

ATTACHMENT D

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

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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

TRANSCRIBED BY: Marjorie Jackson, CETD
Reed Jackson Watkins, LLC
Court-Certified Transcription
206.624.3005

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E X A M I N A T I O N I N D E X

PAUL MEYER

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1 Q. Is it consistent with the cargo terminal -- no, let me back
2 up.

3 Is it consistent with the permit for a cargo terminal to
4 allow a recreational vessel to berth at a cargo terminal?

5 A. I don't see why not.

6 Q. Why is that?

7 A. Because it's a -- because a recreational vessel may actually
8 take on cargo, may move stuff. Kind of like me having a
9 pickup, I may move -- a floating vessel may move stuff
10 and -- whether it's recreational or commercial.

11 Q. What kind of stuff would a recreational vessel need to move
12 in order for it to fit into a cargo terminal?

13 A. Provisions, food, a -- fuel. It may move anything that can
14 be stored on the deck.

15 Q. So when you say fuel, do you mean fuel for the recreational
16 vessel's own use?

17 A. Yes.

18 Q. Now let's look at the activities of a cruise ship.

19 So if you look at the small DPD volume, it's a very thin
20 one. It may just be lying here, it will say on the front.
21 So there is a new DPD volume (inaudible). We ran out of
22 space.

23 A. What is --

24 Q. And this is Exhibits -- Exhibit 36.

25 And you can see that it's -- the front page says it's the

1 Port's DEIS for a cruise terminal location.

2 A. Yes.

3 Q. And it comes from the public library.

4 You're aware that the port files its SEPA determinations
5 at the public library?

6 A. Yes.

7 Q. Okay. So looking at page 2-3, under the heading, "Cruise
8 vessels at Terminal 91," look at the second paragraph. And
9 starting in the middle of the paragraph, you see where it
10 says, "Cruise ships visiting the port make a homeport or
11 port of call"?

12 A. Yeah.

13 Q. Okay. Why don't you read from that part -- to yourself read
14 from that part to the end of the next paragraph.

15 A. Okay.

16 Q. So is it consistent with a permit for a cargo terminal to
17 allow a cruise ship making a port of call to berth there?

18 A. I believe that it would be able to berth at a cargo
19 terminal.

20 Q. And why is that?

21 A. Because moorage is part of the intrinsic use of a cargo
22 terminal.

23 Q. Moorage even if the ship is not taking on provisions?

24 A. Yeah.

25 Q. And why is that? Why is it intrinsic?

- 1 A. Vessels moor at a port, vessels moor at a wharf. It's an
2 intrinsic use that I think anyone with -- you know, with the
3 common sense approach would be that moorage is an intrinsic
4 use at a cargo terminal or a facility at a wharf.
- 5 Q. So under that analysis, any vessel could moor at a cargo
6 terminal; is that correct?
- 7 A. It could moor provided they meet the necessary security
8 requirements, custom requirements.
- 9 Q. Could a vessel moor at a -- could any vessel moor at a
10 passenger terminal site?
- 11 A. They could.
- 12 Q. Lawfully, consistent with the permit?
- 13 A. Again, a moorage use is allowed at a cargo terminal.
- 14 Q. If the permit for the site were a passenger terminal and not
15 a cargo terminal, can any vessel moor at a passenger
16 terminal?
- 17 A. The passenger terminal use is a -- is a development use for
18 the upland portion of the work, it doesn't restrict or show
19 a difference in what's allowed at the wharf space.
- 20 Q. So if there is wharf space, can any vessel moor there
21 regardless of what the permit for the site is?
- 22 A. If the permit has a marine cargo use.
- 23 Q. And if the permit does not have a marine cargo use and has a
24 different kind of moorage use, is it consistent with every
25 type of moorage -- is it consistent with every type of

1 permit that has an aspect of moorage in it to put any kind
2 of boat there?

3 A. I'm kind of confused --

4 Q. Yes.

5 A. -- where that question went.

6 Q. Sorry.

7 Your testimony is that if a site has a permit for a cargo
8 terminal, any kind of vessel may moor there; is that
9 correct?

