



# COUNTY OF HUMBOLDT

For the meeting of: 7/28/2020

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File #: 20-941

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**To:** Board of Supervisors

**From:** Planning and Building Department

**Agenda Section:** Public Hearing

SUBJECT:

Allpoints Outdoor, Inc. Appeal of the Planning Commission Denial of Allpoints Outdoor, Inc. Special Permit Requesting Authorization to Reconstruct a Legal Nonconforming Billboard Structure Damaged During a Winter Storm in November 2019

RECOMMENDATION(S):

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the appellant, and public;
2. Close the public hearing;
3. Adopt the resolution (Resolution 20-\_\_) (Attachment 1) which does the following:
  - a. Finds the project categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15301 (Existing Facilities) and 15302 (Replacement or Reconstruction);
  - b. Makes the findings to support approval of the Appeal and Special Permit;
  - c. Approves the Appeal submitted by Allpoints Outdoor, Inc.;
  - d. Approves the Special Permit for reconstruction of a legal nonconforming billboard structure damaged during a winter storm in November 2019; and
  - e. Directs Planning Department staff to file and process a Notice of Exemption for the project in accordance with CEQA and the CEQA Guidelines, and the findings set forth in this Resolution;
4. Delegate and Authorize the Director of Planning and Building to sign the Indemnification Agreement on behalf of the county.

SOURCE OF FUNDING:

The Appellant has paid an appeal fee for filing and processing of this appeal.

DISCUSSION:

Executive Summary

This is an appeal of the Humboldt County Planning Commission's May 7, 2020 denial of the Allpoints

Outdoor, Inc. Special Permit application to allow reconstruction of a legal nonconforming billboard damaged during winter storms in late November 2019. The project is located in the Spruce Point area south of Eureka.

The appeal alleges that the Planning Commission abused its discretion in denying the permit. The appellant maintains that the denial findings are not supported by substantial evidence presented and that in some cases the findings consider rules and regulations that are either inapplicable or are inconsistent with the zoning regulations now in effect.

The basic tension here is between the fact that many people do not like billboards, particularly this billboard located in an environmentally sensitive area, and the fact that the Zoning Ordinance does allow reconstruction of legal non-conforming structures subject to making special findings and approval of a Special Permit. The basis of the Planning Commission's action was that the sign is new construction, which changes the focus of review and thus staff is recommending the Board approve the appeal and approve the Special Permit.

#### Planning Commission Action

The Planning Commission denied the application with a 4-2 vote (Ayes: Levy, O'Neill, Mitchell, McCavour; Nays: Newman, Bongio). Links to the proceedings of the Planning Commission meetings of February 20, 2020 and May 7, 2020 are included as Attachment 7. While a majority of the Planning Commissioners voted to deny the project, Commissioners were not unanimous in the reasons stated for their decision.

Staff recommended Planning Commission approval of the project, identifying that the technical requirements had been satisfied and the applicable findings could be made to approve a Special Permit for reconstruction of the sign. The analysis provided to the Planning Commission is contained in the Planning Commission Staff Report (Attachment 8).

The Commissioners supporting denial, cited concern over conflicts with the Coastal Zoning Regulations as well as policies concerning billboards found within the 2017 General Plan and Local Coastal Plan. In particular, the Commission struggled to reconcile and accept the provisions of the Zoning Code which confer protections and exceptions to lawful nonconforming uses and structures. A number of Commissioners made it clear that they viewed the repair of the sign as essentially new development and felt that the project should therefore demonstrate compliance with the standard findings applicable to all projects. One Commissioner also cited external policy guidance from the American Planning Association concerning non-conforming signage as a basis for their decision to support denial. Attachment 6 is the Resolution of the Planning Commission with the findings for denial.

#### Background/Project Description

On December 9, 2019, an application was filed requesting a Special Permit to authorize reconstruction of a legal nonconforming billboard blown over in a storm. The principal damage to the sign occurred

on November 26, 2019 when severe winds from a winter storm caused a number of the vertical supporting posts to snap, resulting in the collapse of the billboard.

The project proposes to restore the billboard in its current location reusing between six (6) and nine (9) of the existing vertical uprights. The applicant estimates that a maximum of six (6) of the remaining support posts may require removal and replacement. Where possible, the old post and concrete will be removed, and a new post will be installed within the existing location. If a post cannot be removed, a new hole will be dug next to the old post. Work will be performed in 2-4 days with a crew of 3-5 persons. No heavy construction equipment is needed. Shovels and post-hole diggers are used, as well as battery powered hand tools, ladders, clamps, bolts and screws. No temporary structures or materials (such as scaffolding or temporary bracing) are required.

