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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of:) Hearing Examiner File No. S-15-001
) (DPD Project No. 3020324)
FOSS MARITIME COMPANY)
)
from an Interpretation by the Director, Department)
of Planning and Development.)

_____)
) Hearing Examiner File No. S-15-002
) (DPD Project No. 3020324)
In the Matter of the Appeal of the:)
)
PORT OF SEATTLE,)
) PUGET SOUNDKEEPER’S SECOND
) UPDATED EXHIBIT LIST AND
from Interpretation No. 15-001 of the Director of) WITNESS LIST
the Department of Planning and Development.)
)
_____)

Puget Soundkeeper Alliance, Seattle Audubon Society, Sierra Club, and Washington Environmental Council (collectively “Soundkeeper”) respectfully submit this second updated list of exhibits and witnesses. The additional exhibits are the Port’s and Foss’s responses to the City of Seattle’s interrogatories and requests for production; the Port and Foss served those responses yesterday. All parties are aware of the contents of those documents, and none will be prejudiced by their addition to Soundkeeper’s list of exhibits. Additionally, Soundkeeper has decided not to

1 call Paul Fredrickson as a witness and has accordingly removed him from the witness list.

2 LIST OF EXHIBITS

3 1. Maps of Terminal 5 and the surrounding areas prepared by Soundkeeper's
4 witnesses showing the impact of the Coast Guard exclusion zone on navigation.

5 2. Port of Seattle and Washington Department of Natural Resources, 1998 Port
6 Management Agreement, Ex. A-1.

7 3. Port of Seattle, Harbor Development Strategy 21 (June 26, 2001).

8 4. Governor's Container Ports Initiative: Recommendations of the Container Ports
9 and Land Use Work Group – Excerpts (Jan. 2009).

10 5. Port of Seattle Commission Meeting Minutes (May 13, 2014).

11 6. Jeffrey W. Monroe, Dictionary of Maritime and Transportation Terms (2005)
12 (definitions of "cargo," "carrier," "good," "transfer" and "transport").

13 7. Black's Law Dictionary definitions of "cargo," "carrier," "good," "transfer," and
14 "transport".

15 8. O.E.D. definitions of "cargo," "carrier," "good," "transfer," and "transport".

16 9. Terminal 5 Opportunities Meeting Agenda (Oct. 27, 2014) (PRA Terminal 5-2105
17 to -2106).¹

18 10. Email Re: T5 bollard installation (Jan. 5, 2015) (PRA Terminal 5 – 2862 to -
19 2863).

20 11. Shell PowerPoint – Port of Seattle Terminal 5 Conference: Technical Details and
21 Assurances (PRA Terminal 5 – 2864, 2872-2884).

22 12. Email Re: T-5 Interim Use Consistency Analysis (Jan. 12, 2015) (PRA Terminal

23 _____
24 ¹ Documents produced by the Port under the Public Records Act are denoted "PRA" followed by
the bates-stamped identifier on the documents as released.

1 5-5040 to -5041).

2 13. Email: Draft Foss T-5 Lease Attributes (Jan. 29, 2015) (PRA Terminal 5- 4475-
3 4476).

4 14. Email with Draft T-5 Term Lease Use of Premises (Jan. 31, 2015) (Terminal 5-
5 3467, 3474).

6 15. Email with Draft Lease (Feb. 2, 2015) (PRA Terminal 5-4826-4828, 4835).

7 16. Email Re: Terminal 5 Foss USE description (Feb. 3, 2015) (PRA Terminal 5-
8 1980 to -1981).

9 17. Email with Foss T-5 Term Lease (Feb. 3, 2015) (PRA Terminal 5-3437, 3444).

10 18. Email with Foss T-5 Term Lease (Feb. 12, 2015) (PRA Terminal 5-4543-4544,
11 4554).

12 19. SEPA Exemption for Lease at Terminal 5 (Feb. 5, 2015) (W-312).²

13 20. Terminal 5 Interim Use Consistency Analysis (Jan. 14, 2015) (CW-151 to -165).

14 21. Interim Use Analysis (Jan. 6, 2015) (CW-166 to -170).

15 22. Shell PowerPoint Presentation at Meeting with Port (Aug. 27, 2014) (CW-211 to -
16 233).

17 23. Container Terminal Development Plan Excerpts (Oct. 1991) (CW-245 to -268).

18 24. Notice of Availability of Final EIS, Southwest Harbor Cleanup and
19 Redevelopment Project (Nov. 25, 1994) (CW-279 to -280).

20 25. Joint Federal-State Final EIS, Southwest Harbor Cleanup and Redevelopment
21 Project Table of Contents and Excerpts of Summary (Nov. 1994) (CW-281 to -312).

22 ² Documents that were included in the completed record in *Puget Soundkeeper Alliance v. Port*
23 *of Seattle*, No. 15-2-05143-1 SEA, in King County Superior Court are identified as W-___ or
24 CW-___, where the initials stand for “writ” and “completed writ” respectively.

1 26. Final EIS, Southwest Harbor Cleanup and Redevelopment Project, Technical
2 Appendix F-2 Shoreline and Land Use Analysis (Nov. 1994) (CW-313 to -317, CW-333 to -
3 335).

4 27. Email Re: Interim Revenue from Terminal 5 (Feb. 9, 2015) (CW-339 to -340)

5 28. Email Re: Vessel Maintenance and Report at Terminal 5 (Jan. 26, 2015) (CW-
6 341).

7 29. Email Re: T-5 Use (Dec. 4, 2014) (CW-355).

8 30. Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss (April
9 20, 2015).

10 31. Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss (May
11 19, 2015).

12 32. Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss (May
13 19, 2015).

14 33. Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss (May
15 21, 2015).

16 34. Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss (May
17 21, 2015).

18 35. Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss (June
19 3, 2015).

20 36. Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss (June
21 3, 2015).

22 37. Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss (June
23 3, 2015).

1 38. Photograph taken by Soundkeeper’s witnesses of Terminal 5’s use by Foss
2 (June 3, 2015).

3 39. Foss Maritime Company’s Objections and Responses to Department of Planning
4 and Development’s First Set of Interrogatories (Aug. 10, 2015).

5 40. Foss Maritime Company’s Objections and Responses to Department of Planning
6 and Development’s First Set of Requests for Production of Documents (Aug. 10, 2015).

7 41. Department of Planning and Development’s First Set of Interrogatories and
8 Requests for Production of Documents to Port of Seattle and Response Thereto (Aug. 10, 2015).

9 42. Exhibits from the depositions of Andy McKim and Ben Perkowski.

10 43. Exhibits in rebuttal to testimony or evidence submitted by appellants.

11 LIST OF WITNESSES

12 1. Sue Joerger, Puget Soundkeeper Alliance. Ms. Joerger may present fact testimony on
13 Puget Soundkeeper Alliance’s land-based monitoring of Shell, Shell contractor, and Foss
14 activities at Terminal 5 and will contrast that activity, and the effects of that activity on Puget
15 Soundkeeper Alliance’s activities under the prior Terminal 5 use. Soundkeeper anticipates
16 Ms. Joerger’s testimony will take less than 45 minutes.