10 A. I believe you could make that statement.

11 Q. And would it be -- it would be correct, in your opinion, it
12 would be lawful for any vessel to moor at a cargo terminal?

13 A. Except limited by, you know, the security needs, you know,
14 that kind of --

15 Q. So the cargo terminal is kind of an umbrella permit for
16 moorage.

17 A. The cargo terminal is a transportation facility that allows
18 moorage.

19 Q. Without restriction to what kind of vessel.

20 A. It --

21 Q. Subject to security.

22 A. Subject to security. It appears to allow most moorage uses.

23 Q. Are there other types of permits that have -- for locations
24 on the water that have that kind of general moorage
25 component to them? Does --

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 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 Q. Were you familiar with those operations?
- 2 A. Not very.
- 3 Q. Is the Crowley location still there?
- 4 A. I think Crowley now has moved to 16 -- or no -- yeah.
- 5 Q. Is Pier 2 part of the Foss lease?
- 6 A. I don't know the answer to that.
- 7 Q. Were you familiar with the Westwood shipping operations?
- 8 A. I know Westwood operated out of Terminal 5.
- 9 Q. Look at the last paragraph of this document, so the next
10 page, page 6. You can read this to yourself. You see a
11 reference to Westwood handling a variety of break bulk
12 cargo, including transshipment cargo. Do you see that
13 reference?
- 14 A. Yes.
- 15 Q. And you see a reference to -- sorry, strike that. Was that
16 the understand -- your understanding of what Westwood was
17 doing at Terminal 5?
- 18 A. I think they did break bulk but they also did containerized,
19 too.
- 20 Q. But they were transshipping cargo from one place to another?
- 21 A. Yes.
- 22 Q. Did they do that for hire, like for a fee for someone to
23 transship it for them?
- 24 A. I don't know their relationship with their, you know, people
25 that they were doing it. I would assume that they would.

- 1 Q. So there's some other references to -- one is to a radio
2 tower. It's referenced on page 4 of this memo, W-198.
3 Under 1953, there is a reference to radio transmission
4 equipment and tower. Are you familiar with that
5 installation?
- 6 A. Where was this referenced?
- 7 Q. Paragraph 1, 1953.
- 8 A. I'm not.
- 9 Q. And there's a reference to a shipyard dry dock in 1953. Do
10 you see that?
- 11 A. Mm-hmm, yeah.
- 12 Q. Are you familiar with a shipyard and dry dock at Terminal 5?
- 13 A. Not from back then, I don't know of it.
- 14 Q. So --
- 15 A. Except by reference in here.
- 16 Q. So neither of them are there anymore?
- 17 A. No.
- 18 Q. You don't know or --
- 19 A. No, they're not there, sorry.
- 20 Q. They're not there. So if they were a prior use, they have
21 been abandoned?
- 22 A. I don't know. Yeah, they're not there anymore.
- 23 Q. Thank you.
- 24 HEARING EXAMINER: Mr. Meyer, could you speak up a little
25 bit --

1 THE WITNESS: I'm sorry.

2 HEARING EXAMINER: Because I think you're looking at the
3 book.

4 THE WITNESS: Right, right, I apologize.

5 HEARING EXAMINER: Thank you.

6 Q. (By Ms. Goldman) I would like you to look, there's some
7 photographs attached as an exhibit. If you would go to
8 W-201, the brighter page number on it is page 36. And the
9 numbers are sideways. Some numbers are on the upper
10 right-hand corner.

11 A. Okay.

12 Q. I'm sorry. The next page. What terminal is this?

13 A. Pier 91 -- or Terminal 91.

14 Q. Do you see the marking of the outer harbor lines?

15 A. I do.

16 Q. And can you describe where they are so everyone can see
17 where you're seeing?

18 A. The outer harbor line appears to run relative to the north
19 arrow, approximately east-west, or kind of south of east,
20 and it runs the full length of the waterway and piers
21 intersecting Pier 91 in its southwest corner.

