

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified copy of portion of proceedings, Meeting of September 29, 2020

RESOLUTION NO. 20-90

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT CERTIFYING COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND ADOPTING A MITIGATED NEGATIVE DECLARATION AND FINDINGS OF FACT, APPROVING THE APPEAL FOR RECORD NO. PLN-2020-16389 AND APPROVING ALLPOINTS OUTDOOR, INC. SPECIAL PERMIT, RECORD NO. PLN-2019-16029.

WHEREAS, an application for a Special Permit was submitted to the Humboldt County Planning and Building Department for reconstruction of a legal nonconforming billboard structure damaged during winter storms in late November 2019, located on APN's 305-031-007, 305-031-008, and 305-037-009; and

WHEREAS, the application and supporting materials were referred to reviewing agencies including Coastal Commission, Humboldt Bay Harbor District, Caltrans, and others for site inspections, comments and recommendations; and

WHEREAS, the Planning and Building Department considered all the comments made by other departments and agencies and evaluated the application in light of the Humboldt Bay Area Plan and Zoning Ordinance and formulated a recommendation supporting approval of the application; and

WHEREAS, on February 20, 2020 the Special Permit (PLN-2020-16029) was considered by the Planning Commission during which time substantial public comments were received both in support of and opposed to the proposed project, and the Commission chose to continue the matter to a subsequent meeting to allow staff sufficient time to follow up on questions poised during the meeting; and

WHEREAS, the project was set to be heard again by the Planning Commission on March 19, 2020 but was unable to be heard when the meeting was cancelled in response to direction from State and Local officials responding to public health risks related to the COVID-19 pandemic; and

WHEREAS, on March 17, 2020 the Governor signed Executive Order N-29-20 waiving certain provisions of the Brown Act, and authorizing local legislative bodies to hold public meetings via teleconference or otherwise electronically; and

WHEREAS, on May 7, 2020 the Planning Commission resumed the public hearing at a noticed meeting held via Zoom, where they received additional public comment, and took the following actions:

- a) Determined they were unable to make all of the required findings for approval of Special Permit found in Section 312-17 of the Humboldt County Code; and

- b) Denied the Special Permit by a vote of 4-2; and
- c) Found the denial action categorically exempt from CEQA pursuant to section 15270 of the CEQA Guidelines; and

~~WHEREAS, on May 20, 2020, the applicant, Allpoints Outdoor, Inc. ("Appellant") filed an appeal in accordance with the Appeal Procedures specified in Humboldt County Code Section 312-13 et seq.; and~~

WHEREAS, Humboldt County Code section 312-13.5 requires a hearing within 30 days, but this may be waived by an applicant; and

WHEREAS, the Board of Supervisors held a duly-noticed public hearing, *de-novo*, on July 28, 2020, and reviewed, considered, and discussed the application and appeal for the Special Permit; and reviewed and considered all public testimony and evidence presented at the hearing; and

WHEREAS, at the July 28th public hearing, by a vote of 3-2 the Board of Supervisors elected to continue the matter to the meeting of August 18, 2020, in order to allow staff to work with the applicant to identify the potential environmental effects of digging the foundations, to address the issues associated with public trust resources, to investigate concerns that the Tribes may have with the foundations, and to continue discussions with Caltrans and the Public Lands Commission to see what their jurisdiction and concerns are and that the ODA permit be confirmed; and

WHEREAS, on August 18, 2020, the Board of Supervisors held a duly-noticed continued public hearing, and at the request of staff, voted 5-0 in favor of continuing the public hearing for the project to the meeting of September 15, 2020, to provide additional time for staff to complete the remaining work related to the original continuance request and provide for public comment on the Mitigated Negative Declaration prepared for the project; and

WHEREAS, the Board of Supervisors held a duly-noticed continued public hearing, *de-novo*, on September 15, 2020, and reviewed, considered, and discussed the application and appeal for the Special Permit; and reviewed and considered all public testimony and evidence presented at the hearing; and

