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BEFORE THE HEARINNG EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of))
FOSS MARITIME COMPANY,) No. S-15-001
) S-15-002
)
from an interpretation by the)
)
Department of Planning and)
)
Development.)

VERBATIM TRANSCRIPT OF PROCEEDINGS

OF

AN EXCERPTED PORTION OF DAY 1 OF A HEARING
BEFORE THE HONORABLE ANNE WATANABE, HEARING EXAMINER

8/13/2015

APPEARANCES

For Foss Maritime: David R. West & John C. McCullough
Port of Seattle: Traci Goodwin, Patrick J. Schneider and
Adrian Winston

For DPD: Eleanor S. Baxendale

For Puget Soundkeeper/Earth Justice: Patti Goldman & Matthew Baca

For T-5: Molly Barker

Transcribed at the Request of the Seattle City Attorney

Transcribed by Brian Killgore

TABLE OF CONTENTS

Proceedings

1. Proceedings of 8/13/2015.....3

Testimony

Englin, Greg. 1. Direct by Mr. Schneider.....171

McKim, Andy. 1. Direct by Mr. West.....3

McKim, Andy. 2. Cross by Mr. Schneider.....117

McKim, Andy. 3. Cross by Ms. Baxendale.....134

McKim, Andy. 4. Cross by Mr. Baca.....148

McKim, Andy. 5. Redirect by Mr. West.....158

McKim, Andy. 6. Re-Cross by Mr. Schneider.....164

Exhibits

Exhibits 1 through 11 admitted.....30

Exhibits 1 through 8 are admitted.....217

1 cargo terminal," correct?

2 A. Yes.

3 Q. That was your preliminary conclusion in this draft?

4 A. Yes.

5 Q. Okay.

6 And then you looked at the three options that are in
7 the definition; that is the goods be stored without
8 undergoing any manufacturing processes, transfer to other
9 carriers, or stored outdoors in order to transfer them to
10 other locations.

11 That is part of the definition of cargo terminal,
12 correct?

13 A. Yes.

14 Q. And you say "this provides three activities: Outdoor
15 storage without manufacturing, transfer to other carriers,
16 or outdoor storage pending transfer to other locations,"
17 correct?

18 A. Yes.

19 Q. If you would turn the page?

20 You state, quote: "The words 'in order to transfer
21 them to other locations' is meant to modify only the words
22 'stored outdoors.'

23 "This is clarified by the addition of a comma after
24 'carriers,' in the updated version of the code currently
25 being adopted." Close quote.

1 That is what you said there, right?

2 A. Yes.

3 Q. And let's just talk about that comma.

4 So did the city update its shoreline master program
5 recently?

6 A. Yes.

7 Q. And did that process take several years to accomplish?

8 A. Yes.

9 Q. And in the process of updating the shoreline master program
10 definition of cargo terminal, a comma was added to the
11 definition of cargo terminal, correct?

12 A. Yes.

13 Q. And that comma was added after the word "carriers" in the
14 definition, right?

15 A. Yes.

16 Q. So going back to page 2, which has part of the definition
17 there, "Will the goods be stored," in the original
18 definition in effect until June of this year, after the word
19 "carriers" there was no comma; is that right?

20 A. Yes.

21 Q. And after June of this year, a comma was inserted, correct?

22 A. Yes.

23 Q. And that was passed by the city council, correct?

24 A. Yes.

25 Q. And reviewed by the Department of Ecology, correct?

1 A. Yes.

2 Q. And sent out for public comment to everyone who cared about
3 reviewing the city's changes to its shoreline master
4 program?

5 A. I assume so.

6 Q. Now let's talk about the last antecedent rule.

7 You said you're familiar with it?

8 A. Yes.

9 Q. The last antecedent rule says that when there is a
10 qualifying phrase at the end of a list, that qualifying
11 phrase only applies to the last item in the list unless that
12 qualifying phrase is set off separately by a comma.

13 Correct?

14 A. Yes.

15 Q. And that is what you were doing here at the top of page 3.
16 You were applying the last antecedent rule, correct? You
17 were applying that last provision in the definition only to
18 the stored outdoor of the three items in the list, correct?

19 A. Yes.

20 Q. And that is a matter of statutory interpretation, --

21 A. Yes.

22 Q. -- that rule?

23 A. Yes.

24 Q. And were you applying that rule here when you applied --
25 when you interpreted what that meaning was?

1 A. Yes.

2 Q. All right.

3 So let's go back now to the definition of cargo
4 terminal and this unifying theme.

5 So in your initial draft, you concluded that that last
6 phrase did not qualify all three of the options, but in the
7 interpretation you decided otherwise; is that correct?

8 A. That's correct.

9 Q. And you decided to ignore the rule that you had previously
10 adopted regarding the last antecedent, correct?

11 A. I decided that other factors superseded the application of
12 that rule.

13 Q. And you reached that conclusion after several arguments with
14 city attorney staff, correct?

15 A. I know I said arguments; it's probably an exaggeration. We
16 had spirited discussions as we often do.

17 Q. So that's a yes?

18 A. Yes.

19 Q. All right.

20 And you don't remember discussing that particular point
21 with any other DPD staff, correct?

22 A. I don't specifically recall that, no.

23 Q. You don't recall, for example, discussing it with Mr. Mills
24 who is the person that you often run your interpretations
25 by, correct?

1 of the analysis, correct? Foss's use would be a cargo
2 terminal use and would be permitted? Right?

3 A. Well if it was simply being stored on the site as a storage
4 yard, I don't know that I would agree that it was a
5 transportation facility, which would still be part of the
6 definition, so if there was -- if all that was happening on
7 the site was storage, without relation to any plan to
8 transfer or transport the materials, no, I wouldn't agree
9 that it would meet that definition.

10 Q. Because it doesn't fall within the definition of a
11 transportation facility at that point?

12 A. Yes.

13 Q. I thought you already agreed it was a transportation
14 facility?

15 A. I don't recall how you specifically worded the question
16 before.

17 Q. Let's go back to the definition of transportation facility.
18 That's in exhibit number 2 on page 2.

19 "A use that supports or provides the means of
20 transporting people and/or goods from one location to
21 another," correct?

22 A. That's correct.

23 Q. Storage supports the transportation of goods from one
24 location to another, correct?

25 A. It can.

1 Q. And for Foss to meet the definition of a transportation
2 facility, you are saying something actually has to move it
3 off of the facility?

4 A. Well I believe that the second time you asked the question
5 you were asking whether mere storage would qualify so long
6 as these are goods or container cargo and there is no
7 manufacturing process; that the mere storage would qualify
8 it under this definition, and I would not agree that it
9 would meet this definition because it still wouldn't be a
10 transportation facility at that point because it wouldn't be
11 supporting by the means of transporting -- something
12 wouldn't be supporting the transport if it is not being
13 transported.

14 Q. Well we don't know if it is -- we would have to determine
15 that, would we not?

16 A. That's correct.

17 Q. So if it was to be transported, then it would meet the
18 definition

19 A. Yes.

20 Q. And all of this material was in fact transported, correct?

21 A. I would have to take your word for that.

22 Q. Because you didn't check to find out?

23 A. You mean did I go visit terminal 5 after the Polar -- after
24 the rig had left? No, I did not.

25 Q. You didn't ask Foss the question, What is going to happen

1 applicable at cargo terminals?

2 A. It doesn't do that in so many words.

3 Q. Does it do it in any words?

4 A. Not that I know of.

5 Q. Let's look at Foss 90.

6 MR. WEST: It would be number 17, I gather?

7 (Brief Pause in Proceedings)

8 Q. (By Mr. West) Do you have that, Mr. McKim?

9 A. Yes.

10 Q. That is a substantial development permit from August 2014,
11 correct?

12 A. Yes.

13 I'm sorry -- yes.

14 Q. And that was signed by Ben Perkowski, senior land-use
15 planner at DPD, correct?

16 A. Yes.

17 Q. And was issued almost a year ago to the day, August 14,
18 2014? Correct?

19 A. Correct.

20 Q. So this is again a document authored by the city, your
21 department, correct?

22 A. Correct.

23 Q. And this is also -- this is a document by which DPD allowed
24 the construction of some floats and piles for moorage for
25 fire boats at terminal 91, correct?

1 A. Correct.

2 Q. And if we look at the second page, the city -- at the top,
3 first paragraph -- the city is describing what happens at
4 terminal 91 as of the date of this decision, correct?

5 A. Correct.

6 Q. And it describes that it is -- supports cargo handling
7 facility for fruit, automobile and fish products; serves
8 as -- serving as a factory trawler homeport and support
9 facility with major cold storage warehouses, distribution
10 and seafood processing plant and industrial marine fuel
11 distribution facility and short and long-term moorage for
12 tugs and other large vessels." Correct?

