

August 2, 2021

Sent via E-mail

Chair Alan Bongio
Members of the Humboldt County Planning Commission
Planning Department Staff
3015 H Street
Eureka, CA 95501

**RE: Stott Outdoor Advertising Conditional Use Permit
PLN 2020-16175, APN 201-292-001
2013 Drake Hill Road – UB58 (Gardner)**

Dear Chair Bongio, Members of the Planning Commission, and Planning Department Staff,

I'm writing to you today in response to the staff report for the above-referenced project, which is scheduled to be considered by the Commission at a public hearing to be held on August 5th, 2021 as item H.2. on the agenda. Stott Outdoor Advertising respectfully disagrees with the conclusions and recommendations in the staff report, finding many of the statements and analysis to be inaccurate and/or misleading. As will be expanded on below, there is a path forward for the Commission to make all required findings and approve the requested use permit. This is what we are respectfully requesting of the Commission.

Background

Stott Outdoor Advertising entered into a lease agreement in late 2019 with Terry and Chris Gardner, owners of 2013 Drake Hill Road, to place an off-site sign on their property. The intent of the sign is to advertise Humboldt County goods and services to travelers on Highway 101, including tourists and others who are visiting from out of the area. The sign's design would be identical to two other signs operated by Stott Outdoor Advertising to the south of the project site.

Stott subsequently applied for a Conditional Use Permit as required by Section 87.2.2.8 of the Humboldt County Zoning Ordinance on January 15th, 2020. The application was deemed complete pursuant to the terms of the Permit Streamlining Act (PSA) on February 14th, 2020 when no determination of incompleteness was made by County staff. In a spirit of cooperation and good faith, Stott continued to work with staff, providing additional information and materials in response to subsequent County inquiries received later in February and March. The last substantive information about the project was e-mailed to County staff on April 15th, 2020.

On May 7th, 2020 County staff indicated via e-mail that the project was "...complete enough to move forward, but I may ask for something else as I work on the staff report." To this point, there was no indication that the County could not approve the use permit. Commission meetings in late June or early July were discussed as dates when the project might be considered.

On May 11th, 2020 County staff informed Stott via phone call and e-mail that they would not be able to recommend approval of the use permit based on their research. Various excerpts from the Zoning Ordinance and General Plan were provided as justification for their position.

With the full knowledge of County staff, Stott took several months to evaluate our options and perform our own research. We explicitly stated that we would not consider the PSA clock to be tolling at this time. Stott submitted a letter on October 13th, 2020 indicating that we did not wish to withdraw our application as offered by County staff; rather, we wished to proceed to a public hearing. Now, almost ten months later, the project is finally before the Planning Commission.

Additional Materials Not Provided to the Commission

Stott submitted several more documents to Planning staff regarding this application which contain additional information and context. However, they were not included for whatever reason in the staff report to the Commission. In the interests of full and complete information, they are being transmitted with this letter.

The first, an updated site plan transmitted to the County on April 15th, 2020, containing additional details as requested by County staff, is provided as Exhibit “A”. The second, a description of the project and how it relates to the Outdoor Advertising Act, is provided as Exhibit “B”. The third, an annotated aerial photo showing the proposed sign in relation to Stott’s two existing nearby signs, is provided as Exhibit “C”.

Major Themes in the Staff Report

Planning staff asserts that the project cannot be approved for several reasons, including the following:

- *The project is not allowed on the subject property due to the “Q” overlay zone applied via adoption of Ordinance 1689*
- *The project is inconsistent with Chapter 4 of the General Plan, particularly the intent of the Commercial Recreation land use designation for the property*
- *The project is inconsistent with Chapter 10 of the General Plan, particularly various goals and policies related to scenic highways and the regulation of billboards*

Stott respectfully disagrees with these assertions. A detailed response to each, with supporting documentation as appropriate, is provided below.

Ordinance 1689 and the “Q” Overlay Zone

Assertion - *The Q overlay on this parcel as enacted by Ordinance 1689 takes precedence over Section 87.2.2.8 of the zoning code, and the off-site sign use is not allowed.*

Response - The County has previously approved use permits for off-site signs in the Q overlay zone enacted by Ordinance 1689. The County Counsel’s office also provided a memo noting the Constitutional shortcomings of the County’s regulation as it applies to billboards.

Discussion - The County definitively determined as part of previous approvals under the same regulatory framework that the various Q overlay zones enacted via Ordinance 1689 did NOT prohibit off-site signs. Excerpts of various County documents are provided related to the hearings and eventual approval of the two nearby signs to the south, which are on a parcel with zoning of MH-B-5(10)-Q (also enacted by Ordinance 1689). These signs were initially authorized by CUP 04-04, and finally by CUP 10-16 after the Alton interchange project at the intersection of Highway 101 and Highway 36 was completed.

Exhibit “D” is a memorandum from the County Counsel’s office dated September 22, 2005 regarding the deficiencies of the County’s regulation of billboards, and contains the following (highlighted on the Exhibit for ease of reference):

- “Humboldt County does not have a billboard ordinance.”
- “In the absence of a billboard ordinance, Humboldt County cannot point to a set of regulations whose express purpose is to implement a substantial governmental interest by establishing clearly articulated objective standards by which all billboard uses will be measured.”
- “This office finds the lack of such an ordinance to be highly problematic given the clear mandates established by the Federal courts. It is recommended that the County establish a billboard ordinance to address these constitutional implications.”

Exhibit “E” is an excerpt from a supplemental staff report to the Commission for CUP 04-04 dated October 27, 2005, which references the County Counsel memo, and contains the following (again highlighted for ease of reference):

- “Also, based on County Counsel’s research it is now clear that the inclusion of the ‘Q’ combining zone on several of the parcels does not negate an applicant’s ability to apply for a CUP. This corrects an erroneous assumption in the 1997 staff report.”
- A table showing maximum potential buildout of off-site signs in the area which lists the project parcel (APN 201-292-01), with its zoning of CH-Q, as a location where off-site signs could be built.

New case law subsequent to the preparation of these documents (e.g. *Reed v. Gilbert*) has only served to increase the level of judicial scrutiny applied to sign regulations which limit speech.

Chapter 4 of the General Plan – Commercial Recreation Land Use Designation

Assertion - *The proposed billboard is inconsistent with the development intent of the CR land use designation, which is intended for commercial recreation facilities and accommodations, and recreation/tourist-oriented sales and services geared to local and visitor needs.*

Response - Off-site signs in the area have historically displayed advertisements for goods and services valued by visitors and tourists, thereby providing a valuable service for those businesses. Moreover, the CR land use designation has been deemed consistent with a variety of land uses beyond those described by staff. Finally, state law establishes that outdoor advertising is a legitimate commercial use of property.