### Setting

The project site is located between US 101 and the Elk River, south of the City of Eureka, on the east side of Highway 101, approximately ½-mile south of the intersection of Herrick Ave and US Highway 101. The project site is located within higher ground west of the natural channel of the nearby Elk River. Mapping from the National Wetland Inventory denotes the project site to be within a freshwater emergent wetland. A tidal arm of the Elk River crosses under highway 101 approximately 20 feet north of the sign location. Approximately one third of a mile north of the sign location lies the highway bridge crossing the Elk River. A quarter mile south lies the northbound highway onramp associated with the lower reaches of Humboldt Hill Road.

The project site is located between US 101 and the Elk River, south of the City of Eureka, on the east side of Highway 101 and is zoning zoned AE, F, W. The scale of the zoning and land use maps from the Humboldt Bay Area Plan do not show private land between the Highway 101 right-of-way and Elk River channel, making it difficult to discern that the appropriate land use and zoning is AE where the billboard is located. In examining the site and land use and zoning, the following facts result in this conclusion. Along this stretch of Highway 101, The area to the eastern edge of the Highway 101 right of way is zoned given a land use and zoning designation of Public Facilities (PF) and the river channel is zoned Natural Resources (NR). Agriculture Exclusive (AE) zoning is applied both to the north and south of this location. The scale of the maps does not show area between the PF and NR but there exists an area that is not PR or NR and this parcel exists in this area. Given that AE exists immediately adjacent (to the north and south) and around this area, AE is the most fitting land use and zoning. In the County GIS the subject parcel is clearly shown and given a land use designation of PF. The GIS map incorrectly shows this parcel as being in the City of Eureka, but the parcel data layer shows the zoning as AE with a wetland and floodplain overlay. None of these zones and their attendant land use designations explicitly authorize off-site/non-appurtenant advertising or signs (i.e., billboards).

### Non-conforming Status

Nonconforming Structures and Uses are defined in Humboldt County Code (HCC) section 313-149 as “All or a portion of a building, structure or facility, or a use thereof, which was lawfully erected, altered, established or maintained, but which, because of the application of these regulations to it, no

longer conforms to the specific regulations applicable to the zone in which it is located.” (All future statutory references are to the HCC unless specifically identified as another source.)

Historical aerial photographs obtained from HSU Special Collections demonstrate that the damaged billboard has been at this location since at least 1955, thereby predating adoption of the Zoning Regulations, Building Codes, the General Plan, as well as establishment of the Coastal Zone and adoption of the Humboldt Bay Area Plan (HBAP) which serves as the local coastal plan covering the Spruce Point area. At the Planning Commission, public comment expressed that it is impossible for that to be the original structure (boards, nails etc.) and as a result the billboard should not be considered legal non-conforming. It is anticipated that structures will be maintained over time and this may involve replacing parts. Section 132.3 allows a non-conforming structure to be maintained. The key point is that this billboard existed at this location since at least 1955 making it a “legal nonconforming structure and use.”

Nonconforming uses and structures are a unique category of development granted special considerations under sections 313-131 and 313-132 of the Coastal Zoning Regulations, which provide protections for lawfully established non-conforming uses and structures, including rights to continue these uses and structures, and conditions under which they may be expanded, structurally altered, or reconstructed where damaged by casualty.

Section 313-132.5.2 of the HCC states, “**132.5.2 Reconstruction of a Nonconforming Structure that is Damaged by any Casualty.** The Director may approve a Special Permit for the reconstruction of a nonconforming structure that is damaged by any casualty if application is made within two (2) years after such destruction or damage and if the Director makes all of the required findings in Chapter 2 of this Code.” Section 312-17 of Chapter 2 is labeled Required Findings for All Permits and Variances. This is a broad statement that on the surface seems to require findings be made that a non-conforming structure conform to all Zoning requirements. A non-conforming structure or use are non-conforming because they do not comply with at least one Zoning requirement. This tension is resolved through section 312-41 of Chapter 2 which allows the Hearing Officer to make exceptions to the required findings upon making certain supplemental findings. In order to give meaning to section 132.5.2, the only logical interpretation is that the findings that must be made are those required by the entirety of Chapter 2, including the exceptions allowed for in section 312-41.

