council has always been our trusted ally in embodying and enacting these values and limitations.
PLEASE, -- continue to do so,

Most sincerely,

Rev. Randy Lodjic
the Rev. Randy Lodjic
Honorably Retired
PCUSA

260 Marine Dr.

To: Yachats Planning Commission

From: Noel McIntosh and Linda Tietjen (214 Shell Street)

Subject: Opposition to the proposed development of a "mini-hotel" on designated wetlands

Date Submitted: October 8, 2021

Linda and I are opposed to the proposed plan for the following reasons:

1. The municipal code states that a hotel can only be built on **one acre or more**. The developer seeks exception to the code since only ½ acre of designated wetlands is available to build the "mini-hotel".
2. The municipal code also states that there must be **direct access to and from the hotel to HWY 101**. The developers are requesting a variance be granted to allow "indirect" access to HWY 101 from the hotel parking spaces via Shellmidden Way. (Shellmidden way is narrow, gravel road that the links up with Yachats Ocean Drive and hence to HWY 101.)
3. This proposed "mini-hotel" will be constructed on designated jurisdictional wetland that is a protected area and should be preserved or at least not destroyed by commercial development.

October 10, 2021

To: Planning Commission, City of Yachats

From: Debra Aken, Gregory Ammann

Re: California LLC Development Proposal

We are opposed to the proposal by a California LLC to develop a "Cottage Hotel" on wetlands that border on Yachats Ocean Road directly south of The Yachats Inn and in front of The Dwellings. The proposal is for seven (7) modular (prefabricated unit) cottages ranging in size from about 500 square feet to 1200 square feet. The developer is requesting the Yachats Planning Commission grant the following four regulatory variances for building vacation rentals on the wetlands on Yachats Ocean Road.

Variance 1: to build on invaluable wetlands as determined by Pacific Habitat Services Inc., a professional wetland consulting firm who worked for the city in 2011. This "Hotel" will be constructed on a designated jurisdictional wetland which is a protected area and should be preserved or at least not destroyed by commercial development.

Variance 2: to develop rental property without direct access to Highway 101, overburdening narrow Yachats Ocean Road which is heavily used by pedestrians. As noted in the application, Yachats Municipal Code Section 9.24.020 requires motels to have direct access from Highway 101 which this "Hotel" will not have. The developers are however requesting a variance be granted. With the variance, "Hotel" customers would access the Hotel parking spaces from Highway 101 to Yachats Ocean Road to Shellmidden Way. Traffic on Yachats Ocean Road during the tourist season (6-8 months) is already heavy and particularly difficult for the many visitors and locals who walk on the road. As you know there is no designated walking or pedestrian path along Yachats Ocean Road. Traffic on Shellmidden Way which is a narrow unimproved (gravel) road will have a much increased traffic flow and disturb a quiet neighborhood.

Variance 3: to develop rental property on half acre (undersized, 1 acre required for hotel) lot, which will exacerbate the current water shortage problem. Our water comes from just a few local streams/rivers.

Variance 4: to develop individual rental units (cottages) without going through city lottery system. They are calling the development a "hotel" to skirt the requirement. The proposed development is in an R4 Land Use Zone (Single Family, Duplex, Multi-Family & Motel). It appears that the developers are calling it a "Cottage Hotel" to avoid the necessity of applying for a City of Yachats Transient Rental license which would require getting on the wait list due to the transient rental cap.

It is completely unacceptable for the Yachats Planning Commission or the City Council to grant these variances and go forward with this proposal.

Thank you.



Debra Aken
Gregory Ammann
848 Driftwood Lane
Yachats, OR 97498

October 11, 2021

To: Planning Commission, City of Yachats

From: Polly Gribskov Lisle, Douglas Lisle

Re: California LLC Development Proposal

We are opposed to the proposal by a California LLC to develop a "Cottage Hotel" on wetlands that border on Yachats Ocean Road directly south of The Yachats Inn and in front of The Dwellings. The proposal is for seven (7) modular (prefabricated unit) cottages ranging in size from about 500 square feet to 1200 square feet. The developer is requesting the Yachats Planning Commission grant the following four regulatory variances for building vacation rentals on the wetlands on Yachats Ocean Road.

Variance 1: to build on invaluable wetlands as determined by Pacific Habitat Services Inc., a professional wetland consulting firm who worked for the city in 2011. This "Hotel" will be constructed on a designated jurisdictional wetland which is a protected area and should be preserved or at least not destroyed by commercial development.

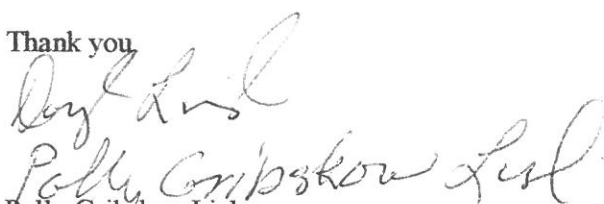
Variance 2: to develop rental property without direct access to Highway 101, overburdening narrow Yachats Ocean Road which is heavily used by pedestrians. As noted in the application, Yachats Municipal Code Section 9.24.020 requires motels to have direct access from Highway 101 which this "Hotel" will not have. The developers are however requesting a variance be granted. With the variance, "Hotel" customers would access the Hotel parking spaces from Highway 101 to Yachats Ocean Road to Shellmidden Way. Traffic on Yachats Ocean Road during the tourist season (6-8 months) is already heavy and particularly difficult for the many visitors and locals who walk on the road. As you know there is no designated walking or pedestrian path along Yachats Ocean Road. Traffic on Shellmidden Way which is a narrow unimproved (gravel) road will have a much increased traffic flow and disturb a quiet neighborhood.

Variance 3: to develop rental property on half acre (undersized, 1 acre required for hotel) lot, which will exacerbate the current water shortage problem. Our water comes from just a few local streams/rivers.

Variance 4: to develop individual rental units (cottages) without going through city lottery system. They are calling the development a "hotel" to skirt the requirement. The proposed development is in an R4 Land Use Zone (Single Family, Duplex, Multi-Family & Motel). It appears that the developers are calling it a "Cottage Hotel" to avoid the necessity of applying for a City of Yachats Transient Rental license which would require getting on the wait list due to the transient rental cap.

It is completely unacceptable for the Yachats Planning Commission or the City Council to grant these variances and go forward with this proposal.

Thank you



Polly Gribskov Lisle
Douglas Lisle
994 Driftwood Lane
Yachats, OR 97498

To: Yachats Planning Commission

From: Lawrence Musial

Re: Agate Point Residences LLC Land Use Application

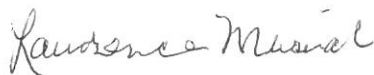
Date: October 11, 2021

This is a reaction to the above referenced application for a seven cottage hotel. I feel that the application should be denied for the following reasons:

- A. This is a veiled attempt to circumvent the restrictions and requirements for a Vacation Rental Ordinance 328;
This is an opinion of the writer, not referenced by a code violation
- B. There is a request for Variances;
 - a. Variances from the flood elevations should be quite rare YMC 9.54.060.A
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant YMC 9.54.060.B.2
The applicant has not shown an exceptional hardship.
- C. The Planning Commission may authorize variances from the requirements of this title where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this title would cause an undue or unnecessary hardship. No variance shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located. In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood and otherwise achieve the purposes of this title. **Section 9.80.010**
If this request is approved the best interests of the surrounding property or neighborhood do not seem to be met.
- D. The property does not provide direct access to Highway 101. This would impact traffic on Yachats Ocean Road and Shellmidden Road (not on Shell Street as referred to in part of the Application). Shell Midden is not a paved street.
- E. The application is not for 1.0 acres and would have a crowded appearance.

For the reasons listed above I would urge the Planning Commission to disapprove the application.

Lawrence Musial
226 Shell Street
Yachats, OR 97498
541-547-4096



October 9, 2021

Yachats City Council
Yachats Planning Commission
Yachats City Planner, Katherine Guenther

Dear Katherine,

Recently I became aware of a planned development to be built close to my home near the Yachats Inn which is two houses south of mine on Shell Street. I am opposed to this development being built here for several reasons but probably the greatest reason is that this is a community that is serious about protecting our wetlands.

This “Hotel” will be constructed on a designated jurisdictional wetland which is a protected area and should be preserved or at least not destroyed by commercial development.

The proposed development is in an R4 Land Use Zone which is Single Family, Duplex, Multi-Family & Motel. It does appear that the developer/ developers are trying to sneak it in by calling it a “Hotel” without applying for a transient rental license which would require getting on a waitlist due to the transient rental cap in Yachats.

Since it will be a “Hotel” will it provide the usual services provided by a hotel as described in Oregon Revised Statute ORS 699.005 (4) (b) “services normally offered by hotels, including but not limited to maid service, linen service, and receptionist”.

On the Application Plot Plan, it appears that the Hotel is designating eleven (11) perpendicular parking spots that are on Shell Street (actually it is Shellmidden Way). Is it legal to designate parking spots on a public street for

commercial purposes? Shellmidden is a narrow gravel road and the eleven perpendicular spots are sixteen (16) feet in length, hardly enough to maneuver and also allow for hotel traffic.

As noted in the application, Yachats Municipal Section 9.24.020 requires hotels to have direct access from Highway 101 which this so-called "Hotel" will not have. The developers are however requesting a variance to be granted. With the variance "Hotel" customers would access the hotel parking spaces from Highway 101 to Yachats Ocean Road and the tourist season which is 6 to 8 months long is already heavily used and difficult for the many visitors as well as locals who walk on this small road. There is no designated walking or pedestrian path along Yachats Ocean Road. The traffic on Shellmidden Way which is a narrow unimproved gravel road will have a much-increased traffic flow and will probably also disturb what is a peaceful neighborhood.

In closing, I ask that you Katherine, the Planning Commission, and the City Council consider these issues and do not approve of the housing development.

Sincerely,
Kathryn Musial
226 Shell Street
Yachats, Oregon

A handwritten signature in cursive script, appearing to read "Kathryn Musial", written in dark ink.

ROBERT & BARBARA MAC ONIE
32 GENDER DR, PO BOX 1018
YACHATS, OREGON 97498

October 12, 2021

City of Yachats Planning Committee
41 Hwy 101 N
PO Box 345
Yachats, Oregon 97498

Subject: Subject: Agate Point LLC Development Application and Proposal

Dear Planning Committee Members,

It is our understanding that the laws and regulations governing development are in place to protect and promote the health and safety of our community and its people. Therefore, any development that requires the granting of conditional uses, variances or other exceptions to existing laws and regulations needs to be accompanied by not just an assertion of but, a clear elucidation of the public benefit afforded the community by the development. I have found no such statement or declaration in the materials submitted. I would like the committee to provide a clear statement of benefit should any of the development requests be granted. I can think of a number of negative consequences for our community as a result of the proposed development.

First and foremost is the increase in traffic on Ocean View Road. Ocean View Road is largely a single lane road with considerable pedestrian traffic. The posted speed is 15 Miles per Hour which, most traffic ignores. This is a commercial development within a residential zone, thus the request for a conditional use permit, yet no traffic study is required. At 16 parking spaces and a daily maintenance and management of the units will create as many as, 40 additional vehicle trips daily, 14 for the cleaning of each unit, 4 for managing and maintenance of the units, and 32 trips figuring 4.5 trips per units. That is potentially a lot more traffic.

Second, this is largely a single-family community of retirees with numerous existing hotels and motels and 124 homes used as vacation rentals; there is no shortage of accommodations. But as a community we are short affordable housing, as a result we have a worker shortage driven by housing and costs. This development adds further competition to a limited labor pool.

Third, this is a cynical attempt to circumvent the Vacation Rental Ordinance by labeling the development as a hotel, which it is plainly not as the proposed managers of the facility is a Vacation Rental Company and not a Hostelry. This is not a game of semantics, the Committee needs to eliminate any possible confusion with respect to accommodations by plainly stating that the use is not only non-conforming but flatly not allow, period.

Fourth, we need to plan for a sustainable future, do we have the sewage treatment capacity, the water and fire-fighting capacity, the infrastructure maintenance capacity to meet all the development allowed for all the currently vacant lots in the city. I suspect that the current demographic of elderly is going to be supplanted by a younger generation of professionals who can work remotely – what better place – which will include a host of children adding to our numbers, do we have the capacity.

Others have likely addressed the specific exceptions to City code that this development requires, please consider all the ramifications of this development and how it could or would affect similar development proposals in the future. Thank you.

Sincerely,



Robert & Barbara

To: The City of Yachats Planning Dept

Date: 10-12-21

Re: Agate Beach Development

To Whom it may concern:

Please note that we are opposed to the application for numerous varients re this development.

- no direct access to the highway
- variances do not align with the established coastal protocols.
- huge environmental impact
- out of state developer

Concerned citizens

Sue Shaw

susw09@aol.com

Mickey Jawlowski

Oct. 12, 2021

Dear Yachats City Planning Commissioners,

As a resident of Yachats, I reject the proposed Agate Point development at 358 Yachats Ocean Road.

In July I attended a meeting organized by the developers for nearby residents who would be impacted. I listened and asked questions. Nothing about their presentation alleviated my concerns regarding increased traffic, safety, monitored overnight lodging, or negative impacts to wetlands.

I'm not opposed to development, per se, but this proposal is wrong in so many ways.

I live full-time on Shellmidden Way, and walk and bike frequently on Yachats Ocean Road to my office in town. I am extremely concerned about how widening Shellmidden Way, a gravel road, as access for overnight renters will negatively impact our living situation, recreation, safety, and property. That said, my opposition is not just a matter of *not in my backyard*. This development is not acceptable for many reasons that impact those of us who live near and far, and hold close in our hearts the importance of protecting nature, maintaining livability, and following the rules.

I reject this proposal on the following grounds:

- Negative impact of safety and increased congestion on Yachats Ocean Road
- An exemption that would allow for single overnight rentals to be considered a motel and thereby bypass our city's lottery system for rentals
- Negative impact on wetlands
- The likely precedent that would be set if this project was approved.

I appreciate the important work you do upholding development standards while supporting the sustained livability of Yachats. Please listen to the residents you represent and reject this proposal in whole.

Respectfully,

Laura Rains
PO Box 652
Yachats



October 12th, 2021

From: Robert Barrett

302 West 7th Street, Yachats OR, 97498

To: Planning Commission

Dear Commissioners,

I am writing to express my concerns with Agate Cove Development Project, and the variances requested to make that development possible. While I am concerned about the potential for the project to negatively impact ecologically sensitive wetlands, and the increased vehicular traffic on a narrow 2-way residential street, those are not my primary worries. Yachats does not need an additional 7 units of short term "vacation rentals" within its city limits while we continue to struggle with an already overburdened infrastructure.

The project seems to be little more than a thinly veiled attempt to circumvent the limits placed by the City Council on Vacation Rentals. While I am not opposed to vacation rentals, and use them regularly myself, I would respectfully suggest that unless and until we address these infrastructure problems, an ever-increasing influx of tourists cannot be sustained. Water shortages, increased traffic, a dearth of parking, an overworked and understaffed city hall, and a lack of affordable workforce housing are all issues that must be addressed before we consider lifting the cap on short term rentals.



Sincerely,
Robert Barrett
Yachats

Admin

From: Yachats City Planner
Sent: Tuesday, October 12, 2021 3:12 PM
To: Admin
Subject: Fw: Opposition to Applegate Project

Katherine Guenther
City Planner

EMAIL:
Planner@Yachatsmail.org

OFFICE PHONE:
541-547-3565, Ext. 104

From: Lance Bloch <lancebloch1@gmail.com>
Sent: Tuesday, October 12, 2021 7:11 AM
To: Kimmie Jackson <Kimmie@YachatsMail.org>; Yachats City Planner <Planner@YachatsMail.org>
Subject: Fwd: Opposition to Applegate Project

Please post with the Planning Commission packet.
Thank you,
Lance

----- Forwarded message -----

From: Maryann Candito <maryanncandito@yahoo.com>
Date: Mon, Oct 11, 2021, 9:15 PM
Subject: Opposition to Applegate Project
To: office@yachatsyardscapes.com <office@yachatsyardscapes.com>, corchard@peak.org <corchard@peak.org>, happydogs27@gmail.com <happydogs27@gmail.com>, jac.danos@gmail.com <jac.danos@gmail.com>, lancebloch1@gmail.com <lancebloch1@gmail.com>, 20lorendickinson@gmail.com <20lorendickinson@gmail.com>, cityhall@yachatsmail.org <cityhall@yachatsmail.org>

Dear Planning Commissioners and City Hall Administration,

We would like to express our extreme opposition to the Applegate project. First of all, regulations were made to preserve Yachats' natural beauty and wetlands, and this is why most of us live here. This project would undermine all of these safeguards meant to protect our wetlands and natural resources.

The increased traffic which would result from seven plus vacation rentals units (it's not a motel, let's call it what it is) on Yachats Ocean Rd would adversely affect the surrounding neighborhoods and would require road improvements. The city of Yachats

would most likely have to pay for a portion of these improvements, which we are very opposed to our tax dollars being used to destroy the wetlands and surrounding area.

Adding more vacation rental units would significantly increase the demand for water. Every summer Yachats goes into, at least, Phase One water restrictions. This project would put more burden on the residents of Yachats, we are the only ones who have water restrictions placed upon us. The vacation rentals have no such restrictions. Once again, it's the residents who suffer when big money comes into Yachats and wants to change our rules for their profits.

Please don't allow this project to move forward.

Thank you,
Dana Bleckinger and Maryann Candito
1045 Driftwood Ln.
Yachats, OR 97498
541-547-3181

October 11, 2021

To: City of Yachats Planning Commission

Re: Agate Cove Development, Yachats Ocean Road

Dear Planning Commission Members,

I am writing today to express our opposition to the proposed Agate Cove development and the variances that have been requested for the project to move forward.

First, the lot for the proposed commercial development is well below the required acreage for a project of this size. At ½ acre, this lot, by regulation, is too small for a commercial project of these dimensions. To allow this variance is to set a dangerous prescedent for future commercial developments that may also seek similar variances to the detriment of Yachats.

Second, the project been misrepresented as a "hotel". It is **not** a hotel, but a half dozen or so individual vacation rental units. It is apparent that the project seeks to bypass existing regulatory procedures related to establishing short term vacation rentals in Yachats. To allow such a blatant "work around" is to completely undermine the vacation rental approval process. Moreover, it is unfair to current vacation property owners who, in good faith, followed the rules. How can we ask that that our regulations be adhered to if we do not Implement them equally?

Thirdly, the development proposes access from Yachats Ocean Road and not from Highway 101, as required by existing regulation. Currently, Yachats Ocean Road is a major strolling area for locals and visitors alike. The additional traffic a commercial venture of this size would generate would significantly increase safety hazards for pedestrians and pets. For our older citizens and visitors, for whom walking is their greatest joy and perhaps only exercise, increased car traffic on this narrow street would make their outings a good deal less safe, as folks would likely be pushed more often onto uneven shoulders and rocky or sloped patches to avoid cars. Again, permitting such a variance would set a precedent for the future that would be harmful for citizens and tourists alike.

Lastly, but perhaps most importantly, from an environmental perspective, this wetland most certainly ought to have been formally protected. Unfortunately, it was not-- and here we are, facing another loss that we can ill afford. That being said, it is our hope that the current situation gives the Planning Commission and City Council pause, and in looking to the future,

inspires us collectively to take all necessary steps to protect what we have left to protect. Yachats is special, very special-- but not so special that it can avoid the impacts of global warming, rising sea levels and extreme weather patterns, which could well include catastrophic flooding. Our wetlands protect us, so let's protect *them*.

Please accept this letter in the spirit it is written-- with our committed, engaged community in mind and with great love for this beautiful place that we call home.

Respectfully,

A handwritten signature in purple ink, appearing to read "Barbara Loza-Muriera and Artur Gnitecki". The signature is fluid and cursive, with the names connected together.

Barbara Loza-Muriera and Artur Gnitecki
3279 Yachats River Drive, Yachats OR 97498
beelozemur@gmail.com

October 5, 2021
20 Beargrass Ct.
Yachats, OR 97498

Yachats Planning Director and Commission

Subject : Agate Point Development Application

The land use CU application for this seven cottage hotel should be denied. It fails to meet key community protections and provisions of the Comprehensive Plan and Municipal Code. The application is unable to meet wetlands jurisdictional priorities of avoidance and mitigation. As of yet, it lacks a Wetlands 404 Permit under the Federal Clean Waters Act which renders premature any Planning Commission decision. Furthermore, though technically meeting Yachats' land use application requirements, the submittal is deficient in providing important information necessary to a fully informed decision.

Sense of Place

The application flies in the face of the tenets, dictates, and provisions of our Comp Plan, which call on any and all proposed development to preserve, protect and enhance our local natural resources. The Comp Plan calls for protection from any proposed uses that might modify the indigenous oceanside characteristics and calls for preserving public views of wetland areas.

This development cannot be considered in isolation from the surrounding area. The entire Yachats Ocean Road exudes a sense of place for residents and visitors alike. As part of the Oregon Coast Trail and State Natural Site, it fulfills expectations of a oceanside marine environment with rock outcroppings, high grass, coastal vegetation, adjacent wetlands, wildlife, and interspersed open space. Agate

Point's very design and site placement trespass upon these highly valued natural resources and sense of place. It's site design and scale unacceptably intrude upon local resident density and intensity of use, degrading the sense of place all along Ocean Road. Natural features are not integrated into the design. Taken together, this proposed development fails to preserve the area's most valued natural resources, as our Comp Plan dictates.

Municipal Code Deficiencies

The most glaring and compelling reason for denial stems from the applicants' inability to provide direct access to U.S. Hwy. 101 as required. There is no precedence for deviating from this hotel requirement nor any reason to grant a variance. There is not one single hotel/motel within Yachats' town limits that does not access directly onto 101. I can't more strongly emphasize how unwise and regrettable it would be to grant an access variance that could come into play for future applications. Just think of the potential bind on future land use decisions and subsequent harmful consequences for retaining our preferred community design, our management of tight traffic and pedestrian patterns, as well as our safety, health and environmental considerations.

It goes without saying that no variance should be granted for the one acre requirement. Give a little...give a lot. Again, bad and unwise precedent.

Variances should only be granted when presented with a hardship inability to make reasonable use of one's property while still protecting the community interest and the rights and values of neighboring property. There is no hardship in this case. Reasonable use is not denied this applicant as there are other practical and compliant uses available. Nor is highest and best use of anyone's property ever guaranteed...hence why we have zoning and land use codes.

Wetlands

The onsite wetlands are the only wetlands south of Yachats benefitting our local ecosystem. The wetlands set it apart from any of the properties fronting and adjoining Yachats' Ocean Road. The Army Corps of Engineers has rendered a Jurisdictional Determination (JD) that these wetlands are "waters" of the United States". Therefore, any excavation, vegetative clearing or construction will require a Section 404 permit with its own terms/conditions or evidence that relief or permissions are granted through their Nationwide or Regional General permit process. We have no information on this from the applicant. I do know that as of October 5, no 404 permit has been applied for.

The Clean Water Act requires all appropriate and practicable steps to avoid and minimize impacts to our wetlands. Compensatory mitigation is a last resort. It is most important to understand that Yachats has the authority to require avoidance or acceptable mitigation at this site under the auspices of its Comp Plan and Municipal Code. This project's scope, size, design, and density is unable to offer any avoidance or mitigation and should therefore be denied.

Application Deficiency

The application lacks information about project impacts and effects on South side water and sewer. How will it affect water quality, quantity, and pressure for local residents?

The vehicular impositions of this project should trigger an impact study on the pedestrian/auto patterns on Ocean Road and to the intersections with Shell Midden Way and U.S. 101.

No information is provided about night sky effects and compliance with Yachats' new Lighting Ordinance.

In conclusion, Yachats' interests can only be served by denying this Conditional Use Application.

Respectfully submitted,


John Ayer, Resident

Hand delivered to City Hall (10 copies) [10-12-21 am](#).

To the Yachats Mayor, Members of the Yachats City Council,
Yachats City Planner, Yachats Planning Commission

October 11, 2021

Regarding the July 23, 2021 "Land Use Application " of Agate
Point Residences LLC

This letter is in opposition to the subject "Land Use
Application."

We are Maggie and Jim Paul. We live at [268 Yachats Ocean
Road](#). We have lived here for six and one half years.

I. The Application and the Applicant

The first page states it is a "Conditional Use" application.
Not a request for a non-conforming use, not a variance, not a
zoning change, not a comprehensive plan change.
Yet it appears to be all of the above.

It requests the City to permit the applicant to "construct a seven (7) cottage hotel," consisting of prefabricated modular units (Page 18 of the application) as "guest accommodation."

The application makes the following at minimum 5 requests:

1-To allow the project to get around current restrictions on vacation rentals for its proposed seven units. Sweet Home vacation rental firm is designated as the non-resident manager of the "cottage hotel" with the "duration [of the rental contracts] as chosen by Client." (Page 19 of the application).

In short, the application requests that this project, a unique vacation rental "cottage hotel" be permanently exempted from vacation rental regulation.

2- To modify the R-4 zoning to allow 7 buildings in the total proposed size which the application notes is not allowed (page 19).

3- To modify the current requirement that such a "hotel" project requires a minimum of one acre, rather than the approximately one half acre size on the applicant's parcel.

(Page 18).

4– To allow the applicant to have no direct access to highway 101, a current requirement for such a “hotel”. (Page 18)

5– The application acknowledges that this project cannot go forward without approval of the Oregon Department of State Lands, which has not yet done so, and that nothing in the application should be relied upon until that approval has been obtained (page 30).

The application states that the developer gave notice to 25 nearby properties of a “community meeting” to discuss the project on July 15, 2021. Neither of us received such notice. We certainly would have gone to that meeting if we had.

Please note that the application was filed with the City on July 23, 2021, and there is no statement in the application as to what information was provided prior to the meeting to the 13 property owners who apparently attended. Was the complete application in draft form provided in advance?

And who is the applicant? It is a limited liability company about which no information is provided. Is it Jon Fletcher,

apparently of Costa [Mesa, California](#), who is identified as the client of one of the firms presenting information in the application?

Although not required by the form application, no business plan or any other information about the applicant has been provided. The City may need the applicant's business plan showing the anticipated costs and profits.

There may be other requests being made by the applicant to the City which an initial review of the application does not explicitly demonstrate.

What is the applicant's track record?

The application acknowledges that there are significant environmental issues raised by the project, while acknowledging that any discussion of the subject is premature unless and until the Department of State Lands issues an opinion about wetlands issues (page 30).

For example, most of the 93 pages of the application concern wetland issues. At page 45 of the application a consultant describes the total wetlands as only ".037 acre", but a map

4

attached as part of the application (page 37) shows approximately 90% of the applicant's property as "wetlands." In any event, the applicant proposes that "any environmental impacts" be "offset" by "mitigation fees to a Conservation Bank." (page 20)

II. Congestion: Vehicle and Pedestrian Traffic

The application admits that the project has no direct access to Hwy 101 as required by law. Access will be through a reconstruction of Shell Midden Rd. And then onto Yachats Ocean Rd., turning either north or south to 101.

And at one point in the application it says there will be 16 parking spaces on the project; (page 18) at another place a map appears to show 21 parking spaces (e.g. page 16).

We live three lots away—approximately 150 yards—from the proposed project. We walk several times a week on Yachats Ocean Road passing where the project would be located.

We have a few comments regarding congestion on Yachats Ocean Road. There are perhaps three types of drivers on that road:

1– residents and their visitors;

2–out of towners who either park on the road to visit the beach or to walk and view the sites, including the blowhole across the street from the proposed project; and

3–those who drive through to enjoy the road and just enjoy the view but keep going.

Anyone who has driven the approximately .7 of a mile on the road knows well there are places that are effectively one way, and that at times—especially weekends and holidays— it gets quite congested.

And there are at least three types of walkers on that road daily.

1-residents like us who walk it several times a week, some who walk it more than once a day, often more than 100 walkers a day, many with their dogs.

2-motel patrons of Yachats Inn who eagerly take in the sights , often with their children and families and dogs.

3–hikers on the coast trail, and those looking for Amanda.

There are hundreds of walkers and dog walkers every week, rain or shine. (We happen to be responsible for being sure doggie bags are provided in the dispenser near the midpoint of the road and on average there are several



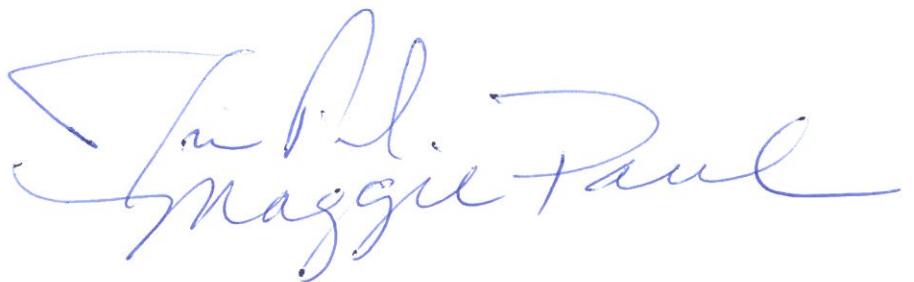
hundreds of those bags used by walkers every two months). And we all know that at times there are few if any places for visitors or beach goers to park their cars. And the narrow spots on the road can test the courtesies of some drivers and walkers.

Finally, although there is more that we could say, please note that we agree with most of the other comments made by other concerned community members in opposition to this proposed project. Rather than repeat those comments we incorporate them by reference here. Please also note that the copy of the application we reviewed on the facebook site Friends of Yachats Ocean Road had 15 blank pages of the application. Not sure if that is the way it was filed.

Thank you for giving us an opportunity to comment on this important matter.

Jim and Maggie Paul

Sent from my iPad

A handwritten signature in blue ink that reads "Jim and Maggie Paul". The signature is written in a cursive, flowing style. The "Jim" is written above "Maggie", and "Paul" is written to the right of "Maggie".

P.O. Box 971
Yachats, OR 97498
11 Oct 2021

Planning Department
City of Yachats
P.O. Box 345
Yachats, OR 97498

To Whom It May Concern:

I am adding my name to those in opposition of granting permits for the developers of the Agate Cove project.

I worry that the proposed development would both threaten the health of the wetlands and negatively impact the quality of life for the single family residents of the area.

It seems to me the only benefit would be financial for the developers.

Sincerely

A handwritten signature in cursive script, appearing to read "Myron Eckhardt".

Myron Eckhardt
872 King Street
Yachats, OR 97498

October 8, 2021

To the Yachats City Planners:

We purchased a cottage in Yachats at 1720 Hwy 101 in 1997. Ten years later we sold it and purchased a house at 540 Yachats Ocean Road.

Our home is in Eugene, but we visit Yachats weekly.

At no time since we owned these properties have they been a vacation rental.

Please plan for our future by ending short term rentals. The tide pools are barren.

The frogs have all but vanished.

The numbers of song birds are fewer every year. Water is a major concern.

Yachats is a gem, and part of their value is their small size... keep the village valuable and small.

Please don't waste the
wetlands. The building
is not going to improve
space. Thoughtful planning
will.

Yours truly
Bonnie Mainwail
Bonnie Mainwail

Admin

From: Julie Bailey <juliebocean@outlook.com>
Sent: Saturday, October 9, 2021 12:13 PM
To: City Hall
Subject: Agate Point Development

Good afternoon,

I am sending this to all of the planning commission.

I am a permanent four year resident of Yachats and a visitor for the previous four decades. My name is Julie Bailey and I live on Radar Road, Yachats.

I am opposed to the proposed Agate Point Residences for the following reasons.

Wetlands.

This is clearly a wetland and should be protected; not paved over or developed. It is an important ecosystem providing habitat for bird, amphibians and mammals. Once removed it can never be replaced.

Traffic

Shell Midden street is a private graveled road. Traffic impact will create dust and a danger in a pedestrian friendly area. The same can be said for Ocean road which already has a lot of traffic on its narrow surface. Lots of cars, people, pets and bikes. Please don't approve a variance that will increase the likelihood of accidents or injury due to increased traffic.

Infrastructure

Yachats does not have the capability of supporting more traffic, tourists or parking. Not to mention the strain on the sewer system and the impact on our water supply; which will likely get even more worrisome with climate change. And, we can clearly see that local businesses are struggling with staff shortages due to the lack of affordable housing.

A Cottage Hotel

This is primarily a single family residential neighborhood. A hotel or let's call it what it really is – seven vacation rentals on ½ acre thinly disguised as a hotel to get around short term rental license requirements is out of place in this location. A variance should not be approved. No onsite manager and Sweet Homes does how well monitoring its existing vacation rentals? And how are they doing with staffing? Rhetorical questions.

The decision you make can set a precedent for future developments in Yachats. I urge you to not to approve the variances. Consider the good of Yachats. How is this development of benefit? It is not the "highest and best use" for this small ½ acre lot regardless of the R4 zoning.

