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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,)
)
from Interpretation No. 15-001 of the Director of) PUGET SOUNDKEEPER’S
the Department of Planning and Development.) FOURTH UPDATED EXHIBIT
) LIST AND WITNESS LIST
)
_____)

Puget Soundkeeper Alliance, Seattle Audubon Society, Sierra Club, and Washington
Environmental Council (collectively “Soundkeeper”) respectfully submit this fourth updated list
of exhibits and witnesses. Soundkeeper requested that the other parties stipulate to
Soundkeeper’s submission of excerpts of documents as PSA Exs. 13-15 and 17-18; Foss
declined to stipulate. For that reason, Soundkeeper is adding the complete documents
corresponding to those excerpts to its exhibit list. Soundkeeper will provide paper copies for the

1 Hearing Examiner and witness binders at the hearing.

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
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 12. Email Re: T-5 Interim Use Consistency Analysis (Jan. 12, 2015) (PRA Terminal
2 5-5040 to -5041).

3 13. Email: Draft Foss T-5 Lease Attributes (Jan. 29, 2015) (PRA Terminal 5- 4475-
4 4476).

5 13A. Complete Ex. 13 Document: Email: Draft Foss T-5 Lease Attributes (Jan. 29,
6 2015) (PRA Terminal 5- 4475-4476).

7 14. Email with Draft T-5 Term Lease Use of Premises (Jan. 31, 2015) (Terminal 5-
8 3467, 3474).

9 14A. Re-scaled: Email with Draft T-5 Term Lease Use of Premises (Jan. 31, 2015)
10 (Terminal 5-3467, 3474).

11 14B. Complete Ex. 14A Document: Re-scaled: Email with Draft T-5 Term Lease Use
12 of Premises (Jan. 31, 2015) (Terminal 5-3467, 3474).

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

14 15A. Re-scaled: 15.Email with Draft Lease (Feb. 2, 2015) (PRA Terminal 5-4826-
15 4828, 4835).

16 15B. Complete Ex. 15A Document: Re-scaled: Email with Draft Lease (Feb. 2, 2015)
17 (PRA Terminal 5-4826-4828, 4835).

18 16. Email Re: Terminal 5 Foss USE description (Feb. 3, 2015) (PRA Terminal 5-
19 1980 to -1981).

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

21 17A. Re-scaled: Email with Foss T-5 Term Lease (Feb. 3, 2015) (PRA Terminal 5-
22 3437, 3444).

1 17B. Complete Ex. 17A Document: Re-scaled: Email with Foss T-5 Term Lease (Feb.
2 3, 2015) (PRA Terminal 5-3437, 3444).

3 18. Email with Foss T-5 Term Lease (Feb. 12, 2015) (PRA Terminal 5-4543-4544,
4 4554).

5 18A. Re-scaled: Email with Foss T-5 Term Lease (Feb. 12, 2015) (PRA Terminal 5-
6 4543-4544, 4554).

7 18B. Complete Ex. 18A Document: Re-scaled: Email with Foss T-5 Term Lease (Feb.
8 12, 2015) (PRA Terminal 5-4543-4544, 4554).

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

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

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

12 22. Shell PowerPoint Presentation at Meeting with Port (Aug. 27, 2014) (CW-211 to -
13 233).

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

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

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

19 26. Final EIS, Southwest Harbor Cleanup and Redevelopment Project, Technical
20 Appendix F-2 Shoreline and Land Use Analysis (Nov. 1994) (CW-313 to -317, CW-333 to -
21 335).

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

- 1 27. Email Re: Interim Revenue from Terminal 5 (Feb. 9, 2015) (CW-339 to -340).
- 2 28. Email Re: Vessel Maintenance and Report at Terminal 5 (Jan. 26, 2015) (CW-
- 3 341).
- 4 29. Email Re: T-5 Use (Dec. 4, 2014) (CW-355).
- 5 30. Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss (April
- 6 20, 2015).
- 7 31. Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss (May
- 8 19, 2015).
- 9 32. Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss (May
- 10 19, 2015).
- 11 33. Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss (May
- 12 21, 2015).
- 13 34. Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss (May
- 14 21, 2015).
- 15 35. Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss (June
- 16 3, 2015).
- 17 36. Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss (June
- 18 3, 2015).
- 19 37. Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss (June
- 20 3, 2015).
- 21 38. Photograph taken by Soundkeeper's witnesses of Terminal 5's use by Foss
- 22 (June 3, 2015).
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1 39. Foss Maritime Company's Objections and Responses to Department of Planning
2 and Development's First Set of Interrogatories (Aug. 10, 2015).