Discussion - Past advertisements on the two existing signs to the south are revealing. Advertisements for casinos have been displayed, as have advertisements for hotels, tire shops, and special events of interest to tourists (such as Cannabis Fair/Emerald Cup). More recently, regulatory changes at the state level regarding cannabis have resulted in an increased number of cannabis-related advertisements, which inform visitors and tourists of this growing sector of the Humboldt County economy.

From a policy standpoint, the County established in the “Zoning Consistency Matrix – Inland”, found in the General Plan as Table 4-H (provided as Exhibit “F”), that the C-1, C-2, and C-H zoning districts are all consistent with the Commercial Recreation land use designation. These zoning districts allow a variety of commercial uses by right which are therefore all deemed compatible with the CR land use designation. These uses include professional offices, restaurants, retail stores, dry cleaning, furniture stores, automobile sales, public garages, and storage warehouses.

Lastly, it is the adopted position of the State of California, as memorialized in Section 5226 of the Outdoor Advertising Act, that:

- (a) Outdoor Advertising is a legitimate commercial use of property adjacent to roads and highways.
- (b) Outdoor advertising is an integral part of the business and marketing function, and an established segment of the national economy, and should be allowed to exist in business areas, subject to reasonable controls in the public interest.

Chapter 10 of the General Plan – Scenic Highways and Regulation of Billboards

Assertion - *The proposed billboard is inconsistent with several goals, standards, and policies related to protection of scenic resources, including special restrictions on the approval of off-site billboards along mapped scenic highways.*

Response - While the section of Highway 101 near the proposed sign is eligible to be officially designated as a scenic highway, the County has not undertaken the burdensome and controversial task of seeking such designation, including adoption of a Corridor Protection Program as required by state law. In addition, the policies related to scenic resources and billboards are to be implemented by adopting ordinances which would make the restrictions binding and enforceable; to date, no such ordinances have been adopted. Lastly, the pattern of development and topography

in the area is inconsistent with Caltrans' requirements for officially designating this portion of Highway 101 as a scenic highway.

Discussion - Staff paints an incomplete picture regarding the interaction of the various policies contained in Chapter 10 of the General Plan as they relate to off-site signs. Notable omissions and misstatements are discussed below.

1. Highway 101 in Humboldt County is not designated as a scenic highway under state law. The section of Highway 101 adjacent to the project site is eligible to be listed as a scenic highway (see Exhibit "G", excerpt from Caltrans' website related to scenic highways), and has been eligible since the inception of the scenic highway program in 1963. However, in the intervening 58 years, Humboldt County has never deemed it a high enough priority to go through the proper steps to formalize such designation, which involves a specific series of studies and regulatory actions (not merely policy directives) which must be completed in consultation with affected property owners and Caltrans. These efforts are frequently controversial, as they typically involve downzoning property, establishing strict sign controls via an amended sign ordinance, establishing strict design review procedures, requiring new power lines to be installed underground, and amending the zoning ordinance to prohibit certain land uses altogether. (See Exhibit "H", a decision-making flowchart prepared by Caltrans for designating scenic highways, which notes the multiple steps in the process where formal conflict resolution measures may be required.) In addition, once the highway segment in question has been approved for such designation, it precludes the use of categorical exemptions in and adjacent to that portion of the highway, forcing future projects into using a mitigated negative declaration or environmental impact report.
2. Implementation measures for policies and standards in the general plan related to billboards have not yet occurred. Appendix A of the General Plan specifies how the goals and policies contained in the Plan are to be implemented. On Page A-18 (provided as Exhibit "I") the implementation measure for the various policies and standards related to billboards as discussed in the staff report is "Sign Ordinance Revision". Since adoption of the General Plan in 2017, no such revision of the sign code specifically related to off-site signs or billboards has occurred.

Going back to the County Counsel's memorandum (Exhibit "D"), if the County wishes to implement the policies and enforce the standards contained in the General Plan related to billboards, it needs to adopt an ordinance specific to billboards, with objective criteria and specific findings consistent with Federal case law in order to pass judicial scrutiny for regulations which limit speech.

3. Even if the County did want to officially designate this portion of Highway 101 as a scenic highway, it doesn't score well on Caltrans' scenic highway criteria. As established in the Caltrans Scenic Highway Guidelines (excerpt provided as Exhibit "J") scenic highways should "...traverse an area of outstanding scenic

quality, containing striking views, flora, geology, or other natural attributes...” and that “...the more pristine the natural landscape is and less affected by intrusions, the more likely the nominated highway will qualify as scenic.” When compared to truly scenic sections of Highway 101, such as the stretch from Patricks Point to Orrick, the section of Highway 101 south of Fortuna near the proposed sign doesn’t hold up well. The area is marked by flat terrain with no meaningful views of the Eel River or the Pacific Ocean, with significant visual intrusions in the form of power lines, signs, industrial and commercial uses, and unremarkable residential and industrial buildings.

Other Considerations

The sign structure proposed for the subject property is identical to the existing signs which have operated a quarter mile to the south for more than a decade. Stott is unaware of any complaints regarding the operation of these existing signs. Even after approval of this sign, there will still be fewer off-site signs in the area between Fortuna and the Van Duzen River than there were prior to construction of the Alton interchange project at the intersection of Highway 101 and Highway 36.

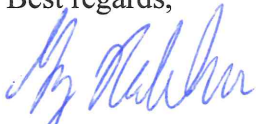
Stott simply seeks to restore an opportunity for local businesses to advertise their goods and services to those traveling on Highway 101, including both locals and visitors to the area. The property is zoned commercial, consistent with state law for new off-site signs. The County’s zoning ordinance allows such a sign to be constructed, subject to issuance of a use permit.

Conclusion

With all the above taken into account, Stott Outdoor Advertising would respectfully request that the Commission direct staff to prepare findings for approval of the requested use permit, to be brought back before the Commission at a future public hearing.

Thank you for your time and consideration. Should you have any questions or wish to discuss this further, please contact me at (530) 717-2705 or gredeker@stottoutdoor.com.