22 Q. Were you here for Mr. Englin's testimony?

23 A. I was.

24 Q. And he described various vessels that were moored at
25 Terminal 91. Did you hear that testimony?

1 A. Did.

2 Q. And from your familiarity with Port operations, are those
3 vessels moored largely on the inside of the outer harbor
4 line?

5 A. Largely, yes.

6 Q. I would like you to go to Foss 39, and W-188.

7 HEARING EXAMINER: Could you repeat?

8 MS. GOLDMAN: Foss 39 and the page is W-188.

9 Q. (By Ms. Goldman) And what is this page showing?

10 A. It's an air photo of Terminal 5.

11 Q. And do you see where the outer harbor line --

12 A. I do.

13 Q. And where is that?

14 A. It's approximately a north-south line that goes along the
15 edge of the existing wharf.

16 Q. And would a vessel moored at term 5 be on the outside of the
17 outer harbor line?

18 A. It would.

19 Q. Do you know what the outer harbor lines delineate?

20 A. I'm kind of embarrassed here to (inaudible) but I don't know
21 who establish -- I can't remember who establishes the outer
22 harbor line. I think it's a -- so it's going to be, I may
23 be incorrect here, it's -- I think the State establishes the
24 outer harbor line -- no, it's the Federal I think that
25 establishes the outer harbor line.

- 1 Q. Do you know the meaning of it, once it's set, what is it
2 delineating?
- 3 A. It delineates the area where one can build a wharf
4 structure.
- 5 Q. Is the area outside of the outer harbor line generally
6 reserved for navigational purposes?
- 7 A. And moorage and navigation.
- 8 Q. I would like you to go to Foss 37. So if you look at the
9 first page, does this appear to be a staff briefing memo for
10 the commission?
- 11 A. Yes.
- 12 Q. Are staff briefing memos typically given to the commission
13 before a meeting?
- 14 A. Yes.
- 15 Q. There's some discussion among us whether this is the final
16 staff briefing memo that was given to the commission for the
17 January 13th meeting, but reserving that, I would like you
18 to look at page 6 of this document. And what is the heading
19 there?
- 20 A. Is this the heading in italics?
- 21 Q. Yes.
- 22 A. Okay. Italics about halfway down, it's "Vessel Berth
23 Moorage and Provision."
- 24 Q. And is that consistent with your understanding of the
25 activities under the Foss lease?

- 1 A. It's one of several.
- 2 Q. If you go down to the third bullet.
- 3 A. Mm-hmm.
- 4 Q. Would you read that, please, out loud.
- 5 A. "T-5 would receive inventory and stage equipment and
6 supplies that would be loaded to a fleet of vessels
7 including exploration drill rigs, ice breakers, provisioning
8 vessels, environmental response vessels, tugs and barges for
9 seasonal operations in Alaska."
- 10 Q. And is that consistent with your understanding of activities
11 that would take place under the Foss lease?
- 12 A. Yes.
- 13 Q. And do you see in the fifth bullet down, the reference to
14 "Over Winter Moorage Plans"?
- 15 A. Yes.
- 16 Q. Is that also consistent with your understanding of
17 activities that would take place under the Foss lease?
- 18 A. I think at the time that was the understanding, but I don't
19 know what the current understanding of how these moorage
20 plans will occur in the future, when this was written.
- 21 Q. I would like you to go now to Soundkeeper Exhibit 12, so it
22 would be in a different binder. I would like you to turn to
23 the second page of this document. Do you see the inquiry at
24 the bottom from Beth Osborne?
- 25 A. Why mm-hmm.

- 1 Q. Who is Beth Osborne?
- 2 A. She works for the Port of Seattle and she works in the
3 Public Affairs section.
- 4 Q. Do you see the subject line where it says "Q/A"?
- 5 A. Yes.
- 6 Q. Do you know what that refers to?
- 7 A. Questions and answers.
- 8 Q. And if you take a moment and look at this document, what was
9 she asking from you or the other recipient of this email?
- 10 A. She was -- wanted to get a -- check on the accuracy of her
11 statement of her answers relative to the questions of: Will
12 there be any environmental impacts in Puget Sound?
- 13 And then she provided an answer and we were asked to
14 comment on the accuracy of those statements.
- 15 Q. And so if you look at the carry-over part from the first to
16 the second page, it looks like you may have forwarded this
17 document to Mr. Blomberg.
- 18 A. Yes.
- 19 Q. Why did you do that?
- 20 A. Because of workload.
- 21 Q. Were you asking him to do something?
- 22 A. Yeah. It was obviously, can you -- I think it's -- the
23 intent was that he would help answer those questions or he
24 would help check the veracity of those statements, her
25 answers.

