



# COUNTY OF HUMBOLDT

For the meeting of: 11/2/2021

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File #: 21-1612

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**To:** The Humboldt County Board of Supervisors

**From:** Planning and Building Department

**Agenda Section:** Public Hearing

**SUBJECT:**

Stott Outdoor Advertising Appeal of Planning Commission Denial of a Conditional Use Permit to allow a 480-Square Foot, Double-Sided, Off-premise Billboard

**RECOMMENDATION:**

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the appellant (applicant), and public; and
2. Close the public hearing; and
3. Adopt the resolution (Resolution 21-\_\_). (Attachment 1) which does the following:
  - a. Finds the project exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15270 (Projects Which Are Disapproved); and
  - b. Finds that the project is not in conformance with the Humboldt County General Plan Chapters 4 - Land Use and Chapter 10 - Conservation and Open Space Elements; and
  - c. Finds that the proposed development would be detrimental to the public health, safety, or welfare; therefore, the mandatory finding required for approval of a Use Permit contained in Humboldt County Code section 312-17.1.4 cannot be made where the proposed billboard increases visual blight along Highway 101; and
  - d. Finds that denial of the proposed project is in the public interest.
  - e. Denies the Conditional Use Permit.
4. Direct the Clerk of the Board to give notice of the decision to the appellant, the Planning and Building Department, and any other interested party.

**SOURCE OF FUNDING:**

The appellant has paid the fee associated with filing this appeal.

**DISCUSSION:**

*Executive Summary*

This is an appeal of the Humboldt County Planning Commission's Aug. 5, 2021, denial of the Stott Outdoor Advertising Billboard Conditional Use Permit (PLN-2020-16175) for a new illuminated off-

premises billboard sign located on a parcel zoned Commercial Highway. The Planning Commission denied the permit by a 4-3 vote (Yes: Levy, O’Neal, Mitchell, and McCavour, No: Bongio, Mulder, and Newman). No new information has been presented which would warrant overturning the Planning Commission decision and their action is consistent with the regulatory objectives of the County. It is recommended the Board of Supervisors deny the appeal and deny the Conditional Use Permit for the Billboard.

The proposed billboard is 50 feet in height, with 40 feet x 12 feet of advertising space (480 square foot sign area), double-sided, and would be illuminated from dusk to midnight daily by two energy-efficient LED luminaries. A single steel column set in a concrete footing would support the billboard. The parcel is located within Airport Zone B1 and approximately 2,600 feet northwest of the Rohnerville Airport. The proposed location of the sign is immediately east of Highway 101, at the southeast corner of Drake Hill Road and Eel River Drive, approximately 250 feet east of the edge of the Caltrans right-of-way and 300 feet from the east edge of the Highway 101 roadway.

The Planning Commission’s denial of the sign at its Aug. 5, 2021, meeting was based on inconsistency of the sign with Chapters 4 (Land Use Element) and 10 (Scenic Resources Element) of the Humboldt County General Plan and that approval of the project would not be in the public interest. The primary reasons for dissent were lack of a sign ordinance to implement the General Plan and desire to support business and economic development.

The appellant filed a timely appeal of the Planning Commission denial on Aug. 17, 2021. The appellant disputes the determination that the project is inconsistent with Chapters 4 and 10 of the General Plan and that denial is in the public interest. The appeal is addressed in more detail below.

## **Project History**

The appellant applied for a CUP under Zoning Ordinance Sections 314-2 Commercial Highway and Sections 314-87 Signs and Nameplates. When it was discovered that the billboard was not consistent with the Q-Qualifying zone or the General Plan, the applicant was immediately notified and offered a full refund. However, as evidenced in the Oct. 13, 2020, letter (Attachment 4), the applicant stated their wish to have a hearing before the Planning Commission with the full knowledge that staff would be recommending denial of the project. Specific policies that prohibit the proposed project include Policy SR-3 which states that new off-premises billboards are limited to areas designed as Commercial Services or Industrial General and limited to a size of 300 square feet. The proposed billboard is in an area designated as Commercial Recreation and would be 480 square feet.

General Plan Policies and standards SR-S6, SR-P3, SR-P4 and SR-S2 protect the county’s scenic resources and specifically prohibit new off-premises billboards along mapped scenic highways. While Highway 101 is not yet a mapped scenic highway, Policy SR-S6 specifically states that it will be considered a scenic highway until such time as a Scenic Highway Roadway map is adopted. Approval of a sign along Highway 101 would potentially jeopardize the ability of the highway to be classified by the state as a scenic highway. For these reasons, the proposed billboard is clearly inconsistent with the County General Plan and approval of the project would not be in the public interest.