Best regards,



Greg Redeker
Senior Real Estate Manager
Stott Outdoor Advertising, Permit Applicant

GR: at

Enclosures

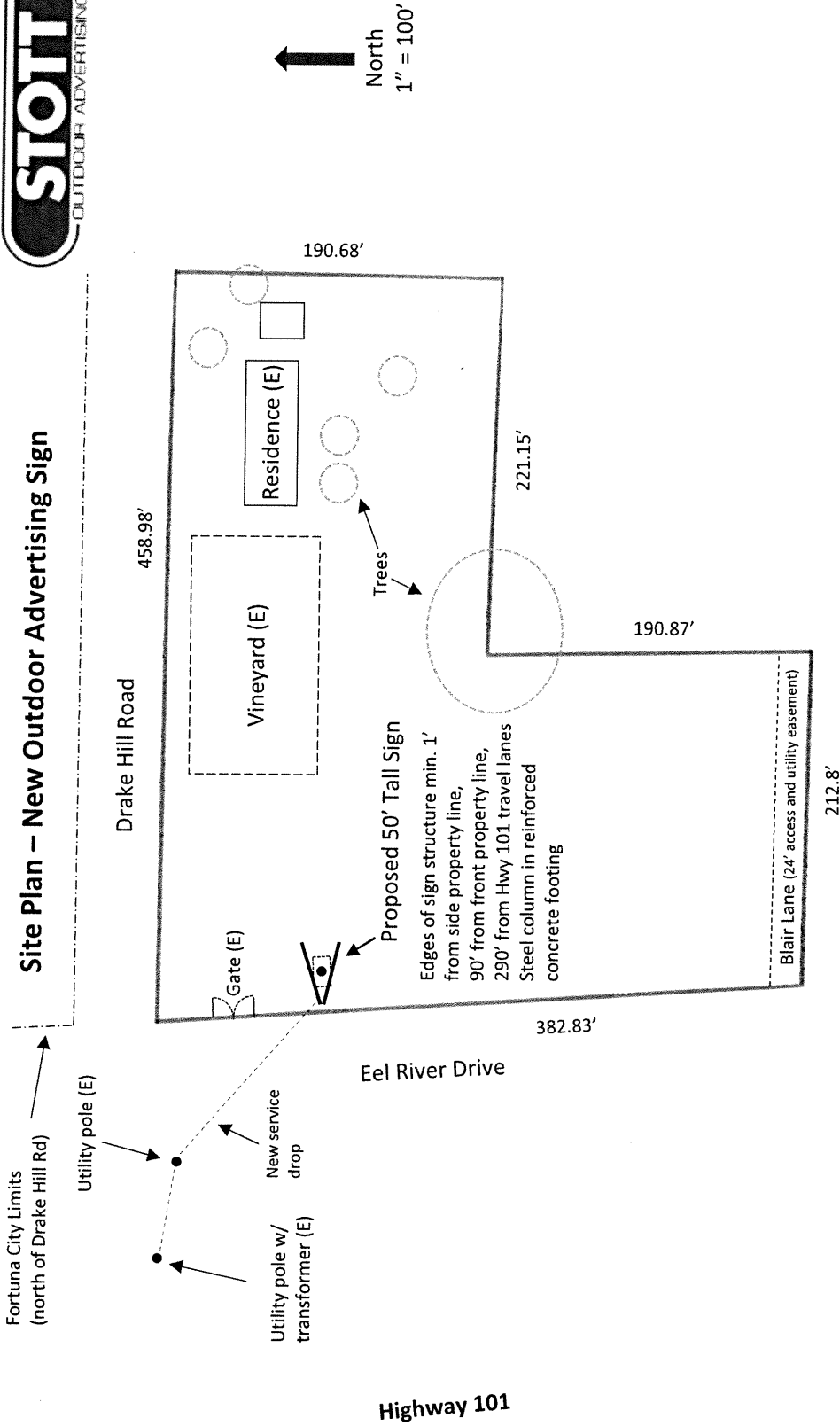
- Exhibit "A" – Revised Site Plan transmitted to County staff April 15, 2020
- Exhibit "B" – Project Description, including discussion of Outdoor Advertising Act
- Exhibit "C" – Annotated Aerial Photo
- Exhibit "D" – Memorandum from County Counsel's office dated September 22, 2005
- Exhibit "E" – Excerpt from Supplemental Staff Report for CUP 04-04 dated October 27, 2005
- Exhibit "F" – Table 4-H "Zoning Consistency Matrix – Inland", Humboldt County General Plan
- Exhibit "G" – Excerpt from Caltrans website depicting Eligible and Designated Scenic Highways
- Exhibit "H" – Scenic Highway Corridor Protection Program Flowchart
- Exhibit "I" – Excerpt from General Plan Appendix A, Implementation Measures
- Exhibit "J" – Excerpt from Caltrans Scenic Highway Guidelines

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Site Plan – New Outdoor Advertising Sign



Owner: Terry and Chris Gardner
 Location: 2013 Drake Hill Road, Fortuna, Humboldt County
 APN: 201-292-001 Size: 2.92 acres
 Zoning: CH-Q – Highway Service Commercial w/ Qualifying Combining Zone
 Prepared by: Greg Redeker, Stott Outdoor Advertising
 gredeker@stottoutdoor.com (530) 717-2705 4/2/20

- Notes:**
- Property is generally level
 - No change to existing structures, trees, or improvements
 - Existing structures (incl. wells, leach fields) min. 200' from sign
 - No side yard setback required (1' proposed)
 - Sign area accessed via gates on Eel River Drive and Blair Lane
 - New sign is 12' x 40', double-sided "V" build, 50' max height
 - Two energy efficient LED light fixtures per face
 - Single steel column set in a concrete footing
 - New overhead electrical service from nearby power pole

Project Description for New Off-Site Advertising Sign at 2013 Drake Hill Road, APN 201-292-001

This project description is intended to be read in conjunction with the other application materials submitted to the Humboldt County Planning Department.

Stott Outdoor Advertising proposes to construct a new outdoor advertising sign in Humboldt County. The project site is a 2.92 acre parcel located on the east side of Highway 101 south of Fortuna, near the intersection of Drake Hill Road and Eel River Drive. The site is generally level. A single-family residence occupied by the property owner is located on the northeastern corner of the property, and a small vineyard is located on the north central portion of the property. The western portion of the property is used intermittently as a paintball field, using inflatable nets and other temporary portable structures. Access is via a vehicle gate off of Eel River Drive and via Blair Lane. No changes are proposed to any existing structures, trees, fencing, or other improvements. Adjacent land uses on the east side of Highway 101 include a specialty wood retailer (Burl Country) across Drake Hill Road to the north, agricultural uses across Eel River Drive to the west, single-family residential uses to the south of the proposed sign location, and agricultural uses to the east. The sign location and the route construction vehicles will take to reach it has been subject to regular disturbance over the years due to various low-intensity commercial uses, including the current paintball field use.