Fire Pits

Smoke pollution, impact on neighbors not to mention a fire hazard. Again no onsite manager.

Supplemental Information

There is a good reason for a hotel/resort required to have direct access to 101 and be on at least an acre. As an example the Yachats Inn has direct access from 101, is clearly on sufficient acreage and has onsite management. Agate Point has none of these. Private street access and via Ocean Road does not make sense and a variance should not be allowed. Parking spaces (at least two per unit) – gosh, let's just jam as many people as we can in a private mostly residential neighborhood. Once again it's clearly a wetland area and once removed it can not be replaced.

Lighting

So much for promoting dark skies. Additional abundant lighting will create more light pollution.

Noise

Increased vacationers making noise into the night. Also fireworks danger.

Trash

There's already an increased amount of trash in the last year or so. We'll see more dog poop bagged and not, cigarette butts, plastic and food and beverage containers.

Thank you for reading and I sincerely hope you will all consider stopping this development.

Julie Bailey

Admin

From: Brian S <serbub@gmail.com>
Sent: Monday, October 11, 2021 7:37 AM
To: City Hall
Subject: Oct 19th Development hearing- Agate Point

Dear Planning Department and Planning Commission,

I would like to show support for the proposed development south of Yachats as a resident of the city. The city has a reputation for being hard to build in amongst builders and home owners, so this is an opportunity to encourage healthy development. Furthermore, the proposal is asking for several exceptions to city rules/codes which should be granted for the reasons listed below. I am writing this letter expressly to show support in the face of vocal opposition in the community who have not shown valid reasons to limit the proposed construction.

Regarding use of the street Shellmidden, an increase of street traffic is inevitable when there is r4 zoning and the best access is off 101. If instead apartments were built, or multiple vacation homes, the traffic would be similar and inevitable. I see no concern with the increases in for or car traffic related to the proposal and hope that personal local concerns are taken with a grain of salt when considering limiting the property owners right to build.

Regarding exception to the minimum amount of space for a motel structure, I think this is a point to consider. The development has properly applied for a variance and is proposing a valid use of the land, however they need permission to build smaller than usual. I totally support this idea as more units allows for more city revenue, more local jobs and less pressure on homes as rentals for tourists. I have heard complaints about this being an exception to the short term rental laws, however they are unfounded. If the proposal meets the criteria for a motel, we should accept it as such. Since this land is explicitly purposed for high density housing, a motel is a great use of the land since it provides parking and all the necessary support for the visitors too. I have absolutely no problem with this exception to the use of the land for motel.

Finally, I have been hearing other unfounded comments about the proposal in general. I have read the proposal and see no concerns with what is being proposed. The development application has fulfilled the requirements for the application and has a great idea for the land. I believe it is our job as neighbors to support them in building. I will be listening intently to the proceedings and hope that the city will remember that personal complaints should not outweigh the rights of the property owner to build, especially when they are following all the rules.

I look forward to the hearing and your vote of support for the project.

Brian Serbu
251 w 7th st
Yachats, or 97498



October 12, 2021

VIA EMAIL & FIRST-CLASS MAIL

City of Yachats

Planning Commission Commissioners:

Lance Bloch, Chair

Loren Dickinson, Vice Chair

Ariana Carlson

Christine Orchard

Helen Anderson

Jacqueline Danos

Yachats City Hall

501 Hwy. 101 N

Yachats, OR 97498

Email: admin@yachatsmail.org and cityhall@yachatsmail.org

Re: Agate Point Conditional Use Application

Dear Commissioners:

This firm represents Jo Dee Moine who owns real property at 390 Yachats Ocean Drive that is affected by the development proposed in the above-referenced matter. This letter is to provide the Planning Commission with written testimony opposing the proposed development.

The application misrepresents the nature of the proposal to circumvent important development standards adopted to protect the citizens of Yachats.

One could easily characterize the applicant's proposal as a bait and switch. On the one hand, the proposal clearly illustrates seven single-family dwellings with separate bedrooms, living area, full kitchens, and private outdoor areas. Indeed, the applicant describes the structures not as rooms or sleeping quarters, but rather rental cottages. Yet, in a transparent attempt to avoid important development standards designed to preserve the livability of Yachats and to get around the lottery for short-term rentals, the applicant attempts to gain approval of its independent rental cottages as a "hotel." By so characterizing its proposal, the applicant is attempting to get approval for seven single-family dwellings on a 21,000 square foot parcel that, under the appropriate development standards, would accommodate three dwellings.

Christopher P. Koback
1331 NW Lovejoy Street, Suite 950
Portland, OR 97209
chris@hathawaylarson.com
(503) 303-3107 direct
(503) 303-3101 main

As noted above and plainly reflected in the application, the applicant is proposing to construct seven single-family dwellings on one lot. Each proposed structure has every element of a single-family detached dwelling unit. A single-family dwelling is defined as a building designed or used, in whole or part, as a residence or sleeping place, either permanently or temporarily, by one or more families, but excluding hotels, motels, and tourist courts. By defining a single-family dwelling to include temporary places for sleeping, the rental cottages fall squarely within that definition.

On the other hand, a hotel is defined as any building containing guest rooms, which are rented or hired out, to be occupied for sleeping purposes for guests. Thus, a hotel is a single building with multiple guest rooms, which do not have full kitchens. The rooms are for sleeping. A motel is defined as a series of sleeping units, each having a separate entrance composed of one or more bedrooms and bathroom. Again, a motel does not have accommodations with full kitchens. Thus, under the city's definitions, a defining characteristic that separates a single-family dwelling from a hotel or motel room is the existence of a full kitchen.

The city's use provisions are also informative. We will address this more below, but in Yachats Zoning Code ("YZC") Sections 9.24.020 and 9.24.030, hotels and motels are allowed in the R4 zone only if they have accessory commercial uses. In most settings involving hotels and motels, the accessory commercial use is a restaurant or some form of eatery because, as noted above, hotel/motel rooms do not have full kitchens.

The proposal is in reality a single-family short-term rental development that fails to meet the required minimum lot area standard.

Because the proposed single-family cottages can never meet the definition of a hotel or motel, they must either be reviewed as single-family dwellings, the definition of which they clearly fall within, or multi-family dwellings on a single lot. Indeed, as one commentor noted in written comments, at least two of the proposed buildings have a main dwelling unit and a separate area that can be rented out separately as an independent living area.

Correctly characterizing the proposal is critical because the city must apply the proper development standards to assure the property is not over loaded. It is obvious the applicant labels its proposal as a hotel because it is trying to avoid the lot area requirement for single-family development. YZC Section 9.24.040 contains the development standards for the R4 zone. The minimum lot area for a single-family dwelling is 6,000 square feet. The minimum lot area for a two-family dwelling is 7,500 square feet. For multi-family dwellings over two units, the minimum lot area is 5,000 square feet for the first unit and 2,500 square feet for each additional unit.

Applying the above provision to the subject site, which is 21,625 square feet, the applicant would only be able to propose three, or possibly four dwellings. Accounting for access issues and other constraints, it would appear that three dwellings would be the maximum allowed.

In an effort to circumvent the applicable single-family dwelling standards, the applicant placed a hotel label on its proposal simply because it plans to continuously rent the dwellings. As a hotel, the applicant asserts that it only needs 1,500 square feet for each hotel unit and, thus, the site can accommodate seven units in addition to the required parking lot.

The applicant's characterization is a transparent attempt to circumvent the applicable development standards in the R4 zone. As noted above, the application material patently demonstrates that the structures being proposed are not hotel units but rather single-family dwellings. When one examines the load placed on the site and the impacts on surrounding properties, there is a market difference between seven single-family dwellings on a 21,000-foot site and seven hotel rooms. Each dwelling can accommodate many more people than a hotel room. For example, the three-bedroom units could easily accommodate two families with at least two cars.

If the city reviews the application as a proposal to develop a multi-family development with multiple units on a single parcel, there is another fatal flaw. Under YZC Section 9.24.040.F, the minimum separation between multi-family buildings shall be 30 feet, unless the buildings are arranged end-to-end. As proposed, the seven multi-family buildings are not end-to-end.

In any case, the proposal is not a hotel or motel under the city's definitions or applying any common logic. It is a proposal for seven single-family dwellings that will be rented for a profit, or a proposal for a multi-dwelling development. Either way, the city must apply to correct development standards and cannot apply the development standards for a hotel or motel.

Another aspect of this is the character of the proposed use. The applicant acknowledges that the plan is to continuously rent the single-family cottages to visitors. Thus, they are short-term rental units. This appears to be a transparent effort to avoid the city's limits on short-term rental units and avoid having to go through the same lottery system as all other owners who wish to make short-term rentals of their homes.

The proposal cannot meet mandatory approval criteria even if one accepts the applicant's mischaracterization of the proposal.

Perhaps the most telling evidence of the applicant's plan to circumvent the lot area requirement is that there are no other uses proposed on the site. The plans include only seven single-family structures. As the applicant concedes, a hotel is not a permitted use on the site because it is below the one-acre minimum, and it does not have direct access to Highway 101.

Section 9.24.020 Permitted Uses allows for a motel, hotel, or resort of 1.0 acre with direct access provided from (sic) U.S. Highway 101 and only with accessory commercial uses. We are requesting a Conditional Use Permit because the project does not meet the 1.0 acre minimum and does not directly access U.S. Highway 101.

As the applicant recites, YZC Section 9.24.030 allows the city to approve, as a conditional use, a hotel that is on a parcel less than one acre and that does not have direct access to Highway 101. However, that code section, just as YZC Section 9.24.020 recites, expressly requires that hotels on less than one acre and without direct access can only be approved as a conditional use if they also have accessory commercial uses. YZC Section 9.24.030 Conditional Uses at subsection P allows:

Motel hotel or resort on less than 1.0 acres with accessory commercial uses.
(Emphasis added).

The application material does not reveal any proposed accessory commercial uses. In the context of a hotel, an accessory commercial use would most commonly be a restaurant or bar, or both. Thus, even if one ignores the applicant's obvious effort to mischaracterize its proposal as a hotel to avoid mandatory development standards, the proposal cannot be approved even conditionally because it does not have accessory commercial uses. There is no provision in either YZC Section 9.24.020 or 9.24.030 that allows the city to approve a motel or hotel that does not have accessory commercial uses.

The applicant has made no demonstration that it will ever be able to fill two jurisdictional wetlands and the proposal is dependent on filling them.

There are two wetlands in the site comprising approximately .13 acres. The applicant's proposal depends upon its ability to fill two wetlands and mitigated for that by simply paying a fee. To support its requests, the applicant submitted a study from Scotts and Associates that concludes that neither wetland is connected to navigable waters and, thus, are not jurisdictional wetlands. The August 17, 2021, response from the Army Corp of Engineers ("Army Corp") is inconsistent with that submission. The Army Corp determined that both wetlands on site are "waters of the U.S.", which means they are jurisdictional. As a result, the application cannot proceed unless and until the applicant appeals that determination and succeeds or applies for and obtains approval from the EPA to fill the wetlands. While a local government has some ability under ORS 197.522, to approve an application based on conditions, the applicant must make some demonstration that the condition is feasible and will assure compliance with the approval criteria. *Gould v. Deschutes County*, 227 Or App 601, 206 P3d 1106 (2009). The application has no information that demonstrates feasibility of prevailing on an appeal of the Army Corp determination or, in the alternative, obtaining an EPA permit to fill the wetlands.

The applicant has not adequately addressed relevant access/safety issues.

YZC Section 9.24.040.I requires that vehicle and pedestrian access to the site be safely and efficiently provided. A critical component of safe access has to be adequate access for fire and other emergency vehicles. The proposed site plan illustrates that there is no such safe access proposed. There is a single road, Shellmidden Way, that enters the site in the proposed parking lot. That road is a narrow, dead end, gravel road. As the parking lot is configured with 20 spaces

October 12, 2021
Page 5

to accommodate up to nine dwelling units, there will be no room for a fire truck to maneuver on the site. If the lot is full of vehicles owned by those renting the seven/nine units, it is doubtful that a fire truck could even get onto the site. Yachats Ocean Drive does not provide a reasonable alternative for emergency access to the proposed buildings located in the southern quadrant of the site. The only way to get efficient access to those structures is through Shellmidden Way where the access can be impeded by vehicles in the parking lot.

Conclusion

As explained above and reinforced by other comments you will review, the applicant has not met its burden to show that its proposal meets all of the applicable standards. For that reason, the application should be denied.

Very truly yours,

HATHAWAY LARSON LLP

A handwritten signature in blue ink, appearing to read "Christopher P. Koback", with a long horizontal flourish extending to the right.

Christopher P. Koback

CPK/ep

cc: Client

The proposed Agate Point development is an insult if not a travesty of the city of Yachats's self-description, which was first formulated in 1996 as the "Yachats City Council Vision."
(See <https://yachatsoregon.org/DocumentCenter/View/1050/Yachats-Area-An-Active-Vision-to-Create-Community>). The Vision is printed on every Yachats Newsletter and was inscribed on the wall in the City Council meeting room in the Commons. Its very first sentence reads as follow:
"Our village is a place where natural resources are valued and protected."

If natural resources are indeed valued and protected, then Yachats is definitely not a place where greedy developers can ransack the environment, destroying trees and wildlife in order to enrich their pockets. We have already seen, and now have to live with, one such horrific destruction of our village, its trees and wildlife utterly destroyed in the Koho housing development. We do not want nor do we need another such destruction of our village. Its flora and fauna are absolutely natural resources to be valued and protected.

Maxine Sheets-Johnstone and Albert Johnstone (fulltime residents of Yachats for 28 years)

Maxine Sheets-Johnstone
Albert P. Johnstone



*Dear Planning Commission,

This letter is written to detail my objections to Agate Point Residences LLC's application for a conditional use permit for the proposed development of a hotel, consisting of seven or eight separate units, along Yachats Ocean Drive. The opinions expressed herein are given as a resident of the City of Yachats and the State of Oregon. This letter is not meant to provide legal advice to any individual and represents my personal opinions.

The owner's application for a conditional use permit is currently pending before the City of Yachats and is scheduled to be heard by this Council on [October 19, 2021](#). I also believe it is pending before three other governmental agencies, including the U.S. Department of the Army, the U.S. Army Corps of Engineers, Portland District, Oregon's Department of State Lands, and the County of Lincoln. I don't believe these three government agencies as of [today](#) have approved the owner's delineation plan and application for building permits. Therefore, it may be premature to have the City consider this development without the requisite approvals from these other agencies.

For instance, the Delineation Map dated [May 6, 2021](#), as proposed by the owner, changes the percentage of wetlands from .13 acres to .03 and .007 acres on a .57 acre site, which differs considerably from the present valid Delineation Map. If the owner's Delineation Map was approved by the Delineation Division of the Department of State Lands (DSL) and the Army Corps of Engineers, the owner would still need to apply for a permit. At this point, the DSL is still conducting a review, which is pending with that division.

On [August 17, 2021](#), approximately two months ago, the Department of Army Engineers asserted that the reviewed areas are waters of the United States, and therefore, the federal government has jurisdiction over the approval of any development of wetlands. If the owner disagrees, he may request an administrative appeal under 33 CFR Part 33. Even so, the owner has to submit a completed Registration for Appeal form, which must be complete, meets the criteria for an appeal, and is timely, i.e., received within 60 days from [August 17, 2021](#).

Because the owner's Delineation Map has not been approved, the map prepared by the Army Corps of Engineers is valid, at least for a period of five years, and shows that the site in question consists of .13 acres of wetlands, which is under federal jurisdiction as "waters of the United States."

The County of Lincoln also cannot approve the project without approval by the Army Corp of Engineers and the Oregon Department of State Lands, which shows compliance with Oregon's Removal Fill Law. As a result, the owner would need to get a wetland delineation of the property and the project must show avoidance of the wetlands, which seems unlikely given the wide swath of land that is part of the wetlands.

If the owner intends to impact the wetlands, which seems probable, the owner would need to get a permit from the State of Oregon. The Army Corps of Engineers, the State of Oregon, and the County of Lincoln need to conduct a regulatory review before any building permits are granted. To request one now from the City of Yachats before such actions are taken is premature and should not be allowed to go forward at this time. The City of Yachats, including the Planning Commission, is without authority to approve any plan impacting the wetlands until and unless approval by the DSL is granted.

Can you please confirm receipt of this e-mail? Very truly yours, Donna Bader"



From: GERALDINE BATTISTOLI <jeri1945@msn.com>

Date: 10/8/21 12:10 PM (GMT-07:00)

To: CityHall@yachatsmail.org, Kimmie Jackson <Kimmie@YachatsMail.org>

Cc: Planner@YachatsMail.org, Donna Bader <Donna@donnabader.com>

Subject: Re: Agate Point Application dated 7/23/21

The Application by Agate Point of Newport Beach, CA. raises three issues:

1) Decision making power (Jurisdiction) of the Wetlands on this parcel.

[* See the letter below submitted by Donna Bader, an Attorney speaking only as a concerned private citizen and resident, which amply covers this issue.]

Simply stated: By it's failure to act to protect the Yachats Wetlands, the Planning Commission has abrogated it's direct authority over this Application. **

** [though it's duty to demand what is termed "avoidance" and to effect "mitigation" to any and all adjacent wetlands by any abutting building project remains.]

2) Because the Commision lacks jurisdiction, it also lacks authority to approve any building plan **until and unless** permits are in place from the Army Corp of Engineers and the Department of State Lands. It may thus be said that the building plan presented by the Applicant is premature and that therefore any action taken by the Commission would be, in legal parlance, void ab initio, voidable, against public policy, or a combination of all three.

3) The Application presents a third issue that can and should be addressed and ruled upon now by the Commission, both in fairness to the applicant (in order to guide any possible valid future application), and to the people of Yachats who should not be required to return to this issue in any subsequent application as they have been numerous, vocal, and unequivocally in their rejection of the request to, by Conditional Use approval, allow this Applicant, without Route 101 access or one acre of land, to qualify for overnight rentals as a hotel/motel.

"Conditional Uses" arise most frequently in heavily restricted residential areas where the residents desire an exception to benefit a majority of the occupants and the grant has a limited adverse impact on the community as a whole.

(i.e. a church... or a daylight-only operational walk-in clinic in a very rural or commercially distant area)

The Yachats Community has expressly rejected even the suggestion of any benefit by this proposal. In fact, the danger to the entire community by setting such a precedent has been uniformly reiterated.

This Application can and should be voted upon and rejected by the Commission now, as the Application is date-stamped July 23, 2021 and is rapidly approaching the one hundred and twenty (120) day mark by virtue of the postponement requested by the Applicant.

In summation, this Commission should not even entertain and should entirely **reject** the Application's building plan segment as the Applicant lacks the requisite Federal and State approvals and **should** vote to deny the Conditional Use portion of the Application.

Respectfully submitted,
Geraldine Battistoli

Date: October 10, 2021

To: Yachats Planning Commission

Subject: Agate Cove Development Concerns/Objection

Dear Commissioners,

It has come to our attention that you are reviewing a proposal for development near Agate Cove accessed by Shellmidden Street. Reference the proposal of several homes/cabins to be placed on a 1/2 acre parcel and will operate as a hotel. Also a location that we had thought designated a wetland.

Concerns:

This proposal does not appear to follow our Municipal Code, i.e: one acre of land for hotel, and direct access to HWY 101

If the land is truly a wetland it is both foolish and irresponsible to build. In addition we need to be considering the eco system and how it will be affected.

Questions:

Who would overseeing the "hotel?"

How will this affect traffic on an already busy Yachats Ocean Road?

Are we considering all factors of the environment? How will plants, animals and people be changed if this proposal is allowed to proceed?

We have been full time residents since 2007 and support the healthy development of Yachats. But due to the most likely negative impact to the community we must take serious caution and raise objection to the Agate Cove Development proposal.

You are in a tender position having to decide the future of our town, and you do make the difference. In your deliberation please remember: **great communities don't just happen – they are planned!**

Respectfully Submitted,
MaryAnn Cherrier
Ellison Glattly
47 Greenhill Drive
PO Box 527
Yachats, OR 97498
tel: 541-261-4475

October 11, 2021

Attention: Planning Department
City of Yachats
PO Box 345
Yachats, OR 97498

Project Name: Yachats Planning Commission Yachats Ocean Road Development

Subject: Yachats Ocean Road Development

Dear Planning Commission

My name is Joseph Danko, and I am a Yachats resident currently living at 370 Hill CT. I am writing as both a Yachats community member and professional engineer who has been leading urban development projects for more than 30 years across the globe.

I am writing to you today to Aggressively Oppose the Yachats Ocean Road Development. Throughout my professional career, I have been focused on implementing community supported, sustainable and resilient developments that strive to include all members of the community. This planned development violates all of the tenets that I have been involved in throughout my career including:

This is not supported by the Community. The neighborhood and community around this exact development area are opposed to this development. It is not in their interest and provides no benefits to their well-being. First and foremost, we must listen carefully to our communities' voice when we conceive new developments. The community is saying "NO" to this development. We need to listen.

The development is not Inclusive. The next developments in and around Yachats need to be focused on affordable housing to support members of our community who work in this community. Our planning commission should focus first and foremost on housing that workers can afford who support the services, health and well being of all Yachats Citizens.

This is not Sustainable or Resilient. This development is planned on an existing wetland. This is not only a violation of the law it is harming to the environment and ecosystem. Wetlands provide

Joseph Danko
370 Hill CT
Yachats, OR
97498
541.547.3618 (D)
541.740.4611 (M)

October 11, 2021

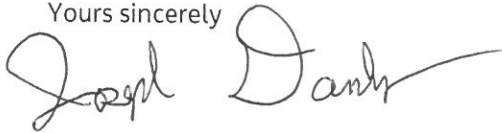
Subject: Yachats Ocean Road Development

ecosystem services to all of us as well as supporting a diversity of life that we all cherish as Yachats Residents. Granting an exemption that will permanently eliminate valuable wetlands is not environmentally unsustainable and it also impacts the overall resiliency of our community.

Destroys the unique Yachats Ocean Road experience. Yachats ocean road provides a unique experience to walk safely with minimal vehicular traffic. I am down there at least once per week and cherish the fresh exposure to the ocean and environment and interactions with other pedestrians. We do not need to add more vehicles that will move Yachats Ocean Road to a more congested type of road increasing the risk of accidents. This will also devastate the "special experience" that is currently offered to the main users who are pedestrians and their pets.

Violates Municipal Code. Hotels are supposed to have direct access to Highway 101. This development violates that code and again granting the Developer an exception is unacceptable. It will also put all of that vehicular traffic onto Yachats Ocean Road. Secondly, the code is clear that hotel developments should be on a minimum of 1 acre. This planned development is only ½ acre. Again, we do not need to make exceptions to our own municipal code when the community is opposed to this development for all of the reasons I have already listed above.

Yours sincerely

A handwritten signature in black ink, appearing to read "Joseph Danko". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Joseph Danko P.E.

Yachats Resident at 370 Hill CT

Managing Director, City Solutions

Jacobs Engineering Group

541.740.4611

jo.danko@jacobs.com

Kimie Jackson

From: Jeanette Busse <jabusse2015@gmail.com>
Sent: Wednesday, September 29, 2021 11:45 AM
To: City Hall; Kimie Jackson
Subject: Attention : Planning Commission:Agate Point Residences Development

Dear Katherine Guenther and Planning Commission,

I object to the development of the Agate Point Residences for the following reasons:

1. The proposed development is not similar to any other development along Yachats Ocean Road. The proposed units are much closer together than are the units at the north end of Yachats Ocean Road. No other development has as many single family dwellings (7 homes on .57 acres).
2. The proposed development would put a hotel-like establishment in the middle of an area of single family dwellings. The area along Yachats Ocean Road and Shellmidden Way to the south of the Yachats Inn is composed of single family residences and is separated from noise and traffic from the Yachats Inn by a stand of trees.
3. The proposed use of Shellmidden Way (called Shell St on the map) for entrance to the units will increase traffic on a single lane gravel road. It will increase noise and dust significantly.
4. Having parking right next to protected wetlands means that renters are not likely to view the wetlands as anything other than undeveloped land that they could use for them or their dogs to use as they wish. Dogs poop and chase wildlife.
5. The proposed parking area infringes on a wetland. Yachats has worked hard with previous developers to preserve the wetland. This wetland serves as natural drainage and a wildlife habitat that would be severely impacted or destroyed.
6. The lack of an on-site manager means that problems can't be addressed and resolved quickly.
7. This will end up looking like a mobile home park. Again, high density of homes per small acreage.
8. Traffic on Yachats Ocean Road will increase significantly where much of that road is only single lane with lots of pedestrian traffic.
9. The R-4 zoning includes many single family dwellings in this same zone as the property proposed for Agate Point development project. By allowing this development to be included as a hotel operation to bypass the short term rental lottery, what would prevent other homes, or group of homes to also bypass the STR license lottery that are in R-4 zone?
10. Approval of this development would set a precedent for other developers to build "hotels" on small lots in residential areas of Yachats.

Please include these objections as input in the Public Hearing scheduled for October 19, 2021 at 3pm.

Sincerely,

Jeanette A. Busse
330 Village Lane
Yachats, OR 97498

10/10/21

To: Yachats Planning Commission
Yachats City Council
From: Patty Hodgins, 433 E. 2nd St.
Re: Proposed Agate Point development

Since many others have made a variety of strong arguments against allowing the developers of Agate Point Cottages to proceed, I'd like instead to pose a few questions.

What would the City *gain* by granting variances to code as regards the one-acre minimum and direct access to 101?

What would be the advantage to the City of going along with the developer's claim that seven cottages constitute a hotel?

What unmet needs in the community would the development fill?

I hope these sorts of questions have occurred to you too. Personally, I can't come up with satisfactory answers.

Thank you all for volunteering your time and energy in service to the community.

P.T.
12th

①

From: Paul Thompson & Elida Canales on Oct 11th, 2021 in the morning

To: Yachats Planning Commission, Yachats Interim City Manager, Yachats City Planner, and Yachats City Council

ALGATE POINT

Subject: Our total and complete belief that this project should be rejected for all the reasons we are listing below

Our city has developed a City Code over the years to manage & define how we would like our city to be for the future. Approving the requested variances undermines this principal. The owners of said property should be required to COMPLY WITH THE CODE AS IS ! Approval of this project and the variances the project owners are requesting will clearly degrade the quality of life for residents and visitors alike in south Yachats.

Yachats Ocean Road is 1 & ½ lanes wide and can't reasonably support more traffic. More traffic on this narrow road is a safety hazard to all the people that use it as a walking and biking trail. Shell Midden Way is a narrow dirt/gravel road not made/designed for increased daily usage from the project's cabin renters.

Paving over wetlands is uncalled for and simply disgusting for the environment. This will cause runoff problems for adjacent landowners and destroy animal and insect habitat not to mention destroying vegetation that feeds and houses birds.

Calling this a "mini hotel" is nothing more than a way to get around the code for "vacation rentals" and the waiting list for a vacation rental

(2)

license. We have huge problems from vacation rentals, i.e., increased noise due to large parties, parking issues, garbage issues, and just general noncompliance with reasonable standards for staying in our community.

They have proposed NO on-site manager and are planning a vacation rental company to manage their seven mini hotels. Sounds like this is a vacation rental project.

Due to global warming and its associated degradation of our city water supply we should not approve this project for a lack of water supply for the future. This project will cause an increased burden on our very limited water supply NOW and for the future.

Please DON'T APPROVE THESE VARIANCES for this "mini hotel" project in south Yachats.

We have lived permanently in Yachats for the last 11 years and feel that the Yachats City Code defines the city we want to live in NOW and for the future.

Thank you for your work on this issue,


Paul Thompson


Elida Canales

10/11/2021

RE: Proposed Variances for "Hotel" development along Yachats Ocean Road

Yachats Planning Commissioners:

We have owned our home south of the bridge in Yachats for over 20 years. We regularly walk into town on Yachats Ocean Road, and given the narrow road (which really should be a one-way street), it is already challenging to do so, especially when there are cars passing in both directions. Besides posing significant risk for pedestrians, the idea of using a gravel, local access road (Shellmidden) to enter this development, it is also untenable for the residents as they strive to preserve the quiet, residential character of their neighborhood.

Wetlands are precious for many reasons, and the plan to develop the area in question raises many concerns for the preservation not only of habitat, but also about the actual diversion of water. How and where to would this water be diverted? What are the potential impacts on other local water systems?

I agree with other residents that it does appear that the developer is using the term "hotel" to get around the vacation rental restrictions. But a hotel must be on at least 1 acre and must have direct access to Hwy 101. This project does not meet either of those requirements.

As we have witnessed in Yachats over the last couple years, more new property owners with deep pockets have chosen to build oversized homes along the waterfront, significantly effecting the views of longtime owners. The impact of these buildings cannot be overstated. Preventing this development is another opportunity for us, as a community, to preserve the character of Yachats village along this stretch of road.

Honestly, my biggest question is WHY WOULD THE PLANNERS EVEN CONSIDER THESE VARIANCES? WHAT UPSIDE IS THERE FOR YACHATS OR ITS RESIDENTS? Other than the developers and possibly the future managers of this property, who will benefit if this project is granted the variances needed to move forward?

I strongly oppose this project and changing local codes or granting variances to allow it!



Ron Simans

From: Meg Simans megsimans@gmail.com
Subject: Agate Point Development
Date: Oct 11, 2021 at 9:10:35 PM
To: cityhall@yachatsmail.org

I am a full time Yachats resident and have been enjoying this Gem of the Oregon Coast for over 50 years since my grandparents first brought me here.

I am an environmentalist and a natural health care physician and I strive to keep our oceans, forests, and wetlands clean. The health of the Yachats environment directly impacts the health of its citizens, animals, and landscapes. The developers who wish to pave over and build on protected wetlands on Yachats Ocean Road should be denied all desired exceptions to the municipal code.

I am opposed to this development and all of the negative impacts it will have on the residents and the entire ecosystem of this precious town.

Meg Simans
Yachats resident

Meg Simans
360 710 2223

Sent from my iPhone

Yachats Planning Commission.

RE: Agate Cove Development.

We are permanent residents of Yachats and are registering our objections to the proposed Agate Cove 'hotel' as follows.

1. The Municipal Code clearly states that a hotel must be on at least one acre or more. This development described as a 'hotel' is actually seven vacation rental cabins on a half-acre. The designation 'hotel' is a poorly disguised effort to avoid vacation rental regulations.

The fact that there will be no onsite management is irresponsible. There will be no control over **noise, trash, trespass, fire pits** (perhaps you can imagine people dragging driftwood up the cliff to burn) what about **smoke, fire danger, Fireworks**. There are frequently more people in a rental than are allowed and this is difficult to regulate.

The west side of Yachats Ocean Road will inevitably become an extension of this development. Trash is already an issue. Residents who daily walk on the road, bring bags to collect trash, everything from cigarette butts to plastic bags, plastic coffee cup lids and not to mention bagged dog poop.

2. The Municipal Code clearly states that all hotels/motels must have direct access to US Hwy 101.

Don't all hotels and motels in Yachats actually have direct access for vehicular traffic to US HWY 101 and why should this development be any different?

The requested exclusion proposes a parking lot for 20 vehicles with access through Shellmidden Way to Hwy 101. **Increased traffic is an understatement.**

Shellmidden Way is a narrow, gravel road access to a residential area with single family homes. This proposal would have an enormous impact on the residents in terms of noise, lights, dust and pedestrian safety. Shellmidden Way joins Yachats Ocean Road close to the junction with US Hwy 101 and the Amanda Trail, so sightseers, pedestrians, and hikers on Yachats Ocean Road will be affected. There is a blind curve at that junction and the area is heavily used, especially during the tourist season. Increased traffic from such a development will exacerbate the

problem. ***This is a major safety issue.*** Perhaps ODOT and the State Parks system should be informed of this proposal.

3. This development is the very opposite of the noble aspirations proposed by the Comprehensive Plan which includes, *Protection of Natural Resources, Protection of Shore land Resources and Protection from Natural Hazards and Disasters.*

Wetland Protection is supported by the community and should be a consideration. This area was surveyed but not formally adopted apparently because it slipped through the cracks due to staffing and administration issues. (Please review Joanne Kittel's letter to the Yachats News of September 2021)

In conclusion, there seems to be absolutely no redeeming features to this development. Based on the facts, the requested exclusions should be denied. If these exclusions are not denied, this will set a precedent and open the door to *similar* future exclusion requests by developers.

Why do we even have a municipal code if it is not going to be followed by everyone?

Judith Toler P.O.Box 61 Yachats Rheychol Paris P.O.Box 686 Yachats

Rheychol Paris

Judith Toler
74, GREEN HILL
Drive
Yachats.

9/22/21

John Bowie

Christine Orchard,

I reviewed the planning commission packet on the Agate Cove (Shellmidden) hotel plans.

The two NE parking spaces were not usable because there was no way to exit without backing out (without a turn around). How would the neighbors like to be a turn-around for the vacation rentals?