17 DATED this 11th day of August, 2015.

18 *s/ Patti Goldman*

19 PATTI A. GOLDMAN, WSBA No. 24426

20 MATTHEW R. BACA, WSBA No. 45676

21 Earthjustice

22 705 Second Avenue, Suite 203

23 Seattle, WA 98104-1711

24 Ph: (206) 343-7340 | F: (206) 343-1526

25 pgoldman@earthjustice.org

26 mbaca@earthjustice.org

*Attorneys for Intervenors Puget Soundkeeper
Alliance, Seattle Audubon Society, Sierra Club and
Washington Environmental Council*

Puget Soundkeeper Alliance (“PSA”) Exhibits – Terminal 5

Ex. #	Date	Description	Identifier
1		Maps of Terminal 5 and the surrounding areas prepared by Soundkeeper’s witnesses showing the impact of the Coast Guard exclusion zone on navigation.	
2		Port of Seattle and Washington Department of Natural Resources, 1998 Port Management Agreement, Ex. A-1.	PRA Terminal 5 – 56-60
3	06/26/2001	Port of Seattle, Harbor Development Strategy 21.	PRA
4	01/2009	Governor’s Container Ports Initiative: Recommendations of the Container Ports and Land Use Work Group—Excerpts.	
5	05/13/2014	Port of Seattle Commission Meeting Minutes.	Port Commission’s Meeting Website
6	2005	Jeffrey W. Monroe, Dictionary of Maritime and Transportation Terms (definitions of “cargo,” “carrier,” “good,” “transfer” and “transport”).	
7		Black’s Law Dictionary definitions of “cargo,” “carrier,” “good,” “transfer,” and “transport.”	
8		O.E.D. definitions of “cargo,” “carrier,” “good,” “transfer,” and “transport.”	
9	10/27/2014	Terminal 5 Opportunities Meeting Agenda.	PRA Terminal 5 – 2105-2106
10	01/05/2015	Email Re: T5 bollard installation.	PRA Terminal 5 – 2862-2863

Ex. #	Date	Description	Identifier
11		Shell PowerPoint–Port of Seattle Terminal 5 Conference: Technical Details and Assurances.	PRA Terminal 5 – 2864, 2872-2884
12	01/12/2015	Email Re: T-5 Interim Use Consistency Analysis.	PRA Terminal 5 – 5040-5041
13	01/29/2015	Email: Draft Foss T-5 Lease Attributes.	PRA Terminal 5 – 4475-4476
14	01/31/2015	Email with Draft T-5 Term Lease Use of Premises.	PRA Terminal 5 – 3467, 3474
15	02/02/2015	Email with Draft Lease.	PRA Terminal 5 – 4826-4828, 4835
16	02/03/2015	Email Re: Terminal 5 Foss USE description.	PRA Terminal 5 – 1980-1981
17	02/03/2015	Email with Foss T-5 Term Lease.	PRA Terminal 5 – 3437, 3444
18	02/12/2015	Email with Foss T-5 Term Lease.	PRA Terminal 5 – 4543-4544, 4554
19	02/05/2015	SEPA Exemption for Lease at Terminal 5.	W-312
20	01/14/2015	Terminal 5 Interim Use Consistency Analysis.	CW-151 to -165
21	01/06/2015	Interim Use Analysis.	CW-166 to -170
22	08/27/2014	Shell PowerPoint Presentation at Meeting with Port.	CW-211 to -233
23	10/1991	Container Terminal Development Plan Excerpts.	CW-245 to -268
24	11/25/1994	Notice of Availability of Final EIS, Southwest Harbor Cleanup and Redevelopment Project.	CW-279 to -280

Ex. #	Date	Description	Identifier
25	11/1994	Joint Federal-State Final EIS, Southwest Harbor Cleanup and Redevelopment Project Table of Contents and Excerpts of Summary.	CW-281 to -312
26	11/1994	Final EIS, Southwest Harbor Cleanup and Redevelopment Project, Technical Appendix F-2 Shoreline and Land Use Analysis.	CW-313 to -317, CW-333 to -335
27	02/09/2015	Email Re: Interim Revenue from Terminal 5.	CW-339 to -340
28	01/26/2015	Email Re: Vessel Maintenance and Report at Terminal 5.	CW-341
29	12/04/2014	Email Re: T-5 Use.	CW-355
30	04/20/2015	Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss.	
31	05/19/2015	Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss.	
32	05/19/2015	Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss.	
33	05/21/2015	Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss.	
34	05/21/2015	Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss.	
35	06/03/2015	Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss.	
36	06/03/2015	Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss.	
37	06/03/2015	Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss.	
38	06/03/2015	Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss.	

Ex. #	Date	Description	Identifier
39	08/10/15	Foss Maritime Company's Objections and Responses to Department of Planning and Development's First Set of Interrogatories.	
40	08/10/15	Foss Maritime Company's Objections and Responses to Department of Planning and Development's First Set of Requests for Production of Documents.	
41	08/10/15	Department of Planning and Development's First Set of Interrogatories and Requests for Production of Documents to Port of Seattle and Response Thereto.	

EXHIBIT 39

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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:) Hearing Examiner File:
) **S-15-001 and S-15-002**
)
FOSS MARITIME COMPANY) FOSS MARITIME COMPANY'S
) OBJECTIONS AND RESPONSES TO
) DEPARTMENT OF PLANNING AND
from an interpretation by the Director,) DEVELOPMENT'S FIRST SET OF
Department of Planning and Development.) INTERROGATORIES
)
_____)

Pursuant to Hearing Examiner Rule of Practice and Procedure ("Rule") 3.11 and Washington Civil Rule 33, Foss Maritime Company ("Foss") responds and objects to Department of Planning and Development's ("DPD") First Set of Interrogatories ("Interrogatories") as follows:

GENERAL OBJECTIONS

1. Foss objects to the Interrogatories to the extent that they seek information protected by the attorney client privilege.
2. Foss objects to the Interrogatories to the extent that they seek information protected by the work product doctrine, the common interest doctrine, or the joint defense doctrine.
3. Foss objects to the Interrogatories to the extent that they purport to require Foss to

1 interview an unduly burdensome number of its employees to provide a complete answer. Foss
2 has conducted a reasonable investigation to determine its responses to these interrogatories.

3 4. Foss objects to the Interrogatories to the extent that they seek responses from Foss
4 beyond the requirements of the Hearing Examiner Rules or Washington Court Rules.

5 5. Foss objects to the Interrogatories to the extent they seek confidential and
6 proprietary business or financial information. Such information is highly confidential, not
7 reasonably calculated to lead to the discovery of admissible evidence, is unduly burdensome to
8 produce, and would cause harm to Foss which is disproportionate to the relevance of such
9 information, if any.

