

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE**

ASSOCIATION TO PRESERVE AND )  
PROTECT LOCAL LIVELIHOODS, et al., )  
) )  
*Plaintiffs,* )  
) )  
PENOBSCOT BAY AND RIVER PILOTS )  
ASSOCIATION, )  
) )  
*Plaintiff-Intervenor,* )  
) )  
v. )  
) )  
TOWN OF BAR HARBOR, )  
) )  
*Defendant,* )  
) )  
CHARLES SIDMAN, )  
) )  
*Defendant-Intervenor* )  
\_\_\_\_\_ )

Case No. 1:22-cv-416-LEW

**JOINT PROPOSED FINDINGS OF FACT**

Plaintiffs Association to Preserve and Protect Local Livelihoods (“APPLL”), B.H. Piers, L.L.C. (“BH Piers”), Golden Anchor, L.C., doing business as Harborside Hotel (“Harborside”), B.H.W.W., L.L.C. (“BHWW”), Delray Explorer Hull 495 LLC (“495”), Delray Explorer Hull 493 LLC (“493”), and Acadia Explorer 492, LLC (“492”) (and together with APPLL, BH Piers, Harborside, BHWW, 495, and 493, “Plaintiffs”) and Plaintiff-Intervenor Penobscot Bay and River Pilots Association (“Pilots” or the “Pilots Association”) submit the following Joint Proposed Findings of Fact.

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**JOINT PROPOSED FINDINGS OF FACT – PLAINTIFFS AND PLAINTIFF-INTERVENOR**

*Association to Preserve and Protect Local Livelihoods, et al. v. Town of Bar Harbor, Case No. 1:22-cv-416-LEW*

## I. PARTIES

1. Plaintiff Association to Preserve and Protect Local Livelihoods (“APPLL”) is a not-for-profit 501(c)(6) organization, duly organized under the laws of the State of Maine, with a principal place of business in the Town of Bar Harbor, County of Hancock, State of Maine. *See* Compl. at ¶ 6 (ECF No. 1); Plaintiffs’ Trial Exhibit (“PX”) 244 (Amended Articles of Incorporation).

2. APPLL is comprised of members (“APPLL Members”) that own and/or operate businesses in Bar Harbor and have combined their resources to advocate for the preservation and protection of local businesses and livelihoods. *See* Compl. at ¶ 6 (ECF No. 1); Trial Transcript, July 12, 2023 (“Tr. 12-Jul.”) at 271:3-10, 310:3-16.

3. APPLL Members include owners and employees of restaurants, retail stores and tour-related businesses, among others. *See* Tr. 12-Jul. at 271:6-10, 310:3-16.

4. Consistent with its amended articles of incorporation, APPLL’s purposes include, but are not limited to, empowering and supporting local business owners and employees and protecting their way of life, advocating for businesses in and around the Mount Desert region, and resisting measures that would impinge on business conditions or the local economy. *See* Compl. at ¶ 6 (ECF No. 1); Tr. 12-Jul. at 271:6-10, 308:13-14, 310:3-5; PX 244.

5. APPLL exists so that its members can work together to protect tourism from inequitable treatment and legislation that discriminates against maritime tourism. *See* Compl. at ¶ 6 (ECF No. 1); Tr. 12-Jul. at 271:6-10, 310:3-16.

6. Plaintiff BH Piers is a limited liability company, duly organized under the laws of the State of Maine, with a principal place of business in the Town. *See* Compl. at ¶ 7 (ECF No. 1); Compl. Verification at pp. 42-43 (ECF No. 1).

7. Plaintiff BH Piers operates a pier located at 1 West Street, commonly known as Harbor Place in Bar Harbor, Maine. *See* Compl. at ¶ 8 (ECF No. 1); Compl. at p. 36 (ECF No. 1); Tr. 12-Jul. at 270:3-4 (mentioning the address).

8. Passengers and crew from cruise ships anchored in Frenchman Bay land at Harbor Place. *See* Trial Transcript, July 11, 2023 (“Tr. 11-Jul.”) at 80:3-5; Trial Transcript, July 13, 2023 (“Tr. 13-Jul.”) at 15:11-12.

9. Plaintiff Golden Anchor (with BH Piers, collectively referred to as the “Pier Owners”) is a limited liability company, duly organized under the laws of the State of Florida, with a principal place of business in Delray Beach, County of Palm Beach, State of Florida, authorized to transact business in the State of Maine. *See* Compl. at ¶ 9 (ECF No. 1); Compl. Verification at p. 37 (ECF No. 1); Tr. 12-Jul. at 66:4-12 (describing acquisition and formation).

10. Golden Anchor operates a pier at 55 West Street in the Town, commonly known as Harborside Docks.<sup>1</sup> *See* Compl. at ¶ 10 (ECF No. 1).

11. Plaintiff BHWB is a limited liability company, duly organized under the laws of the State of Maine, with a principal place of business in the Town, doing business as Bar Harbor Whale Watch Company. *See* Compl. at ¶ 11 (ECF No. 1); Compl. Verification at p. 38 (ECF No. 1); Tr. 12-Jul. at 78:23-25, 79:1-3 (describing ownership).

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<sup>1</sup> Collectively, the owners of the Harbor Place and Harborside tender piers are sometimes identified herein as the “Pier Owners.”

12. Plaintiff 495 is a Florida limited liability company. 495 owns and operates a 149-passenger custom built jet propulsion cruise ship tender vessel (the “Coastal Explorer”) that is used to ferry cruise ship passengers and crew to and from the cruise ships to the landings of BH Piers and Harborside for their disembarkations and visits to the Town. *See* Compl. at ¶ 12 (ECF No. 1); Tr. 12-Jul. at 125:22-126:3, 145:9-16 (Delray Explorer 495 owns the Coastal Explorer); PX 201.

