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January 22, 2014

VIA U.S. MAIL

Karryn Merkel, Planning Commission Clerk
Humboldt County Planning Commission
Planning and Building Department
3015 H Street
Eureka, CA 95501

Re: Public Comment on Language in Proposed Chapter 10, Conservation and
Open Space, of Humboldt County Draft General Plan Update

Dear Ms. Merkel:

Miller Starr Regalia represents CBS Outdoor Inc. ("CBS") in connection with its outdoor advertising operations in Humboldt County, and would like to inform the Planning Commission of certain illegalities that are present in the current draft Humboldt County General Plan Update ("Draft Update"),¹ insofar as the proposal contains provisions that regulate outdoor advertising displays. We understand that, on January 13, 2014, the Board of Supervisors voted to send draft Chapter 10 back to the Planning Commission for review and revision. Pursuant to this direction, we also understand that the Planning Commission may begin reconsidering the language of Chapter 10 as early as January 28, 2014, and hope the Commissioners will consider this correspondence as they review and revise this chapter.

CBS's position regarding the illegalities in the Draft Update is more fully explained in a letter we sent to the Board of Supervisors on December 2, 2013, incorporated herein by this reference. In summary, the current proposal would remove the existing sign inventory and require conditional use permits for the repair or reconstruction of existing billboards. Provisions such as these would, if adopted:

- (1) Interfere with vested rights that CBS has accrued in the law as it stands today, affecting as many as 90 of CBS's signs;

¹ Specifically, CBS wishes to comment on the Draft Update as approved by the Planning Commission, available at <https://co.humboldt.ca.us/gpu/documentsplan.aspx>.

- (2) Improperly interfere with CBS's right to perform customary maintenance on its signs, as guaranteed under state law; and
- (3) Constitute an unlawful taking under statutory and constitutional provisions.

On the above bases, CBS respectfully requests that the County amend the proposed sign-related policies to exclude those phrases and provisions that further regulate existing, lawful outdoor advertising displays, including provisions SR-P6 and SR-SXX.² Again, our incorporated letter of December 2, 2013 contains more detail, and is attached to this letter for your convenience

We thank you for your attention to these important matters, and request that you distribute copies of both this letter and the attached correspondence to the full Planning Commission.

Very truly yours,

MILLER STARR REGALIA



Sean Marciniak

SRM:kli

Enclosure

cc: Collin Smith, CBS Outdoor (w/encl.)
Tracy D'Amico, Administrative Assistant to the Board of Supervisors
(tdamico@co.humboldt.ca.us) (w/encl.)

² In addition, we understand from correspondence between the City and interested parties that, when the Planning Commission last considered Chapter 10 in June 2011, it did not contemplate further regulation on the repair of signs, and that this expansion of the chapter's scope may have been the result of an error by staff. To the extent that "repair" language was inserted without authorization, we respectfully ask the Planning Commission to remove it on this separate and independent basis.



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December 2, 2013

VIA U.S. MAIL AND EMAIL (MRICHARDSON@CO.HUMBOLDT.CA.US)

Michael Richardson, Senior Planner
Humboldt County Planning and Building Dept.
3015 H Street
Eureka, CA 95501

Re: Public Comment on Language in Proposed Chapter 10, Conservation and
Open Space, of Humboldt County Draft General Plan Update

Dear Mr. Richardson:

Miller Starr Regalia represents CBS Outdoor Inc. ("CBS") in connection with its outdoor advertising operations in Humboldt County, and wishes to alert the Board of Supervisors to certain illegalities that are present in the draft Humboldt County General Plan Update ("Draft Update"),¹ insofar as the proposal contains provisions that regulate outdoor advertising displays. The Board may be considering these very provisions today, December 2, 2013, when it will hold a public hearing and deliberate the contents of Proposed Chapter 10 of the Draft Update, which in part addresses the regulation of signs.

CBS operates as many as 90 outdoor advertising displays in Humboldt County, and all of these signs fall squarely within the jurisdiction of the Outdoor Advertising Act (Gov. Code § 5200 et seq).² The current proposal, among other things, seeks the removal of existing sign inventory and requires conditional use permits for the repair or re-construction of existing billboards. Provisions such as these violate the Outdoor Advertising Act, as well as fundamental constitutional protections against unlawful takings. More specifically, the sign-related policies that the Board is considering would, if adopted: (1) interfere with vested rights that CBS has accrued in the law as it stands today; (2) improperly interfere with CBS's right to perform customary maintenance on its signs, as guaranteed under state law; and

¹ Specifically, CBS wishes to comment on the Draft Update as approved by the Planning Commission, available at <https://co.humboldt.ca.us/gpu/documentsplan.aspx>.

² While many provisions of the Outdoor Advertising Act apply only to signs that sit within 660 feet of, or otherwise near, a qualifying highway, the state law and constitutional principles that the current proposal would violate — i.e., section 5412 of the Outdoor Advertising Act, as discussed below — apply to signs located "anywhere" within the State of California.