10 6. Foss objects to the Interrogatories to the extent they are vague, ambiguous or
11 susceptible to varying interpretations. Foss is responding to the Interrogatories as it interprets
12 and understands them. If DPD subsequently asserts an interpretation of any Interrogatory that
13 differs from the understanding of Foss, Foss reserves the right to supplement its objections
14 and/or responses herein.

15 7. Foss objects to the Interrogatories to the extent they incorporate, reference, or rely
16 upon factual assumptions, characterizations, or legal conclusions that are incorrect, speculative,
17 or inappropriate. Any information provided by Foss in response to any of the Interrogatories
18 shall not be deemed an admission, concession, or acquiescence to the accuracy of any
19 assumption, characterization, or conclusion incorporated within, or referred to or relied upon in
20 any Interrogatory.

1 **RESPONSES TO SPECIFIC INTERROGATORIES**

2 **INTERROGATORY NO. 1:** Identify all persons participating in the preparation of your
3 answers and responses to these Interrogatories and Requests for Production, and for each such
4 person state the answers or responses for which that person provided information or documents.

5 **ANSWER:** Foss incorporates the General Objections above into this response. Foss
6 further objects to this Interrogatory to the extent it seeks disclosure of information protected by the
7 attorney-client privilege and/or the attorney work product doctrine. Subject to and without waiving
8 the foregoing objections, Foss responds as follows:

9 In addition to Foss’s inside and outside legal counsel, Paul Gallagher provided information
10 used in Foss’s responses to Interrogatories Nos 4, 5 and 6. Mr. Gallagher’s knowledge and
11 information was gained from his own experience and from his interactions and communications
12 with many individuals over the past year while serving as the lead for Foss’s Terminal 5 project.
13 Identification of all persons who have provided him information over that time period is impossible
14 and impractical, as well as unduly burdensome given the marginal usefulness of such information.

15 Information for the remaining Interrogatories consists of work product.

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19 **INTERROGATORY NO.2:** If you contend that mooring the Polar Explorer and
20 assisting vessels at Terminal 5 is “intrinsic” to the permitted use of cargo terminal, please

- 21 a. state all facts that relate to, support, or refute your contention,
22 b. Identify all persons with knowledge of those facts, and
23 c. Identify all documents that support, refute or relate to the contention.

1 For the purpose of this interrogatory, “intrinsic” has the meaning in Seattle Municipal Code
2 23.60.940 (“use, accessory”).

3 **ANSWER:** Foss incorporates the General Objections above into this response. Foss
4 further objects to the Interrogatory as seeking to have Foss put on a dress rehearsal of the hearing in
5 this matter, which is an improper interrogatory pursuant to *Weber v. Biddle*, 72 Wash.2d 22, 29
6 (1967) (“the opposing party cannot be required to put on a dress rehearsal of the trial. While it is
7 proper to elicit information as to evidentiary facts as contrasted with ultimate facts, nevertheless it is
8 improper to ask a Party to state evidence upon which he intends to rely to prove any fact or facts.”).
9 Foss further objects to this Interrogatory as overbroad, unduly burdensome and untimely insofar as
10 it seeks all facts that “relate to, support, or refute” its contention, seeks “all persons” with
11 knowledge of such facts, and seeks “all documents” that “support, refute, or relate to” the
12 contention. The hearing in this matter is in three days and the time for disclosing exhibits and
13 witnesses has passed. Foss further objects to this Interrogatory as vague, ambiguous, and not
14 reasonably calculated to lead to this discovery of admissible evidence, and as seeking a legal
15 conclusion about a term that is used in an ordinance. Subject to and without waiving the foregoing
16 objections, and based on the assumption that the reference to “Polar Explorer” means “Polar
17 Pioneer,” Foss responds as follows:

18 Moorage is intrinsic to the operations of any cargo terminal. Vessels cannot load or unload
19 without mooring; cargo terminals cannot operate without facilities to moor vessels as they load and
20 unload; a core function of cargo terminals is servicing commercial vessels of all types, not just those
21 that carry cargo as their primary function; commercial vessels need moorage locations appropriate
22 to the type of vessel for periods in which they are not actively sailing. There is no basis for
23 differentiating between various vessels or types of vessels in this regard. Facts supporting these

1 contentions include but are not limited to facts regarding the historical uses of cargo terminals in the
2 Puget Sound area; the nature of maritime commerce, and the operations of ports, vessels, and
3 terminals. Foss further notes that, by its nature, the loading and unloading of vessels takes may take
4 a significant amount of time, during which a vessel must remain moored.

5 The Polar Pioneer is no different than any other vessel that has moored at City cargo
6 terminals for decades. Terminal 91, a cargo terminal, routinely hosts all types of vessels for short
7 and long term moorage, including icebreakers, research vessels, oil spill response vessels, naval
8 vessels (U.S. and foreign), fishing vessels, fire boats, police boats, tugs, barges, and cargo vessels.
9 The City has known of Terminal 91's use as a "homeport" for such vessels and has cited that use in
10 documents it authored, documents which considered whether additional uses should be permitted.
11 The City's purported distinctions between Terminal 5 and other cargo terminals in the City, as well
12 as distinctions between vessels based on their "function," are selective and discriminatory and are
13 not based on any criteria in the code.

14 Foss has identified persons with knowledge of these facts, and has identified and produced
15 documents relating to these facts, in its Witness and Exhibit list. Virtually every person involved in
16 the maritime industry would have knowledge of facts relevant to this matter. Documents relevant to
17 this issue would also include thousands if not millions of documents pertaining to marine
18 operations.

19 Foss further incorporates by reference the materials submitted by Foss and the Port to the
20 City in connection with the City's Interpretation at issue in this appeal; the pre-hearing briefs to be
21 filed by the parties; and the other pleadings submitted in this matter.

1 **INTERROGATORY NO. 3:** If you contend that the activity of mooring and
2 provisioning an oil rig, such as the Polar Explorer, and its assisting vessels at Terminal 5 is “no
3 different than other activities that have been treated by the City as a cargo terminal use” (Hearing
4 Examiner Order on Motion to Dismiss, paragraph 8), please:

5 a. State all facts that relate to, support, or refute your contention, including but not
6 limited to:

- 7 i. what activity occurred,
8 ii. when it occurred,
9 iii. where it occurred,
10 iv. the nature of the City’s action showing it treated the activity as a cargo
11 terminal use;

12 b. Identify all persons with knowledge of facts that relate to, support, or refute your
13 contention; and

14 c. Identify all documents that support, refute, or relate to your contention.

15 **ANSWER:** Foss incorporates by reference its objections to Interrogatory No. 1. Subject
16 to and without waiving the foregoing objections, Foss responds as follows:

17 Foss contends that its activities at Terminal 5 are no different than other activities that have
18 been treated by the City as cargo terminal uses. Foss incorporates by reference its response to
19 Interrogatory No. 1. Foss further states that vessels of all types regularly moor and provision at
20 Terminal 91 without any associated loading or unloading of cargo, and have done so for decades.

