



February 19, 2020

Humboldt County Planning Commission
3015 H Street
Eureka, CA 95501

Re: Allpoints Outdoor, Inc. Special Permit for Reconstruction of a Legal Nonconforming Billboard Structure; Record Number PLN-2019-10629 (Eureka Area)

Dear Commissioners,

On behalf of Humboldt Baykeeper's board, staff, and members, I submit these comments on Allpoints Outdoor, Inc. Special Permit for Reconstruction of a Legal Nonconforming Billboard Structure; Record Number PLN-2019-10629 (Eureka Area). Humboldt Baykeeper works to safeguard our coastal resources for the health, enjoyment, and economic strength of the Humboldt Bay community, and is a member of the California Coastkeeper Alliance and the international Waterkeeper Alliance.

Humboldt Baykeeper objects to off-site, commercial billboards built in tidal wetlands around the Humboldt Bay area due to their impacts to public trust resources, visual/scenic resources, and other impacts to the environment that have not been assessed. In the case of the subject billboard, there are numerous outstanding issues that the staff report fails to address, which are enumerated below.

The billboard was reportedly destroyed in a windstorm on Nov. 27, 2019, and County staff is recommending approval of a Special Permit for reconstruction of the legal nonconforming billboard structure, subject to the recommended conditions, unless the Commission is unable to make the required findings.

We urge the Commission to deny the Special Permit, since the required findings cannot be made for the following reasons.

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- I. **The proposed development is not consistent with the purposes of the existing zone in which the site is located.**

The reconstruction of a nonconforming structure that is damaged by any casualty is subject to Section 132.5.2 of the Humboldt County Code, which says,

*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.***

Chapter 2: 312-17 REQUIRED FINDINGS FOR ALL PERMITS AND VARIANCES states:

17.1 REQUIRED FINDINGS FOR ALL PERMITS. Unless waived by State law, 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 all of the following findings are made:**

17.1.2 **The proposed development is consistent with the purposes of the existing zone in which the site is located**, or when processed in conjunction with a zone reclassification, is consistent with the purposes of the proposed zone.

The staff analysis explains that the zoning of the subject parcel is unknown, but speculates that Agriculture Exclusive (AE) is the most fitting land use and zoning, given the property's characteristics and location. Other nearby parcels are zoned Public Facilities (PF) and Natural Resources (NR). However, **off-site/non-appurtenant signs (i.e., billboards) are not an authorized use in any of these zones.** (page 25)

- How can the finding be made that the proposed development is consistent with the purposes of the existing zone in which the site is located?

- II. **To protect public safety, billboards are not allowed below the floodwater level of stream channels upstream of highway bridges.**

The subject parcel is entirely within the FEMA Special Flood Hazard Area, FIRM Flood Rating: Zone A, Panel Number 0839G, adjacent to the Elk River, upstream of the Highway 101 bridge, in conflict with CA Bus & Prof Code § 5403 (c), which states that **No advertising display shall be placed or maintained in** "any stream or drainage channel or below the floodwater level of any stream or drainage channel where the advertising display might be deluged by flood waters and swept under any highway structure crossing the stream or drainage channel or against the supports of the highway structure."

- How can the finding be made that the proposed development and conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare?

III. The billboard cannot be rebuilt in its current location; therefore, potential impacts to wetlands and public trust resources have not been analyzed.

The staff analysis says that subject parcel is entirely within coastal wetlands, and that wetland impacts will be minimal because “Ground disturbance will be limited through ongoing use of a pier and post foundation and reuse of as much of the existing structure as is safely possible.” (page 26)

However, in a Feb. 10, 2020 email, a CalTrans planner wrote, “Also, you should be aware that the billboard will need to be installed outside the State right of way. The attached image shows a corner of the billboard within State right of way, **so new footings will likely be needed.**” (page 59)

According to CA Bus & Prof Code § 5403(a), **No advertising display shall be placed or maintained within the right-of-way of any highway.** In addition, CA Bus & Prof Code § 5405 states that **no advertising display shall be placed or maintained within 660 feet from the edge of the right-of-way** of, and the copy of which is visible from, any interstate or primary highway, other than any of the following: [none of the exceptions apply]. It appears that the location of the proposed development has not yet been identified.

- How can the finding be made that there no substantial evidence that the project will have a significant effect on the environment when the location of the proposed project has not been determined?

All state agencies have an affirmative duty to undertake a public trust doctrine consistency analysis for projects that may impact trust resources, such as projects occurring on submerged lands. (*San Francisco Baykeeper*, 242 Cal.App.4th 202, 242.) Here, the record does not demonstrate any public trust doctrine consistency analysis has occurred.

- Has the State Lands Commission determined whether the proposed development is below Mean Higher High Water, and therefore within the jurisdiction of the Humboldt Bay Harbor, Recreation, and Conservation District?
- How has the County addressed its responsibility to protect public trust resources?

IV. The property ownership is unclear.

In addition to questions regarding the zoning, it appears that the ownership of the subject parcel is also unclear. The staff analysis says that 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 determine the applicable land use and zoning of the portion of the property where the existing billboard is located. (page 20). The excerpt from the ODA database shows that the property is owned by "CALIF. DIV. OF HWY." (page 50 of the County staff report).

- Has the applicant provided evidence of property ownership and evidence of permission of the property owner?

V. Findings for Granting Exceptions under County Code §312-41.1

Repair and maintenance within an Environmentally Sensitive Habitat Area requires a coastal development permit. According to California Code of Regulations Title 14, Division 5.5, Chapter 6, Subchapter 7, Section 13252, "the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact...**(3) Any repair or maintenance to facilities or structures or work located in or within 50 feet of an environmentally sensitive habitat area.**"

- Has the County issued permits for repair, maintenance, and reconstruction of the structure?
- How was the fallen structure determined to be a lawfully erected, established, and maintained?
- When was the billboard originally permitted by the ODA, and what were the dimensions and materials of the permitted structure relative to the dimensions of the structure that fell down and is proposed to be rebuilt?

VI. Use of Pressure-Treated Wood in Aquatic Ecosystems

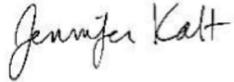
The plans for the proposed development show pressure-treated wood as the material for the structure, including all of the uprights. (page 38) Many of these products use copper, which is not recommended for applications near aquatic ecosystems because of its toxicity to aquatic organisms¹ such as Coho Salmon, which the Elk River supports.

- Will pressure-treated wood be in contact with water or wetland soils? If so, are the chemicals used for the pressure treatment considered appropriate for aquatic use?

¹ Environmental Considerations of Treated Wood National Park Service – Pacific West Region.
<https://www.doi.gov/sites/doi.gov/files/migrated/greening/buildings/upload/EnvironmentalConsideration%20TreatedWood.pdf>

We appreciate the opportunity to comment on the proposed project, and we urge the Commission to deny the Special Permit unless these outstanding questions are adequately addressed.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Kalt". The signature is written in a cursive, flowing style.

Jennifer Kalt, Director

jkalt@humboldtkeeper.org

Cc:

Jesse Robertson, CalTrans District 1, Transportation Planner

Heidi Quintrell, Caltrans District I, Encroachment Permits Chief

Bob Merrill, California Coastal Commission, North Coast District Manager

Jennifer Olson, California Dept. of Fish and Wildlife, Senior Environmental Scientist