BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeals of
FOSS MARITIME COMPANY AND
PORT OF SEATTLE
from an interpretation issued by the Director,
Department of Planning and Development

Hearing Examiner File Nos.
S-15-001; S-15-002

FOSS MARITIME COMPANY'S
WITNESS AND EXHIBIT LIST
(Code Interpretation No. 15-001)

Appellant Foss Maritime Company ("Foss") submits the following list of witnesses and exhibits in the above referenced appeal. Foss reserves the right to supplement, amend, or revise this list.

I. WITNESS LIST

The following are witnesses Foss may call in this matter:

1. Paul Gallagher, Foss. May testify regarding (i) Foss's actual and intended activities at Terminal 5 and other facilities in the City of Seattle and Puget Sound; (ii) the operations of drilling rigs at Terminal 5 and at sea and the loading and unloading of goods and/or cargo therefrom; and (iii) other issues relevant to the appellant's case.

2. Paul Stevens, Foss. May testify regarding (i) Foss's negotiations of its lease of Terminal 5 with the Port of Seattle; (ii) Foss's communications with the Port of Seattle and the
City of Seattle regarding intended operations at Terminal 5; (iii) Foss’s actual and intended activities at Terminal 5 and at other facilities in the City of Seattle and Puget Sound; and (iv) other issues relevant to appellant’s case.

3. Michael Wardwell, Foss. May testify regarding (i) the operations of drilling rigs at Terminal 5 and at sea and the loading and unloading of goods and/or cargo therefrom, and (ii) other issues relevant to appellant’s case.

4. Andrew McKim, City of Seattle Department of Planning and Development (“DPD”). May testify regarding the classification of the actual and intended Foss uses at Terminal 5, of cargo terminal and moorage uses elsewhere in the City of Seattle, and matters relating to DPD’s Interpretation No. 15-001.

5. Ben Perkowski, DPD. May testify regarding the shoreline exemption granted to the Port of Seattle on February 5, 2015 and/or the classification of the actual and intended Foss uses at Terminal 5, of cargo terminal and moorage uses elsewhere in the City of Seattle, and various matters relating to DPD’s Interpretation No. 15-001.

6. Cliff Portman, DPD. May testify regarding the classification of the actual and intended Foss uses at Terminal 5, of cargo terminal and moorage uses elsewhere in the City of Seattle, and various matters relating to DPD’s Interpretation No. 15-001.

7. Diane Sugimura, DPD. May testify regarding the classification of the actual and intended Foss uses at Terminal 5, of cargo terminal and moorage uses elsewhere in the City of Seattle, and various matters relating to DPD’s Interpretation No. 15-001.

8. Sue Putnam, DPD. May testify regarding permit history at Terminal 5, and other matters regarding DPD’s Interpretation No. 15-001.

9. Everett Billingslea, Alaska Marine Lines. Mr. Billingslea or another representative may testify regarding Alaska Marine Lines’ barge transportation operations, based out of Terminal 115, to remote parts of Alaska.
10. Mike Hyde, American Seafoods Company. Mr. Hyde or another representative may testify regarding American Seafoods Company's use and moorage of its vessel(s) at Terminal 91, including an explanation of its conventional (non-container) cargo operations such as loading and unloading of fish, netting, and other operational materials, its importance to Seattle's maritime community, and how these uses will be impacted by the Interpretation.

11. Charlie Costanzo, American Waterway Operators. Mr. Costanzo or another representative may testify regarding this national trade association's representation of the nation's tugboat, towboat and barge industry, lobbying for sound maritime, environmental and labor policy, and the impact of the Interpretation on these industries and their members.

12. Doug Christensen, Arctic Storm, Inc. Mr. Christensen or another representative may testify regarding Arctic Storm, Inc.'s use and moorage of its vessel(s) at Terminal 91, including an explanation of its conventional (non-container) cargo operations such as loading and unloading of fish, netting, and other operational materials, its importance to Seattle's maritime community, and how these uses will be impacted by the Interpretation.

13. Warren Aakervik, Ballard Oil Company. Mr. Aakervik or another representative may testify regarding Ballard Oil Company's marine fueling facility operations located on a pier on the north side of the Lake Washington Ship Canal, in Salmon Bay, as well as its supply of other goods and materials to commercial, government and private vessels, including the Pacific Northwest fishing fleet.

14. Julia Shemesh, Crowley Maritime Corporation. Ms. Shemesh or another representative may testify regarding Crowley Maritime Corporation's vessel assist, escort service, and vessel preparation prior to deployment operations at Pier 17 and Terminal 18. Ms. Shemesh or another representative also may testify about how the permits and contracts they have entered into with other vessels are in jeopardy depending on the outcome of this appeal.