21 Foss has identified persons with knowledge of these facts, and has identified and produced
22 documents relating to these facts, in connection with its Witness and Exhibit list.

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2 **INTERROGATORY NO. 4:** Please identify all Shell vessels and floating structures and
3 Shell contractor vessels and floating structures that have moored or docked at Terminal 5 in
4 2015.

5 **ANSWER:** Foss objects to the term “Shell contractor vessels and floating structures” as
6 vague. As Foss best understands those terms, Foss responds that the following vessels have moored
7 or docked at Terminal 5 since Foss signed the lease for Terminal 5:

- 8 a. Polar Pioneer
- 9 b. Harvey Champion
- 10 c. Harvey Supporter
- 11 d. Harvey Explorer
- 12 e. Tuuq
- 13 f. Harvey Spirit
- 14 g. KRS 286-6
- 15 h. Tor Viking II
- 16 i. Aiviq
- 17 j. American Trader

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20 **INTERROGATORY NO. 5:** Please describe all activities Shell and Shell contractors
21 have conducted at Terminal 5 in 2015.

22 **ANSWER:** Foss incorporates the General Objections above into this response. Foss

1 further objects to this Interrogatory as overbroad and unduly burdensome insofar as it seeks a
2 description of “all” activities Shell and Shell contractors have conducted, and to the extent it seeks
3 discovery of information outside of Foss’s possession, custody, or control. Subject to and without
4 waiving these objections, Foss responds as follows:

5 Since Foss leased Terminal 5, Foss has used Terminal 5 as a cargo terminal, in accordance
6 with the requirements of its lease with the Port of Seattle. Foss received goods, cargo, equipment,
7 supplies, stores, provisions and other materials from third parties who delivered those items to
8 Terminal 5 by rail or truck. Such materials was staged, arranged and stored on the terminal to
9 facilitate loading the goods onto vessels. Many of the materials were packed into containers.
10 Using contracted longshore labor, Foss loaded such items onto various vessels that are owned by
11 Foss, chartered by Foss, or owned or chartered by Shell contractors, for transfer and transportation
12 of those items to other locations. Vessel personnel and longshore labor then secured those materials
13 aboard the vessels for transfer to other locations. Foss also unloaded goods from vessels, including
14 vessels owned or chartered by third party customers as well as vessels owned by or chartered by
15 Foss. Foss provided interim storage and disposal of unloaded items at Terminal 5 for itself and its
16 customers. Foss transferred items to third parties who will transport them from Terminal 5 by truck
17 or rail. Standard, routine run and maintain activities were conducted.

18 Foss and Shell personnel performed numerous tasks at Terminal 5 in support of these
19 loading and unloading activities. Foss had personnel who oversaw and maintained security for the
20 terminals; ensured that safety and operations procedures were followed; documented and directed
21 the loading and unloading operations as well as the docking and mooring of the vessels; performed
22 routine run and maintain activities as appropriate; and numerous other support operations. Shell had
23 personnel employed at Terminal 5 who performed similar functions, as did Shell contractors.

1 In addition, routine maintenance and minor repair work was performed at Terminal 5. The
2 crews of the vessels used, monitored and tested their systems to be sure that they were fully
3 operational. This included ongoing testing of navigational and mechanical systems. The vessels
4 hired consultants, contractors to help with testing and, as needed, servicing, replacement and/or
5 repair of ship's equipment on and within the vessel.

6 Prior to taking possession of Terminal 5, Foss replaced bollards on the pier apron. Foss also
7 repaired shore-side facilities and readied those facilities for Foss's operation of the cargo terminal.

8 Foss has escorted numerous governmental officials who have asked to inspect or tour
9 Terminal 5.

10 Foss further incorporates by reference its response to Interrogatory No. 1, and the materials
11 referenced therein.

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15 **INTERROGATORY NO. 6:** If you contend that during 2105 the Polar Explorer or
16 attending vessels moored at Terminal 5 loaded and unloaded items that are within the definition
17 goods or container cargo in SMC 23.60.940/23.60A.940, please

- 18 a. state all facts that relate to your contention, including type, quantity (or tonnage)
19 and purpose for the items loaded,
20 b. Identify all persons with knowledge of those facts, and
21 c. Identify all documents that relate to, support, or refute your contention.

22 **ANSWER:** Foss incorporates its objections and response to Interrogatory No. 1. Subject
23 to and without waiving the foregoing objections, Foss responds as follows:

1 Foss loaded substantial quantities and numerous type of materials onto several vessels since
2 Foss took possession of Terminal 5 in February 2015. Foss believes and contends that all of this
3 material constitutes “goods or containerized cargo” as that term is used in both SMC 23.60.940 and
4 SMC 23.60A.940. The types of materials (much of them loaded into containers) that were loaded
5 onto the Polar Pioneer and onto seven other vessels associated with Shell’s Arctic exploration
6 project are identified in Foss’s hearing exhibits, which contain photographs of the materials on the
7 dock as well as loaded on the vessels; cargo manifests; load or stow plans; and other documents
8 indicating the materials which were received at Terminal 5, stored on the terminal, and then loaded
9 on the vessels.

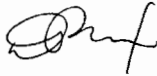
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14 **INTERROGATORY NO. 7:** Please identify all persons who negotiated the agreements
15 between you and Shell for using Terminal 5.

16 **ANSWER:** Foss incorporates the General Objections above into the response to this
17 Interrogatory. In addition, Foss objects to this Interrogatory as overbroad, as requesting information
18 not reasonably calculated to lead to the discovery of admissible evidence, and as requesting
19 information that is proprietary and confidential. The identity of such persons is not reasonably
20 calculated to lead to the discovery of admissible evidence.

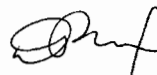
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23 DATED this 10th day of August, 2015.

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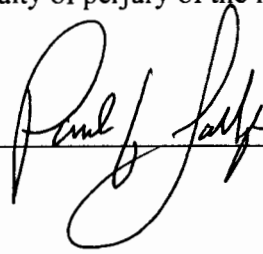
By 
David R. West, WSBA #13680
Donald B. Scaramastra, WSBA #21416
Daniel J. Vecchio, WSBA #44632
Attorneys for Foss Maritime Company

MCCULLOUGH HILL LEARY, P.S.

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

VERIFICATION

Paul Gallagher, being first duly sworn, upon oath deposes and says: I am a Vice President of Foss Maritime Company, and am qualified to verify Foss Maritime Company's interrogatories responses. I have read the above and foregoing DEPARTMENT OF PLANNING AND DEVELOPMENT'S FIRST SET OF INTERROGATORIES TO FOSS MARITIME COMPANY, and the answers and responses thereto, know the contents thereof, and believe the same to be true and correct, under penalty of perjury of the laws of the state of Washington.