13. Plaintiff 493 is a Florida limited liability company. 493 owns and operates a 149-passenger custom built jet propulsion cruise ship tender vessel (the “Schoodic Explorer”) that is used to ferry cruise ship passengers and crew to and from the cruise ships to the landings of BH Piers and Harborside for their disembarkations and visits to the Town. *See* Compl. at ¶ 13 (ECF No. 1); Tr. 12-Jul. at 145:17-19 (Delray Explorer 493 owns the Schoodic Explorer); Tr. 12-Jul. at 126:10-15 (discussion in which Schoodic Explorer is mentioned as one of the tender vessels).

14. Plaintiff 492 is a Florida limited liability company. 492 owns and operates a 149-passenger custom built jet propulsion cruise ship tender vessel (the “Acadia Explorer”) that is used to ferry cruise ship passengers and crew to and from the cruise ships to the landings of BH Piers and Harborside for their disembarkations and visits to the Town.<sup>2</sup> *See* Tr. 12-Jul. at 145:20-22 (Acadia Explorer owns the Acadia Explorer); Tr. 12-Jul. at 87:13-22.

15. Plaintiff-Intervenor Penobscot Bay and River Pilots Association (“Pilots Association”) is a corporation duly organized under the laws of the State of Maine, with a principal place of business in Searsport, Maine. *See* Intervenor Compl. at ¶ 11 (ECF No. 43).

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<sup>2</sup> Collectively, the owners of the three tender vessels are alternatively identified as the “Tender Vessel Owners” or “Tender Owners” herein.

16. Defendant Town of Bar Harbor (the “Town”) is a municipal corporation, duly organized under the laws of the State of Maine, and its principal place of business is in the County of Hancock, State of Maine. *See* Answer of Defendant Town of Bar Harbor at ¶ 16 (ECF No. 53).

17. Defendant-Intervenor Charles Sidman (“Sidman”) is a resident of Bar Harbor, Maine and was the lead petitioner in the Initiated Ordinance. *See* Verified Motion to File Complaint in Intervention (ECF No. 45 at 1); Tr. 13-Jul. at 249:8-9; PX 235.

18. Sidman is co-author of the language of the Initiated Ordinance. Tr. 13-Jul. at 97:23-25; 97:1; Tr. 13-Jul. at 311:19-25; 312:1-3.

19. Sidman also drafted, with counsel, the “Purpose” section of the Initiative. *See* Tr. 13-Jul. at 266:5-13.

## **II. BACKGROUND**

### **A. Maine’s Tourism Industry**

20. Tourism is one of the state’s largest industries. *See* Tr. 12-Jul. at 198:8-14 (Gabe: “Maine is thought of as being a drive tourism market.”).

21. The State relies heavily on tourism for economic stability and growth. *See id.*

22. Cruise tourism inspires return visits to Maine. *See* PX 195 at 13 (Flink).

23. The Maine Office of Tourism is, by statute, a marketing agency for the State. *See* PX 195 at 3 (Flink). CruiseMaine is an initiative of the Maine Office of Tourism. *See* PX 195 at 3 (Flink).

24. The mission of CruiseMaine is to support, educate, and promote all the cruise communities in Maine seeking sustainable cruise ship tourism. *See* PX 195 at 3 (Flink).

25. CruiseMaine engages in business-to-business marketing with the cruise industry on behalf of the State of Maine. *See* PX 195 at 4 (Flink). CruiseMaine engages with cruise line operators and the cruise industry trade association, Cruise Lines International Association (“CLIA”). PX 195 at 6 (Flink).

26. Carnival Corporation, Royal Caribbean Group, and Norwegian Cruise Line Holdings and lines that are subsidiaries or affiliates of these companies are active in the New England/Canada cruise trade. *See* PX 195 at 6 (Flink). These cruise lines do not operate domestic-flag vessels in the New England/Canada region. PX 195 at 7 (Flink).

27. Ports of call are vital to the cruise industry. Tr. 12-Jul. at 168: 24-25.

28. Decades of consumer research confirm that the ports of call on an itinerary are what is important to the customer. Where the cruise ship is going is the first thing the customer wants to know. Tr. 12-Jul. at 168:24-25.

29. Cruise passengers get off the ship to visit the ports of call on the cruise itinerary. Tr. 12-Jul. at 169:1-5.

30. Marquee ports are essential destinations for cruises in a region due to their close proximity to exceptional tourist attractions. PX 195 at 11 (Flink) (Acadia and Bar Harbor’s brand recognition are attributes that make it a marquee port).

31. A marquee port is a port that sell cruise tickets according to marketing research. PX 195 at 11 (Flink).

32. A marquee port is a port that is optimal for customer preference. Tr. 12-Jul. at 174:8.



33. Cruise companies are motivated to fit marquee ports into their itineraries. Tr. 12-Jul. at 174:5-6.

34. A cruise itinerary does not work if it does not have multiple destinations. PX 195 at 8 (Flink).

35. Seven to fourteen day cruises are the most common cruise lengths in Canada and New England. PX 195 at 8 (Flink).

36. The vast majority of Maine's cruise traffic is part of the Canada/New England region, which spans from New York City and New Jersey to Montreal and the St. Lawrence Seaway. It includes New England, the eastern Canadian provinces, the Maritimes, as well as the province of Quebec. PX 195 at 8-9 (Flink).

37. One of the focuses of the Maine Office of Tourism is cruise tourism in Maine. PX 195 at 12 (Flink); *see also* Joint Stipulation ("J. Stip.") ¶ 5 (ECF No. 137).

38. Bringing first-time visitors to Maine is a high priority of the Maine Office of Tourism. PX 195 at 12 (Flink).

39. Research conducted by the Office of Tourism and CruiseMaine shows that over half of cruisers are coming to Maine for the first time. PX 195 at 12 (Flink).