In the case of the Special Permit being requested, the project clearly conflicts with certain provisions of the Coastal Zoning Regulations which would ordinarily be applicable to projects involving new proposals for off-site/non-appurtenant signage (i.e. “billboards”), including:

1. Billboards are not authorized within any of the Zoning Districts applicable to the property where it is located. Offsite advertising signs are allowed in commercial and industrial zones subject to a Special Permit.
2. Evidence suggests that the billboard is located within a wetland, and subject to compliance with Coastal Wetland Areas Combining Zone provisions found in section 313-38.1. Signs are not a form of development which may occur within these areas.
3. Billboards are considered structures subject to compliance with applicable setbacks and the

existing billboard structure is located within the 20-foot front yard setback.

The project also conflicts with certain provisions of the Humboldt Bay Area Plan (HBAP), which would ordinarily be applicable to projects involving new off-site/non-appurtenant signage (i.e. “billboards”) including:

1. Billboards are not authorized within any of the Land Use Designations applicable to the property.
2. The billboard lies within a strip of land adjacent to the western bank of the Elk River. The project area is characterized by plants and hydrology common to wetlands. Aquatic features such as rivers, wetlands, estuaries and related critical habitat for rare and endangered species are all recognized and protected as Environmentally Sensitive Habitat Areas (ESHA) pursuant to sections 30240 of the Coastal Act and 3.30 of the HBAP. Billboards are not a form of development which may occur within ESHA.

Supplemental Findings for Exceptions (312-41)

1. *41.1.1 There are special circumstances or conditions associated with the proposed development, use, or project site that support granting the exception*

The facts that the sign is a legal nonconforming structure blown over by the wind and that the Zoning Ordinance allows maintenance of nonconforming structures and allows nonconforming structures to be reconstructed when damaged by natural calamities are special circumstances applying to this circumstance that support granting this exception.

The application is for repair and reconstruction of a lawful nonconforming structure. The billboard has existed at the site for over 60 years, predating the creation of countywide zoning regulations, adoption of the general plan, and establishment of the local coastal program. It was lawfully erected, established, and maintained and qualifies for recognition as a legal nonconforming structure and use, since it does not conform with the Zoning Regulations. The billboard was blown down on November 26, 2019, due to high winds produced during a winter storm event.

Section §313-132.5.1 of the Humboldt County Zoning regulations include provisions for “one-for-one” structural alteration to maintain a nonconforming structure in the same location without requiring a variance or other discretionary permit. Section §313-132.5.2 includes additional provisions for reconstruction of a nonconforming structure damaged by casualty, if application is made within two (2) years after the destruction or damage. The applicant has continued to maintain this sign at this location and in this configuration and has made application to reconstruct the sign in a timely manner.

The proposed repair and reconstruction of the sign are proposed in a manner consistent with the provisions of Sections 313-132.5.1 and 2. The repair work will involve either retention of existing structural elements, or one for one replacement of structural elements (piers, posts, cross-bracing), piers will either be retained and the structure reattached, or new vertical supports will be installed in

the same location or immediately next to the existing pier. Reconstruction activities will primarily involve establishment of up to six (6) new vertical supports for the billboard.

2. 41.1.2 *The granting of the exception will not be detrimental to the public welfare*

Protection of the Public Welfare is the basis of all land use regulation. The concept of the Public Welfare is broad and inclusive, it represents the community's values including but not limited to physical, aesthetic, environmental and economic. In the case of a billboard, there are those who find billboards unsightly and oppose them, while others find billboards helpful in learning about products and services.

The current regulatory framework would not allow a new billboard to be constructed at this location. This type of sign is allowed in commercial and industrial zones but not in Agricultural Exclusive Zones. Development is generally not allowed in ESHA except under unusual circumstances and this location is characterized by ESHA. Most of the population would not want to see a proliferation of billboards, but this request is not about a new sign, it is about reconstruction of an existing sign at this location.

The rationale for requiring a discretionary permit for a non-conforming structure is so that in situations where the non-conforming use or structure has become so out of character with or damaging to the surrounding area that reconstruction can be denied. An example of this includes a structure built within the regulatory floodway interfering with the flow of floodwaters. When such a structure is damaged, it is in the public interest not to see it rebuilt. In situations where the non-conforming use or structure do not pose a detriment to the community then typically permits are issued to allow them to be repaired and reconstructed.