CERTIFICATE OF SERVICE

I, Dominique Barrientes, certify under penalty of perjury under the laws of the State of Washington that on August 10, 2015, I caused to be served the foregoing document, FOSS MARITIME COMPANY'S OBJECTIONS AND RESPONSES TO DEPARTMENT OF PLANNING AND DEVELOPMENT'S FIRST SET OF INTERROGATORIES, on the person(s) identified below in the manner shown:

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EPowell@earthjustice.org

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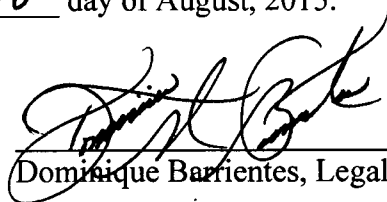
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Dated at Seattle, Washington, this 10th day of August, 2015.



Dominique Barrientes, Legal Assistant

EXHIBIT 40

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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:) Hearing Examiner File:
) **S-15-001 and S-15-002**
)
FOSS MARITIME COMPANY) FOSS MARITIME COMPANY'S
) OBJECTIONS AND RESPONSES TO
) DEPARTMENT OF PLANNING AND
from an interpretation by the Director,) DEVELOPMENT'S FIRST SET OF
Department of Planning and Development.) REQUESTS FOR PRODUCTION OF
) DOCUMENTS

Pursuant to Hearing Examiner Rule of Practice and Procedure ("Rule") 3.11 and Washington Civil Rule 34, Foss Maritime Company ("Foss") responds and objects to Department of Planning and Development's ("DPD") First Set of Requests for Production ("Requests") as follows:

GENERAL OBJECTIONS

1. Foss objects to the Requests to the extent that they seek production of documents that are protected from disclosure by attorney-client privilege, as attorney work product, as material prepared in anticipation of litigation, hearing or trial, or as containing mental impressions, conclusions, opinions, or legal theories of one or more of Foss's attorneys.

2. Foss objects to the Requests to the extent that they seek or may be deemed to seek documents possessed by third-parties not under Foss's control.

1 3. Foss objects to the Requests to the extent that they seek responses from Foss
2 beyond the requirements of the Hearing Examiner Rules or Washington Civil Rules.

3 4. Foss objects to the Requests to the extent they seek the production of documents
4 containing confidential and proprietary business or financial information. Such information is
5 highly confidential, not reasonably calculated to lead to the discovery of admissible evidence,
6 and unduly burdensome to produce.

7 5. Foss objects to the Requests to the extent they are vague, ambiguous or
8 susceptible to varying interpretations. Foss is responding to the Requests as it interprets and
9 understands those requests. If DPD subsequently asserts an interpretation of any Request that
10 differs from the understanding of Foss, Foss reserves the right to supplement its objections
11 and/or responses herein.

12 6. Foss objects to the Requests to the extent they incorporate, reference, or rely upon
13 factual assumptions, characterizations, or legal conclusions that are incorrect, speculative, or
14 inappropriate. Any information provided or production of or reference to documents by Foss in
15 response to any of the Requests shall not be deemed an admission, concession, or acquiescence
16 to the accuracy of any assumption, characterization, or conclusion incorporated within, or
17 referred to or relied upon in any request.

18 **RESPONSES TO SPECIFIC REQUESTS**

19 **REQUEST FOR PRODUCTION NO. 1:** Please provide all agreements and all draft
20 agreements between you and Shell for use of Terminal 5.

21 **RESPONSE:** Foss incorporates the General Objections above into the response to this
22 Request. In addition, Foss objects to this Request as overbroad, as requesting information not
23 reasonably calculated to lead to the discovery of admissible evidence, and as requesting information
that is proprietary and highly confidential. Subject to and without waiving these objections, the

1 documents produced as FOSS_0001 to FOSS_00005 are the pertinent provisions of Purchase
2 Contract UA54145 for the Supply of Material Handling and Terminal Services between Shell
3 Offshore, Inc. and Foss Maritime Co., insofar as that contract pertains to the types of services Foss
4 contracted to provide Shell at Terminal 5.

5
6 **REQUEST FOR PRODUCTION NO. 2:** Produce a true, correct, accurate and complete
7 copy of all documents identified in your answers to the preceding interrogatories.

8 **RESPONSE:** Foss incorporates the General Objections above into the response to this
9 Request. Subject to and without waiving the foregoing objections, Foss has produced documents
10 responsive to this Request, consisting of its designated exhibits in this matter.

11 DATED this 10th day of August, 2015.

12 GARVEY SCHUBERT BARER

13 By 

14 _____
15 David R. West, WSBA #13680
16 Donald B. Scaramastra, WSBA #21416
17 Daniel J. Vecchio, WSBA #44632
18 Attorneys for Foss Maritime Company

17 MCCULLOUGH HILL LEARY, P.S.

18 By 

19 _____
20 John C. McCullough, WSBA #12740
21 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 August 10, 2015, I caused to be served the foregoing document, FOSS MARITIME COMPANY'S OBJECTIONS AND RESPONSES TO DEPARTMENT OF PLANNING AND DEVELOPMENT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS, on the person(s) identified below in the manner shown:

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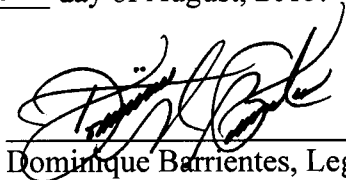
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Dated at Seattle, Washington, this 10th day of August, 2015.



Dominique Barrientes, Legal Assistant

PURCHASE CONTRACT UA54145

FOR THE

SUPPLY OF MATERIAL HANDLING AND TERMINAL SERVICES

between:

SHELL OFFSHORE, INC.

and

FOSS MARITIME COMPANY



Section III – Scope Description

1. GENERAL

This order shall constitute an agreement by CONTRACTOR to furnish all tools and equipment, materials (except COMPANY-furnished material), labor and supervision to provide terminal/dock facilities (slips), onsite storage, and material handling operations in support of COMPANY's operations at Terminal 5, Seattle, Washington (Terminal).

It shall be the CONTRACTOR'S responsibility to see that such activities are performed in such a manner as to yield results in accordance with COMPANY'S project objectives.

CONTRACTOR agrees to provide these services safely and efficiently on an economic and timely basis, and in keeping with standards and practices generally accepted in the industry and highlighted in the Shell/Contractor Safety Interface Document.

CONTRACTOR will provide and manage trained and qualified personnel to ensure the job function is efficiently executed for COMPANY's business throughout the contract period.