40. Introducing new visitors to Maine is a priority of the Maine Office of Tourism because once visitors come to Maine, they tend to come back. Visitation methods that bring first-time visitors are a way for the State to expand into new markets. PX 195 at 12 (Flink).

41. Cruises bring first-time visitors to Maine from a broader geographical region than Maine's typical land-based visitation. PX 195 at 12 (Flink); *see also* Tr. 12-Jul. at 198:11-19.

42. Over 80 percent of Maine’s land-based visitors originate in the mid-Atlantic, New England, or eastern Canada. PX 195 at 12 (Flink).

43. Twelve percent of cruise visitors are international, with half of those visitors coming from Canada. PX 195 at 12-13 (Flink).

44. The most common states of origin for cruise visitors are California and Texas. PX 195 at 13 (Flink).

45. A 2018 CruiseMaine survey found that 30 percent of cruise visitors intended to return on a land-based vacation and 29 percent planned to return on another cruise. PX 195 at 13 (Flink).

46. Peak visitation season for the Maine Office of Tourism is the summer months, particularly July and August. PX 195 at 13 (Flink).

47. The peak season for cruising to Maine is September and October. These months see two-thirds of all cruise passengers in a season. PX 195 at 13 (Flink).

48. The Maine Office of Tourism works with CruiseMaine to encourage and oversee cruise ship tourism in the state. PX 195 at 12 (Flink).

49. State funding supports CruiseMaine. J. Stip. ¶ 5 (ECF No. 137).

50. “PortCall” is a maritime software platform that provides users real-time data related to vessel movements and port operations—obtained from port authorities, terminal operators, or other entities responsible for overseeing port operations and/or vessel movement. J. Stip. ¶ 3 (ECF No. 137).

51. CruiseMaine, a part of the Maine Office of Tourism, maintains the PortCall system for Maine ports, which posts some information for the general public at the following uniform

resource locator (URL) address: <https://maine.portcall.com>. J. Stip. ¶ 4 (ECF No. 137).

**B. The Cruise Industry in Bar Harbor**

52. Bar Harbor is a tourist town. Tr. 13-Jul. at 177:22-23.

53. Bar Harbor is an access point for Acadia National Park. Tr. 12-Jul. at 15:22-16:1; PX 195 at 11 (Flink); PX 191 at 6 (Grigsby).

54. Acadia National Park experienced approximately four million visits in 2021. PX 110 (ANP Annual Summary 2021).

55. Bar Harbor experiences high tourist visitation, particularly during the summer season. Visitors are drawn by, among other things, Acadia National Park, but many are drawn by Bar Harbor itself. These visitors come by cruise ship or they come by land. Tr. 13-Jul. at 82:19-83:9.

56. Both overnight and daytime visitors are drawn to Bar Harbor because of its proximity to the Maine coast and Acadia National Park. J. Stip. ¶ 2 (ECF No. 137).

57. Bar Harbor is a marquee cruise destination. Tr. 12-Jul. at 173:21-22 (“[I]n the Canada/New England context, Bar Harbor is the Marquee Port.”); PX 195 at 11 (Flink); PX 191 at 6 (Grigsby). It is a popular port-of-call on a wide variety of cruise ship itineraries. J. Stip. ¶ 1 (ECF No. 137). Bar Harbor is the only marquee port in Maine. Tr. 12-Jul. at 174:9-10.

58. Bar Harbor is an access point for cruises to the Canadian Maritimes. PX 195 at 8-9 (Flink); *see* PX 191 at 7 (Grigsby) (Holland America has been in the Canada/New England market for over 23 years).

59. For many years, Bar Harbor’s tourist economy was limited to the period between Memorial Day and Labor Day. Tr. 11-Jul. at 133:21-25;134: 1-7; Tr. 12-Jul. at 64:3-19.

60. At various times, business leaders made efforts to expand the tourist season, such as efforts to “bring people in via boat,” including Navy vessels and cruise ships. Tr. 12-Jul. at 13:16-24.

61. In the late 1990s and early 2000s, several groups came together to grow the economic potential of the “shoulder seasons”—the months on either side of the Memorial Day-Labor Day period (April and May and September and October). Tr. 11-Jul. at 135:20-25, 136:1-17; *see also* PX 195 at 13-14 (Flink) (describing ripple effect of shoulder season on local economy).

62. In 2008, the Bar Harbor Town Council, at the request of the Cruise Ship Task Force, adopted several recommendations of the Plan, including establishing voluntary, daily passenger caps to manage cruise ship visitation and forming a permanent committee—the Cruise Ship Committee—to review cruise ship activity, which would report annually to the Town Council. PX 206 (2/12/2008 Meeting Minutes).

63. In addition to promising growth for the shoulder seasons, it was recognized that cruise ship visits had some unique and positive attributes which set them apart from land-based visitors, including: cruise ship visitors did not come by automobile; the Town could schedule and therefore prepare for each cruise ship visit; and the Town could impose a fee on each cruise ship visiting Bar Harbor, thereby, supporting the municipal services the visits would require. Tr. 12-Jul. at 16:2-25, 17:1-22.

64. Working in conjunction with the Maine Department of Transportation and the Maine Port Authority, the Town commissioned a broad-based review which covered increasing cruise visits and increased activity such visits would bring. In 2007, the consulting firm of Bernello

& Ajamil issued the Cruise Tourism Destination Management Plan (the “B&A Report”). DX 260 (B&A Report).

65. The Town of Bar Harbor formed a Cruise Ship Task Force to further review the B&A Report’s findings and recommendations. Tr. 11-Jul. at 140:17-25, 141:1-3, 141:16-25, 142:1; PX 206 (2/12/2008 Meeting Minutes); PX 224A (Passenger Cap Recommendation).

