

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of:)

FOSS MARITIME COMPANY AND) Hearing Examiner File Nos.
PORT OF SEATTLE) S-15-001; S-15-002
from an interpretation) (Directors Interpretation
issued by the Director) 15-001)
Department of Planning)
and Development)

Administrative Hearing
Cross-Examination Testimony of Paul Meyer
before
HEARING EXAMINER ANNE WATANABE

August 24, 2015

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1 mention a degree other than your bachelor's and then a
2 master's in geology. Did -- and then you said that you went
3 to the King County Planning Department.

4 Did you get a planning degree?

5 A. No.

6 Q. So you don't have a degree other than the two that you
7 testified to earlier.

8 A. Yes.

9 Q. And so how did you come to learn the planning trade?

10 A. You know, as part of my work at King County DDS, I was put
11 in a responsible position to handle the permits for gravel
12 mines based on my experience in geology where I had worked
13 around mines. These were large basically grating type
14 projects, essentially. And from that I was -- you know,
15 learned all the issues, you know, on site as much as I could
16 about things like SEPA, permitting, types of permits.
17 Obviously I knew about grating code pretty well after a
18 while, so --

19 Q. Does King County only require a permit if there is
20 construction on a particular site?

21 A. I believe so.

22 Q. Do you know whether the City of Seattle requires a permit
23 for changes in use even if there isn't any construction?

24 A. I believe they have that opportunity.

25 Q. What is your responsibility at -- for -- with respect to

1 assigned the berths for the ships?

2 A. I don't remember the specifics of his testimony.

3 Q. What do you think of that?

4 A. I'm sorry?

5 Q. If Mr. Englin was assigning berths for ships without regard
6 to what the permits were for the site of the berthing, do
7 you think that's a correct approach?

8 A. I think that would be speculative on my part and it goes
9 outside of my area of expertise. I -- you know, I get the
10 permits and then there is the permit actions out there. How
11 the business unit runs it I wouldn't -- I assume based --
12 you know, that they would follow the correct rules.

13 Q. So you would assume that they would be assigning ships to
14 berths where the site has the correct permit.

15 A. I don't think that they would -- berths. I don't know how
16 they would go about assigning either berths or -- I just
17 don't know how they operate on a day-to-day basis.

18 Q. When you get the permits for a particular site, do you
19 expect the activities at that site to conform to the permit?

20 A. I do.

21 Q. I'm handing you the definition of cargo terminal.

22 Have you had a chance to look at that?

23 A. Oh, yeah.

24 Q. Okay.

25 A. Sorry.

1 A. I think the permits is an up -- is a development action. I
2 don't think it's necessarily the uses that are allowed under
3 that.

4 Q. I'm sorry. I didn't understand your answer.

5 A. I mean, we're not adding a use here. We're talking about a
6 permit which would be a substantial development permit; for
7 example, if it was on a shoreline or something like that.
8 That wouldn't necessarily limit or add uses, you know, for a
9 moorage or not for a moorage.

10 Q. Is there any difference in your mind between a commercial
11 moorage permit and a cargo terminal permit?

12 A. It's difficult to answer that because the commercial moorage
13 permit is part of the -- you know, in the current code
14 construction part of a commercial marina, and then there is
15 a subsection of that of commercial moorage.

16 Since it seems to be related to a commercial marina, and a
17 marina doesn't have anything near the type of use or is
18 consistent with the marine cargo use and industrial type
19 use, a commercial marina is strictly a system of piers to --
20 you know, to moor recreational vessels and it's more of a
21 parking function. So I don't believe the two are analogous.

22 Q. So you're saying a commercial marina is for recreational
23 vessels.

24 A. It appears that when you read the definitions, considering
25 that the City puts it under a marina and a marina by

1 definition is associated with recreational, that it -- that
2 seems to be more of the relationship. And trying to force a
3 commercial moorage into an industrial moorage is difficult.

4 Q. Okay. So you don't think that the standards for commercial
5 moorage makes sense for vessels that are other than
6 recreational vessels; is that what you're saying?

7 A. I don't believe so.

8 Q. And the example that you gave the other day was the
9 requirement for restrooms; is that correct?

10 A. You could meet the requirement of restrooms, but I'm really
11 more concerned about other interpretations of -- that
12 somebody might ask related to, you know, under that use.

