

## Heidi K. S. Napolitino

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**From:** Tom McCormick <tommccormick@mac.com>  
**Sent:** Tuesday, February 20, 2024 11:46 AM  
**To:** Heidi K. S. Napolitino  
**Subject:** 2020 agreement shows Alon Asphalt and BSRE concerned that nonconforming use rights might expire  
**Attachments:** 2020-07-31 Site Services Agreement.pdf

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Heidi, could you please post the below email, dated Feb. 1, 2024, as a public comment for Council's Feb. 20, 2024 meeting. This is email #2 of 5 to be posted as a public comment.

Thank you.

Tom McCormick

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Begin forwarded message:

**From:** Tom McCormick <tommccormick@mac.com>  
**Subject:** 2020 agreement shows Alon Asphalt and BSRE concerned that nonconforming use rights might expire  
**Date:** February 1, 2024 at 3:28:16 PM GMT+13  
**To:** Michael Dobesh <michael.dobesh@snoco.org>  
**Cc:** Mike McCrary <mike.mccrary@snoco.org>, Elizabeth Mitchell <emitchell@townofwoodway.com>, John Brock <jbrock@townofwoodway.com>, Rajeev Thakur <rthakur@townofwoodway.com>, Jim Willett <jwillett@townofwoodway.com>, "Dr. Steven Mitchell" <smitchell@townofwoodway.com>, Mike Quinn <mquinn@townofwoodway.com>, Eric Faison <eric@townofwoodway.com>, "Heidi K. S. Napolitino" <Heidi@townofwoodway.com>, Brian Kirk <bkir461@ECY.WA.GOV>

Michael,

Supplementing my email sent two days ago, please note the following:

In June 2020, the oil company's lease expired and commercial oil operations at Point Wells were discontinued. (The oil company's current name is Alon Asphalt; however, the lease and other legal documents use the predecessor name, Paramount Petroleum Company or "Paramount".)

In July 2020, a month after the oil company discontinued commercial oil operations, BSRE took contractual steps to keep the oil terminal positioned for possible future use. On July 31, 2020, BSRE entered into a "Site Services Agreement" with Paramount (copy attached), whereby BSRE agreed to pay Paramount \$50,000 per month to have it perform the following caretaker "Site Activities":

"(a) all actions necessary to maintain and comply with the terms of or requirements associated with [various government] Permits;

- (b) all actions necessary to ensure that ... the Site is maintained (including the Improvements), in accordance with all laws, regulations, orders, permits, and authorizations, and ... the Improvements [(oil tanks, pipes, equipment, pier, etc.)] are maintained in a manner consistent with past practice;
- (c) all actions necessary to comply with all governmental reporting requirements under the Permits;
- (d) all actions necessary to comply with the Washington Department of Natural Resources Aquatic Lands Lease No. 20-013465 ("Lease") and any associated Permits and to maintain the Improvements related thereto [(since June 2020, the oil company paid about \$2.2 million to replace 60 of the pier pilings, as required by the DNR lease)]; and
- (e) the provision of MARSEC security with respect to the Site [(refers to requirements of the United States Coast Guard Maritime Security system)] ...."

BSRE must have figured that by paying \$50,000 per month to Paramount to minimally maintain the facility, maybe commercial oil operations could be resumed in the future. But it was a gamble. The parties knew that nonconforming use rights could expire. As revealed by the inclusion of a not-to-sue clause in the last sentence of paragraph 7 of the Site Services Agreement, the parties were concerned whether minimally maintaining the facility was sufficient to prevent the nonconforming use rights from expiring:

"7. Although [the oil company (Paramount)] will not be conducting marine fuel and asphalt blending and terminaling operations as part of the Site Activities during the Term, the Parties agree that, at this time, the Improvements are not being permanently closed and, therefore, [Paramount] shall have no obligation to, and shall not, dismantle or decommission Improvements during the Term, in order to facilitate either Party (or a third party) potentially in resuming such operations after the Term. **In the event that these [commercial oil] operations are not resumed after the Term, [BSRE] hereby releases, discharges, and covenants not to sue [Paramount] on the basis that [Paramount]'s conduct of the Site Activities during the Term *did not maintain a legal nonconforming use during the Term.***" (Boldface and italics added for emphasis.)