WHEREAS, at their meeting on September 15, 2020, the Board voted 3-2 to adopt a motion of intent to approve the Appeal and grant the Special Permit subject to a permit term limit of five (5) years, following which the billboard must be removed from the site; and

WHEREAS, the Board continued the meeting of September 15, 2020, to September 29, 2020, to allow time for the Resolution to be revised to articulate the basis for the Board's pending decision on the permit request; and

WHEREAS, the Board of Supervisors, on September 29, 2020, considered and adopted this resolution; and

~~**WHEREAS**, Humboldt County Code section 312-17 specifies the required findings which must be made during approval or conditional approval of all permits and variances, including Special Permits; and~~

WHEREAS, in addition to the required findings specified in section 312-17 of the Humboldt County Code, projects must comply with Supplemental Findings found in Sections 312-18 through 312-49, where applicable; and

WHEREAS, section 312-41 of the Humboldt County Code allows for exceptions to the required findings; and

Now, THEREFORE BE IT RESOLVED, that the Board of Supervisors makes all the following findings:

1. **FINDING:** The Special Permit is a discretionary project and subject to the California Environmental Quality Act (“CEQA”). Substantial evidence supports the conclusion that there will be no significant adverse effects on the environment. A Mitigated Negative Declaration has been prepared, circulated, and processed in compliance with the requirements of CEQA.

- EVIDENCE**
- a) The project has the potential to result in significant environmental impacts unless provisions are made to reduce the impacts. Mitigation Measures have been identified which mitigate the impacts to a less than significant level. A Mitigated Negative Declaration (MND) was prepared for the project.
 - b) Pursuant to Section 21091(b) of the Public Resources Code, the mitigated negative declaration was released for a 30-day public review period (State Clearinghouse Number 2020080173) beginning on August 12, 2020 and ending September 11, 2020; and
 - c) Pursuant to Section 15072(b)(1) of the CEQA Guidelines, on August 12, 2020 a public notice appeared in the Times Standard, a newspaper of general circulation for the area affected by the proposed project. The published notice included a description of the project and notification that the

Humboldt County Board of Supervisors were considering adopting a mitigated negative declaration prepared for the project. The published notice included a deadline for comment ending on September 11, 2020.

- d) The MND includes mitigation measures for potential impacts to Aesthetic, Biological and Water Quality in the project vicinity. Mitigation measures include prohibitions on sign lighting, post hole digging during certain tide conditions, and use of pressure-treated wood where new materials are required for repair.
- e) The billboard is a wooden structure primarily comprised of 4x6 and 2x6 framing. Periodic replacement of various structural elements (posts, bracing, plywood) has undoubtedly occurred multiple times during the 65+ years it has been located at this site, especially given that it is located outdoors in a marine environment (¼-mile from Humboldt Bay).
- f) On December 9, 2019, a Building Permit application (BLD-2019-50667) was submitted for repair of the sign. Plans prepared by a licensed civil engineer have been reviewed and approved by the Building Division. Plans submitted show that repair of the sign will require replacement of six (6) vertical support posts.

Three (3) of the posts to be replaced are main vertical supports (4x6) and the other three (3) posts (2x6) tie to horizontal bracing at the rear of the billboard. Holes for the six (6) new posts will be 18 inches wide and dug within the same location as the holes for the damaged supports they are replacing. Holes for the three (3) new main vertical supports will be 5 feet deep and holes for the three (3) new rear brace supports will be 3 feet deep.

Concrete will be poured into each hole during installation of the six (6) new posts. The applicant has personally verified that all the existing vertical support posts for the billboard currently feature concrete footings of similar size and depth. A licensed C-45 sign contractor with 30 years of experience, the applicant manages a number of signs throughout the area and confirms that footings of this sort are customary for signs of this vintage, including those found in wet environments.