- 1 document that was referred to in Soundkeeper Exhibit 12?
- 2 A. I'm not trying to be a pain here, but I don't know whether
3 that was the document, you know, not seeing the actual
4 attachment. The names are similar.
- 5 Q. And the other document referred to an interim use
6 consistency analysis?
- 7 A. Right.
- 8 Q. Is that what this document Soundkeeper 21 is?
- 9 A. The names are familiar. I can't -- unless I saw that
10 particular -- that it was the same one. I mean, you know,
11 in the third sentence it goes "I'm not certain what
12 reached," so I'm not sure exactly.
- 13 Q. Oh, I'm asking you a different question now. You used
14 your -- Mr. Blomberg's email to used the phrase "interim use
15 consistency analysis."
- 16 A. Mm-hmm.
- 17 Q. And I'm asking whether Soundkeeper 21 is such an analysis.
18 Is this an interim use consistency analysis?
- 19 A. Yes.
- 20 Q. What does that mean? Consistency with what?
- 21 A. With the Port's -- is it consistent with the shoreline
22 substantial development permit and SEPA action.
- 23 Q. And if you will look at the second page of this document --
24 actually, let me just ask you. So this document was from
25 you to Mr. Blomberg --

- 1 A. Mm-hmm.
- 2 Q. -- (inaudible) with the email?
- 3 A. Right.
- 4 Q. Did you write this document?
- 5 A. I was involved with writing it, yes.
- 6 Q. And if you will look at the second page, which is CW-167 in
7 the fine print, you see a reference under "Land Use," that
8 the substantial development permit was conditionally
9 approved as the existing cargo terminal. Do you see that?
- 10 A. Yes.
- 11 Q. And then under that there's some definitions. So why were
12 the definitions included in this document?
- 13 A. Well, because like any good research project, you certainly
14 want to have your definitional characteristics understood.
15 I mean, this is -- we were trying to be as legal as we could
16 here and understand what we were doing. These were the
17 important pieces of this analysis.
- 18 Q. And you will see you have -- the first definition says
19 "transportation facility," is that right?
- 20 A. Yes.
- 21 Q. And then embedded within that there is a "cargo terminal"
22 definition?
- 23 A. Yes.
- 24 Q. Under that, there are definitions of "cargo." Do the first
25 and third coincide with some of the definitions and

- 1 descriptions in the first document I have here, which was
2 Foss 20? It's in a different binder.
- 3 A. Without looking at that, I would say they're probably the
4 same.
- 5 Q. And then the middle one, "containerized cargo."
- 6 A. Yes.
- 7 Q. Can you read that, please.
- 8 A. "Cargo, containerized means cargo packed in a large,
9 typically 8-feet-by-8-feet-by-20-foot, trunk-like box
10 loaded, stored and unloaded as a unit."
- 11 Q. And is it your understanding that the containers that are
12 typically loaded and unloaded at a large containership
13 terminal are of this standard size?
- 14 A. Yes.
- 15 Q. So I would like --
- 16 A. But not limited to that.
- 17 Q. At a large containership terminal?
- 18 A. Yeah.
- 19 Q. What about the large containerships that come in, are they
20 typically loading and unloading standard size containers?
- 21 A. For a containership, yes.
- 22 Q. I would like you to look at Soundkeeper Exhibit 20 now.
- 23 A. I'm sorry, which one?
- 24 Q. 20. I didn't have you look at the date on 21. Why don't
25 you look at the date on 21, and then I'm going to ask you to