Humboldt County Code section 312-17 contains the required findings that must be made for approval of a Conditional Use Permit. The Hearing Officer may approve or conditionally approve an application for a Conditional Use Permit only if all of the findings delineated in that section can be made. The mandatory findings include: “17.1.1 The proposed development is in conformance with the County General Plan . . .” and “17.1.4 The proposed development and conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare . . .”

The county is in the process of updating the Zoning Code to bring it current with the General Plan Update. Appendix A-18 to the General Plan provides an Implementation Action Plan that projects adoption of a Billboard ordinance within 5 years of adoption of the General Plan Update, which would be October 23, 2022.

The project was heard by the Planning Commission on Aug. 5, 2021. The commission, by a vote of 4-3, denied the Conditional Use Permit (PLN-2020-16175).

### **Appeal**

The appellant has presented the following statements in support of the appeal. This report lists the claims, followed by a staff response.

#### **Appeal Issue 1:**

*The adopted resolution relies in part on incorrect findings regarding zoning.*

*The subject property is zoned CH-Q. New off-site signs are allowed in the CH zone subject to approval of a use permit, pursuant to Section 87.2.2.8 of the Humboldt County Zoning Code. However, Planning staff had asserted in the agenda report that the "Q" zoning overlay for the property served to prevent approval of the use permit.*

*In response to this assertion, Stott submitted an excerpt from a staff report for previous Stott signs in the area (Attachment "1", Exhibit "E") which included statements that County Counsel had determined that the "Q" overlay zone did not prevent approval of a permit for new off-site signs. Staff verbally indicated during the hearing that they were no longer recommending that the "Q" overlay zone be used as a reason for denial, based on this new information. Nevertheless, the resolution adopted by the commission (Attachment "3") still included a finding that the "Q" zone doesn't allow the requested use. This was a clear error by the commission.*

**Response:** The Q Zone was not the basis upon which the Billboard was denied. The applicant's statements regarding the consideration of the "Q" overlay in the original draft Planning Commission resolution are correct. At the Planning Commission hearing staff corrected the recommendation to remove reference to the Q zone. Unfortunately, the resolution that was sent to the applicant as part of the decision packet was the original draft resolution and not the amended resolution adopted by the Planning Commission at the hearing. The corrected resolution was sent to the applicant after the

appeal was filed. This corrected resolution is attached to this staff report. This was not an error by the commission but rather an administrative error by the Planning Department which has been corrected.

### **Appeal Issue 2:**

*The project is outside of the 200-foot scenic buffer discussed in the General Plan.*

*There was much discussion in the staff report and at the hearing regarding Scenic Highways and their protection. Setting aside for a moment the fact that no portion of any highway in Humboldt County is an Officially Designated Scenic Highway under state law (see page 5 of Attachment "1"), the General Plan speaks to the establishment of a Visual Buffer along "Mapped Scenic Highways" which "...shall not exceed 200 feet from the edge of the traveled roadway." (Policy SR-S2.A.) Because the proposed project is approximately 300 feet from the edge of the nearest travel lane on Highway 101, it would appear that all follow-on standards and restrictions would be inapplicable to the sign based on its distance from Highway 101.*

Response The General Plan does not allow billboards at the proposed project location. First, SR-S3 clearly states that billboards are allowed only in Commercial Services or Industrial General land use designations (this site has a land use designation of Commercial Recreation). Second, SR-P4 prohibits new billboards on scenic highways. Third, SR-S2.B. prohibits construction of new off-premise billboards as applied to mapped Scenic Highways, whether in the visual buffer width or not. The first sentence of Subdivision B applies to uses along mapped scenic highways. Throughout standard SR-S2, the visual buffer/visual buffer area is explicitly referenced when the standard is intended to apply only in that area. Finally, the General Plan is required to be internally consistent, and it follows that when read in the context of SR-P4, SR-S2.B. is not limited to the visual buffer area. While the Highway has not yet been designated as scenic, the county has a goal of doing so as discussed below. See also staff discussion under Appeal Issue 5, below.