66. In accordance with the B&A Report recommendations, the Town Council established a Cruise Ship Committee. PX 224A (Passenger Cap Recommendation). The Cruise Ship Committee had no legislative power; it was “strictly advisory.” Tr. 11-Jul. at 142:5-9; Tr. 12-Jul. at 72:3-8.

67. The Cruise Ship Committee also included a place for a representative of “an entity receiving ship tenders,” in other words, the Pier Owners. PX 224A (Passenger Cap Recommendation).

68. A representative of the Pier Owners was included on the Cruise Ship Committee “to bring their operational issues and suggestions to the table.” Tr. 11-Jul. at 142:13-15; Tr. 12-Jul. at 70:13-16.

69. The Town Council also provided a seat on the Cruise Ship Committee for a representative of CruiseMaine. PX 224A (Passenger Cap Recommendation); Tr. 11-Jul. at 142:13-21.

70. The Cruise Ship Committee usually met eight to ten times a year and the Harbormaster, the Chief of Police, and “other Town officials” were “almost always in attendance.” Tr. 12-Jul. at 5:20. At these meetings, the committee members would “update[e] each other of how the operation was going.” Tr. 12-Jul. at 73:15-16.

71. The B&A Report recommended that the Town set fees for cruise ship visits. DX 260 at 105-11); Tr. 11-Jul. at 17:5-22. The Town Council accepted this recommendation and structured the fees so that they were allocated to municipal services where cruise ship visits had “a direct impact,” including salary support for the Town Planner, the Police Department, and the Harbormaster. Tr. 12-Jul. at 17:20-25, 18:1-4; Tr. 13-Jul. at 76:20-78:6, 81:3-8, 84:12-18.

72. Cruise ship fees are estimated to be approximately 10% of the Town budget. Tr. 12-Jul. at 19:5-12; *see also* DX 471 at 1 (Cruise Management Plan v. Article 3).

73. The B&A study prepared a map showing the walking patterns of disembarking cruise ship passengers in Bar Harbor. DX 260 at 34 (B&A Report).

74. The walking patterns of disembarking cruise ship passengers observed by residents are consistent with the B & A study which indicates the highest intensity of pedestrians is near the waterfront. Tr. 11-Jul. at 152:6-25, 153:1.

75. In response to complaints, and the Cruise Ship Committee’s recommendation, the Town Council directed tour buses returning from Acadia National Park to offload at the Village Green where, from there, they could “filter through the town.” Tr. 11-Jul. at 155:16-25, 156:1-6.

### **C. Bar Harbor as a Tender Port**

76. Cruise itineraries do not begin or end at Bar Harbor. PX 195 at 9 (Flink).

77. Bar Harbor is not a turn-around port for the cruise industry. A turn-around port is a port where passengers begin or end their cruises. PX 195 at 9 (Flink).

78. Bar Harbor is a tender port, meaning that cruise ships do not dock at the water’s edge. Tr. 12-Jul. at 67:21-68:1, 201:20-202:3. PX 195 at 14 (Flink).

79. Cruise vessels cannot come all the way into port in Bar Harbor. Tr. 12-Jul. at 67:21-68:1, 201:20-202:3. PX 195 at 14 (Flink).

80. Tender vessels, owned by the Tender Owners, ferry passengers and crew between the custom barges secured to the cruise ships and the two Coast Guard approved private piers in Bar Harbor at Harbor Place and Harborside Docks, owned and operated by the Pier Owners. These two private piers are the only cruise ship tender landing facilities in the Town. Tr. 12-Jul. at 84:10-16, 86:16-87:5. PX 195 at 15 (Flink).

81. The two private piers of the Pier Owners receive disembarking passengers via tenders from cruise vessels in Bar Harbor. J. Stip. ¶ 7 (ECF No. 137).

82. Those private tender piers are specifically designed and designated as secure facilities for the purpose of receiving cruise ship passengers and crew. PX 202 (Golden Anchor Pier Permit); PX 203 (BHH Pier Permit); Tr. 12-Jul. at 88:11-21.

83. The Pier Owners underwent the federal process for obtaining Coast Guard Approvals for the express purpose of engaging in the disembarking of cruise ship passengers and crew at their respective tender piers. PX 202 (Golden Anchor Pier Permit); PX 203 (BHH Pier Permit); Tr. 12-Jul. at 88:11-21.

84. Cruise ships calling at Bar Harbor typically arrive in the morning. *See* PX 6 (PortCall excerpt); PX 7 (PortCall excerpt); PX 163 (PortCall excerpt); PX 164 (PortCall excerpt); PX 165 (PortCall.com schedule); Tr. 12-Jul. at 68:19-20, 107:23-108:2.

85. Cruise ships that call at Bar Harbor typically depart on the same day they arrive. *See* PX 6 (PortCall excerpt); PX 7 (PortCall excerpt); PX 163 (PortCall excerpt); PX 164 (PortCall excerpt); PX 165 (PortCall.com schedule); Tr. 12-Jul. at 107:23-108:2. However, American Cruise

Lines cruise ships calling at Bar Harbor depart the day following the day of arrival. *See* PX 6 (PortCall excerpt).

86. Cruise ships anchor offshore at one of two federal anchorage grounds in Frenchman Bay, known as Anchorage A and Anchorage B. *See* Tr. 11-Jul. at 45:16-18; 46:7-14; PX 25 (Map of Federal Anchorages).

87. Anchorages A and B are anchorage grounds designated by the United States Coast Guard to facilitate maritime commerce. *See* Tr. at 46:11-16.

88. The anchorage grounds are up to two miles away from the passenger landing areas of the Pier Owners in Bar Harbor. *See* PX 25 (Map of Federal Anchorages).