- g) Reconstruction will be performed using a crew of 3-5 persons, and it is expected to take 2-4 days to return the sign to an upright position. 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 to enable reconstruction.
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- h) Potential for cumulative impacts is unlikely as historical aerial photos reveal that there has been a nearly 80% reduction in similar highway signage in this area when compared to historic levels. This application allows retention of an existing sign no new impacts will result from reconstruction of the sign. A review of a historical aerial photo from 1957 reveals signage at nine distinct locations (including the project location) along a 0.6 mile stretch of highway immediately north of Spruce Point. At nearly all of these locations were double-sided signs. Today only three signs remain. All signs are located east of Highway 101 at two locations and are single-sided, facing northbound traffic.
- i) Impacts to nearby wetlands are not expected since ground disturbance is limited to the existing footprint of the sign which is previously disturbed. Evidence suggests that signage of this sort can co-exist within wetland environments. Only six (6) new posts will be needed and each will be placed within the same location as one they are replacing.
- j) The project lies adjacent to a state highway (101) which is not currently designated as a Scenic Highway. The project will not result in damage to scenic resources, including trees, historic buildings, rock outcroppings, or similar resources.
- k) Tribal Historic Preservation Officers from the Wiyot Tribe and Bear River Band of the Rohnerville Rancheria declined the opportunity to request consultation pursuant to AB 52 and maintain that the project site has a low potential for hosting tribal cultural resources. Standard conditions concerning inadvertent discovery have been included with the Conditions of Approval for the project.

2. **FINDING:**

The Mitigated Negative Declaration evaluates the environmental impacts associated with reconstruction of the sign understanding that the sign has existed for 60 years. Consistent with CEQA Guidelines section 15125((a)1), this allows a more accurate assessment of the environmental impacts because the environmental impacts are associated with reconstruction of an existing sign and not with constructing a new sign.

EVIDENCE

- a) Section 15125(a)(1) of the CEQA Guidelines states: *“Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project’s impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence.”*
- b) The Humboldt County Code in section 132.5.2 states: *“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.”* The project can only be considered as the reconstruction of an existing non-conforming structure. The sign must be considered existing.
- c) The property has a history of prior disturbance and alteration. 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. Aerial photographs obtained from HSU Special Collections demonstrate that billboard has been at this location since at least 1955. A review of historical mapping between 1898 and 1949 reveals the presence of an earlier road right-of-way alignment traveling east-west near the northern limits of the property to a prior bridge routing traffic through Elk River corners. Vegetation patterns and the presence of bridge supports along both banks of the river provide physical evidence of this prior condition.
- d) Currently the billboard is blown over with some posts standing and a pile of debris on the ground. The MND

includes a description and photographs of the billboard as currently blown over and as it historically stood. Inclusion of all of this information is necessary to provide the most accurate picture practicably possible of the project's impacts. ~~This history also demonstrates that conditions at the site do change and fluctuate over time.~~

3. **FINDING:** The proposed development is not subject to the County General Plan, Open Space Plan, and the Open Space Action Program.

- EVIDENCE**
- a) The County General Plan does not apply to this area within the Coastal Zone as the Coastal Version of the General Plan has not been adopted by the Board of Supervisors or certified by the California Coastal Commission.
 - b) The General Plan includes 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. These policies are not applicable to this application.

4. **FINDING:** Reconstruction of the existing sign is consistent with the provisions of the Humboldt Bay Area Plan.

- EVIDENCE**
- a) The placement of new off-site signs is highly restricted under the scenic resource's provisions of the HBAP. However, this is not a new sign and is not subject to the restrictions imposed on a new sign.
 - b) The existing billboard site is outside of the coastal view area mapped within the HBAP.
 - c) The HBAP calls for 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 billboards between Eureka and Arcata and to identify suitable areas for clustered

signing, and new off-site signs. The scenic route study has not yet been completed, thus there is not policy direction on how to address an existing legal non-conforming sign which needs to be repaired. There is no policy guidance requiring removal of this sign as opposed to allowing it to be reconstructed.