### **Appeal Issue 3:**

*There was no mention of other General Plan policies in support of the project.*

*As noted in Stott's PowerPoint, there are several other policies in support of the project which were not mentioned by staff. These include:*

Goal ED-G1           *"A diverse, stable, and growing local economy"*

Goal Ed-G8   *"Stated and clear permitting and licensing processes which engage with businesses...in a timely, effective, and proactive manner"*

ED-IM4           *"Update ordinances and permit processes..."*

G-P31   *"Common Sense Principle. The General Plan should be interpreted in a common-sense manner to encourage reasonable development which can meet the needs of the community with minimal impacts on the environment and demands on public services..."*

*During Commission discussion, Chair Bongio noted that “We say no to so many things, then wonder why our County is so stagnant.” Stott agrees that saying yes to new development is critical to the long-term economic health of Humboldt County. In the case of the proposed sign, this unmanned facility will generate no traffic, noise, dust, odor, demand for services, or any of the other factors which typically accompany new development. Instead, this project will generate new tax revenue for the County, new land rent for the property owner which will be circulated in the community and provide an opportunity for local businesses to advertise their goods and services to those traveling on Highway 101, contributing to the success of those businesses and increasing the taxes they remit to the County.*

**Response:** The applicant references the above Goals from Chapter 9, Economic Development Element, and Chapter 3, Governance Policy of the Humboldt County General Plan in support of the proposed project. They state in full:

ED-G1. Stable Economy. A diverse, stable, and growing local economy.

ED-G8. Regulatory and Permit Streamlining. Stated and clear permitting and licensing processes which engage with businesses, (including micro-enterprise and home-based startups) in a timely, effective and proactive manner.

ED-IM4. Permit Streamlining for Business Growth. Update ordinances and permit processes to increase efficiency and reduce permit-processing times addressing constraints to business growth including micro enterprises and home-based businesses.

G-P31. Common Sense Principle. The General Plan should be interpreted in a common-sense manner to encourage reasonable development which can meet the needs of the community with minimal impacts on the environment and demands on public services. Taking a comprehensive view of all relevant plan policies, the result must balance the intent of these policies, in a practical, workable, and sound manner. When using the Common-Sense Principle, findings shall be made by the Planning Commission and/or Board of Supervisors indicating how the use of this principle balances the needs of the community and Plan policies.

The General Plan Update policies restricting billboards are consistent with the goals stated in the Economic Development Element (particularly ED-G1). (The General Plan is required to be internally consistent per Government Code section 65300.5.) The restriction on billboards and the ultimate goal of designating 101 as a scenic highway are aimed at attracting tourism and recreational uses to this unique environment. This promotes economic activity and growth. Ignoring the billboard provisions contained in the General Plan Update would not give weight to those provisions and would also render the General Plan Update internally inconsistent, which the BOS previously found it was not.

**Appeal Issue 4:**

*The County's lack of a billboard ordinance is "highly problematic" as determined by County Counsel.*

*In 2005, the County Counsel's office found the County's lack of a billboard ordinance " ... to be highly problematic given the clear mandates established by the Federal courts." (See page 3 of Attachment "I", and Exhibit "E".) The level of scrutiny to which local sign ordinances have been subjected by the courts has only increased in the last 16 years, particularly in the wake of Reed v. Gilbert. Denying a permit for an off-site sign, which courts have determined to be a type of speech given certain first-amendment protections, would likewise be problematic in the absence of a billboard ordinance.*

**Staff Response:** The lack of a billboard ordinance is not a justification for allowing the placement of a billboard sign on a site where the designated land use of Commercial Recreation does not allow for establishment of the billboard. Neither does it justify, nor allow, for ignoring the Goals and Policies of Humboldt General Plan Chapter 10, Conservation and Open Space Element, which do not support the proposed billboard. The County Counsel memo in 2005 was written prior to the adoption of the 2017 General Plan which prohibits the placement of a new billboard in this location. The General Plan is the adopted policy document that guides all land use development in the county. Humboldt County Code section 312-17.1.1 requires the Board to find that the proposed development is in conformance with the County General Plan in order to approve the Conditional Use Permit.

### **Appeal Issue 5:**

*The County's policies relating to Scenic Highways make little sense.*

*As mentioned at the Commission public hearing, Humboldt County has not deemed it a high enough priority for the 58 years that California's Scenic Highway Program has existed to go through the process of obtaining official designation for truly scenic highway segments in the County. The current position of "until we get around to going through the official scenic highway designation process, all state highways in the County shall be considered to be scenic" makes little sense and contains no incentives to actually go through the process of obtaining official scenic designation. To use an analogy, it's like saying "Until we hold an election, all those who are eligible to be elected shall be treated as if they have already been elected." I think we would all agree that having thousands of citizens asserting that they should be treated like elected officials, without having to go through the difficult process of running for office and winning an election, is nonsensical.*