13 A. Correct.

14 Q. So all of those activities were going on in 2014, just as
15 they were going on in 2007, right?

16 A. They were going on, according to the background data
17 provided in this decision, yes.

18 Q. They were going on according to the city's own documentation
19 of what was happening at that terminal?

20 A. They were going on according to the description provided in
21 this decision. I don't know to what extent the city
22 independently documented that as opposed to providing that
23 as background information for analysis of the additional
24 developments authorized under the decision.

25 Q. Let me just be clear. This isn't someone else's document;

1 transporting of cargo in the stream of commerce?

2 A. Well they are transporting, generally transporting
3 passengers, again, or -- so you know I would say that they
4 probably also would be a passenger terminal rather than
5 cargo terminal.

6 Q. Okay, how about government vessels? For example, we are
7 going to hear from Mr. Englin that -- that -- what are
8 called ships of state, foreign flagged vessels come and moor
9 at cargo terminals -- for Seafair or other purposes.

10 Would they fail or pass the test?

11 A. Based on my understanding, I would say that would not be --
12 that they wouldn't be involved in the transport of cargo and
13 they wouldn't belong at a cargo terminal.

14 Q. Okay.

15 Now how about -- the next category is tugs and barges.
16 Let's focus just on tugs.

17 Under what circumstances using the primary function
18 test can a tug moor at a cargo terminal?

19 A. Well I think that we have talked about tugs as potential
20 accessory use, so if you had a tug that was assisting
21 vessels that were there to transport cargo, it would be
22 appropriate at a cargo terminal because it would be
23 assisting something with the primary function of
24 transporting cargo.

25 Q. So if the tug is there lay berthing, awaiting its next call,

1 then it wouldn't be consistent with a cargo terminal use?

2 A. Well I think that we have also said that lay berthing of
3 things that otherwise belong at cargo terminals is regarded
4 as -- as an intrinsic to a cargo terminal use, and so that
5 it would be permissible.

6 Q. So if a tug was used to assist into a birth somewhere a non-
7 cargo vessel, then it couldn't moor at that cargo terminal?

8 A. Well, that would be one that -- I mean you could -- I would
9 say on that day it wasn't being used in that manner.

10 If you have a tug that is routinely used and normally
11 used for assisting cargo vessels, it would normally be
12 permissible at a cargo terminal, I would say yes; the use
13 otherwise as assisting something that is not cargo -- that
14 is not bearing cargo would not be a cargo terminal use.

15 Q. Well, I am going to make an assumption here.

16 Let's assume that tugs assist every possible -- every
17 imaginable kind of vessel. So how do those types know
18 whether they can moor any cargo terminal or not?

19 A. Well I mean I guess the bottom line is if the things that
20 they are assisting are limited to legitimate cargo vessels,
21 then there is no problem with the tug.

22 If the things that they are assisting are -- include
23 other types of vessels, then the main problem is those other
24 types of vessels as opposed to the tug.

25 Q. So does it follow from what you just said that Foss or

1 and their relationship with the drill rigs.

2 Do you recall that?

3 A. Yes.

4 Q. All right.

5 Is your understanding that the purpose of terminal 5's
6 use by Shell and Foss would be to service an entire fleet of
7 vessels?

8 A. I don't know how many vessels would ultimately be involved.
9 At the time the interpretation was requested, I had been
10 relying initially on information -- well the information the
11 port had provided us initially -- which -- I don't believe
12 there were a lot of vessels discussed at the time.

13 Q. But it would be more than one vessel coming and going? It
14 would be a few vessels that are mutually supporting each
15 other for a similar goal?

16 A. It could be, yes.

17 Q. Okay.

18 And was your understanding that the primary purpose of
19 that fleet altogether would be to drill in the Arctic?

20 A. Yes.

21 Q. And maybe there would be some shuffling of supplies once
22 they got to the Arctic, but that fleet would be about
23 drilling, right?

24 A. That would be true, yes.

25 Q. Okay.

1 transported somewhere else.

2 She is the one who brought this up.

3 HEARING EXAMINER: All right, and now your
4 question is a variant of that?

5 MR. SCHNEIDER: Yes.

6 HEARING EXAMINER: Which is -- all right.

7 MR. SCHNEIDER: I am following that to its logical
8 conclusion.

9 HEARING EXAMINER: Go for it.

10 Q. (By Mr. Schneider) So the question, Andy, is if they can't be
11 loaded at a cargo terminal -- items that need space and
12 cranes and machinery to load and unload -- and what kind of
13 maritime facility in the city of Seattle can they be loaded?

14 A. Well, that would -- there are a couple of possibilities, and
15 one would be to examine whether this falls under the
16 definition of -- under the current code, commercial marina;
17 under the old code, commercial moorage. And I believe that
18 if a facility at a use established as a commercial moorage,
19 which it could in addition to a cargo terminal use, and
20 which would be permitted in the same environments where
21 cargo terminals are permitted, that a commercial moorage use
22 would be sufficient and that is a use that would typically
23 be permitted outright under the zoning for the port
24 facilities.

25 Alternatively, if it just plain didn't fit under one of

1 the definitions, the shoreline code provides for
2 establishing through a shoreline conditional use, uses that
3 aren't otherwise covered.

4 So there would be two routes to possibly get approval
5 of a facility. One would be to establish additionally a
6 commercial moorage use, or the other, if that doesn't work,
7 would be to get a shoreline conditional use approval.

8 Q. Okay, well leaving aside the special use permit, which under
9 the shoreline code requires considerable process involving
10 the Department of Ecology, correct?

11 A. Well a shoreline conditional use would -- does have notice
12 and does have review by the Department of Ecology.

13 I don't know how considerable or how much time that
14 would take.

15 Q. And are you suggesting that a commercial marina, the
16 definition of commercial marina allows heavy equipment on
17 the uplands to load and unload substantial construction
18 material?

19 A. I am not aware of anything that says that it doesn't. It is
20 not something that we have fully analyzed.

21 Q. Well I thought your whole interpretation of the cargo
22 terminal was if it is not expressly permitted, it is
23 prohibited and now are you saying that under a commercial
24 marina, if it is not prohibited, it is allowed?

25 A. I don't believe I ever said that if something is not

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McKim, Andy. 2. Cross by Mr. Schneider.....117
McKim, Andy. 3. Cross by Ms. Baxendale.....134
McKim, Andy. 4. Cross by Mr. Baca.....148
McKim, Andy. 5. Redirect by Mr. West.....158
McKim, Andy. 6. Re-Cross by Mr. Schneider.....164

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Exhibits 1 through 11 admitted.....30
Exhibits 1 through 8 are admitted.....217

1 Q. And all assets or only certain -- some of them?

2 A. I interface with all assets potentially in case we operate
3 secondary rights, for instance, but we have terminal
4 operators for some of the assets, so part of the portfolio
5 outside of the -- where we don't have terminal operators,
6 those are the assets that I work with, but it is extensive
7 and it circumnavigates the whole --

8 Q. Okay.

9 I am going to ask you to slow down just a little bit
10 and speak just slightly more loudly, please.

11 Do you -- are you responsible for cargo terminals?

12 A. Yes.

13 Q. Are you responsible for the subset of cargo terminals that
14 deal with container cargo?

15 A. No, not as often.

16 Q. And when you say you manage these assets, what does that
17 mean in terms of what your day-to-day responsibilities are?

18 A. So we book vessels into the terminals. We work on the
19 capital plans, developing that, the budgets. We actually
20 administer all of the accruals and all of the billing, and
21 then we actually provide the services for the customers at
22 the terminals.

23 Q. If a vessel wants to moor in the city of Seattle, what role
24 do you play in that moorage?

25 A. Basically they contact us, and then we make a determination

1 if and where and when we can moor them at any facility
2 within the Port of Seattle portfolio.

3 Q. Before we go on about your responsibilities, I want to have
4 you explain to us your background in the maritime industry.

5 What have you done before assuming your current
6 position? Why don't we start with your first job in the
7 maritime industry and move forward?

8 A. Okay.

9 I started off when I was 18, commercially fishing to
10 put myself through school. I came out from the Midwest.

11 I fished for about nine years, including after I left
12 school.

13 Then after that I came shore side when I met my wife
14 and got married, and I managed vessels for American Seafoods
15 during their startup years and for about four or five years
16 with American Seafoods managing factory trawlers and in
17 Russia, Argentina and the United States.

18 And then I worked for Pacific Northern Oil in sales and
19 marketing. They are an operator for the tank farm at T91
20 and we had assets in Portland, as well.

21 Q. Okay, this -- does that tank farm at T91 still exist?

22 A. No, it was just demolished and capped.

23 Q. And why was there a tank farm at T91?

24 A. In order to provide fuel for all classes of vessels in the
25 harbor as well as all throughout the Pacific Northwest,

1 A. So we work with fishing companies. If they are bringing
2 factory trawlers in and out of a terminal, they call us for
3 berthing.

4 We have leases that we draft and negotiate with tugboat
5 companies, with processing seafood processing companies,
6 with marine construction companies, with barge companies,
7 tug and barge companies.