What really stood out was that half the parking lot was on public land (Shellmidden). The lot to NE is owned by the Dwellings subdivision. I don't believe they have any plans to develop the wetland lot that they purchased to keep their view, but that doesn't mean they might not change their plans at some point in the future.

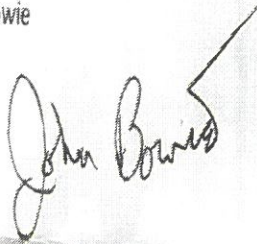
When I bought my lot Shellmidden was still called Shell St. Yachats Inn had already got the rights to Shell St. through the Yachats Inn. There is a stub section of Shell St that runs from Mitchell Ln. to the Yachats Inn. The City of Yachats has not allowed the two property owners that abut that stub property to annex it to their property. Should the Agate Cove plan take over the same public ground that Yachats holds dear?

I think you should be aware that the parking on the Agate Cove proposal looks good on a drawing. It is unrealistic. It shows 16 foot lines for parking cars. Many cars and pickups are 20 to 24 foot long.

So not only are they trying take the public easement for ingress egress and utilities with eleven parking spaces, if this was not allowed, they need to move the parking onto their own property by city codes. At that point they can't fit seven units on their property.

Let them build four residential units and rent them on a monthly basis rather than a nightly a vacation rental basis to try to get around the 125 cap of VCR's.

John Bowie



From: edith nussman ediegodiva@yahoo.com
Subject: public hearing
Date: September 6, 2021 at 4:42 PM
To: cityhall@yachatsmail.org
Cc: planner@yachatsmail.org

EN

my home is going to be directly affected by this proposed construction. therefore, i have several concerns that i feel need to be mentioned & considered prior to any movement forward on these plans.

my 1st concern is safety: the proposed access to this development will go right past my home & drive way. it was mentioned at the last mtg that i attended that shell midden is supposedly 30 ft wide which would be a requirement to allow traffic. there is no way that shell midden is 30 ft wide except at the sites of driveways. any plans to widen shell midden would necessitate using property that does not belong to the city. this portion was re-named shell midden for a reason. it was formerly known as shell st but the township determined that, due to fire concerns, there would be no way for emergency vehicles to know where on shell st the fire was. hence, they divided it. does that mean that now there is no concern in case of a fire? that makes me feel unsafe. also - the increased traffic - approximately 2 cars / dwelling - makes for a potentially dangerous route. as it is, my husband was hit by a car coming out of the homes built behind us on 101, the dwellings. the day after the accident the town put up a stop sign. again, it makes me feel unsafe that it takes an accident to happen before a dangerous situation is dealt with. shell midden is an unimproved road although we were told that there would be improvements to it since we've lived here. the only maintenance that is done to this road is only done when i call & ask for it to be done. again - no action taken by the town unless something or someone requests it. this all created a very unsafe environment in a community which i've always felt safe in.

2nd concern is terminology: since when is a cabin a hotel? that's like calling a tent a house. to avoid being in the rental lottery doesn't justify changing the terminology. i'd also guess that it seems illegal if not unethical.. same as calling what has been designated wet lands not wet lands any more. just because you can change the designation doesn't mean that you should. people have been trying to buy to build for many years & they've been turned away because the city stated this is wetlands. somewhere lies the truth.

lastly: these pre-fab cabins will look like shacks. this will reflect on the value of the homes around them. using them as short-term rentals invites transient people who would not take a vested interest in maintaining the beauty that is yachats. there will be more light pollution & noise & traffic. none of these concerns is directly overseen by the town at present. it seems to me that it will only get worse with this proposal.

i sincerely hope you will seriously consider these issues & proceed in an ethical & legal fashion. just because you can do this doesn't mean you should.

edie nussman

Kimie Jackson

From: Lance Bloch <lancebloch1@gmail.com>
Sent: Monday, September 27, 2021 7:04 AM
To: Yachats City Planner; Kimie Jackson
Subject: Fwd: Agate Point

Here is another email to be added to the packet for the Planning Commission hearing on October 19th. The regular session agenda at 3pm will just include the public hearing and the planners report.

Thanks,
Lance

----- Forwarded message -----

From: **Richard Ponting** <rponting@comcast.net>
Date: Mon, Sep 27, 2021, 5:52 AM
Subject: Agate Point
To: <lancebloch1@gmail.com>

Planning Commission

Please note the email that I forwarded to city council. As you can see from comments to my post on the Yachats community Facebook site, people are adamantly opposed to this development on Yachats Ocean Road. (Link included below). Please do not approve this project, variance, or any aspect of it. It is not the community's best interest.

" September 26, 2021

Yachats City Council

Below is a copy of my note to MaryEllen re the proposed development at Agate Point. Following is my post on the Yachats Facebook page. I include it because of the 39 comments in one day adamantly opposed to this development. Please review this. There is no compelling reason to approve this development. There are dozens of very good reasons not to.

I am Richard Ponting and my home is 95 Surfside Dr. I have substantial concerns about Agate Point Development. First, I object to the change in zoning that allows the entrance to the development from Yachats Ocean Road. People regularly walk on this road and tourists already often drive quickly on this narrow road/path. It creates added danger. Second I object to environmentally sensitive Wetlands being filled in. Third, the development that replaced Shamrock looks like a common urban development. It has no color, a repetitive design creating what looks like monocultural community, and looks like sprawl. This design looks just like it. Do traffic on narrow neighborhood community streets, wetland destruction, and ugly design make this development unnecessary. Yes! Does Yachats really need to add more development at the expense of community standards and safety? I think, emphatically, no!

Thank you.

Richard Ponting.

<https://www.facebook.com/groups/YachatsVillage/permalink/2969122620003485/>

9/22/21

John Bowie

Christine Orchard,

I reviewed the planning commission packet on the Agate Cove (Shellmidden) hotel plans.

The two NE parking spaces were not usable because there was no way to exit without backing out (without a turn around). How would the neighbors like to be a turn-around for the vacation rentals?

What really stood out was that half the parking lot was on public land (Shellmidden). The lot to NE is owned by the Dwellings subdivision. I don't believe they have any plans to develop the wetland lot that they purchased to keep their view, but that doesn't mean they might not change their plans at some point in the future.

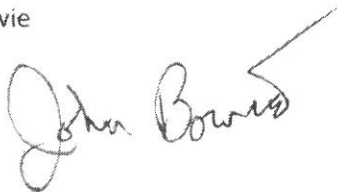
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So not only are they trying to take the public easement for ingress egress and utilities with eleven parking spaces, if this was not allowed, they need to move the parking onto their own property by city codes. At that point they can't fit seven units on their property.

Let them build four residential units and rent them on a monthly basis rather than a nightly vacation rental basis to try to get around the 125 cap of VCR's.

John Bowie

A handwritten signature in black ink that reads "John Bowie". The signature is written in a cursive style with a long, sweeping horizontal line extending from the end of the name.



Commending Wetland Preservationists

We would like to commend the residents of “The Dwellings” community in Yachats for their on-going and incredibly valiant efforts to protect one of our City’s significant natural wetlands from loss due to a proposed development. This wetland, which provides so many invaluable ecological and aesthetic functions, was determined by Pacific Habitat Services, Inc., a professional wetland consulting firm working for the City in 2011, to comprise much of two privately owned lots along Yachats Ocean Road. This wetland mapping was undertaken as part of a City-wide wetland inventory and mapping project which, when completed, was to be adopted by Yachats City Council to enhance the City’s ability to protect locally significant wetlands through its own regulations. Unfortunately, the completed wetland mapping “slipped through the cracks” due to city administrative and staffing changes and was never adopted. As a result, formal determination of this wetland’s size and impact on the use of this lot is now beyond the City’s purview, permitting the current landowner an avenue to work with Oregon’s Division of State Lands to obtain its support of an alternative wetlands delineation that favors his development objectives.

Prior to their current efforts to protect this wetland, the forward-thinking residents of “The Dwellings” raised the funds necessary to purchase one of the two vacant lots in order to prevent wetland loss. They were unable to raise additional funds to purchase the other vacant lot in time before it was sold for a proposed development. Yet, these courageous and passionate Yachats citizens continue to fight for this wetland’s protection.

Consistent with our mission and on-going projects, we wholeheartedly support community-based efforts such as these to protect our valuable natural and cultural resources from degradation or loss, and strongly encourage our City officials and staff to quickly complete and adopt an official wetlands inventory initiated ten years ago to provide better local protection.

Joanne Kittel, John Purcell, co-chairs, View the Future

Kimmie Jackson

From: Lance Bloch <lancebloch1@gmail.com>
Sent: Wednesday, September 22, 2021 2:35 PM
To: Kimmie Jackson; Yachats City Planner
Subject: Fwd: Comments regarding the Agate Point Development

Here is one of the letters I got relating to the public hearing.
Lance

----- Forwarded message -----

From: **Crews, Tracy Diane** <Tracy.Crews@oregonstate.edu>
Date: Sun, Sep 19, 2021, 12:21 PM
Subject: Comments regarding the Agate Point Development
To: Leslie Vaaler <Leslie@yachatsmail.org>, Shannon Beaucaire <citymanager@yachatsmail.org>
Cc: City Hall <cityhall@yachatsmail.org>, Greg@yachatsmail.org <greg@yachatsmail.org>, Mary Ellen O'Shaughnessey <MaryEllen@yachatsmail.org>, anthony@yachatsmail.org <anthony@yachatsmail.org>, Ann@yachatsmail.org <ann@yachatsmail.org>, Office Admin <office@yachatsyardscapes.com>, Helen Anderson <happydogs27@gmail.com>, corchard@peak.org <corchard@peak.org>, jac.danos@gmail.com <jac.danos@gmail.com>, lancebloch1@gmail.com <lancebloch1@gmail.com>, lorendickinson@gmail.com <lorendickinson@gmail.com>

Dear City Council, Planning Commission Members, and City Planner/Manager,

As a resident of Yachats, I am writing to express my concern regarding the proposed Agate Point development. I have perused the documents submitted to the City of Yachats and have the following questions and concerns:

1. What is the reasoning behind the 1 acre restriction and the maximum density for which they are seeking exemptions? In my opinion, if policies are implemented there should be a valid reason and allowing exemptions only encourages more requests for said exemptions. Either this is the rule or the rule should be modified if it doesn't serve a valid purpose. Developers should not be purchasing property with the intent of seeking exemptions.
2. The developers have indicated that they will offset environmental impacts of filling the wetlands through "payment of mitigation fees to a Conservation Bank". As a trained biologist and environmental educator, I know that wetlands once lost are hard to recover and a large portion of wetlands in Oregon have already been filled and/or modified for other uses with significant impacts to associated wildlife. In fact, the state is now spending millions of dollars annually in attempts to restore altered wetlands because of documented impacts to wildlife. The report submitted did not appear to include any potential wildlife use of the identified wetlands on the proposed property.
3. Although they have made an application to function as a "hotel" it sounds like they are in fact proposing to build a string of STRs, describing individual residences managed by an offsite entity. The City of Yachats implemented restrictions on STRs in an effort to reduce issues caused by this type of business. If they are proposing to be considered a hotel, they should be required to have staff onsite AT ALL TIMES to deal with any issues like other hotels, including monitoring and addressing client behavior and potential emergencies. As housing for service staff is such an issue in our area, any new hotels should be strongly encouraged, if not required, to provide onsite housing for their employees. It just seems to me that what they are proposing is an

attempt to function as an STR while avoiding the restrictions in place which hardly seems fair to those that are currently on the waitlist for licenses, which does not include myself.

4. While water usage and availability concerns are not restricted to the proposed property, I hope that future water consumption considerations are being included in all new proposed developments. Efforts should be made to encourage or require drought resistant landscaping and “green architecture” that includes water and energy conservation in their proposed designs. I am also concerned that tourists put greater strain on our water supply and treatment systems as they are not paying for these services “out of pocket” and thus do not have the financial incentives to curtail usage. As tourist season coincides with the summer drought season, providing additional housing for tourists rather than encouraging daytrips can only increase demands on an already strained system.
5. Lastly, if as a City, we are going to encourage increased development, we really need to revisit having increased police presence. I do not know how much of our City budget is currently dedicated to enforcement and what funding sources provide these services (some lodging taxes I hope!).

I truly appreciate those of you who volunteer your time and talents to serve on the City Council and the Planning Commission. I know it is an important if thankless job. Thank you for the time and effort you dedicate to keeping our beautiful little city running and for your consideration of the comments above.

Sincerely,

Tracy Crews

921 Yachats River Rd

Yachats, OR 97498

541-961-9493

Kimmie Jackson

From: Crews, Tracy Diane <Tracy.Crews@oregonstate.edu>
Sent: Sunday, September 19, 2021 12:22 PM
To: Leslie Vaaler; Katherine Guenther
Cc: City Hall; Greg@yachatsmail.org; Mary Ellen O'Shaughnessey; Anthony Muirhead; Ann@yachatsmail.org; Office Admin; Helen Anderson; corchard@peak.org; jac.danos@gmail.com; lancebloch1@gmail.com; lorendickinson@gmail.com
Subject: Comments regarding the Agate Point Development

Dear City Council, Planning Commission Members, and City Planner/Manager,

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Sincerely,

Tracy Crews

921 Yachats River Rd

Yachats, OR 97498

541-961-9493

September 15, 2021

City of Yachats
Planning Commission
PO Box 345
501 N Highway 101
Yachats, OR 97498

To whom it may concern:

I'm writing in response to the plans for a 7-unit hotel by Agate Point Residences, LLC on the agenda for the September 21st Planning Commission meeting. I'm vehemently against the construction of the proposed property located at 358 Yachats Ocean Road. My reasons are as follows:

- I understand that Agate Point Residences, LLC plans involve paving over designated wetlands. This is unacceptable. It will negatively impact the environment for birds, etc.
- I thought that Yachats has a rental property cap/limit. Why is this plan even being considered?
- With lodging and rentals being such a huge concern in Yachats and Lincoln County in general, the last thing we need is another vacation rental property. The lack of lodging for residents has negatively impacted numerous businesses in town including the Post Office. They had offered jobs to two different out of state people only to have them turn down the job because they couldn't find a place to live!
- I believe the proposed vacation rental property will negatively impact traffic. Yachats doesn't need more traffic. We're bursting at the seams as it is.
- How will the vacation rental property impact the neighbors in the vicinity of 358 Yachats Ocean Road? For example, lighting and noise.
- With whom do the nearby residents issue a noise complaint? Will the Sheriff's office even come out to address the noise problem with the renters?
- Will fire pits be part of the construction? Is this a wise decision given the fire dangers in Yachats and all of Lincoln County?
- What about illegal fireworks? The use of illegal fireworks is already a big issue in Yachats.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Celia August". The signature is written in dark ink and is positioned above the printed name and address.

Celia August
PO Box 1088
Yachats, OR 97498
coastalmbs1@gmail.com

September 15, 2021

City of Yachats
Planning Commission
PO Box 345
501 N Highway 101
Yachats, OR 97498

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- What about illegal fireworks? The use of illegal fireworks is already a big issue in Yachats.

Thank you in advance for your consideration.

Sincerely,



Paula B Morgan
PO Box 1088
Yachats, OR 97498
paula_b_morgan@yahoo.com

303 Highway 101 S
Yachats OR 97498
September 12, 2021

RE: Proposed Hotel South of Bridge, please consider on-site management

Hello Planning Commission:

It may be too late for the proposed Hotel South of the Bridge, but at least for future projects, I hope you strongly consider on-site management when there is a density of short stay lodging.

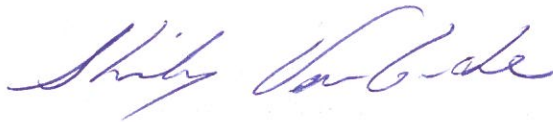
I live next door to the Yachats Inn and it is well managed by a wonderful extended family, but what mainly sets it apart from the VRs in our neighborhood is having on-site management.

With on-site management guests in vacation mode can be quickly reminded of hotel rules, and if guests need assistance the local manager can get them medical or vehicle help. Onsite management checks license plates to make sure only registered guests are on their property; this provides safety for the area and also reduces noise from over occupancy. Firework bans, leash laws, picking up poop, and quiet hours are enforced quickly. This is especially important for locations with fire pits, as loud conversations after sundown can disturb others' sleep.

On-site management also provides employee housing which some local existing motels have realized they need to provide. Encouraging it for new projects will be helpful for owners unfamiliar with the Yachats situation. One on-site night manager I became friends with was able to meet benchmarks so her children could live with her, due in large part to having a stable job and housing; such a positive outcome for that family.

With the proposed 7-unit hotel, there is room for a small apartment for on-site staff by decreasing the size of one of the larger units. Shared walls are the norm for a hotel. A permanent person or family living at the hotel makes a huge difference in the neighborhood, and provides a better visit for their rule-abiding guests.

Thank you for your careful consideration of this complex issue,



Shirley VanGarde
Shirleyvan10@gmail.com

Tuesday, June 7, 2022

Dear Members of the Planning Commission:

I am writing in opposition to the variances requested for the proposed Agate Cove development. The Fletchers' proposal does not meet criteria as developed by our citizens and our city. If we allow our natural settings to be compromised the results may well be irrevocable and certainly, in my opinion, inexcusable.

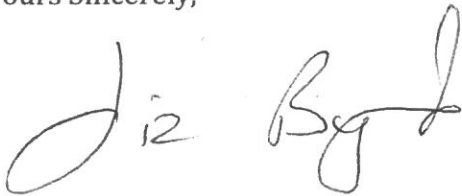
I disagree that there 'is a big need for a new type of hotel accommodation in this long-standing tourist destination' I think perhaps the 'big need' being addressed is that of Mr Fletcher's pocketbook. One of the main problems is of course the access in and out of the proposed hotel property. This is a SINGLE LANE GRAVEL road that is being discussed as the major access route for a commercial property.

Mr Fletcher's points are that it's OK to get a conditional use permit to use a gravel road for access instead of access from the highway or Yachats Ocean Road. He further states that he thinks many potential guests will be walking or using bicycles and not cars after they are settled. He has absolutely no control over what the guests will do after they arrive.

The proposed Agate Cove development seeks to override the plan our citizens have worked hard to develop, and the out of state business is asking for exceptions and variances to our plan to protect our community-for their financial gain, not for the benefit of our ecosystem or our citizenry.

Yachats does not need another hotel which requires so many variances to the accepted land use, and which does not benefit current residents.

Yours Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Byrd". The signature is fluid and cursive, with the first name "Elizabeth" written in a large, looped script, and the last name "Byrd" written in a smaller, more compact script.

Elizabeth Byrd

281 NE Shorepine Crest St

Yachats, OR 97498

Judith M. Toler

74 Greenhill Drive,

Yachats, OR

97498

Dear Planning Commission Members,

I am writing in opposition to the CUP request made by Messrs. Fletcher for the Agate Point 'Cottages' development.

In reading the Yachats Municipal Code and the Comprehensive Land Use Plan in their respective entirety, I found many reasons for the Planning Commission to deny this permit in spite of the fact that only a few references were listed in the Notice of Public Hearing.

Yachats Municipal Code (9.24.020 Permitted Uses) states "Motel, hotel or resort on a minimum of 1.0 acre with direct access provided from US Highway 101 only and with accessory commercial uses." In this case, the lot in question is only .56 of an acre and the developer proposes to use narrow, gravel Shellmidden Way for ingress and egress. This is a lightly used access road for local residents. Shellmidden Way connects to a narrow section of Yachats Ocean Road which leads around a blind curve to US Hwy 101. This section of YOR is heavily used by pedestrians accessing the Amanda Trail and viewing a spectacular section of the coast. The developers plan nine units with the potential to house at least 36 vacationers. The likelihood that 18 vehicles negotiating these roads several times daily, especially during inclement weather will exacerbate existing pedestrian safety issues. It is already often necessary to walk on the shoulder as cars try to pass each other. Also, the fact that some units are literally almost at the edge of Yachats Ocean Road will encourage parking (and loading) close by as it is the easiest access.

There are several other issues in Zoning and Land Use. 9.52.070 Shoreland setbacks,(Protection Standard) states "Development Activities shall not change the natural drainage or increase the water flow, and in the same section (4 c) For subdivisions and planned unit developments, include an engineered stormwater plan that provides for on-site stormwater detention and primary treatment that

2.

screens and separates gross pollutants (sedimentation, floatables, oil and grease)

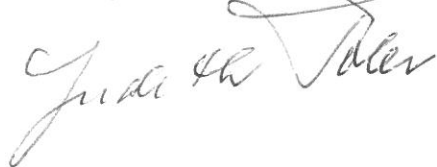
Also, the Comprehensive Plan states in Proposed Actions (d) Applications for subdivisions, Planned Unit Developments and building permits shall include plans for storm water management.

This development does not appear to have any plan for runoff from the buildings, walkways and especially the parking lot. This is important if it negatively impacts Gregory Creek and the wetland areas to the North and East which comprises over 2 acres. This area is in the process of becoming a Conservation Easement in Perpetuity, the Easement holders will be View the Future. (See Lincoln Land Legacy Project paperwork which has been supplied by Jeri Battistoli and the letter posted in the Yachats News by Joanne Kittel).

The Comprehensive Plan states that Land use policies, procedures and applications shall complement the natural beauty of Yachats' location and its environment, which has led to Yachats' long-standing reputation as "The Gem of the Oregon Coast". It also states that all buildings, their siting, design and materials shall enhance rather than detract from the quiet coastal ambiance of the City.

Cramming nine units and an office plus a parking lot on just over half an acre will not enhance this area of great natural beauty, rather it will enhance Mr Fletcher's bank balance.

Thank you for your consideration

A handwritten signature in cursive script that reads "Judith Toler". The signature is written in dark ink and is positioned below the typed name.

Judith Toler

June 6, 2022

City of Yachats
Attention: Planning Commission
PO Box 345
501 N Highway 101
Yachats, OR 97498

Hi City of Yachats Planning Commissioners,

I implore the Yachats Planning Commissioners to deny all requests made by the Fletcher's with regards to the Agate Point Development. We need to preserve the natural beauty and marine life in Yachats. There is too much at stake to approve the Agate Point Development.

As has been clearly documented, the Agate Point Development is violating the ordinances set forth by the Planning Commission. The violations are as follows:

- A. **Section 9.24.020 Item K** states that a minimum of 1 acre with direct access to Highway 101. The Agate Point Development is 0.57 of an acre and does not have direct access to Highway 101.
- B. **Section 9.24.040 Item B6** states no structure shall be located closer than sixty (60) feet from the center line of any state highway, nor forty-five (45) feet from the center line of any collector or arterial street.
- C. **Section 9.24.040 Item G** addresses Vehicle Access. Ingress or egress to a multifamily dwelling or to a motel shall not be allowed from less than a thirty-five (35) foot right-of-way and a twenty-five (25) foot all weather travel surface, accessible to emergency vehicles.

The other very serious concern is the destruction of the wetlands if the Agate Point Development is approved by the Planning Commission. The Planning Commission's decision could set a dangerous precedent for the coastal communities throughout the State of Oregon. I implore the Planning Commission to deny all conditional uses the Agate Point Development have submitted. I also respectfully request that the Planning Commission deny the permit to build the Agate Point Development.

I recently drove along Yachats Ocean Road and had forgotten how narrow it is. That being said, **I have some important comments regarding traffic concerns:**

1. Yachats Ocean Road is too narrow to accommodate the increased traffic due to the Agate Point Development.
2. The increased traffic is dangerous for both the Yachats residents and the renters.
3. Frankly, given Yachats Ocean Road is so narrow, I have to ask why the initial proposal by the Fletcher's was approved in the first place.

Questions regarding fire and emergency vehicle access:

4. Given Yachats Ocean Road is narrow and Shellmidden Way is a narrow, gravel road, used for residential access in the vicinity of the proposed development, what would happen if a wildfire broke out?
5. How will the emergency vehicle(s) reach the wildfire or site of the emergency?
6. How would the Yachats residents evacuate?
7. How would the visitors evacuate?
8. Are fire pits part of the Agate Point Development? Won't the fire pits usage be increasing the risk of a wildfire?
9. Can we really count on renters to adhere to proper fire pit safety operations?
10. What about illegal fireworks? The use of illegal fireworks are already a big concern in Yachats. Again, will renters using illegal fireworks increase the probability of a wildfire?
11. Isn't the City of Yachats leaving themselves open to the possibility of lawsuit(s) in the event of catastrophic loss of life and homes due to a wildfire or other serious emergency in the area of the development?
12. Would the influx of traffic in the area and emergency vehicle access concerns result in an increase to a resident's Homeowners, Earthquake, and/or Flood insurance?

Question regarding parking:

13. How many of the renters are actually going to park in the designated Agate Point Development parking lot? I have personal experience with renters and parking.
14. How many will park on Yachats Ocean Road?
15. What if other vacationers park in the designated Agate Point Development resulting in a full parking lot leaving no room for Agate Point Development renters? Where will the Agate Point Development renters park? Most likely Yachats Ocean Road.
16. What recourse will residents have regarding parking infractions?

Questions regarding noise complaints:

17. Who do the residents contact to report a noise complaint? Will there be staff at the Agate Point Development to address the noise complaint with a renter(s)?
18. What are the hours the staff member will be working? Will they be onsite?
19. Will the Sheriff's office come out to address a noise complaint? In the past, due to staffing issues in the Sheriff's office, firework complaints have gone unanswered.

Questions regarding the "community meeting" called out by the Fletcher's:

20. I find it interesting that the Fletcher's held a "community meeting" without inviting all Yachats residents?
21. How was the "community meeting" advertised?
22. According to the 2020 Census, Yachats had a population of 994 residents. With the current growth, we're well over 1,000 Yachats residents. If the "community meeting" was actually properly advertised, do you truly believe that not a single Yachats resident would have attended the 6pm meeting?
23. There were 12 dedicated Yachats residents that showed up for the 4pm "community meeting." The Fletcher's claimed that a flight delay was the reason for postponing the meeting to 6pm. There are multiple Yachats residents that witnessed The Fletcher's in Yachats prior to the 4pm meeting. If this was a business meeting, would the Fletcher's show up late

to a very important meeting? The Fletcher's lack of integrity makes me question their commitment to having a constructive "community meeting" with Yachats residents. If the Fletcher's are deceitful about a "community meeting," what else are they going to try and get away with?

Again, I implore the Yachats' Planning Commissioners to deny all requests made by the Fletcher's in regard to the Agate Point Development. We need to preserve the natural beauty and marine life in Yachats. There is too much at stake to approve the Agate Point Development.

This is not about being anti-development. It's about advocating for responsible development that addresses the needs of the community. The Agate Point Development fails in this regard.

Thank you in advance for your consideration.

Sincerely,

Celia August
PO Box 1088
Yachats, OR 97498
coastalmbs1@gmail.com

June 6, 2022

City of Yachats
Attention: Planning Commission
PO Box 345
501 N Highway 101
Yachats, OR 97498

Hi City of Yachats Planning Commissioners,

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11. Isn't the City of Yachats leaving themselves open to the possibility of lawsuit(s) in the event of catastrophic loss of life and homes due to a wildfire or other serious emergency in the area of the development?
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This is not about being anti-development. It's about advocating for responsible development that addresses the needs of the community. The Agate Point Development fails in this regard.

Thank you in advance for your consideration.

Sincerely,

Paula B Morgan
PO Box 1088
Yachats, OR 97498
paula_b_morgan@yahoo.com

Mary Crook

1092 Ocean View Dr.

P.O. Box 863

Yachats, OR 97498

541-547-4547

June 6, 2022

To the Yachats Planning Commission
City Hall
Yachats, OR 97498

I am writing to urge the Yachats Planning Commission to uphold its commitment to preserving what remains of our precious wetlands. The city's comprehensive plan and municipal codes were created for a reason, namely, to ensure our community stays faithful to its overall vision. In doing so we can be assured we will not succumb to the whims of developers who have no interest in our unique character and natural fragility. Granting exceptions to established codes creates a dangerous precedent that can only cost us dearly in the future. Please protect Yachats Ocean Road State Park and say NO to the proposed Agate Point Resort.

Respectfully,



Mary Crook
Business owner and 30-year resident of Yachats.

April 20, 2022

City of Yachats
Yachats Planning Commission
501 US Hwy 101 North
Yachats, OR 97498

Planning Commission,

I am firmly against the wetland development for Agate Point Resort.

Keep Yachats the village we love. Lack of commercialism is why people return and love it here.

Please vote NO on this proposed development.

A handwritten signature in cursive script that reads "Peggy Emerson". The signature is fluid and elegant, with the first name "Peggy" being more prominent than the last name "Emerson".

Peggy Emerson
Resident

David M. Cowden

3501 US Hwy 101 North
Yachats, Oregon 97498

April 19, 2022

City of Yachats
Yachats Planning Commission
501 US Hwy 101 North
Yachats, OR 97498

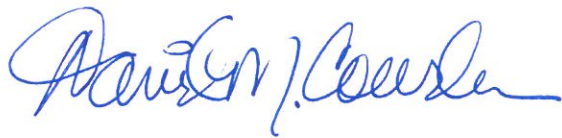
Planning Commission Members,

I am writing in opposition to the Agate Point Resort project on the wetlands adjacent to Yachats Ocean Road.

The will of voters established the parameters of planning and development of municipal lands. Are we willing to disregard this? I see nothing in this project to accrue benefit to the city. The only exception is tax revenue. Do we sacrifice the "village" ambience we are famous for and allow outside developers to ravage a neighborhood and a quiet drive access to the bay that so many local and visiting people enjoy? Yachats is the "Gem of the Oregon Coast" because we eschew even modest commercialism.

Multiple units to be called a hotel to skirt restrictions is ludicrous. Fire pits? Additional traffic/parking on YOR? Total square footage of structures exceeding the established limit? Destroying a wetland?

A HARD NO here !



April 20, 2022

Yachats Planning Commission
City of Yachats
501 US Hwy 101 North
Yachats, OR 97498

Planning Commission,

The proposed development for the Agate Point Resort on the wetlands off of Yachats Ocean Road is a bad idea.

The zoning and restrictions in effect SHOULD NOT BE ALTERED for this or any other projects.


Christopher Galiszewski
resident

April 29, 2022

RE: Proposed Variances for Agate Point "Hotel" development along Yachats Ocean Road (YAR)

Yachats Planning Commissioners:

It has come to my attention that a formal application has now been submitted for variances to local codes and rules regarding the development of subject property contiguous to YAR. I am choosing to resubmit this letter to emphasize my position on this issue.

We have owned our home south of the bridge in Yachats for over 20 years. We regularly walk into town on YAR, and given the narrow road (which really should be a one-way street), it is already challenging to do so, especially when there are cars passing in both directions. Besides posing significant risk for pedestrians, the idea of using a gravel, local access road (Shellmidden) to enter this development, it is also untenable for the residents as they strive to preserve the quiet, residential character of their neighborhood.

Wetlands are precious for many reasons, and the plan to develop the area in question raises many concerns for the preservation not only of habitat, but also about the actual diversion of water. How and to where would this water be diverted? What are the potential impacts on other local water systems?

I agree with other residents that it does appear that the developer is using the term "hotel" to get around the vacation rental restrictions. But a hotel must be on at least 1 acre and must have direct access to Hwy 101. This project does not meet either of those requirements. These rules exist for a reason, and this application does not present any good reason to allow for these changes.

As we have witnessed in Yachats over the last couple years, more new property owners with deep pockets have chosen to build oversized homes along the waterfront, significantly effecting the views of longtime owners. The impact of these buildings cannot be overstated. Preventing this development is another opportunity for us, as a community, to preserve the character of Yachats village along this stretch of road.

Honestly, my biggest question is WHY WOULD THE PLANNERS EVEN CONSIDER THESE VARIANCES? WHAT UPSIDE IS THERE FOR YACHATS OR ITS RESIDENTS? Other than the developers and possibly the future managers of this property, who will benefit if this project is granted the variances needed to move forward?

I strongly oppose this project and changing local codes or granting variances to allow it!

Ron Simans

April 29, 2022

Yachats City Council
501 Hwy 101 N.
Yachats, Oregon

Re: Proposed Yachats Ocean Rd. Project

To all City Council Members:

It has come to our attention that the developers who want to build a multi-Unit unsupervised Vacation Rental complex on Yachats Ocean Road are attempting to once again seek your approval. As a reminder of just some of the reasons that we, the residents and neighbors of Yachats Ocean Road still remain adamantly opposed to this project are, besides the destruction of the existing wetlands, it will create a traffic nightmare, deprive the neighboring home owners of their right to peaceful enjoyment, will be unsupervised which flies in the face of both the County and City proposals to curtail Short Term Rentals given the issues they present and is even evidenced by a place on the Yachats City Website to report Short Term Rental problems!