*Under the current policy, less photogenic portions of state highways (see Attachment "4" for examples) are considered to be just as scenic under the law as those segments which would easily meet state standards (see Attachment "5" for examples of truly scenic sections of highway). Again, this makes little sense.*

**Staff Response:** The County has identified which highways should be treated as scenic in the General Plan. This action was taken through a public process and it is entirely within the authority of the county to choose which resources should be treated as scenic. As discussed previously, the following adopted General Plan policies were used in determining the project inconsistent with the Scenic

Resources Goals and Policies of the General Plan. Below each is an explanation of the basis of Staff's reasoning:

Goals:

1. SR-G1: Conservation of Scenic Resources. Protect high-value scenic forest, agriculture, river, and coastal areas that contribute to the enjoyment of Humboldt County's beauty and abundant natural resources.

Staff believes that the addition of billboard signage would detract from the overall aesthetic quality of scenic views along Highway 101 by placement of a third billboard along this stretch of the east side of Highway 101, south of Fortuna, and resulting in a cluster of billboards in an area that otherwise remains semi-rural and with generally high visual qualities. People are drawn to visit Humboldt County based on the unique natural environment, and this quality could be diminished by an additional billboard.

Notably, the two existing billboards were approved by the Planning Commission on March 1, 2012, with a term of 15 years, and included the following option: "Prior to the expiration of the permit or permit extension, the Planning Commission, upon proper application, may extend the permit for a period of up to five (5) additional years, if it finds that the sign is in conformance with the Humboldt County Code §312-17.1." The existing billboards are slated for removal in 2027, unless extended. The existing billboards were approved prior to adoption of the 2017 General Plan Update.

2. SR-G2: Support for a Designated Scenic Highway System. A system of scenic highways that increase the enjoyment of, and opportunities for, recreational and cultural pursuits and tourism in the County without detracting from allowed uses.

The development of another billboard sign (as discussed above, this project would result in placement of a third billboard along this stretch of the east side of Highway 101 south of Fortuna), may also be detrimental to the County achieving the General Plan's ultimate goal of a Scenic Highway designation of Highway 101 from Cal-Trans and denial of the sign is therefore in the public interest. A stated policy goal is to increase the enjoyment of, and opportunities for, recreational and cultural pursuits and tourism in the County. This Scenic Highway designation would be a draw for tourists seeking to experience the natural beauty of Humboldt County, and would result in additional tourism and economic stimulus for the County. Reduction of visual clutter in furtherance of safety objections is also paramount to this policy goal. It is in the interest of Humboldt County residents and the general public for Highway 101 to be designated as a scenic highway.

Policies:

- SR-S6. Scenic Highway Map. Until such time as a General Plan Scenic Highway Roadway Map is prepared and adopted, Humboldt County Highways listed in Sections 263.1 through 263.8 of the California Streets and Highways Code shall be considered to be Scenic Highways pursuant to Policy SR-P3, Scenic Highway Protection, and the County shall address the potential for significant impacts to scenic resources during ministerial and discretionary permit review. [This stretch of Highway 101 is listed in

section 263.6, subdivision (f) of the Streets and Highways Code.]

- SR-P3. Scenic Highway Protection. Protect the scenic quality of designated Scenic Highways for the enjoyment of natural and scenic resources, coastal views, landmarks, or points of historic and cultural interest.
- SR-P4. Term of Off-Premises Billboards and Prohibition. Limit the term of new and existing off premise billboards by ordinance to provide for removal consistent with the Outdoor Advertising Act. Prohibit the construction of new off-premises billboards along mapped Scenic Highways and coastal views.
- SR-S2. Scenic Highway Standards. The following standards apply to mapped Scenic Highways:
  - B. Permitted Uses. Permitted uses shall be allowed except the construction of new off premise billboards is prohibited. Permitted uses that are within the visual buffer area measures may be required to protect scenic qualities of the site.
- SR-S3. New Off-Premise Billboards. New off-premise billboards shall be restricted to a maximum term of 15 years and limited to areas designated as Commercial Services or Industrial General. Off-premise billboards shall not include animation or electronic messaging unless for public service purposes and be restricted to a size of 300 square feet.

SR-S6, SR-P3, SR-P4 and SR-S2 help to define the characteristics for a Scenic Highway. These Policies show that, at the time of adoption, the clear intent of the General Plan was for Highway 101 to be designated as a Scenic Highway and, therefore, its Policies called for it to be treated as such during future development review. The approval of offsite sign along this stretch of Highway 101 is not compatible with goals and objectives for a Scenic Highway, and approval of the offsite billboard signage as proposed by the appeal could jeopardize the ability of the County to receive the scenic highway designation.