In this particular case, the sign does exist within an ESHA environment, and it may be that the sensibility of the County is that the sign should not be repaired or reconstructed. On the other hand, it may be that the County sensibility is that this is a businessperson who purchased this property and sign as part of their business and the sign is not causing identifiable environmental harm and therefore can be reconstructed and remain. An alternative would be to recognize that the sign is in ESHA and the County does want to see it removed, but in such a way that the sign owner does not experience an immediate financial blow. In such a situation the permit could be approved to allow the sign to be repaired and reconstructed for a period of time, say 15 years, which would allow the applicant to recoup their investment, but then require the sign to be removed.

The project site is located adjacent to an access-controlled segment of US 101. There is no public access or pedestrian right of way in close proximity to the proposed project. The structure is outside of the coastal view area identified within the local coastal plan. Conditions of approval require that a building permit be secured for the repair of the structure. Engineered plans have been prepared for the proposed reconstruction and should increase the stability and safety of the structure once implemented. The project is conditioned on compliance with the Flood Damage Control Ordinance codified in HCC 335-1. The current structure has been present at the site for over 60 years with no indication of being detrimental to public welfare.

3. *41.1.3 The applicant has proposed alternative standards which conform with the established standard(s) as closely as feasible*

The reconstructed sign structure will not be enlarged, maintaining the same height, size and bulk. The construction materials will be the same, consistent with the County code provisions for maintenance, it is like for like replacement. This is as close to conformance with established standards as feasible. Conditions of Approval have been included that would restrict the sign from employing motion, sound, mechanical devices, blinkers, flashing lights, animation, red, green or amber lights or unusual lighting. These restrictions are in keeping with the general prohibitions found in section 313-87.3.3 of the Coastal Zoning Regulations.

In addition, the applicant will use alternative construction methods to minimize impacts to ESHA (See 4, below.)

4. *41.1.4 The granting of the exception will not have a significant adverse effect on environmentally sensitive habitats*

The existing billboard is outside of the Elk River Slough but in a location characterized by plants and hydrology common to Environmentally Sensitive Habitat Areas (ESHA). The structure has been present at the site for over 60 years and the condition of the ESHA under and around the sign indicates that the sign is not negatively affecting the ESHA. No heavy machinery will be used and the applicant will reuse as much of the existing structure, foundation and posts as is safely feasible. Reconstruction will be performed in 2-4 days using a crew consisting of 3-5 persons. No heavy construction equipment is needed. Shovels and post-hole diggers will be used, as well as battery powered hand tools, ladders, clamps, bolts and screws. No temporary structures or materials (such as scaffolding or temporary bracing) are required to enable reconstruction. No alterations to the design, size or surface area of the existing structure are proposed. For these reasons, repair and reconstruction of this lawful nonconforming sign is unlikely to result in adverse effects to sensitive habitats.

*Compliance with the California Environmental Quality Act (CEQA)*

The Special Permit is a discretionary project and therefore potentially subject to the California Environmental Quality Act (“CEQA”) but it has been determined on the basis of substantial evidence in the record that the application is exempt from further environmental review based on CEQA Guidelines Section 15301 (Existing Facilities) and Section 15302 (Replacement or Reconstruction). Because the proposal involves both repair and reconstruction activities, use of both the Class 1 and Class 2 exemptions is appropriate. Substantial evidence in the record supports the conclusion that there will be no significant adverse effects on the environment.

CEQA Guidelines Section 15301 (Class 1) exempts the operation, repair, maintenance and minor alteration of existing public or private structures involving negligible or no expansion of existing or former use. The reconstruction plan submitted by the applicant details a general workflow for the

anticipated activities involved during repair of the structure. Reconstruction is proposed to occur within the same footprint and between six (6) and nine (9) of the existing vertical uprights will be repaired and reused. The project includes a Condition of Approval prohibiting the use of pressure-treated wood for replacement posts. No alterations to the design, size or surface area of the existing structure are proposed.