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

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

7 42. Port of Seattle, Commission Special Meeting Agenda (Jan. 13, 2015), *publicly*
8 *available at the Port of Seattle's website at*
9 http://www.portseattle.org/About/Commission/Meetings/2015/2015_01_13_SM_Agenda_Linked.pdf
10 (last visited Aug. 19, 2015) (CW-117).

11 43. Letter from Patti Goldman et. al to Port of Seattle Commissioners, re: Request for
12 Reconsideration Regarding Terminal 5 Interim Lease (Jan. 28, 2015) (CW-180 to -185).

13 44. Pilot's Report of Incident, Board of Pilotage Commissioners (Mar. 9, 2015) (filed
14 in the related litigation).

15 45. U.S. Coast Guard Foreign and Offshore Compliance Division, Monthly List of
16 IMO Reportable Detentions Webpage and Apr. 2015 Report, *publicly available at U.S. Coast*
17 *Guard's website at* <http://www.uscg.mil/hq/cgcvc/cvc2/safety/detentions.asp> (last visited Aug.
18 19, 2015).

19 46. Excerpts from: Shell Gulf of Mexico Inc., Revised Outer Continental Shelf Lease
20 Exploration Plan: Chukchi Sea, Alaska (Revision 2: March 2015), *publicly available at Bureau*
21 *of Ocean Energy Management's website at*
22 http://www.boem.gov/uploadedFiles/BOEM/About_BOEM/BOEM_Regions/Alaska_Region/Leasing_and_Plans/Plans/2015-03-31-EP-Revision-2.pdf
23 (last visited Aug. 19, 2015).

1 47. Excerpts from: Shell, Chukchi Sea Regional Exploration Program Oil Spill
2 Response Plan (May 2015), *publicly available at Bureau of Safety and Environmental*
3 *Enforcement's website at*
4 [http://www.bsee.gov/uploadedFiles/BSEE/BSEE_Newsroom/Publications_Library/OSRPs/Arcti](http://www.bsee.gov/uploadedFiles/BSEE/BSEE_Newsroom/Publications_Library/OSRPs/Arctic/2015_05_15_Revision%203_Redacted_Shell%20Chukchi%20Sea%20OSRP%20with%20Cover%20Letters.pdf)
5 [c/2015_05_15_Revision%203_Redacted_Shell%20Chukchi%20Sea%20OSRP%20with%20Cov](http://www.bsee.gov/uploadedFiles/BSEE/BSEE_Newsroom/Publications_Library/OSRPs/Arctic/2015_05_15_Revision%203_Redacted_Shell%20Chukchi%20Sea%20OSRP%20with%20Cover%20Letters.pdf)
6 [er%20Letters.pdf](http://www.bsee.gov/uploadedFiles/BSEE/BSEE_Newsroom/Publications_Library/OSRPs/Arctic/2015_05_15_Revision%203_Redacted_Shell%20Chukchi%20Sea%20OSRP%20with%20Cover%20Letters.pdf) (last visited Aug. 19, 2015).

7 48. Exhibits from the depositions of Andy McKim and Ben Perkowski.

8 49. Additional exhibits in rebuttal to testimony or evidence submitted by appellants.

9 LIST OF WITNESSES

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

15 DATED this 21st day of August, 2015.

17 

18 PATTI A. GOLDMAN, WSBA No. 24426

19 MATTHEW R. BACA, WSBA No. 45676

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26 *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
13A	01/29/2015	Complete Ex. 13 Document: 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
14A	01/31/2015	Re-scaled: Email with Draft T-5 Term Lease Use of Premises.	PRA Terminal 5 – 3467, 3474
14B	01/31/2015	Complete Ex. 14A Document: Re-scaled: 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
15A	02/02/2015	Re-scaled: Email with Draft Lease.	PRA Terminal 5 – 4826-4828, 4835
15B	02/02/2015	Complete Ex. 15A Document: Re-scaled: 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
17A	02/03/2015	Re-scaled: Email with Foss T-5 Term Lease.	PRA Terminal 5 – 3437, 3444
17B	02/03/2015	Complete Ex. 17A Document: Re-scaled: 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

Ex. #	Date	Description	Identifier
18A	02/12/2015	Re-scaled: Email with Foss T-5 Term Lease.	PRA Terminal 5 – 4543-4544, 4554
18B	02/12/2015	Complete Ex. 18A Document: Re-scaled: 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
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.	