Additionally, the General Plan does not allow billboards at the proposed project location. First, SR-S3 clearly states that billboards are allowed only in Commercial Services or Industrial General land use designations (this site has a land use designation of Commercial Recreation). Second, SR-S2.B. prohibits construction of new off premise billboards as applied to mapped Scenic Highways, whether in the visual buffer width or not. Third, SR-P4 prohibits the construction of new off-premises billboards along mapped Scenic Highways and coastal views. While the Highway has not yet been designated as scenic, the County clearly has a goal of doing so as discussed above. Even though the highway has not yet been designated as scenic, SR-S3 still applies, and the use is prohibited because the land use designation is Commercial Recreation and not Commercial Services or Industrial General.

Even if billboards were allowed at the proposed project site, signage beyond the 200-foot Visual Buffer from the edge of the travel roadway (addressing Appeal Issue 2, from above) would nonetheless remain a concern due to the prominence of the proposed billboard (its proposed height to 50 feet and the double-side sign size of 480 square feet), and therefore would be inconsistent with the General Plan. The billboard sign size is larger than what General Plan policy would allow; SR-3 limits the size of billboards to not more than 300 square feet; here, each side of the proposed billboard would be 480 square feet. The proposed billboard would be in a location that would detrimentally impact the overall



scenic quality as seen from this stretch of Highway 101 south of Fortuna. The proposed billboard would therefore be inconsistent with General Plan Policy SR-G1 and not be supportive for a designated Scenic Highway pursuant to Policy SR-G2. Designation of this stretch of Highway 101 as scenic is in the public interest as discussed above.

**Additional comments from the Applicant**

- 1. Several Commissioners noted that the proposed location seemed appropriate for the sign. We agree. Given the dearth of locations which meet both the County's adopted sign regulations as well as state requirements, approval of this one sign will not usher in a wave of new sign applications. The question is simply whether this one sign in this location, on a site 300 feet from Highway 101, where the County's zoning code says that such a sign can be built with a use permit, should be allowed.*

**Staff Response:** By a 4-3 vote, the Planning Commission determined that the location for the billboard was not feasible because of the General Plan land use designation of Commercial Recreation which limits land uses as noted: *“This designation is intended for commercial recreation facilities and accommodations and recreation/tourist-oriented sales and services geared to local and visitor needs.”* This further highlights the importance of the scenic nature of the site and the desirability decreasing visual clutter and potential impediments to traffic safety.

- 2. Lastly, the sign structure proposed for the subject property is identical to the existing signs which have operated a quarter mile to the south for a decade. Stott is unaware of any complaints regarding the operation of these existing signs.*

**Staff Response:** These signs were approved prior to the adoption of the 2017 General Plan, which has specific policies prohibiting proposed signs in the CR designation and also calls for this section of the highway to be treated as a scenic resource. The two billboards located approximately one-quarter of a mile to the south of the proposed sign are located on parcels with a land use designation of Industrial General (IG) and zoned Heavy Industrial (MH) which allows the billboard use under Policy SR-S3. See above discussion under Appeal Issue 5, regarding the permit term of the existing signs. The existing signs would be required to be removed in 2027 if not extended.

**FINANCIAL IMPACT:**

There will be no additional effect on the General Fund.

**STRATEGIC FRAMEWORK:**

This action supports your Board's Strategic Framework by its support of the Goals and Policies of of Humboldt County General Plan Chapters 4 and 10.

**OTHER AGENCY INVOLVEMENT:**

None

**ALTERNATIVES TO STAFF RECOMMENDATIONS:**

If the Board wishes to approve the appeal to allow placement of the billboard pursuant to the Conditional Use Permit, staff would need to return to the Board at a subsequent meeting with findings and conditions to allow the sign placement. This alternative is not recommended at this time as the project would be inconsistent with guiding General Plan policies.

**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 Resolution and Findings
2. Appeal filed by Greg Redeker on behalf of Stott Outdoor Advertising
3. Staff Report and Resolution of the Planning Commission, Resolution No. 21-109
4. Appellant Response
  - A. Appellant submitted alternate resolution for approval
  - B. Appellant submitted Billboard Safety Study

**PREVIOUS ACTION/REFERRAL:**

Board Order No.: J-1

Meeting of: 10/05/2021

File No.: 21-1421