Many of us have already voiced our opposition when this Project was first introduced and even held a public demonstration to alert the members of our community of this proposal and received a tremendous amount of support. As when this proposal was first introduced, we still feel that by greenlighting this proposal and ignoring the obvious facts the damage this project will present to Yachats Ocean Road, which is truly a beautiful city asset, it would clearly demonstrate a breach of Community Trust regarding the future development of our beloved City of Yachats.

Very truly yours,



Bill and Cathi Thompson

Yachats Office Manager

From: Jim Paul <jtpthree@gmail.com>
Sent: Tuesday, June 14, 2022 4:14 PM
To: Yachats Office Manager
Subject: Application of Agate Point ResidencesLLC to Develop a Motel on Yachats Ocean Road

Attention: Katherine Gunther, City Planner and Yachats Planning Commission

We, Jim Paul and Maggie Paul, living at 268 Yachats Ocean Road, write to urge that the subject application be denied. We repeat and incorporate our previous letter dated October 11, 2021 and delivered on October 12, 2021 to the Mayor, City Council, City Planner and Planning Commission.

We note that the May 31, 2022 Notice of Public Hearing (of the June 21, 2022 hearing on the application before the Planning Commission) does not specify a deadline for public comments.

We understand that the only application by the proposed developers is the one dated July 23, 2021 "Land Use Application," and that the only written information subsequently submitted since then is an undated two page document entitled "Yard Setbacks, Building Height, Lot Coverage." That document does not appear to show the extent to which this proposed development actually covers the lot.

We have not yet seen the Staff Report which we understand was to be available today. We may have additional comments once we see that report.

And we request an opportunity to make oral comments at the June 21 hearing.

Respectfully, Jim Paul and Maggie Paul

Sent from my iPad

Yachats Office Manager

From: barbaravernon@aol.com
Sent: Sunday, June 12, 2022 12:32 PM
To: Yachats Office Manager
Subject: Yachats Planning Commission/June 21,2022 meeting at 3:00 p.m.

We, Barbara and Vernon Scott, wish to object to granting a conditional building permit to Agate Point Residences LLC for development of a 7-unit motel. The applicant has advanced a number of arguments for granting their request for a conditional building permit as set forth in their May 31st letter to the Yachats News editor. The applicant admits in this letter that the property chosen by them doesn't meet the requirements for building a hotel/motel they are proposing. The only arguments they advance is they think the community should have an additional hotel/motel because one has not been built in some time. It is submitted that this is not a sufficient basis to grant a waiver of the relevant regulations. The granting of this permit would forever change the character of the neighborhood environment. We wish to adopt the arguments of the Yachats Action alliance as set forth in their May 26 2022 letter to the editor of the Yachats News.

Barbara and Vernon Scott
412 Yachats Ocean Rd
[Sent from the all new AOL app for iOS](#)

Yachats Office Manager

From: Tod Davies <tod.davies@gmail.com>
Sent: Wednesday, April 20, 2022 11:43 AM
To: Yachats Office Manager
Cc: Julie Bailey; Alex Cox; Jacqueline Danos
Subject: Fwd: Concerns about Agate Point Development - to Planning Commission

Hello,

I sent the below last year when I enumerated all the reasons I oppose the Agate Point proposed development. Since all those reasons still stand, I thought it unnecessary to repeat, instead I'm forwarding the original email.

The only change in my own mind that has come out of this renewed application for development is that I now feel I should apply to be on the planning commission.

Thanks for your help in sending this to the appropriate city emails, and for all your work for Yachats.

Best wishes,

Tod Davies
315 Radar Road

----- Forwarded message -----

From: **Tod Davies** <tod@exterminatingangel.com>
Date: Sun, Oct 10, 2021, 5:51 PM
Subject: Concerns about Agate Point Development - to Planning Commission
To: <tod.davies@gmail.com>

Hello,

I am a permanent two year resident of Yachats and a visitor for the previous four decades. My name is Tod Davies, and I live on Radar Road in Yachats.

I am very concerned about, and opposed to, the proposed Agate Point Residences for the following reasons.

Wetlands.

This is clearly a wetland and should be protected; not paved over or developed. It is an important ecosystem providing habitat for birds, amphibians and mammals. Once removed it can never be replaced.

Traffic

Shell Midden Street is a private graveled road. Traffic impact will create dust and a danger in a pedestrian friendly area. The same can be said for Ocean Road which already suffers from a lot of traffic on its narrow surface: cars, people, pets and bikes. Please don't approve a variance that will increase the likelihood of accidents or injury due to increased traffic.

Infrastructure

Yachats does not have the capability to support more traffic, tourists or parking. Also to be considered is the strain on the sewer system and the impact on our water supply--likely to worsen with climate change. We can clearly see that local businesses are struggling with staff shortages due to the lack of affordable housing.

A Cottage Hotel

This is primarily a single family residential neighborhood. Seven vacation rentals on ½ acre thinly disguised as a hotel to get around short term rental license requirements is out of place in this location. A variance should not be approved. I have had concerns about how short term rentals are monitored for fire danger etc. already. There is no onsite management proposed here that would answer these concerns.

The decision you make can set a precedent for future developments in Yachats. I urge you to not to approve the variances. Consider the good of Yachats. How is this development of benefit? It is not the "highest and best use" for this small ½ acre lot regardless of the R4 zoning.

Fire Pits

Smoke pollution, impact on neighbors not to mention a fire hazard. Again no onsite manager.

Supplemental Information

There is a good reason for a hotel/resort required to have direct access to 101 and be on at least an acre. As an example the Yachats Inn has direct access from 101, is clearly on sufficient acreage and has onsite management. Agate Point has none of these. Private street access via Ocean Road does not make sense, and a variance should not be allowed. . Once again it's clearly a wetland area. Once removed it cannot be replaced. We should tread very carefully before allowing growth that is potentially undoable and unsustainable.

Lighting

Additional abundant lighting will obviously create more light pollution.

Noise

More vacationers mean more nighttime noise, as well as increased fire danger from legal and illegal fireworks.

Trash

There's already been an increased amount of trash in the last year or so. We'll see more dog poop, bagged and not, cigarette butts, plastic and food and beverage containers.

I sincerely hope you will all consider stopping this development.

Thank you for your attention, and for all your work here,

Tod Davies

Tod Davies
editorial director
Exterminating Angel Press
exterminatingangel.com
"Creative Solutions for Practical Idealists"

join us on [FACEBOOK](#)
& [Twitter @EAPress](#)

Yachats Office Manager

From: Marc C <mbcohen06@gmail.com>
Sent: Wednesday, June 8, 2022 8:56 AM
To: Yachats Office Manager
Subject: Fwd: Agate Point Conditional Use Permit Application

Hello,

I am forwarding an email I sent to the planning commissioners last year to be sure it is in the record. Please confirm receipt.

Thank you

Marc Cohen

----- Forwarded message -----

From: Marc C <mbcohen06@gmail.com>
Date: Mon, May 2, 2022 at 12:46 PM
Subject: Fwd: Agate Point Conditional Use Permit Application
To: <planner@yachatsmail.org>

Hello Ms. Guenther,

Richard Ponting emailed me letting me know he met with you regarding this CU application, and suggested I might do the same. So I thought I'd start with an email. I need to bring myself up to speed on recent developments, if any, with this proposed project, but I wanted to share with you the letter I sent to the commission last fall.

I believe shortly after I sent this letter, the timing for commission action on the CU was delayed, but I understand it is now before the commission again. As such, has the application been amended, and is it indeed coming before the commission for approval in the near future? If so, I will resend my letter to commissioners as a reminder of the code issues I believe are important to consider in their deliberations. If there is any other action I can take, or anyone else to whom I should forward my email, I'd appreciate any direction.

Thank you,

Marc Cohen

----- Forwarded message -----

From: Marc C <mbcohen06@gmail.com>
Date: Thu, Oct 7, 2021 at 1:57 PM
Subject: Agate Point Conditional Use Permit Application
To: <lancebloch1@gmail.com>, <lorendickinson@gmail.com>, <jac.danos@gmail.com>, <happydogs27@gmail.com>, <corchard@peal.org>, <office@yachatsyardscapes.com>

To members of the Yachats Planning Commission,

I write to share my concerns regarding the application for a conditional use permit sought by the owners of 358 Ocean Road to develop a 7 unit hotel facility. My wife and I have been homeowners and part time residents in Yachats for eight years. We don't rent our home as a vacation rental.

I am a strong proponent of property rights, and also believe that our town will continue to grow, develop and expand as a tourist destination. I also believe the City has adopted ordinances and a Comprehensive Plan to both respect property rights and support and manage the growth that is no doubt in the City's future. Balancing these priorities is a constant challenge, and the CU permitting process is one way to address particular challenges and questions as they arise and as needs may change. However, it seems to me that this CU request is stretching just a bit too far, and asks the Commission to make exceptions that represent significant departures from the City's existing code and plans.

- The applicant is asking the Commission to effectively ignore the 1.0 acre requirement for a hotel, motel or resort. At 24,698.97 SF, the applicant misses the mark for this requirement by 43.3%. I could understand a request if the lot missed the requirement by 2,000 or 3,000 SF (5-8%), but at nearly half the size required by zoning ordinances, granting a CU permit allowing such a development on what is just over a 1/2 acre lot would open the flood gates and would likely set a very concerning precedent.
- The applicant is also asking the Commission to effectively ignore the requirement that a hotel have direct access from US Highway 101. This means Ocean Road and Shellmidden Way will serve as access to the development. The roads in Yachats are intended for residential access and are for the most part very pedestrian friendly, providing residents and tourists alike a walking, cycling and running experience unfettered by commercial traffic. This is especially true for Ocean Road, as evidenced by the number of cyclists, walkers and runners on a near daily basis. Seven units will not bring seven cars -- it might bring 2-3 times that amount given that rentals often cater to friends and family gatherings. Again, granting a CU permit that would excuse the 101 access requirement for a hotel would set a concerning precedent. I think it's also worth noting that the lack of 101 access would most likely result in guests parking on Ocean Road, no matter the owners' best intention, and even if the city were to mark it "no parking." I'm confident the managers would provide guests with directions to the parking area east of the proposed development. Nonetheless, with the set back being so minimal, guests will no doubt drive from the north along Ocean Road, see the development and simply park in front along Ocean Road. Despite instruction, human nature is what it is, and we will see a significant relative increase in automobile traffic, and a significant increase in the number of cars parked on Ocean Road.
- Further exemplifying the "stretching a bit too far" nature of this application: the applicant notes that simple math would allow for 6.84 buildings on the 24,698.97 SF comprising this lot (assuming the 1 acre requirement were to be shelved). But the applicant is again asking the Commission to look past code and proposes to build 7 structures. 7 is not too far from 6.84, but to "pass over" a minor change here sets a concerning precedent.
- Taken together, the applicant is asking the Commission to reduce the lot area requirement by 43%, disregard the traffic and parking impact to Ocean Road, and allow the construction of even more units than would be allowed under conditions that did meet code. I understand the objective to maximize "land productivity" in a commercial setting, but this application is a stretch in my opinion, assuming I am understanding the zoning ordinances and Comprehensive Plan accurately. I think the Commission should deny each of the variances sought. That said, even if the lot size requirement were met, the lack of Highway 101 access is reason enough to deny the application.
- Additionally, the site plan shows compliance with the 20' front yard set back requirements for the structures. What is concerning, though, is that the developer is proposing picnic tables

and firepits placed at what appears to be maybe 5' from the road. I don't find any specific regulations governing picnic tables and firepits (I could have missed them), but this also seems to be pushing the envelope in my view, given the nature of adjoining land use.

- While I believe this CU permit request should be denied on the objective basis of current zoning ordinances, it also seems to me this proposed development is inconsistent with the City's Comprehensive Plan.
 - While a bit more subjective in nature, Goal A, Policy 4 of the Plan refers to orderly development of land through zoning, etc. to conserve natural resources. Open space and scenic views are noted as important components of the City's environment. While the obvious "view" in this area is to the west, there is also the view to the east to consider, and its consistency. A lot just over 1/2 acre crammed with 7 rental units is not consistent with the environment created and protected by the current zoning ordinances governing Ocean Road.
 - Goal G, Policy 6 calls for the "City, through development regulations, to ensure that new development shall be of an appropriate scale to retain and enhance the small-town, ocean side character of the Yachats community." The "scale" of 7 units crammed on 1/2 acre (or even one acre) does not support this policy in my view.
 - Goal G, Policy 8 states that "The City shall support the preservation of open space on private land through such means as set back standards and limiting lot coverage and *encourage the preservation of open space when new subdivisions and PUDs are considered for approval.*" The proposed development is, in my opinion, not consistent with this policy -- which I assume was intended for developments that first met general zoning requirements, not developments that asked the city to reduce lot size requirements by more than 40% and ignore access requirements (Hwy 101).

Thank you for your consideration, and for your service. Your job is not an easy one!

--

Marc Cohen
801-573-3383

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Marc Cohen
801-573-3383

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Marc Cohen
801-573-3383

May 2, 2022

Attention: Planning Department

City of Yachats
PO Box 345
Yachats, OR 97498

Project Name: Yachats Planning Commission Yachats Ocean Road Development

Subject: Yachats Ocean Road Development

Dear Planning Commission

My name is Joseph Danko, and I am a Yachats resident currently living at 370 Hill CT. I am writing as both a Yachats community member and professional engineer who has been leading urban development projects for more than 30 years across the globe.

I am writing to you today to Aggressively Oppose the Yachats Ocean Road Development. Throughout my professional career, I have been focused on implementing community supported, sustainable and resilient developments that strive to include all members of the community. This planned development violates all of the tenets that I have been involved in throughout my career including:

This is not supported by the Community. The neighborhood and community around this exact development area are opposed to this development. It is not in their interest and provides no benefits to their well-being. First and foremost, we must listen carefully to our communities' voice when we conceive new developments. The community is saying "NO" to this development. We need to listen.

The development is not Inclusive. The next developments in and around Yachats need to be focused on affordable housing to support members of our community who work in this community. Our planning commission should focus first and foremost on housing that workers can afford who support the services, health and well being of all Yachats Citizens.

This is not Sustainable or Resilient. This development is planned on an existing wetland. This is not only a violation of the law it is harming to the environment and ecosystem. Wetlands provide

Joseph Danko
370 Hill CT
Yachats, OR
97498
541.547.3618 (D)
541.740.4611 (M)

Attention: Planning Department
Subject: Yachats Ocean Road Development

ecosystem services to all of us as well as supporting a diversity of life that we all cherish as Yachats Residents. Granting an exemption that will permanently eliminate valuable wetlands is not environmentally unsustainable and it also impacts the overall resiliency of our community.

Destroys the unique Yachats Ocean Road experience. Yachats ocean road provides a unique experience to walk safely with minimal vehicular traffic. I am down there at least once per week and cherish the fresh exposure to the ocean and environment and interactions with other pedestrians. We do not need to add more vehicles that will move Yachats Ocean Road to a more congested type of road increasing the risk of accidents. This will also devastate the "special experience" that is currently offered to the main users who are pedestrians and their pets.

Violates Municipal Code. Hotels are supposed to have direct access to Highway 101. This development violates that code and again granting the Developer an exception is unacceptable. It will also put all of that vehicular traffic onto Yachats Ocean Road. Secondly, the code is clear that hotel developments should be on a minimum of 1 acre. This planned development is only ½ acre. Again, we do not need to make exceptions to our own municipal code when the community is opposed to this development for all of the reasons I have already listed above.

Yours sincerely

Joseph Danko P.E.

Yachats Resident at 370 Hill CT

Managing Director, City Solutions

Jacobs Engineering Group
541.740.4611
jo.danko@jacobs.com

October 12, 2021

VIA EMAIL & FIRST-CLASS MAIL

City of Yachats

Planning Commission Commissioners:

Lance Bloch, Chair

Loren Dickinson, Vice Chair

Ariana Carlson

Christine Orchard

Helen Anderson

Jacqueline Danos

Yachats City Hall

501 Hwy. 101 N

Yachats, OR 97498

Email: admin@yachatsmail.org and cityhall@yachatsmail.org

Re: Agate Point Conditional Use Application

Dear Commissioners:

This firm represents Jo Dee Moine who owns real property at 390 Yachats Ocean Drive that is affected by the development proposed in the above-referenced matter. This letter is to provide the Planning Commission with written testimony opposing the proposed development.

The application misrepresents the nature of the proposal to circumvent important development standards adopted to protect the citizens of Yachats.

One could easily characterize the applicant's proposal as a bait and switch. On the one hand, the proposal clearly illustrates seven single-family dwellings with separate bedrooms, living area, full kitchens, and private outdoor areas. Indeed, the applicant describes the structures not as rooms or sleeping quarters, but rather rental cottages. Yet, in a transparent attempt to avoid important development standards designed to preserve the livability of Yachats and to get around the lottery for short-term rentals, the applicant attempts to gain approval of its independent rental cottages as a "hotel." By so characterizing its proposal, the applicant is attempting to get approval for seven single-family dwellings on a 21,000 square foot parcel that, under the appropriate development standards, would accommodate three dwellings.

Christopher P. Koback
1331 NW Lovejoy Street, Suite 950
Portland, OR 97209
chris@hathawaylarson.com
(503) 303-3107 direct
(503) 303-3101 main

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As noted above and plainly reflected in the application, the applicant is proposing to construct seven single-family dwellings on one lot. Each proposed structure has every element of a single-family detached dwelling unit. A single-family dwelling is defined as a building designed or used, in whole or part, as a residence or sleeping place, either permanently or temporarily, by one or more families, but excluding hotels, motels, and tourist courts. By defining a single-family dwelling to include temporary places for sleeping, the rental cottages fall squarely within that definition.

On the other hand, a hotel is defined as any building containing guest rooms, which are rented or hired out, to be occupied for sleeping purposes for guests. Thus, a hotel is a single building with multiple guest rooms, which do not have full kitchens. The rooms are for sleeping. A motel is defined as a series of sleeping units, each having a separate entrance composed of one or more bedrooms and bathroom. Again, a motel does not have accommodations with full kitchens. Thus, under the city's definitions, a defining characteristic that separates a single-family dwelling from a hotel or motel room is the existence of a full kitchen.

The city's use provisions are also informative. We will address this more below, but in Yachats Zoning Code ("YZC") Sections 9.24.020 and 9.24.030, hotels and motels are allowed in the R4 zone only if they have accessory commercial uses. In most settings involving hotels and motels, the accessory commercial use is a restaurant or some form of eatery because, as noted above, hotel/motel rooms do not have full kitchens.

The proposal is in reality a single-family short-term rental development that fails to meet the required minimum lot area standard.

Because the proposed single-family cottages can never meet the definition of a hotel or motel, they must either be reviewed as single-family dwellings, the definition of which they clearly fall within, or multi-family dwellings on a single lot. Indeed, as one commentor noted in written comments, at least two of the proposed buildings have a main dwelling unit and a separate area that can be rented out separately as an independent living area.

Correctly characterizing the proposal is critical because the city must apply the proper development standards to assure the property is not over loaded. It is obvious the applicant labels its proposal as a hotel because it is trying to avoid the lot area requirement for single-family development. YZC Section 9.24.040 contains the development standards for the R4 zone. The minimum lot area for a single-family dwelling is 6,000 square feet. The minimum lot area for a two-family dwelling is 7,500 square feet. For multi-family dwellings over two units, the minimum lot area is 5,000 square feet for the first unit and 2,500 square feet for each additional unit.

Applying the above provision to the subject site, which is 21,625 square feet, the applicant would only be able to propose three, or possibly four dwellings. Accounting for access issues and other constraints, it would appear that three dwellings would be the maximum allowed.

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In an effort to circumvent the applicable single-family dwelling standards, the applicant placed a hotel label on its proposal simply because it plans to continuously rent the dwellings. As a hotel, the applicant asserts that it only needs 1,500 square feet for each hotel unit and, thus, the site can accommodate seven units in addition to the required parking lot.

The applicant's characterization is a transparent attempt to circumvent the applicable development standards in the R4 zone. As noted above, the application material patently demonstrates that the structures being proposed are not hotel units but rather single-family dwellings. When one examines the load placed on the site and the impacts on surrounding properties, there is a market difference between seven single-family dwellings on a 21,000-foot site and seven hotel rooms. Each dwelling can accommodate many more people than a hotel room. For example, the three-bedroom units could easily accommodate two families with at least two cars.

If the city reviews the application as a proposal to develop a multi-family development with multiple units on a single parcel, there is another fatal flaw. Under YZC Section 9.24.040.F, the minimum separation between multi-family buildings shall be 30 feet, unless the buildings are arranged end-to-end. As proposed, the seven multi-family buildings are not end-to-end.

In any case, the proposal is not a hotel or motel under the city's definitions or applying any common logic. It is a proposal for seven single-family dwellings that will be rented for a profit, or a proposal for a multi-dwelling development. Either way, the city must apply to correct development standards and cannot apply the development standards for a hotel or motel.

Another aspect of this is the character of the proposed use. The applicant acknowledges that the plan is to continuously rent the single-family cottages to visitors. Thus, they are short-term rental units. This appears to be a transparent effort to avoid the city's limits on short-term rental units and avoid having to go through the same lottery system as all other owners who wish to make short-term rentals of their homes.

The proposal cannot meet mandatory approval criteria even if one accepts the applicant's mischaracterization of the proposal.

Perhaps the most telling evidence of the applicant's plan to circumvent the lot area requirement is that there are no other uses proposed on the site. The plans include only seven single-family structures. As the applicant concedes, a hotel is not a permitted use on the site because it is below the one-acre minimum, and it does not have direct access to Highway 101.

Section 9.24.020 Permitted Uses allows for a motel, hotel, or resort of 1.0 acre with direct access provided from (sic) U.S. Highway 101 and only with accessory commercial uses. We are requesting a Conditional Use Permit because the project does not meet the 1.0 acre minimum and does not directly access U.S. Highway 101.

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As the applicant recites, YZC Section 9.24.030 allows the city to approve, as a conditional use, a hotel that is on a parcel less than one acre and that does not have direct access to Highway 101. However, that code section, just as YZC Section 9.24.020 recites, expressly requires that hotels on less than one acre and without direct access can only be approved as a conditional use if they also have accessory commercial uses. YZC Section 9.24.030 Conditional Uses at subsection P allows:

Motel hotel or resort on less than 1.0 acres with accessory commercial uses.
(Emphasis added).

The application material does not reveal any proposed accessory commercial uses. In the context of a hotel, an accessory commercial use would most commonly be a restaurant or bar, or both. Thus, even if one ignores the applicant's obvious effort to mischaracterize its proposal as a hotel to avoid mandatory development standards, the proposal cannot be approved even conditionally because it does not have accessory commercial uses. There is no provision in either YZC Section 9.24.020 or 9.24.030 that allows the city to approve a motel or hotel that does not have accessory commercial uses.

The applicant has made no demonstration that it will ever be able to fill two jurisdictional wetlands and the proposal is dependent on filling them.

There are two wetlands in the site comprising approximately .13 acres. The applicant's proposal depends upon its ability to fill two wetlands and mitigated for that by simply paying a fee. To support its requests, the applicant submitted a study from Scotts and Associates that concludes that neither wetland is connected to navigable waters and, thus, are not jurisdictional wetlands. The August 17, 2021, response from the Army Corp of Engineers ("Army Corp") is inconsistent with that submission. The Army Corp determined that both wetlands on site are "waters of the U.S.", which means they are jurisdictional. As a result, the application cannot proceed unless and until the applicant appeals that determination and succeeds or applies for and obtains approval from the EPA to fill the wetlands. While a local government has some ability under ORS 197.522, to approve an application based on conditions, the applicant must make some demonstration that the condition is feasible and will assure compliance with the approval criteria. *Gould v. Deschutes County*, 227 Or App 601, 206 P3d 1106 (2009). The application has no information that demonstrates feasibility of prevailing on an appeal of the Army Corp determination or, in the alternative, obtaining an EPA permit to fill the wetlands.

The applicant has not adequately addressed relevant access/safety issues.

YZC Section 9.24.040.I requires that vehicle and pedestrian access to the site be safely and efficiently provided. A critical component of safe access has to be adequate access for fire and other emergency vehicles. The proposed site plan illustrates that there is no such safe access proposed. There is a single road, Shellmidden Way, that enters the site in the proposed parking lot. That road is a narrow, dead end, gravel road. As the parking lot is configured with 20 spaces

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to accommodate up to nine dwelling units, there will be no room for a fire truck to maneuver on the site. If the lot is full of vehicles owned by those renting the seven/nine units, it is doubtful that a fire truck could even get onto the site. Yachats Ocean Drive does not provide a reasonable alternative for emergency access to the proposed buildings located in the southern quadrant of the site. The only way to get efficient access to those structures is through Shellmidden Way where the access can be impeded by vehicles in the parking lot.

Conclusion

As explained above and reinforced by other comments you will review, the applicant has not met its burden to show that its proposal meets all of the applicable standards. For that reason, the application should be denied.

Very truly yours,

HATHAWAY LARSON LLP

A handwritten signature in blue ink, appearing to read "Christopher P. Koback", with a long horizontal flourish extending to the right.

Christopher P. Koback

CPK/ep

cc: Client

Yachats Office Manager

From: Kristin Christiansen <kristin.k.christiansen@gmail.com>
Sent: Tuesday, April 19, 2022 9:16 AM
To: Yachats Office Manager
Subject: Agate Point Conditional Use

Dear City,

I strongly oppose the proposed "hotel" on Yachats Ocean Road. If this is passed it will take precedent for other developers to seek exceptions to the municipal code. Below are 4 variances Agate Point is asking for Yachats to ignore for their own financial benefit. Bullet 5 adds some additional reasons as to why I oppose the "hotel".

1 - [REDACTED] variance to build on invaluable wetlands as determined by Pacific Habitat Services Inc., a professional wetland consulting firm who worked for the city in 2011. [REDACTED]

2 - variance to develop rental property without direct access to Highway 101, overburdening narrow Yachats Ocean Road which is heavily used by pedestrians. [REDACTED]

3 - [REDACTED] variance to develop rental property on half acre (undersized, 1 acre required for hotel) lot, which will [REDACTED] exacerbate the current water shortage problem. [REDACTED]. Note our water comes from just a few local streams/rivers.

4 - [REDACTED] variance to develop individual rental units (cottages) without going through city lottery system. They are calling the development a "hotel" to skirt the requirement. [REDACTED]

5 - other reasons to oppose. -the security lighting for the parking area would adversely effect the night's sky. -noise and congestion of 7 rental units. -may cause overflow parking on Yachats Ocean Road. -no on site management to control noise fire pits - just doesn't fit the look and feel of neighborhood. -how much more can our infrastructure handle?

There are a number of emotional points to make against this development as I am sure many have expressed and I am incredibly inspired by the outpouring of concern citizens for the future of Yachats and the beautiful coast. I am surprised and embarrassed that this out-of-State developer feels they can come to our quaint village and do as they please ... I plea to the City to put a stop from this going through.

Regards,
Kristin Christiansen
23 Basalt Loop

Yachats Office Manager

From: wendyg <wendyg@teleport.com>
Sent: Monday, April 18, 2022 8:25 PM
To: Yachats Office Manager
Subject: FW: YOR

Sent from my Verizon, Samsung Galaxy smartphone

Subject: YOR

Good Evening,

I have lived in Yachats for over 30 years, I own Coastal Homes & Land.

I am opposed to the new development off shellmidden, I worked at Emerald Coast realty when the property was in a hearing for a development, it was then in 2004.

The property was deemed not a property to be developed because of access & wetlands. Nothing has changed, the area is very tight, the road very narrow & congested. I oppose this development in the past, my opinion has not changed.

Please dig into the past files, why was it not approved then? The obvious reason's are compounded today.

Thank You for your concern for our citizens.

Sincerely,

Wendy Snidow

Sent from my Verizon, Samsung Galaxy smartphone

Yachats Office Manager

From: Heather T. <hlmtaylor@gmail.com>
Sent: Monday, April 18, 2022 7:44 PM
To: Yachats Office Manager
Subject: Please, no developments on Shell Midden!

This -- and Yachats Ocean Rd -- is not an area for even a moderately busy commercial development. Yachats Inn and Koho both have entrances off 101, which is fine, but there should not be extra traffic in that kind of a heavily-visited pedestrian area. Not to mention the depletion of wetlands, my goodness! Not the kind of climate change we want at all. Please do not grant any concessions to the developers who want to build "Agate Point Resort."

Thank you so much,
Heather Taylor
Yachats, OR #1000

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[Design by Heather T.](#)

Yachats Office Manager

From: krohn@peak.org
Sent: Monday, April 18, 2022 7:45 PM
To: Yachats Office Manager
Subject: objecting to a proposal to build Agate Point Resort in a wetland off Yachats Ocean Road(YOR).

To whom it may concern,

I'm writing to object to the Agate Point Resort. This area is too small for this development and the loss of wet lands is not good for the environment. The area does not have enough roads for ingress/egress issues that are already caused on Yachats Ocean Rd.

As an appraiser in the area, I've seen far too many 'almost' accidents on Yachats Ocean Road. I live in the Yachats area and do many appraisals in this area. Fall and winter see enough traffic on this roadway, but spring and summer there are far too many vehicles with tourists that do not understand the area and have caused accidents or almost accidents.

Part of the appeal to this area is the peace and quiet and views. More 'resort' development in this area does not assist the already homeless workers. Does not help with the peace and quiet or the views.

Please do not allow this to be built in our beautiful community, we have enough 'resorts' in Yachats already.

Sincerely

Robyn Krohn
Cert. Res. R.E. Appraiser

621 NE Nevada St
Yachats, OR 97498
541-270-8769

Yachats Office Manager

From: Gail Brewer <brewerg@peak.org>
Sent: Monday, April 18, 2022 9:26 PM
To: Yachats Office Manager
Subject: Agate Point Resort

To Whom It May Concern:

I am again writing to voice my concern over the development of the Agate Point Resort. When the project was being considered at the end of last year I also wrote a letter. It has been put off, in part, in the hopes that those of us opposing it have forgotten all about it. We have not. I am a resident south of the bridge and it is not only very close to where I reside, but also where we take our daily walks with our dog.

Here are my concerns. This project is on a wetland. Wetlands provide many ecological benefits to an area. Not only do they provide for a diverse animal and plant life, but they also filter water that directly empties into the ocean. The access roads to the project are narrow and pass through a residential area. Many people walk the Yachats Ocean Road, and this would add more traffic danger to pedestrians. Moreover projects of this nature are supposed to have direct access to Highway 101 according to the city's code. The lot itself is also too small for the project according to code. The buildings as proposed will cover more than 45% of the coverage allowed and the setback from the road is also questionable. The Yachats Ocean Road community is also against this project and many weren't informed or not listened to as the party wanting to build this projects claims.

If this project is allowed to go forward, it will set a precedence for other developers as they will realize that our city codes don't really matter or mean anything, and all they have to do is buy some land and then proceed to build whatever they want and pad their pockets at the expense of those around them. Right now our service workers are having a difficult time finding housing and those of us that live here find that the cost to do so is rising in part because of projects like these.

Please follow the codes that are in place for a good reason and don't allow this project to move forward.

Sincerely,
Gail R. Brewer

Yachats Office Manager

From: hank lindsay <hanklind@yahoo.com>
Sent: Monday, April 18, 2022 10:06 PM
To: Yachats Office Manager
Subject: Agate Point Resort

The Agate Point Resort does not fit in with our community. The lot is too small, buildings would cover more ground than the 45% coverage allowed, both roads are far too narrow, the setback from the center of YOR (and possibly Shell Midden) is less than the 45' allowed by code, it is proposed to be built on a wetland, I believe the YOR neighborhood is strongly against it, the proposal violates both the spirit of the Yachats Comprehensive plan and the letter of the municipal code.

The project is not wanted or needed in our community.

Sent from my iPad

Yachats Office Manager

From: Lauren Strach <laurenstrach@gmail.com>
Sent: Tuesday, April 19, 2022 6:45 AM
To: Yachats Office Manager
Subject: Stop the Development

Dear Committee,

Yachats Ocean Road is a treasure, and further development outside of what is zoned should NOT be allowed. I walk my dog daily from my house on Windy Way, and I know what it is like to dodge existing traffic. My neighbors, who are senior citizens, also walk their dogs and are concerned with the natural increase in traffic in the summer. More traffic from Shellmidden Lane to 101 would compromise the beautiful experience and the safety of our residents.

Do NOT allow any variance. Your job is to enforce the existing code.

Lauren Strach and Michel Rose
full-time residents
33 Windy Way

Yachats Office Manager

From: Maeona Urban <urbanart@peak.org>
Sent: Tuesday, April 19, 2022 8:33 AM
To: Yachats Office Manager
Subject: Ocean Road Development

Please no development of the "Motel" on Yachats Road. Find the codes to stop it whether it be emergency access, being able to turn a fire engine around in there, traffic on a narrow road, or some other violation or infringement. It does just seem like they are trying to take advantage of our small town to do whatever they want. I know the area may never have been set aside as wetland but really. There must be some way for us to protect something around here.