The site is zoned CH-Q (Highway Service Commercial with a Qualified combining zone), a zoning district which allows non-appurtenant signs (i.e., billboards) subject to approval of a use permit. Property across Drake Hill Road to the north is inside the Fortuna city limits, and is zoned A-E on Fortuna's zoning map. Property across Eel River Drive to the west is zoned AG-B-5(20). Property to the south is zoned R-1-B-4(1)-T, and property to the east is zoned AE-B-5(60). The site is also located in the 100-year flood plain as delineated on the FEMA flood maps.

The outdoor advertising sign will be a steel structure with two 12' x 40' sign faces arranged in a "V" configuration, the same as two existing Stott signs located approximately 950 and 1450 feet to the south. Overall height is proposed to be 50 feet above grade, the same as the two existing nearby signs. (This height is five feet greater than the 45-foot maximum height normally allowed in the zoning district, and will require authorization pursuant to Section 314-99.1.) The edges of the sign will be a minimum of 1 foot from the side property line abutting Eel River Drive. A single steel column will support the sign, set in a concrete footing, and will be designed to meet code requirements for construction in a flood plain. Size of the footing is not finalized at this time, but will be less than 40 cubic yards. No additional fill or grading is proposed beyond the excavation required for the footing. Each sign face will be illuminated by two energy-efficient LED luminaires, specifically designed for outdoor advertising, which minimize unwanted light spill onto nearby properties. Illumination will be from dusk to midnight daily. Electricity will be provided via a new service drop from the nearby overhead power lines.

Subsequent to obtaining required approvals from Humboldt County but prior to construction, Stott will obtain all required permits from Caltrans authorizing placement of the sign.

Construction will last approximately a week. Construction will occur during the dry season so that the ground can adequately support the weight of construction vehicles, and so that drainage patterns are unaffected. All construction activities will comply with applicable local and state standards regarding hours of work, idling duration, dust control, and other measures which reduce construction-related impacts. After the sign has been built, a single pickup truck will visit the sign a few times per year to change the sign copy and perform any needed maintenance.

Prepared by: Greg Redeker, Real Estate Manager Updated 4/2/20

Exhibit "B"

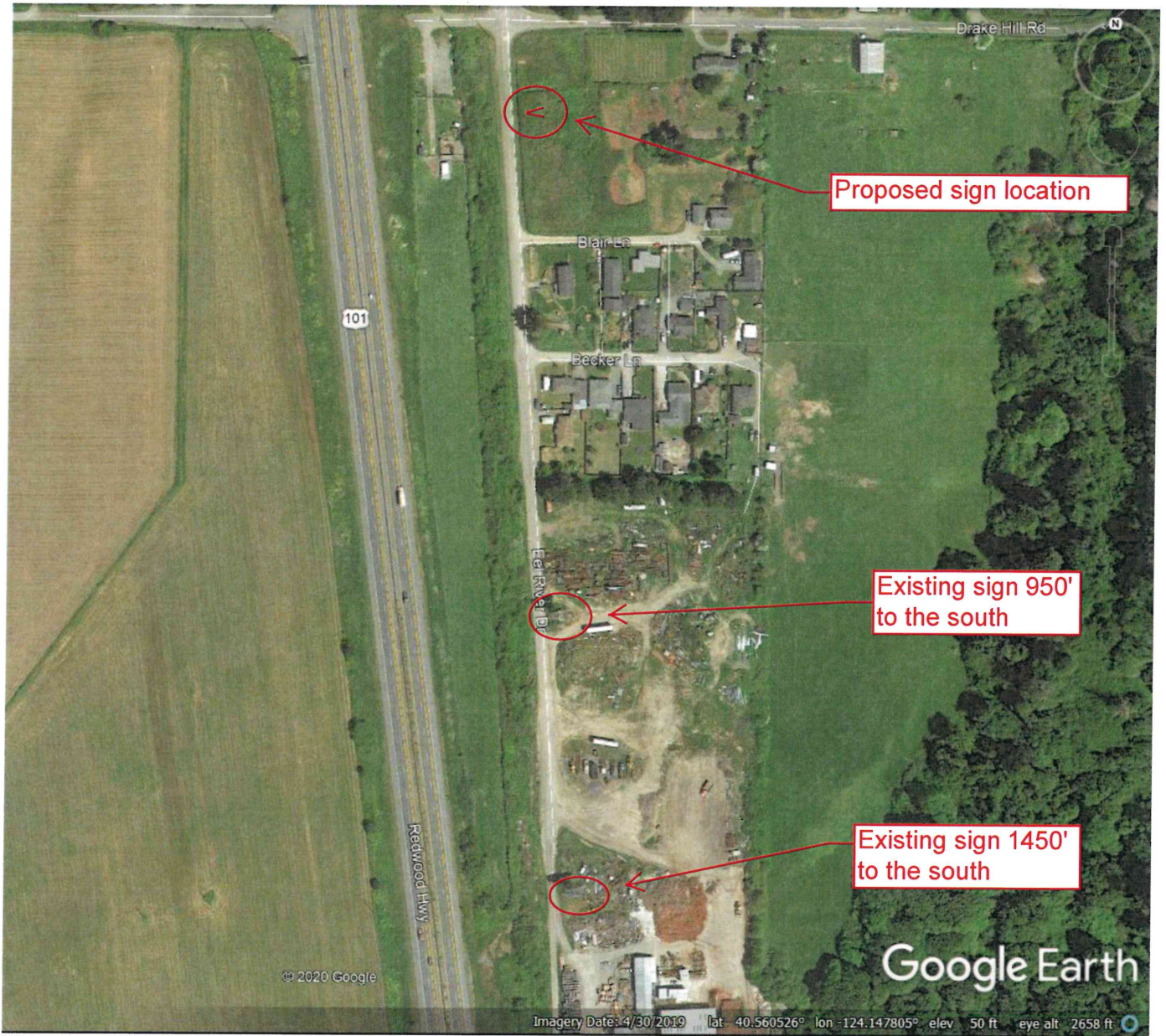
Outdoor Advertising Act Discussion

The proposed project is subject to the California Outdoor Advertising Act ("Act") (California Business and Professions Code Division 3, Chapter 2, Section 5200 et seq.) and its implementing regulations (California Code of Regulations Title 4, Division 6, Section 2240 et seq.). The Act is administered by the Caltrans office of Outdoor Advertising in Sacramento. All off-site signs intended to be viewed from a state highway or freeway in the state of California are subject to the Act, and are required to obtain permits from Caltrans for the installation and operation of these signs. Off-site signs are subject to various objective standards (such as size and spacing) and must generally be located in commercial or industrial zoned areas. The proposed sign, being more than 500 feet away from any existing permitted off-site signs and located in a commercial zoning district, complies with Caltrans criteria.

