



# COUNTY OF HUMBOLDT

## Legislation Details (With Text)

**File #:** 20-1153      **Version:** 1      **Name:**  
**Type:** Appeal      **Status:** Passed  
**File created:** 9/8/2020      **In control:** Planning and Building  
**On agenda:** 9/15/2020      **Final action:** 9/15/2020  
**Title:** 1:30 p.m. - Allpoints Outdoor, Inc. Appeal of the Planning Commission Denial of Allpoints Outdoor, Inc. Special Permit requesting authorization to reconstruct a legal nonconforming billboard structure damaged during a winter storm in November 2019

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Staff Report, 2. Attachment 1 - Draft Board Resolution (9-11-20).pdf, 3. Attachment 2 - Maps Site Plan Historical Photos ODA Permit.pdf, 4. Attachment 3 - Elevations Plans Photos Eng.pdf, 5. Attachment 4 - Draft Mitigated Negative Declaration, 6. Attachment 5 - Public Trust Determination from State Lands Commission, 7. Attachment 6 - Board Report from July 28, 2020, 8. Attachment 7 - Correspondence between CalTrans ODA and Outfront Media, 9. Public Comment, 10. Public Comment K3

Date	Ver.	Action By	Action	Result
9/15/2020	1	Board of Supervisors	approved as amended	Pass

**To:** Board of Supervisors

**From:** Planning and Building Department

**Agenda Section:** Time Certain Matter

### SUBJECT:

1:30 p.m. - Allpoints Outdoor, Inc. Appeal of the Planning Commission Denial of Allpoints Outdoor, Inc. Special Permit requesting authorization to reconstruct a legal nonconforming billboard structure damaged during a winter storm in November 2019

### RECOMMENDATION(S):

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the appellant, and public;
2. Close the public hearing;
3. Adopt the resolution (Resolution 20-\_\_) (Attachment 1) which does the following:
  - a. Adopts the proposed Mitigated Negative Declaration in Attachment 4 as required by Section 15074(b) of the CEQA Guidelines, and finds that there is no substantial evidence that the proposed project will have a significant effect on the environment;
  - b. Makes the findings to support approval of the Appeal and Special Permit; and
  - c. Approves the Appeal submitted by Allpoints Outdoor, Inc.; and
  - d. Approves the Special Permit for reconstruction of a legal nonconforming billboard

structure damaged during a winter storm in November 2019.

- e. Directs the Planning and Department to file a Notice of Determination for the project in accordance with the CEQA Guidelines, and
4. Delegate and Authorize the Director of Planning and Building to sign the Indemnification Agreement on behalf of the County.

#### SOURCE OF FUNDING:

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

#### DISCUSSION:

##### Executive Summary

This is a continued public hearing on the appeal of the Humboldt County Planning Commission's May 7, 2020 denial of the Allpoints Outdoor, Inc. Special Permit application to allow reconstruction of a legal nonconforming billboard damaged during winter storms in late November 2019. The project is located in the Spruce Point area south of Eureka.

The first public hearing on the appeal was held before the Board of Supervisors on July 28, 2020. A majority of the Board voted in support of continuing this item to allow staff to address a number of concerns raised by Board members in response to public comment. These included:

1. questions about the validity of the Outdoor Advertising Permit for the billboard
2. concerns about the potential amount of ground disturbance and new materials required for repair of the structure
3. Potential for tribal cultural resource sensitivity
4. Conflict with protections for public trust resources.

Each of these issues is discussed below.

##### *1. Questions about the validity of the Outdoor Advertising Permit*

After discussions with Caltrans it must be concluded that the existing sign has a valid permit, and if there are discrepancies between the existing sign and the permit subsequent action will result in the sign continuing to have a permit.

George Anzo, CalTrans Outdoor Advertising (ODA) Permits Manager confirmed that permits exist for all three billboards found on the Allpoints Elk River property, including the damaged billboard. The permits for the three billboards are currently assigned to Outfront Media, LLC. 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". The letter goes on to inform the permit holder that they had 60 days to make repairs to or replace the sign and that failure to do so could result in the permit being revoked, subject to an appeal.

Under §2271 of the Outdoor Advertising Regulations, a "display" (sign) is considered "destroyed" when it "remains damaged and not used for the purpose of outdoor advertising". ODA is obligated to notify the permit holder of the determination and may extend the period for repair or replacement up to 6 months, "upon receiving written notice from the permittee showing good cause". During a recent conversation with Mr. Anzo on September 1, 2020, it was confirmed the Outfront had provided a

timely written request for additional time and that the ODA was not considering revocation of the permit at this time. Related correspondence between CalTrans ODA and the permit holder is included in Attachment 7.

