



August 28, 2024

Humboldt Bay Harbor, Recreation and Conservation District
P.O. Box 1030
Eureka, CA 95502-1030

Sent via email

Re: Comments on Staff Report for Humboldt Bay Harbor, Recreation, & Conservation District, Harbor District Permit 2024-01

Dear President Dale and Harbor District Commissioners,

On behalf of Humboldt Waterkeeper, the Environmental Protection Information Center, and the Northcoast Environmental Center, we submit these comments in response to the Staff Report for Resolution 2024-08 Establishing Findings Relative to Permit 2024-01; Determining the Existence of California Environmental Quality Act Exemption; and Approving Harbor District Permit 2024-01 with Conditions for Billboard Repair and Continuation of Use for Five Years. Humboldt Waterkeeper works to safeguard coastal resources for the health, enjoyment, and economic strength of the Humboldt Bay community through education, scientific research, and enforcement of laws to fight pollution. We would like to incorporate by reference Humboldt Waterkeeper's comments submitted on March 11, 2024 on the proposed permit application.

We urge you to deny the permit for the Proposed Use, which conflicts with the District's long-standing Ordinance 7, as well as Amendment 2, which was adopted in 2021.

As enacted in 1976, the District's Ordinance No. 7, Section 9,ⁱ states that

(f) Signs and related structures, other than those that are necessary and approved by the District for **navigational, public safety, resource management and identification purposes** shall be eliminated and prohibited from the tidal and submerged lands within the jurisdiction of the District.

Further, Amendment No. 2 Ordinance No. 7, Section 4, adopted on Jan. 14, 2021,ⁱⁱ states,

[N]o permit may be issued authorizing an ongoing billboard or off-premise sign or structure use, or its maintenance, repair, or reconstruction, without the District first considering of the impact of the proposed use on the air, water, land, environment, and ecology of the District's lands, and thereafter finding that the proposed use is necessary to promote the

safety, health, comfort and public convenience of the public, that the proposed use is required by the public convenience, and that the proposed use will not have an adverse environmental or ecological effect.

In addition to the District's Ordinance 7, government entities and agencies are required to **consider and prioritize public trust uses** including navigation, protection of fisheries, recreation, and preservation of trust lands in their natural state. *Marks v. Whitney (1971) 6 Cal.3d 251, 259–260.*

The Proposed Use is Inappropriately Characterized as Repair of an Existing Sign

The findings before you are inadequate due to a lack of substantial evidence claiming that the Proposed Use is “repair” of a non-conforming billboard, as defined in state law.ⁱⁱⁱ The subject billboard fell down in January, and was finally removed from the adjacent Humboldt Bay Trail right-of-way about a month ago.

The District's Amendment 2, Ordinance 7 defines “like-for-like” repair as allowable, “as long as there is no enlargement or expansion of the structure or “ [Section 2 (d)]. According to the current Outdoor Advertising Act permit,^{iv} the subject billboard's ODA permit (#6277) allows six uprights of 4 x 4” lumber, while the proposed project describes 12 x 6’ lumber. As such, the proposed use is considered an **expansion** rather than customary maintenance as defined by the Outdoor Advertising Act.^v

The draft resolution before you also states that “the District has not previously issued a permit for the continuation of billboard No. 4567A as required by Ordinance 7” [Resolution No. 2024-08, page 1 of 4 on page 21 of the staff report]. It is unclear whether the billboard has ever been granted a tideland lease, either from the District or the State Lands Commission, and therefore its legal status is unverified. In addition, the billboard no longer occupies the site; it was removed over a month ago in accordance with an emergency Coastal Development Permit that was approved by the Coastal Commission earlier this year.

The subject billboard has not continuously occupied the site since 1976, does not have an active permit from the District, and therefore is an illegal billboard that should be prohibited as defined by Amendment No. 2 Ordinance No. 7, Section 4:^{vi}

- b) *Illegal Billboards and Off Premises Signs and Structures:* A billboard or off premises sign or structure that has not continuously occupied a site since September 16, 1976, and does not have an active permit from the District, shall be deemed an illegal sign and shall be subject to removal in compliance with this Ordinance No. 7.

- (c)(1) Billboards and off-premises signs and structures are inconsistent with the purposes and standards of the District's regulatory and jurisdictional authority and are, therefore, prohibited in all Planning Designations in Article III of this Ordinance No. 7.

The Proposed Findings are Inadequate

The resolution before you lacks substantial evidence supporting the findings that (b) “the Proposed Use is necessary to promote public safety, health, comfort, and convenience of the public;” (d) “the Proposed Use will not have any substantial adverse environmental or ecological effect;” or (i) “the Proposed Use will not produce an unreasonable burden on the natural resources and aesthetics of the area...or on parks, recreation and scenic areas” (Staff Report, page 22).