Maeona

Yachats Office Manager

From: Cowden/Prince <jlpdmc@gmail.com>
Sent: Tuesday, April 19, 2022 11:07 AM
To: Yachats Office Manager
Subject: Agate Point development

Dear Members of Yachats Planning Commission,

I am writing to express my very strong opposition to the proposed Agate Point Resort development.

You've heard all the arguments against it, so I won't repeat them here. I will state that I am of the firm belief that the things that make Yachats unique are worth fighting for and this development is NOT in the best interest of the town and is not suitable for many reasons.

Please do not ignore the desires of the residents who are trying to protect the integrity of this area. Do NOT allow this development to proceed.

Respectfully,
Johnni Prince
3501 Highway 101 N
Yachats, OR 97498

"It isn't enough to talk about peace. One must believe in it. And it isn't enough to believe in it. One must work at it."

~Eleanor Roosevelt

Yachats Office Manager

From: David Diamond Diamond <ddiamond1951@gmail.com>
Sent: Tuesday, April 19, 2022 1:05 PM
To: Yachats Office Manager
Cc: lancebloch1@gmail.com; theilacker@gmail.com
Subject: Agate Point Resort - Reject this proposal

April 19, 2022

City of Yachats Planning Commission

Re: Agate Point Resort Proposal

I wish to express my concern for the potential granting of conditional use for the Agate Point Resort adjacent to Yachats Ocean Road. As a property owner and resident of Yachats I am a proponent for responsible development of our community.

In addition to issues relating to the number of proposed dwelling units and the lot square footage, the site for development has wetlands that would require filling, access to the site would not be appropriate (Shell Midden), and State Park visitors and pedestrians would be exposed to the dangers of the resulting increased car traffic.

Thank you for your consideration,

David Diamond

955 Hanley Drive

Yachats

(541) 517-8535

ddiamond1951@gmail.com

Yachats Office Manager

From: Jo Dee Moine <jodeemoine@comcast.net>
Sent: Tuesday, April 19, 2022 1:11 PM
To: Yachats Office Manager
Subject: YOR Agate Pointe development code issues

Hi Dayna,

Here is my October letter from my land use attorney. I am resending it today as I hear the city is meeting at 2:00 to discuss city code in regards to this development.

I object to the proposed development because it does not access Hwy 101 directly, has no accessory commercial uses and other reasons as outlined in the enclosed letter. Please forward this to the appropriate city officials.

Thank you,

Jo Dee Moine
390 Yachats Ocean Road

Yachats Office Manager

From: Obrien, James P - (jobrien) <jobrien@arizona.edu>
Sent: Tuesday, April 19, 2022 2:03 PM
To: Yachats Office Manager
Subject: Agate Point Resort

To whom it may concern:

I was opposed to this development last year and I continue to be opposed this year. Such a resort should only enter/exit from Highway 101, not YOR. Such traffic would be incongruous to the rural nature of YOR since the road is as much a footpath for walkers as it is for automobiles. The resort would greatly increase automobile traffic and make the road unsafe for walkers. The exceptions that would have to be granted clearly demonstrate this is not compatible with the current environment.

This community does not need more high-end development. It needs affordable housing for workers and residents.

Please deny all conditional use permits. This is not a matter of being anti-progress, but, rather, being opposed to development which requires so many exceptions to the Yachats Comprehensive plan.

Thank you.

James P. O'Brien
Yachats resident

Yachats Office Manager

From: CC Horton <cchorton830@gmail.com>
Sent: Tuesday, April 19, 2022 2:14 PM
To: Yachats Office Manager
Subject: Proposed Agate Point Development

Dear Members of the Planning Commission,

We are writing to reiterate the message we sent you on October 11, 2021, voicing our opposition to the city granting developers special exemptions to our code for their proposed Agate Point development .

Please hold the line on the code requirements, which are in place for the benefit of the community as a whole. For all the reasons that have been pointed out by many who have weighed in on this issue, we don't believe it would be in the best interest of our community for this project to be enabled.

Thank you,

Creight & Jo Horton

Yachats Office Manager

From: PAUL PETERSON <paulfrancis6189@aol.com>
Sent: Tuesday, April 19, 2022 7:46 PM
To: Yachats Office Manager
Subject: DEVELOPMENT ON YACHATS OCEAN ROAD

Dear Yachats Planning Commission

As a home owner near where the planned development is being considered on Yachats Ocean Road I am adamantly against it.

There is no way our narrow local streets can handle the extra traffic this development will incur.

I am in shock that this is still even being considered.

Stick to our written codes for land & street use. Period.

Paul Francis Peterson
67 Greenhill Drive
Yachats OR 97498

Yachats Office Manager

From: Sally Marie <sallymarie97498@gmail.com>
Sent: Wednesday, April 20, 2022 7:37 AM
To: Yachats Office Manager
Subject: resort south of the bridge

I live at 31 Shell St, Yachats, OR 97498.

I am strongly opposed to the proposed motel/resort which would be built just off Yachats Ocean Road and Shellmidden Road. This development would violate numerous quality of life issues for residents and visitors.

Please do not grant conditional use permits for this proposed development. Yachats Ocean Road is crowded already with pedestrians needing to negotiate with cars, trucks and motorhomes. A development of this sort is supposed to be accessible from the highway.

Sally Marie

Yachats Office Manager

From: Roscoe Caron <roscoecaron@gmail.com>
Sent: Wednesday, April 20, 2022 9:27 AM
To: Yachats Office Manager
Subject: Agate Point Resort

Members of the Planning Commission and Yachats City Council,

Please do not authorize the proposed resort in the wetland off of Yachats Ocean Road. The multiple reasons to deny authorization have been stated by many Yachats residents previously: Excess traffic on Shell Midden Street; the size of the lot is too small; the resort should have access via Hwy 101; increased danger to pedestrians on Yachats Ocean Road; the loss of the little remaining wetland in Yachats.

Sincerely,

— Roscoe Caron

Yachats Office Manager

From: Fran morse <fran@maxglenn.com>
Sent: Wednesday, April 20, 2022 11:31 AM
To: Yachats Office Manager
Subject: YOR development project in wetlands --NO

This is an addendum to my precious long letter detailing why the Yachats Planning Commission should be against this development of wetlands. The project violates numerous municipal codes establishing setbacks and access. We do not need to grant all requests for "conditional use" permits. Sometimes the right answer is, "No."

Fran Morse
PO Box 953
1395 King St
Yachats. OR
97498

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Yachats Office Manager

From: Betty Richard <bettyar57@gmail.com>
Sent: Wednesday, April 20, 2022 4:27 PM
To: Yachats Office Manager
Subject: Agate Point Resort

To Whom it may concern,

I live on Yachats Ocean Rd and I am stunned that, again, I must make my voice heard about this awful Resort being built on too small a space, with poor access and little parking. There are rules for numbers of building/area and this violates them all. This makes a mockery of our city planning and should have never come up for review. Please, stop any attempt to complete this project.

Elizabeth A Richard
266 Yachats Ocean Rd
PO Box 472
541 547-3936
cell 208 699-2363
bettyar57@gmail.com

Yachats Office Manager

From: Alex Cox <tombstone@fastmail.com>
Sent: Wednesday, April 20, 2022 6:30 PM
To: Yachats Office Manager
Subject: Please Forward: Concerns about Agate Point Development - to Planning Commission

Hi there

I'm a Yachats resident. I sent an objection to the Agate Point development proposal last year. Since I've heard the project's backers have put in another application for development, I would like to repeat my opposition to the plan.

The reasons are the same as before:

Wetlands.

The land is habitat which should not be paved over or destroyed.

Traffic

A variance that will increase the volume of traffic and the likelihood of accidents or worse.

Infrastructure

Yachats isn't a developer's paradise. The city doesn't have the capacity for everything. We need to prioritize full-time residents and businesses, and protect our limited water supply and sewer system.

"A Cottage Hotel"

Indeed! Seven vacation rentals on half an acre, thinly disguised as a hotel without onsite management, to get around short term rental license requirements, have no place here.

Access

Hotels/resorts are required to have direct access to 101 and be on at least an acre. So this project must be rejected.

Thank you very much,

Alex Cox

315 Radar Rd
Yachats
OR 97598-0511

Yachats Office Manager

From: Marc A. <macourtenay@gmail.com>
Sent: Wednesday, April 20, 2022 7:02 PM
To: Yachats Office Manager
Subject: Agate Point Resort

Dear Planning Commission, City Manager of Yachats, City Planner, and City Council of Yachats,

Some months ago, many of us wrote letters to the city objecting to a proposal to build Agate Point Resort in a wetland off Yachats Ocean Road(YOR). We made powerful statements to the developers and to the city to stop this development from moving forward, and it was delayed.

But now the developers will resubmit and I believe they hope that the community has calmed down; that we have forgotten. *We haven't!* This letter to the city is requesting that you stop this project. The city needs to know where we, the tax-paying citizens, stand regarding this project. We are against it for good reasons.

As you know, developers want to build a resort in a wetland next to YOR. To access it drivers would have to drive down YOR then turn onto the unpaved Shell Midden Street.

The proposed resort would require the city to grant numerous conditional use permits before it can move forward. The lot is too small, the roads too narrow. Increased traffic on this mostly one lane state park road will endanger the many people who are already moved to the shoulder by cars claiming right of way.

By code, resorts should be accessed from HWY 101. Access instead would run from the state park road we walk on through a small neighborhood. There is no compelling reason for the city to grant these conditional use permits to authorize this development.

The lot is too small, buildings would cover more ground than the 45% coverage allowed, both roads are far too narrow, the setback from the center of YOR (and possibly Shell Midden) is less than the 45' allowed by code, it is proposed to be built on a wetland, protected by the laws of the State of Oregon.

The YOR neighborhood is strongly against it, the proposal violates both the spirit of the Yachats Comprehensive plan and the letter of the municipal code, and it would set a precedent that our codes are merely hurdles for developers to negotiate rather than standards that represent the communities best interest.

It's clear that the developers need to know that time has not changed our mind or resolve to stop the building of this resort! We the people hold you, the elected, appointed, and in some cases the hired officials of Yachats responsible for protecting us from such predatory, unscrupulous building projects.

Thank you,
Marc Courtenay
900 Hanley Drive
Yachats, OR 97498

Yachats Office Manager

From: Craig Hogan <craighogan@uchicago.edu>
Sent: Thursday, April 21, 2022 1:25 PM
To: Yachats Office Manager
Subject: Opposed to Agate Point development

I'm writing to voice a strong opposition to granting city approval for the proposed Agate Point Resort development.

The proposal violates many basic principles that should govern a community like ours, that places such a high value on the natural environment. Apart from the damage to the fragile local environment, the proposed development would degrade the quality of life for many people in our community, and adversely impact the experience of many visitors who value a particularly valuable part of our coastline. There is no good reason to make an exception to allow this kind of development in this particular place. There are good reasons why our community has chosen wisely to regulate development in our city, and in this spot in particular.

Thank you for your kind attention.

Craig Hogan
924 Hanley Dr, Yachats

Yachats Office Manager

From: Richard Ponting <rponting@comcast.net>
Sent: Friday, April 22, 2022 7:04 AM
To: Yachats Office Manager
Subject: Agate Point
Attachments: Agate Point 4 15.pdf

To Yachats Planning Commission
From Richard Ponting
Re Agate Point
Date 4/20/22

I believe conditional use permits for Agate Point should be denied. Attached I have referenced code and goals to explain my position. Thank you for your consideration of my concerns.

Agate Point
April 15, 2022

Both the Yachats Municipal Code and Comprehensive Plan exist to define and codify how we want our community to thrive. Agate point development is requesting that we ignore goals in the Comprehensive Plan, regulations in the municipal code, and the feelings of Yachats Ocean Road (YOR) community.

Yachats Ocean Road is part of the Oregon State Park system. It is a largely one lane road used for residents and visitors alike. We stroll with our families and pets, ride bikes, and walk in solitude appreciating the areas natural beauty. People are often forced to the shoulder to avoid cars determined to own the right of way. It is a part of the Oregon Coast Trail and the beginning of the Amanda trail. Yachats Ocean Road is perhaps more a path than a road, and it is an Oregon treasure.

Agate Point developers propose to have traffic turn down YOR and turn on to unpaved Shell Midden Street to access the resort's 18 space parking lot. It would be built on undeveloped land, a wetland, and people at resort would almost certainly park on YOR to walk to their room. There are many reasons I object to Agate Point being developed on this land. Foremost among them, in addition to the imposing traffic and congestion, is that the access proposed is not from Highway 101 as required in codes. They propose that the city waive its codes and permit traffic to use YOR and Shell Midden as the access the resort. There is no compelling reason for the city to ignore its codes and goals to permit this. There are many reasons to deny their request to disregard city codes. Also, the precedent it would set would make this a slam dunk for other development in the future. The nature of Yachats Ocean Road is imperiled if this development moved forward.

Below is a list of some goals and codes from the Yachats Comprehensive Plan and Municipal Code the developers are asking the city to ignore. I repeat, there is *no compelling reason* to grant conditional use permits to support the construction of Agate Point resort.

Yachats Municipal Code:

Section 9.72.010 Authorization to grant or deny conditional use permits.

In taking action on a conditional use permit application, the Planning Commission may either permit or deny the application. The Planning Commission's action must be based on findings addressing the requirements of the comprehensive plan and zoning ordinance, as addressed in Chapter 9.88.

City must make decisions guided by Comprehensive plan and the Code

Section 9.24.020 Permitted uses. (For Hotel)

K. 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.

Agate point is .57 of an acre and access is not from 101

Section 9.24.040 Standards.

A4. The minimum lot area per resort, hotel or motel guest unit shall be one thousand five hundred (1,500) square feet with a public water and sewer system.

As proposed, there are 13,500' for 9 people, including parking lot. Here is the math: The 24829 sq ft. lot can be covered 45%. And 1500 sq ft per guest is the space required in the code. In that 45%, which is 11173 sq ft, there are 9 proposed guest accommodations, $9 \times 1500 = 13500$. In other words, the proposal is overbuilding a small lot by 2500 sq ft.

Section 9.24.040 Standards.

b6. No structure shall be located closer than sixty (60) feet from the center line of any state highway, nor forty-five (45) feet from the center line of any collector or arterial street.

The lots platted for YOR go onto the rocks. This is common for ocean front lots, platted before the Oregon Beach Bill. But the setbacks calculated from the bank not from the platted property lines. The code is clear, stating the setback is from the center of the road, not from the center of the lot, as has been suggested. So the setback is in this case is 45' from the center of YOR. And its 45' from the center of Shell Midden Street to any structure.

The Yachats Comprehensive plan:

This document is goals for our community based on various surveys and meetings. The municipal codes developed for the community are intended to be reflect the goals established this plan. 9.72.010 makes this very clear. The code repeatedly references this. It is a mistake to see it as anti or pro anything. It is a representation of the communities' beliefs about codifying growth. Below are relevant statements from the plan. To reiterate, Agate Point is a planned hotel to be built in a wetland, in a neighborhood where it is not wanted, and along an Oregon State Park. With increased traffic it would endanger people who use YOR. It would require the city to waive code to permit it.

Goal G6 "The City shall, through development regulations, ensure that new development shall be of an appropriate scale to retain and enhance the small-town, ocean side character of the Yachats community.

Goal G9

The City shall preserve public views of wetland areas, beaches and stream corridors.

G8 "The City shall support the preservation of open space on private land through such means as set back standards and limiting lot coverage and encourage the preservation of open space when new subdivisions and planned unit developments are considered for approval."

F2 The City shall encourage the state to maintain its parks and beach access areas for the benefit of residents and visitors.

A1 The City shall ensure that the quality of air, water and land resources is maintained

*A2 and A6 The City shall protect significant marine habitats, as identified on the City's adopted Natural Resources map and inventory data, from proposed land uses that will, or might, modify their indigenous characteristics."

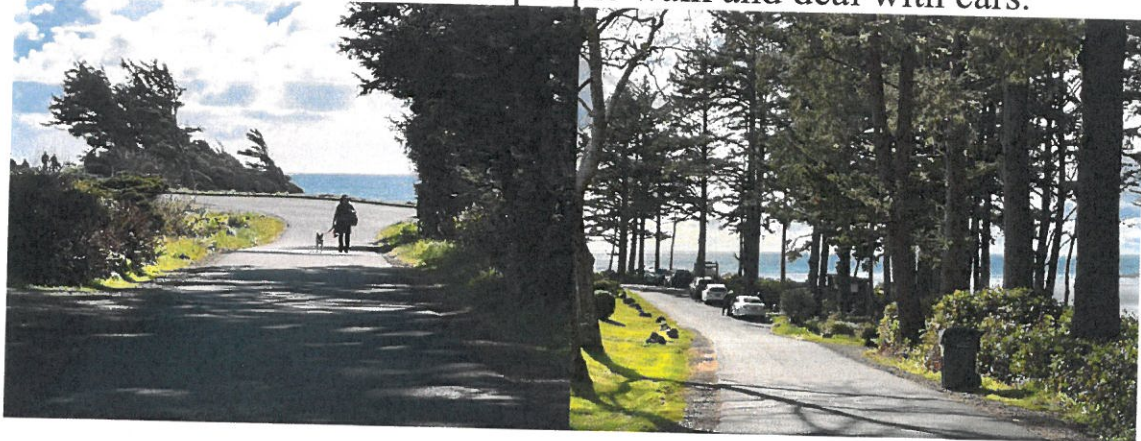
A6 The City shall protect significant marine habitats, (wetlands included)as identified on the City's adopted Natural Resources map

Yachats Ocean Road and Shell Midden Road are too narrow to accommodate increased traffic. The code requires the road be 35' wide. YOR is mostly no more than 12' wide with various areas added for parking. In the summer parking along Yachats Ocean Road is crowded, and when cars pass often it is one way traffic and people are often pushed to narrow uneven shoulders. Increased resort traffic is not a good idea. Drivers often move too fast or indifferently along this road. In the summer when the road is full of parked cars the danger will be even more pronounced.

Below are pictures of Shell Midden Road and YOR. Some have suggested opposing Agate Point Resort is antidevelopment. I am advocating for responsible development. There is no compelling reason for the city to grant conditional use permits for this development. The lot is too small, buildings cover more ground than allowed, the road is far too narrow, the setback from the center of YOR (and possibly Shell Midden) is less than allowed by code, it is proposed to be built on a wetland, the YOR neighborhood is against it, the proposal violates both the both spirit of the Yachats Comprehensive plan and the letter of the municipal code, and it would set a precedent that our codes are merely hurdles for developers to negotiate rather than standards that represent the communities best interest.

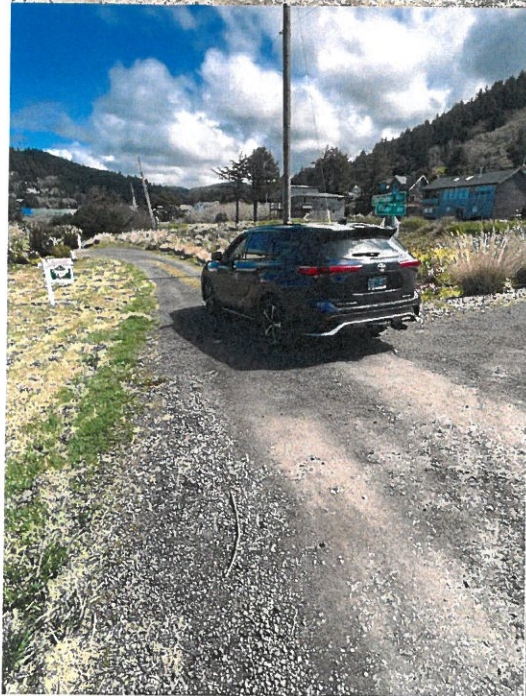
The city needs to emphatically deny the proposal to build Agate Point Resort!

Yachats Ocean Road Road as people walk and deal with cars.





Shell Midden Street



April 22, 2022

Dear City Planning Commissioners,

We have several concerns regarding the proposed Agate Point Resort development. We recognize the right of people to develop their properties, but we also believe that all people must abide by the carefully crafted Yachats building codes and requirements.

The following are exceptions to the Yachats codes that the developers are requesting:

- Egress not off Hwy 101 but, off of the tiny one lane dirt Shellmidden Way
- The proposed buildings would cover more than the 45% coverage allowed
- The setback from Yachats Ocean Road is less than the allowed 45 feet

This proposed resort would heavily impact Yachats Ocean Road where many of us walk daily with children and pets. It is a one lane road and the extra traffic would make it even more dangerous.

We feel strongly that the city's code and requirements should be enforced! If exceptions are made at the whim of developers, what is the purpose of having municipal code and requirements? Please stand firm and protect our special village.

Sincerely,

John Aviani

Linda Siegel

42 Mitchell Lane, Yachats

Yachats Office Manager

From: Hogan Anthea <antheahogan@gmail.com>
Sent: Tuesday, April 26, 2022 12:54 PM
To: Yachats Office Manager
Subject: Proposed Agate Point development

Save Yachats Ocean Road – please say no to the proposed Agate Point Resort

These developers are at it again. They persist in seeking to build seven vacation rentals which they describe as a motel, on a half-acre of wetland, and are asking to be exempt from city codes requiring an acre. They also want an exemption from the code requiring access from Highway 101 to allow them to use the small gravel residential road Shellmidden Way. For each vacation unit they want at least two parking places plus fire pits; all of this in a wetland area.

Wetland areas are unique ecosystems for plants and animals and as such should be protected, not exploited. As far as real estate is concerned, building on or near a saturated wetland will result in ongoing water damage to structures. The best use for it is to leave it alone, protect and enjoy it.

Apart from the wetland issue, the lot is too small, buildings would cover more ground than the allowed 45% coverage, access roads are too narrow, and the setbacks from the center of YOR are less than the 45' allowed by code. Access roads are not currently able to handle more traffic and usage. Are they also going to seek to widen the road?

There is no obvious need for additional city revenue from the proposed vacation homes. It might be a better idea to buy up wetland before it disappears. The Council has already dropped the ball on Yachats Ocean Rd. wetland protection by failing to adopt the inventory done by Pacific Habitat Services back in 2011 which was created in order to be able to put in place protective regulations. This has allowed the current situation to arise whereby this habitat is now threatened by commercial development which will forever change the nature of this part of the coastline.

A state park is meant to be a protected area. Why are we considering allowing a commercial enterprise to intrude alongside this area, especially one that will obliterate the beauty and function of the present wetland habitat? If you want to preserve Yachats as a gem of the Oregon coast please do not support this.

Anthea Hogan

924 Hanley Dr. Yachats, OR 97498

Yachats Office Manager

From: Diana Couey <taddypants@gmail.com>
Sent: Thursday, April 28, 2022 2:12 PM
To: Yachats Office Manager
Subject: Building on wetlands on Yachats Ocean road

Please stop the plans for development that is in the planning at the wetlands. It so hard to get around in Yachats now. especially in the summer! Please allow we citizens who live here and don't want our town to be overrun by tourists year around, to have a say in this. Those who come and go without caring for those of us who call this home. Enough is enough! Please draw the line to protect us. Thank You Diana Couey

Yachats Office Manager

From: Paul Pardi <oregonpardi@aol.com>
Sent: Friday, June 3, 2022 11:16 AM
To: Yachats Office Manager
Subject: Proposed Development sponsored by Agate Point Residence LLC.

Sir,

This reworking of the highly objectionable variance request is still wrong. This parcel is not zoned for a hotel of any size. The roadway is barely a country lane - not wide enough for the 50 or so daily trips this hotel will generate. This section of Yachats is a hub for walkers, joggers, bikes, birdwatchers, and whale watchers. The lack of sidewalks forces people into the street. Adding congestion to an already busy corridor is poor planning.

Environmentally this piece of land is the last undeveloped parcel on that street. It is of mixed terrain: including a section of vital wetland.

Disturbing this area, even if you don't physically bulldoze it, will negatively impact resident wildlife.

I've lived in Yachats for the last ten years and bike this street at least five times a week. I'm not some no-growth reactionary, I understand we need housing for our service workers. This proposal addresses none of those issues. We have plenty of hotels to serve visitors.

Paul Pardi
541-547-5156
41 NW Salmon St
Yachats, OR 97498

Point of Order

Before commenting on Agate Point Residences' proposal, I'd like to respectfully request that a member of the Planning Commission raise a point of order about the public notification rules under which this public hearing is being conducted. I offer this observation in support of my request.

To notify the public about this meeting, the City did not use its adopted public involvement plan, as Goal K claims the City is doing, but instead relied on YMC 9.88.060 – municipal code that predates the Comprehensive Land Use Plan and only requires direct notification to properties within 250 feet of the proposal. Shouldn't the public involvement policies of the Comprehensive Land Use Plan define how public notifications of land use hearings are conducted, rather than irrelevant legacy code? Will one of the commissioners please ask for a point of order on this observation? Thank you.

Agate Point Residences LLC

When reading our municipal code, it is important to read the definitions, to get a solid understanding of the attributes that make similar things different.

From YMC 9.04.030 we learn that a hotel is a building containing guest rooms that are rented out for sleeping purposes. And from YMC 4.08.020 we learn that a vacation rental is a dwelling unit, containing separate living facilities, including provisions for sleeping, eating, cooking and sanitation. In short, hotels rent "rooms" for sleeping, and vacation rentals rent "dwelling units" with living facilities.

Agate Point Residences is proposing to rent dwelling units, which, when held out for short-term rental, meets the definition of vacation rental. They are even proposing to outsource management to local vacation rental management companies, as many vacation rental do, making this proposed hotel, and a pod of vacation rentals on the same lot, indistinguishable.

While it is true that Yachats is a successful tourist destination, even Disneyland, has a maximum capacity, and that is why Yachats has placed a cap on the number of available vacation rental licenses. If the City decides to ignore the clear distinction between renting hotel rooms and renting dwelling units, and approves this conditional use permit, then others will follow, and the cap on vacation rentals will be easily circumvented by the creative application of nomenclature.

Doug Conner
490 Lemwick Ln.
Yachats

Yachats Office Manager

From: Morgen Brodie <silvercrone47@gmail.com>
Sent: Monday, June 6, 2022 9:36 AM
To: Yachats Office Manager
Subject: Re: Comments for Planning Commission meeting on October19, 2021

Follow Up Flag: Follow up
Flag Status: Completed

Dear Members of the Planning Commission:

I submitted the following statement to you in October and am dismayed that this issue is still in contention. The Fletchers' proposal does not meet criteria as developed by our citizens and our city and frankly I have come to resent their continued efforts to override carefully crafted mechanisms to preserve our environment. If we allow our natural settings to be compromised the results may well be irrevocable and certainly, in my opinion, inexcusable.

Sincerely,
Morgen Brodie
258 W 2nd Street

I am writing in opposition to the variances requested for the proposed Agate Cove development.

While I leave it to my learned friends to cite chapter and verse of the variances and their potential negative outcome (both in the short run and as we continue to be surprised and horrified by the unfolding consequences of global warming), I wish to take a broad view. (The pun's a bonus there.)

Yachats operates on the labor and good will of citizen volunteers such as yourselves-people who are willing to devote huge amounts of time to familiarize themselves with the issues facing our community and to draft and review plans, ordinances and motions that will reflect our community vision, the first part of which is "Our village is a place where natural resources are valued and protected...."

To that end we have had much energy and skill devoted to the development of land use planning, including specific stipulations to protect our natural resources and quality of life. The proposed Agate Cove development is not consistent with and seeks to override the plan our citizens have worked hard to develop, and the out of state business is asking for exceptions and variances to our plan to protect our community-for their financial gain, not for the benefit of our ecosystem or our citizenry.

I strongly request that you honor the work, spirit and intent of our community, recognize that we are temporary stewards of this beautiful land, and deny the variances, which are not to the benefit of our citizens or the land on which we are blessed to live.

Thank you for your consideration.

Morgen Brodie
258 W. 2nd Street

--

LAYNE MORRILL

628 Radar Road
Yachats, OR 97498

June 6, 2022

Via Email

Yachats Planning Commission
501 Highway 101 N
Yachats, OR 97498

Re: Case No. 2-CU-PC-21 Filed 7-13-21 Hearing Date June 21, 2022

Dear Commissioners:

I write to oppose the application. The Application is an attempt to circumvent the City's vacation rental licensing ordinance by labeling as a "hotel" what is in fact a "manufactured dwelling park" used as vacation rentals. The "hotel" label does not fit, and the Planning Commission should not allow this end run around lawfully adopted regulation and licensing provisions.

The Applicant claims its project is a "hotel." That is false. A "hotel" is defined as "guest rooms rented or hired out for sleeping purposes for guests." Similarly, a "motel" is defined as "a series of sleeping units, each having a separate entrance, composed of one or more bedrooms." YMC 9.04.030. The applicant's nine units are not hired out "for sleeping purposes" and are not "sleeping units." Each unit provides kitchen facilities for preparation of meals. Inclusion of kitchen facilities in each unit excludes them from the definition of "hotel" and "motel." Those kitchen facilities make Applicant's units "single-family dwellings" which is defined as "a building designed or used exclusively for the occupancy of one family and having kitchen facilities for only one family." YMC 9.04.30. Under our Zoning Code, single family dwellings with kitchen facilities cannot qualify as a hotel (or motel).

When single family dwellings including kitchen facilities are rented to the general public for 30 days or less, they are "vacation rentals." YMC 4.08.020. Vacation rentals cannot be operated without a separate license for each vacation rental unit. YMC 4.08.040(B). No licenses are currently available to Applicant for these units.

It is more than a little ironic for Applicant to claim its proposed use is a "hotel" when it has engaged a vacation rental management company (Sweet *Homes*) to manage the "hotel."

I am unaware of any existing hotel managed by Sweet *Homes*. Rather, Sweet *Homes* has loudly protested the City's regulation of vacation rentals and its cap of 125 vacation rental licenses as well as the County's recent regulatory measures. This Application is an obvious attempt to evade the vacation rental licensing ordinance by falsely claiming that this group of single-family dwellings is a "hotel."

Moreover, Applicant disregards the most obvious characteristic of its development – that it is a collection of manufactured dwellings meeting the definition of "manufactured dwelling park." The Zoning Code defines "manufactured dwelling park" as "four or more manufactured dwellings within 500 feet of each other on a lot or parcel of the same ownership." YMC 9.04.030. Applicant's units meet that definition.

A manufactured dwelling park must contain "not less than five (5) acres of contiguous land, unless the Planning Commission finds that a particular parcel of less than five (5) acres is suitable" because of its "unique character, topography, landscape features, or by virtue of its qualifying as a special problem area." YMC 9.68.40(E)(1). Applicants should have filed an application for manufactured dwelling park but did not. Had they done so, however, their 0.65-acre site is a small fraction of the required five acres. And the site is pristine ocean-front land containing wetlands that is surrounded by high-value site-built homes. The "unique character" of this site is the polar opposite of a "manufactured dwelling park." No grounds exist for an exception to the five-acre requirement. It would be a travesty to drop a .65-acre manufactured dwelling park into the middle of this beautiful neighborhood because that small site will not permit adequate buffering for the surrounding neighborhood.

The Planning Commission should deny the conditional use permit.


Layne Morrill

To: Yachats Planning Commission
In Response to: Agate Point Residences LLC Application
Case File:#2-CU-PC-21
Submitted: June 8, 2022

My name is Linda Fitch and I live full time at 431 Shellmidden Way.

I have a unique perspective of being one of only a handful of individuals whose resident access is on Shellmidden Way, and yet one of the corners of my property is less than 50 feet to Yachats Ocean Road. (My 3 big picture windows give me day to day visibility of all traffic on Yachats Ocean Road; foot, pet, bike and motorized vehicles). We have owned our home on Shellmidden Way since 2008, long enough to experience the construction of "The Dwellings" (7 homes) and the traffic impact their use on the existing Shellmidden Way road structure.

This letter is concerning the Agate Point Residences application to construct a 7-unit cottage AND office on only .56 acres which includes 20% wetlands (as documented by the applicant May 31, 2022 Yachats News article). There are many concerns with density numbers, open space requirements, wetland mitigation, and access. Concerns which all need additional consideration but as we know numbers can be massaged to always show whatever you want.

To me, there is one core issue that must be addressed before any conditional use permits should be considered for Agate Point guest units, this is traffic on Yachats Ocean Road.

Based on documented concerns (city document - public input up to 10/5/21 and 10/15/21) during this application process the applicant and residents are all in agreement, there are issues with traffic on Yachats Ocean Road.

The city is side-stepping and the applicant is exacerbating those issues by proposing to place commercial traffic onto Shellmidden Way, a small narrow one-track gravel residential road instead of working with the city and State Parks to first address a solution to the traffic issues on Yachats Ocean Road. Shellmidden Way traffic all ends up on Yachats Ocean Road.

This Commission needs to address the commercial traffic affects from Agates Point Residences to Yachats Ocean Road, not side-step the core issue of the Yachats Ocean Road by approving conditional use of a small residential road or ignore that fact that Shellmidden Way would create a cul-de-sac which is not allowed per the Yachats Comprehensive Plan for commercial use.