8 We work with incidental business with ships of state,
9 various government entities, state agencies, counting
10 agencies, city agencies and offshore vessels. We work with
11 almost every market segment that we can service.

12 Q. Okay.

13 Now Mr. Englin, I think to begin with -- I will try not
14 to ask you to get on your feet again, but I would like you
15 to go up to the oversized exhibits.

16 I am going to hand you a portable microphone.

17 (Brief Pause in Proceedings)

18 Q. (By Mr. Schneider) And using this blowup of the Port of
19 Seattle Exhibit 24, which is the aerial photograph, would
20 you explain for us what you are saying and how that relates
21 to the business you have just been describing?

22 A. So this is an aerial of the outer harbor for the Port of
23 Seattle, and the greater Seattle area.

24 My offices are over here at terminal 91 on pier 91.

25 So what this says, this highlights all of the various

1 terminals around the outer harbor and around Harbor Island
2 and going up the Duwamish River, and they are labeled
3 accordingly.

4 Q. So what is the difference between a terminal and a pier?

5 A. A pier is just a portion of a terminal, so a pier is
6 basically another word for a dock as opposed to a terminal
7 you encompass the whole facility.

8 Q. Okay.

9 And how many of those facilities are in the port's
10 understanding cargo terminals?

11 A. Well they are virtually all a cargo terminal. There is
12 only -- there's a few facilities, which might be a mooring
13 dolphin where they may not necessarily but could transfer
14 cargo from vessel to vessel, but they are virtually all
15 cargo terminals at some level.

16 Q. Okay, and so if you could move to the next exhibit, 23?

17 You just used -- referred to a mooring dolphin.

18 Why don't you step around to the other side so you
19 don't block the examiner's view, and explain to us what a
20 mooring dolphin is?

21 A. They are referred to here. There's mooring dolphins up here
22 at North Harbor Island, for instance.

23 The mooring dolphin could be just a single piling,
24 which is like a telephone pole, and it could be made of
25 metal, it could be concrete, and it could be any size.

1 So that alone, if you had a large single mooring
2 dolphin, that could be a single mooring dolphin,
3 basically -- or you can have a series of pilings that you
4 are -- you put together to create a mooring facility.

5 Q. So what is the relationship if any between the mooring
6 dolphin and the shore?

7 A. Mooring dolphins are separated from the shore, so they
8 generally don't have shore-side access and so they are not
9 really considered necessarily -- usually categorized as a --
10 as a cargo facility, because they are not really handling
11 cargo across the pier.

12 Q. Do they have any purpose other than moorage of vessels?

13 A. No. That's what they're for. They are mainly just to
14 provide moorage capacity.

15 Q. And how many -- you don't have to give us an exact number,
16 but approximately how many mooring dolphins are we looking
17 at on Exhibit 23?

18 A. Well I am not positive, but the -- but there's one, two,
19 three, four, five, six facilities.

20 Q. And are there multiple dolphins at some of those facilities?

21 A. Yes.

22 Q. And what role do you play in deciding which vessels moor at
23 the mooring dolphins?

24 A. Well basically they contact us. They tell us what their
25 needs are and then based upon their needs, their operational

1 needs, as well as configuration of the actual vessel, we
2 will make a -- and availability, then we make determinations
3 to where they can moor.

4 Q. Okay. Moorage

5 I think you can take your seat again. Thank you.

6 (Brief Pause in Proceedings)

7 Q. (By Mr. Schneider) So does the port provide moorage at all of
8 the cargo terminals you referred to in Exhibit 24, as well
9 as the mooring dolphins illustrated in Exhibit 23?

10 A. Yes.

11 Q. What standards does the port use in deciding what moors
12 where?

13 A. It comes down to whether or not there is an exclusive
14 control over a facility.

15 Like for instance if it is a terminal and they have a
16 lease, or -- and we have to exercise secondary berthing
17 rights, so obviously it comes down to availability and size
18 of vessel.

19 Q. Okay.

20 You're using a lot of technical terms, so forgive me; I
21 am going to have to stop and ask you to explain.

22 What is a secondary berthing right?

23 A. So within the leases at the container terminals, or some of
24 the cargo facilities, cargo terminals, we have a lease with
25 an entity, a customer; so that tenant -- within that, there

1 will be a clause saying that the port may exercise secondary
2 berthing rights at their facility.

3 What that means is, even though they have -- overall
4 they have, you know, use of that facility, we can exercise a
5 secondary berthing right if it is not being used.

6 So for instance if there was a container terminal,
7 there is no vessels there, we have an overriding need to use
8 that facility for another vessel, we will contact the
9 terminal operator, or tenant, and we will inform them we
10 need to exercise our secondary berthing right to be able to
11 position a vessel at that terminal because it may be unique
12 in terms of its characteristics -- that can serve that
13 business.

14 Q. Okay.

15 We know that there is a leasehold with Foss Maritime at
16 terminal 5. Does that leasehold encompass all of the area
17 available for moorage at terminal 5?

18 A. No.

19 Q. And do you play any role in deciding what happens at the
20 portion of terminal 5 that is outside the leasehold?

21 A. Yes.

22 Q. What role do you play with that?

23 A. Well basically we are looking for businesses to occupy that
24 additional capacity and generate revenue for that facility
25 and put it into use.

1 Q. And so in looking at the -- all of the facilities in Exhibit
2 24 that I think you said were cargo terminals in the port's
3 estimation, how many of those are actually managed by the
4 port and then how many are subject to leaseholds where they
5 are managed by the lessee?

6 A. The primary terminals that are managed by the lessee are --
7 I could list them. It might be easier for me, anyway -- and
8 for you.

9 Terminal 5, where Foss has a portion of it, so they
10 just have that one portion of terminal 5. I think terminal
11 103 has a terminal, and then the -- terminal 18, terminal
12 25, terminal 30 and terminal 46.

13 Q. And could you use your laser pointer and identify for us
14 where each of these terminals are?

15 A. It's dangerous I think but I will do it.

16 (Laughter)

17 A. There is terminal 5 where Foss has a portion of it.

18 Terminal 18.

19 Q. Terminal 18 is on Harbor Island?

20 A. On Harbor Island, correct.

21 And terminal 46.

22 Q. And where is terminal 46 in relation to downtown Seattle?

23 A. It is right -- basically right in -- it is right next to the
24 ferry terminal, almost. There is 48 right there, and which
25 is the state ferry, and then there you have 46.

1 Q. Okay.

2 A. And then you have terminal 30 and terminal 25.

3 Q. And so other than those six facilities, which you identified
4 as being managed by the lessee, are you primarily
5 responsible for moorage at the remainder of them?

6 A. Yes, if there is moorage, yes.

7 Q. Okay.

8 How does the port charge the vessels that come and moor
9 at its facilities?

10 A. We either use -- if they have a lease, then that moorage or
11 that dockage, that is defined in the lease.

12 If we have a preferential use agreement, that is
13 defined in the preferential use agreement, but for all other
14 uses then we use the terminal's tariff number 5.

15 Q. What is a preferential use agreement and how does it differ
16 from a lease?

17 A. A preferential use agreement is an agreement between us and
18 a customer where they guarantee -- they are guaranteeing us
19 a minimum amount of these at berth, so we get a guarantee at
20 a certain negotiated rate, and what that does is that
21 guarantees us, the port, a revenue stream for those
22 facilities, but it also gives them a little -- a reduced
23 rate for that guarantee to use those facilities -- as
24 opposed to a lease, which a lease is basically 365 days a
25 year.

1 Most preferential use agreements are either 125 days or
2 150 days, which reflects often -- more closely approximates
3 the operating period during which the customers have their
4 vessels berthed here.

5 Q. Okay.

6 So let's assume a vessel is approaching the city of
7 Seattle and all they want is moorage. Does the port
8 accommodate that?

9 A. Yes, absolutely

10 Q. If I could turn you -- your attention please to port Exhibit
11 22, would you identify that for us?

12 A. 22 is a copy of the terminal's tariff number 5.

13 Q. And just to allay confusion, the reference to number 5 is
14 not a reference to terminal 5, correct?

15 A. No.

16 Q. Why is this terminal's tariff number 5?

17 A. Historical precedent.

18 Q. Okay.

19 A. It has been in existence a long time.

20 Q. And what is in this document and how do you use it in your
21 day-to-day business?

22 A. The terminal's tariff number 5 basically sets out the
23 conditions and all of the definitions for customers that are
24 trying to call in the port.

25 This is a publicly accessible document, so they

1 basically can come to the port and they will have some idea
2 about what their rates and conditions will be to occupy
3 berthing at the port.

4 Q. Okay. So --

5 A. That is how I apply it.

6 Q. And how do you use this in your day-to-day business?

7 A. If a vessel -- let's just say a vessel calls out names, and
8 they say we are a 300 foot vessel. We ask them what term
9 they need to stay -- you know, how long they need to stay,
10 and we find a facility for them.

