



February 11, 2022

Sent Via Email to Koch.Kristine@epa.gov

Kristine Koch
Remedial Project Manager
USEPA, Superfund & Emergency Management Division
U. S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155, M/S 12-D12-1
Seattle, Washington 98101-3140

RE: City of Ruston's Comments on Proposed Point Ruston Amendment Consent Decree #5
and Construction Management Plan Design Addendum #3

Dear Ms. Koch,

Thank you for taking the time to speak with me on January 14, 2022 regarding EPA's consideration of the updated Point Ruston Construction Management Plan and the proposed 5th Amended Consent Decree. As I expressed, the City of Ruston has significant concerns about this plan which is a drastic departure from the original redevelopment plan and will have substantial detrimental impacts on the City of Ruston and the people who live, work and recreate in our city. This letter sets forth many of the concerns we have and how this plan violates the City's code, the FSEIS, and the promises made to Ruston when we approved this development more than a decade ago.

As you know, the Ruston portion of the former Asarco site was master planned with a full environmental review. The Point Ruston Final Supplemental Environmental Impact Statement (FSEIS) was issued on March 27, 2008 to address the impacts of this project. The Point Ruston Master Development Plan (PRMDP) was also originally approved in 2008. It was this plan that was determined to meet environmental standards and satisfy the Consent Decree. Unfortunately, Point Ruston has not yet completed either the remediation nor the redevelopment work in Ruston consistent with these approved plans. The updated Construction Management Plan Design (CMP) creates an even more extreme departure from what was promised for this property.

With Ruston being "ground zero" for the Asarco contamination, clean up and creation of useable, vibrant improvements are part of making our community "whole." This CMP not only fails to create such space, but actually does more harm to our community. We urge you to take the City's comments into consideration in determining what is an acceptable remediation for this site.

1. Contaminated Soils.

The contaminated soils were originally planned to either be used as part of the project or removed offsite to an appropriate disposal facility. Several years ago, it became apparent that Point Ruston would not be able to accommodate the contaminated soils anticipated by the EPA for use in the overall construction project. At that time, the City of Ruston suggested the following three alternatives to Metro Parks, Point Ruston, and the EPA for utilizing these soils:

- **Base of OCF.** Add fill along the base of the OCF (Lot 13) and allow construction of structures immediately adjacent to Yacht Club Road, utilizing the structures to retain soil behind them to the south and east.
- **Lot 10A/B.** Add fill between the BNSF tunnel and Ruston Way on Lot 10A/B and allow construction of Building 10A and 10B immediately adjacent to Ruston Way, utilizing the structures to retain soil behind them to the south.
- **Rust Park Fill.** Place the fill between the BNSF tracks and Commercial Street upon the City of Ruston's Rust Park property which extends from Winnifred Street to Baltimore Street.¹

Despite the above suggestions, the EPA allowed Metro Parks to pay Point Ruston over a million dollars to take dirt generated off-site by Metro Parks and place it upon the Lot 15 building site making it impossible to develop as planned. Metro Parks had originally planned to export waste soils to LRI, but since it exceeded cost estimates to do so, the dirt was made into "dunes" at the Dune Peninsula Park and a massive view-blocking terrace was created along the north edge of Park Avenue, with the substantial remainder placed in Ruston upon Lot 15 and 10C. This cost savings that EPA allowed Metro Parks to realize was wholly at the City of Ruston's expense in terms of quality of outcome and impeding future redevelopment. This new configuration will also have a significant negative financial impact to Ruston by reducing the promised development potential of the Point Ruston Development from several hundred residential units to a surface parking lot. Additionally, when EPA allowed Metro Parks to transport the soils over Ruston's right of way, significant damage occurred – particularly to Park Avenue and Highland Streets. To date the damage has not been repaired.

2. Contaminated soils impact to building sites and development potential should undergo additional public process.

Placing the contaminated soils within the proposed development area results in modification or elimination of open space and building pad locations within the project. In addition to impacting public open space, these changes to the remediation plan will result in the loss of hundreds of housing units and thousands of square feet of commercial area. Furthermore, these revisions directly conflict with the public's expectations, as documented in the Point Ruston FSEIS, PRMDP, and Ruston Comprehensive Plan. These plans and documents represent significant time, effort, and expense. In the past EPA has relied on these documents in guiding the remediation plan. See FSEIS Fact Sheet, page i, FSEIS Section 2.1 through 2.5 – Project Description, Objectives and Proposed Action, and RMC 25.01.061.a - PRMDP Overall Goals.

As proposed, these revisions more than a decade after the original approvals, will short-change the public by removing many important promised development features. Instead, the proposal results in surface parking lots and large piles of dirt where an active, vibrant, project was promised.