Point A - There will be major traffic impacts that the applicant and/or city is not addressing.

The applicant demonstrated their clear lack of traffic knowledge by stating they anticipate their guests will be making few, if any trips daily from their cottages (May 31, 2020 Yachats News article). The Commission needs to note, the impact will be from 9 rentable guest units since two units are duplexes (See Yachats City staff notes page 1 Report of Facts) plus full time 24/7 office

staffing. In addition to traffic related to 9 rentable guest units and 24/7 office staff there will be housekeeping, facility maintenance personnel, landscaping maintenance crews and weekly utility traffic such as refuse pickup and delivery services for operation of a commercial business, just to name a few. Not only will the volume of traffic increase but the size of the service vehicles to support commercial businesses will be larger, like linen tucks, cargo vans, FedEx or UPS trucks, and trucks with long trailers pulling mowers or other landscaping needs.

- a. The applicant is demonstrating their lack of local weather knowledge. Yachats gets 168 days of rain per year according to World Climate.com. Based on personal observation of Yachats Ocean Road pedestrian and bicycle traffic and common knowledge only the brave, hearty and prepared visitors will ride bikes or walk into town on rainy days, most will drive.

There will be major traffic impacts from the Agate Point Residences.

- b. The Applicant is demonstrating their lack of knowledge of “why” a visitor comes to vacation in Yachats. As indicated by the Yachats Chamber of Commerce a typical visitor experience may include visiting Thor’s Well, hiking at Cape Perpetua, visiting Heceta Head or Yaquina Bay lighthouses, venturing into the Sea Lions caves, visiting the Oregon Coast Aquarium, or wandering the historic districts of Newport or Florence.

All of these activities require trips to and from where a visitor is staying and will rarely be biked or walked from the cottages.

There will be traffic impacts to the Yachats Ocean Road from the Agate Point Residences.

- c. And typically there will be more than one or two trips from their cottage per day. After travelers have spent a busy day hiking, visiting, or touring they will NOT walk into town for dinner at any of the restaurants and then walk home, especially if children are part of their group.

Bottom line – there will be a considerable increase in traffic with the Agate Point Residences, both from the visitors and necessary management personnel. This is all commercial traffic from a commercial business.

There is no other commercial business routing traffic directly onto Yachats Ocean Road.... Yachats Inn and the KOHO all access 101, which is why the regulation is there in the first place.

Agate Point owners are applying for conditional use to put major commercial traffic on a residential road (Shellmidden Way). This will make Shellmidden Way into a dead-end commercial cul-de-sac which flows into Yachats Ocean Road.

Point B - Yachats Ocean Road currently has traffic issues.

The Yachats Ocean Road issues first need to be addressed by the Planning Commission, working with the Oregon Parks and Recreation Department and solved/resolved. Consciously adding a considerable increase in commercial traffic to a road with existing traffic problems is a very poor decision, short sighted and ignores the major commercial traffic impact to a State Park, a Zone S-P.

Yachats Ocean Road currently allows limited two-way traffic from either the North or South from 101. To the residents and visitor alike, this 1-mile corridor is like a mini park, part of Yachats Ocean Road State Natural Site. Although wonderful to walk, gawk at the waves or stop and take pictures... when driving this short 1-mile distance is currently fraught with traffic issues.

There are seven major pinch-points where two-way traffic cannot pass safely and long stretches where passing an approaching car requires both drivers to partially pull off the blacktop to allow both vehicles to pass.

Traffic Issues on Yachats Ocean Road going from the South Access up the 1 mile to the North access:

Poor visibility coming off 101 due to trees being overgrown and not maintained for reasonable sight distances. The no camping sign and 15-mph speed limit sign are overgrown and not visible and thus not followed. This issue has been brought personally to the city and state park employees with no attention or action taken within the last year. This blind corner is an accident waiting to happen.

1st pinch-point – After Rock Drive traffic must back up or stop to allow one vehicle at a time. Due to the drop offs on each side of the road it is not possible for two vehicles to pass.

Just before Shellmidden Way neighbors have resorted to placing logs of driftwood as barriers along the road to prevent anyone from driving off the blacktop. These neighbors have forced even more constriction due to the narrow road width.

2nd pinch-point – Just before Shellmidden Way and Yachats Ocean Road two cars cannot pass each other, the driftwood does not allow two vehicles to pass.

3rd pinch-point – Directly in front of our home, before the larger parking area. This area is narrow with a steep drop off to the ocean. In 2019 a vehicle rolled off down the rocks toward the ocean at this spot.

4th pinch-point – before Yachats Inn open mowed grass area. The Yachats Ocean Road is dangerous here with no shoulder and a steep drop off on the ocean side and often standing water/wetlands on the non-ocean side.

trail corridor, creating a major safety concern to the trail users. I know residence within the required distance from the Agate Point Residence proposal have been notified by the city for comment as required. But has the Planning Commission worked with the Yachats Trails Committee and given proper notification to all related trail organizations and public interest groups that the Agate Point Residences proposal will directly affect the safety of the coastal trail hiker with the increased commercial traffic?

All interested public should be notified as to the effects of the proposed Agate Point Residence on the trail and be allowed adequate time to comment. Has the Oregon Coast Trail Action Plan committee been contacted? They are currently working on a plan for the trail and their involvement should be mandatory. Visitors hiking the Amanda Trail often park on Yachats Ocean Road (personal observation) and again increased commercial traffic will affect these trail users who should also be notified and provided the opportunity to review and comment on the trail impact from the commercial traffic.

Visitors and residence alike love to walk, run, drive, bike... Yachats Ocean Road. Typical weekend users often include parents or grandparents pushing baby carriages, young children running back and forth, people walking their dogs, many times individuals enjoying beverages, or looking for the perfect picture to capture the experience....and all totally distracted (personal observation).

Watching the eagles, whales, pelicans or seals, the constantly changing river as it meets the sea, towering majestic forests, breathtaking sunsets, clouds rolling in down the river and the loud pounding sound of the waves on the rocks all make this small 1 mile section of road magical. And a traffic nightmare.

Pedestrians can't hear traffic behind them because of the pounding surf. There is no sidewalk so ALL traffic (dogs, walkers, bikers, runners, vehicles) is mixed together on this narrow, predominantly one-lane blacktop roadway. The 15-mph sign is not visible because it is so overgrown so speeding traffic is common and hazardous to all users.

I absolutely realize this Planning Commission hearing tonight is not about options for Yachats Ocean Road (like making it one-way), but this Planning Commission meeting is about the Agate Point Residence application. What MUST be clear to the Commission is that the Agate Point Residence WILL create a significant increase in commercial traffic by vehicles, bikers, and walkers. This traffic will be added to the Yachats Ocean Road. These are NOT separate issues.

The Yachats Ocean Road issues must be addressed and resolved by the city and state parks BEFORE the Agates Point Residence should even be considered for conditional use approval.

The Agate Point Residence will create major commercial traffic which will impact a road that has existing traffic issues and will only get worse as growth in Yachats continues. The proposed Agate Point Residence will impact the safety of the designated Oregon Coast Trail and the

Yachats Ocean Road State Natural Area will be impacted due to major increase in commercial traffic.

And in a worse case emergency situation – fire or ambulance, already have a treacherous road, with pinch-points and traffic backups. As I'm writing this response Fire Engine 72 and the ambulance responded to an emergency – these are large vehicles and take up the entire width of most places on the Yachats Ocean Road. Agate Point Residence will add additional commercial vehicle traffic, additional bikers and walkers causing emergency vehicles to navigate a narrow road with limited pullouts and significantly more traffic, creating even further safety complications.

I feel it would be an incomprehensible decision for this Planning Commission to consciously approve, routing all the new commercial traffic from the Agates Point Residence onto Yachats Ocean Road.

Point C – Shellmidden Way is not a valid option

To even consider placing the commercial burden onto Shellmidden Way, a single lane gravel RESIDENTIAL road is to make an extremely poor decision at best. Approving conditional use of Shellmidden Way avoids the core issues of Yachats Ocean Road. Shellmidden Way would need major upgrading to handle the year-round commercial traffic generated and then ongoing maintenance by the city.

As a note; Agate Point Residence applicants indicate Shellmidden Way is 30 ft (May 31 Yachats News) but not only is it currently a narrow gravel road there are multiple encroachments of utility pedestals, boxes for television, and phone junctions, in addition to several large electrical transformer boxes within the identified 30ft right of way. To widen to a 30-foot two-way road would take extensive and expensive work by the cable, phone and the electrical companies to move the interfering utility boxes.

Using Shellmidden Way as the access for Agate Point Residences is setting up the Planning Commission to create an illegal cul-de-sac. Thus, the conditional use variance cannot be approved because according to Yachats city standards commercial uses shall not have vehicles access to or from a cul-de-sac.

See:

G) Vehicular Access YMC Section 9.24.040 Standards. (R-4 Residential Zone) G. Vehicle Access. Ingress or egress to a multifamily dwelling or to a motel shall not be allowed from less than a thirty-five (35) foot right-of-way and a twenty-five (25) foot all weather travel surface, accessible to emergency vehicles. In the event that a thirtyfive (35) foot right-of-way is not possible, a minimum of ten (10) foot easement (five (5) feet on each side of the travel surface) shall be dedicated to the City for utility purposes and pedestrian use. **Commercial uses and multifamily dwellings shall not have vehicles access to or from a cul-de-sac.**

Even if the applicant or city staff argue Agate Point Residence would not be creating an illegal cul-de-sac by using Shellmidden Way, the new construction on Shellmidden Way will never be a two-lane road capable of handling the amount of Agate Point Residence commercial traffic.

Proposing the use of Shellmidden Way, a residential narrow gravel road as access to a commercial operation completely ignores the core traffic issue of Yachats Ocean Road and creates an illegal dead-end cul-de-sac for commercial traffic and consciously adds major commercial impact to both Shellmidden Way and Yachats Ocean Road.

Even after improvement Shellmidden Way will still be a single one-lane road with major commercial traffic.... dumping onto Yachats Ocean Road with all it's issues. Turn right and encounter 5 major pinch-points and endanger walking traffic; turn left and encounter 2 major pinch-points and encounter traffic turning from 101 that can't see you. A no-win!

My last major point of concern is the notification and appropriate involvement of all relevant government organizations, interest groups and compliance with Oregon Parks and Recreation Department regulations and plans related to the jurisdiction of Yachats Ocean Road.

Point D – Per the Oregon Parks and Recreation Department map the Yachats Ocean Road is completely within the State Park, Yachats Ocean Road State Natural Site (see attached exhibit A).

Yachats Ocean Road jurisdiction is under the Oregon Parks and Recreation Department and is considered Zone S-P which should be managed accordingly. (Yachats Comprehensive Plan Inventory page 19 Transportation and South Beach & Beverly Beach Management Unit S15 p.276).

The Oregon Park and Recreation Department maps for Unit S15 show the entire road is within Park Boundary, Zone S-P, see attached exhibit A Unit Plan map.

The Park holds jurisdiction from the non-ocean side of the road down to water edge. Yachats Ocean Road State Natural Site is managed following the guidelines of the South Beach & Beverly Beach Management Units Final Plan which was coordinated with and reviewed for compatibility by the City of Yachats.

As per the South Beach & Beverly Management Unit Plan "The uses allowed in the Yachats Ocean Road State Natural Area is regulated by the City of Yachats Comprehensive Plan through its zoning maps and code. Under the City's Comprehensive Plan, the State Parks (S-P) zone applies."

From Yachats Comprehensive Plan: Section 9.32.010 Purpose. The state park zone is intended to designate state-owned parkland and provide for its future management in the interest of

both residents and visitors. In the S-P zone, the following regulations shall apply. (Ord. 73E § 2.060, 1992; Ord. 99, 1981).

See Section 9.32.020 for Permitted uses. (not included here)

According to the Yachats Municipal Code Section 9.32.030 Conditional uses. In an S-P zone, the following uses and their accessory uses may be permitted subject to the provisions of Chapters 9.44, 9.48, 9.52 and 9.72 where applicable:

- A. Any proposed use which significantly alters the current park use patterns;
- B. Any proposed expansion of a currently existing state park. (Ord. 73E § 2.060(2), 1992; Ord. 99, 1981)

The Yachats Ocean Road is considered park jurisdiction. The commercial traffic from Agate Point Residence will significantly alter the current park use patterns.

Based on the above code 9.32.03 the applicant could apply for S-P Conditional Use since their proposal will significantly alter the current park use patterns with their commercial traffic (Remember the Yachats Ocean Road State Natural Site IS also the Yachats Ocean Road and governed under Zoning S-P). If the applicant chooses to apply for this conditional use a new timeline needs to start for necessary public comment and coordination with the State since the Road/Park is under their jurisdiction.

In summary:

- A. The Agate Point Residence will generate major commercial traffic onto Yachats Ocean Road.
- B. Yachats Ocean Road does not allow two-lanes of traffic to pass and has 7 pinch-points where traffic is limited to one lane. The road has existing traffic issues and is currently a safety hazard to walkers, bikers, and motorists alike.
- C. Use of Shellmidden Way would create a dead-end cul-de-sac for commercial purposes which cannot be authorized according to city code.

Even with construction Shellmidden Way will remain a narrow one-lane road, with major commercial traffic, which ALL still flows onto Yachats Ocean Road, amplifying existing traffic issues.

- D. Yachats Ocean Road is Oregon Park and Recreation Department property and the impacts to the road from the Agate Point Residence application should be managed according to Zone S-P. Agate Point Residence will generate a major increase in commercial traffic, and this is a significant impact to the Park, requiring different applications and much greater notification of public participation and comment periods. Yachats Ocean Road is an Oregon State Park and there is interest its management.

It speaks volumes that the South Beach State Park Manager Dylan Anderson had not been notified by the city of this upcoming June 21, 2022 Yachats Planning Commission meeting, even though the Agate Point Residence commercial traffic will significantly impact the park (Personal communication with Park Manager 6/7/2022). This lack of coordination with the Oregon Park and Recreation Department is very concerning, a clear demonstration how the city (and applicant) is either oblivious to the commercial traffic impacts from the Agate Point Residence or ignoring the impact to the Yachats Ocean Road and its current Issues.

The only reasonable decision this planning commission should make is to deny the conditional use permit being requested by the Agate Point Residence until the city, along with the Oregon Park and Recreation Department, can address the core issue – the existing traffic issues and long-term management of Yachats Ocean Road.

After the existing Yachats Ocean Road issues are adequately resolved, then the Planning Commission, coordinating with the Oregon Park and Recreation Department Director to ensure the commercial traffic is not a significant variant from the approved South Beach and Beverly Beach Management Unit Plan (using the criteria in OAR 736-018-0040 for minor variation) can decide if adding significant commercial traffic to Yachats Ocean Road and the Oregon Coast Trail fits the long-range goals of this city and is consistent with the Oregon Park and Recreation Department Commissioner mandates.

Yachats Ocean Road is a state park and Zoned S-P by the city. Any proposal that would alter the current use pattern will need proper notification of all users, interested trails organizations, residents, county emergency services, and park interest groups. The State Guidelines for Parks and the Yachats City's guidelines under the Comprehensive Plan for proper notification and involvement should be followed.

The first issue for the Planning Commission is to work with the Oregon Park and Recreation Department to ensure the continuation of the beautiful park like qualities of this unique 1mile of road, which is also the designated Oregon Coast Trail and Yachats Ocean Road State Natural Site, provide safe walking and driving for residence and visitors alike, insure and/or improve emergency access as possible, and maintain the S-P zone intention.

Based on the current issues the only real choice the Planning Commission has at this point is to deny the Agate Point Residence application for R-4 conditional use.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "S. D. R. A." or similar, written in a cursive style.

Date: 6/8/2022

Linda Fitch
431 Shellmidden Way
Yachats, Oregon 97498

Curtsey Copies:

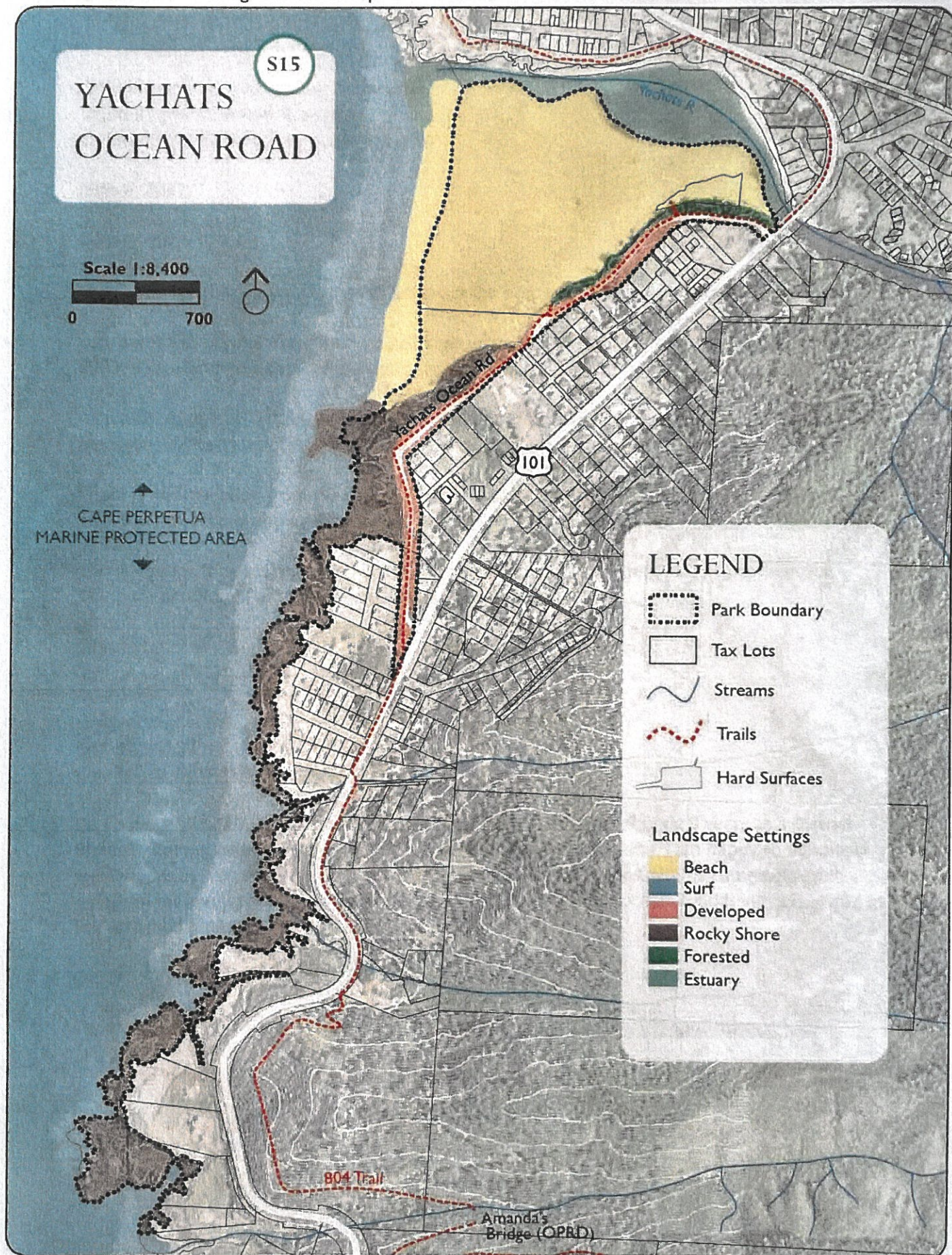
South Beach State Park
Park Manager Dylan Anderson
5580 SW Coast HWY
Newport, Oregon 97366
Emailed: Dylan.ANDERSON@opr.d.oregon.gov

Oregon Park and Recreation Department
Attn Planning: South Beach and Beverly Beach Management Area
725 Summer St. NE C
Salem, OR 97301

Emailed:
Dennis Comfort - Coastal Regional Director – Dennis.Comfort@opr.d.oregon.gov
Preson Phillips – Central Coast District Manager _ Preson.Phillips@opr.d.oregon.gov

FIGURE S15-A – Existing Conditions Map

Exhibit A



Oregon Parks and Recreation Department
South Beach State Park Manager
Dylan.ANDERSON@oprd.oregon.gov

June 8, 2022

Dear Dylan,

Thank you for sharing your perspective about the proposed Agate Point Residence application.

I am sorry the city did not inform you of their upcoming Planning Commission meeting June 21, 2022. I've attached a copy of the notice to this email.

As we discussed, my primary concern is the effect of the major increase in commercial traffic to the Yachats Ocean Road which is state property and jurisdiction.

There is no indication from the city that the effects of the increase in commercial traffic to the park is being recognized or appropriate zoning (S-P) is being followed.

Thank you for forwarding my letter and these concerns on "up" the chain to the Regional Manager and State Park Commissioners as appropriate.

Sincerely,



Linda Fitch
541-272-1197
Email: lindalfitch@gmail.com

Ps. I have almost 20 years of working for the US Forest Service including 8 years as a District Ranger working with very controversial issues in a resort community. I am happy to volunteer my services as a community member to assist the park in working towards community and government involvement and resolution of the existing Yachats Ocean Road issues discussed in the attached letter.

Cc:

Dennis Comfort - Coastal Regional Director – Dennis.Comfort@oprd.oregon.gov

Preson Phillips – Central Coast District Manager – Preson.Phillips@oprd.oregon.gov

Yachats Office Manager

From: James Gimarelli <jimgimarelli@yahoo.com>
Sent: Wednesday, June 8, 2022 7:08 PM
To: Yachats Office Manager
Subject: Agate Point Resort Feedback

To Whom it may concern--as long-time Yachats residents, we want to go on record as being AGAINST the Agate Point Resort development. Our concerns are two-fold, as follows: (a) increased congestion in the area that is already overrun, especially in the summer time; and (b) the damage that this could do to plants, wildlife and the beauty of the current wetlands.

Thank you for your consideration to our request. Unfortunately, we will be out of town for the public hearing on June 21. Have a Great Day!!

Sincerely,

Jim and Bebe Gimarelli
28 Catkin Loop
Yachats, OR 97498

SUBMISSION OF ADDITIONAL COMMENT ON CUP SOUGHT BY APPLICANT AGATE POINT

This will supplement my previous input, dated October 15, 2022, which is attached to this public input email and incorporated herein by reference.

THE PIVOTAL PROVISION IN THIS MATTER IS YMC SECTION 9.24.040(G).

Most ordinances applicable to the issues raised in connection with the Agate Point Conditional Use Permit application apply to both motels and hotels. The provision mentioned in the staff report that does not apply to *both* motels and hotels is YMC Section 9.24.040(G) (Vehicle Access) which applies on its face only to motels in R-4 zones.

For purposes of that ordinance, Agate Point is a motel, as defined in YMC Section 9.04.030 (Definitions): “Motel” means a series of sleeping units, each having a separate entrance, composed of one or more bedrooms and bathroom, excluding any facility which meets the definition of “bed and breakfast facility.” The proposed development falls within the definition of “motel, because each sleeping unit in the 7 proposed rental cottages has a separate entrance, whereas a hotel does not. Thus, YMC Section 9.24.040(G) applies to the Agate Point proposal.

That ordinance has two limitations relating to vehicle access:

- (1) A motel cannot be located on a road unless the minimum right of way is at least 35 feet wide with an all-weather surface at least 25 feet wide.

Shellmidden Road has a 30’ right of way. A motel cannot be located on Shellmidden Road unless the city were able to exact from adjacent landowners 5 extra feet of right of way and to take action to ensure the road has a 25’ wide all-weather surface. This limitation may preclude this project from ever being approved, from the standpoint of the City, for it would entail imposing an easement on existing property owners to allow the motel.

- (2) A motel cannot be located on a cul-de-sac or dead-end street, defined as “a minor street with only one outlet.”

Since Shellmidden Road dead-ends into private property, it is a dead end street, and a motel cannot be located there as is. This is not a provision for which a condition could be devised; it appears to be a mandatory eligibility provision that is not waivable.

The City would have to exercise eminent domain to transform Shellmidden Road into a through-road. It would be a highly questionable investment to expend major City funds to convert a dead-end road into an adequate through-road to accommodate a 7-unit motel proposed to be plopped next to wetlands on a small parcel of land on Shellmidden Road.

It bears noting that no one else has ever seriously contemplated building dwellings on the parcel in question. Surely, a better disposition of this land would be for the current owners to deed the parcel to the City of Yachats to serve as open space. It could be named after the owners: “Fletchers’ Grove.”

Respectfully submitted,

Jas. Adams (10 Beargrass Court, Yachats, Oregon

FROM: Jas. Adams, weetristan@gmail.com

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

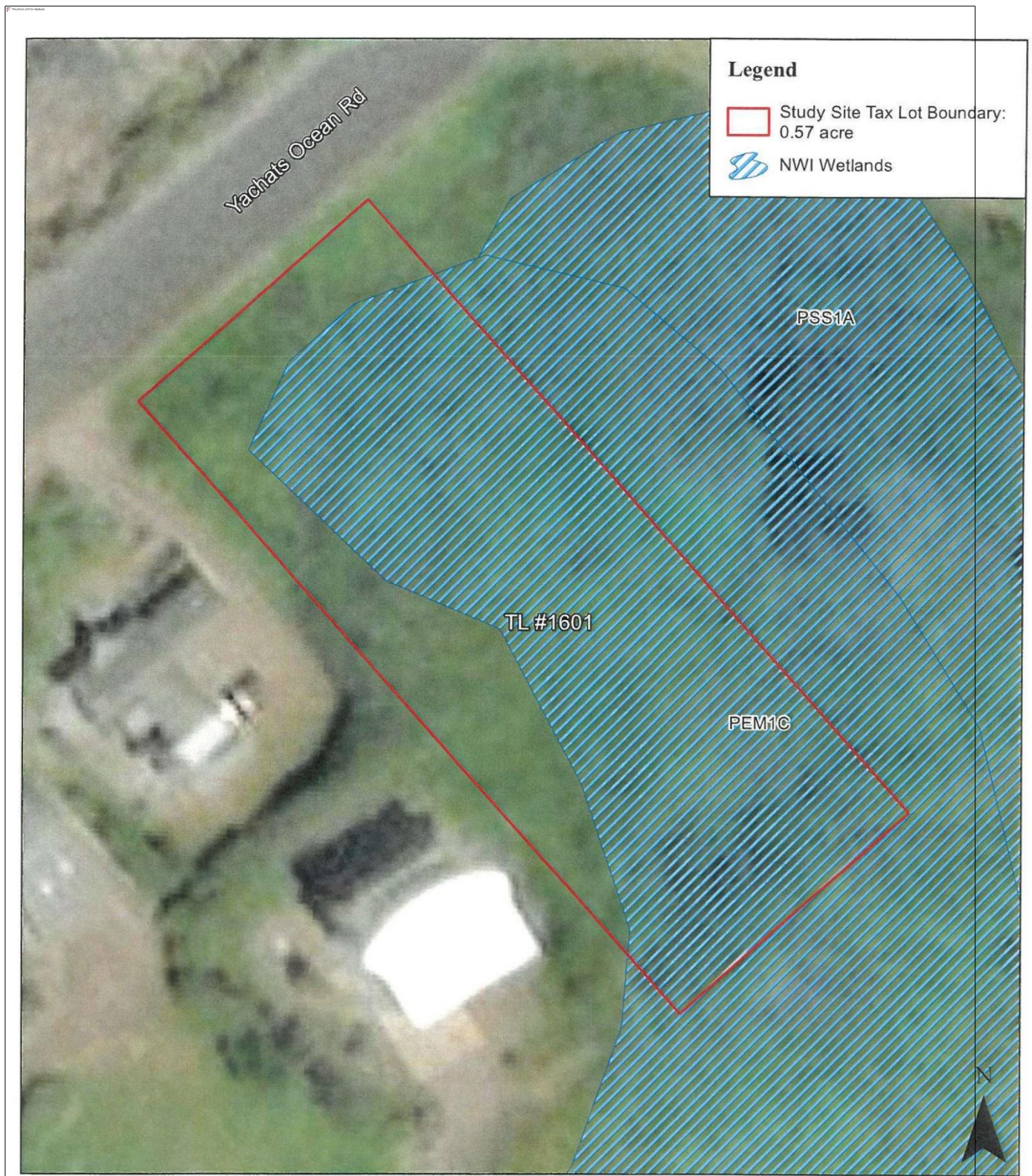
8. CONCLUSION

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 prove 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

NPS Form 10-900-a

OMB No. 1024-0018 (8-86)

**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.

From: **maggie marshall** <marshallmag@yahoo.com>
Date: Sat, Jun 18, 2022, 5:08 PM
Subject: Agate Point
To: lancebloch1@gmail.com <lancebloch1@gmail.com>

We are long time, year round residents of Yachats and want to voice our strong opposition to the proposed development at Agate Point. Time and time again in the 17 years we have lived here we have seen the planning commission grant variances to developers whose plans don't meet the requirements of the codes put in place. Volunteers who love our city have worked hard and long to put these codes in place for the benefit of all of us. They need to be adhered to so that we can all continue to enjoy living here. It is very disheartening to see the planning commission bending over backwards to please developers so that they don't have to abide by the rules like the rest of us and degrade the quality of our environment in the process. It also erodes the integrity of the planning commission and city officials as this continues to happen. We hope that this time you will say NO.

Maggie and Paul Marshall
P.O. Box 365
Yachats
OR 97498

CITY OF YACHATS

ORDINANCE NO. 182

AN ORDINANCE VACATING A PORTION OF SHELL STREET IN THE CITY OF YACHATS, COUNTY OF LINCOLN, STATE OF OREGON, AS INITIATED BY THE CITY COUNCIL, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Yachats has initiated on its own motion a vacation proceeding conducted in accordance with ORS 271.005 through 271.230; and

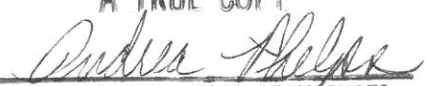
WHEREAS, the City Council did hold a public hearing on whether or not to vacate said portion of said street on May 28, 1991, and made the following findings and conclusions:

FINDINGS AND CONCLUSIONS

The City Council of the City of Yachats makes the following findings and conclusions:

1. That said portion of Shell Street described below has never been used by the City for general traffic circulation;
2. That the portion of the street proposed to be vacated will not adversely effect the general traffic circulation system of Yachats;
3. That public access to affected property will not be removed;
4. That the vacation of the previously mentioned portion of Shell Street will allow better utilization of adjacent property;
5. That the owner of tax lot 1701, a Mr. Darrell Allyn, 82341 Rattlesnake Road, Dexter, Oregon 97341, did object to the portion of the vacation that abutted tax lot 1701 and requested that the vacation be shortened to only include that portion of Shell Street that was north of the northern-most line of lot 1701;
6. That a Mr. Bill Adams of 131 Shell Street, P O Box 17, Yachats, Oregon 97498, apparently owner of a portion of Shell Street not subject to the vacation, did object to the vacation of any portion of the street;
7. That the Central Lincoln People's Utility District of Newport, Oregon, requested that the City grant an easement for an existing overhead electric powerline through that portion of Shell Street being vacated, which should be executed prior to the vacation;
8. That notice of the consideration of the street vacation

Ordinance No. 182, Shell St. Vacation

A TRUE COPY

CITY RECORDER - CITY OF YACHATS

initiated by the Yachats City Council was published as required and all affected persons and persons entitled to rights of notice were notified and given the right to comment on the proposed street vacation;

9. That the Yachats City Council considered the petition at a public hearing on May 28, 1991 at 7:00 P.M., at the Yachats Commons Room 8, which is located at 441 N Hwy 101, Yachats, Oregon 97498;

10. That at the public hearing the Council did take into consideration the request of Darrell Allyn to reduce the scope of the vacation to exclude the portion of Shell Street south of the northerly boundary of Darrell Allyn's property and agreed to do so, which removed any objection Darrell Allyn had to the vacation;

11. The Council finds that the objection from Bill Adams was not sufficient objection to pursuant to ORS 271.130 to constitute a majority of the area affected;

NOW, THEREFORE, THE CITY OF YACHATS ORDAINS AS FOLLOWS:

Section 1. Legal Description. That portion of Shell Street as described as follows, to wit:

LEGAL DESCRIPTION - 14-12-34-AA LOT 1500

That portion of Parcel #33 (also known as Shell Street) of Deed recorded May 8, 1951 in Book 145, page 176, Deed Records, lying within the following:

Beginning at a point in the Westerly right of way line of the Oregon Coast Highway that is South 44°35' West 820.38 feet along said right of way from the intersection of said right of way with the North line of Section 34, T 14 S, R 12 W, W.M., in Lincoln County Oregon, said beginning point also being at the most Easterly corner of the property described in Memorandum of Contract recorded January 28, 1988 in Book 189, page 1340, Film Records; thence north 45°25' West 462.18 feet to the State of Oregon tract described in Deed recorded November 17, 1931 in Book 63, page 534, Deed Records; thence South 44°34' West 325 feet along the State of Oregon tract to the most Westerly corner of the property described in Memorandum of Contract recorded January 28, 1988, in Book 189, page 1340, Film Records; thence South 45°25' East 466.68 feet to the Westerly right of way line of the Oregon Coast Highway; thence Northerly along said right of way 325 feet, more or less, to the point of beginning.