CONTRACTOR'S duties shall include the following:

1. CONTRACTOR shall provide Slips, Staging Areas, Living Quarters, Marshalling Areas, Personnel, and Equipment to meet COMPANY's needs at the Terminal.
2. CONTRACTOR shall operate Terminal and ensure general housekeeping at the Terminal is maintained consistent with personnel safety and accident free operations as the primary concern.
3. CONTRACTOR is responsible for the receipt, storage, staging, loading and unloading of all material used by COMPANY in the performance of its business.
4. CONTRACTOR shall load/unload marine vessels, trucks, etc. in accordance with COMPANY requirements.
5. CONTRACTOR shall handle, sort (if necessary), and place in proper disposal container(s), identified for COMPANY USE ONLY, all trash and other non-hazardous solid waste generated from COMPANY activities, which originate at the Terminal. COMPANY shall deliver to the Terminal its hazardous and non-hazardous solid waste generated offshore, pre-sorted and placed into properly marked containers. Upon arrival at the Terminal, CONTRACTOR shall off-load both solid and hazardous wastes and if necessary, shall further sort such waste and shall place the waste into the properly designated COMPANY containers for disposal. COMPANY will contract for disposal of COMPANY trash and other non-hazardous solid waste generated from offshore operations as well as trash and other solid waste generated by COMPANY at the Terminal. COMPANY will be responsible for such disposal.
6. CONTRACTOR shall be solely responsible for generation, transportation, storage and disposal, and for the cost of transporting the trash and other solid waste generated by the CONTRACTOR or any other Terminal customers of CONTRACTOR.
7. CONTRACTOR shall not be responsible for the segregation of COMPANY solid waste from COMPANY hazardous waste and hazardous material at COMPANY's offshore locations and which are generated by the offshore operations of COMPANY, COMPANY's contractors or COMPANY contracted vessels. CONTRACTOR shall be responsible for maintaining the segregation of COMPANY labeled solid waste, from COMPANY labeled hazardous waste and hazardous material wherever generated. Further, CONTRACTOR shall be responsible for any mixing or mis-labeling of said waste, which may occur after waste has been properly segregated and labeled prior to delivery to CONTRACTOR.

8. CONTRACTOR shall at all times keep COMPANY's hazardous waste and hazardous materials segregated from the hazardous waste and hazardous material of other customers of CONTRACTOR at the TERMINAL.
9. CONTRACTOR shall comply with all state and federal laws and regulations applicable to the TERMINAL and pertaining to storage and training required to handle hazardous waste and hazardous material, including but not limited to the use of a Hazardous Waste Area. CONTRACTOR shall identify and segregate the COMPANY Hazardous Waste Area so that it is used solely and exclusively for COMPANY hazardous waste and hazardous materials during the entire term of this AGREEMENT.

COMPANY's onsite personnel shall have the right to provide further reasonable clarification of work to CONTRACTOR.

ADDITIONAL SPECIFICATIONS AND REQUIREMENTS

Vehicle Access Roads

1. CONTRACTOR will provide a secure, gated entrance at the South entrance to the facility. Changes to this arrangement shall not be made without prior written notice to and consent of) the COMPANY.
2. CONTRACTOR will provide a vehicle access road throughout the terminal facility and adjacent land. This roadway, which will be at least 30-feet wide, will be maintained in a reasonable condition to ensure safe passage for vehicle and equipment at the account of CONTRACTOR. COMPANY agrees that the vehicle access road behind COMPANY's leased properties will be a common access road (i.e. to be use by all CONTRACTOR tenants). COMPANY stipulates that traffic flow through any COMPANY leased slip shall be at the sole discretion of COMPANY. Written permission granting access to COMPANY leased terminal land (including storage) or slips must be received in writing from the COMPANY terminal manager, which will not be unreasonably withheld.

Marshalling Area

1. CONTRACTOR will provide a dedicated area for marshalling COMPANY's equipment.
2. CONTRACTOR will provide a receiving and backhaul station/facility within the Marshalling area.

Forwarding Equipment

CONTRACTOR will provide any additional forklifts or trailers required to move COMPANY equipment from the marshalling area to COMPANY's slips at rates in accordance with Section IV – Schedule of Rates.

Specifications of Marshalling Area

1. Outdoor storage will be managed and organized such that each COMPANY project, as defined by the COMPANY terminal Manager has a clearly defined and self-contained area ("project area"). Each "project area" must be managed to allow for expansion and contraction of storage requirements within the square footage.

Modifications/Change Orders

1. Changes to the CONTRACTOR terminal facility (from the time of the contract initiation) or the layout or usage of said facility as it applies to COMPANY's leased properties and/or as it immediately impacts COMPANY's operations must be communicated to COMPANY in writing with 30 days notice to the COMPANY.
2. Requests by COMPANY for changes or modifications to the contract facilities or services as discussed herein, must be made in writing and directed to CONTRACTOR contract manager. Costs and payment terms of requested changes and/or modifications to be mutually agreed upon.

2. EXTRA WORK

In the event CONTRACTOR is required by COMPANY to perform work that would fall outside of the activities commonly associated with the provision of a marine terminal and material handling services, a change in contract agreement must be executed and signed by an authorized representative of both CONTRACTOR and COMPANY prior to performance of the extra work. Any proposed changes to the existing contract agreement will be sent to COMPANY representative where an alteration to this agreement will be issued.



EXHIBIT 41

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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:

FOSS MARITIME COMPANY

from an interpretation of the Director,
Department of Planning and Development.

Hearing Examiner File:
S-15-001 and S-15-002

DEPARTMENT OF PLANNING AND
DEVELOPMENT'S FIRST SET OF
INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS
TO PORT OF SEATTLE AND
RESPONSES THERETO

TO: APPELLANT, PORT OF SEATTLE;
AND TO: PATRICK SCHNEIDER and TRACI GOODWIN, Counsel for Appellant

Pursuant to Hearing Examiner Rule of Practice and Procedure ("Rule") 3.11, The City of Seattle Department of Planning and Development (DPD) requests Appellant to respond to the following interrogatories and requests for production.

You are being served with the original of the interrogatories. To facilitate preparation of answers and responses, the City will additionally provide an electronic copy of the document to you by electronic mail. Please insert your answers on the original in the space provided following each request, or use additional pages if necessary. Please serve the completed original on the undersigned. Each interrogatory is to be answered fully and separately, in writing and under oath, within 30 days of service upon you.

1 DPD further requests that the Appellant, within 30 days of the service hereof, produce for
2 inspection and copying the documents described below at the Office of the City Attorney, 701
3 Fifth Ave., 20th Floor, Seattle, Washington 98124, or at such other time and place as agreed
4 upon by counsel.

5 If any interrogatory cannot be answered in full, please answer it to the extent possible,
6 specify the reasons for your inability to answer the remainder, and, as to information in response
7 thereto which becomes known or available to you after service of your original answers, you are
8 requested to submit promptly supplemental answers setting forth such additional information in
9 full. In answering these interrogatories, please furnish such information as is available to you
10 regardless of whether this information is obtained directly by you, through your agents or other
11 representatives, or by your attorney.

12 In responding to each request for production, if you do not produce a document in whole
13 or in part because you are unable to do so, or for any other reason, you are requested to identify
14 each person whom you believe has custody, possession or control of the document.