13 Q. So you would agree that cargo terminals and commercial
14 moorages could have restrooms.

15 A. They could have some common needs.

16 Q. I beg your pardon?

17 A. Well, I mean most places are going to need a restroom if you
18 have, you know, people in a terminal.

19 Q. So it's not the restroom that concerns you.

20 A. Probably the restroom doesn't concern me.

21 Q. These are the standards for a (inaudible). And I apologize
22 for the small print, but there is a way of getting it on two
23 pieces -- getting it on one piece of paper.

24 A. Thanks.

25 Q. And the next one. So looking under Subsection B, which are

1 the general standards for marinas, commercial and
2 recreational.

3 A. Mm-hmm.

4 Q. B1 says that the marina operators will develop best
5 management practices documents for the tenants.

6 A. Okay.

7 Q. Does that seem like it's an appropriate for requirement for
8 a commercial marina?

9 A. For a commercial marina?

10 Q. Mm-hmm.

11 A. Yes.

12 Q. And No. 2, B2, Marinas shall be operated and managed in a
13 manner to preserve water quality pursuant to the Stormwater
14 Code and to protect public health."

15 Does that seem like a reasonable standard for a commercial
16 marina?

17 A. For a commercial marina, yes.

18 Q. Okay. For a marina that does not have recreational boats?

19 A. I would suspect that both commercial and recreational would
20 have that same standard.

21 Q. And the same would apply to Standard No. 1.

22 A. Yes.

23 Q. And with respect to standards for residences for -- I'm
24 sorry, for vessels and for floating-on-water residences,
25 probably wouldn't worry about a floating-on-water residence

1 at a commercial marina, but for vessels that are -- and this
2 is for noncommercial, I'm sorry. 3 is noncommercial.

3 And 4 is restrooms, which we've already talked about.

4 A. Are we still on 3?

5 Q. No. I'm sorry. 3 is noncommercial.

6 A. All right. So 3 doesn't involve --

7 Q. Correct.

8 A. Okay.

9 Q. 4 is the restrooms, which we've already discussed.

10 Item No. 5, "Marinas having more than 3,500 linear feet of
11 moorage or slips large enough to accommodate vessels larger
12 than 20 feet in length shall provide sewer pump-out facility
13 or the best available method of disposing of sewage waste."

14 Does that seem like a reasonable requirement for a
15 commercial facility that has vessels other than recreational
16 vessels?

17 A. You said commercial facility, no.

18 But commercial marina, yes.

19 Q. Or a commercial marina that has vessels other than
20 recreational vessels?

21 A. Yes.

22 Q. No. 6 is, "Standard for locating overwater projections."

23 Does that seem like a reasonable standard for a commercial
24 marina that has vessels other than recreational vessels?

25 A. No, it's not, because this is referring to residences.

1 Q. Okay. "Marinas shall be designed to prevent water
2 stagnation and the need for dredging."

3 Does that seem like a reasonable standard for a commercial
4 marina that doesn't have -- that has vessels other than
5 recreational vessels?

6 A. To be honest with you, I couldn't answer that because I
7 don't know why you need two openings at opposite end.

8 Q. Okay. And Item 8, "Piers shall be oriented with currents to
9 prevailing" -- or, "prevailing winds to prevent trapping
10 surface debris and oily residue to the extent reasonable."

11 Does that seem applicable to a commercial marina that has
12 vessels other than recreational vessels?

13 A. It may be applicable.

14 Q. Okay. And then the rest -- Item No. 9 is referring to the
15 location of piers and floats and another standard.

16 So generally speaking, the standards that aren't
17 restricted to residential situations, those do seem
18 applicable to a commercial marina.

19 A. Yes.

20 Q. Earlier you testified about permits at Terminal 91.

21 A. Yes.

22 Q. So putting away the small notebook and pulling out the big
23 notebook. Turning to Exhibit 11, and turning to page 29.

24 A. I'm sorry, what page?

25 Q. 29. They are paginated at the bottom.

1 A. Got it. Very white spot.

2 Q. This is Application No. 8400945. See that at the top of the
3 page?

4 A. Yes.

5 Q. All right. And look at the next page, which is the page
6 with the white spot. Looking below the white spot, it
7 states that, "The overall use is cargo terminal"; is that
8 correct?