15. John Bundy, Glacier Fish Company. Mr. Bundy or another representative may testify regarding Glacier Fish Company's use and moorage of its vessel(s) at Fisherman's
Terminal in Salmon Bay, including an explanation of its conventional (non-container) cargo operations such as loading and unloading of fish, netting, and other operational materials, its importance to Seattle’s maritime community, and how these uses will be impacted by the Interpretation.

16. Jordan Royer, Pacific Merchant Shipping Association. Mr. Royer or another representative may testify regarding Pacific Merchant Shipping Association’s global maritime trade operations involving representing owners and operators of terminals and vessels, many of whom operate in Seattle at Port facilities and throughout the world.

17. Rich Wood, Premier Pacific Seafoods. Mr. Wood or another representative may testify regarding Premier Pacific Seafoods’ North Pacific Pollock and Hake fish processing operations, the use and moorage of its vessel(s) at Terminal 91, including an explanation of its conventional (non-container) cargo operations such as loading and unloading of fish, netting, and other operational materials, its importance to Seattle’s maritime community, and how these uses will be impacted by the Interpretation.

18. Vince O’Halleran, Sailor’s Union Of The Pacific. Mr. O’Halleran or another representative may testify regarding the Sailor’s Union Of The Pacific’s members’ activities as mariners, fisherman, boatmen and other workers working at cargo facilities throughout Seattle, including Terminal 5, and the impact of the Interpretation on such activities.

19. Augie Tellez, Seafarer’s International Union. Mr. Tellez or another representative may testify regarding Seafarer’s International Union’s members’ activities as working at cargo facilities throughout Seattle, including Terminal 5, and the impact of the Interpretation on such activities.

20. Kyle Lukin or Mark Knudsen, SSA Terminals, LLC. Mr. Lukin, Mr. Knudsen or another representative may testify regarding SSA Terminals, LLC’s vessel transportation service operations, including marine and cargo operations, at Terminal 18, the largest container facility in the Pacific Northwest, and other terminals within Seattle.
21. Richard Berkowitz or James Henry, Transportation Institute. Mr. Berkowitz, Mr. Henry or another representative may testify regarding how a productive and efficient maritime industry relies on agreements and government issued rights and permits and the impact of the Interpretation on such reliance.

22. Rear Admiral John Lockwood, Vigor Industrial, LLC. Mr. Lockwood or another representative will testify regarding Vigor Industrial, LLC’s operations of its 27-acre vessel construction and repair facility located on Harbor Island and may include an explanation of the assorted large cargo handling operations and the impact of the Interpretation on such activities.

23. Possible additional expert witness regarding issues of cargo terminal activities or other issues raised in the appeals.

24. Witnesses listed by any other party.

25. Witnesses in rebuttal to testimony or evidence introduced by Respondent City of Seattle and/or in response to witnesses identified by the City in its witness list.

II. EXHIBIT LIST

1. DPD Interpretation No. 15-001.

2. Drafts and/or notes regarding DPD Interpretation No. 15-001.

3. 1995 Shoreline Substantial Development Permit issued to the Port of Seattle for Terminal 5.


5. Resolution 3650, as amended.

6. Port of Seattle Term Lease.


8. PSR Superfund Site Record of Decision.

10. Container Development Plan

11. Terminal 5 Southwest Harbor Redevelopment Proposal

12. Site Plans for Terminal 5.


14. Record provided to King County Superior Court by the Port of Seattle for case No. 15-2-05143-1 SEA.

15. Lease between Foss and the Port of Seattle, dated February 6, 2015.

16. Port of Seattle License for Temporary Use and/or Occupancy to Foss.

17. Correspondence between Port of Seattle and Foss.


19. Correspondence between Port of Seattle and City of Seattle, including drafts, regarding the use and/or replacement of mooring bollards at Terminal 5.

20. Application materials, including drafts, from the Port of Seattle for shoreline exemption for the replacement of mooring bollards.

21. Records of the activities performed at Terminal 5, including logs and manifests; work logs; delivery slips; stow plans for vessels; summaries of loading, unloading, and storage activities; and employee shift records.

22. Licenses, certificates of registry, and other vessel records pertaining to the Polar Pioneer, Noble Discoverer, and other support vessels.

23. Regulations and codes applicable to mobile offshore drilling units.

24. Illustrative drawings, renderings and photographs of Terminal 5, Terminal 91, and other cargo terminals.

25. Additional permits, exemptions, or other documentation issued by the City of Seattle for terminals and other properties in Puget Sound.
26. Maps showing route of the Polar Pioneer and support vessels.