11 We refer them to the terminal's tariff number 5, to be
12 able to determine what the rate is that they are to be
13 charged on a 24-hour basis for dockage, which is moorage.

14 Q. Okay.

15 So I want to go through and direct your attention to
16 certain pages of this document and ask you to explain to us
17 what -- what we are seeing, and if you could start by
18 turning to page 31, please? And that is the page of the
19 document itself.

20 It is Bates number 294.

21 And there is a definition of vessel there. Would you
22 read that for us?

23 A. "Vessel. The term 'vessel,' as used in this tariff means
24 any watercraft, barge or raft that is presented for
25 berthing," and number 2, "reference to vessel includes,

1 without exception, its owner, charter, agent, operator and
2 its employees."

3 Q. So can one infer from this definition that this tariff
4 provides -- applies to any sort of vessel that comes to the
5 city of Seattle?

6 A. Yes.

7 Q. Or the Port of Seattle?

8 A. Yes.

9 Q. And then turning the page, there is a reference to a
10 security fee.

11 Will you explain what that is and to what facilities it
12 applies?

13 A. So some vessels that are often distant water vessels or sail
14 outside the 200 mile limit, they are subject to federal
15 regulatory agencies, and one of the -- after 9/11, one of
16 the -- one of the regulations that came into effect was the
17 Maritime Transportation Safety Act of 2002, and we refer to
18 it as MTSA.

19 And in order to comply with that, we had to basically
20 secure certain berths per the direction of the US Coast
21 Guard, and so they are assessed a security fee in order to
22 berth at those specific berths when -- if they are -- if and
23 when they are subject to MTSA regulations.

24 Q. Turning to the bottom of that page, you have got -- under
25 the heading "use of berth," we have a working berth and an

1 idle berth with different fees associated.

2 What is a working berth and what is an idle berth?

3 A. So a working berth, when they are berthed at one of these
4 MTSA regulated berths.

5 Working berth is when they are in active operational
6 mode. So if they are unloading or loading cargo, or they
7 are -- they have a lot of activity going on with a vessel,
8 it is considered that they are -- it is a working berth.

9 If it is an idle berth, basically it is -- there is a
10 lack of activity. They don't have any cargo coming on and
11 off, and that basically the vessel is kind of -- it is like
12 a lay berth status.

13 And that is why they still have to pay the facility
14 fee, which is to help reimburse us for the infrastructure
15 and all of the fencing and security measures, but they have
16 a reduced staffing fee because you only need an idle guard
17 that comes over there as needed.

18 Q. And then turning to -- turning to page 39, it says "item
19 2000: Temporary non-preferential assignment conditions."

20 Explain what is talked about there to us, please?

21 A. So basically vessels can come in and out of the port, but
22 that doesn't mean that they -- that we can move them to any
23 berth that we want to. They don't have an exclusive
24 agreement for a specific berth unless they get into a --
25 into a lease agreement.

1 And so what this is, this is basically informing them
2 under what conditions that they would be able to come into
3 the port, but they don't have a preferential assignment to a
4 berth. In other words, we can designate whatever berth we
5 want to.

6 Q. And once a vessel is here, can you make the vessel move to a
7 different --

8 A. Yes.

9 Q. -- berth?

10 A. Yes.

11 Q. And under what circumstances might that happen?

12 A. It can happen under any number of circumstances. Let's just
13 say that there might be a vessel that has the -- needs a
14 specific water depth. This vessel might be occupying a
15 berth where they -- that is the only berth that they could
16 come into, and so what we do is we will shift the vessel
17 from one berth over to another berth in order to accommodate
18 another inquiry and another vessel that needs to get into
19 the apron.

20 Q. And do you move vessels to different facilities or just to
21 different berths at a single facility?

22 A. We move them to different facilities. We move them to
23 different berths. They can move around anywhere.

24 Q. And then turning the page, there is a page here with items
25 about wharfage.

1 Explain what wharfage is and how it is applied to
2 vessels?

3 A. So vessels of any class -- some vessels come in that are
4 cargo vessels, but they may not even have any cargo on
5 board, but if they do have cargo, and they want to discharge
6 the cargo, this is basically the rules and conditions under
7 which they can discharge the cargo, and it is referred to as
8 wharfage or the rents that we receive for the discharge and
9 handling of cargo.

10 Q. What does wharfage on dunnage mean?

11 A. That would be a charge, so -- so let's just say you have a
12 pallet of frozen seafood. They charge them the dunnage --
13 is all the wood and the pallet, the actual pallet itself and
14 the strapping that is included, so they will -- there might
15 be a charge that is also included for the dunnage -- for the
16 cargo itself -- as opposed to just the material only.

17 Q. And then briefly just explain for us those three other
18 definitions, beginning with wharfage overside. What is
19 that?

20 A. So in some instances a vessel will come alongside of a cargo
21 terminal and so for instance Boeing airplane parts, they
22 could go on the dock, or if the ship has a crane, they could
23 load it over -- over the side, directly onto another vessel
24 like a barge, and they would be charged for that.

25 Q. And wharfage overside bulk?

1 A. Yeah.

2 So bulk liquids are -- usually they are going to be
3 pumped, and they might be pumped from one vessel to another,
4 or they could be pumped from a vessel to the shoreside
5 facility, and this is basically saying that wharfage
6 overside bulk, so bulk liquids pumped overside from a vessel
7 to a barge -- that is what they are trying to define there
8 in terms of wharfage.

9 Q. And what is rafting?

10 A. Rafting is simply two vessels. So one vessel might be
11 dockside, and then the rafting vessel is the vessel that
12 moors right outside the other vessel but alongside.

13 So they are not alongside but adjacent to another
14 vessel, but they are not alongside the apron of the pier.

15 Q. And what charge if any is levied against the rafted vessel,
16 the one that is not adjacent to the pier?

17 A. Rafted vessels usually get half the normal dockage rate. It
18 is usually 50%, and that is shown under item 7000 under
19 dockage.

20 Q. And what about then the last item on page 40, wharfage on
21 transshipments?

22 A. So sometimes when you come in, vessels might come in, there
23 will be -- they don't want to basically pay twice, so if the
24 cargo might be coming in on a -- being transshipped, they
25 might not get paid -- they may not have another wharfage

1 charge when they transload to another ship -- but just get
2 the one charge when they load it onto let's say a cargo, a
3 smaller cargo ship.

4 Q. So I am not sure I have a clear mental picture of what you
5 just said.

6 What do you mean by transshipment?

7 A. So let's just say a fishing vessel came in and they had some
8 cargo on board. They may or may not have a charge for
9 wharfage to unload that cargo onto the dock. It goes down
10 the dock, it goes on to a smaller -- a bigger cargo vessel,
11 and that is so it is a transshipment, so it is transloading
12 it from one ship to another.

13 Q. And turning to page 45, section 4, passenger vessels and
14 cruise ships, how are they levied fees by the port?

15 A. They have a specialized tariff -- that is called out within
16 the tariff.

17 Q. And what is it based on, just in a very general way?

18 A. Most of it is based on -- well they have a dockage fee, but
19 they also -- most of it is based on passenger fees, not
20 unlike the airport.

21 Q. And then turning over several pages to 49, it says dockage
22 rates for passenger vessels, which I think you just
23 described, but explain to us what that is?

24 A. Yeah, so that calls out -- basically defines for like cruise
25 ships what fees they will be paying per passenger, so it

1 says for instance home port cruise ship, terminal 91
2 facility surcharge, right in the middle? They will be
3 charged \$1.63 per passenger.

4 So it just outlines basically what the charges are
5 going to be for the cruise vessel.

6 Q. I'm asking about the item above that.

7 A. Oh, I'm sorry.

8 Q. Dockage rates?

9 So what is a dockage rate as opposed to a per passenger
10 fee?

11 A. Okay, dockage rate is basically for moorage, and that a
12 space on a -- the lineal -- the length of the vessel, and so
13 what that does is that gives you the dockage fee based upon
14 whether it is a weekend home port or what class of cruise it
15 is -- as opposed to the -- the passenger fee, which is
16 almost akin to wharfage.

17 So the cargo is passengers as opposed to some sort of
18 cargo, so they break up -- they differentiate them.

19 So vessels may come in, like a cruise vessel -- it may
20 come in and not discharge any passengers, but they have to
21 pay dockage.

22 So they can come in and moor, but that doesn't mean
23 they are conducting passenger operations, so they still have
24 to pay a fee.

25 Q. So turning multiple pages again to page 26. The heading at

1 the top of the page is equipment rental and labor rates.

2 What does that refer to?

3 A. So we rent equipment rental out to the customers, so we have
4 some really large forklifts, for instance, that we will rent
5 to -- to customers, and this calls out the conditions under
6 which we rent them, and then also gives you a rate schedule
7 for that equipment, and it also calls out if for instance
8 they need us to set a gangway for the ship, what the labor
9 rates might be, or for almost all sorts of different types
10 of uses, whether it is setting a -- they have a cargo
11 loading ramp or a platform -- like a gangway -- whether they
12 have to rent a sweeper, clean the dock or what have you, or
13 flatbed.