9 A. Yes.

10 Q. Then go above the white spot. And you noted that there is a
11 list of uses that it states are existing at the site. And
12 those include chilled cargo handling, vehicle importing,
13 fish processing, tank farm operations and vessel moorage.

14 You see that spot?

15 A. Yeah.

16 Q. If the vessel moorage was moorage for the vessels that are
17 bringing in the chilled cargo or the vehicle importing or
18 the fish processing, that would be consistent with DPD's
19 interpretation, wouldn't it?

20 A. I'm sorry. Could you run that by me again?

21 MR. MCCULLOUGH: Object, lack of foundation.

22 MR. SCHNEIDER: Yeah. I found the question very
23 confusing. Are you referring back to the interpretation as
24 explained by Mr. McKim or -- I'm not quite sure what you're
25 asking, so I object to the form of the question.

1 HEARING EXAMINER: Okay. I'll sustain it because I'm a
2 little confused by that question too, Ms. Baxendale. Maybe
3 we can --

4 MS. BAXENDALE: That's fine.

5 HEARING EXAMINER: -- restate.

6 MS. BAXENDALE: I will. Thank you.

7 Q. (By Ms. Baxendale) Are you familiar with the interpretation
8 that DPD issued that's the subject of this appeal?

9 A. I'm familiar with it from reading now, yeah.

10 Q. And are you familiar with the -- one of the conclusions in
11 the interpretation that a vessel moored at a cargo terminal
12 must be performing a cargo terminal function?

13 A. I don't believe -- I don't understand how you would get to
14 there from that interpretation from this paragraph here.

15 Q. No, I'm not asking you whether that paragraph says --

16 A. Where is the interpretation?

17 Q. Oh, you're not familiar with the interpretation that was
18 issued by Mr. McKim in May?

19 A. Oh, oh, oh. Okay. Sorry. Sorry.

20 Q. That's all right. I had just assumed since that's what the
21 appeal is about that when I say interpretation that's what
22 you --

23 A. I am focused in right on this right in front me.

24 Q. I apologize. All right. Let's go back, because there was
25 some concern about (inaudible).

1 Are you familiar with the interpretation that was issued
2 in May of this year?

3 A. Yeah, May.

4 Q. Okay. Thank you.

5 A. Yes.

6 Q. And are you familiar with the fact that one of its
7 conclusions is that, in order to lawfully moor at a cargo
8 terminal, a vessel must be carrying out a cargo terminal
9 function?

10 MR. SCHNEIDER: Objection, I don't think that accurately
11 reflects the interpretation as opposed to Mr. McKim's
12 testimony about what the interpretation means.

13 Q. (By Ms. Baxendale) What do you understand the interpretation
14 to mean?

15 A. The interpretation seems to be a very narrowly focused
16 thought process, tortured as it may seem, that brings in --
17 under question the definition of cargo, and kind of using
18 that to reach out of code to establish a new weird function
19 test that -- and what you're talking about is more a remedy
20 and, you know, it's not a -- you know, you're saying, go do
21 something else.

22 But anyway, I -- the interp- -- the analysis seemed to be
23 that establishes a new definition of cargo, which makes --
24 from that definition would seem to make it illegal to do
25 certain types of cargo.

1 Q. Are you familiar with what Mr. Schneider has characterized
2 as Mr. McKim's view that the interpretation requires that
3 vessels mooring at a cargo terminal need to be carrying out
4 a cargo terminal function?

5 A. You mean a cargo terminal --

6 Q. Are you --

7 A. Yeah.

8 Q. -- familiar with the way Mr. Schneider has been
9 characterizing Mr. McKim's interpretation?

10 MR. SCHNEIDER: Objection, I don't think --

11 THE WITNESS: I --

12 MR. SCHNEIDER: -- my characterization of Mr. McKim's
13 testimony, asking this witness whether he knows it is a
14 proper question.