5. **FINDING:** The existing sign qualifies as a Legal Non-conforming structure and use of the land pursuant to the provisions section 313-149 of the Zoning Ordinance. The Zoning Ordinance allows reconstruction of the sign subject to approval of a Special Permit.

EVIDENCE a) Historical aerial photographs demonstrate that the damaged billboard has been at this location since at least 1955, thereby predating the adoption of the Zoning Regulations, Building Codes, as well as establishment of the Coastal Zone and adoption of the Humboldt Bay Area Plan (HBAP), the local coastal plan covering the Spruce Point area. The billboard structure therefore qualifies for consideration as a lawful “nonconforming” structure and use.

Evidence exists demonstrating that the billboard is a lawful non-conforming structure, as a historical aerial photo from 1957 reveals signage at nine distinct locations along a 0.6 mile stretch of highway immediately north of Spruce Point, including the damaged billboard.

- b) The evidence supports the conclusion that the applicants have a valid ODA permit issued by CalTrans. Evidence exists demonstrating that the billboard is a lawful non-conforming structure, as a historical aerial photo from 1957 reveals signage at nine distinct locations along a 0.6 mile stretch of highway immediately north of Spruce Point, including the damaged billboard. In a telephone call with staff, Mr. Anzo explained CalTrans believes the permit assigned to the sign (#15322) to be legitimate.
- c) George Anzo, CalTrans Outdoor Advertising (ODA) Permits Manager confirmed that permits exist for the damaged billboard. On June 9, 2020, Mr. Anzo sent a letter to Outfront Media informing them that during a field survey on April 7, 2020 ODA observed that “the state permitted display appears to be destroyed”.

- d) Mr. Anzo verified that, in the event the permit was revoked for some reason following further investigation, the decision (revocation) would be subject to appeal and review by an administrative law judge. During the appeal, the permit holder would have a strong argument that the sign should be considered “lawfully erected” pursuant to §5216.1 of the Outdoor Advertising Act, which includes a “rebuttable presumption” provision whereby “an advertising display is lawfully erected if it has been in existence for a period of five years or longer without the owner having received written notice during that period from a governmental entity stating that the display was not lawfully erected.” Given the evidence already gathered confirming the age of the structure and current permit status with ODA, it is likely that the sign would ultimately be determined to be lawfully erected and eligible for a permit.
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- e) Nonconforming uses and structures are a unique category of development granted special considerations under sections 313-131 and 313-132 of the code. Section 132.5.2 states: *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.*
- f) Section 312-1.3 states: *In addition to the required findings for all permits and variances, the Hearing Officer may approve or conditionally approve an application for a Special Permit, Use Permit, Coastal Development Permit, or Planned Unit Development Permit only if the supplemental findings, as applicable, are made. (See Sections 312-18 through 312-49).*
- g) Within the Supplemental Findings of Chapter 2 is section 312-41 which states: *The Hearing Officer may grant exceptions, as authorized by this Chapter, if all of the following findings are made (these finding for an exception are made under Findings 9-12 below).*
- h) By definition Nonconforming Uses and Structures fail to conform with one or more specific regulations applicable to the zone in which they are located.

- i) When considering permits requesting repair or reconstruction of Nonconforming Structures or resumption of Nonconforming Uses, it is naturally to be expected that one or more of the standard findings found in section 312-17, and/or Supplemental Findings found in Sections 312-18 through 312-49 cannot be made.
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- j) 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 off-site/non-appurtenant signage (i.e. “billboards”), including:
1. Billboards are not explicitly authorized within any of the Zoning Districts applicable to the property in which it is located.
 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.
- k) In the case of the Special Permit being requested, 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 explicitly 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 riparian areas and 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 30240 of the Coastal Act and 3.30 of the HBAP. Billboards are not a form of development

which may occur within ESHA.