89. All cruise vessels are required to use Anchorage A or B. Tr. 13-Jul. at 18:24-19:2; PX 195 at 15 (Flink).

90. The majority of cruise ships anchor at Anchorage B. *See* PX 197 at 114-115 (Wharff).

91. When a pilot directs a vessel in Frenchman Bay, the pilot does his best to honor the Town's reservation system with regard to anchorage designations. Ultimately, however, the pilot in consultation with the vessel master decides where each individual vessel should be anchored. Tr. 11-Jul. at 47:3-11.

92. The pilot directs the navigation of vessels into their positions within the anchorages and determines the point at which anchors are deployed. Tr. 11-Jul. at 47:25-48:10, 64:23-65:7, 108:1-23.



93. No one other than a United States Coast Guard Captain of the Port (“COTP”) can overrule a state-licensed pilot’s decision on a vessel’s use of an anchorage. Tr. 11-Jul. at 47:25-48:10, 64:23-65:7, 108:1-23.

94. Ships anchored at Anchorage B are not visible from downtown Bar Harbor. Tr. 12-Jul. at 115:5-16 (Salvatore: “At high tide, on some ships you can get a glimpse of the tippy top...”); PX 86G (Video of Anchorage B).

95. Rarely does it happen that vessels are in all three spots in Anchorages A and B on a single day. Tr. 13-Jul. at 48:1-8.

96. The Harbor Master takes reservations on a first-come, first-served basis for cruise ships for Anchorage A and Anchorage B. Tr. 11-Jul. at 46:17-47:5; Tr. 13-Jul. at 18:6.

97. The Town does not have a priority list for which ship or ships get the anchorages if there is some competition for their use. *See id.*

98. The Town does not have, and has not had, an internal policy of giving preference to large cruise ships over smaller cruise ships for use of the anchorages. PX 29 (2022 BH Cruise Ship SOP – Port Call Reservations and Procedures).

99. The Pilots Association’s licensed pilots provide pilotage to the anchorages for all foreign-flagged vessels. Tr. 11-Jul. at 85:17-21 (pilot system is compulsory for foreign and certain domestic vessels); Tr. 11-Jul. at 93:13-18 (same).

100. The Pilots Association’s licensed pilots provide pilotage to the anchorages for any U.S.-flagged vessels required to take a pilot. Tr. 11-Jul. at 85:17-21 (pilot system is compulsory for foreign and certain domestic vessels); Tr. 11-Jul. at 93:13-18 (same).

101. All foreign-flagged vessels are required to take a pilot under Maine law. Tr. 11-Jul. at 85:17-21 (pilot system is compulsory for foreign and certain domestic vessels); Tr. 11-Jul. at 93:13-18 (same).

102. Not all U.S.-flagged vessels are required to take a pilot under Maine law. Tr. 11-Jul. at 85:17-21 (pilot system is compulsory for foreign and certain domestic vessels); Tr. 11-Jul. at 93:13-18 (same).

103. During the 2023 cruise season, foreign-flagged cruise vessels are scheduled to spend, on average, approximately nine hours in their federally-designated anchorage, based on scheduled arrival time and departure time. J. Stip. ¶ 6 (ECF No. 137).

104. Once anchored, smaller launches or tenders (including those owned by the Tender Vessel Owners) ferry passengers between the cruise vessels and two private piers in Bar Harbor operated by the Pier Owners. PX 195 at 15 (Flink).

105. The Pilots Association's pilots sometimes ride these tenders to and from the private piers. Tr. 11-Jul. at 94:13-16.

106. The private piers are the only cruise ship tender landing facilities in the Town. Tr. 13-Jul. at 90:13-22.

107. The Town does not have control over the secure facilities that accept passengers. PX 197 at 128 (Willis).

108. The secure facilities that accept passengers are regulated by the Coast Guard. PX 197 at 128 (Willis).

109. The Harbor Master does not have rulemaking authority over the private piers where cruise ship passengers disembark. Tr. 13-Jul. at 39:18-24.

110. The Harbor Master, in his capacity as lieutenant of special services, manages traffic only at the points of disembarkation for cruise ship passengers, Harborside and Harbor Place. Tr. 13-Jul. at 15:9-12.

111. Typically, cruise passengers are on land in Bar Harbor for no more than six to seven hours. Tr. 12-Jul. at 201:6-8; PX 6 (PortCall excerpt); PX 7 (PortCall excerpt); PX 163 (PortCall excerpt); PX 164 (PortCall excerpt); PX 165 (PortCall.com schedule); see also PX 200 (Acadia Explorer Captains Logs); PX 201(Coastal Explorer Captain's Logs).

112. Once on land, passengers and crew visit Bar Harbor or the surrounding area, including Acadia National Park. Tr. 12-Jul. at 15:22-16:1; PX 195 at 11 (Flink).

113. Passengers disembarking from cruise ships at the private piers may become pedestrians or board tour buses or taxis to go on tours. PX 197 at 109 (Wharff).

114. With respect to passengers boarding tour buses to go on tours, their presence in Bar Harbor is relatively minimal and short term. PX 85 (Aerial Video); PX 197 at 109 (Wharff).

115. The Town does not have a system in place to track disembarking passengers and determine where such passengers end up. PX 197 at 108, 110-111 (Wharff).

116. Passengers typically head back to the ships in the early afternoon by tenders, including those owned by Tender Vessel Owners. PX 200 (Acadia Explorer Captains Logs); PX 201 (Coastal Explorer Captains Logs); Tr. 12-Jul. at 107:15-108:2.

#### **D. Bar Harbor as a Class A Port**

117. Bar Harbor serves as a United States Customs and Border Protection ("CBP") Class A port of entry for foreign-flagged cruise vessels re-entering the United States. J. Stip. ¶ 24 (ECF No. 137).