14 Q. Then turning over to page 61, we finally get to dockage.

15 So what is dockage?

16 A. Dockage is -- well you guys are probably most familiar -- it
17 is like -- it is what the moorage, the cost of moorage is,
18 and it is based on the length overall of each vessel, and it
19 is -- dockage is based on a 24-hour period, so for when the
20 first line is on the dock, on the pier, to when they throw
21 the last line, and it is -- so it runs on a 24-hour basis.

22 Q. Does the port apply the dockage fee to all of the facilities
23 that you illustrated on Exhibit 24 that the port is
24 responsible for the moorage at?

25 A. Yes.

1 Q. Is the dockage fee different at the mooring bollards than it
2 is at a cargo terminal?

3 A. Yes.

4 Q. Why and how much?

5 A. Well it can vary. It is significantly different because the
6 functionality of the moorage dolphin system is much less
7 than if you are alongside of an apron at a pier, which gives
8 you a lot more ability to conduct other operations and ship
9 repair provisioning, crewing. It is just much easier when
10 you are alongside the dock.

11 Q. Okay, and can you use examples of ships that would come to
12 one of the port's facilities -- let's now move on from
13 mooring dolphins, but to an actual cargo terminal -- and
14 just be charged dockage, and not any other fees?

15 Can you give us examples of why a ship would come in
16 and only be charged dockage?

17 A. Yeah, we do it all the time.

18 We have barges that come in that don't have any product
19 on board, don't have any operations. They're just -- it is
20 just lay berthed.

21 They come in and they are waiting to go into a shipyard
22 somewhere.

23 We have tugs that come in.

24 The locks are -- the Ballard locks are closed and they
25 can't get into their shipyard -- into the north lake. They

1 will call us and they just want to tie up alongside the
2 pier.

3 Factory trawlers come in and they are not going to
4 discharge any product. They discharge -- let's say American
5 Seafoods would have discharged product up in Bellingham, and
6 they come down and they lay up for a few months until the
7 next season opens up and then fix the vessel, provision,
8 back load all of the materials and supplies that they need.

9 The same with -- there is a lot of seasonality in the
10 maritime industry, so you will get vessels that will come
11 down from Alaska and the season is over and now it is time
12 to repair the vessel and give people time off. And they
13 need lay berthing, so they call us up all the time.

14 Sometimes people come over to the mooring dolphins, lay
15 up there because they're waiting to go up the Duwamish up to
16 another facility in order to transload all the cargo.

17 So we will get Alaska Marine Lines, for instance, comes
18 down with all the frozen salmon and seafood products from
19 Alaska, and materials, and they will just -- they will tie
20 up at a mooring dolphin, or they might come into a facility
21 and tie up in some instances.

22 Q. But their purpose is not to load or unload at that facility,
23 but to await going somewhere else?

24 A. Correct.

25 Q. Now you referred to offloading of fish product in

1 Bellingham, and then the vessel, here.

2 Why does that happen?

3 A. Because they have certain conditions -- they have negotiated
4 certain rates and conditions with the Port of Bellingham and
5 with the stevedores and their cargo, the cargo ship
6 operators to transload their product up in Bellingham rather
7 than trying to -- to do it down here at the Port of Seattle,
8 or any facilities down here.

9 Q. Then why, after they have offloaded their cargo in
10 Bellingham, why then do they come to Seattle?

11 A. Well it is one of the best hubs internationally in the world
12 for supporting very complex maritime vessels.

13 You have ship repair. You can access crew if you have
14 to recruit people. You can go into a shipyard in this area,
15 so you can just conduct all these operations in preparation
16 to be able to maintain and keep that vessel operating in
17 harsh conditions.

18 Q. If a -- can you identify specific businesses that use that
19 business model of offloading somewhere else and then coming
20 to Seattle just for moorage?

21 A. Well American Seafoods has a fleet of I think seven factory
22 trawlers. They do it.

23 We have US Seafoods. They come in with their whole
24 fleet and have done the same thing. They don't usually --
25 they don't offload usually at our facilities.

1 I have tug and barges. I mean we have articulated tug
2 and barges -- they are called ATB's is the acronym of these
3 large tank barges. They come in and they do their repair
4 here. They will have inspections done here by the US Coast
5 Guard, and then they will depart and actually go into
6 service at some point, but they may be just laid up for any
7 period of time before they are under contract to go north.

8 We have offshore vessels that come in. We have --

9 Q. What do you mean by offshore vessels?

10 A. Offshore vessels would be like offshore supply vessels. It
11 is kind of a -- it is an overall term. There is actually
12 offshore supply vessels, which we saw like at terminal 5,
13 but we have them at 91. We have almost -- the Harvey Gulf
14 vessels, Edison Schweiz -- the Aiviq came over.

15 So they come over and they -- so for instance they were
16 getting -- they were -- the Aiviq came over. They just had
17 a couple of US Coast Guard admirals that were coming to
18 inspect the vessel and take a look at it before it left and
19 was going to transit up to the Arctic.

20 They just came over to pier 91 and just to take a look
21 around and see the vessel firsthand.

22 But we have a number of vessels that will come over for
23 inspections.

24 We have seismic vessels. We have research vessels that
25 come in. We have the NOAA ships coming over -- I think

1 this -- within a few days. We have the Bell Shimada NOAA
2 vessel, research vessel coming in -- and they're not -- we
3 have the University of Washington Thomas G. Thompson at the
4 end of pier 91 right now.

5 They are loading on an ROV. It is not -- it is a
6 remotely operated vehicle, like a small sub that's tethered
7 for research.

8 So that is all commonplace.

9 Q. So are they loading that research submarine to take it
10 somewhere else, or to use it?

11 A. They just use it out here and they will -- they will train
12 people on it, and -- on the use of it, and then they will
13 bring it back in and they will also test the government
14 for -- under contract to private contractors in some cases,
15 so they can take it out and test it before they send it out
16 somewhere.

17 So no, they are just -- it is not for the -- it is not
18 cargo and it is -- it is certainly not cargo, and it is --
19 it is more just a scientific expedition.

20 They also take crew on.

21 The Coast Guard comes over. They just recently
22 did a short -- well what they did was they wanted all of the
23 families, because they were going to deploy a Coast Guard
24 cutter for a long cruise.

25 All of the families get on board over at our terminal.

1 They steam over to the US Coast Guard headquarters and then
2 they unload them, but they get to see the vessel before they
3 go to sea.

4 We host Seafair, as you guys all know. We just got
5 done with that.

6 Q. What do you mean by hosting Seafair?

7 A. So we have -- so we call it Fleet Week, so the U.S. Navy,
8 they come into the various facilities around the outer
9 harbor, and it is -- it is an opportunity for families to
10 get together.

11 A lot of times they are coming off of a long cruise,
12 and so then they end the cruise here in Seattle and steam in
13 and tie up, and then it is an opportunity for all of the
14 public to basically see some of the various U.S. Navy
15 vessels, as well as Canadian Navy vessels, Canadian Coast
16 Guard vessels, and our own, of course, Coast Guard vessels.

17 Q. Okay, so if a vessel comes in and lay berths, and -- how
18 common is it for a vessel in that situation to be doing
19 maintenance?

20 A. Maintenance is ongoing and ever present. It is -- basically
21 it is -- the assumption is that they are going to be
22 conducting maintenance almost all the time on any vessel.

23 You have to maintain those vessels in order for them to
24 be able to operate, and it is just like any plant and
25 equipment. You have people on the vessel that are trying to

1 maintain everything.

2 Q. And give us examples of commonplace maintenance of vessels
3 at these cargo facilities?

4 A. Well, for instance -- well we had to bring in the Hanjin
5 Copenhagen, and that was as a result of the -- a US Coast
6 Guard captain of the port order.

7 Basically they had a -- they had what looked like to be
8 a potential breakdown on a pump or something -- some piece
9 of equipment on board.

10 Q. Before you go ahead, what is the Hanjin Copenhagen?

11 A. That is a container ship that was offloading containerized
12 cargo over at terminal 46, and then while they were there,
13 the Coast Guard conducted an inspection and they found that
14 there was a piece of equipment, a pump on board that looked
15 like it had malfunctioned, but it was a critical, critical
16 pump, and so the Coast Guard made the decision, the captain
17 of the port, who is the top person in this region, made the
18 decision you can't leave port until I make sure that this is
19 fixed and inspected.