Concerns have been raised with discrepancies between historic Outdoor Advertising Permit paperwork provided by Humboldt Baykeeper and the permit number assigned to the sign in the current Caltrans Outdoor Advertising Permit database. The historic permit paperwork was secured by Baykeeper during a public records act request some years ago. According to Baykeeper, Caltrans has been unable to locate the original permit paperwork associated with the damaged billboard (permit #15322). Mr. Anzo explained CalTrans has not completed its internal review of these discrepancies and believes the permit assigned to the sign (#15322) to be legitimate. Mr. Anzo also 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.

2. *Concerns about the potential amount of ground disturbance and new materials required for the repair of the structure*

The billboard is a wooden structure primarily comprised of 4x6 and 2x6 framing. Staff has worked with the applicant to identify the specific details of what is needed to repair the sign. The applicant has submitted revised construction plans with engineering calculations showing a significant reduction in the amount of new materials needed minimizing ground disturbance. Plans prepared by a licensed civil engineer have been reviewed and approved by the Building Division and are included in Attachment 3. The approved plans reveal that only six (6) new posts will be needed during repair of the sign, and each post will be placed within the same location as one being replaced. 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 being replaced. 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 project includes conditions requiring all excess concrete and excavated spoils to be removed from the site and placed at an approved location. Buckets will be used to stage and transport materials during excavation and removal from the site. The project also includes a condition requiring that all project-related construction be performed in accordance with the Reconstruction Plan and Best Management Practices information provided by the applicant. No gas-powered or heavy construction equipment is needed to perform the necessary repairs to the sign. A crew of 3-5 people will perform all necessary labor over the course of 2-4 days.

3. *Potential for tribal cultural resource sensitivity*

The project lies within lands associated with the ancestral territory of the Wiyot Tribe and Bear River Band of the Rohnerville Rancheria. In December referrals were circulated to the Tribal Historic Preservation Officer (THPO) for each of these tribes. In their response to the referral, both THPO's indicated that the site had a low probability of hosting tribal cultural resources and recommended that the standard language concerning inadvertent discovery be included as a condition of approval for the project. Following circulation of the Mitigated Negative Declaration for the project, THPO's for both Tribes were once contacted and offered an opportunity to request formal consultation pursuant to the AB52 -both THPO's declined consultation.

#### *4. Conflict with protections for public trust resources.*

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 staff using a 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 is not 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.

#### *CEQA*

During the first public hearing on the appeal the Board received a number of public comments challenging the initial determination that the project was categorically exempt from CEQA pursuant to the Class 1 and Class 2 exemptions which cover repair and maintenance and reconstruction of existing public or private structures and facilities. Commenters challenged use of the exception citing "unusual circumstances" exist and that the project design and operational details should be treated as mitigation measures. To help address these concerns, on August 11, 2020 staff completed and submitted an Initial Study and Mitigated Negative Declaration to the State Clearinghouse for circulation and public comment beginning on August 12, 2020 and ending on September 11, 2020. Public notice was also provided in the Times Standard. The draft Mitigated Negative Declaration (MND) is included as Attachment 4. 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. A number of revisions have been made to the draft Board resolution to reflect the decision to prepare the Mitigated Negative Declaration and no longer utilize the aforementioned categorical exemptions.

### Staff Recommendation

Staff believes the grounds for appeal are adequate to warrant granting the appeal and the required findings for approval can be made. Several recommended conditions of approval have been modified in conjunction with refinement and finalization of details in the construction plans, and application of mitigation measures identified in the Mitigated Negative Declaration. A more complete discussion of the required findings was previously provided in the Board Report prepared for the initial appeal hearing held on July 28, 2020. The report is included as Attachment 6.

### FINANCIAL IMPACT:

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

### STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by supporting business, workforce development and creation of private-sector jobs type in or leave blank.

### OTHER AGENCY INVOLVEMENT:

CalTrans, California Coastal Commission

### ALTERNATIVES TO STAFF RECOMMENDATIONS:

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

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

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

2. Deny the appeal and deny the project. In the event the Board of Supervisors finds evidence in public testimony or from other sources compelling to deny the application, the Board should state the basis for that conclusion and continue the item to September 22, 2020, so that a resolution can be prepared expressing those findings, denying the appeal and denying the application.

### ATTACHMENTS:

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

1. Draft Board Resolution, Findings, and Recommended Conditions of Approval.
2. Maps, Site Plan, Historical Photos, Outdoor Advertising Permit
3. Elevations, Reconstruction Plans, Photos, Engineering
4. Draft Mitigated Negative Declaration
5. Public Trust Determination from State Lands Commission
6. Board Report from July 28, 2020.
7. Correspondence between CalTrans ODA and Outfront Media, LLC

**PREVIOUS ACTION/REFERRAL:**

Board Order No.: Item 20-941, 20-1032

Meeting of: July 28, 2020, August 18, 2020

File No.: PLN-2020-16389