CEQA Guidelines Section 15302 (Class 2) applies to the replacement or reconstruction of existing structures and facilities where the new structure is located on the same site as the structure replaced and will have substantially the same purpose and capacity. The reconstruction plan submitted by the applicant details a general workflow for the anticipated activities involved during repair of the structure. The applicant estimates that a maximum of six (6) of the remaining uprights may require removal and replacement. Where possible, the old post and concrete will be removed, and a new post will be installed within the existing location. If a post cannot be removed, a new hole will be dug next to the old post. The project includes a Condition of Approval prohibiting the use of pressure-treated wood for replacement posts. No alterations to the design, size or surface area of the existing structure are proposed. Reconstruction will be performed using a crew of 3-5 persons, and erection of the sign is expected to take 2-4 days to be completed. No heavy construction equipment is needed. Shovels and post-hole diggers are used, as well as battery powered hand tools, ladders, and clamps, bolts and screws.

There are potential exceptions to the use of categorical exemptions under CEQA. In this case none of the potential exceptions to the use of categorical exemptions contained in CEQA Guidelines Section 15300.2 apply to this project. The exceptions and the reasons they do not apply are as follows:

- a) *Location.* The location exception does not apply to Class 1 and 2 exemptions.
- b) *Cumulative Impact.* The project seeks to repair and reconstruct a sign which is part of the environmental baseline, having existed in this location for over 60 years. Potential for cumulative impacts is unlikely as a review of historical aerial photos reveals that there has been a nearly 80% reduction in highway signage in this area when compared to historic levels.
- c) *Significant Effect.* Significant impacts are not expected to result since minimal new ground disturbance is expected and evidence suggests that signage of this sort can exist within wetland environments. There is no evidence to suggest that there is a reasonable possibility that the proposed repair and reconstruction activities would result in a significant effect on the environment due to unusual circumstances. The work to be performed will require minimal ground disturbance and heavy equipment need not be utilized.
- d) *Scenic Highways.* While the project lies adjacent to State Highway 101, Highway 101 is not designated as a Scenic Highway. The project will not result in damage to scenic resources, including trees, historic buildings, rock outcroppings, or similar resources.
- e) *Hazardous Waste Sites.* The sign is not located on a property host to a hazardous waste site found on the Cortese list found in section 35962.5 of the Government Code.
- f) *Historical Resources.* There are no designated historical resources at the site. Though the sign structure is over 45 years of age, it is unlikely to possess potential historical significance as it has



been subject to alterations since it was constructed, including removal of a corresponding double-facing element. Regardless, the measures being taken to repair the structure with wooden materials of a similar type and design are in keeping with the Secretary of the Interiors Standards for the treatment of historical structures which are cited as Best Practices under 15064.5 of the CEQA Guidelines.

### Basis of Appeal

The applicant (Allpoints Outdoor, Inc.) is also the appellant. Allpoints Outdoor, Inc. (“Appellant”) claims that the Planning Commission abused its discretion in denying the Special Permit, maintaining that the Commission’s decision is not supported by substantial evidence presented, and contradicts evidence contained in the staff report.

The adopted Planning Commission Resolution (Resolution No. 20-27) is included as Attachment 6 to the Board Report and contains findings summarizing the basis for the denial of the permit. Referencing Resolution No. 20-27, the appellant notes that Findings 2, 4, 5, 6 and 7 consider rules and regulations that either (1) are inapplicable, have not been adopted, do not carry the force of law, or were not presented in the staff report or public comment; or (2) are inconsistent with current zoning regulations in effect. The appellant also notes that Finding 8 stands in contravention with evidence concerning regulatory requirements discussed within the staff report for the project.

This is a *de novo* hearing and the Board of Supervisors is not limited to the evidence in the existing record. In granting any appeal, the Board of Supervisors must determine that the decision of the Planning Commission is not in accord with the standards and regulations of the zoning ordinances, or that there was an error or an abuse of discretion by the Planning Commission.

The grounds for appeal are adequate to warrant granting the appeal. The following discussion addresses the discrete points raised in the appeal.

**Appeal Issue 1:** In Finding 2 of Resolution No. 20-27, the Commission found that *“The project is not consistent with current guidance from the American Planning Association concerning non-conforming signage.”*

Appellant’s Assertion(s): In their challenge of Finding 2, the appellant is asserting that the finding is based on rules and regulations that are inapplicable, have not been adopted and do not carry the force of law.

Response: The American Planning Association (APA) is an organization of professional planners dedicated to improving the planning profession. They often provide tools and information intended to help planners develop better communities. The County has not referenced any APA documents in any regulations. APA documents do have standing as policy guidance for action on a

discretionary permit.