Unlike some other state statutes which are implemented at the local level, such as CEQA or the Subdivision Map Act, cities and counties have no direct role in implementing the provisions of the Outdoor Advertising Act. However, as part of the application for an outdoor advertising permit from Caltrans, an applicant must submit a copy of an issued building permit for the sign to indicate that all local approvals have been obtained. Please note that the Caltrans permitting process typically takes at least 60 days, so there is frequently a delay from when the local permit is granted and when construction begins.

Stott would be pleased to provide a copy of the issued Caltrans permit to Humboldt County prior to construction.

Prepared by: Greg Redeker, Real Estate Manager Updated 4/2/20



Location of new sign at 2013 Drake Hill Road in relation to existing identical Stott signs
Proposed sign is 290' from Highway 101 travel lanes
Existing signs are 240' and 210' from Highway 101



Inter-office memo

from the desk of

CAROLYN RUTH
Deputy County Counsel

To: Humboldt County Planning Commission

Re: **Stott Outdoor Advertising - October 6, 2005 Meeting**
Constitutional Issues, Humboldt County Code and CEQA

Date: September 22, 2005

RECEIVED

SEP 23 2005

HUMBOLDT COUNTY
PLANNING COMMISSION

Background:

Stott Outdoor Advertising has submitted an application to Community Development Services Department (CDS) to construct a billboard near Highway 101 in the Alton area, on a parcel zoned Heavy Industrial (MH) with a Qualified (Q) Combining Zone.

During the hearing for this project on September 1, 2005, counsel for Stott Advertising took the position that denial of the project would constitute an unconstitutional infringement on Stott Outdoor Advertising's right to free speech.

A Stott representative testified that the Humboldt County Code is very restrictive with respect to the regulation of billboards and with the overlay of the State requirements, there is no need for further regulation. He pointed out that the last time Stott Outdoor Advertising sought to place a billboard in Humboldt County was in 1997.

This memo discusses constitutional issues relating to billboards, the manner in which the Humboldt County Code currently serves to regulate billboards, and the applicability of CEQA to the Planning Commission's determination.

I.

Constitutional Issues and the Regulation of Billboards

A. Regulation of Commercial Speech

Billboards are a form of speech - commercial speech. As such they are unlike other land uses governed by State and local law. The regulation of billboards is subject to a constitutional overlay that examines the manner and method of the regulation to ensure that it does not unduly infringe upon the First Amendment right to free speech. It is not enough to simply subject the placement of the billboard to the usual set of findings such as reviewing whether the billboard conforms to the general plan, or is detrimental to the public health, safety and welfare. Courts have not permitted billboards to be regulated by broad, subjective standards, because what is being regulated is speech itself.

To be valid, Courts have held that a County's regulation of speech must contain a clear statement of purpose directly related to advancing a substantial governmental interest and the regulation must be specifically and narrowly tailored to meet that goal. In other words, if you want to limit free speech you can do so as long as you have a legitimate governmental interest in doing so (the purpose) and as long as you narrowly tailor the limitations to meet that goal.

Exhibit "D"

For instance, regulations limiting a billboard's location and construction which are based upon clearly articulated standards of safety and aesthetics, are constitutional as a matter of law. The twin goals of safety and aesthetics are substantial government goals that may justify regulation of speech and a regulation that goes no further than necessary to meet such goals will be upheld. [*Ackerly Communications Inc. v. Krochalis* (9th Cir. 1997) 108 F3d.1095].

B. Case Law

The United States Supreme Court case of *Metromedia, Inc. v. City of San Diego* (1981) 453 U.S. 490 is the leading case that controls the regulation of billboards. In that case the Court upheld a restriction on offsite billboards that was designed to advance the City's interests in traffic safety and aesthetics. *Metromedia* confirmed that the test established by the Supreme Court in a case called *Central Hudson* for determining the validity of government restrictions on commercial speech applies to the regulation of billboards [*Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of New York* (1980) 447 U.S. 557]. The test in summary states: Commercial speech that concerns lawful activity and is not misleading can only be regulated if the restriction (1) seeks to implement a substantial governmental interest, (2) directly advances that interest, and (3) reaches no further than necessary to accomplish the given objective.

The cases make it clear that restrictions on commercial speech (billboards), must be carefully and specifically drawn in order to avoid infringing on the First Amendment. Creating such restrictions is not difficult. The courts have supported billboard regulations and outright bans on billboards when the regulations are intended to advance a city's interest in avoiding visual clutter, and protecting citizens from traffic hazards even in the absence of detailed proof that the billboard regulation will in fact advance the city's interests [See *Ackerley Communications of the Northwest Inc. v. City of Seattle* (9th Cir. 1997) 108 F.3d 1095].

The U.S. Supreme Court has upheld local ordinances that regulate billboards because they are "traffic hazards," "unattractive," "distracting to motorists and pedestrians," and because they, "advance interests of traffic safety and aesthetic concerns."

However, regulations that are not carefully designed to meet the *Central Hudson* test will not be upheld.

In *Desert Outdoor Advertising, Inc. v. City of Moreno Valley*, (9th Cir.1996)103 F. 3d 814, the Court rejected the City of Moreno ordinance governing on-site and off-site signs for several reasons, one of which was the fact that the ordinance failed to meet the first prong of three required elements necessary to restrict commercial speech, namely that it "seek to implement a substantial governmental interest."

The City of Moreno ordinance required as a condition of a use permit that City officials find that "[an off-site sign] will not have a harmful effect upon the health or welfare of the general public and will not be detrimental to the welfare of the general public and will not be detrimental to the aesthetic quality of the community or the surrounding land uses." The Court found that this criteria was ambiguous and subjective. "A law cannot condition the free exercise of First Amendment rights on the 'unbridled discretion' of government officials" [*Desert* 103 F. 3d 814 at 818]. "A law subjecting the exercise of First Amendment freedoms to the prior

restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional” [Id]. While the Court agreed that aesthetics and safety represent substantial governmental interests which may justify regulation of speech, the ordinance did not show that it was enacted to further these interests. The City of Moreno sign ordinance did not contain a statement of purpose concerning those interests, nor did the City provide any evidence that the ordinance furthered those interests.

In a footnote, the *Desert* Court noted that, “insofar as billboards are concerned, the burden on the City of meeting the first prong is not a great one.” Had the City enacted the ordinance with a clear statement of purpose indicating the City’s interest in eliminating the hazards posed by billboards to pedestrians and motorists and in preserving and improving its appearance, the City would have demonstrated that the ordinance sought to implement substantial governmental interests, and would thus have satisfied the first prong of the *Central Hudson* test [Id].