15 If you object in part to any interrogatory or request for production, please indicate which
16 objections or claims of privilege are asserted with regard to each discovery request. If only part
17 of a discovery request is objected to, you should indicate which objections or claims of privilege
18 are asserted with regard to each such part and respond to the remainder completely.

19 With regard to each document withheld upon a claim of attorney-client privilege or work
20 product doctrine, prepare a document-by-document privilege log stating the type of document
21 (i.e., letter, memorandum, notes, etc.), date, preparer(s), intended recipient(s), subject matter(s),
22 persons who have received the document or have been told about the contents thereof, and other
23 information which would permit the Hearing Examiner to adjudicate the validity of the claim or
24 privilege. This privilege log must be produced contemporaneously with the documents produced
25 in response to these requests.

1 In responding to each request for production, please identify by number each and every
2 request to which the documents are responsive.

3 DEFINITIONS

4 1. "DOCUMENT" as used herein means all original writings of any nature
5 whatsoever whether handwritten, typed, printed, or otherwise visually reproduced, all electronic
6 media of any type, and all non-identical copies thereof, in your possession, custody, or control,
7 or the possession, custody or control of your authorized agent, regardless of where located, and
8 includes, but is not limited to, contracts, agreements, and other official documents and legal
9 instruments, memoranda, journals, emails, books of account, vouchers, ledgers, orders, checks,
10 invoices, receipts, bills, records, tape recordings, letters, correspondence, communications, diary
11 entries, reports, studies, summaries, minutes, notes, jottings, tabulations, charts, manuals,
12 brochures, schedules, computer print-outs, data processing input and output, microfilm,
13 telephone logs, telephone toll records, telegrams, teletypes, records, and invoices, reflecting
14 business operations and other records kept by electronic, photographic or mechanical means, and
15 any other documents as defined in Washington Court Rule 34. In all cases where originals
16 and/or non-identical copies are not available, "documents" also means identical copies of
17 original documents and copies of non-identical copies.

18 2. "Identity" or "identify" means:

- 19 a) when used with reference to a natural person, to state his or her full name,
20 business affiliation, present business address, present or last known
21 position;
- 22 b) when used with reference to any entity, such as a partnership, joint
23 venture, trust, or corporation, to state the full legal name of such entity, the
24 entity's street address, the entity's telephone number, the identity of the
25 officer, manager, trustee, other principal representative, or employee who
26

1 is known or is believed to possess the knowledge or information
2 responsive to the interrogatory and for which the entity was identified;

3 c) when used with reference to documents, to state specifically: the type of
4 documents involved, together with information sufficient to enable the
5 City to locate the document, such as its date, the name of any addressee
6 and/or signer, the title or heading of the documents, and the approximate
7 number of pages; in lieu of identifying documents, copies may be
8 provided;

9 d) when used with reference to a vessel or floating structure to state
10 specifically: its name, state or federal registration number, type of vessel
11 or function of floating structure, and its dimensions.

12 3. The phrase "RELATING TO" means describing, reflecting, concerning,
13 summarizing or referring to in any way.

14 4. "YOU" and "YOUR" refers to the Port of Seattle, as well as each of its current
15 and former consultants, accountants, officers, directors, employees, attorneys and other agents.

16 INTERROGATORIES

17 **INTERROGATORY NO. 1:** Identify all persons participating in the preparation of
18 your answers and responses to these Interrogatories and Requests for Production, and for each
19 such person state the answers or responses for which that person provided information or
20 documents.

21 **ANSWER:**

22 *As these are contention interrogatories that are objectionable for the reasons stated*
23 *below, the answers have been prepared by the undersigned attorney.*

1 **INTERROGATORY NO. 2:** If you contend that mooring an oil rig, such as the Polar
2 Explorer, and its assisting vessels at Terminal 5 is “inherent” to the permitted use of cargo
3 terminal, please

- 4 a. state all facts that relate to, support, or refute your contention,
- 5 b. Identify all persons with knowledge of those facts, and
- 6 c. Identify all documents that support, refute or relate to the contention.

7 For the purpose of this interrogatory, “inherent” has the meaning intended in your Appeal to the
8 Hearing Examiner filed on or about May 15, 2015, page 6, line 14.

9 **ANSWER:**

10 *The Port objects to this interrogatory as improper. As stated in Weber v. Biddle, 72*
11 *Wn.2d 22 (1967): “. . . the opposing arty cannot be required to put on a dress rehearsal of the*
12 *trial. While it is proper to elicit information as to evidentiary facts, nevertheless it is improper to*
13 *ask a party to state evidence upon which he intends to rely to prove any fact or facts.”*

14 *The Port also objects because the questions are overbroad and unduly burdensome,*
15 *particularly since they were propounded so late in this appeal that the answers are due three*
16 *days before the hearing begins, and after each party’s witness and exhibit lists are due. Many*
17 *employees of the Port’s maritime division have knowledge of these facts, and there are countless*
18 *numbers of documents that are relevant to this contention. The witnesses that the Port has*
19 *identified for this hearing are persons with knowledge of the relevant facts, and DPD has not*
20 *sought to depose any of them.*

21 *Without waiving these objections, the Port states that moorage is inherent in the use of*
22 *all marine facilities, including cargo terminals, because moorage is an inherent aspect of*
23 *navigation. A ship must moor in order to use a marine facility of any description. To treat such*
24 *moorage as a separate use rather than an inherent use of a marine facility is nonsensical as well*
25 *as inconsistent with the Shoreline Management Act and the City’s SMP.*

1 **INTERROGATORY NO. 3:** If you contend that mooring an oil rig, such as the Polar
2 Explorer, and its assisting vessels at Terminal 5 is “intrinsic” to the permitted use of cargo .
3 terminal, please

- 4 a. state all facts that relate to, support, or refute your contention,
5 b. identify all persons with knowledge of those facts, and
6 c. identify all documents that support, refute or relate to the contention.

7 For the purpose of this interrogatory, “intrinsic” has the meaning in Seattle Municipal Code
8 23.60.940 (“use, accessory”).