**Appeal Issue 2:** In Finding 4 of Resolution No. 20-27, the Commission found that *“Although an updated General Plan has not yet been adopted for the Coastal Zone (nor certified by the Coastal Commission), the Commission cannot make the finding that authorization of sign reconstruction is not detrimental to public welfare, given the public comments received at hearings during the General Plan Update process.”*

Appellant’s Assertion(s): In their challenge of Finding 4, the appellant is asserting that the finding is based on rules and regulations that are inapplicable, have not been adopted and do not carry the force of law, or were not presented in the staff report or public comment.

Response: This finding refers back to comments made during hearings on the General Plan that are reflected within the Scenic Resources provisions found in section 10.7 of the Plan. The sentiment here is that based on the number of people who oppose billboards, allowing an existing billboard to be reconstructed would be detrimental to the public welfare. A number of Commissioners expressed interest in holding hearings in the future to establish policies and regulations governing billboards. The assertion that the rules and regulations have not been adopted and do not carry the force of law is correct, as an updated General Plan has not yet been adopted for the Coastal Zone and the 2017 General Plan now in effect does not govern activities in the Coastal Zone. The issue of whether reconstruction of the sign can be found to be within the interest of the public welfare is addressed above. As discussed above, a determination of what is best for protection of the public welfare is a balance of concerns including physical, aesthetic, environmental and economic. Public sentiment may not always be the best indicator what is best for maintaining the public welfare.

**Appeal Issue 3:** In Finding 5 and 6 of Resolution No. 20-27, the Commission found that *“The General Plan includes a number of policies designed to restrict the term and placement of billboards, prohibit their construction within Sensitive Habitat Areas, compel their removal or relocation on public lands and railroad rights of way, and prompt removal of illegal billboards. However, the new General Plan has not yet been certified by the Coastal Commission and therefore does not apply to the permitting of the subject property”*

In Finding 7, the Commission found *“However, the Humboldt Bay Area Plan (HBAP) serves as the basis for land use planning within this portion of the Coastal Zone. The placement of new off-site signs are highly restricted under the scenic resources provisions of the HBAP. However, the existing billboard site is outside of the coastal view area mapped within the HBAP. The plan also commits to preparation of a Scenic Route Study for portions of Highway 101, including the segment adjacent to the project location. Described as a joint-effort between CalTrans and the County Planning Department and subject to Coastal Commission approval, the special emphasis of the study is to investigate opportunities for Cal-Trans, the county, and the Harbor District to eliminate billboarding between Eureka and Arcata and to identify suitable areas for clustered signing, and new off-site signs.”*

Appellant’s Assertion(s): In their challenge of Findings 5, 6, and 7 the appellant is asserting that

these findings are based on rules and regulations that have not been adopted and do not carry the force of law.

Response: As is noted in Finding 6 of the Planning Commission’s Resolution, an updated General plan for the Coastal Zone has yet to be adopted by the Board of Supervisors and certified by the California Coastal Commission. The appropriate policy document for this area is the Humboldt Bay Area Plan which calls for preparation of a Scenic Route Study. As the Scenic Route Study has not been initiated at this time, it is inappropriate to speculate upon potential outcomes or use it as a basis to deny the current permit request for reconstruction of a lawful nonconforming structure damaged by casualty. The policy does not carry a prohibition of the reconstruction of signs at this location as it does with respect to the corridor between Eureka and Arcata. These three findings, while having been discussed by the Planning Commission do not support denial of the request to reconstruct the non-conforming sign.

**Appeal Issue 4:** Finding 8 of Resolution No. 20-27 states, “*The Commission cannot make the finding that the project does not have significant effects on environmentally sensitive habitats as it is located within a wetland and would require some new development through the replacement or addition of posts.*”

Appellant’s Assertion(s): In their challenge of Finding 8, the appellant is asserting that this finding is in total contravention of what was described in the staff report, and no public comment presented evidence to contradict what was contained in the staff report.