20 So we shifted that vessel over to terminal 5 in order
21 to conduct that inspection, that repair.

22 Q. So it was at terminal 5 purposes entirely unrelated to
23 cargo?

24 A. Correct.

25 Q. And what kind of repair was done there?

1 A. Well I don't know if I want to go into the detail of
2 everything, because I don't know that much about it, but
3 they -- they basically -- I believe they -- you know they
4 went through the whole system. They had divers down
5 inspecting the seals. They had to go down with divers and
6 create a coffer so that it was waterproof, and then be able
7 to undo the -- you know, to look at the seals and inspect
8 the whole propulsion system for the -- on the stern tube.

9 Q. So how about at T91 when the fishing vessels come into
10 homeport. What kind of maintenance and repair do they
11 undergo while there?

12 A. They repair and maintain every aspect of the vessel from the
13 bridge to the keel, so the propulsion systems, the hydraulic
14 systems, the electrical systems, the factories, the deck
15 systems, the cranes --

16 Q. And how about painting?

17 A. Yeah, and you have to maintain the hull structure. You are
18 trying to protect it from rust and the -- and salt, so it is
19 pretty typical, they will -- there's limits in terms of how
20 much they can do before they go into a shipyard, but they --
21 and there's BMPs, best management practices that they have
22 to follow in terms of painting it, but they -- they go over
23 the -- usually the superstructure or interior, and they
24 will -- they will conduct some painting on the overall
25 facility.

1 Q. How -- excuse me, how about a cruise ship? Do they undergo
2 maintenance or repair when they are at T91?

3 A. Yes, constantly and routinely.

4 Q. And can you give us an example of something you routinely
5 see?

6 A. Well we just got done -- we had a crane barge that came
7 alongside. They had to lift off -- you know, one of the
8 lifeboats, because it was malfunctioning -- you know, so
9 they do an inspection of that, but they do the same kinds of
10 repair and maintenance ongoing on those ships, so let's say
11 that, you know, water makers? You know, they will have to
12 go through and tear apart the water maker if it is not -- if
13 it is not functioning correctly, because they obviously have
14 got to produce a tremendous amount of water for those -- for
15 the passengers on board.

16 They go through the whole thing -- the propulsion
17 systems, the mooring systems. You could have a winch that
18 is -- that maybe needs to be serviced. Just about anything
19 and everything.

20 Q. How about painting, do they paint the cruise ships when they
21 are here?

22 A. I haven't seen too much painting exterior -- on the
23 exterior. They are continually cleaning the vessel and
24 maintaining it, but I know that they paint on the interior.
25 I have seen them and gone down in the engine rooms.

1 But you know, painting is pretty consistent. You know,
2 they are going to have to maintain the vessel and the
3 structures.

4 Q. I want to turn back to the exhibit book, and we have a
5 series of exhibits -- Exhibits 1 through 8.

6 Can you collectively tell us what those are, please?

7 A. So just about every day, or we try to do it every day that
8 we are in the office, we put out a vessel-berthing plan for
9 mainly terminal 91. We have expanded it to some of the
10 other facilities, and what we do is we distribute this to
11 people that need to know, and this gives you basically the
12 berthing plan with all of the vessels and their positioning,
13 and also as a part of this, we -- you can kind of see the
14 berthing schedule for when we expect the vessels to arrive,
15 depart, and what pier and what berth we expect to position
16 them at.

17 Q. Okay, so to illustrate what you just said, let's -- for some
18 inexplicable reason, number 1 is a smaller scale than what
19 the rest were -- the rest of them, so let's go to the --
20 Exhibit 2 for a moment.

21 A. Okay.

22 Q. And we will come back to number 1, but what are we seeing on
23 Exhibit 2? Can you identify the graphics for us?

24 A. Okay, so this is an overall -- kind of like an aerial of the
25 southern half of terminal 91 -- basically from the Magnolia

1 HEARING EXAMINER: Okay, so is that an objection
2 to this or is simply wanting to -- we can bring that up
3 during cross-examination, if you want to go into more, but
4 I -- what I am hearing is a general explanation of what is
5 out at the terminal, and that is taking in that information
6 right now.

7 MS. BAXENDALE: I mean it -- it was an objection
8 that we -- it was along the lines of what we spoke about
9 earlier, and so I wanted to flag that this is coming to life
10 now, but I am not sure how you would like to handle that,
11 because if we start -- we had asked that there be precision
12 about looking at activities at terminals that have a cargo
13 terminal permit as opposed to generally talking about what
14 can happen anywhere.

15 HEARING EXAMINER: Right, and I think where we
16 left that, and that was a long time ago, but unless -- you
17 know unless whoever is presenting this information about a
18 specific terminal can verify what its permitted status is, I
19 am not going to be able to make assumptions about the
20 individual uses at that terminal, so I am assuming that, you
21 know, in addition to just the general information, somewhere
22 along the line, either from appellants, or even the
23 respondents are going to say that there is -- this is
24 something -- we are comparing the apples to oranges again.
25 This is not the cargo terminal use for terminal 5.

1 Bridge south. And you can see the two piers. There is pier
2 90, which is closest to us, and then pier 91, which is the
3 upper pier.

4 And then we have a couple of things highlighted in
5 terms of buildings and facilities such as the Smith Cove
6 Cruise Terminal, and Morrell USA, and then have on pier 90
7 we have the freeze facility, which is -- where the City Ice,
8 and then we have another building where we have Morrell,
9 Cami and American Seafoods are inside. And then you can see
10 the Seattle Fire Department where they have their facilities
11 now that were relocated from over by the ferry by pier 54.

12 Q. Okay, actually I am going to ask you again to -- just for
13 the sake of old eyes like mine --

14 A. Yeah?

15 Q. -- turn the page again to 4, because there we finally have
16 the graphics that are a reasonable size.

17 A. Sure.

18 MS. BAXENDALE: I would like to just note, this
19 brings us to the area where we did have the objections of
20 talking about activities at terminals that are not connected
21 to what are the permitting uses at the terminal, and so at
22 this particular terminal there is a -- there may be a cargo
23 terminal permit for part of it, but not all of it, and so if
24 we are talking about moorage at the whole facility, it is
25 not linked up with the cargo terminal permits.

1 I don't know if that helps, but I am accepting this as
2 just the general -- again, general information of the
3 activities that are going on at terminal 91, and I'm
4 assuming someone is going to ask me to make a leap at some
5 point and say this is how it -- how -- this is how it
6 relates to the code, so -- I don't know if that helps.

7 (Brief Pause in Proceedings)

8 HEARING EXAMINER: Okay.

9 Please continue, Mr. Schneider.

10 MR. SCHNEIDER: Thank you.

11 Q. (By Mr. Schneider) So again using this Exhibit 4, why are
12 some of the facilities on the pier highlighted?

13 A. Just to call out certain uses and certain tenants within
14 those that are key tenants for -- at the terminal.

15 Q. Are those highlighted because of the specific vessels that
16 are there on that day or what?

17 A. Well within the vessels, yes, those are highlighted -- the
18 blue vessels are incoming vessels, generally speaking, and
19 the green vessels are vessels that are on berth, so this was
20 July 17, 2015, and we were getting ready for Seafair, which
21 was going to be at the very end of July, like July 29
22 through August 2 or so, so these are vessels that are
23 incoming that we are looking at that are blue, and you can
24 see where we were positioning the vessels, the Coast Guard
25 cutter, for Seafair, on pier 91, on the east side there,

1 berth number 4.

2 We have a factory trawler, the Star Bound, coming in to
3 offload, and then conduct repairs at the facility, but they
4 are starting off over on berth 2 to offload product in city
5 ice.

6 Then they are going shift the vessel over to pier 91 on
7 the west side by berth M -- berth L/berth M -- up in the
8 upper right-hand corner, and that is where they are going to
9 conduct some heavy lifts, as well as a bunch of repair and
10 maintenance.

11 Just in front of them is Independent Packers. We just
12 call it IPC, but they have --

13 Q. Now you're leaping around --

14 A. I'm sorry.

15 Q. -- a lot, so --

16 A. Okay.

17 So I will just circumnavigate. Is that -- I will just
18 go around and -- go around the piers?

19 Q. Yeah, go around and --

20 A. Okay.

21 Q. Well, before actually you get to describing here what is on
22 this day, I want to finish laying the foundation for all of
23 them.

24 Q. Okay.

25 A. So again you said you do this on an almost daily basis?

1 A. Yes.

2 Q. And to what end? Why?

3 A. We wanted it to be transparent to everybody, with a lot of
4 people that are key within the port, as well as all of the
5 customers and tenants, what other operations are going on at
6 the pier, so when they contact us, they have some baseline
7 of what activity that we have coming up -- and so don't
8 double book a -- two vessels in one berth, as well.

9 Q. Does the keeping of, or the creation of these lay berthing
10 status documents have anything to do with the port's tariff?

11 A. Well yes because some of this is -- this kind of ties into
12 some of the areas which are under lease, so some of these
13 differentiate between leaseholds and some of it is more like
14 whether it be a pref use or spot business, that is more
15 focused on vessels, specifically.

16 Q. So -- so without talking about the specific vessels here on
17 that day, what portions of these two piers, 90 and 91, are
18 subject to leasehold?