27. Handbooks and records regarding maintenance activities at Terminal 5 in the winter.

28. Memorandum regarding staff briefing to Port Commission, as produced by DPD at RFP4000640-647.

29. Photographs and/or graphics relating to cargo loading operations, goods loaded onto the Polar Pioneer and/or supporting vessels at Terminal 5, drilling rigs in Puget Sound, the Polar Pioneer, Noble Discoverer, and associated vessels.

30. Records of moorage at cargo terminals in Puget Sound.

31. Records from the activities performed at Terminal 91, including records of fishing vessel moorage and wintering vessels.

32. Resumes of expert witnesses, if any.

33. Excerpt from Webster’s New Collegiate Dictionary produced by the City of Seattle at RFP2000213-15.

34. Correspondence and materials submitted by Foss to the DPD in response to DPD inquiries.

35. Correspondence and materials submitted by Port to the DPD in response to DPD inquiries.

36. City of Seattle’s responses to Foss’s Interrogatories.

37. Records of DPD enforcement actions regarding vessel moorage.

38. Correspondence, including emails, produced by DPD regarding the Interpretation, Terminal 5, Foss, cargo terminals, Shell, or other issues relevant to this appeal.

39. Correspondence, including emails, produced by the Seattle City Council regarding the Interpretation, Terminal 5, Foss, cargo terminals, Shell, or other issues relevant to this appeal.
40. Correspondence, including emails, produced by the Office of the Mayor regarding the Interpretation, Terminal 5, Foss, cargo terminals, Shell, or other issues relevant to this appeal.

41. Press releases pertaining to the Interpretation, Terminal 5, Foss, cargo terminals, Shell, or other issues relevant to this appeal.

42. Media articles pertaining to the Interpretation, Terminal 5, Foss, cargo terminals, Shell, or other issues relevant to this appeal.

43. Any or all items disclosed by the City of Seattle in response to Foss's Public Records Act requests and/or Requests for Production.

44. Additional exhibits listed by the Port, the City of Seattle, Intervenor Puget Soundkeeper Alliance and the T-5 Intervenors.

45. Exhibits in rebuttal to testimony or evidence introduced by the City of Seattle or Intervenor Puget Soundkeeper Alliance.

46. Exhibits allowed by Hearing Examiner into evidence.

Foss reserves the right to submit additional exhibits and call additional witnesses in response to testimony and evidence introduced by the City of Seattle, as requested by the Hearing Examiner, or substitute witnesses due to the availability of witnesses.

Dated this 21st day of July, 2015.

MCCULLOUGH HILL LEARY, P.S.

By: John C. McCullough, WSBA #12740
Attorneys for Foss Maritime Company

GARVEY SCHUBERT BARER

By: David R. West, WSBA #13680
Daniel J. Vecchio, WSBA #44632
Attorneys for Foss Maritime Company
CERTIFICATE OF SERVICE

I, Dominique Barrientes, certify under penalty of perjury under the laws of the State of Washington that on July 21, 2015, I caused to be served the foregoing document, FOSS MARITIME’S WITNESS AND EXHIBIT LIST, on the person(s) identified below in the manner shown:

Patti Goldman  ☑
Amanda Goodin
Matthew Baca
EARTHJUSTICE
705 Second Avenue, Suite 203
Seattle, WA 98104-1711
pgoldman@earthjustice.org
mbaca@earthjustice.org
epowell@earthjustice.org

Patrick J. Schneider
Adrian Urquhart Winder
W. Adam Coady
Brenda Bole
FOSTER PEPPER PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101
schnp@foster.com
winda@foster.com
coadw@foster.com
boleb@foster.com

Traci Goodwin
PORT OF SEATTLE LEGAL DEPARTMENT
2711 Alaskan Way
Seattle, WA 98121
goodwin.t@portseattle.org

John C. McCullough
Laura Counley
MCCULLOUGH HILL LEARY, PS
701 Fifth Avenue, Suite 6600
Seattle, WA 98104
jack@mhseattle.com
laura@mhseattle.com

☐ United States Mail, First Class
☐ By Legal Messenger
☐ By Facsimile
☒ By Email

☐ United States Mail, First Class
☐ By Legal Messenger
☐ By Facsimile
☒ By Email

☐ United States Mail, First Class
☐ By Legal Messenger
☐ By Facsimile
☒ By Email

☐ United States Mail, First Class
☐ By Legal Messenger
☐ By Facsimile
☒ By Email

MCCULLOUGH HILL LEARY, P.S.
701 Fifth Avenue, Suite 6600
Seattle, WA 98104
206.812.3388
206.812.3389 fax
Dated at Seattle, Washington, this 21st day of July, 2015.

Dominique Barrientes, Legal Assistant