Under Snohomish County Code 30.67.450(5), Alon Asphalt's nonconforming use rights have expired because the nonconforming use at Point Wells has been discontinued for more than 12 months (since June 2020). The statute does not require that a facility be "permanently closed" or abandoned in order for nonconforming use rights to expire; the statute requires only that the nonconforming use—marine fuel and asphalt blending and terminaling operations—be discontinued for at least 12 months. That has occurred.

The July 2020 Site Services Agreement says that the oil company (Paramount) "will not be conducting marine fuel and asphalt blending and terminaling operations as part of the Site Activities." And true to the agreement, since June 2020, neither Paramount nor anyone else has conducted marine fuel and asphalt blending and terminaling operations—the nonconforming use remained discontinued. Since then, only minimal maintenance and caretaker activities have been performed, which shows at best that the parties had no intent to abandon, which is irrelevant under SCC 30.67.450(5)(last sentence).

Paramount's performance of the Site Activities specified in the Site Services Agreement (see above) *did not maintain a legal nonconforming use*. Minimally maintaining a facility for possible future use is not enough to avoid expiration of all nonconforming use rights at Point Wells.

I respectfully request that you please advise Alon Asphalt, BSRE, and Paramount that all nonconforming use rights have expired. Please advise the parties that they will be denied permits for the proposed berm project. Please advise the parties that they cannot re-start the nonconforming commercial oil operations at Point Wells.

Thank you.

Tom McCormick

## SITE SERVICES AGREEMENT

This Site Services Agreement (the "Agreement") is made as of the Effective Date (as defined below) by and between by and between Paramount of Washington, LLC ("POW"), a Delaware limited liability company, and Paramount Petroleum Corporation, a Delaware corporation ("Paramount," and together with POW, "Grantee"); and BSRE Point Wells, LP, a Delaware limited partnership ("Grantor").

WHEREAS, Grantor purchased from Grantee the real property generally referred to as Point Wells (the "Property") pursuant to an Agreement of Sale and Purchase dated April 22, 2010 (the "Purchase Agreement"). All capitalized terms used but not defined in this Agreement will have the meanings ascribed in the Purchase Agreement.

WHEREAS, Grantee and Grantor were also parties to a Development Agreement for the Property dated June 1, 2010 (the "Development Agreement").

WHEREAS, pursuant to Section 14.1 of the Purchase Agreement, Grantor granted a license to Grantee to access the Property to enable certain operations of the Improvements (the "License"). That term of the License expires on June 1, 2020.

WHEREAS, Grantee and Grantor are parties to a lawsuit captioned *BSRE Point Wells, LP v. Paramount of Washington, LLC, et al.*, Case No. 20-2-01578-31.

WHEREAS, POW or its affiliates holds the following permits: National Pollutant Discharge Elimination System Waste Discharge Permits WA0003239 and WA0031704, the Hydraulic Project Approval Permit No. 2018-4-197+01, and U.S. Army Corps of Engineers NWP3 (collectively, the "Permits").

In consideration of the mutual promises, covenants, and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor and Grantee (together, the "Parties"), the Parties hereby agree as follows:

1. Access. Grantor hereby, subject to the terms and conditions herein, grants to Grantee, and such of its agents, employees contractors, consultants, subcontractors, subconsultants and representatives whose access is required to enable Grantee to perform its obligations under this Agreement (collectively "Representatives"), for the Term (as defined below) authorization to enter the Property only in order to use the land and Improvements on the Property (together, the "Site") for the conduct of such activities as Grantee is required to perform under this Agreement (the "Site Activities").
2. Site Activities. During the Term, and subject to Section 5 below, Grantee will perform the following Site Activities in a professional and competent manner:
  - a. all actions necessary to maintain and comply with the terms of or requirements associated with the Permits;

- b. all actions necessary to ensure that: (i) the Site Activities are performed, and the Site is maintained (including the Improvements), in accordance with all laws, regulations, orders, permits, and authorizations, and (ii) the Improvements are maintained in a manner consistent with past practice;
- c. all actions necessary to comply with all governmental reporting requirements under the Permits;
- d. all actions necessary to comply with the Washington Department of Natural Resources Aquatic Lands Lease No. 20-013465 (“Lease”) and any associated Permits and to maintain the Improvements related thereto; and
- e. the provision of MARSEC security with respect to the Site (provided that Grantor will not be prevented from accessing the Site subject to applicable security requirements and Section 12 below).

Notwithstanding any other provision of this Agreement, during the Term Grantee shall not conduct any marine fuel and asphalt blending, fuel receipts or shipments, vessel loading, storage of fuel, unloading, transfer or other terminaling operations.