15 HEARING EXAMINER: Well, it seems like it's not really
16 moving forward very well.

17 Are you -- Ms. Baxendale, you're -- seems like you're just
18 trying to get his understanding of the interpretation and to
19 compare it with this permit. Is that --

20 MS. BAXENDALE: Yes, that's correct.

21 HEARING EXAMINER: -- correct?

22 MS. BAXENDALE: That's correct.

23 HEARING EXAMINER: Okay. Well, that seems like something
24 we should be able to accomplish. So -- and I'm not quite
25 sure how to do it, but perhaps we just start with

1 Mr. Meyer's understanding of what the interpretation allows
2 at a cargo terminal.

3 THE WITNESS: I mean, as I said, my interpretation of
4 re- -- of trying to understand Mr. McKim's interpretation --

5 HEARING EXAMINER: I understand you disagree with it,
6 we're just trying to --

7 THE WITNESS: No, I understand.

8 HEARING EXAMINER: -- form a basis for your opinions.

9 THE WITNESS: It's that cargo was uniquely defined in his
10 interpretation, and it's -- you know, and the way it was
11 defined limits the ability, you know, or makes it suspect
12 that some types of vessels would not be able to moor and
13 take on cargo based on their use in the stream of commerce.

14 Q. (By Ms. Baxendale) And within --

15 A. And -- yeah.

16 Q. Oh, sorry. Are you finished?

17 A. Yeah.

18 Q. So within that limited definition of goods that you found in
19 the interpretation, is the description of the activities
20 above the white spot on page 30, is that consistent with
21 that limited interpretation of goods?

22 A. I would say it allows -- it is consistent and it will -- I'm
23 sure it doesn't limit all the other things that could go on
24 there.

25 Q. So then looking at another document that you looked at,

1 which is on page 44 of the exhibit.

2 MR. WEST: I'm sorry. Which number?

3 MS. BAXENDALE: 44.

4 Q. (By Ms. Baxendale) This is the permit that's 88, unreadable,
5 3984. It's an application. I'm sorry. It's not a permit,
6 it's an application.

7 A. Mm-hmm.

8 Q. So then looking at the summary of the proposed action, which
9 is right at the top of the page, the first paragraph, you
10 can see that it's enclosing two piers to make a
11 refrigeration warehouse, right?

12 A. Mm-hmm.

13 Q. You last testified reading from the first paragraph of the
14 site description, that calls the moorage accessory moorage,
15 right? Going down to the site description.

16 A. Mm-hmm. Okay.

17 Q. Now, read aloud the description of the function of the piers
18 that are going to be enclosed in the last paragraph at the
19 bottom of the page and continuing to the next page, starting
20 with the subject.

21 A. Okay.

22 Q. That's describing the function of the piers before they are
23 enclosed, right?

24 A. Yes.

25 Q. So the accessory moorage that is described in the first

1 paragraph could be referring to the kind of moorage that is
2 within the limited scope of the interpretation's definition
3 of goods, correct?

4 MR. MCCULLOUGH: Object; calls for speculation by the
5 witness.

6 HEARING EXAMINER: Let's see. Who is objecting? I mean,
7 I don't know if it's -- he -- okay. Even though it's --

8 MR. MCCULLOUGH: Go ahead. I will --

9 HEARING EXAMINER: -- Mr. Schneider's witness, I --

10 MR. MCCULLOUGH: Mr. Schneider's witness.

11 HEARING EXAMINER: Right. And --

12 MR. MCCULLOUGH: I'm still objecting, however.

13 HEARING EXAMINER: Oh, okay. All right. Well, I'm going
14 to overrule it for now. Let's take another shot at this.

15 THE WITNESS: Could you repeat the question? It's so much
16 fun listening to these.

17 Q. (By Ms. Baxendale) The description of the goods that are
18 currently -- or in the permit currently being loaded and
19 unloaded on the piers that are going to be enclosed, those
20 could be the limited description of goods that are being
21 part of the accessory moorage, correct? For which the -- do
22 you understand? The boats that are loading and unloading
23 those goods, those could be using the accessory moorage; is
24 that correct?

25 A. They would have to use the accessory moorage. How else are

1 you going to get there?

2 Q. And those kinds of goods would be within the limited
3 definition of goods that you think the interpretation
4 creates; is that correct?

5 A. Yes.

6 Q. Now, is it your position that the interpretation is
7 unreasonable because it would ask -- would require the port
8 to ask what each vessel is doing before the port assigns a
9 berth to the vessel?

10 A. I mean, my opinions of why it's bad is that it's already an
11 allowed use.

12 Q. It -- okay. Do you think it's unreasonable for the port to
13 be asking a vessel what its operations are before it
14 assigns -- before the port assigns a berth to that vessel?