(3) constitute an unlawful taking under statutory and constitutional provisions. Under the laws of preemption, local policies that conflict with state law are rendered void. To the extent the County would insist on enforcing any such policies, takings jurisprudence would provide for the recovery of damages.

On the above bases, CBS respectfully requests that the County amend the proposed sign-related policies to exclude those phrases and provisions that further regulate existing, lawful outdoor advertising displays. The policies of concern and the reasons for CBS's concern are identified further below in this letter. Please note, CBS reserves its right to submit further comment on the environmental review process that the County has undertaken pursuant to the California Environmental Quality Act ("CEQA;" Pub. Res. Code § 21000 et seq), including the Draft Environmental Impact Report ("Draft EIR") that has been prepared in an attempt to evaluate the impacts of adopting the Draft Update.

Summary of provisions that are unlawful, as currently proposed. The following Draft Update provisions would violate state statutes, as well as state and federal constitutional provisions:

SR-P6. Limit the Term of Off-Premise Billboards and Prohibition. Limit the term of new *and existing* off-premise billboards by ordinance to provide for removal. Prohibit the construction of new off-premise billboards along mapped Scenic Roadways and coastal views. (Emph. added.)

SR-SXX. Permits for Billboards. Require Conditional Use Permits and conformance to building, zoning and other local codes for construction of new billboards as well as expansion, *repair, or reconstruction* of existing billboards. (Emph. added).

Limiting the term of an existing display's operating life would violate the Outdoor Advertising Act. Policy SR-P6 contemplates the removal of existing signs after the expiration of a fixed term of years. As worded, this proposal would violate the Outdoor Advertising Act. In relevant part, the Act provides that "no advertising display which was lawfully erected³ anywhere within this state *shall be compelled to be removed ... whether or not removal or limitation is pursuant to or because of this chapter or any other law, ordinance, or regulation of any government entity, without payment of just compensation*, as defined in the Eminent Domain Law (Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure" (Gov. Code § 5412.)

³ "Lawfully erected" is a term of art, and refers to displays that were erected in compliance with laws and ordinances in effect at the time of their construction. (Bus. & Prof. § 5216.1.) There exists a rebuttable presumption that older signs are lawfully erected. (*Id.*)

Thus, insofar as proposed policy SR-P6 would "[l]imit the term of new *and existing* off-premise billboards by ordinance," and does not contemplate the payment of just compensation, the proposal would violate state law and the constitutional takings jurisprudence upon which the aforementioned statute is based. To the extent the law conflicts with state law, it is void. (See, e.g., *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 830 ["If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void."]) Regardless, enforcement of policy SR-P6 would entitle CBS to monetary compensation under section 5412 of the Outdoor Advertising Act.

Requiring a conditional use permit for repair or reconstruction of existing displays would interfere with vested rights that CBS has accrued. Policy SR-SXX would appear to require that the County approve a conditional use permit for the "repair" or "re-construction" of outdoor advertising displays that have been damaged or destroyed, even if performed as part of a sign's customary maintenance, and even if the display is to be rehabilitated to the exact same dimensions and specifications as it existed prior to damage or destruction. Currently, the Humboldt County Code only requires, at most, a building permit where an applicant seeks to make minor repairs to a sign. (Humboldt County Code ["HCC"], Title III, Div. 3, § 106.2 [building permit required to repair or alter a structure, though certain maintenance activities exempt even from this requirement].) A special permit — and not a conditional use permit⁴ — only is required where, for instance, a natural disaster or other casualty has destroyed a sign. (See HCC, Title III, Ch. 3, § 313-132.5.2.)

Under the County Code, a conditional use permit is a discretionary approval, and involves the imposition of requirements borne by consideration of such matters as aesthetics and public welfare. (See, e.g., HCC, Title III, Ch. 2, § 312-17.1, Ch. 3, § 43.2.4.3.2.) First, by infusing the approval process with discretionary considerations, the City would make the repair of existing displays — which in most cases now requires either a building permit only or nothing at all — significantly more expensive, and more time-consuming. Presumably, the County would be imposing conditions on a sign repair that did not exist or apply when the display owner first constructed the affected sign, and would make such decisions after public hearings. (HCC, Title III, Ch. 2, §§ 312-9.1, 312-9.2 [no apparent mechanism to waive hearing for use permit].)

Effectively, adoption of policy SR-SXX would entail the revocation of existing building permits for an affected display, without hearing or notice, and require that a display owner spend a great deal of time and money obtaining a new use permit for rehabilitation of that same improvement. Aside from considerations of due process, the imposition of this new procedure would interfere with CBS's vested rights.

⁴ As you know, a special permit is a much simpler entitlement than a use permit. It can be issued by the planning director and does not require a public hearing in all circumstances. (See HCC, Title III, Ch. 2, § 312.9.)

A vested development right accrues where an applicant obtains a building permit, performs substantial work on a permitted improvement, and incurs substantial liabilities in good faith reliance upon the permit. Where an entity has acquired a vested right in an improvement, a public agency cannot change the laws governing the construction of that improvement. According to the California Supreme Court, "[o]nce a landowner has secured a vested right the government may not, by virtue of a change in the zoning laws, prohibit construction authorized by the permit upon which he relied." (*Avco Community Developers, Inc. v. South Coast Regional Com.* (1975) 17 Cal.3d 785, 791.)