The Proposed Project Does Not Qualify for a CEQA Exemption

We strongly urge the Commission to reject the findings as presented, since the proposed project does not qualify for an exemption under the California Environmental Quality Act (CEQA). To be categorically exempt, the lead agency must consider whether the exemption is negated by an exception pursuant to CEQA Guidelines, Section 15300.2, and Public Resources Code, Section 21084. Such exceptions may apply under the following circumstances:

1. “A project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant” [CCR 14 §15300.2 (a)]

The project site is environmentally sensitive, since it wholly within wetlands defined as Waters of the U.S. and Environmentally Sensitive Habitat Area (ESHA) as defined by the California Coastal Act. The findings fail to consider whether significant impacts to environmentally sensitive areas could occur as a result of the project. Wetland fill necessary for the footings may need to be expanded to meet Building Code requirements. To fully analyze the potentially significant impacts to environmentally sensitive tidal wetlands, engineered designs showing the full extent of impacts to wetlands must be considered and fully analyzed. In addition, the proposed project specifies the use of treated wood uprights to be driven ten feet below the surface in a tidal wetland. It is unclear whether the uprights will be made of treated wood, which is not recommended for applications near aquatic ecosystems because of its toxicity to aquatic organisms^{vii} such as Coho Salmon.

2. “A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources” [CCR 14 §15300.2 (d)].

The findings fail to consider whether significant impacts to scenic areas could occur as a result of the project, despite the location of the project within a Coastal Zone Scenic View Area designated by the Humboldt Bay Area Local Coastal Program, which states that “no development shall block coastal views to the detriment of the public” (Section 3.40 (B)(4)).^{viii} Impairing a scenic coastal view area is an adverse environmental effect.

3. “A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances” [CCR 14 §15300.2 (c)].

There are two unusual circumstances in the subject location which could result in significant impacts. One is the **Humboldt Bay Trail**, a major recreational facility under construction that will connect Eureka and Arcata (and which will also be part of the **California Coastal Trail**). According to the staff report, construction crews would access the site along the railroad tracks, which no longer exist, the rails having been recently removed from the Great Redwood Trail right-of-way to build the Bay Trail. The staff report does not mention the Great Redwood Trail Agency’s easement and whether the agency has granted permission to encroach upon its right-of-way, nor has the agency been consulted regarding potential impacts of the project on the use of the trail. In addition to construction, the District should consider how the sign company will access the billboard to change the display, and whether that will require closure of the trail.

The second unusual circumstance is a proposed wetland restoration project known as the **Humboldt Bay Living Shoreline Project**, which has been in the planning stages for many years.^{ix} The California Dept. of Fish & Wildlife’s comments dated April 25, 2024 raise the potential for the billboard to interfere with that restoration project, which is being designed to protect Highway 101 from rising sea level and associated erosion during storm surge. The potential to interfere with this project should be considered and the potential impacts to public safety should be weighed against the supposed “comfort and public convenience” of the proposed reconstruction of the off-premise billboard.

Without consideration of the above information, the findings as presented in your staff report are incomplete. For these reasons, we urge you to either deny the permit altogether or to reject the inappropriate reliance on a CEQA exemption and direct staff to fully analyze these impacts. We appreciate the opportunity to review and comment on this proposed project.

Sincerely,

Jennifer Kalt, Humboldt Waterkeeper

jkalt@humboldtwaterkeeper.org

Tom Wheeler, Environmental Protection Information Center

tom@wildcalifornia.org

Caroline Griffith, Northcoast Environmental Center

director@ournec.org

Cc: Reid Boggiano - State Lands Commission

Melissa Kraemer - California Coastal Commission

George Anzo - CalTrans Office of Encroachment & Outdoor Advertising Permits

Mike Wilson, Natalie Arroyo, John Ford, Hank Seemann - Humboldt County

Mike Van Hattem – CA Dept. of Fish & Wildlife

ⁱ Ordinance 7: An Ordinance Implementing Certain Portions of the Humboldt Bay Master Plan. 1976. Humboldt Bay Harbor, Recreation, and Conservation District.

<https://humboltdbay.org/sites/humboltdbay.org/files/Ordinance%20no.%207%2C%201976.pdf>

ⁱⁱ Amendment 2, Ordinance 7. 2021. Humboldt Bay Harbor, Recreation, and Conservation District.

<https://humboltdbay.org/sites/humboltdbay.org/files/Amendment%20No%202%20Ordinance%20No%207%2C%2001-14-2021.pdf>

ⁱⁱⁱ 4 CCR § 2270, Customary Maintenance.

[https://govt.westlaw.com/calregs/Document/IA43A71A3543B11ECAE2D000D3A7C4BC3?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/IA43A71A3543B11ECAE2D000D3A7C4BC3?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

^{iv} CalTrans Office of Encroachment and Outdoor Advertising Permits Map Viewer.

<https://caltrans.maps.arcgis.com/apps/webappviewer/index.html?id=f0bb9147535d49a4bd24099475883c15>.

Accessed August 26, 2024.

^v 4 CCR § 2270, Customary Maintenance.

[https://govt.westlaw.com/calregs/Document/IA43A71A3543B11ECAE2D000D3A7C4BC3?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/IA43A71A3543B11ECAE2D000D3A7C4BC3?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

^{vi} *ibid.*

^{vii} Environmental Considerations of Treated Wood National Park Service – Pacific West Region.

<https://www.doi.gov/sites/doi.gov/files/migrated/greening/buildings/upload/EnvironmentalConsiderationsTreatedWood.pdf>

^{viii} Humboldt Bay Area Local Coastal Program. 2022. Humboldt County.

<https://humboldt.gov/DocumentCenter/View/50844/Humboldt-Bay-Area-Local-Coastal-Plan>

^{ix} Humboldt Bay Living Shoreline Project. Humboldt County Public Works Dept. <https://humboldt.gov/2487/Sea-Level-Rise>