Had the City set forth standards by which the determination of aesthetics and harm would have been made, and had they clearly indicated that the protection of aesthetics and prevention of hazards was the purpose for the ordinance, it appears that the law would have been upheld.

II. Humboldt County Code

Humboldt County does not have a billboard ordinance. Billboards are regulated locally by a set of eight (8) codes that address the regulation of “signs” beginning with Section 314-87.2.2. Only one of these code sections directly pertains to billboards and it states as follows:

87.2.2.8 Non-appurtenant signs (i.e. billboards) may be permitted in any CH, MH, C or U Zone, where the General Plan designates the area for commercial or industrial development with a use permit.

Accordingly, in Humboldt County a billboard can only be placed in one of the designated zones and will be subject to a Use Permit which itself has certain findings which must be made, such as general plan and zone conformance, and the finding that the use is not detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.

These findings, however, as indicated in the case law discussion above, will be viewed carefully by the Courts since they impact a First Amendment right.

In the absence of a billboard ordinance, Humboldt County cannot point to a set of regulations whose express purpose is to implement a substantial governmental interest by establishing clearly articulated objective standards by which all billboard uses will be measured.

This office finds the lack of such an ordinance to be highly problematic given the clear mandates established by the Federal courts. It is recommended that the County establish a billboard ordinance to address these constitutional implications.

III. Applicability of CEQA

CEQA review for the Stott Project is governed by California law. While an adverse decision based in the findings required by CEQA could still be challenged by the applicant as an unlawful infringement on free speech, this Commission must make the CEQA findings independently, based upon substantial evidence received in the record of the proceedings.

Even if the Planning Commission determines that all of the findings required by County Code for a conditional use permit can be met in this case, CEQA must, by law, be considered.

As the court noted in *Eller Media Company v. Community Redevelopment Agency* (2003) 108 Cal.App.4th 25 at 39, “that a billboard complies with sign specifications in a local zoning ordinance does not mean necessarily that it comports with CEQA and consequently does not entitle the applicant to automatic approval of the permit application for that billboard.”

The Planning Commission will need to take into account the requirements of CEQA and make appropriate findings.

Cumulative Impact Assessment

The 1997 Stott permit included an assessment of possible billboard sites by zoning and potential buildout given the separation requirements of the Outdoor Advertising Act (See Page 19 of Attachment 2). It was determined that within the study area (1 – mile radius of the Alton Highway 36 intersection) that there are twelve (12) additional sites that can be developed with billboards. The site of the current Stott billboard project (APN 201-292-11) was identified as having the potential for six (6) separate advertising structures. Also, based on County Counsel’s research it is now clear that the inclusion of the “Q”-combining zone on several of the parcels does not negate an applicant’s ability to apply for a CUP. This corrects an erroneous assumption in the 1997 staff report.

Two of the potential sites are in the Coastal Zone and would require a CDP/SP (§313-87.3.2.4.2, HCC). The other ten (10) sites are inland and would require a CUP. The potential “buildout” within the study area is reflected in the table below:

APN	ZONING	EXISTING	NEW OR ADDITIONAL	PLANNED REMOVAL	BUILDOUT POTENTIAL
201-241-08 (burl shop)	C-1	1	0	-1	0
201-232-18	C-3	2	1	-2	1
201-232-01	C-3	0	1	0	1
201-221-04 (Hansen’s North)	CR (CZ)	1	1	-1	1
201-221-01 (Hansen’s South)	MG (CZ)	1	1	-1	1
201-292-11	MH-Q	0	6 (2 <p>)	0	6
201-292-01	CH-Q	2	1	0	3
201-241-15	MH-Q	0	1	0	1
TOTAL		7	12	-5	14

In 1997, the Planning Commission did not make a finding that the two additional billboards constituted a significant environmental effect. Under CEQA a finding of significance must be made where a project has possible environmental effects that are individually limited but cumulatively considerable. “Cumulatively considerable” means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

If the project is approved and constructed a total of nine (9) billboards will be in place for a short time; four (4) to remain following the acquisition and removal of the five (5) existing billboards as part of the Alton Interchange Project. The four (4) billboards would represent 29 percent of the potential buildout.

The applicant’s legal representative has indicated that the owner may be willing to convey development rights to more than the two (2) requested billboards on APN 201-292-11. This would result in four (4) fewer advertising structures and a reduction in the total “potential” buildout from 14 to 10. If the applicant agrees to this limitation, Optional Condition #4 could be applied (see below).

As noted above, the possible impacts are aesthetics and safety. Whether the addition of these signs constitutes a significant impact should be made by the Commission based on the evidence in the record. It should be noted that this application is the only current project in the study area and that the Department is not aware of any “probable future projects”.

Table 4-H. Zoning Consistency Matrix – Inland

LAND USE DESIGNATIONS	C-1	C-2	C-3	C-H	MB	ML	MH	AV	PFT	PF2	DF	FP	RS	R-1	R-2	R-3	R-4	RA	AE	AG	TPZ	FR	U
Residential Land Use Designations																							
Residential-Medium Density (RM)															X	X	X		X ³	X	X ³		
Residential-Low Density (RL)														X	X*	X*			X ³	X	X ³		
Residential Estates (RE)											X	X	X*	X*				X*	X ³	X	X ³	X ^{2*}	
Residential Agriculture (RA)											X	X	X*	X*				X*	X ³	X*	X ³	X ^{2*}	
Commercial Land Use Designations																							
Commercial General (CG)	X	X																			X ³		
Commercial Services (CS)	X	X	X	X	X ²																X ³	X ²	
Commercial Recreation (CR)	X	X	X	X																	X ³	X ²	
Mixed Use (MU)	X	X											X ³	X ³	X	X	X			X ³	X ³		
Village Center (VC)	X	X		X		X	X					X	X	X						X	X ³	X	
Rural Community Center (RCC)	X	X	X	X		X	X					X	X	X					X ³	X	X ³	X	
Industrial Land Use Designations																							
Industrial, General (IG)			X		X ²	X	X												X ³		X ³	X ²	
Industrial, Resource Related (IR)						X ²	X ²				X								X		X		
Business Park (MB)		X ²	X ²		X	X ²																	
Open Space and Public Land Use Designations																							
Conservation Floodway (CF)									X	X	X	X							X				X
Natural Resources (NR)										X	X								X				
Open Space (OS)										X	X								X				
Public Facilities (PF)	X	X		X		X	X	X	X	X	X		X	X	X	X	X		X	X	X		X
Public Recreation (PR)									X	X	X								X	X*	X		
Public Lands (P)								X		X	X								X	X*	X		X
Tribal Lands (TL)								X		X	X								X	X*	X		X
Tribal Trust Lands (TTL)								X		X	X								X	X	X		X
Railroad						X	X	X	X	X		X							X	X	X		X
Resource Production Land Use Designations																							
Timberlands (T)										X	X	X							X	X*	X		
Ag. Grazing (AG)										X	X	X							X	X*	X		
Ag. Exclusive (AE)										X	X	X							X	X*	X		

* Zones are consistent with identified land use designations only when combining zone density/minimum lot size designators are consistent with General Plan policies and standards.