Again, CBS lawfully operates as many as 90 outdoor advertising displays in the County, and has done so for years, if not decades. It has spent substantial sums of money constructing these signs, and has incurred significant liabilities insofar as it must maintain displays pursuant to lease agreements with property owners, and must post advertising copy on these displays pursuant to contracts with companies offering goods and services. CBS has vested rights in these displays, and thus has vested into the initial permitting requirements that governed the construction of these displays.

In summary, CBS has a right to repair its signs using the entitlement process that exists today, and any legislation that disrupts the existing framework would constitute an unlawful interference with CBS's vested rights. Moreover, insofar as the new policies effectively revoke existing permits for existing signs, without notice or hearing, the policies would effect a violation of due process rights guaranteed by the state and federal constitutions.

Requiring a use permit for repair or reconstruction of existing displays would violate the Outdoor Advertising Act. The question of vested rights aside, the state Outdoor Advertising Act separately and independently restricts a locality from interfering with the repair or re-construction of display. In restricting a local government from removing existing signs, the Act provides:

Notwithstanding any other provision of this chapter, no advertising display which was lawfully erected anywhere within this state ... shall [have] its customary maintenance or use be limited, whether or not removal or limitation is pursuant to or because of this chapter or any other law, ordinance, or regulation of any government entity, without payment of just compensation, as defined in the Eminent Domain Law (Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure

In essence, a county cannot limit the "customary maintenance or use" of a display that has been lawfully erected without paying just compensation to injured parties. "Customary maintenance" means "any activity performed" on an advertising display "for the purpose of actively maintaining the Display in its existing approved physical

configuration and size dimensions at the specific location" approved by permit. (4 California Code of Regulations ["CCR"] § 2270.) Here, policy SR-SXX's requirement of a use permit has the potential to limit customary maintenance in a number of ways. For instance, the use permit process could result in the County imposing conditions of approval that preclude CBS from repairing a sign back to its previously approved physical configuration. Again, under state law, CBS has the right to maintain a sign in the exact configuration a public agency previously approved. Moreover, the very imposition of unnecessary delay also qualifies as a practical limitation on customary maintenance that would violate the Outdoor Advertising Act.

The prospect of delay not only would offend the plain language of section 5412 of the Act, but would make it legally infeasible for CBS to comply with other requirements of state law. The Outdoor Advertising Act provides that where a display has been significantly damaged or destroyed (e.g., by a natural disaster), a sign operator must replace or repair the damage within 60 days, with a possibility of an extension to six months. Were the County now to require a conditional use permit for such re-construction, which would involve a discretionary decision that could trigger full environmental review (*see* Pub. Res. Code § 21080) and public hearings (HCC, Title III, Ch. 2, §§ 312-9.1, 312-9.2), the ensuing process would require *at least* six months to complete, thereby making it legally infeasible to comply with state-adopted schedules. The law of preemption does not permit this sort of conflict. (*See Friends of Lagoon Valley, supra*, 154 Cal.App.4th at 830 [legislation that conflicts with state law is preempted and void].)

In summary, any proposed legislation that has the effect of (1) imposing a time-consuming, discretionary approval process on the mere repair or re-construction of an outdoor advertising display; or (2) subjecting the sign operator to additional conditions that could have the effect of precluding its repair to permitted dimensions, would qualify as a limitation on a given display's customary maintenance or use. Policy SR-SXX would achieve both, and do so without contemplating the payment of just compensation.⁵ Its adoption therefore would violate statutory and constitutional law.

* * *

In summary, the sign policies proposed under Chapter 10 of the Draft Update, which the Board may consider today, December 2, 2013, would, if adopted: (1) unlawfully interfere with vested rights that CBS has accrued; (2) improperly interfere with CBS's right to perform customary maintenance on its signs, as guaranteed under

⁵ Here, just compensation would have to address losses that include, but are not limited to, expenses necessary to navigate unlawful permitting processes, as well as lost revenues associated with the extended time it would take to obtain a use permit for repair.

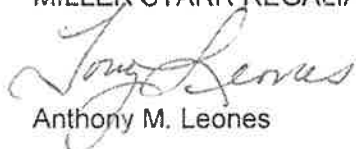
Michael Richardson
December 2, 2013
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state law; and (3) constitute an unlawful taking under statutory and constitutional provisions. Accordingly, we respectfully request that the Board modify the current proposal to exclude any further regulation of existing, lawful signs.

We thank you for your attention to these important matters, and remain available to the Board and to staff for any questions.

Very truly yours,

MILLER STARR REGALIA

A handwritten signature in cursive script, appearing to read "Tony Leones".

Anthony M. Leones

AML/SRM:kli

cc: Collin Smith, CBS Outdoor
Tracy D'Amico, Administrative Assistant to the Board of Supervisors
(tdamico@co.humboldt.ca.us)