118. A Class A port is a designated port of entry for all travelers. *Id.*

119. Bar Harbor is one of only three Class A ports in Maine. *See, e.g.,* J. Stip. ¶¶ 24, 26, 28 (ECF No. 137).

120. Many cruise ships that call at the port of Bar Harbor do so following one or more calls at ports in other states and often ports in other countries (*i.e.*, Canada, Bermuda). *See* PX 6 (PortCall excerpt); PX 7 (PortCall excerpt); PX 163 (PortCall excerpt); PX 164 (PortCall excerpt); PX 165 (PortCall.com schedule); PX 191 at 6 (Grigsby).

121. Bar Harbor often serves as a port of entry for foreign-flagged cruise vessel re-entering the United States. *See* PX 193 at 5-6 (Martin); PX 8 (PortCall excerpt).

122. Bar Harbor is one of the most convenient and practical customs ports of entry capable of accommodating the large number of cruise ships that re-enter the United States from foreign waters each season. *See generally* PX 193 at 3 (Martin) (Bar Harbor is by far the preferred port of call).

123. When Bar Harbor is the vessel's first port of call on a southbound voyage from Canada, passengers and crew disembarking in Bar Harbor, whether U.S. citizens or foreign nationals, are presented at Bar Harbor for federal immigration and customs inspection onboard the vessel at the federal anchorages and are cleared entry into the United States before they ever step foot on Bar Harbor soil. *See* Tr. 11-Jul. at 107:14-24; PX 192 at 8-9 (Kuryla).

124. The majority of cruise itineraries that include a call at Bar Harbor also include one or more foreign ports of call. PX 6 (PortCall excerpt); PX 7 (PortCall excerpt); PX 163 (PortCall excerpt); PX 164 (PortCall excerpt); PX 165 (PortCall.com schedule).

125. Bar Harbor is geographically well-located to permit customs processing of cruise vessel passengers on itineraries that include ports of call in Canada and other foreign locations. *See generally* PX 192 at 8-9 (Kuryla); PX 193 at 3 (Martin) (Bar Harbor is by far the preferred port of call).

126. Bar Harbor is geographically well-located between Boston and Halifax. PX 191 at 5 (Grigsby).

### **E. Bar Harbor Visitation**

127. Persons enter Bar Harbor by various means of conveyance. See PX 85 (Aerial Video); Defendants' Trial Exhibit ("DX") 319 at 4 (Gabe article discussing land-based tourism in the context of cruise passenger congestion).

128. Transport by water is not the only (or even the primary) way that visitors enter Bar Harbor. *See* PX 83 (Aerial Video); PX 84 (Aerial Video); PX 85(Aerial Video); Tr. 12-Jul. at 198:8-19 (Maine is primarily driving tourism).

129. Less than 10 percent of visitors come to Bar Harbor by cruise ship. PX 211 (CLIA Letter: "cruising accounts for 7 percent of Bar Harbor's tourism business").

130. The remaining visitors reach Bar Harbor by land-based means of transportation (e.g., automobile, bus, or bicycle). Tr. 12-Jul. at 198:8-19 (Maine is primarily driving tourism).

131. The Town does not have a way of counting the number of tourists that come into Bar Harbor. *See generally* J. Stip. ¶ 8 (ECF No. 137).

132. The Town does not have a definitive number for the number of tourists that come into Bar Harbor. J. Stip. ¶ 8 (ECF No. 137).

133. The Town does not have its own figure as to what proportion of visitors to Bar Harbor come by cruise ship. *See generally* J. Stip. ¶ 8 (ECF No. 137).

134. The Town has not, at any time, had a system in place to track people disembarking from or embarking on cruise ships in Bar Harbor. PX 197 at 108 (Wharff).

135. Most cruise visitors come to Bar Harbor in September and October. PX 195 at 13 (Flink); DX 402 at 4 (Gabe PPT) (over 60% of cruise passengers visit in September and October); DX 319 at 4-5 (Gabe, Growth and Change); *see, e.g.*, PX 106 (ANP Annual Summary).

136. In September and October, the volume of land-based travelers and overnight guests is at its lowest. DX 319 at 5 (Gabe, Growth and Change).

137. In September and October, the number of cruise visitors entering Bar Harbor is roughly equivalent or less than the tourists on Town streets in June and July. PX 195 at 13 (Flink).

138. The COVID-19 pandemic forced the shutdown of cruise travel in 2020. Tr. 13-Jul. at 137:5-12.

139. In 2020, no cruise ships came to Bar Harbor because of the COVID-19 pandemic. Tr. 13-Jul. at 261:6-7.

140. In 2021, no foreign-flagged cruise ships came to Bar Harbor because of the COVID-19 pandemic. Tr. 13-Jul. at 137:17-22, 261:8-11.

#### **F. Bar Harbor's Paid Parking Program**

141. In 2019, the Town instituted a paid parking program in downtown Bar Harbor. Tr. 13-Jul. at 67:15-25.

142. The Town has generated revenue as a result of the paid parking program. Tr. 13-Jul. at 69:6-7.

143. The Town generates more parking revenue on days when cruise ships are not in Bar Harbor versus on days when cruise ships are in Bar Harbor. Tr. 13-Jul. at 69:17-70:6.

144. The Town generates more parking revenue on days when cruise vessels are not in Bar Harbor because parking spaces blocked off for tour buses on cruise days are available for paid public parking. Tr. 13-Jul. at 70:7-71:13.

### **G. Competition in the Vacation Market**

145. The primary operational purpose of cruise vessels is the embarkation, disembarkation, and transport of passengers from port-to-port for leisure and recreation. Tr. 12-Jul. at 168:15-169:13.