Ex. #	Date	Description	Identifier
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.	
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.	
42	1/13/15	Port of Seattle, Commission Special Meeting Agenda. ¹	CW-117

¹ Publicly available at the Port of Seattle's website at http://www.portseattle.org/About/Commission/Meetings/2015/2015_01_13_SM_Agenda_Linked.pdf (last visited Aug. 19, 2015).

Ex. #	Date	Description	Identifier
43	1/28/15	Letter from Patti Goldman et. al to Port of Seattle Commissioners, re: Request for Reconsideration Regarding Terminal 5 Interim Lease.	CW-180 to CW-185
44	3/9/15	Pilot's Report of Incident, Board of Pilotage Commissioners.	
45	4/15	U.S. Coast Guard Foreign and Offshore Compliance Division, Monthly List of IMO Reportable Detentions Webpage and Apr. 2015 Report. ²	
46	3/15	Excerpts from: Shell Gulf of Mexico Inc., Revised Outer Continental Shelf Lease Exploration Plan: Chukchi Sea, Alaska (Revision 2: March 2015). ³	
47	5/15	Excerpts from: Shell, Chukchi Sea Regional Exploration Program Oil Spill Response Plan. ⁴	

² Publicly available at U.S. Coast Guard's website at <http://www.uscg.mil/hq/cgcvc/cvc2/safety/detentions.asp> (last visited Aug. 19, 2015).

³ Publicly available at Bureau of Ocean Energy Management's website at http://www.boem.gov/uploadedFiles/BOEM/About_BOEM/BOEM_Regions/Alaska_Region/Leasing_and_Plans/Plans/2015-03-31-EP-Revision-2.pdf (last visited Aug. 19, 2015).

⁴ publicly available at Bureau of Safety and Environmental Enforcement's website at http://www.bsee.gov/uploadedFiles/BSEE/BSEE_Newsroom/Publications_Library/OSRPs/Arctic/2015_05_15_Revision%203_Redacted_Shell%20Chukchi%20Sea%20OSRP%20with%20Cover%20Letters.pdf (last visited Aug. 19, 2015).

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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,)
)
from Interpretation No. 15-001 of the Director of)
the Department of Planning and Development.)

DECLARATION OF SERVICE

I am a citizen of the United States and a resident of the state of Washington. I am over 18 years of age and not a party to this action. My business address is 705 Second Avenue, Suite 203; Seattle, Washington 98104-1711.

I declare that on August 21, 2015, I served a copy of PUGET SOUNDKEEPER’S FOURTH UPDATED EXHIBIT LIST AND WITNESS LIST, PUGET SOUNDKEEPER ALLIANCE (“PSA”) EXHIBITS – TERMINAL 5 and this DECLARATION OF SERVICE via the Hearing Examiner’s electronic filing system and/or via e-mail on the following parties:

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21
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John C. McCullough
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jack@mhseattle.com
Attorney for Appellant Foss Maritime Company

- via legal messenger
- via overnight mail
- via first-class U.S. mail
- via hand delivery
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- via e-mail

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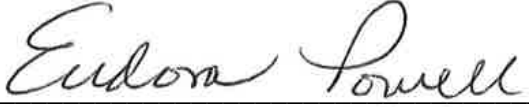
- via legal messenger
- via overnight mail
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- via hand delivery
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- via e-mail

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Molly K. D. Barker
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11 *Attorneys for Intervenors Alaska Marine Lines;*
American Seafoods Company; American Waterway
12 *Operators; Arctic Fjord, Inc.; Arctic Storm, Inc.;*
Ballard Oil Company; Crowley Maritime Corporation;
13 *Glacier Fish Company; Premier Pacific Seafoods;*
Sailors' Union of the Pacific; SSA Terminals, LLC;
14 *Transportation Institute and Vigor Industrial LLC*

- via legal messenger
- via overnight mail
- via first-class U.S. mail
- via hand delivery
- via Hearing Examiner
- E-File System
- via e-mail

15 I, Eudora Powell, declare under penalty of perjury under the laws of the state of
16 Washington that the foregoing is true and correct.

17 Executed this 21th day of August, 2015, at Seattle, Washington.

18 
19 _____
20 EUDORA POWELL, Litigation Assistant