15 A. I think that would restrict commerce and trade. I mean,
16 it's kind of like, you know, our -- your -- this previous
17 example, what if I didn't ask where those fruits and
18 vegetables were going, what if they were -- you know, what
19 if they weren't, you know, going to meet his definition and,
20 you know, they were used on the boat, for all I know. I
21 can't -- it would take -- it would be very difficult to
22 answer those questions.

23 Q. Doesn't the port have to ask questions in order to assign
24 vessel moorage or a berth to the appropriate facilities?

25 A. I don't know the answer to that. I don't work on the

1 business end of the operations.

2 Q. So would it be reasonable for the port to ask a vessel

3 that's seeking a berth whether it needs cranes?

4 A. I -- they would probably ask that.

5 Q. And if the vessel were going to unload cars, it would need

6 to go to a terminal where you could unload cars?

7 A. Yes.

8 Q. You understand that use, an activity has to be allowed both

9 in the zone, the land use zone where the activity -- where

10 the property is and in the shoreline environment where the

11 property is, right?

12 A. Yes.

13 Q. And you know that commercial moorage is allowed in the urban

14 shoreline environment.

15 A. Yes.

16 Q. Do you need to --

17 A. I --

18 Q. I could show you the chart if you --

19 A. Yes, it is.

20 Q. Okay. And do you know that it's a transportation use?

21 A. What is a transportation use?

22 Q. Commercial moorage.

23 A. I have to look --

24 Q. The chart --

25 A. I have to look at the chart --

1 Q. The transportation use is --

2 A. A transportation use allows commercial moorage. It is one

3 of the subsets that's allowed.

4 Q. Commercial moorage is a type of transportation use, correct?

5 A. Commercial marina moorage under the current shoreline code.

6 Q. Commercial marina moorage is a type of transportation use,

7 right?

8 A. Yes.

9 Q. It's not listed as a commercial use, is it?

10 A. No.

11 Q. Is there any directive in either the shoreline code -- the

12 Shoreline Master Program or the zoning code to take the two

13 separate uses and run them together?

14 A. No, but you could probably make that interpretation. You

15 know, I mean, again, when you sit there and start looking at

16 the different code derivations and you start arguing, well,

17 one is listed as a commercial, I think one could make an

18 interpretation that the commercial use is different than the

19 commercial moorage.

20 Q. But commercial moorage isn't listed under commercial usage,

21 is it? It's listed under transportation uses.

22 A. But there is also commercial that's allowed as a use in the

23 transportation facility section if -- I believe.

24 Q. It's commercial moorage that's allowed as a transportation

25 use.

1 this particular time.

2 Q. And approximately every year, how many permits or approvals
3 do you apply for?

4 A. We probably apply anywhere from 30 permits upwards to 50.
5 And these are -- you know, I'm breaking out individual for
6 federal permit action, a state action as each being a
7 separate action.

8 Q. So --

9 A. So one development may require five permits.

10 Q. So it could be -- so it would be five times the 50 or the
11 five --

12 A. So of the --

13 Q. -- making up the 50?

14 A. So the five making up -- so you might have ten development
15 actions.

16 Q. And why hasn't the port applied for a commercial moorage
17 permit?

18 A. It hasn't been necessary until very recently.

19 Q. And when it became -- when did you become aware that it
20 might be necessary.

21 A. I think May 15th. Basically we lost -- after 105 years, all
22 of a sudden we lost a use that's been allowed.

23 Q. And why hasn't the port applied for a commercial moorage
24 permit since then?

25 MR. SCHNEIDER: Objection. The reasons should be obvious,

1 including the fact that the interpretation is not final,
2 it's asking for speculation about all sorts of things,
3 including attorney-client privileged communications.

4 If the questioning is focused on whether, you know, this
5 person has made any decisions outside of the context of this
6 appeal, but you're talking about why the port is bringing
7 this appeal in effect, and I think the reasons are obvious.

8 HEARING EXAMINER: All right. We can establish whether or
9 not the port has applied, but the underlying reasons, I'm --
10 I'll sustain the objection.

11 Q. (By Ms. Baxendale) Are you aware that the port can apply for
12 a permit under protest?

13 A. Yes.

14 Q. So that while this appeal is going on, the port could apply.

15 A. It has the ability to.

16 Q. Do you know whether -- if you applied for a permit under
17 protest whether DPD would allow the operations to continue
18 while the permit is being processed?