9 **ANSWER:**

10 *The Port objects to this interrogatory as improper. As stated in Weber v. Biddle, 72*
11 *Wn.2d 22 (1967): “. . . the opposing party cannot be required to put on a dress rehearsal of the*
12 *trial. While it is proper to elicit information as to evidentiary facts, nevertheless it is improper to*
13 *ask a party to state evidence upon which he intends to rely to prove any fact or facts.”*

14 *The Port also objects because the questions are overbroad and unduly burdensome,*
15 *particularly since they were propounded so late in this appeal that the answers are due three*
16 *days before the hearing begins, and after each party’s witness and exhibit lists are due. Many*
17 *employees of the Port’s maritime division have knowledge of these facts, and there are countless*
18 *numbers of documents that are relevant to this contention. The witnesses that the Port has*
19 *identified for this hearing are persons with knowledge of the relevant facts, and DPD has not*
20 *sought to depose any of them.*

21 *Without waiving these objections, the Port states that moorage is intrinsic in the use of*
22 *all marine facilities, including cargo terminals, because moorage is an intrinsic aspect of*
23 *navigation. A ship must moor in order to use a marine facility of any description. To treat such*
24 *moorage as a separate use rather than an intrinsic use of a marine facility is nonsensical as well*
25 *as inconsistent with the Shoreline Management Act and the City’s SMP.*

1 **INTERROGATORY NO. 4:** If you contend the DPD Director's Interpretation 15-001 is
2 inconsistent with the City of Seattle Comprehensive Plan policy LU 270, please

- 3 a. state all facts that relate to, support, or refute your contention,
4 b. Identify all persons with knowledge of those facts, and
5 c. Identify all documents that support, refute or relate to the contention.

6 **ANSWER:**

7 *The Port does not contend that the Interpretation is inconsistent with policy LU-270. The*
8 *reference to this policy in the Port's appeal is a typo, as is clear from the appeal itself, which*
9 *says that the referenced policy ". . . states that it is the City's policy to retain Seattle's role as the*
10 *Gateway to Alaska, and to meet the moorage needs of all vessels." The policy that includes such*
11 *language about being the Gateway to Alaska and meeting the moorage needs of all vessels is*
12 *LU-257.*

13 *The Port objects to this interrogatory as improper. As stated in Weber v. Biddle, 72*
14 *Wn.2d 22 (1967): ". . . the opposing party cannot be required to put on a dress rehearsal of the*
15 *trial. While it is proper to elicit information as to evidentiary facts, nevertheless it is improper to*
16 *ask a party to state evidence upon which he intends to rely to prove any fact or facts."*

17 *The Port also objects because the questions are overbroad and unduly burdensome,*
18 *particularly since they were propounded so late in this appeal that the answers are due three*
19 *days before the hearing begins, and after each party's witness and exhibit lists are due. Many*
20 *employees of the Port's maritime division have knowledge of these facts, and there are countless*
21 *numbers of documents that are relevant to this contention. The witnesses that the Port has*
22 *identified for this hearing are persons with knowledge of the relevant facts, and DPD has not*
23 *sought to depose any of them.*

24 *Without waiving this objection, the Port states that it already has explained, in multiple*
25 *documents filed with the Hearing Examiner, why the Interpretation is inconsistent with the City's*
26 *policy to retain Seattle's role as the Gateway to Alaska and to meet the moorage needs of all*

1 vessels. Mr. McKim's deposition also demonstrates the inconsistency of the Interpretation with
2 this policy. As explained by Mr. McKim, only vessels whose primary purpose is the transport of
3 cargo may moor at cargo terminals, and then only when using the cargo terminal to load and
4 unload cargo. This Interpretation prohibits the use of the Port's cargo terminals for
5 overwintering by vessels that serve the Alaskan fishing fleet, and prohibits use of the Port's
6 cargo terminals by countless other vessels including research vessels, naval vessels, ships of
7 state, construction vessels, tugboats, icebreakers, and law enforcement vessels, all of which
8 currently moor at the Port's cargo terminals.

9
10 **INTERROGATORY NO. 5:** If you contend that the activity of mooring and
11 provisioning an oil rig, such as the Polar Explorer, and its assisting vessels at Terminal 5 is "no
12 different than other activities that have been treated by the City as a cargo terminal use" (Hearing
13 Examiner Order on Motion to Dismiss, paragraph 8), please:

14 a. State all facts that relate to, support, or refute your contention, including but not
15 limited to:

- 16 i. what activity occurred,
17 ii. when it occurred,
18 iii. where it occurred,
19 iv. the nature of the City's action showing it treated the activity as a cargo
20 terminal use;

21 b. Identify all persons with knowledge of facts that relate to, support, or refute your
22 contention; and

23 c. Identify all documents that support, refute, or relate to your contention.
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1 **ANSWER:**

2 *The Port objects because the questions are overbroad and unduly burdensome,*
3 *particularly since they were propounded so late in this appeal that the answers are due three*
4 *days before the hearing begins, and after each party's witness and exhibit lists are due.*

5 *This interrogatory quotes Hearing Examiner language characterizing a claim by Foss*
6 *Maritime, not the Port, and Foss is in possession of the specific facts, not the Port. Foss's*
7 *activities as described to the Port are in fact "no different than other activities that have been*
8 *treated by the City as a cargo terminal use," and many employees of the Port's maritime*
9 *division have knowledge of such activities, including the witnesses for the hearing identified by*
10 *the Port, and DPD has not sought to depose any of these witnesses.*

11
12 **INTERROGATORY NO. 6:** If you contend that during 2105 the Polar Explorer or
13 attending vessels moored at Terminal 5 loaded and unloaded items that are within the definition
14 goods or container cargo in SMC 23.60940/23.60A.940, please

15 a. state all facts that relate to your contention, including type, quantity (or tonnage)
16 and purpose for the items loaded,

17 b. Identify all persons with knowledge of those facts, and

18 c. Identify all documents that relate to, support, or refute your contention.

19 **ANSWER:**

20 *The Port objects because the questions are overbroad and unduly burdensome,*
21 *particularly since they were propounded so late in this appeal that the answers are due three*
22 *days before the hearing begins, and after each party's witness and exhibit lists are due. The*
23 *questions also are unduly burdensome for the simple reason that the dictionary definition of the*
24 *word "goods" is patently broad enough, as a matter of law, to encompass any type of cargo,*
25 *including provisions, that pass through or are stored at a cargo terminal. No witnesses or*
26 *exhibits are needed to establish the dictionary definition of "goods"*

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REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Produce a true, correct, accurate and complete copy of all documents identified in your answers to the preceding interrogatories.

RESPONSE:

No documents are identified.

DATED this 10th day of July, 2015.

PETER S. HOLMES
Seattle City Attorney

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Planning and Development*

AFFIDAVIT

STATE OF _____

ss.

COUNTY OF _____

_____, being first duly sworn, upon oath deposes and says: I am _____ for the Port of Seattle, and as such am qualified to respond to the interrogatories and requests for production. I have read the above and foregoing DEPARTMENT OF PLANNING AND DEVELOPMENTS FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO PORT OF SEATTLE, and the answers and responses thereto, know the contents thereof, and believe the same to be true and correct.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20__.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at _____

My appointment expires _____

ATTORNEY'S CERTIFICATION

I declare under the penalty of perjury under the laws of the State of Washington that I am the attorney for Appellant Port of Seattle herein and I am authorized to make the foregoing answers and responses. I declare that I have read the foregoing answers and responses, know the contents thereof, and believe them to be true and correct to the best of my knowledge.

DATED this 10th day of August, 2015

By 

Traci Goodwin, WSBA #14974
Patrick J. Schneider, WSBA #11957
Counsel for Port of Seattle