- 1) Humboldt County Code section 312-41 lists Supplemental Coastal Findings for Granting an Exception, and it is appropriate that these findings be used in consideration of the Special Permit being requested, as nonconforming uses and structures are afforded protection and certain exceptions from strict adherence to the Coastal Zoning Regulations. Further this avoids an absurd result, promotes internal consistency within the Humboldt County Code, and gives meaning to the code sections governing nonconforming uses and structures.
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6. **FINDING:**
- a) The Board of Supervisors is not obligated to allow reconstruction of the Billboard and has complete discretion to approve, deny or conditionally approve a Special Permit for reconstruction of the billboard.

EVIDENCE

- b) Any possible vested right was lost following destruction of the sign in November 2019. The billboard was standing in a location where it cannot currently be permitted as a new structure and given the fact that the billboard has fallen and needs to be reconstructed means it has lost its vested status.

- c) The billboard is a non-conforming structure and use. An underlying goal of local regulation of land use is to promote orderly development in conformance with established standards. Phasing out non-conforming uses and development is consistent with this underlying goal.

- d) Section 132.5.2 of the Humboldt County Code requires approval of a Special Permit to reconstruct a nonconforming structure. This is a discretionary permit that allows for public input and allows approval or denial of the application and allows for conditions to be imposed.

- e) In order to approve a Special Permit, the Board of Supervisors must determine that such approval will not be detrimental to the Public Health, Safety and Welfare and may impose limitations and conditions to protect the public health, safety and welfare.

7. **FINDING:** The proposed development is consistent with the purposes of the existing zone in which the site is located.

- EVIDENCE** a) 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 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 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 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 map does not show area between the PF and NR but this parcel exists in this area. 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.
- b) The AE zone does not explicitly authorize off-site/non-appurtenant advertising or signs (i.e. billboards).
- c) The sign has existed at this location and has not interfered with the primary use of the property which is open space but could also be used for grazing. The continued existence of the sign will not have an adverse effect on the intended primary use of the property.

8. **FINDING:** 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 properties or improvements in the vicinity.

- EVIDENCE** a) Both locally and nationally, billboards continue to be a source of vigorous debate. During review and consideration of the Special Permit request, the Planning Commission and Board

of Supervisors received numerous written and public comments both in support of and against the project.

- b) The proposed reconstruction has been designed by a civil engineer and the project includes conditions of approval requiring that the repaired billboard must meet all currently applicable structural, electrical, plumbing and mechanical codes. The billboard site is located over a quarter of a mile from the nearest private improvements and historical aerial photographs demonstrate that the site has hosted similar structures for over 60 years. The structure does not directly conflict with or impair grazing or other agricultural uses authorized to occur in the Agriculture Exclusive zone.

9. **FINDING:** The proposed development does not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law.

EVIDENCE a) This project will not affect any housing units and will not reduce the number of housing units identified in the Housing Element.

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

EVIDENCE a) The repair and reconstruction of a lawful nonconforming structure, without expansion of the structure is a special circumstance. 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.

- b) Section §313-132.5.1 of the Humboldt County Zoning regulations includes provisions for “one-for-one” structural alterations 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 occur as described in Finding 1, Evidence (g), above.

11. **FINDING:**

The granting of the Special Permit for a period of 5 years at which time the sign must be removed will not be detrimental to the public welfare but will further the interests of the public to enhance the entrance to the City of Eureka, protect and restore wetlands, protect scenic viewsheds while balancing the economic interests of the community and individual property owner.