- 3. Term. The term (the “Term”) will commence on June 1, 2020 and will expire on the earlier of November 30, 2020 or such earlier date of which Grantor may advise Grantee in writing with at least forty-five days advance written notice.
- 4. No Extension. The Parties agree that this Agreement is not an extension of the License or the Development Agreement.
- 5. Costs. For the services rendered by Grantee hereunder, Grantor shall pay Grantee fees as set forth in this paragraph 5. On the first day of each month during the term beginning August 1, 2010 (unless earlier terminated; September 1, 2020; October 1, 2020; and November 1, 2020), Grantor shall pay to Grantee a fee of \$50,000 U.S. dollars for the performance of the Site Activities during such calendar month.
- 6. Insurance. Grantee and its affiliates shall maintain the same insurance coverage with respect to the Site and all operations thereon in the same amounts as was in place as of May 1, 2020 (the “Insured Matters”), subject to any changes that Grantee and its affiliates implement to any blanket insurance policies that cover all facilities that they own or operate in the United States to the extent that the changes affect the Site and all operations thereon in the same way that all other of Grantee’s and its affiliates’ facilities and operations are affected. Grantor shall be named as an additional insured with respect to the Insured Matters.
- 7. No Decommissioning. Although Grantee will not be conducting marine fuel and asphalt blending and terminaling operations as part of the Site Activities during the Term, the Parties agree that, at this time, the Improvements are not being permanently closed and, therefore, Grantee shall have no obligation to, and shall not, dismantle or decommission Improvements during the Term, in order to facilitate either Party (or a third party) potentially in resuming such operations after the Term. In the event that

these operations are not resumed after the Term, Grantor hereby releases, discharges, and covenants not to sue Grantee on the basis that Grantee's conduct of the Site Activities during the Term did not maintain a legal nonconforming use during the Term.

8. Limited Release Concerning Potential Loss of Use and Removal Claims. Grantor hereby releases Grantee from any Claims relating to loss of use with respect to the Property during the Term (but not before or after the Term), and discharges and covenants not to sue Grantee on the basis that Grantor suffered loss of use of the Property during the Term. Grantor also hereby releases, discharges, and covenants not to sue Grantee for any Claims relating to Grantee's failure to remove Improvements on the Property only during the Term (but not before or after the Term).
9. Permits and Authorizations. During the Term, Grantee shall continue to maintain and comply with (or cause their affiliates to do so) the Permits, but, subject to Section 10 below, it shall not be prohibited from seeking termination of the Permits to be effective at or after the expiration of the Term. Prior the earlier of October 15, 2020 or the date on which written notice of termination is received from Grantor pursuant to Section 3, Grantee will take no action (and will cause its affiliates not to take any action) that would (a) impair the use of the Site consistent with its current use and operations following the Term, including without limitation the provision of any further notice to the Local Emergency Planning Commission or the U.S. Coast Guard, or (b) initiate a termination of any Permit. Grantee shall be jointly and severally responsible for the actions of its Affiliates.
10. Grantor Option. At the option of Grantor, which may be exercised at any time during the Term, Grantee will convey (or, as applicable, will cause their affiliates to convey) all interest in and to the Permits to Grantor or its designee(s). In the event Grantor exercise this option, Grantee will take all actions and will cause their affiliates to take all actions reasonably necessary to effectuate the transfer of the Permits and the receipt of any required governmental approvals. The assignment of the Permits will be subject to any required governmental approvals.
11. Grantor Diligence. During the Term, Grantor may conduct due diligence on the Improvements at its sole cost and risk. Grantee will use commercially reasonable efforts to cooperate with and assist Grantor or its Representatives in the performance of such diligence, including by providing for the last three years: detailed operating expenses, capital expenditures, maintenance expense, any maintenance schedule and the types and quantities of petroleum products stored. No later than 24 hours before Grantor, its Representatives, or any other persons authorized by Grantor seek to access the Improvements, Grantor shall notify Grantee in writing of the names and contact information for all such individuals. Subject to this notification requirement, Site security requirements, and provided that such access shall not interfere with Grantee's performance of Site Activities, during the Term, Grantee will not prevent Grantor, its Representatives, or any other persons authorized by Grantor access to the Site, including the Improvements.