¹ The Rust Park property is located directly across the street from the former Asarco stack yet it has never been remediated. We have shared with you the need to remediate this site on multiple occasions. While EPA has acknowledged its responsibility to complete the remediation, to date no progress has been made.

This is contrary to all prior approvals, the City's zoning code, and violates the public trust. As you know, the plan for this property went through extensive public outreach and engagement and careful review in issuing the FSEIS and the approved Point Ruston Master Development Plan (PRMDP). The proposed changes are significant enough that they deserve to undergo the same intensity of public process as was done when the plan was first developed. The public deserves the chance to provide input to EPA on these changes. We urge you to require the revisions to undergo updated environmental review and public outreach and to require any development be consistent with allowed uses under the Ruston zoning code.

3. Proposed revision to CMP will result in a violation of the prior land use approvals and will violate the Ruston zoning code.

The proposed plan calls for very large surface parking lots as part of the final configuration. Surface parking is not allowed as a primary use on this property under either the Ruston Municipal Code or the PRMDP. If EPA allows Point Ruston to install a surface parking lot upon Lot 15 this will put the property in direct violation of local codes. Likewise, Point Ruston's installation of a surface parking lot upon Lot 16 is also a violation of local codes. See RMC 25.01.061(g) – Point Ruston Master Development Plan Land Uses, RMC 25.07 – Ruston Land Use Matrix.

In our discussions, you have indicated that the EPA views the cap as a temporary improvement and that EPA expects that buildings will eventually be constructed on these sites. Given the length of time that has already passed, that "temporary" condition may well last years or decades. Allowing Point Ruston to install an asphalt cap that can be used for a parking lot, is contrary to our codes, regardless of the duration that it would be in place. But more importantly, having large swaths of asphalt cap across this site will create more storm water runoff and creates enforcement issues in the city that will drain Ruston financially. In addition, the asphalt is environmentally problematic and unsightly. Instead of allowing the utilization of asphalt as a cap, requiring the site to be seeded and used as open space until redevelopment is ripe is a far better outcome as it would not violate Ruston codes, it would not create storm water environmental issues, and it will provide the public with a useable amenity during the interim time period.

4. The proposed CMP violates the requirement of installing a pedestrian access to the waterfront promenade.

The modification will also result in loss of required connections and open space from Promontory Hill Park to the Waterfront Promenade that were required by the FSEIS, Washington State Shoreline Management Act, and the Shoreline Substantial Development Permit. FSEIS Figure 11 – Pedestrian Connectivity Site Plan shows the primary greenspace which connects Promontory Hill Park and the public right of way with the Waterfront Promenade between Lot 15 and Lots 16/17. This open space and public access to the waterfront is required under the Washington State Shoreline Management Act - more specifically, it is required under the shoreline permit issued for the Silver Cloud Hotel, (Permit #SSDP 08-01). Instead of completing this required work, the proposed CMP will allow this area to be filled and replaced with an asphalt cap, a large surface parking lot, and sloped contaminated fill with hydroseed. This will violate the approved entitlements and the Ruston zoning code and remove an important public amenity from this project. See RMC 25.01.061(m) – Point Ruston Public Access, Parks and Open Space, RMC 25.01.061(m) – Table 9-1 "Open Space Between Buildings 15 and 16/17", FSEIS Figure 6 – Public Access/Parks and Open Space Plan, and FSEIS Figure 10 – Park Enhancements.

5. Proposed CMP violates the recent FSEIS Amendment (Agreed Plan of Action).

The City of Ruston and the City of Tacoma recently agreed to allow development of a mixed-use project at the 10C site as part of a proposed amendment to the Point Ruston Final Supplemental Environmental Impact Statement. Point Ruston agreed to this plan and signed the agreement binding itself to complete the work. If the large stockpile of contaminated fill is placed upon Lot 10C as proposed in the CMP, meeting the terms of the Agreed Plan of Action will be made impossible. In addition to violating the agreement between Point Ruston and both cities, this departure would have significant negative impacts upon the City of Ruston's aesthetics, its ability to achieve GMA population requirements, and anticipated future tax base.

Building 10C was anticipated to be around 30,000 sq/ft of mixed use (commercial/residential). This includes dozens of residential units above the ground floor commercial uses. The loss of this building site has significant economic impacts due to the loss of future commercial tax revenue, as well as having negative aesthetic impacts as the placement of buildings on both sides of the street (Ruston Way/51st Street) provides a critical architectural connection between the Point Ruston development and the traditional Ruston neighborhoods. This will be lost by the placement of fill on the site instead and instead creates a "dead zone" in this area of the city.