- EVIDENCE**
- a) 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.
 - b) This is not a new sign, but a request for reconstruction of an existing nonconforming sign that was destroyed in a storm event, which is given special consideration in the Zoning Ordinance.
 - c) There are those who find billboards unsightly and oppose them, while others find billboards helpful in learning about products and services.

d) The Board of Supervisors considered the County regulations not allowing new signs on property designated AE or new development within ESHA with the expectations the property owner had in purchasing this property with three existing billboards.

e) The Board of Supervisors balanced the community concerns expressed in the public hearing both to allow and deny reconstruction of the billboard, with the County policy direction to not allow a billboard at this location and considered the applicant's economic interests in approving the reconstruction of the billboard for a limited period of time.

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

EVIDENCE a) Conditions of Approval have been included restricting the sign from employing motion, sound, mechanical devices, blinkers, flashing lights, animation, red, green or amber lights or unusual lighting. The applicant is proposing replacing the structure like for like, and does not include any red, green, or amber lights, motion, sound, mechanical devices, blinkers, flashing lights, animation or lighting of any kind. A Condition of Approval has also been included prohibiting the use of sign lighting.

13. **FINDING:** In the Coastal Zone, the granting of the exception will not have a significant adverse effect on environmentally sensitive habitats.

EVIDENCE a) The existing billboard is outside 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 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. Only six (6) new posts will be needed and each will be placed within the same location as one they are replacing.

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, and 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.

14. FINDING:

The project does not threaten any public trust uses that may occur in the location where the billboard is sited.

EVIDENCE

A public trust inquiry for the property was submitted to the State Lands Commission. In their response dated August 24, 2020, the Commission determined that *"the property...does not include State sovereign land under the jurisdiction of the Commission and is not subject to the Public Trust,"* further noting that the Humboldt Bay Harbor, Recreation, and Conservation District (HBHRCD) was granted any remaining state interest in tidally influenced portions of the lower Elk River, landward to the ordinary high water mark. HBHRCD staff have been given an opportunity to review the proposal and have declined to assert jurisdiction over the project. This was verified verbally during a conversation with Larry Oetker, current Executive Director of HBHRCD.

Though the nearby Elk River is navigable by small boats, the site is on private land adjacent to an access-controlled state highway and the closest public launching point is located near the mouth of the river, over two (2) miles downstream from the property. On August 1, 2020, a site visit was conducted by canoe during high tide. Approximately one (1) mile upstream from the property, the river is overgrown by a dense thicket of willow and other riparian species and becomes no longer navigable. 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, including the use and enjoyment of tidal and navigable portions of the Elk River by the public. A condition of approval has been included which prohibits the project from impeding or restricting the easement right of the public to navigate and

exercise the incidences of navigation (oar or motor-propelled craft) along the Elk River in this area.

15. **FINDING:** The Board of Supervisors finds there is merit in the appeal that the Planning Commission based its action on findings 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 grounds for appeal are adequate to warrant granting the appeal.

- EVIDENCE**
- a) In Finding 2 of Resolution No. 20-27, the Commission found, “The project is not consistent with current guidance from the American Planning Association concerning non-conforming signage.” Current APA guidance does not carry the force of law as it is not referenced or utilized within any of the applicable state or local laws governing consideration of the project.
 - b) 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.” 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. As the appeal hearing before the Board occurs “de novo”, it is not appropriate to use prior public comment on a separate matter as the basis for a decision on the current project. During the hearing a number of Commissioners expressed interest in holding hearings in the future to review possible changes to establish existing 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.

- c) In Findings 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.” 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 contemplated in the Humboldt Bay Area Plan and Finding 7 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. The assertion that the finding is based on rules and regulations have not been adopted and do not carry the force of law is correct. Findings 5, 6 and 7, while having been discussed by the Planning Commission do not support denial of the request to reconstruct the non-conforming sign.
- d) In Finding 8 of Resolution No. 20-27, it was found that “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.”

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 neighboring 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.

