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July 15, 2020

Board of Supervisors – County of Humboldt
825 5th Street
Eureka, CA 95501

RE: Appeal of Allpoints Outdoor, Inc. Special Permit, PLN-2020-16389

To the Board of Supervisors,

On behalf of the applicant, Allpoints Outdoor, Inc (“Allpoints”). I submit the following comments regarding the appeal now pending before the Board of Supervisors of the Planning Commission’s decision on Allpoints’ Special Permit for Reconstruction of a Legal Non-Conforming Billboard Structure (PLN 2019-10629).

Allpoints is a locally owned small business that supports a family. It is engaged in the business of outdoor advertising for other small businesses and non-profits in the community. It has eight (8) employees to maintain, manage, and administrate the outdoor advertising business. Its list of clients’ ranges in size and industry, from the Sequoia Park Zoo to the Humboldt County Fair. It pays its property taxes on land occupied by the billboards, which property taxes would be reduced if not for the presence of the billboards.

Under Humboldt County Code, the required findings for a Special Permit can and should be made to authorize rebuilding the non-conforming structure. As a reconstruction project, it falls squarely within a categorical exemption to the California Environmental Quality Act, and the manner in which it will be rebuilt present no significant adverse effects on environmentally sensitive habitat areas.

The impact of denying this Special Permit will be felt within the business community. There is a reason that small businesses advertise on billboards: it increases sales and brings in revenue. At a time when many small businesses are hurting due to the ongoing corona-virus pandemic, denying this special permit will reduce the ability of some businesses to get their products and services in front of potential customers. It will lead to less business activity, not more.

The denial of this Special Permit may also have a cascading effect on other outdoor displays and set a dangerous precedent. Denying billboard permit holders the ability to rebuild outdoor displays after they are damaged or destroyed may encourage those seeking to eliminate billboards altogether to take matters into their own hands knowing when the owner applies for a permit to rebuild, it will be denied. This would amount to land use control through the teeth of a chainsaw.

Therefore, for the following reasons we urge you, the Humboldt County Board of Supervisors to reverse the Planning Commission's decision on the reconstruction of this billboard and make the appropriate findings in this case.

I. The Required Findings Should be Made

A. County Code Allows for the Reconstruction of Non-Conforming Structures

Pursuant to the Humboldt County Code, an existing legal non-conforming structure may be reconstructed in the coastal zone if it is damaged by any casualty. Humboldt County Code (hereinafter "HCC") §313-132.5.2. A legal non-conforming use or structure is any use or structure which was in existence on the effective date of the zoning regulations, or any amendment thereto which makes such use nonconforming. HCC §313-131.2-3. Such uses may be continued indefinitely, except as otherwise provide in the regulations. *Id.* To reconstruct a legal non-conforming structure, the applicant must make an application for reconstruction within two (2) years of after the destruction or damage and the Director must make all the required findings under Chapter 2 of the Code. HCC §313-132.5.2. Here, it is undisputed that Allpoints made application for a special permit to reconstruct the damaged billboard within two years of its damage.

B. The Exception to the General Finding Requirements

The question then is whether the required findings under Chapter 2 of the HCC can be made. In this case, the required findings can be made under the exceptions found in Chapter 2.

Part of the required findings requires that the proposed development is consistent with the purpose of the existing zone in which the site is located. See HCC §312-17.1.2. Admittedly, the AE Zone where the legal non-conforming billboard exists would not provide for a proposed development site for a new billboard. See HCC §313-7.1. However, since this is a legal non-conforming structure proposing to be rebuilt, the HCC provides for an exception to the making of the required findings. See HCC §312-41.1.

Under HCC §312-41.1, the Director may grant exceptions to making the required findings if the following findings are made: (1) There are special circumstances or conditions associated with the proposed development, use, or project site that support granting the exception; (2) the granting of the exception will not be detrimental to the public welfare; (3) the applicant has proposed alternative standards which conform with the established standards as closely as feasible; and (4)

the granting of the exception will not have a significant adverse effect on environmentally sensitive habitats. HCC §312-41.1.1-4.

The exception to the required finding requirement make sense in the context of non-conforming structures and their reconstruction. If there was no exception to the general findings, then any reconstruction permit for a non-conforming structure resulting from a zoning change could never be approved. This would create a conflict in the zoning regulations, rendering the reconstruction provisions for non-conforming structures ineffectual. This result was surely not intended.

C. The Exception Findings Can Be Made in This Case

The conditions associated with reconstructing the nonconforming billboard support granting an exception. Photographic documentation show that the site has been used as a site for a billboard for well over sixty years. There is no proposed expansion of the billboard surface itself or its structural supports, which has always been 12' x 40' with six structural posts, despite previously submitted comments to the contrary. The proposed reconstruction is a "one-to-one" replacement of the support structures and billboard surface. The applicant intends to use the existing posts to the extent feasible for purposes of rebuilding the supports.