- 1 look at the date on 20. So what was the date on Exhibit 21?
- 2 A. 21, I sent it to George on January 6th.
- 3 Q. Now, Puget Soundkeeper Exhibit 20.
- 4 A. Yes.
- 5 Q. What does the cover page of this indicate? What is that?
- 6 A. It is something that was sent on January 14th.
- 7 Q. From whom to whom?
- 8 A. To -- from me, probably at my work address, to my home.
- 9 Q. And is this another draft of a consistency analysis? And to
- 10 answer that, I suggest you skip ahead to CW-162 and we'll
- 11 come back to the --
- 12 A. 162?
- 13 Q. Yeah. The material that begins on CW-162, another draft of
- 14 the consistency analysis.
- 15 A. Yes. You know, because it says "draft" under it.
- 16 Q. Okay. Now, preceding this page, there's a lot of material.
- 17 Can you tell me what this material is?
- 18 A. Yeah. Again, trying to be more understanding of what's
- 19 going on, I pulled together anything and everything that
- 20 could possibly be related to this issue. It was I guess you
- 21 would call a data dump. It wasn't necessarily what I did
- 22 omit or did include. It was not thoughtful. It was just as
- 23 much as I could think of that might be useful in this
- 24 analysis.
- 25 Q. So on the bottom of CW-152 and carrying over to CW-153,

- 1 there are definitions there, "cargo" and "cargo terminal."
2 And can you tell from the citation where those come from?
- 3 A. You said the bottom?
- 4 Q. Yeah, the bottom of CW --
- 5 A. Oh, I see.
- 6 Q. -- there is a citation and then the definitions are in the
7 next page.
- 8 A. Okay, got it.
- 9 Q. So where do those definitions come from?
- 10 A. They came from the City's old shoreline master code because
11 it was -- it's not 60-A, but it was 60s, so I probably got
12 them online.
- 13 Q. And then following those definitions, you see a reference to
14 chapter 23.84A?
- 15 A. Mm-hmm.
- 16 Q. And what is that a citation to?
- 17 A. 84A is the land use code, and that -- I'm sorry, that was
18 the -- yeah, the land use code. And it has definitions for
19 light manufacturing or manufacturing, which is subdivided to
20 light, general and heavy.
- 21 Q. If you continue over to the bottom of CW-155.
- 22 A. Mm-hmm.
- 23 Q. And there's a definition there of "transportation facility"
24 and it carries over on the next page. And it's "cargo
25 terminal, parking and moorage." Are those definitions from

- 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

1 authorizations including local, state and federal review,
2 depending on the scope of proposed activities and uses."

3 Q. You see the part where it says any change in use at the site
4 would require new approvals and authorizations?

5 A. Yes.

6 Q. Would that include new approvals from the City under the
7 shoreline management?

8 A. I think I said including local.

9 Q. Mm-hmm. So if the definition of "cargo terminal" is
10 established not to include the use under the Foss lease,
11 then would the Port need to obtain a new approval or
12 authorization from the City?

13 A. Hopefully they'd appeal first.

14 Q. If you lost that appeal -- I know that's what you hope, but
15 if you lost that appeal, would the Port need to obtain a new
16 approval or authorization for the use of Terminal 5 under
17 the Foss lease?

18 MR. SCHNEIDER: Objection; calls for a legal opinion and
19 speculation.

20 MS. GOLDMAN: I believe that we have been asking Mr. Meyer
21 to give a lot of legal opinions.

22 MR. SCHNEIDER: Well, this is speculation about the
23 future. All sorts of events could intervene and affect what
24 the future brings. We're not asking about interpretation of
25 the code as it applies at the moment.

1 HEARING EXAMINER: Well, I think she's just asking him
2 where another permit would be needed, and he's already
3 discussing --

4 THE WITNESS: A permit?

5 HEARING EXAMINER: A permit, yes.

6 THE WITNESS: No, there is -- it's not a permit.

7 HEARING EXAMINER: All right. Then I better let you go
8 ahead and answer this question.

9 THE WITNESS: You would be asking for an additional use.

10 HEARING EXAMINER: Okay. Let's maybe move back to your
11 question, and I think I've --

12 Q. (By Ms. Goldman) So if we assume that it is established
13 that "cargo terminal" does not encompass the use of terminal
14 Terminal 5 under the Foss lease --

15 A. Yeah.

16 Q. -- then is it your testimony that the Port would need to
17 obtain an additional approval or authorization for that
18 lease from the City?