NOW, THEREFORE, be it resolved that the Board of Supervisors hereby:

1. Adopts the findings contained herein; and
2. Adopts the Mitigated Negative Declaration; and
3. Authorizes and directs Planning Department staff to file and process a Notice of Determination for the project in accordance with CEQA and the CEQA Guidelines, and the findings set forth in this Resolution; and
4. Approves the Appeal submitted by Allpoints Outdoor, Inc.; and
5. Approves the Special Permit subject to the conditions of approval contained in Attachment 1 of this Resolution.

The foregoing Resolution is hereby passed and adopted by the Board of Supervisors on September 29, 2020, by the following vote:

Dated: September 29, 2020



Estelle Fennell, Chair
Humboldt County Board of Supervisors

Adopted on motion by Supervisor Wilson, seconded by Supervisor Bass, and the following vote:

AYES: Supervisors Bohn, Bass, Wilson, Fennell, Madrone
NAYS: Supervisors --
ABSENT: Supervisors --
ABSTAIN: Supervisors --

STATE OF CALIFORNIA)
County of Humboldt)

I, KATHY HAYES, Clerk of the Board of Supervisors, County of Humboldt, State of California, do hereby certify the foregoing to be an original made in the above-entitled matter by said Board of Supervisors at a meeting held in Eureka, California.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Board of Supervisors.



Ryan Sharp
Deputy Clerk of the Board of Supervisors of
the County of Humboldt, State of California

ATTACHMENT 1

CONDITIONS OF APPROVAL

APPROVAL OF THE SPECIAL PERMIT IS CONDITIONED ON THE FOLLOWING TERMS AND REQUIREMENTS WHICH MUST BE SATISFIED BEFORE RELEASE OF THE BUILDING PERMIT AND INITIATION OF OPERATIONS.

Conditions of Approval:

1. The Special Permit is granted for a period of 5 years at which time the sign must be removed. The sign shall be removed not later than September 29, 2025. A Coastal Development Permit shall be submitted for sign removal not later than September 29, 2024, and a Demolition Permit shall be submitted not later than May 29, 2025 for removal of all components of the sign, including foundations.
2. Prior to issuance of the building permit, the applicant shall provide the Planning Division with a copy of an Outdoor Advertising Permit issued by CalTrans for the reconstructed billboard.
3. The project is located adjacent to an access-controlled segment of US 101. If proposing to utilize Highway 101 to access the sign site during reconstruction and/or subsequent maintenance activities, permission shall first be secured from CalTrans through an encroachment permit or similar means.
4. Building permits are required for all improvements. All work done shall meet all currently applicable structural, electrical, plumbing and mechanical codes. Issuance of a building permit for the necessary improvements, or written documentation from the Building Department that no building permits are required shall satisfy this condition.
5. The applicant shall secure authorization from the California Coastal Commission prior to initiating any development activities, including ground disturbance, construction, or repairs/maintenance.
6. The project shall comply with the Flood Damage Prevention Ordinance (HCC 335-1), as necessary.
7. All work shall be performed by hand crews in conformance with the Reconstruction Plan and Best Management Practices information provided by the applicant. No gas-powered or heavy construction equipment may be utilized during repair activities.
8. Repair and re-erection of the billboard shall conform to the approved plans (dated August 13, 2020) prepared by Stan Elcock C41457 and on file with Building Permit Application BLD-2019-50667. Reconstruction must be performed on a like-for-like basis. Holes for the six (6) new posts will be 18 inches wide and dug within the same location as the holes for the damaged supports they are replacing. Holes for the

three (3) new main vertical supports will be 5 feet deep and holes for the three (3) new rear brace supports will be 3 feet deep. During excavation of new pier holes, care shall be taken to ensure no spoils are deposited within nearby wetland habitat. Concrete will be poured directly into each hole during installation of the six (6) new posts. Any excess concrete and excavated spoils shall be removed from the site and shall be placed at a location approved by the Planning & Building Department. Buckets shall be used to stage and transport materials during excavation and removal from the site.