A finding that the reconstruction will not detriment the public welfare is warranted because the project as conditioned will adhere to the ordinances regulating off-site/non-appurtenant signs in the coastal zone. HCC §313-87.3.1, which regulates signs in Humboldt County, states that the purpose of the regulation is to ensure that such signage will not impair the public health, safety, and welfare by being excessively intrusive. The applicant in this case will adhere to those regulations as conditioned to ensure the public welfare, rather than cause detriment. Likewise, there is no evidence that the proposed reconstruction poses a detriment to public welfare or infrastructure in the event of a flood. Historical photos included in the staff report show the billboard proposed to be reconstructed still standing after the 1955 flood in Humboldt County. The billboard survived the 1964 flood too. The project has been further conditioned on adherence to the Flood Damage Prevention Requirements in HCC §§335-1 – 335-8. The applicant will adhere to these regulations, which are adopted to promote the public health, safety and welfare, upon project implementation. The rebuilt structure will not impede uses described in the zoning regulations for AE zone and is compatible with grazing and agricultural uses. The applicant will replace the structure like for like, using the same building materials and dimensions as the original structure.

The proposed reconstruction of the billboard, as conditioned, adheres to the established standards as closely as feasible for signage (HCC §313-87.3.1). The sign will not employ motion, sound, mechanical devices, blinkers, flashing lights, animation or unusual lighting; it will be setback so as not to obstruct free and clear vision of motor vehicle operators; it will not be confused with any authorized traffic sign which would otherwise interfere with, mislead or confuse motor vehicle operators; it will not employ red, green or amber lights or illumination such that it

could be confused with any authorized traffic sign; and it will not be erected in such a manner that will impede the free and clear vision of pedestrians.

The proposed reconstruction will not have a significant adverse effect on environmentally sensitive habitat areas (“ESHA”) because the evidence shows that the method of reconstruction will limit ground disturbance and not exacerbate the baseline conditions in the ESHA. The applicant is proposing to reconstruct the existing structure in approximately the same location in the upland portion of the property, reuse as many of the existing footings in the reconstruction, not use any heavy equipment in the reconstruction, minimize disturbance by using post and pier construction, and configure the billboard in the same configuration as it has existed for the previous 60 plus years, thereby posing no more adverse effect than the existing baseline conditions. The evidence that the condition of wetland plants surrounding the existing structure is indistinguishable from plants in areas further away indicate that the structure can coexist without degrading the ESHA.

D. The Project Should Be Found Categorically Exempt From CEQA

The Board should find that this project is categorically exempt from the California Environmental Quality Act since it involves reconstruction of an existing facility. Section 15302 exempts projects consisting of reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure and will have substantially the same purpose and capacity. Projects involving reconstruction are exempt from CEQA because they have already “been determined not to have a significant effect on the environment.” See Public Resources Code 21084. The staff report analysis shows that the reconstruction exemption applies, and that none of the exceptions to the exemptions apply in this circumstance. (Page 36). To find otherwise, there would have to be substantial evidence that the project *will* have a significant effect on the environment to justify removing the project from the exempt class. *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal. 4th 1086, 1105. When analyzed against the baseline condition, i.e. the existing structure, there is no evidence that the proposed reconstruction will have a significant effect on the environment. The structure has stood for over 60 years, there has been no finding that the original baseline has degraded the wetland, the most minimally invasive techniques will be used in the reconstruction, and the reconstruction is using like kind materials on a one-to-one basis.

E. The Outdoor Advertising Act Allows for The Reconstruction of Outdoor Displays

Although this issue is not before the Board, and is not part of the required findings, the reconstruction of the proposed billboard is authorized under the Outdoor Advertising Act. Title 4 California Code of Regulations §2271 (c) provides that a permittee has 60 days from the date of receiving notice from the Department of Transportation that a Display is damaged to repair, replace, *rebuild*, or *re-erect* in kind the damaged nonconforming Display and place advertising copy. (Emphasis Added). For good cause shown, that time period may be extended for a period not more than a total of six months. 4 CCR §2271 (c). Here, the applicant received notice from the

Department of Transportation on June 9, 2020 that the sign had been damaged. Assuming the applicant's special permit is approved, the rebuilding or re-erecting will be accomplished within the sixty-day period in compliance with the regulations.

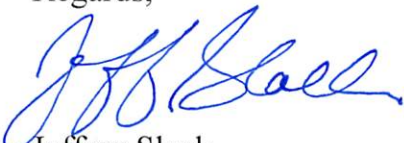
F. Other Comments

Much ink has been spilled in prior comments regarding the Public Trust Doctrine and its tenuous relationship to this proposed reconstruction. However, this project, as proposed, falls outside the scope of the public trust doctrine because there is no way that the proposed billboard would interfere with navigable waterways covered under the public trust.

As stated in the staff report, the billboard is located outside of the Elk River Slough and does not infringe on any navigable waterway. In California, the scope of the public trust includes tidelands, navigable lakes and streams. See *National Audubon Soc. v. Superior Court* (1983) 33 Cal. 3d 419, 435. The doctrine is inapplicable to non-navigable waters. See *Golden Feather Community Assn. v. Thermalito Irr. Dist.* (1989) 209 Cal. App. 3d 1276, 1283-1287. The trust has been primarily applied to issues surrounding water diversion and the impact such diversions have on navigable waterways. See generally, *National Audubon Soc.*, supra, 33 Cal. 3d at 425. Here, there is no proposed water diversion associated with this project and the billboard at issue has never been shown or even alleged to interfere with a navigable waterway where it stood. Previous commenters have put forth no explanation of how the reconstruction of this billboard would relate to areas subject to the public trust, let alone how the project interferes with the public trust.

For the foregoing reasons, we urge the board to reverse the decision of the Planning Commission denying the applicant's Special Permit.

Regards,



Jeffrey Slack