Response: Through review of historical aerial photographs it has been documented that the damaged billboard is a lawful non-conforming use and structure. Nonconforming uses and structures are a unique category of development granted special considerations under sections 313-131 and 313-132 of the HCC. The structure has been present at the site for over 60 years and the condition and integrity of the underlying Environmentally Sensitive Habitats (ESHA) indicates that co-existence with the sign footings is possible. No heavy machinery will be used during repair of the sign, and the applicant will reuse as much of the existing structure, foundation and posts as is safely feasible. For these reasons, repair and reconstruction of this lawful nonconforming sign is unlikely to result in adverse effects to sensitive habitats beyond the environmental baseline of the site. Minimizing the number of new footings and associated ground disturbance while avoiding the use of heavy equipment are measures that help avoid potential short-term impacts within sensitive habitats. Concern was expressed that the use of treated wood may have the potential to release chemicals into the environment, but the applicant’s proposal precludes the use of treated wood. To date there have been no comments made or substantial evidence presented demonstrating that the proposed repair of the sign would result in significant effects on ESHA.

Comments from Humboldt Baykeeper Concerning Appeal

Comments from Humboldt Baykeeper concerning the Appeal were received on July 6<sup>th</sup> and are included as Attachment 5. The following discussion summarizes and addresses the discrete points

raised in the letter.

**I. The proposed development is not consistent with the purposes of the existing zone in which the site is located.**

*In order to approve a Special Permit for reconstruction of a non-conforming structure damaged by casualty pursuant to 313-132.5.2, the decisionmaker must make all of the required findings found in Chapter 2 of the Zoning Regulations, including the required findings for all permits found in section 312-17. This includes finding that “The proposed development is consistent with the purposes of the existing zone in which the site is located.” The staff report notes that off-site non-appurtenant signs are not an authorized use in any of the zones applicable to the portion of the property where the sign is located.*

Response: See discussion above on Non-conforming Status

**II. To protect public safety, billboards are not allowed below the floodwater level of stream channels upstream of highway bridges.**

*To approve the Special Permit, the decisionmaker must find that, “The proposed development and conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare; or materially injurious to property or improvements in the vicinity.” These findings cannot be made since the subject parcel is entirely within the FEMA Special Flood Hazard Area, FIRM Flood Rating: Zone A, Panel Number 0839G, adjacent to the Elk River, and upstream of the Highway 101 bridge. Section 5403(c) of the Outdoor Advertising Act prohibits advertising displays from being located below the floodwater level of any stream or drainage channel where the advertising display might be deluged by flood waters and swept under any highway structure crossing the stream or drainage channel.*

Response: While the structure is located within the 100-year Flood zone, repair and reconstruction is subject to compliance with the Humboldt County Flood Damage Prevention Ordinance. Humboldt County regulations do not prohibit construction within the Flood Zone but rather require the structure to be engineered to withstand the hydrostatic forces of a 100 year event. Typically, piers in the ground supporting a sign do not pose an issue for floodwaters. During its 70+ year history, major floods occurred countywide in both 1955 and 1964. Review of historical photos from 1957 and 1968 reveal that signage at the project location persisted in the years immediately following these historic flood events. Information provided by the applicant reveals that an Outdoor Advertising Permit has been granted by CalTrans through 2031 (Permit 15322). Interpretation, application, and enforcement of the Outdoor Advertising Act and associated regulations remains the responsibility of CalTrans Office of Outdoor Advertising (ODA).

**III. (a) Customary Repair and Maintenance Rules Do Not Apply**

*“The permit before the Planning Commission was inaccurately characterized as falling under customary repair and maintenance.” Section 2271 of the Outdoor Advertising Act (ODA)*

*Regulations describes the process for determining when a display is deemed to be destroyed and no longer eligible to utilize provisions for customary maintenance described under Section 2270 of the ODA.*

Response: Interpretation, application, and enforcement of the Outdoor Advertising Act and associated regulations remains the responsibility of CalTrans Office of Outdoor Advertising (ODA). The County has not been informed that the sign cannot be reconstructed.

### **III. (b) Use of the Repair and Maintenance Coastal Permit Exemption is not appropriate**

*Per Section 13252 of the Coastal Zone Administrative Regulations: “the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact...(3) Any repair or maintenance to facilities or structures or work located in or within 50 feet of an environmentally sensitive habitat area.”*

Response: This appeal does not include action on the Coastal Development Permit. The project is located within a portion of the Coastal Zone where the Coastal Commission retains permit authority, so the applicant will need to also receive separate authorization from the Coastal Commission in order for the project to go forward. The project may be eligible for use of the exemption found under section 30610(g) of the Coastal Act, which authorizes replacement of structures destroyed by a natural disaster where the replacement structure has been approved by the relevant local land use agency. Ultimately, this determination will be made through the North Coast office of the Coastal Commission independent of the Board’s action on the Appeal.