LEGAL DESCRIPTION - 14-12-34-AA LOT 1600

That part of Parcel #33 (also known as Shell Street) of Deed recorder May 8, 1951 in Book 145, page 176, Deed Records, lying with the following:

Beginning at the intersection of the North line of Section 34,
Ordinance No. 182, Shell St. Vacation

T 14 S, R 12 W, W.M., in Lincoln County, Oregon, with the Westerly right of way line of the Oregon Coast Highway; thence Southwesterly on the Westerly line of said highway 1145.40 feet to the true point of beginning; thence North 45°25' West 466.68 feet to the State of Oregon tract described in Deed recorded November 17, 1931 in Book 63, page 534, Deed Records; thence South 44°34' West 200 feet along the State of Oregon tract to the most Northerly corner of Partition Plat 1995-50 recorded November 29, 1995; thence Southeasterly along the Northeasterly line of said Plat and along the Southeasterly extension of said Northeasterly line 500 feet, more or less, to the Westerly right of way line of the Oregon Coast Highway; thence Northeasterly along said right of way line 200 feet, more or less, to the true point of beginning.

is declared to be vacated.

Section 2. Easement Granted. The City of Yachats hereby reserves, within the boundaries of the portion of Shell Street to be vacated, a permanent overhead right-of-way easement for overhead power lines as granted to the Central Lincoln People's Utility District on the _____ day of May, 1996, a copy of which is attached hereto as Exhibit "A" and by reference herein made a part of this ordinance.

Section 3. Property Owners Agree. The City finds that the adjacent, abutting property owners have all agreed and consented to the vacation, particularly as that portion of Shell Street vacated has been limited to the portion of the vacation that lies north of tax lot 1701 and that the vacation will not substantially affect the market value of such property and for this reason no property owner is entitled to damages by reason of said vacation.

Section 4. Property Owner Not Affected. That the property owner, Bill Adams, who objected to the vacation does not constitute a majority of the property owners within the area affected as computed on the basis of ORS 271.08 and apparently does not constitute an affected owner as defined in the State Statute.

Section 5. Recording. Upon taking effect, the City Recorder is hereby directed to have recorded a certified copy of this ordinance with the Lincoln County Clerk, Lincoln County Assessor, and the Lincoln County Surveyor as provided by law.

Section 6. Emergency. Due to the length of time taken to complete this vacation and the adverse effects further delay may have on property owners, an emergency is declared to exist, and this ordinance is effective upon its passage by the Council.

PASSED AND ADOPTED by the City Council on the 9th day of May, 1996
by the following vote:

3 Ayes

2 Abstentions

0 Nays

0 Absent

APPROVED by the Mayor on the 14th day of May 1996.

Attest:

Martha Dillen
Martha Dillen, Mayor

Andrea Phelps
Andrea Phelps, City Recorder

OVERHEAD RIGHT OF WAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

In consideration on One Dollar (\$1.00), and other valuable consideration, receipt whereof is hereby acknowledged, the undersigned hereby grants a perpetual easement for a overhead power line to the CENTRAL LINCOLN PEOPLE'S UTILITY DISTRICT, a municipal corporation, with the right to place, construct, operate and maintain, inspect, reconstruct, repair, replace and keep clear electric power lines and communication lines with all necessary poles, towers, wires, cables, guys, anchors, fixtures and appurtenances attached thereto upon, across and over the following described property situated in Lincoln County, State of Oregon:

Beginning at the NE corner of Tax Lot 2300, (also known as Lot 2) in the Mindy Addition to Yachats, located in the NE 1/4 of the NE 1/4 of Sec. 34, T14S, R12W W.M. Lincoln County, Oregon, thence S 45° 25' E, 15 feet to the center of a 30 foot street known as Shell Street, which is the true point of beginning.

A strip of land 30 feet in width, being 15 feet on either side of a described center line bearing S 44° 34' W, 1100 feet more or less to the North line of a road known as Yachats Ocean Road, all being located in the NE 1/4 and the NW 1/4 of the NE 1/4 of Sec. 34, T14S, R12W, W.M. Lincoln County, Oregon.

Grantees shall at all times have the right to fell or trim any trees thereon, or upon our adjacent lands, for obtaining and maintaining proper clearance for said line; and grantee shall further have the right of full and free ingress to and egress from said property for all purposes herein mentioned, and to remove at any time any or all of the poles, towers and/or wires, cables, guys, anchors, fixtures and appurtenances from the said property.

The rights, conditions and provisions of this easement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this the 10th day of May, 1996.
City of Yachats

WITNESS:

Andrea Phelps

By

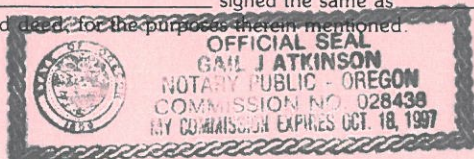
Martha Dillen
mayor

STATE OF OREGON }
County of Lincoln } SS.

On this 10th day of May, 1996, before me, the above signed individuals, personally appeared

Martha Dillen to me known to be the individual described in and who executed the within instrument, and acknowledged that she

her signed the same as her free and voluntary act and deed, for the purposes therein mentioned.



Gail J. Atkinson
Notary Public for Oregon

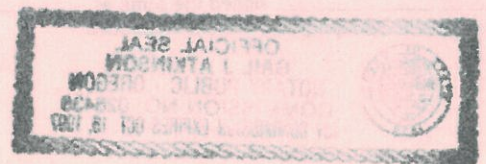
My Commission Expires: 10/18/97

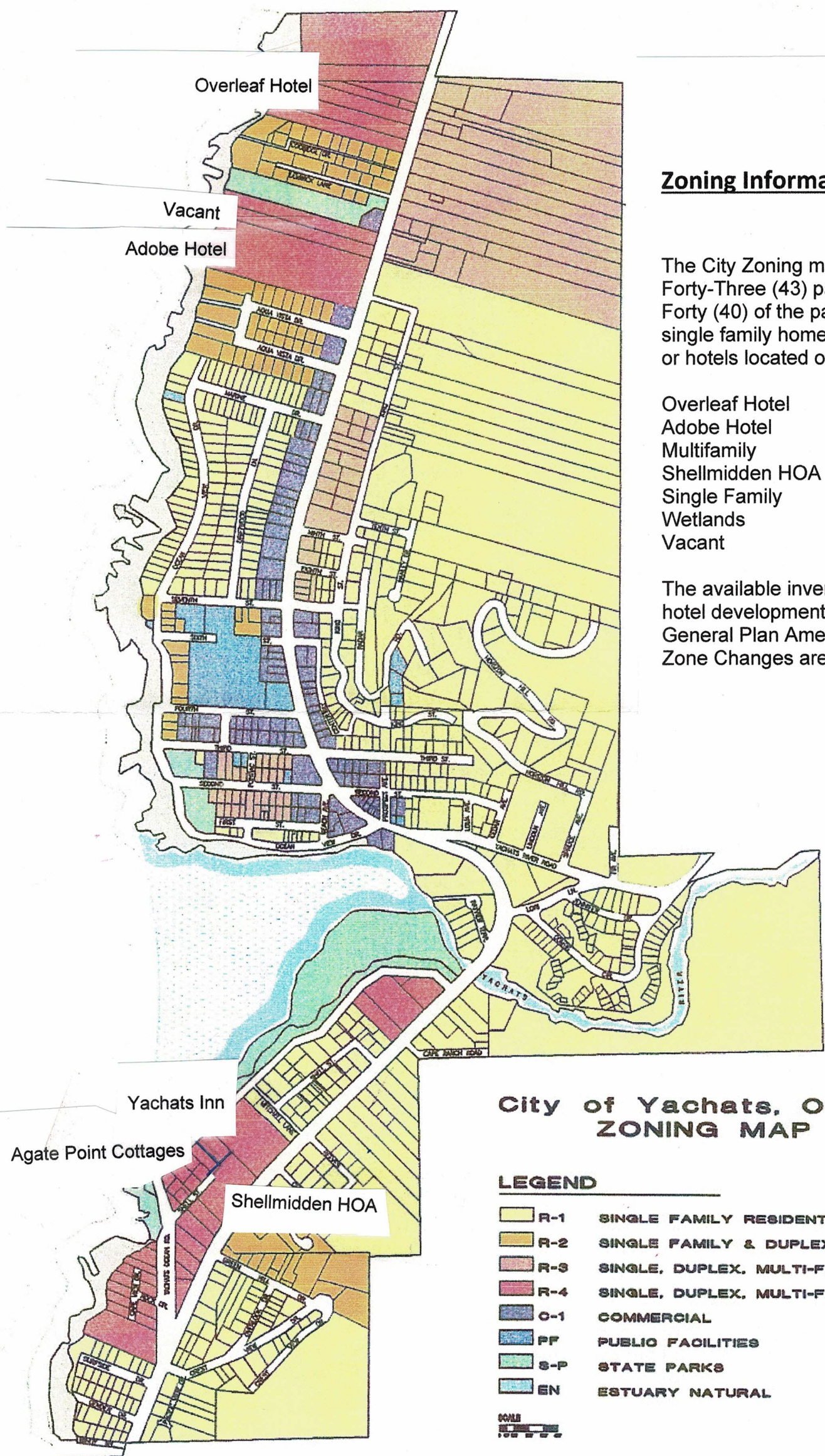
OFFICIAL SEAL

1967

[illegible]

1944





Zoning Information

The City Zoning map has designated Forty-Three (43) parcels in the R-4 zone. Forty (40) of the parcels already have single family homes, multifamily and or hotels located on them.

Overleaf Hotel	8 parcels
Adobe Hotel	1 parcel
Multifamily	5 parcels
Shellmidden HOA & KoHo	
Single Family	24 parcels
Wetlands	1 parcel
Vacant	3 parcels

The available inventory of land for hotel development is very limited unless General Plan Amendments and Zone Changes are approved.

Agate Point
April 15, 2022

Both the Yachats Municipal Code and Comprehensive Plan exist to define and codify how we want our community to thrive. Agate point development is requesting that we ignore goals in the Comprehensive Plan, regulations in the municipal code, and the feelings of Yachats Ocean Road (YOR) community.

Yachats Ocean Road is part of the Oregon State Park system. It is a largely one lane road used for residents and visitors alike. We stroll with our families and pets, ride bikes, and walk in solitude appreciating the areas natural beauty. People are often forced to the shoulder to avoid cars determined to own the right of way. It is a part of the Oregon Coast Trail and the beginning of the Amanda trail. Yachats Ocean Road is perhaps more a path than a road, and it is an Oregon treasure.

Agate Point developers propose to have traffic turn down YOR and turn on to unpaved Shell Midden Street to access the resort's 18 space parking lot. It would be built on undeveloped land, a wetland, and people at resort would almost certainly park on YOR to walk to their room. There are many reasons I object to Agate Point being developed on this land. Foremost among them, in addition to the imposing traffic and congestion, is that the access proposed is not from Highway 101 as required in codes. They propose that the city waive its codes and permit traffic to use YOR and Shell Midden as the access the resort. There is no compelling reason for the city to ignore its codes and goals to permit this. There are many reasons to deny their request to disregard city codes. Also, the precedent it would set would make this a slam dunk for other development in the future. The nature of Yachats Ocean Road is imperiled if this development moved forward.

Below is a list of some goals and codes from the Yachats Comprehensive Plan and Municipal Code the developers are asking the city to ignore. I repeat, there is no compelling reason to grant conditional use permits to support the construction of Agate Point resort.

Yachats Municipal Code:

Section 9.72.010 Authorization to grant or deny conditional use permits.

In taking action on a conditional use permit application, the Planning Commission may either permit or deny the application. The Planning Commission's action must be based on findings addressing the requirements of the comprehensive plan and zoning ordinance, as addressed in Chapter 9.88.

City must make decisions guided by Comprehensive plan and the Code

Section 9.24.020 Permitted uses. (For Hotel)

K. 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.

Agate point is .57 of an acre and access is not from 101

Section 9.24.040 Standards.

A4. The minimum lot area per resort, hotel or motel guest unit shall be one thousand five hundred (1,500) square feet with a public water and sewer system.

As proposed, there are 13,500' for 9 people, including parking lot. Here is the math: The 24829 sq ft. lot can be covered 45%. And 1500 sq ft per guest is the space required in the code. In that 45%, which is 11173 sq ft, there are 9 proposed guest accommodations, $9 \times 1500 = 13500$. In other words, the proposal is overbuilding a small lot by 2500 sq ft.

Section 9.24.040 Standards.

b6. No structure shall be located closer than sixty (60) feet from the center line of any state highway, nor forty-five (45) feet from the center line of any collector or arterial street.

The lots platted for YOR go onto the rocks. This is common for ocean front lots, platted before the Oregon Beach Bill. But the setbacks calculated from the bank not from the platted property lines. The code is clear, stating the setback is from the center of the road, not from the center of the lot, as has been suggested. So the setback is in this case is 45' from the center of YOR. And its 45' from the center of Shell Midden Street to any structure.

The Yachats Comprehensive plan:

This document is goals for our community based on various surveys and meetings. The municipal codes developed for the community are intended to be reflect the goals established this plan. 9.72.010 makes this very clear. The code repeatedly references this. It is a mistake to see it as anti or pro anything. It is a representation of the communities' beliefs about codifying growth. Below are relevant statements from the plan. To reiterate, Agate Point is a planned hotel to be built in a wetland, in a neighborhood where it is not wanted, and along an Oregon State Park. With increased traffic it would endanger people who use YOR. It would require the city to waive code to permit it.

Goal G6 "The City shall, through development regulations, ensure that new development shall be of an appropriate scale to retain and enhance the small-town, ocean side character of the Yachats community.

Goal G9

The City shall preserve public views of wetland areas, beaches and stream corridors.

G8 "The City shall support the preservation of open space on private land through such means as set back standards and limiting lot coverage and encourage the preservation of open space when new subdivisions and planned unit developments are considered for approval."

F2 The City shall encourage the state to maintain its parks and beach access areas for the benefit of residents and visitors.

A1 The City shall ensure that the quality of air, water and land resources is maintained

*A2 and A6 The City shall protect significant marine habitats, as identified on the City's adopted Natural Resources map and inventory data, from proposed land uses that will, or might, modify their indigenous characteristics."

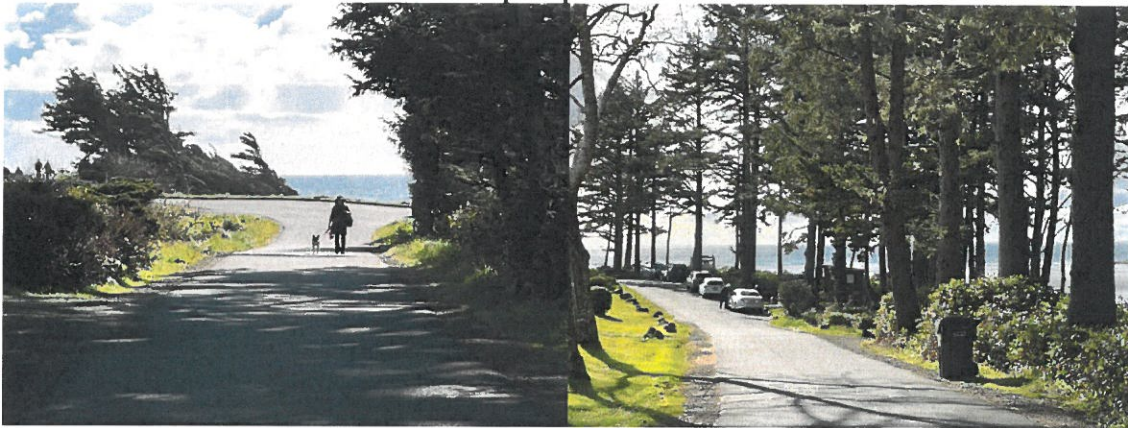
A6 The City shall protect significant marine habitats, (wetlands included)as identified on the City's adopted Natural Resources map

Yachats Ocean Road and Shell Midden Road are too narrow to accommodate increased traffic. The code requires the road be 35' wide. YOR is mostly no more than 12' wide with various areas added for parking. In the summer parking along Yachats Ocean Road is crowded, and when cars pass often it is one way traffic and people are often pushed to narrow uneven shoulders. Increased resort traffic is not a good idea. Drivers often move too fast or indifferently along this road. In the summer when the road is full of parked cars the danger will be even more pronounced.

Below are pictures of Shell Midden Road and YOR. Some have suggested opposing Agate Point Resort is antidevelopment. I am advocating for responsible development. There is no compelling reason for the city to grant conditional use permits for this development. The lot is too small, buildings cover more ground than allowed, the road is far too narrow, the setback from the center of YOR (and possibly Shell Midden) is less than allowed by code, it is proposed to be built on a wetland, the YOR neighborhood is against it, the proposal violates both the both spirit of the Yachats Comprehensive plan and the letter of the municipal code, and it would set a precedent that our codes are merely hurdles for developers to negotiate rather than standards that represent the communities best interest.

The city needs to emphatically deny the proposal to build Agate Point Resort!

Yachats Ocean Road Road as people walk and deal with cars.





Shell Midden Street



Yachats Office Manager

From: Yachats City Planner
Sent: Monday, June 20, 2022 11:59 AM
To: Yachats Office Manager
Subject: Fw: Agate Point Development

Katherine Guenther
City Planner
City of Yachats

EMAIL:
Planner@Yachatsmail.org

OFFICE PHONE:
541-547-3565, Ext. 104

From: Ruth Bass <ruth@ruthmbass.com>
Sent: Friday, June 17, 2022 9:33 AM
To: Yachats City Planner <Planner@YachatsMail.org>; Anthony Muirhead <Anthony@YachatsMail.org>; Ann@yachatsmail.org <Ann@YachatsMail.org>; Greg@yachatsmail.org <greg@YachatsMail.org>; Mary Ellen O'Shaughnessey <MaryEllen@YachatsMail.org>; Leslie Vaaler <Leslie@YachatsMail.org>
Subject: Agate Point Development

Please do not give permits or variances to the Fletchers that are pushing a project called Agate Point.

This is a wolf in sheep's clothing. Calling the development a hotel to circumvent the short-term rental license rules.

Please follow the code that is in place to keep this from happening. Regulations and codes have been put in place for a reason.

I ask that the planning commission to follow the codes and regulations that are in place.

1. the property is not adjacent to highway 101
2. Shellmaddon Way is too narrow for the additional amount of traffic
3. the property is mostly wetland
4. this is not a hotel
5. this property does not meet the site size requirements
- 6.
7. Please deny all conditional use permits for this project!

Yachats resident,
Ruth Bass
PO Box 849
Yachats, OR 97498

Yachats Office Manager

From: John Chappell <john.chappell.simmons@gmail.com>
Sent: Monday, June 20, 2022 10:13 PM
To: City Hall; Admin; Yachats Office Manager
Subject: OPPOSITION TO AGATE POINT

Greetings,

We are new PERMANENT, full-time residents of Yachats at the corner of Yachats Ocean Road and Shelmidden Way. Approval of a development explicitly restricted by city code will greatly impact us, our neighbors, and this community. We are strongly OPPOSED to the approval of a conditional use permit for Agate Point Development for the following reasons:

First, the application does not meet the requirements for a hotel/motel in acreage or ingress/egress from OR101. These arguments supporting this position are described better by other sources, but the zoning rules are intended to prevent the impacts of this very kind of development by insisting that hotels and their derivatives entail adequate property (size and scope) and access that property by highway 101 only.

Second, access by Shelmidden Way is WHOLEY inappropriate, creates risk for pedestrians, increases traffic on Yachats Ocean Road, and relies on flawed information/logic, not to mention increases maintenance.

Third, the applicants' published logic that traffic impact will be limited because of the "walkability" of Yachats is made without data and is naive.

As to the first point, the requirements set forth by the city are intended EXPLICITLY, to deter developers from doing what the applicants have done, which is purchase property they can't develop under the current guidelines as this property meets neither the letter of the code nor the spirit of its intent. If the applicants were genuine in their desire to develop an R-4 parcel for a hotel to assuage the lack of hotel/motel development in Yachats, they would have purchased a parcel of the appropriate size with the appropriate access. R-4 parcels without access to Hwy. 101 aren't suitable for hotels, period.

Relative to the second objection, Shelmidden Way is an unimproved, irregular, 13' wide gravel driveway that provides access to a handful of single family homes, and a condominium development. It regularly degrades when wet, based on existing homeowner and service traffic, leaving pot holes and ruts. The stated 30' "right of way" may be accurate according to maps, but realistically, Shelmidden Way is a glorified gravel driveway with only 13' of compacted gravel width (same as the paved area of Yachats Ocean Road), however WITHOUT shoulders. This makes it impossible for more than one vehicle to pass at one time; attempts by cars/visitors requires pulling into driveways and aprons maintained by local residents.

Given the lack of shoulders, pedestrians have no where but unimproved areas to walk, particularly with their pets, should a vehicle be accessing the gravel road. Even with current limited traffic, this can be problematic, and certainly won't be adequate for the significantly-increased traffic from a hotel/motel/overly-dense dwelling set. Editorial comments from the developers that predict their business model will be one of non-impact, with patrons walking to town and not driving is outright insulting and ludicrous. No one can predict the behavior of people to "walk to town," (versus drive and thus create traffic). The idea that Agate Point's business model of visitors only walking to town and not commuting to the innumerable natural and commercial attractions of the central Oregon coast is in the least uninformed, and more likely disingenuous .

Thirdly, the deferral to access the development from Shelmidden Way still will increase traffic on Yachats Ocean Road

significantly. The applicants admitted in a recent editorial that accessing Agate Point from Yachats Ocean Road was untenable. However, shifting the attention from Yachats Ocean Road to Shelmidden Way makes this problem worse and is a red herring. Without access to and from Hwy. 101, patrons will have to travel Yachats Ocean Road to get to Shelmidden Way, from either direction, and exit Shelmidden Way from the proposed development onto Yachats Ocean Road from Shelmidden. Given the choice of going north or south, what direction would patrons interested in driving instead of walking into town go? North, most likely, increasing traffic on the one-lane road, that pedestrians depend upon. Shy of making Yachats Ocean Road one-way, there is no control over which direction patrons will turn from Shelmidden onto Yachats Ocean Road or how many transits they will make.

Finally, this discussion does not address a real question of how many visitors can actually travel Shelmidden while patronizing Agate Point. Even though there would be a limit on the number of parking spaces available, should Agate patrons have guests who are driving and not arriving together, where would that overflow parking be? This is fraught with risk on a gravel driveway that barely serves the current population.

Were the developer applicants genuinely interested in the impact on traffic on the beloved Yachats Ocean Road, they would be proposing access from Hwy. 101 as required by code, instead of asking for forgiveness/flexibility. They meet neither the letter nor the spirit of the hotel/motel requirements and thus the application should be rejected. The Yachats code for development must not become a mere hurdle to be worked around when convenient.

The outcome of this discussion will be easy to RECALL.

John Simmons Chappell

John Simmons Chappell
Dad of Cameron & Ian
Sent from my iPad

Yachats Office Manager

From: Jeanette Busse <jabusse2015@gmail.com>
Sent: Monday, June 20, 2022 5:32 PM
To: Yachats Office Manager
Subject: Fwd: Attention : Planning Commission:Agate Point Residences Development

Please accept this letter as an objection to the conditional use permits for the Agate Point Residences development.

Dear Katherine Guenther and Planning Commission,

I object to the development of the Agate Point Residences for the following reasons:

1. The proposed development is not similar to any other development along Yachats Ocean Road. The proposed units are much closer together than are the units at the north end of Yachats Ocean Road. No other development has as many single family dwellings (7 homes on .57 acres).
2. The proposed development would put a hotel-like establishment in the middle of an area of single family dwellings. The area along Yachats Ocean Road and Shellmidden Way to the south of the Yachats Inn is composed of single family residences and is separated from noise and traffic from the Yachats Inn by a stand of trees.
3. The proposed use of Shellmidden Way (called Shell St on the map) for entrance to the units will increase traffic on a single lane gravel road. It will increase noise and dust significantly.
4. Having parking right next to protected wetlands means that renters are not likely to view the wetlands as anything other than undeveloped land that they could use for them or their dogs to use as they wish. Dogs poop and chase wildlife.
5. The proposed parking area infringes on a wetland. Yachats has worked hard with previous developers to preserve the wetland. This wetland serves as natural drainage and a wildlife habitat that would be severely impacted or destroyed.
6. The lack of an on-site manager means that problems can't be addressed and resolved quickly.
7. This will end up looking like a mobile home park. Again, high density of homes per small acreage.
8. Traffic on Yachats Ocean Road will increase significantly where much of that road is only single lane with lots of pedestrian traffic.
9. The R-4 zoning includes many single family dwellings in this same zone as the property proposed for Agate Point development project. By allowing this development to be included as a hotel operation to bypass the short term rental lottery, what would prevent other homes, or group of homes to also bypass the STR license lottery that are in R-4 zone?
10. Approval of this development would set a precedent for other developers to build "hotels" on small lots in residential areas of Yachats.

Please include these objections as input in the Public Hearing scheduled for October 19, 2021 at 3pm.

Sincerely,

Jeanette A. Busse
330 Village Lane
Yachats, OR 97498

Yachats Office Manager

From: Admin
Sent: Monday, June 20, 2022 9:11 AM
To: Yachats Office Manager
Subject: FW: Agate Point

From: Lance Bloch <lancebloch1@gmail.com>
Sent: Sunday, June 19, 2022 7:48 AM
To: Admin <Admin@YachatsMail.org>; City Coordinator <citycoordinator@YachatsMail.org>; Yachats City Planner <Planner@YachatsMail.org>
Subject: Fwd: Agate Point

Please add this letter to the packet for the meeting on Tuesday, June 21st.
Lance

----- Forwarded message -----

From: **maggie marshall** <marshallmag@yahoo.com>
Date: Sat, Jun 18, 2022, 5:08 PM
Subject: Agate Point
To: lancebloch1@gmail.com <lancebloch1@gmail.com>

We are long time, year round residents of Yachats and want to voice our strong opposition to the proposed development at Agate Point. Time and time again in the 17 years we have lived here we have seen the planning commission grant variances to developers whose plans don't meet the requirements of the codes put in place. Volunteers who love our city have worked hard and long to put these codes in place for the benefit of all of us. They need to be adhered to so that we can all continue to enjoy living here. It is very disheartening to see the planning commission bending over backwards to please developers so that they don't have to abide by the rules like the rest of us and degrade the quality of our environment in the process. It also erodes the integrity of the planning commission and city officials as this continues to happen. We hope that this time you will say NO.

Maggie and Paul Marshall
P.O. Box 365
Yachats
OR 97498

TO: CITY OF YACHATS PLANNING COMMISSION

6/17/2022

FROM: JOHN and MARGARET BENDER (205 Shell Street, Yachats)

SUBJECT: AGATE POINT RESIDENCES LLC

We respectfully request that the Planning Commission VOTE NO on granting the requested condition use variances requested by Agate Point Hotel Cottages.

Agate Point, we believe and contrary to what they state, is attempting to skirt the issue of having to apply for a city transient rental license. The "hotel cottages" are transient rentals disguised as a "Hotel." Hotels normally have a 24 hour front office staff person. Although they have now stated they will have an office, how often will it be staffed (24 hours?)

One of the conditional use variances they are requesting is to not comply with the city code requiring motels/hotels to have direct access from Highway 101. With a variance, hotel guests would access the hotel parking spaces from Highway 101 to Yachats Ocean Road and then to Shellmidden Way. Traffic on Yachats Ocean Road during the tourist season (6 to 8 months) is already heavy and thus particularly difficult for the many visitors and locals who walk the road and must always watch for automobiles many of which do not abide by the 15 mile per hour speed limit. There is no designated walking or pedestrian path along Yachats Ocean Road (much of which is one lane) so it must be shared by walkers, cars and bicyclists. Shellmidden Way, which is a narrow dirt/gravel road not meant for even moderate traffic, will experience a much increased traffic flow and disturb a quiet neighborhood.

The proposed Hotel development will occupy a site that includes several designated jurisdictional wetlands which are protected areas and should be preserved or at least not destroyed by commercial development.

Granting the variances, especially granting the variance for direct highway 101 access will establish a frightful precedent. Imagine several hotel/motels along Yachats Ocean Road or Ocean View Drive destroying the wonderful pristine beauty of Yachats. We understand a Highway 101 direct access variance may have been granted the Rock Creek Cottages. However, that would have been many years ago when Yachats would have been much smaller and hosting many fewer visitors.

In our view, there is no compelling reason for the Planning Commission to grant the variances. The Planning Commission should not grant the conditional use permits requested by Agate Point Cottage Hotels.

Thank You.


John and Margaret Bender

SUBMISSION OF ADDITIONAL COMMENT ON CUP SOUGHT BY APPLICANT AGATE POINT

This will supplement my previous input, dated October 15, 2022, which is attached to this public input email and incorporated herein by reference.

THE PIVOTAL PROVISION IN THIS MATTER IS YMC SECTION 9.24.040(G).

Most ordinances applicable to the issues raised in connection with the Agate Point Conditional Use Permit application apply to both motels and hotels. The provision mentioned in the staff report that does not apply to *both* motels and hotels is YMC Section 9.24.040(G) (Vehicle Access) which applies on its face only to motels in R-4 zones.

For purposes of that ordinance, Agate Point is a motel, as defined in YMC Section 9.04.030 (Definitions): "Motel" means a series of sleeping units, each having a separate entrance, composed of one or more bedrooms and bathroom, excluding any facility which meets the definition of "bed and breakfast facility." The proposed development falls within the definition of "motel, because each sleeping unit in the 7 proposed rental cottages has a separate entrance, whereas a hotel does not. Thus, YMC Section 9.24.040(G) applies to the Agate Point proposal.

That ordinance has two limitations relating to vehicle access:

- (1) A motel cannot be located on a road unless the minimum right of way is at least 35 feet wide with an all-weather surface at least 25 feet wide.

Shellmidden Road has a 30' right of way. A motel cannot be located on Shellmidden Road unless the city were able to exact from adjacent landowners 5 extra feet of right of way and and to take action to ensure the road has a 25' wide all-weather surface. This limitation may preclude this project from ever being approved, from the standpoint of the City, for it would entail imposing an easement on existing property owners to allow the motel.

- (2) A motel cannot be located on a cul-de-sac or dead-end street, defined as "a minor street with only one outlet."

Since Shellmidden Road dead-ends into private property, it is a dead end street, and a motel cannot be located there as is. This is not a provision for which a condition could be devised; it appears to be a mandatory eligibility provision that is not waivable.

The City would have to exercise eminent domain to transform Shellmidden Road into a through-road. It would be a highly questionable investment to expend major City funds to convert a dead-end road into an adequate through-road to accommodate a 7-unit motel proposed to be plopped next to wetlands on a small parcel of land on Shellmidden Road.

It bears noting that no one else has ever seriously contemplated building dwellings on the parcel in question. Surely, a better disposition of this land would be for the current owners to deed the parcel to the City of Yachats to serve as open space. It could be named after the owners: "Fletchers' Grove."

Respectfully submitted,

Jas. Adams (10 Beargrass Court, Yachats, Oregon

FROM: Jas. Adams, weetristan@gmail.com

TO: Yachats City Hall & Yachats Planning Commission and the City Planner:
cityhall@yachatsmail.org, lancebloch1@gmail.com, lorendickinson@gmail.com,
jac.danos@gmail.com, happydogs27@gmail.com, corchard@peak.org,
office@yachatsyardscapes.com, & 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 if 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

NPS Form 10-900-a

OMB No. 1024-0018 (8-86)

**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.

Yachats Office Manager

From: GERALDINE BATTISTOLI <jeri1945@msn.com>
Sent: Saturday, June 18, 2022 10:40 AM
To: City Hall
Subject: Submission for Agate CUP Planning Hearing
Attachments: Ordinance 182.pdf

Please make the attached City of Yachats Ordinance # 182 a part of the official file for consideration by the Planning Commissioners during their June 21st hearing on the Agate Cove Application.