19 A. They may decide to ask for an additional use.

20 Q. If the Port wanted to proceed with the activity, would it
21 need to have an additional authorization or use?

22 (Sound of cell phone music.)

23 MS. BAXENDALE: Sorry.

24 HEARING EXAMINER: That's okay. We'll just hold up for a
25 moment, Mr. Meyer.

1 THE WITNESS: It's very nice.

2 HEARING EXAMINER: It's nice.

3 MS. GOLDMAN: At least it wasn't a duck.

4 A. If it was, you know, to prevent an illegal situation, they
5 may choose to ask for an additional use.

6 Q. (By MS. Goldman) And is it your understanding that the
7 Shoreline Management Act and the Shoreline Master Program
8 would require an additional authorization or approval for
9 the Foss lease if cargo terminal does not encompass that
10 lease.

11 A. Again, I am asking, doing a lot of legal interpretation
12 here, and it would depend on the outcome of this, you know,
13 this forum here. If the definition of "cargo" is similar to
14 what was in the interpretation, then we might be -- we might
15 be forced, to avoid an extra legal situation, to apply for
16 an additional use.

17 Q. Well, let me take it out of this context and ask you as a
18 hypothetical. Let's assume that there is a terminal where
19 the only permitted use is as a ship repair in a dry dock
20 facility, could the Port allow a cruise ship to moor there,
21 to have passengers embark and disembark under that permit?

22 A. I haven't looked at that in detail of what's allowed or not
23 allowed, but I would suspect that the actions and functions
24 of a dry dock wouldn't have the upland development necessary
25 to moor that type of vessel.

1 A. Probably not the permitting process. It would be
2 establishment of the local codes and whether or not it would
3 be consistent with the Shoreline Master Plan, not the
4 permitting.

5 Q. I believe you also testified that SEPA might apply to the
6 permitting process. Do you recall that?

7 A. Yes.

8 Q. And that the public might have a 14-day period to provide
9 comment?

10 A. Yes.

11 Q. Do you think the public could offer some useful perspectives
12 to the city or useful information in the permitting process?

13 A. The public would likely offer a lot of comments and likely
14 offer opinions of how it should be used, not necessarily
15 remembering and reflecting that the Shoreline Master Plan
16 calls for not just protection of environmental quality but
17 does call for more than one use, recognizing that the
18 Shoreline Master Plan does look at uses like industrial
19 uses. They may forget that.

20 Q. Could other state and local agencies provide useful input
21 into a permitting process?

22 A. They would provide input.

23 Q. So the Department of Natural Resources, for example, might
24 it have a perspective on mooring the Polar Pioneer drill rig
25 in the west waterway? Would it then be able to offer that

1 perspective in the permitting process?

2 A. Yes.

3 Q. And are you aware that the Department of Natural Resources
4 has expressed concerns about long-term moorage of the drill
5 rig in the west waterway?

6 A. They have asked -- from what I know, they have asked the
7 Attorney General to resolve an issue whether or not -- they
8 wanted an opinion from the Attorney General about moorage in
9 the waterway.

10 Q. And that's because the Polar Pioneer would be moored outside
11 the outer harbor line?

12 A. If I understand it, that is one of the issues, yes.

13 Q. So if there were a permitting process, the Department of
14 Natural Resources could have offered its views as part of
15 that process?

16 A. Yes.

17 Q. Are you familiar with the Port's Harbor Development
18 Strategy?

19 A. I know that they did some strategic planning documents over
20 time, but most -- I think all of them were done before I
21 started work here. And I can't say I know a lot about
22 what's inside, and quite frankly, given their age and the
23 rapid changes in cargo and just in general what's happening
24 in the cargo world and waterborne transportation, I'm not
25 sure they're relevant.