146. Cruise lines operate in the vacation market. Tr. 12-Jul. at 163:19-21, 166:21-167:7; PX 191 at 11 (Grigsby); PX 192 at 10-12 (Kuryla).

147. Cruise lines compete with other vacation alternatives, like hotels, for travelers' leisure dollars. Tr. 12-Jul. at 163:19-21, 166:21-167:7; PX 191 at 11 (Grigsby); PX 192 at 10-12 (Kuryla).

148. Cruising is an alternative available to individuals planning a visit to Bar Harbor. *See* Tr. 12-Jul. at 163:19-21, 166:21-167:7; PX 191 at 11 (Grigsby); PX 192 at 10-12 (Kuryla).

149. Overnight visitors to Bar Harbor and Acadia National Park can stay at hotels in or around Bar Harbor. *See* Tr. 12-Jul. at 162:17-163:5.

150. Visitors coming by cruise vessel to Bar Harbor and Acadia National Park stay on the cruise vessel. *See* Tr. 12-Jul. at 162:17-163:5.

151. Cruise lines compete with land-based hotels and other businesses that cater to tourists for business from visitors to Acadia National Park and/or Bar Harbor. Tr. 12-Jul. at 162:17-163:10; see PX 191 at 11 (Grigsby); PX 192 at 11-12 (Kuryla).

152. Approximately 60 percent of cruise passengers will travel on a cruise vessel that is scheduled to call at Bar Harbor during the 2023 season. PX 195 at 10-11 (Flink).

153. Cruise lines include Bar Harbor as a port-of-call on cruise itineraries because it is popular with cruise passengers. Tr. 12-Jul. at 168:15-169:13; PX 193 at 3 (Martin).

154. Bar Harbor ranks high on cruise line customer surveys. PX 195 at 63 (Flink) (explaining that Bar Harbor is a marquee port based on customer surveys by cruise brands).

155. Cruise passengers want to visit Bar Harbor and Acadia National Park. PX 195 at 11 (Flink).

156. A cruise itinerary with a stop at Bar Harbor is not practical and loses its appeal if passengers cannot get off the ship. Tr. 12-Jul. at 15:22-16:1, 293:12-14.

157. Generally, cruise itineraries are planned years in advance and are published 24 to 30 months from the first sailing in a given season. J. Stip. ¶ 23; PX 191 at 5 (Grigsby).

158. Many cruise lines are planning their itineraries and booking ports of call for 2025-2028. *See* PX 7 (PortCall excerpt).

159. Itinerary planning involves considerations of time, speed, and distance, to assemble the best possible itineraries. Vessel speed puts limitations on what ships can do in the course of several days or a week or two. Cruise lines often try to build an itinerary around at least one port that has particular cachet, keeping in mind time, speed, and distance considerations. *See* Tr. 12-Jul. at 172:22-173:18.



160. A disembarkation limitation set at less than the capacity of the vessel creates an “untenable” situation for itinerary planning. Disembarkation limits like the one in the Ordinance would create issues for marketing, logistics, guest satisfaction, and fairness issues, among others. It would force a line to pick “winners and losers.” PX 192 at 12-14 (Kuryla).

#### **H. Town’s Efforts to Manage Cruise Ship Visitation**

161. For nearly 20 years, Bar Harbor has worked cooperatively with stakeholders, residents, cruise industry partners, and state agencies to develop cruise tourism in a manner beneficial to the Town and the cruise industry. *See* Tr. 11-Jul. at 136:18-137:8 (Paradis describing Council’s efforts before he was elected); Tr. 12-Jul. at 29:7-12 (Council wanted to expand cruise ship visits in shoulder season). The industry has done the same. Tr. 12-Jul. at 179:4-180:13; PX 192 at 12 (Kuryla).

162. In 1998, Bar Harbor adopted a plan called the “Bar Harbor Waterfront Master Plan” (the “Master Plan”). *See* Tr. 11-Jul. at 133:21-25; 134:24-25; 135:1-4 (discussing Bar Harbor was in the middle of a comprehensive planning time).

163. The Tender Vessel Owners have historically and collectively expended of more than \$17.8 million on the three customized tender vessels based, in part, on the development and adoption of the Master Plan and the efforts of the Town and the State of Maine in support of the Plan. Tr. 12-Jul. at 83-84; *see* Tr. 12-Jul. at 87:6-25 (Tender Vessel Owners designed and built new tender vessels between 2017 and 2018 exclusively to serve cruise ships calling on Bar Harbor). Initially, tender services were provided by boats that were designed for whale watch tours. Tr. 12-Jul. at 80-81.

164. Likewise, the two Pier Owners each went through a process to acquire, improve and renovate their respective piers to accommodate cruise passenger tourism and expended more than \$4,137,000 on the two tender piers based, in part, on the development and adoption of the Master Plan and the efforts of the Town and the State of Maine in support of the Plan. Tr. 12-Jul. at 82-83; *see* Tr. 12-Jul. at 82:1-24 (Any improvements made to the piers by the Pier Owners were to facilitate growth in cruise ship visits).

165. The tender vessels owned by the Tender Vessel Owners (and at times boats owned by entities related to the Tender Owners) ferry passengers and crew between the custom barges secured to the cruise ships and the two Coast Guard approved private piers in Bar Harbor at Harbor Place and Harborside Docks, owned and operated by BH Piers and Harborside. *See* Tr. 12-Jul. at 89:1-90:25.

166. The custom-built barges owned by BHWW are utilized to assist in safely disembarking and embarking cruise ship passengers from the ships to and from tender vessels. Tr. 12-Jul. at 84:13-87:12.

167. The tenders ferry passengers and crew between the cruise ships and the two Coast Guard approved private piers in Bar Harbor at Harbor Place and Harborside Docks, owned and operated by the Pier Owners. These two private piers are the only cruise ship tender landing facilities in the Town. *See* Tr. 12-Jul. at 89:1-90:25; PX 200 (Acadia Explorer Captains' Logs); PX 201 (Coastal Explorer Captain's Logs).