Respectfully submitted,
Geraldine Battistoli

Sent from my Galaxy Tab® E

CITY OF YACHATS

ORDINANCE NO. 182

AN ORDINANCE VACATING A PORTION OF SHELL STREET IN THE CITY OF YACHATS, COUNTY OF LINCOLN, STATE OF OREGON, AS INITIATED BY THE CITY COUNCIL, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Yachats has initiated on its own motion a vacation proceeding conducted in accordance with ORS 271.005 through 271.230; and

WHEREAS, the City Council did hold a public hearing on whether or not to vacate said portion of said street on May 28, 1991, and made the following findings and conclusions:

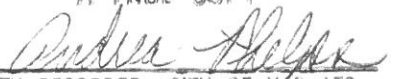
FINDINGS AND CONCLUSIONS

The City Council of the City of Yachats makes the following findings and conclusions:

1. That said portion of Shell Street described below has never been used by the City for general traffic circulation;
2. That the portion of the street proposed to be vacated will not adversely effect the general traffic circulation system of Yachats;
3. That public access to affected property will not be removed;
4. That the vacation of the previously mentioned portion of Shell Street will allow better utilization of adjacent property;
5. That the owner of tax lot 1701, a Mr. Darrell Allyn, 82341 Rattlesnake Road, Dexter, Oregon 97341, did object to the portion of the vacation that abutted tax lot 1701 and requested that the vacation be shortened to only include that portion of Shell Street that was north of the northern-most line of lot 1701;
6. That a Mr. Bill Adams of 131 Shell Street, P O Box 17, Yachats, Oregon 97498, apparently owner of a portion of Shell Street not subject to the vacation, did object to the vacation of any portion of the street;
7. That the Central Lincoln People's Utility District of Newport, Oregon, requested that the City grant an easement for an existing overhead electric powerline through that portion of Shell Street being vacated, which should be executed prior to the vacation;
8. That notice of the consideration of the street vacation

Ordinance No. 182, Shell St. Vacation

A TRUE COPY


CITY RECORDER - CITY OF YACHATS

initiated by the Yachats City Council was published as required and all affected persons and persons entitled to rights of notice were notified and given the right to comment on the proposed street vacation;

9. That the Yachats City Council considered the petition at a public hearing on May 28, 1991 at 7:00 P.M., at the Yachats Commons Room 8, which is located at 441 N Hwy 101, Yachats, Oregon 97498;

10. That at the public hearing the Council did take into consideration the request of Darrell Allyn to reduce the scope of the vacation to exclude the portion of Shell Street south of the northerly boundary of Darrell Allyn's property and agreed to do so, which removed any objection Darrell Allyn had to the vacation;

11. The Council finds that the objection from Bill Adams was not sufficient objection to pursuant to ORS 271.130 to constitute a majority of the area affected;

NOW, THEREFORE, THE CITY OF YACHATS ORDAINS AS FOLLOWS:

Section 1. Legal Description. That portion of Shell Street as described as follows, to wit:

LEGAL DESCRIPTION - 14-12-34-AA LOT 1500

That portion of Parcel #33 (also known as Shell Street) of Deed recorded May 8, 1951 in Book 145, page 176, Deed Records, lying within the following:

Beginning at a point in the Westerly right of way line of the Oregon Coast Highway that is South 44°35' West 820.38 feet along said right of way from the intersection of said right of way with the North line of Section 34, T 14 S, R 12 W, W.M., in Lincoln County Oregon, said beginning point also being at the most Easterly corner of the property described in Memorandum of Contract recorded January 28, 1988 in Book 189, page 1340, Film Records; thence north 45°25' West 462.18 feet to the State of Oregon tract described in Deed recorded November 17, 1931 in Book 63, page 534, Deed Records; thence South 44°34' West 325 feet along the State of Oregon tract to the most Westerly corner of the property described in Memorandum of Contract recorded January 28, 1988, in Book 189, page 1340, Film Records; thence South 45°25' East 466.68 feet to the Westerly right of way line of the Oregon Coast Highway; thence Northerly along said right of way 325 feet, more or less, to the point of beginning.

LEGAL DESCRIPTION - 14-12-34-AA LOT 1600

That part of Parcel #33 (also known as Shell Street) of Deed recorder May 8, 1951 in Book 145, page 176, Deed Records, lying with the following:

Beginning at the intersection of the North line of Section 34,
Ordinance No. 182, Shell St. Vacation

T 14 S, R 12 W, W.M., in Lincoln County, Oregon, with the Westerly right of way line of the Oregon Coast Highway; thence Southwesterly on the Westerly line of said highway 1145.40 feet to the true point of beginning; thence North 45°25' West 466.68 feet to the State of Oregon tract described in Deed recorded November 17, 1931 in Book 63, page 534, Deed Records; thence South 44°34' West 200 feet along the State of Oregon tract to the most Northerly corner of Partition Plat 1995-50 recorded November 29, 1995; thence Southeasterly along the Northeasterly line of said Plat and along the Southeasterly extension of said Northeasterly line 500 feet, more or less, to the Westerly right of way line of the Oregon Coast Highway; thence Northeasterly along said right of way line 200 feet, more or less, to the true point of beginning.

is declared to be vacated.

Section 2. Easement Granted. The City of Yachats hereby reserves, within the boundaries of the portion of Shell Street to be vacated, a permanent overhead right-of-way easement for overhead power lines as granted to the Central Lincoln People's Utility District on the _____ day of May, 1996, a copy of which is attached hereto as Exhibit "A" and by reference herein made a part of this ordinance.

Section 3. Property Owners Agree. The City finds that the adjacent, abutting property owners have all agreed and consented to the vacation, particularly as that portion of Shell Street vacated has been limited to the portion of the vacation that lies north of tax lot 1701 and that the vacation will not substantially affect the market value of such property and for this reason no property owner is entitled to damages by reason of said vacation.

Section 4. Property Owner Not Affected. That the property owner, Bill Adams, who objected to the vacation does not constitute a majority of the property owners within the area affected as computed on the basis of ORS 271.08 and apparently does not constitute an affected owner as defined in the State Statute.

Section 5. Recording. Upon taking effect, the City Recorder is hereby directed to have recorded a certified copy of this ordinance with the Lincoln County Clerk, Lincoln County Assessor, and the Lincoln County Surveyor as provided by law.

Section 6. Emergency. Due to the length of time taken to complete this vacation and the adverse effects further delay may have on property owners, an emergency is declared to exist, and this ordinance is effective upon its passage by the Council.

PASSED AND ADOPTED by the City Council on the 9th day of May, 1996
by the following vote:

3 Ayes

2 Abstentions

0 Nays

0 Absent

APPROVED by the Mayor on the 14th day of May 1996.

Attest:

Martha Dillen
Martha Dillen, Mayor

Andrea Phelps
Andrea Phelps, City Recorder

OVERHEAD RIGHT OF WAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

In consideration on One Dollar (\$1.00), and other valuable consideration, receipt whereof is hereby acknowledged, the undersigned hereby grants a perpetual easement for a overhead power line to the CENTRAL LINCOLN PEOPLE'S UTILITY DISTRICT, a municipal corporation, with the right to place, construct, operate and maintain, inspect, reconstruct, repair, replace and keep clear electric power lines and communication lines with all necessary poles, towers, wires, cables, guys, anchors, fixtures and appurtenances attached thereto upon, across and over the following described property situated in Lincoln County, State of Oregon:

Beginning at the NE corner of Tax Lot 2300, (also known as Lot 2) in the Mindy Addition to Yachats, located in the NE 1/4 of the NE 1/4 of Sec. 34, T14S, R12W W.M. Lincoln County, Oregon, thence S 45° 25' E, 15 feet to the center of a 30 foot street known as Shell Street, which is the true point of beginning.

A strip of land 30 feet in width, being 15 feet on either side of a described center line bearing S 44° 34' W, 1100 feet more or less to the North line of a road known as Yachats Ocean Road, all being located in the NE 1/4 and the NW 1/4 of the NE 1/4 of Sec. 34, T14S, R12W, W.M. Lincoln County, Oregon.

Grantees shall at all times have the right to fell or trim any trees thereon, or upon our adjacent lands, for obtaining and maintaining proper clearance for said line; and grantee shall further have the right of full and free ingress to and egress from said property for all purposes herein mentioned, and to remove at any time any or all of the poles, towers and/or wires, cables, guys, anchors, fixtures and appurtenances from the said property.

The rights, conditions and provisions of this easement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this the 10th day of May, 1996,
City of Yachats

WITNESS:

Andrea Phelps

By

Martha Dillen
Mayor

STATE OF OREGON
County of Lincoln

SS.

On this 10th day of May, 1996, before me, the above signed individuals, personally appeared

Martha Dillen

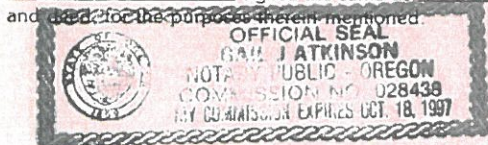
to me known to be the individual

described in and who executed the within instrument, and acknowledged that

signed the same as

her

free and voluntary act



Gail J. Atkinson
Notary Public for Oregon

My Commission Expires: 10/18/97

MEMO 10/10/2021

TO: CITY OF YACHATS PLANNING COMMISSION

FROM: Melinda Bender (Hanley Drive property)

SUBJECT: AGATE POINT HOTEL COTTAGES VARIANCE REQUEST

We respectfully request you (the Planning Commission) **vote NO** on granting a conditional use variance as requested by Agate Point Hotel Cottages.

Granting a variance (allowing commercial hotel use in a residential area) would impact livability for Yachats residents and impact wildlife (as this is a wetland).

Allowing this variance request would be harmful to the beauty of Yachats.

PLEASE **DENY** THE REQUEST FOR A CONDITIONAL USE PERMIT.

Sincerely,
Melinda Bender

April 20, 2022

City of Yachats
Attention: Heide Lambert
City Manager
PO Box 345
501 N Highway 101
Yachats, OR 97498

Hi Ms. Lambert,

I'm writing in opposition to the plans for the proposed hotel by Agate Point Residences, LLC. I'm vehemently against the construction of the proposed property located on Yachats Ocean Road. My reasons are as follows:

- a. Most egregious is that the proposed development will be built on wetlands. The proposal violates the spirit of the Yachats Comprehensive plan and the letter of the municipal code. If approved, it would set in place a dangerous precedent for our lovely town. The negative impact of doing so is far reaching.
- b. The Agate Point Development approval presents serious traffic concerns. They are as follows:
 - Yachats Ocean Road is too narrow to accommodate the increased traffic resulting from the Agate Point Development.
 - The increased traffic is dangerous for the residents and the visitors.
 - How many of the renters are really going to park in the designated Agate Point Development parking area? Who will oversee the parking violations? What recourse will the residents have regarding parking abuse infractions?
 - It's imperative that the City of Yachats enforce the code requiring a hotel to have direct access to Highway 101. Clearly, the Agate Point Development is in violation of the aforementioned code.
- c. What about noise complaints? Who do the residents call to report a noise complaint? Will the Sheriff's office come out to Yachats to address a noise complaint?
- d. Are fire pits part of the Agate Point Development proposal? With all the fire concerns locally and statewide, is that really the best thing to do?

- e. What about illegal fireworks? The use of illegal fireworks is already a big issue in Yachats.

This is not about being anti-development. It's about advocating for responsible development that addresses the needs of the community.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Paula B Morgan", with a long, sweeping horizontal stroke at the end.

Paula B Morgan

PO Box 1088

Yachats, OR 97498

paula_b_morgan@yahoo.com

April 20, 2022

City of Yachats
Attention: Heide Lambert
City Manager
PO Box 345
501 N Highway 101
Yachats, OR 97498

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Thank you in advance for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Celia August". The signature is fluid and extends to the right with a long, sweeping tail.

Celia August

PO Box 1088

Yachats, OR 97498

coastalmbs1@gmail.com



HATHAWAY LARSON

Koback · Connors · Heth

June 20, 2022

VIA EMAIL AND FIRST-CLASS MAIL

City of Yachats

Planning Commission Commissioners:

Lance Bloch, Chair

John Theilacker, Vice Chair

Loren Dickinson

Christine Orchard

Jacqueline Danos

Julie Bailey

501 Hwy. 101 N

Yachats, OR 97498

Email: admin@yachatsmail.org and cityhall@yachatsmail.org

Re: Agate Point Conditional Use Application

Dear Chair Bloch and Commissioners:

This firm represents Jo Dee Moine who owns real property at 390 Yachats Ocean Drive that is affected by the development proposed in the above-referenced matter. We will be attending the June 21, 2022 hearing on the above application and will provide testimony and argument on behalf of Ms. Moine. This letter is to provide the Planning Commission with written testimony opposing the proposed development. This appears to be the second time this proposed development is being presented. It was previously scheduled for a public hearing before the Planning Commission in October 2021. On October 12, 2021, we submitted written testimony demonstrating that there were numerous issues with the application that did not allow the city to approve it under the relevant criteria. For ease of reference, we included a copy of that letter with this submission. Our client was not advised exactly what transpired but understands that the applicant either withdrew the application or put it on hold. As we will explain below, the applicant has not been able to correct the problems with the application and the only decision that is supported in the code is a denial.

Christopher P. Koback

1125 NW Couch Street, Suite 550

Portland, OR 97209

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(503) 303-3107 direct

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Procedural Issues

The original application was to develop seven detached structures each with all of the elements of a single-family dwelling. One of the proposed structures have two dwelling units. As your Planning Director correctly noted, there are eight total units being proposed. Each of the eight units have separate living, dining, kitchen, and bedroom area. In our October 21, 2021 letter, we demonstrated that although the applicants labeled the proposal a hotel, it was really a single-family dwelling, short-term rental cluster development. One of the significant issues we raised in our October 21, 2021 letter that made the proposal not approvable was that even if one accepted that it was a hotel (we will explain below why that cannot be accepted) in the R4 zone, hotels must have accessory commercial uses. The proposal in the application did not propose any uses other than the dwelling cottages.

The application has never been formally modified as far as we can tell. The application still refers to seven rental cottages. The staff report recites that the applicant has added an office and meeting room to the proposal. To our knowledge there was never any notice of any modified application. It appears someone may have indicated informally, on a “plot plan”, a possible location for a “meeting room” and an “office”. However, as noted, we are not aware that any notice was issued for a revised application. In fact, the notice of hearing seems inconsistent with the nature of the proposal. The notice of hearing describes the proposal as a seven-unit motel with an office. There was no mention of a meeting room. The use of different terms to describe the proposal is not inconsequential. There are different standards for a hotel and a motel. For example, access for a motel must be through a 35-foot right-of-way and a hotel only requires 30 feet of right-of-way. It appears that the applicant and planning staff intentionally interchanged terms to create confusion, making it more difficult for residents to understand the criteria on which they must present at the hearing.

Substantive Issues

The proposed use is neither a hotel nor a motel.

As we illustrated in our October 21, 2021 letter, the use being proposed cannot be found to be a hotel or motel under the city’s definition or any critical analysis. A hotel is defined as any building containing guest rooms which are rented or hired out to be occupied for sleeping purposes for guests, excluding any facility which meets the definition of bed and breakfast facility. The text is clear and unambiguous. For something to be a hotel, it must be a single building with multiple rooms. There is no question that the proposal is for multiple buildings that include all of the elements of single-family dwellings. The applicant proposes seven (7) rental cottages.

A motel, on the other hand, is defined as a series of sleeping units, each having a separate entrance and composes of one or more bedrooms and a bathroom, excluding any facility which meets the definition of bed and breakfast facility. The proposed use more closely resembles a motel.

However, it cannot be deemed a motel because each unit has a kitchen. We believe there is only one reasonable interpretation of the code. If a unit has a full kitchen, it cannot be approved as either a hotel or motel. When the definitions of a hotel or motel is evaluated in context with other definitions, including the definition of a single-family dwelling, it is clear that if a proposed use has all of the elements of a single-family dwelling unit, it cannot be approved as a hotel or motel. Those uses are specifically defined to not include kitchens.

The definition of a dwelling unit and single-family dwelling unit both define a structure or rooms that have a kitchen. The drafters expressly defined a single-family dwelling unit to include a kitchen and left kitchens out of the definition of hotel and motel. It was obviously to note a distinct difference between a hotel or motel unit and a single-family dwelling. The absence of a kitchen is the distinguishing element.

There is good reason for the drafters to make that distinction. Single-family and multi-family dwellings function differently from hotels and motels. They accommodate more people and typically, longer stays. More room is required for such uses. Because of that, the city decided that for single and multi-family dwellings, greater lot areas are required.

As we explained in our October 2021 letter, it is obvious that the applicant is intending to develop six single-family dwelling structures and one multi-family dwelling structures but to avoid important development standards adopted to protect the citizens in Yachats, they seek approval for a hotel or a motel depending on what one reads. Single and multi-family dwelling development require much larger lot areas and the applicant could not accomplish the objectives of cramming nine single-family dwellings on the subject site. The applicant could not avoid having to go through the same short-term rental registration process as other owners if they sought approval for what they are really trying to develop.

Even the applicant seems to concede that it is not seeking approval for a hotel or motel. Ostensibly in response to our October 2021 letter and other citizen comments, the applicant addresses the claim that they are really trying to get approval for a disguised short-term rental development with single-family dwellings in the recent narrative. The applicant concedes: "we are taking what would be STRs and moving them into an area actually zoned for such use. Kitchens and complete compact units are simply what people now want." The problem with that is single-family compact dwelling units with kitchens are still single-family dwellings and cannot be approved under the standards for a hotel. An applicant cannot avoid important development standards just because they perceive that people want them and then label them something they clearly are not.

Lack of accessory commercial use.

Even if one were to ignore the obvious fact that the applicant is proposing a single-family and multi-family short-term rental use, the proposal cannot be approved as either a hotel or motel. Hotels and motels can only be approved if they include accessory commercial uses. This was one

fatal flaw we pointed out in our October 2021 letter. The applicant recently tried to cure this by stating that it is including an office and a meeting room. The formal site plan that accompanied the application did not depict either of those elements. It looks like the applicant hastily added them in some material provided to planning staff but there were no dimensions or details provided on the proposed new structures.

An accessory use must be a separate use that is incidental to and subordinate to the primary use. In this case the required accessory use must also be a commercial use. An accessory use cannot be part of the primary use. The applicant's brief statement on the office reveals that it is not an accessory commercial use incidental to a hotel or motel. It is an office that is part of the proposed "hotel." In fact, from the recent depiction of the units, it appears that the office is not really an office but is part of cottage number 6. It is not even going to serve as the administrative office of the "hotel." It is not a separate use at all. Moreover, even if the applicant tries to claim that the office will be for rent to the public, it would not then be incidental to the hotel or motel. A separate commercial office renting business is not typically found as part of a hotel or motel.

The description of the meeting room is suspect. Without showing any dimensions or features, the applicant claims that the meeting room will serve as a venue for those renting the proposed dwelling units to play ping pong, for storage of chairs and firewood (they removed fire pits from the proposal) and others who may want to rent it for events such as weddings. If it is used for storage and recreating by guests, it is not a separate commercial use. It is part of the cottages. Without any information on the size of the "meeting room," it is impossible to assess whether it can function as a separate accessory use. From the vague reference in the documents, it appears that the room will be so small it could not be a venue for any real meeting event. It is a room proposed simply as a ruse to try and meet the requirement for having a separate accessory use.

From the "plot plan" one can extrapolate some measurements in other areas and see that the "meeting room" is about 10 x 16. Plainly, a room that small could never function for any weddings or parties. The applicant does not ever try to explain how anyone could rent a small office to the public as a meeting room. In that limited amount of space, no organization could conduct a meeting. In addition, meeting rooms require ancillary services such as water, coffee, internet, telephone and screens for presenting. The applicant included no details on any of that. That is probably because the applicant could never present a business plan for renting a "meeting room" that is so small and lacking in features that it will never be rented or used by anyone. It will be a thrown up prefabricated shed used only to perpetuate the misrepresentation that the proposal is a hotel.

A truly accessory commercial use that is incidental to a hotel would be a restaurant or lounge that provides food and beverage for those staying in the motel and the general public. The applicant did not include either a restaurant or lounge as part of this application for a simple reason. The use is not a hotel or motel that would ever need such an accessory use. The proposal is for nine

dwelling units. Occupants do not need to eat out or go to a lounge for a drink. They have everything they need in the dwelling units.

Lot area.

As we explained in our October 2021 letter, for the applicant to obtain approval for what they are really proposing, a single-family cluster development intended for short-term rental, it must meet the standards for single-family and multi-family buildings. For the five single unit buildings, the applicant needs 30,000 square feet of site. For the two multi-family dwelling structures, it needs another 15,000 square feet. The applicant has 24,698 square feet at most. The site is not large enough to approve five single-family and two multi-family structures.

Access.

Even if one could look past the problem caused by the fact that the application is for single and multi-family structures on a site that is too small, the applicant cannot meet the requirement in YMC 9.24.040 for access. On this point, it is important to revisit what is being proposed because there are different access standards for hotels and motels. Motels require at least 35 feet of right-of-way for access, whereas it appears hotels only need 30 feet. Thus, even if one assumes for arguments sake that the proposal is not for a single-family cluster development, the exact use proposed has to be determined. The Shellmiden Way right-of-way is only 30 feet wide, which illustrates one of the reasons the applicant, at times, refers to the proposal as a hotel. That selective use of terms cannot help the application. The express text for the definition of a hotel is multiple rooms in a single building. The proposal cannot be deemed a hotel. Thus, if the Planning Commission were to accept the applicant's claim that it is not proposing a single-family development, the only other use the Planning Commission can look to is a motel. Even if one accepted that the proposed use is a motel, there is not sufficient right-of-way to meet the code. The applicant must have 35 feet of right-of-way and it has only 30 feet.

There is another problem meeting the code related to access. If the Planning Commission agrees that the applicant is proposing a residential use with two multi-family dwelling structures, or if it accepts that the applicant is proposing a hotel, the access is non-complaint. A hotel is a commercial use. Commercial uses cannot be served by a cul de sac. Similarly, multi-family dwellings cannot be served by a cul de sac. A cul de sac and a dead-end street are the same thing under the code. Each are a minor street with only one outlet which provides a vehicular turn-a-round. Under that definition, Shellmiden Way is a cul de sac.

There are three problems then with access. If the Planning Commission agrees that the proposal is for single and multi-family dwellings (two buildings have two units in each), the access for multi-family dwellings is deficient. If the Planning Commission agrees with the applicant's hotel characterization, the right-of-way is a cul de sac that cannot serve that commercial use. If the Planning Commission accepts that the proposed use is a motel, there are two problems. The right-

June 20, 2022

Page 6

of-way is not 35 feet wide, as required, and the commercial use would be served by a cul de sac, which is not allowed.

Improper conditions.

Planning staff stated in its report that even though the decks, office, or meeting room are not depicted on the site plan that is part of the application, development standards applicable to the lot are met or can be met. This is one of the problems with the planning staff allowing an applicant to informally revise an application on the fly without requiring compliance with the requirements that the applicant provide a new formal site plan. How can anyone say with reasonable certainty that lot standards can be met when all of the structures and parts of structures that must be evaluated have not been formally included on the site plan? The informal depictions the applicant provided have no dimensions. There is a cascade of issues with that. How can one assess whether the meeting room is truly an accessory commercial use without understanding the whether the size is adequate for that separate commercial use? There was no proposed business plan for renting the meeting room. There were no details on how it would be marketed. It is possible, if not likely, that when one examines the size required to have a separate commercial event space, the site plan will have to be revised again to expand the proposal. Even if a meeting room, as proposed, could qualify as an accessory commercial use, it is not possible to conclude at this time that all development standards are or can be met.

Very truly yours,

HATHAWAY LARSON LLP

s/ Christopher P. Koback

Christopher P. Koback

CPK/ep
Enclosure

cc: Client

October 12, 2021

VIA EMAIL & FIRST-CLASS MAIL

City of Yachats

Planning Commission Commissioners:

Lance Bloch, Chair

Loren Dickinson, Vice Chair

Ariana Carlson

Christine Orchard

Helen Anderson

Jacqueline Danos

Yachats City Hall

501 Hwy. 101 N

Yachats, OR 97498

Email: admin@yachatsmail.org and cityhall@yachatsmail.org

Re: Agate Point Conditional Use Application

Dear Commissioners:

This firm represents Jo Dee Moine who owns real property at 390 Yachats Ocean Drive that is affected by the development proposed in the above-referenced matter. This letter is to provide the Planning Commission with written testimony opposing the proposed development.

The application misrepresents the nature of the proposal to circumvent important development standards adopted to protect the citizens of Yachats.

One could easily characterize the applicant's proposal as a bait and switch. On the one hand, the proposal clearly illustrates seven single-family dwellings with separate bedrooms, living area, full kitchens, and private outdoor areas. Indeed, the applicant describes the structures not as rooms or sleeping quarters, but rather rental cottages. Yet, in a transparent attempt to avoid important development standards designed to preserve the livability of Yachats and to get around the lottery for short-term rentals, the applicant attempts to gain approval of its independent rental cottages as a "hotel." By so characterizing its proposal, the applicant is attempting to get approval for seven single-family dwellings on a 21,000 square foot parcel that, under the appropriate development standards, would accommodate three dwellings.

Christopher P. Koback
1331 NW Lovejoy Street, Suite 950
Portland, OR 97209
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(503) 303-3107 direct
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As noted above and plainly reflected in the application, the applicant is proposing to construct seven single-family dwellings on one lot. Each proposed structure has every element of a single-family detached dwelling unit. A single-family dwelling is defined as a building designed or used, in whole or part, as a residence or sleeping place, either permanently or temporarily, by one or more families, but excluding hotels, motels, and tourist courts. By defining a single-family dwelling to include temporary places for sleeping, the rental cottages fall squarely within that definition.

On the other hand, a hotel is defined as any building containing guest rooms, which are rented or hired out, to be occupied for sleeping purposes for guests. Thus, a hotel is a single building with multiple guest rooms, which do not have full kitchens. The rooms are for sleeping. A motel is defined as a series of sleeping units, each having a separate entrance composed of one or more bedrooms and bathroom. Again, a motel does not have accommodations with full kitchens. Thus, under the city's definitions, a defining characteristic that separates a single-family dwelling from a hotel or motel room is the existence of a full kitchen.

The city's use provisions are also informative. We will address this more below, but in Yachats Zoning Code ("YZC") Sections 9.24.020 and 9.24.030, hotels and motels are allowed in the R4 zone only if they have accessory commercial uses. In most settings involving hotels and motels, the accessory commercial use is a restaurant or some form of eatery because, as noted above, hotel/motel rooms do not have full kitchens.

The proposal is in reality a single-family short-term rental development that fails to meet the required minimum lot area standard.

Because the proposed single-family cottages can never meet the definition of a hotel or motel, they must either be reviewed as single-family dwellings, the definition of which they clearly fall within, or multi-family dwellings on a single lot. Indeed, as one commentor noted in written comments, at least two of the proposed buildings have a main dwelling unit and a separate area that can be rented out separately as an independent living area.

Correctly characterizing the proposal is critical because the city must apply the proper development standards to assure the property is not over loaded. It is obvious the applicant labels its proposal as a hotel because it is trying to avoid the lot area requirement for single-family development. YZC Section 9.24.040 contains the development standards for the R4 zone. The minimum lot area for a single-family dwelling is 6,000 square feet. The minimum lot area for a two-family dwelling is 7,500 square feet. For multi-family dwellings over two units, the minimum lot area is 5,000 square feet for the first unit and 2,500 square feet for each additional unit.

Applying the above provision to the subject site, which is 21,625 square feet, the applicant would only be able to propose three, or possibly four dwellings. Accounting for access issues and other constraints, it would appear that three dwellings would be the maximum allowed.

In an effort to circumvent the applicable single-family dwelling standards, the applicant placed a hotel label on its proposal simply because it plans to continuously rent the dwellings. As a hotel, the applicant asserts that it only needs 1,500 square feet for each hotel unit and, thus, the site can accommodate seven units in addition to the required parking lot.

The applicant's characterization is a transparent attempt to circumvent the applicable development standards in the R4 zone. As noted above, the application material patently demonstrates that the structures being proposed are not hotel units but rather single-family dwellings. When one examines the load placed on the site and the impacts on surrounding properties, there is a market difference between seven single-family dwellings on a 21,000-foot site and seven hotel rooms. Each dwelling can accommodate many more people than a hotel room. For example, the three-bedroom units could easily accommodate two families with at least two cars.

If the city reviews the application as a proposal to develop a multi-family development with multiple units on a single parcel, there is another fatal flaw. Under YZC Section 9.24.040.F, the minimum separation between multi-family buildings shall be 30 feet, unless the buildings are arranged end-to-end. As proposed, the seven multi-family buildings are not end-to-end.

In any case, the proposal is not a hotel or motel under the city's definitions or applying any common logic. It is a proposal for seven single-family dwellings that will be rented for a profit, or a proposal for a multi-dwelling development. Either way, the city must apply to correct development standards and cannot apply the development standards for a hotel or motel.

Another aspect of this is the character of the proposed use. The applicant acknowledges that the plan is to continuously rent the single-family cottages to visitors. Thus, they are short-term rental units. This appears to be a transparent effort to avoid the city's limits on short-term rental units and avoid having to go through the same lottery system as all other owners who wish to make short-term rentals of their homes.

The proposal cannot meet mandatory approval criteria even if one accepts the applicant's mischaracterization of the proposal.

Perhaps the most telling evidence of the applicant's plan to circumvent the lot area requirement is that there are no other uses proposed on the site. The plans include only seven single-family structures. As the applicant concedes, a hotel is not a permitted use on the site because it is below the one-acre minimum, and it does not have direct access to Highway 101.

Section 9.24.020 Permitted Uses allows for a motel, hotel, or resort of 1.0 acre with direct access provided from (sic) U.S. Highway 101 and only with accessory commercial uses. We are requesting a Conditional Use Permit because the project does not meet the 1.0 acre minimum and does not directly access U.S. Highway 101.

As the applicant recites, YZC Section 9.24.030 allows the city to approve, as a conditional use, a hotel that is on a parcel less than one acre and that does not have direct access to Highway 101. However, that code section, just as YZC Section 9.24.020 recites, expressly requires that hotels on less than one acre and without direct access can only be approved as a conditional use if they also have accessory commercial uses. YZC Section 9.24.030 Conditional Uses at subsection P allows:

Motel hotel or resort on less than 1.0 acres with accessory commercial uses.
(Emphasis added).

The application material does not reveal any proposed accessory commercial uses. In the context of a hotel, an accessory commercial use would most commonly be a restaurant or bar, or both. Thus, even if one ignores the applicant's obvious effort to mischaracterize its proposal as a hotel to avoid mandatory development standards, the proposal cannot be approved even conditionally because it does not have accessory commercial uses. There is no provision in either YZC Section 9.24.020 or 9.24.030 that allows the city to approve a motel or hotel that does not have accessory commercial uses.

The applicant has made no demonstration that it will ever be able to fill two jurisdictional wetlands and the proposal is dependent on filling them.

There are two wetlands in the site comprising approximately .13 acres. The applicant's proposal depends upon its ability to fill two wetlands and mitigated for that by simply paying a fee. To support its requests, the applicant submitted a study from Scotts and Associates that concludes that neither wetland is connected to navigable waters and, thus, are not jurisdictional wetlands. The August 17, 2021, response from the Army Corp of Engineers ("Army Corp") is inconsistent with that submission. The Army Corp determined that both wetlands on site are "waters of the U.S.", which means they are jurisdictional. As a result, the application cannot proceed unless and until the applicant appeals that determination and succeeds or applies for and obtains approval from the EPA to fill the wetlands. While a local government has some ability under ORS 197.522, to approve an application based on conditions, the applicant must make some demonstration that the condition is feasible and will assure compliance with the approval criteria. *Gould v. Deschutes County*, 227 Or App 601, 206 P3d 1106 (2009). The application has no information that demonstrates feasibility of prevailing on an appeal of the Army Corp determination or, in the alternative, obtaining an EPA permit to fill the wetlands.

The applicant has not adequately addressed relevant access/safety issues.

YZC Section 9.24.040.I requires that vehicle and pedestrian access to the site be safely and efficiently provided. A critical component of safe access has to be adequate access for fire and other emergency vehicles. The proposed site plan illustrates that there is no such safe access proposed. There is a single road, Shellmidden Way, that enters the site in the proposed parking lot. That road is a narrow, dead end, gravel road. As the parking lot is configured with 20 spaces

October 12, 2021
Page 5

to accommodate up to nine dwelling units, there will be no room for a fire truck to maneuver on the site. If the lot is full of vehicles owned by those renting the seven/nine units, it is doubtful that a fire truck could even get onto the site. Yachats Ocean Drive does not provide a reasonable alternative for emergency access to the proposed buildings located in the southern quadrant of the site. The only way to get efficient access to those structures is through Shellmidden Way where the access can be impeded by vehicles in the parking lot.

Conclusion

As explained above and reinforced by other comments you will review, the applicant has not met its burden to show that its proposal meets all of the applicable standards. For that reason, the application should be denied.

Very truly yours,

HATHAWAY LARSON LLP

A handwritten signature in blue ink, appearing to read "Christopher P. Koback", with a long horizontal flourish extending to the right.

Christopher P. Koback

CPK/ep

cc: Client