6. The recontamination of 10C and removal of this open space and pond violates the PRMDP.

In addition to removing an important portion of the development by making Building 10C impossible to develop as proposed, parcel 10C was slated to be open space and included the former cooling pond. This parcel had been completely remediated however under EPA oversight the parcel was purposefully re-contaminated with contaminated fill while at the same time an important public amenity was removed. The open space and pond on this site needs to be delivered, either here or elsewhere on the site.

7. The proposed CMP will result in reduced population and residential density in Ruston in violation of the City's GMA-mandated growth targets.

The loss of Building 15 is anticipated to reduce Ruston's projected residential unit count by 240 units, or about 535 residents. For a city with a projected built-out population of just over 1,450-1,600 residents, the loss of this building site significantly impacts our ability to meet our population goals under the Washington State Growth Management Act, as contemplated under the Ruston Comprehensive Plan. See Comprehensive Plan Figure 4.1 and 4.2, and the related paragraph on "Growth Accommodation" for an explanation of Ruston's estimated population projections and how it relies on the Point Ruston project to achieve Growth Management Act (GMA) compliance. It should also be noted that this site was anticipated to make significant progress in Ruston's attempt to highlight the benefits of "Missing Middle" type housing, which provides various forms of medium/high density affordable housing. The Washington State Legislature recently enacted requirements for cities in Washington State to allow "missing middle" housing. This departure will hamper the City's ability to meet these state requirements. In addition, even if Lot 15 is developed at some point in the future, the increased grade resulting from the placement of the large amount of soils onto the site raises the ground level several feet above the sidewalk. Ruston's

comprehensive plan, FSEIS, and PRMDP require development to occur at the sidewalk level. That is made impossible by this fill proposal and will remove street and pedestrian access to this parcel.

8. Proposed CMP work will utilize Ruston's public roadway infrastructure without permission and without any assurance that damage to the roadway will be repaired.

As discussed above, when Metro Parks used Ruston's roadways to move significant quantities of dirt and perform their construction project, the City's roadways were damaged. This damage has never been repaired by Metro Parks. The City, being small and having limited budget resources, doesn't have the funds to repair the damage. For this reason, the City has adopted vehicle weight limitations for most of our roadways. See Chapter 16.07 RMC. That code requires parties who use the City's roadways for overweight vehicles (more than 26,001 pounds) or any vehicles which are transporting hazardous materials to obtain a permit and post a bond so that any damage that they cause to the City's streets will be repaired. The streets that require this permit include:

- Winnifred Street - between 49th Street and Park Avenue;
- Baltimore Street - between the Ruston City Limits and Commercial Street;
- 49th Street - between Pearl Street and Orchard Street;
- 50th Street - between Pearl Street and Winnifred Street;
- 51st Street - between Baltimore Street and Pearl Street;
- 52nd Street - between Pearl Street and Bennett Street;
- 53rd Street - between Pearl Street and Bennett Street;
- Park Avenue - between Pearl Street and Bennett Street;
- Highland Street - between Rust Way and Park Avenue;
- Shirley Street - between 51st Street and Park Avenue;
- Bennett Street - between 51st Street and 52nd Street;
- Ruston Way - between Baltimore Street and the City limits;
- Yacht Club Road - from Ruston Way to the point where it becomes a private road;
and
- Baltimore Street between Commercial Street and Ruston Way (vehicles which are more than 7,000 pounds empty weight are prohibited).

The project as proposed in the CMP would utilize these streets without providing Ruston the protection and surety it needs to both prevent any damage to the roads or to ensure that any and all damage will be repaired by the party that damages the roadways. If you will be approving the revised CMP, we request that you require Point Ruston to obtain a permit from Ruston under Chapter 16.07 RMC, including posting a bond to repair any damage that it causes by using the City's roadways for its project.

9. Conclusion.

To summarize, the proposed amendment to the CMP represents an extreme departure from the promises that were made to the City of Ruston by Point Ruston, LLC and the EPA. These revisions not only fail to fulfill years of planning and study, including the environmental review, but will create violations of the Ruston zoning code, violations of final land use permitting

Letter to Kristine Koch
February 11, 2022
Page 6

requirements, violation of the Agreed Plan of Action under SEPA, and will result in the City being unable to meet its requirements under the Growth Management Act. These revisions will also likely result in damage to City infrastructure and will hamper future redevelopment of this site. We urge the EPA to consider the best interests of the community that is ground zero for the superfund site by not approving this Plan. If EPA will be allowing revisions to the plan, we implore you to not allow asphalt caps, but rather to add soil and hydroseed to these parcels so that they will absorb storm water and create a public amenity while the public waits even longer for the promises of this remediation and redevelopment to be delivered.

We stand ready to continue to work with EPA to make this project into everything that was promised.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Bruce Hopkins". The signature is fluid and cursive, with a large, sweeping flourish at the end.

D. Bruce Hopkins
Mayor

cc: Ruston City Council