² Requires Q – Qualified combining zone to ensure consistency.

³ Resource zones may be used as holding zones until rezoning to planned uses

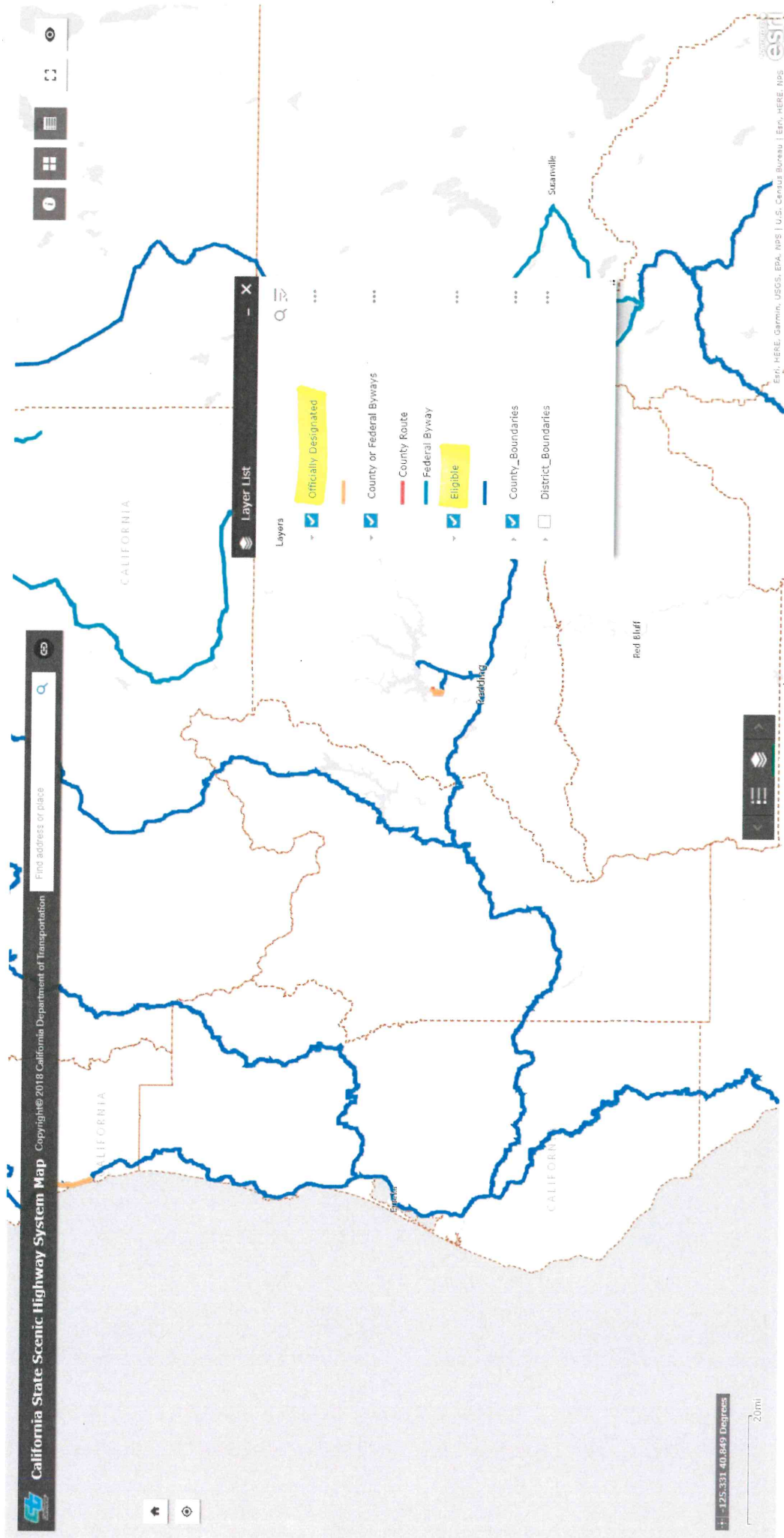
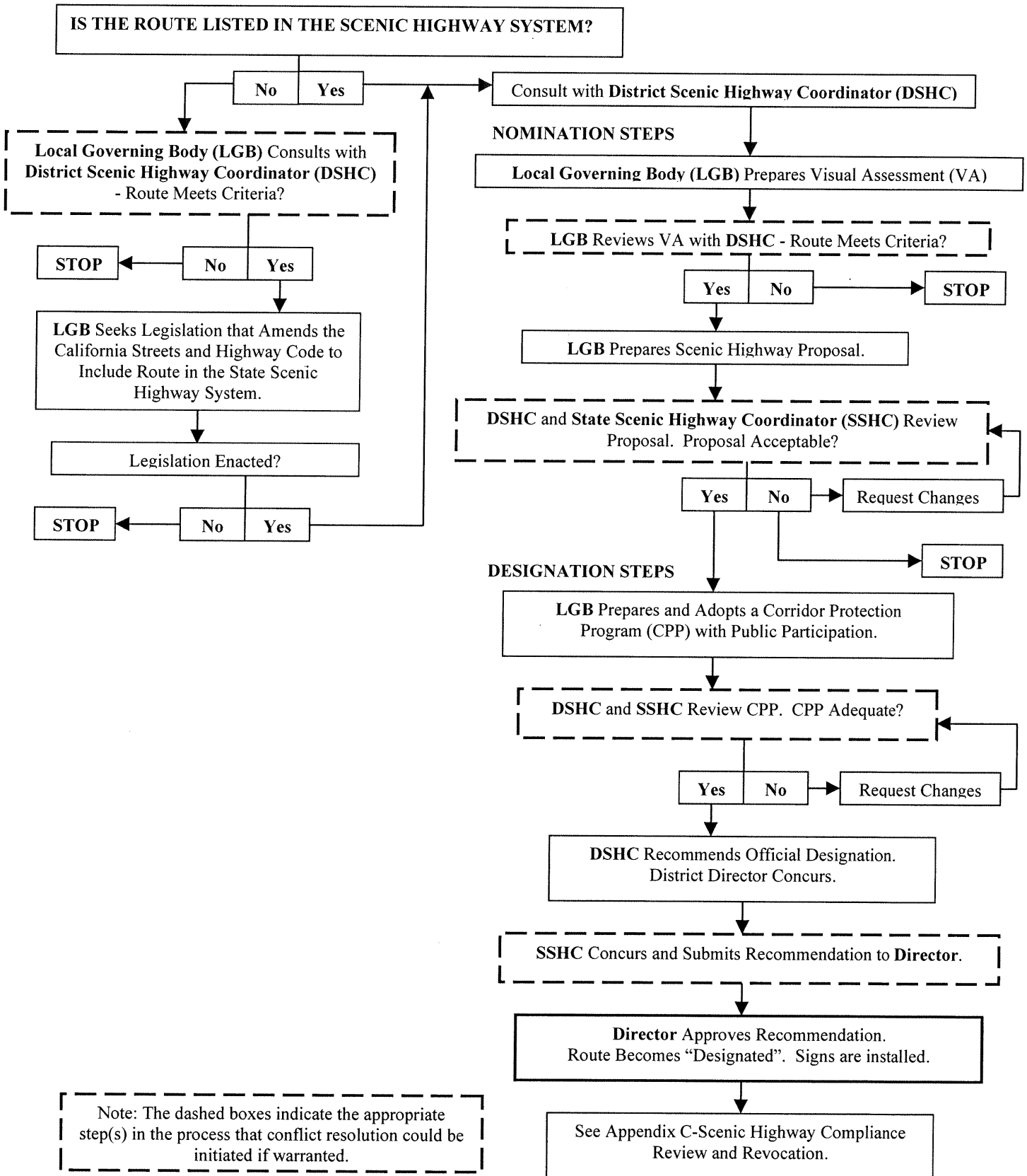