19 A. I don't know if I can answer that because I am not sure how
20 they would bring an enforcement action. It seems from
21 previous testimony that could -- definitely seems to kind of
22 occur at a whim or who is looking out the window and
23 deciding whether or not something is amiss.

24 Q. Mm-hmm. So are you aware of whether the port could continue
25 to operate activities that the City believes properly fall

1 crates.

2 Q. So are these descriptions of cargo that would be
3 transshipped at cargo terminals?

4 A. What's your definition of "transshipped"?

5 Q. Shipped by a carrier from one place to another.

6 MR. McCULLOUGH: I'm going to object; lack of foundation.

7 MS. GOLDMAN: Lack of foundation for what?

8 MR. McCULLOUGH: The witness has been asked and testified
9 as to what the kinds of cargo are, not how they would be
10 handled and how the handling of those relates to anything in
11 the memorandum.

12 HEARING EXAMINER: Well, I'm going to overrule the
13 objection. Go ahead.

14 A. I'm sorry. Could you re-ask?

15 Q. (By Ms. Goldman) yes. Actually, let me ask a foundational
16 question just to remove any doubt.

17 A. Okay.

18 Q. Are you familiar with the marine cargo terminal activities
19 throughout the Port facilities?

20 A. I have familiarity with it, yes.

21 Q. Would you say you're highly familiar with them?

22 A. Moderately familiar.

23 Q. If I -- would you like to look at your declaration again?

24 A. I'm familiar with them. I don't have the full knowledge of
25 a business person operating on there, but I'm familiar with

1 them and I know where they are.

2 Q. Of the different types of cargo that you just listed, that
3 you just described --

4 A. Mm-hmm.

5 Q. -- the memo describes that you just read, are these
6 different types of cargo that would be transshipped at cargo
7 terminals?

8 A. Yes.

9 Q. Okay. Now, I would like you go to page 4 of this document.
10 It's -- the Bates stamp in the bottom is W-198. Are you
11 familiar with the activities at Terminal 5?

12 A. Terminal -- which one?

13 Q. Terminal 5?

14 A. Yes.

15 Q. And are you familiar -- you said that you -- your staff
16 helped with this -- prepare this document?

17 A. Yes.

18 Q. So on the bottom of page 4, there's some descriptions of
19 cargo activities. If you see these -- some of these are
20 associated with different photographs, but we can just look
21 at the description. So do you see the description under
22 1953 West Shoreline, West Waterway?

23 A. Yes.

24 Q. Use for lumber and break bulk shipping.

25 A. Yes.

1 Q. Is that a use that would be transshipping cargo from one
2 location to another?

3 A. Yes.

4 Q. And would that cargo be delivered for some other use?

5 MR. McCULLOUGH: I'm going to object again. That calls
6 for speculation of the witness. We haven't -- I mean, we
7 identified large categories of so-called cargo, but the
8 witness has not testified that he has any knowledge as to
9 how any of this generic cargo may be used somewhere else.

10 MS. GOLDMAN: And this -- you're objecting even though
11 it's not your witness.

12 MR. McCULLOUGH: Yes.

13 HEARING EXAMINER: All right. Well, we'll consider -- it
14 is your witness --

15 MR. McCULLOUGH: I mean, we can call him, you know, as our
16 witness if --

17 HEARING EXAMINER: I know. I would like to avoid going
18 there, so --

19 MR. McCULLOUGH: Right.

20 HEARING EXAMINER: Ms. Goldman, again, the purpose of this
21 line of questioning, as apparently I'm going to hear
22 foundational objections.

23 MS. GOLDMAN: The purpose of this line of questioning is,
24 what are cargo terminal uses at Terminal 5. And this
25 witness will go back to his declaration and we'll see what

1 he said about his knowledge so I can establish some more
2 foundation and I think we can --

3 HEARING EXAMINER: Right. And, you know, I have been -- I
4 listened to this witness at length giving his opinion last
5 time. He seemed pretty capable of discerning how the
6 interpretation itself was going to impact Port activities.
7 I think it's close enough of a call for him to have
8 knowledge to -- and certainly, Mr. Meyer, if you don't feel
9 like this is within your scope of knowledge, I expect you to
10 say so, but I will allow the questions to continue.

11 Q. (By Ms. Goldman) I would like you to go back to your
12 declaration --

13 A. Mm-hmm.

14 Q. -- which is Foss 24, second page, paragraph 9. And in the
15 middle, the part that you read before, you said that the
16 description of cargo activities in these documents fairly
17 reflects our collective knowledge of the activities that
18 take place at the Port's cargo terminals.