12. Lawsuit.

- a. The deadline for Grantee to respond to Grantor's pending discovery requests shall be extended to November 30, 2020.
- b. Neither the fact nor any of the terms or conditions of this Agreement shall be considered evidence as to the validity or invalidity, correctness or inaccuracy, or equity or inequity, of any position that any Party is taking in or any cause of action asserted in the Lawsuit or that may be asserted in the future in the Lawsuit or otherwise. To the contrary, this Agreement is entered into solely to allow the Parties additional time to determine if the issues in the Lawsuit can be resolved by the Parties.
- c. The Parties agree (without binding obligation) during the Term to engage in a good faith effort to resolve the Lawsuit and all other controversies among the Parties.
- d. Except for the limited releases and covenants not to sue explicitly addressed herein, this Agreement does not impair or affect either party's claims, arguments or defenses relating to the Lawsuit.

13. Notices. All notices, requests, demands, claims, and other communications hereunder shall be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given two (2) Business Days after it is sent by registered or certified mail, return receipt requested, postage prepaid, addressed to the intended recipient as set forth below, and also via e-mail at the address below:

If to Grantee:

Paramount Petroleum Corporation  
Paramount of Washington, LLC  
c/o Delek US Holdings, Inc.  
7102 Commerce Way  
Brentwood, TN 37027  
Attn: Frederec Green  
Tel: (615) 224-1168  
Email: Fred.Green@delekus.com

With a copy to:

Paramount Petroleum Corporation  
Paramount of Washington, LLC  
c/o Delek US Holdings, Inc.  
7102 Commerce Way  
Brentwood, TN 37027  
Attn: Abby Yates  
Tel: (615) 721-3703  
Email: Abby.Yates@delekus.com

If to Grantor:

BSRE Point Wells, LP  
Azreali Center 1 (Round Tower)  
Menachem Begin RD 132  
Tel Aviv Israel 6701101  
Attn: Michael Zissman  
Email: Miki@BSRE.CO.IL

With a copy to:

I.W. Winsten  
Honigman LLP  
2290 First National Building  
660 Woodward Avenue  
Detroit, MI 48226-3506  
Email: iwinsten@honigman.com

or to such other place and with such other copies as either Party may designate as to itself by written notice to the others in accordance with this Section 13.

14. Wiring Instructions:

Bank Name and Address:

Wells Fargo Bank  
420 Montgomery Street  
San Francisco, CA 94104

Account Information:

Account Title: PARAMOUNT PETROLEUM CORPORATION  
Account Number: 4698187929  
ACH/Wire/Check Routing Number: 121000248  
For International SWIFT/BIC code: WFBIUS6S

15. [Reserved].

16. The undersigned representative of each Party certifies that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this Agreement.

17. This Agreement contains the complete agreement between the Parties regarding the subject matter addressed herein and fully supersedes all prior contracts, agreements, understandings, negotiations or discussions, oral or written, relating to the subject matter hereof. There are no warranties, representations, agreements or understandings,



oral or written, relating to the subject matter hereof that are not fully expressed or provided for herein.

18. Any paragraph or subparagraph headings or section titles in this Agreement are provided solely as a matter of convenience to the reader and shall not be construed to alter the meaning of any paragraph or provisions of this Agreement.
19. This Agreement shall be governed and interpreted in accordance with Washington law.
20. This Agreement may be executed in original counterparts, all of which together shall be deemed to constitute one Agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.
21. Any modifications to this Agreement shall be in writing, signed by each Party.
22. The "Effective Date" of this Agreement shall be the last date that any Party signed the Agreement.

[signatures on following page]


IN WITNESS WHEREOF, the Parties execute this Site Services Agreement as shown below:

**PARAMOUNT OF WASHINGTON, LLC**

**BY ALON PARAMOUNT HOLDINGS, INC. ITS MANAGING MEMBER**

Signed:  \_\_\_\_\_  
By: Frederec Green

Date: 7/31/2020

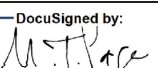
Signed:  \_\_\_\_\_  
By: Mark Page

Date: 7/31/2020

**PARAMOUNT PETROLEUM CORPORATION**


Signed:  \_\_\_\_\_  
By: Frederec Green

Date: 7/31/2020

Signed:  \_\_\_\_\_  
By: Mark Page

Date: 7/31/2020

**BSRE POINT WELLS, LP**

Signed:  \_\_\_\_\_  
By: Michael Zissman

Date: 7/31/2020