19 A. So starting in the upper right-hand corner, there is a 150-
20 foot lease with Independent Packers Corporation. They have
21 150 feet of lineal moorage.

22 Q. And what business are they in?

23 A. They are basically a processor of seafood -- of various
24 types of seafood -- and some of the seafood that they get
25 that they process comes from various hatcheries, as well as

1 wild fish that is caught out in Puget Sound and the Pacific
2 Northwest region.

3 And then as you come around, Morrell --

4 Q. Before you move on from that, what kind of vessel or vessels
5 do they moor at their leasehold?

6 A. They moor fishing vessels. They moor tender vessels is what
7 we call them. They basically transport them in refrigerated
8 seawater from Puget Sound where they pull it out of the net
9 pens, like -- and then they will trans -- they will bring it
10 over here to this facility, unload it, dewater it and unload
11 it into a tote, and then they run it by forklift to the
12 north off of the page up to Independent Packers' processing
13 facility.

14 Q. So they are the one leasehold, 150 feet?

15 A. Um-hum?

16 Q. And then moving again counterclockwise, what do we have?

17 A. And as you go down, you have -- Morrell doesn't have moorage
18 associated with their lease, but they support -- they
19 engineer, fabricate and install complete factories on all of
20 these vessels that they serve there.

21 Q. And again, I am really focusing on leasehold of the moorage
22 space.

23 A. Okay.

24 And then you have Cruise Terminals of America, which
25 leases basically the hatched area that is -- the southern

1 half of pier 91 and all of the hatched area that you see
2 there.

3 Q. And what is that leasehold all about, and is it yearlong or
4 what?

5 A. They just changed the terms and conditions of it, but
6 basically that is throughout the cruise terminal, and then
7 it reverts to the Port of Seattle to operate that moorage
8 during the -- during the non-cruise season, and there's a
9 short -- their shoulder period is on the actual cruise
10 season that they have control over that facility, so it is a
11 predefined number of days that they have that facility.

12 Q. So approximately what portion of the year is that area
13 controlled by Cruise Terminals of America and what portion
14 of the year is it -- is the moorage controlled by the Port
15 of Seattle?

16 A. It is about 5 to 6 months it is controlled by the cruise
17 terminal, and then the other half of the year, let's say it
18 is controlled by the Port of Seattle.

19 Q. During the time that it is controlled by Cruise Terminals of
20 America, does the port retain secondary berthing rights?

21 A. We do. We -- we can -- we have brought vessels in there,
22 but with the permission of Cruise Terminals of America.

23 For instance, the Aiviq actually moored there, and that
24 was for the inspection of the -- by the US Coast Guard, and
25 we -- they didn't have -- they didn't have where the Crown

1 Princess is right now, they didn't have a cruise ship there,
2 and we called them and said, hey, they're coming over. If
3 possible, we would like to moor them, and they needed to --
4 they are required to be at a MTSA regulated facility, which
5 all of the hatched areas, those are MTSA regulated
6 berthing -- potentially if we want to flip the switch and
7 turn it on by them as such.

8 Q. In other words, those are the secure facilities or can be?

9 A. Right.

10 Q. Okay.

11 Okay, so there is that leasehold. What other areas?

12 A. And then you have to come all the way around pier 91 over to
13 the east side, and then we have a lease with the Seattle
14 Fire Department.

15 Q. And is that where we see in red two fireboats?

16 A. Correct. And that is about 250 feet, lineal feet.

17 And then as you follow that north, you see there is a
18 Foss in yellow. There is a Foss leasehold there.

19 Q. And what use does Foss make of that leasehold?

20 A. They use that to moor tugboats.

21 Most of the time, that serves as the onboard for their
22 tug assist vessels for the other harbor here, and then at
23 other times of the year they have basically every Foss tug
24 is cycled through that lease at some time.

25 We have seen them all. And --

1 Q. And what do the tugs do while they are there, and why are
2 they there?

3 A. They're just laid up. They might be conducting some repair
4 and maintenance, but a lot of times they are just -- like if
5 they are the tug assist vessels, they are just waiting for
6 the callout, or just laying up until they get a call out for
7 a ship assist, like with the grain terminal or with a
8 container ship or whomever.

9 And then they have other vessels that just come and
10 just lay up until -- sometimes the locks are closed, like I
11 said. They might have -- there have been times we've had
12 six, seven tugs stacked in there, and they are waiting for
13 the Ballard Locks to open up before they can go around to
14 their ship repair facility, for instance.

15 Q. Any other leaseholds?

16 A. And they have a moorage agreement with NRC. It is not
17 really leasehold. We have a moorage agreement with NRC and
18 their oil spill response vessels, their small ones, and they
19 have been positioned there for many years.

20 Q. And what does an oil spill response vessel do?

21 A. An oil spill response vessel kind of came out of -- out of
22 the Exxon oil spill originally, so anyway they -- these
23 vessels are there -- what they do is they are deployed to
24 boom all of the vessels, and they all just basically -- they
25 boom the vessels and/or would respond if there was an oil

1 slick or spill of any sort.

2 Q. What do you mean by booming a vessel?

3 A. So they encircle the vessel with specialized floating boom
4 that prevents any oil residue from coming off the vessel,
5 and then expanding in -- out into the water into the general
6 channels without -- so it just contains that vessel if there
7 is any sort of oil or anything coming off of the vessel.

8 Q. How common is it to boom a vessel?

9 A. It is almost -- it is standing operating procedure now.
10 Almost everybody booms the vessels almost all the time.

11 Q. When the Polar Pioneer was at terminal 5, was it boomed?

12 A. Yes.

13 Q. When the cruise ships come in, are they boomed?

14 A. They're not boomed until they are usually like taking up
15 bunkers, and then they -- then they will boom the vessel, so
16 they will boom them while they are transferring fuel, but
17 they are in kind of pretty briefly, so -- but when they are
18 transferring fuel, they boom up.

19 Q. How about the Navy vessels here for Seafair, were they
20 boomed?

21 A. They boomed -- I believe they boomed those vessels, but they
22 weren't transferring fuel or anything.

23 I am trying to remember if the LHD, because it is like
24 an aircraft carrier, it was a little bit of a challenge, but
25 I think they boomed those vessels if I remember.

1 Q. Okay.

2 MR. SCHNEIDER: So Ms. Watanabe, before I go
3 through these, and again there are eight of them, and ask
4 to -- more detail, I would like to offer them as exhibits.

5 HEARING EXAMINER: So we have got 1 through 8?

6 (Brief Pause in Proceedings)

7 HEARING EXAMINER: They weren't admitted -- unless
8 we are good to go through some more objections or?

9 MS. BAXENDALE: Well I don't understand the
10 purpose for which they are admitted, and I think that would
11 be the most useful.

12 Is it just to describe the activities or is it for some
13 other purpose?

14 MR. SCHNEIDER: Well there are multiple purposes,
15 but probably most prominently to illustrate the variety of
16 non-cargo vessels that moor at this cargo terminal, and we
17 have -- each of the eight exhibits is from a different month
18 of the year to provide some demonstration of how that
19 moorage of non-cargo vessels evolves during the course of a
20 year.

21 MS. BAXENDALE: I guess I would continue with the
22 objection only because the site has multiple permits.

23 I am beginning to understand that maybe that doesn't
24 matter, but I -- our original theory for saying that we
25 thought that this was going to be irrelevant to the case is

1 that -- since pier 91, or terminal 91 has multiple permits,
2 and -- I can link up a lot of this stuff with existing
3 permits, I don't know that it shows generally what is -- I
4 don't think it is relevant to show what you can do at a
5 cargo terminal.

6 On the other hand, the testimony suggests that anything
7 can happen at a cargo terminal, so at this point I am a
8 little bit confused about how it works.

9 HEARING EXAMINER: Well, if you are confused, then
10 certainly -- I'm still trying to understand how it works.

11 I think my -- again my notion is that I will take in
12 information, and I have certainly been hearing from Mr. --
13 Mr. McKim got quizzed over all of the potential uses that
14 could or could not occur under the -- under the banner of
15 cargo terminal, and I'm assuming that at some point I am
16 going to be given the arguments that these are all uses that
17 are -- through some legal mechanism are permitted or at
18 least they are legal as cargo terminal use.

19 Am I -- am I missing something?

20 I mean I think as just information about what is
21 occurring out there right now, it is very much the kind of
22 information I normally take in at a hearing on disputed land
23 uses.

24 MS. BAXENDALE: I understand.

25 HEARING EXAMINER: So I -- you know, I will go

1 ahead and accept it. I don't think I am making
2 assumptions -- if that is what is causing some concern at
3 this point about what is -- what is actually permitted out
4 there under everyone's theory of the case. I'm just
5 accepting it as information about what is currently going on
6 and how vessels behave out there and what happens.