### **III. (c) Discrepancies between the size of the billboard and CalTrans permit records**

*“The only permit on record for this structure was issued by the CalTrans Office of Outdoor Advertising, which authorized a much smaller structure than what is proposed (15 x 25 feet, with four uprights vs. 22 x 40 feet, with seven uprights).”*

Response: No evidence has been provided in support of this claimed discrepancy. Interpretation, application, and enforcement of the Outdoor Advertising Act and associated regulations remains the responsibility of CalTrans Office of Outdoor Advertising (ODA). There are a total of three billboards on this property, and the description above fits the other two billboards.

### **IV. Inappropriate Use of Categorical Exemption under CEQA**

Response: See discussion above.

### **V. Impacts to Public Trust Resources**

*The parcel is entirely within coastal wetlands, yet potential impacts to wetlands and public trust resources have not been analyzed. The May 7, 2020 Staff Report states that the subject parcel is*

*entirely within coastal wetlands, which are considered public trust resources. Humboldt County is bound by the obligations of the Public Trust Doctrine. Government entities and agencies are required to consider and prioritize public trust uses including navigation, protection of fisheries, recreation, and preservation of trust lands in their natural state.*

Response:

The project does not threaten any public trust uses that may occur in the location where the billboard is sited. As the site is adjacent to the highway on private land, navigation and recreation are not permitted on the site. As a legal nonconforming structure, the billboard has existed in its current location for at least sixty years with no detriment to the public trust resources, and as explained above, the method of reconstruction is not anticipated to damage public trust resources or impact any fisheries.

FINANCIAL IMPACT:

There will be no additional effect on the General Fund. The appellant has paid in full the appeal fee associated with this appeal.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by supporting business, workforce development and creation of private-sector jobs Click here to type another item(s) from the Strategic Framework, or leave as a period.

OTHER AGENCY INVOLVEMENT:

CalTrans, California Coastal Commission

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board of Supervisors has a range of alternatives to the staff recommendation to approve the appeal and uphold the approval of the project, as summarized below:

1. Approve the appeal and approve the project with a limited term. As noted above the Board may wish to see the sign removed but recognize the applicant's investment and approve the Special Permit for a limited duration. This would allow the applicant to continue to generate revenue for a time to recoup investment cost but would ultimately see the removal of the sign. In the event the Board chooses this alternative, it is recommended that a new condition 14 be added as follows:

The Special Permit is granted for a period of 15 years at which time the sign must be removed. The sign shall be removed not later than July 28, 2035. A Coastal Development Permit shall be submitted for sign removal not later than July 28, 2034, and a Demolition Permit shall be submitted not later than March 1, 2035 for removal of all components of the sign, including foundations.

2. Deny the appeal and deny the project. In the event the Board of Supervisors finds evidence in public testimony or from other sources compelling to deny the application, the Board should state the basis for that conclusion and continue the item to August 4, 2020, so that a resolution can be prepared expressing those findings, denying the appeal and denying the application.

3. Determine the use of categorical exemptions from CEQA are not appropriate and direct that an Initial Study be prepared. This option should only be used if the Board of Supervisors finds that there is no substantial evidence demonstrating that the criteria of the cited categorical exemptions are met by this project, or that the County's determination that none of the potential exceptions to categorical exemptions apply is not supported by substantial evidence. This alternative would require additional study or information related to potential environmental impacts which have not been answered. This alternative would require a continuance to a date uncertain.

ATTACHMENTS:

NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.

1. Draft Board Resolutions and Findings
2. Maps, Site Plan, Historical Photos, Outdoor Advertising Permit
3. Elevations, Reconstruction Plans, Photos, Engineering
4. Appeal filed by Jeff Slack on behalf of Allpoints Outdoor, Inc.
5. Public Comments from Humboldt Baykeeper, dated July 6, 2020
6. Comments from Jeff Slack on behalf of Allpoints, dated July 15, 2020
7. Resolution of the Planning Commission, Resolution No. 20-27
8. Links to the proceedings of the Planning Commission meetings held on February 20, 2020 and May 7, 2020
9. Planning Commission Staff Report from meeting of May 7, 2020
10. Public Comments provided to Planning Commission
11. Public Comments received on Appeal
12. Indemnification Agreement
13. Petition from Humboldt Baykeeper

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A