9. To the satisfaction of both CalTrans and the Planning & Building Department, evidence shall be provided verifying the location of the sign with respect to the eastern boundary of the nearby highway right-of-way. A survey may be required if determined necessary by either agency.
10. Within seven (7) days of the Board of Supervisors' approval of the Special Permit, the Owner/Applicant shall submit a signed and notarized Indemnification Agreement, in form approved and provided by the Office of County Counsel, to the Director of Planning & Building for review and signature by the County. Recordation of the Indemnification Agreement, as outlined, may be required by the Planning & Building Department.

Operational Restrictions:

11. The sign shall be operated at all times in conformance with Section 314-87.3.3.1 of the Zoning Regulations. Sign copy shall be restricted and limited to avoid any movement that could distract motorists. No electronic or projection screens shall be permitted. No decals that shimmer, rotate, revolve, twirl, or move in the wind or by electronic means shall be permitted.
12. The sign shall be operated at all times in conformance with Section 314-87.3.3.2 of the Zoning Regulations. The sign shall not obstruct free and clear vision of motor vehicle operators, or obstruct the vision of, or be confused with any authorized traffic sign, signal or device, or which makes use of the words "stop," "danger," or any other word, phrase, symbol, or character in such manner as to interfere with, mislead or confuse motor vehicle operators.
13. The sign shall be operated at all times in conformance with Section 314-87.3.3.3 of the Zoning Regulations. No red, green or amber lights or illuminated signs shall be placed in such a position that they could be confused with any authorized traffic sign, signal or device.
14. Sign lighting is prohibited.

On-Going Requirements/Development Restrictions Which Must Continue to be Satisfied for the Life of the Project:

15. The project shall be conducted consistent with the Project Description and Site Plan and other terms of this permit. Changes other than Minor Deviations authorized

pursuant to Section 312-11.1 of the Humboldt County Code shall require modification of this permit.

16. During repair and reconstruction activities, new materials shall exclusively feature resistant lumber that has been structurally graded, such as Cedar, Redwood or similar woods that are naturally durable. Metal supports may be substituted where featuring similar durability. Use of pressure-treated wood is prohibited.
17. During project-related construction or future operation of the billboard, the site and structure shall be managed so as not to impede or restrict the easement right of the public to navigate and exercise the incidences of navigation on State waters that are capable of being physical navigated by oar or motor-propelled small craft.

Informational Notes:

1. If cultural resources are encountered during construction activities, the contractor on site shall cease all work in the immediate area and within a 50-foot buffer of the discovery location. A qualified archaeologist as well as the appropriate Tribal Historic Preservation Officer(s) are to be contacted to evaluate the discovery and, in consultation with the applicant and lead agency, develop a treatment plan in any instance where significant impacts cannot be avoided.

The Native American Heritage Commission (NAHC) can provide information regarding the appropriate Tribal point(s) of contact for a specific area; the NAHC can be reached at 916-653-4082. Prehistoric materials may include obsidian or chert flakes, tools, locally darkened midden soils, groundstone artifacts, shellfish or faunal remains, and human burials. If human remains are found, California Health and Safety Code 7050.5 requires that the County Coroner be contacted immediately at 707-445-7242. If the Coroner determines the remains to be Native American, the NAHC will then be contacted by the Coroner to determine appropriate treatment of the remains pursuant to PRC 5097.98. Violators shall be prosecuted in accordance with PRC Section 5097.99

The applicant/permittee is ultimately responsible for ensuring compliance with this condition.

2. Applicant is responsible for receiving all necessary permits and/or approvals from other state and local agencies.
3. This permit shall expire and become null and void at the expiration of one (1) year after all appeal periods have lapsed (see "Effective Date"); except where construction or use in reliance on this permit has commenced in compliance with these conditions and with authorization from the California Department of Housing and Community Development prior to such anniversary date. The period within which construction or use must be commenced may be extended as provided by Section 312-11.3 of the Humboldt County Code.