Exhibit "G"

Appendix B
Scenic Highway Designation



2017 Humboldt County General Plan - Implementation Action Plan					
Text of Measure	Method	Responsibility	Timing	Cost Range	Policies Implemented
Chapter 10 Conservation and Open Space Elements – Cultural Resources					
CU-IM1. Cultural Resources Ordinance and Advisory Committee	Zoning Regulations	Long Range Planning	2 to 5 Years	< \$10,000	CU-P1. Identification and Protection, CU-P2. Native American Tribal Consultation, CU-P3. Consultation with Other Historic Preservation Agencies and Organizations, CU-P4. Avoid Loss or Degradation, CU-P5. Findings Necessary for Loss or Destruction, CU-P6. Mitigation, CU-S4. Conditioning, Designing, or Mitigating Projects to Avoid Loss or Reduce Impacts to Archaeological Resources, CU-S6. Assessment and Treatment of Impacts to Significant Historic Structures, Buildings and Districts, CU-S7. Cultural Resource Advisory Committee Recommendations and Mitigation
CU-IM3. Cultural Resources Designation	Plan or Study	Long Range Planning	5 Years	~ \$1,000s	UL-P9. Historic Resources
CU-IM4. Historic Building Code	Project Review	Current Planning	Ongoing	Normal Operations	CU-P1. Identification and Protection
CU-IM5. Historic Building Identification	Plan or Study	Long Range Planning	2 to 5 Years	< \$10,000	CU-P1. Identification and Protection
CU-IM6. Map Resource Areas	Zoning or Plan Map Revision	Long Range Planning	5 Years	< \$10,000	CU-P1. Identification and Protection
Chapter 10 Conservation and Open Space Elements – Scenic Resources					
SR-IM1. Mapping of Scenic Areas and Scenic Highways	Plan or Study	Long Range Planning	5 Years	< \$50,000	CU-P1. Identification and Protection, Development in Mapped Scenic Areas, SR-S1. Development in Mapped Scenic Areas,
SR-IM2. Sign Ordinance Revision	Zoning Regulations	Long Range Planning	5 Years	< \$10,000	SR-P4. Term of Off-Premise Billboards and Prohibition, SR-P5. Billboards in Sensitive Habitat Areas, SR-P9. Vandalism of billboards, SR-S3. New Off-Premise Billboards, SR-S5. Permits for Billboards

- ❖ Caltrans places scenic highway signs with the poppy logo along officially designated scenic routes (the California poppy serves as the logo for the California Scenic Highway Program).
- ❖ A process for revoking official State or County Scenic Highway designations that no longer comply with the program requirements.

SECTION II: SCENIC HIGHWAY CRITERIA

The goal of the California Scenic Highway Program is to preserve and enhance the natural beauty of California. California contains several distinct landscape regions and the merits of a particular landscape are considered within the context of its own region. Regardless of landscape region, the highway should traverse an area of outstanding scenic quality, containing striking views, flora, geology, or other unique natural attributes. Therefore, Caltrans evaluates the merits of a nominated highway on how much of the natural landscape a traveler sees and the extent to which visual intrusions impact the "scenic corridor." Visual intrusions may be natural or constructed elements, viewed from the highway, that adversely affect the scenic quality of a corridor. Adverse affects are characterized as minor, moderate, or major. Visual intrusions are evaluated in the following manner:

- ❖ The more pristine the natural landscape is and less affected by intrusions, the more likely the nominated highway will qualify as scenic.
- ❖ Where intrusions have occurred, the less impact they have on an area's natural beauty, the more likely the nominated highway will qualify as scenic.
- ❖ The extent to which intrusions dominate views from the highway will determine the significance of their impact on the scenic corridor.

State highways nominated for scenic designation must first be on the statutory list of highways eligible for scenic designation in the State Scenic Highway System. These highways are identified in Section 263 of the Streets and Highways Code (see Appendix A). A process for adding eligible highways to the statutory list is described in Section III: Obtaining Eligibility. *County* highways nominated for scenic designation that are believed to have outstanding scenic values are considered eligible and do not require any legislative action. Both State and county highway nominations follow the same process and have the same requirements.

Scenic highway nominations are evaluated using the following criteria:

- ❖ The State or county highway consists of a scenic corridor that is comprised of a memorable landscape that showcases the natural scenic beauty or agriculture of California (see definition for 'vividness', under Section III: Step 1, Visual Assessment).
- ❖ Existing visual intrusions do not significantly impact the scenic corridor (see definitions for 'intactness' and 'unity' below, under Section III. Step 1: Visual Assessment).
- ❖ Demonstration of strong local support for the proposed scenic highway designation.
- ❖ The length of the proposed scenic highway is not less than a mile and is not segmented.