19 And we have now established that this document that we're
20 looking at, Foss 20, is one of those documents that you were
21 referring to?

22 A. I believe so.

23 Q. Would you read the rest of that paragraph?

24 A. I'm sorry, which paragraph?

25 Q. Paragraph 9 after what you read before, it starts with, "I

1 have personally visited."

2 A. "I have personally visited every Port of Seattle marine
3 cargo terminal, including Terminal 5 multiple times."

4 Q. Keep going.

5 A. "I am highly familiar with the diverse right of cargo uses
6 at 518, 86, 91 and 115, as well as 25, 30 and 46. There was
7 no question in my mind that the activities proposed by Foss
8 at Terminal 5 are well within a normal, regular routine
9 scope of activities conducted by the Port's tenants at the
10 Port's many cargo terminals."

11 MS. GOLDMAN: I believe that should establish that
12 Mr. Meyer has a familiarity to answer these questions and
13 also the relevance of the opinion he offered there to
14 whether the new use is consistent.

15 MR. McCULLOUGH: He has a personal understanding of what
16 occurred in 1953?

17 MS. GOLDMAN: I didn't ask him the truth of that
18 statement. I asked him whether the use for lumber and break
19 bulk shipping was for the transshipment of cargo. And he
20 said --

21 HEARING EXAMINER: Okay. I have overruled the objection.
22 I mean, as we go forward, you know, obviously...

23 Q. (By Ms. Goldman) Do you see the next reference to bulk
24 steel shipping operations?

25 A. Yes.

1 Q. And would that use have been transshipping CARGO from one
2 location to another?

3 A. Yes.

4 Q. And would the cargo ship have been using that bulk steel for
5 its own provisions or operations?

6 A. I don't know that. I mean, it could you have -- if you
7 needed bulk steel to do repairs along en route, or what if
8 it was, you know, providing support for a drill vessel?

9 Q. So this could have been the ship's own provisions?

10 A. Yes.

11 Q. And the next paragraph refers to bulk lumber transshipment
12 and barge cargo operations. Would that have been a use that
13 transships cargo from one place to another?

14 A. That was transshipping.

15 Q. I'm sorry, I didn't hear your answer.

16 A. Yes, it does.

17 Q. And would the bulk lumber cargo have been used by the cargo
18 ship for its own operations?

19 A. I don't know the answer to that. It could have been. These
20 are kind of the problems associated with this
21 interpretation.

22 Q. Let's go to the next page, and under paragraph 3 there's a
23 reference to bulk construction material barge shipping
24 activity. Would that be a use that would transship cargo?

25 A. I'm sorry, which one? 3?

- 1 Q. Paragraph 3, with the 1962 reference, the last line refers
2 to bulk construction material barge shipping activity.
- 3 A. Yes.
- 4 Q. And would that be a use that would transship cargo from one
5 location to another?
- 6 A. Yes.
- 7 Q. And would the bulk construction material be used by the
8 cargo ship in its own operations?
- 9 A. It could definitely be. On construction material you don't
10 know whether or not that's going to be used inside the
11 vessel, used for the vessel. It definitely is possible.
- 12 Q. Would you consider that to be, the bulk construction
13 materials to be provisions loaded onto the cargo ship?
- 14 A. It could be.
- 15 Q. Food for the crew and construction materials, too?
- 16 A. Construction materials. I don't think I would call the food
17 as provisions. I don't think I would call food construction
18 materials.
- 19 Q. I would like you to go to the end. Down at the bottom
20 there's reference to the Southwest Harbor Redevelopment
21 Project.
- 22 A. Yep.
- 23 Q. Are you familiar with that?
- 24 A. I'm familiar with it, yes.
- 25 Q. And when did that happen?

1 A. It was before my time, but I understand that the project --
2 the thought of the project started early 90s and then
3 (inaudible) actions, SEPA review, getting permits, design,
4 culminated in the construction of the Southwest (inaudible)
5 project somewhere in the vicinity of '98, '99.

6 Q. Was one of the permits a shoreline substantial development
7 permit?

8 A. Yes.

9 Q. And was that a permit that established and confirmed
10 Terminal 5 as a cargo terminal?

11 A. I believe it does.

12 Q. And was one of the purposes of the redevelopment to expand
13 and make more efficient the container terminal operations at
14 Terminal 5?