7 So with that, I will go ahead and accept 1 through 8.

8 And again, it will be the port's exhibits 1 through 8.

9 MR. SCHNEIDER: Thank you.

10 Q. (By Mr. Schneider) So again, I apologize for the small scale,
11 but if we can turn back to Exhibit 1, which states that it
12 is from January 14 -- I guess it doesn't say the year on
13 that initial one -- but if you could explain for us the non-
14 cargo vessels that were there on that date as illustrated on
15 this berthing plan?

16 A. So the --

17 Q. And I have a magnifying glass if that will help.

18 A. I have bifocals, but they are not doing me enough good here,
19 but I think the -- so the Excellence, they are in for ship
20 repair. Global Seattle, I think they were there only for
21 like a reception.

22 Q. And if you could tell us not just the name but the kind of
23 vessel it is before you describe why it was there?

24 A. Yeah.

25 The excellence is a mother ship so they are a floating

1 processor. They take fish from fishing vessels, so the fish
2 is transferred at sea to the Excellence, and then the
3 Excellence takes it on board and processes it and they
4 participate in the Alaska Pollock fishery and the Pacific
5 Whiting fishery off the coast of Washington and Oregon.

6 Q. And what does that vessel do with the fish once it is
7 processed on board?

8 A. Then they -- they basically, once it is frozen cargo, then
9 they will discharge it in the -- and more often than not,
10 they will discharge it over on pier 90, to City Ice Cold
11 Storage, also known as Lineage Logistics now, and sometimes
12 they discharge it in other ports.

13 Q. Okay, and where on this diagram is that vessel that you just
14 have been describing?

15 A. They are in the upper left-hand corner at -- it says berth H
16 on pier 91, and it says, Excellence, 367 lineal feet -- 367
17 feet long.

18 Q. So they are in an area subject to the lease for the cruise
19 terminals, but it is not cruise season?

20 A. Correct, so we have the apron area, in effect. So during
21 cruise season, then the lease then is constrained to the
22 cruise terminal, the building itself.

23 Q. Okay.

24 A. We control the apron area, the dock area as well as the dock
25 moorage.

1 Q. Okay, could you read then, counterclockwise around pier 91?

2 A. Okay, counterclockwise we will go then to Sea Freeze Alaska,
3 which is a factory trawler, so they catch the fish
4 themselves. They bring it on board. They process the fish
5 and freeze the fish. So they are a factory and a trawler.

6 Q. And then what happens to the fish?

7 A. And they discharge the fish at various port authorities,
8 most -- most of it is discharged up in Dutch Harbor, Alaska.

9 We don't receive cargo usually from Sea Freeze Alaska.
10 That is part of the US Seafoods fleet.

11 All of their product just goes directly from Dutch
12 Harbor to foreign markets.

13 Q. Okay.

14 A. And then the next vessels going counterclockwise is -- those
15 are other -- they have the Legacy, they have a number --
16 they have all of those vessels right there. They are a part
17 of their fleet. Those are some of the smaller -- they call
18 them the head and gut fleet.

19 They are basically bottom trawlers, and they process
20 the product on board -- the Bare It All. They have any
21 number -- any number of vessels. It is hard to read them
22 from here.

23 Q. So are you saying the smaller vessels to the right --

24 A. Yep.

25 Q. -- are vessels that accompany the larger vessel?

1 A. Well, no, they're -- they fish unto themselves. They are
2 factory trawlers, so they might be just small-scale factory
3 trawlers.

4 They might also serve as -- in some cases -- they have
5 a number of different classes of vessels that harvest
6 seafood -- harvest fish -- so they may even be -- they have
7 one vessel that they had purchased that they were converting
8 to a research vessel, and that one is shown in blue there.

9 Q. What kind of research?

10 A. I am not sure exactly. I think -- you know, it depends what
11 they get chartered for.

12 Sometimes you are -- you go under federal contract.
13 You could do buoy tendering. They will charter the vessel
14 to go out and if they have a ship's crane, they will go out
15 and they will swap buoys out for -- whether buoys or what
16 have you.

17 We get all sorts of different types of operations.

18 They might even be used for seismic work. They could
19 be used for mapping the bottom in Alaska. They can put on
20 specialized sonars, or off the coast or anywhere.

21 And then as you go further down, I believe it says
22 Northern Glacier at 201 lineal feet long?

23 So the Northern Glacier is a factory trawler. They
24 have processed a lot of different fish, and then the next
25 one across from them is the Ocean Phoenix. That is a former

1 container vessel called the John F. Kennedy, the former John
2 F. Kennedy that was with APL.

3 So the Ocean Phoenix is a mother ship, and so they take
4 fish from a whole large fleet of catcher vessels called
5 trawlers, and then they transfer the fish to the Ocean
6 Phoenix, just like the Excellence.

7 And then they process it on board, and they
8 discharge -- usually they discharge at our terminal, and
9 they might do 5- to 7000 tons of product, and then they lay
10 up the rest of the time and basically conduct ship repair on
11 board, or are in just idle status -- and they -- if they get
12 all the work done, and they have done a big -- some major
13 re-fits to the vessel, so like this year I would anticipate
14 they will probably do some repair and maintenance as usual,
15 and they might give the crew time off and just have a couple
16 of engineers on board and some key staff.

17 Q. Continuing then counterclockwise around pier 90?

18 A. Yeah.

19 At the very end of the pier, that vessel is the Boss
20 Atlantic.

21 The Boss Atlantic is a -- so what they do is they lay
22 large cables across the ocean floor for telecommunications.
23 Right? That is how they distribute the -- like they are a
24 cable layer.

25 So the Boss Atlantic had mechanical problems, and they

1 got towed in, or they came in and actually had some other
2 mechanical problems, but they came in and they berthed at
3 the end of the pier 90, and they were laid up there for like
4 a month trying to conduct repairs.

5 Q. But the purpose of that vessel is laying cable?

6 A. Yeah.

7 Q. Okay.

8 Any other non-cargo vessels there on that day?

9 A. I think all of the vessels there might've been non-cargo.

10 I don't -- I can't read what that blue one is, but
11 the -- I'm not positive -- let's see.

12 I don't know if anyone else can read it?

13 If you give me the name, I can tell you what they --
14 oh, it might be on this list here.

15 Oh, yeah, the Boss Atlantic, Old Seattle Legacy,
16 American Dynasty -- so the American Dynasty was -- they came
17 in and they were just laying up. They actually had a lot of
18 repair and maintenance to do on the vessel.

19 Q. What kind of vessel is it?

20 A. That is a factory trawler for American Seafoods.

21 Q. Okay, so let me interrupt for a moment.

22 A. Um-hum?

23 Q. You have been talking a lot about various kinds of fishing
24 vessels. Is there any particular reason that the port's
25 cargo terminal here is the homeport for that fishing fleet?

1 A. Well the port basically negotiated with the -- starting with
2 American Seafoods in about 1990. They negotiated with
3 American Seafoods as part of their big redevelopment plan to
4 retain that business here at -- in Seattle.

5 American Seafoods -- this is just one example of one
6 company -- but they were one of the largest companies, and
7 they were growing steadily.

8 They basically were looking for a place where they
9 could service all of their vessels -- ideally at one
10 facility as they grew the fleet -- and they needed
11 warehousing that was adjacent, ideally, if they could have
12 it, and I was working for American Seafoods at the time, and
13 we negotiated a deal with the port, and the port was looking
14 to secure revenue from customers for the reconstruction of
15 all of these facilities, so they were undergoing a big
16 capital program, and so they were looking to secure
17 business, so they invested all of this money into these and
18 rebuilding these old facilities that they could retain that
19 business.

20 Q. So there are other seafood companies, other than American
21 Seafoods, that are here.

22 Is there a particular reason why there are so many
23 companies?

24 A. Well it is an ideal facility. It has been built out. It is
25 a major hub.

1 The Seattle area is a really major hub currently, and
2 hopefully for many years to come, for being able to support
3 very complex maritime businesses and vessels.

4 These vessels are some of the most complex in the
5 world, these factory trawlers, for instance. They are as
6 complex as seismic vessels or research vessels.

7 They have all of these systems on board, so they are
8 not only just like transporting like a container ship is --
9 just transporting cargo -- they have to catch the product,
10 so they have to process it, so they have a huge factory in
11 there, and then they have to freeze the product, and it is
12 food handling, so it has to be especially clean and there's
13 all these restrictions, and then they also have really
14 complex navigational systems on board and electrical
15 systems, and they have 110 crew, plus or minus.

16 They could have a couple of hundred on the Ocean
17 Phoenix, the mother ship, but on those vessels they have
18 very highly skilled people, so -- and there's a really good
19 hub of highly skilled workforce here in Seattle and the
20 Pacific Northwest, because it is such a big maritime hub.

21 So that is part of the reason why they really like
22 being here, but they look at -- you know, we looked at being
23 at other ports in the Northwest, and even --

24 Q. And when you say "we," you mean -- you mean when you were at
25 American Seafoods?