15 A. I think it established the cargo terminal usage, not
16 specifically the container cargo.

17 Q. Oh, I'm not talking about the permit. I'm talking about the
18 Southwest Harbor Redevelopment Project, the redevelopment
19 itself.

20 A. Yes.

21 Q. Was it designed to expand and make more efficient the
22 container cargo shipment activities at Terminal 5?

23 A. I would really have to defer to the business units, since I
24 wasn't there, that did it. Was that its only specific use?
25 It actually had a lot of other uses. It had an incredible

1 the land use code?

2 A. No, these would be from the shoreline code, because they're
3 referenced at 60.944.

4 Q. Do you want to take a look at a document that Ms. Baxendale
5 showed you a few minutes ago that had the various
6 definitions, and compare the one on the bottom with the
7 language that's on CW-155 carrying over to CW-156. I can
8 show you another copy --

9 A. Is it one of these?

10 Q. If you will compare the language on the bottom, which --

11 A. Right, right, okay.

12 Q. Yeah. Which --

13 A. I want to make sure I have the right one.

14 Q. So if you look at the land use code definition on this
15 handout page, please compare it to CW-155 and carry over to
16 CW-156.

17 A. Okay. Through No. 1, so starting with transportation and
18 then going on to CW-156, and No. 1 Cargo Terminal, they
19 appear to be the same.

20 Q. So you included both the land use code and the shoreline
21 definition in your data dump?

22 A. Yes, yep.

23 Q. So now if you'll -- I notice on page CW-155, there are two
24 definitions of use or sub definition -- there's a "use
25 principal."

1 A. I'm sorry, go ahead.

2 Q. And a "use accessory."

3 A. Yes.

4 Q. Do you want to take a look at those, and I'd be interested
5 in what the difference is between those two in your mind.

6 A. Between "use" or "use accessory" and "use principal"?

7 Q. "Use principal" and "use accessory."

8 A. Accessory establishes the incidental and accessory use
9 necessary to support a principal use, and a principal use
10 has a distinct purpose and function.

11 Q. So when I was asking you earlier whether the various cargo
12 transshipment activities that took place at Terminal 5 were
13 for the purpose of provisioning the vessels, if that were
14 the case, would that be a principal use or an accessory use?

15 A. I would argue that it would be a principal use.

16 Q. If the lumber or the steel were used on the vessel, that
17 would be a principal use?

18 A. Yeah, because it's cargo.

19 Q. Okay. I would like you to look now at Foss Exhibit 46. Are
20 you there? What is this document?

21 A. This is the memo to SEPA file. When the Port makes a
22 categorical exemption for SEPA, it's documented in a memo to
23 file.

24 Q. And will you look at the second page where there is a
25 definition for "cargo terminal." Will you tell me whether

1 this definition is from the shoreline code or the land use
2 code?

3 A. Land use code.

4 Q. So that's what you used when you were determining the SEPA
5 exemption?

6 A. Yes.

7 Q. Did you view these two definitions to be interchangeable?

8 A. I think we recently established that they're the same.

9 Q. I would like you to go back to Soundkeeper Exhibit 20 and go
10 to CW-162.

11 MR. SCHNEIDER: I'm sorry, which exhibit? Which exhibit?

12 MS. GOLDMAN: It's Puget Soundkeeper Exhibit 20. We were
13 just looking at that one, and CW-162.

14 Q. (By Ms. Goldman) Are you there?

15 A. Yeah.

16 MS. GOLDMAN: Is everyone else there?

17 Q. (By Ms. Goldman) Okay. Would you read the third full
18 paragraph out loud, please?

19 A. Starting with "similar"?

20 Q. Yeah.

21 A. "Similar to compliance requirements that all Port marine
22 cargo sites, continuing Terminal 5 marine cargo operations
23 must be consistent with prior approvals and conditions for
24 use of the site, and any substantial expansion or change in
25 use at the site would require new approvals and

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C E R T I F I C A T E

STATE OF WASHINGTON)
)
COUNTY OF SNOHOMISH)

I, the undersigned, do hereby certify that the foregoing recorded statements, hearings and/or interviews were transcribed under my direction as a transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of September, 2015

Marjorie Jackson, CETD