168. In 2008, the Town accepted a recommendation from the Town's Cruise Ship Study Task Force (now the Cruise Ship Committee) to adopt daily cruise passenger caps of 5,500

passengers per day for the months of May, June, September and October, and 3,500 passengers per day for the months of July and August. J. Stip. ¶ 9 (ECF No. 137).

169. The daily passenger caps were based on the lower berth capacity of the cruise vessels. J. Stip. ¶ 10 (ECF No. 137).

170. Lower berth capacity generally refers to the passenger capacity of the vessel and is calculated based on the number of “lower berths” or beds on the vessel. DX 260 at 89 (B&A Report).

171. Lower berth capacity is based on double occupancy (two lower beds per cabin). *See* DX 260 at 89 (B&A Report).

172. Lower berth capacity does not account for other persons on the vessel who may disembark at a port, such as crew. PX 191 at 6 (Grigsby); DX 260 at 89 (B&A Report).

173. Lower berth capacity does not account for a possible third, fourth, or fifth passenger in a cabin. PX 191 at 6 (Grigsby).

174. The daily passenger limits were voluntary. Tr. 11-Jul. at 144:21-23.

175. The daily passenger limits were variable. Tr. 11-Jul. at 145:4-9 (5,500 for May and June, 3,500 for July and August).

176. For more than 15 years, the Town and its Cruise Ship Committee and Town Staff negotiated voluntary caps with the cruise industry. Tr. 11-Jul. at 146:23-147:8 (explaining that the Cruise Ship Committee made recommendations annually); Tr. 12-Jul. at 54:19-55:6 (same); PX 197 at 28-29 (Gilbert); *see also* J. Stip. ¶ 11 (ECF No. 137); J. Stip. ¶ 14 (ECF No. 137).

177. The Town Council had the authority to accept or reject the Cruise Ship Committee’s annual recommendations for cruise ship passenger caps. J. Stip. ¶ 12 (ECF No. 137).

178. The Town Council has acted on the Cruise Ship Committee recommendations annually. J. Stip. ¶ 13 (ECF No. 137).

179. From 2008 through 2021, the Town Council approved the Cruise Ship Committee's recommendations for passenger caps. J. Stip. ¶ 14 (ECF No. 137).

180. On February 15, 2022, the Town Council approved the formation and membership of a working group to negotiate with the cruise industry for a voluntarily-modified cruise schedule for 2023 and beyond. J. Stip. ¶ 15 (ECF No. 137). Previously, on July 21, 2021, the Town Council instructed the Harbormaster not to confirm cruise line applications to visit Bar Harbor. PX 197 at 72 (Peacock). The suspension order remained in effect for more than a year until August of 2022 and, while it was in effect, no cruise ship applications could be confirmed. PX 195 at 47 (Flink); *see also* PX 195 at 39-41 (Flink) (discussion of July 30 through December 15, 2021 CLIA letters to Town Council).

181. On August 16, 2022, the Town Council adopted the cruise ship management plan. *see* J. Stip. ¶ 16 (ECF No. 137).

182. On August 16, 2022, the Town Council initially approved a Memorandum of Agreement (“MOA”) plan by a 5-2 vote. J. Stip. ¶ 16 (ECF No. 137).

183. After several months of discussions and revisions, the MOA was finalized on September 28, 2022. J. Stip. ¶ 17 (ECF No. 137).

184. In September and October 2022, the Town entered into Memoranda of Agreement (“MOA”) with cruise lines. J. Stip. ¶ 20 (ECF No. 137).

185. The MOAs contain voluntary caps consistent with the cruise ship management plan. DX 327 at 2 (Memorandum of Understanding).

186. Under the MOAs, aggregate daily passenger disembarkations are limited to 3,800 passengers in May, June, September and October. *See* PX 195 at 25-26 (Flink).

187. Under the MOAs, aggregate daily passenger disembarkations are limited to 3,500 passengers in July and August. DX 327 at 2 (Memorandum of Understanding).

188. The MOA included a shortened cruise ship season, by eliminating the months of April and November, and lower passenger caps that, in almost all cases, would reduce the number of daily cruise visitors disembarking at Bar Harbor. J. Stip. ¶ 18 (ECF No. 137).

189. The Town entered into MOAs with American Cruise Lines, Disney Cruise Lines, Holland America Line, Hurtigruten Expeditions, Norwegian Cruise Line, Pearl Seas Cruises, Princess Cruises, Royal Caribbean Cruises, Ltd., Seabourn Cruise Line, Viking Cruises, and Windstar Cruises Marshall Islands. DX 327 (Memorandum of Understanding).

190. The Town's efforts to revise the passenger caps were a response to increased land-based visitation and the lengthening of the cruise ship season. PX 197 at 57 (Peacock).

191. The Town's efforts were also a response to "angst and feeling of too much cruise ship tourism in town." Tr. 13-Jul. at 113:1-7; PX 197 at 116 (Peacock).

192. The Town approved the passenger caps in the MOAs with the individual cruise lines. J. Stip. ¶ 19 (ECF No. 137).

193. The passenger caps in the MOAs with the individual cruise lines were compatible with the ability of the Town to accommodate those numbers of cruise ship visitors. PX 197 at 62 (Peacock).

194. The Town managed cruise visitation in other ways, in addition to the voluntary passenger caps. PX 12A (9/20/19 Cruise Ship Post Orders, Responsibilities and Policy).

195. Over the years, the Town made changes to the way the Town managed the disembarkation of cruise ship passengers and the tour buses, specifically developing processes to make the process more efficient and safer for the passengers and the general public. PX 197 at 126-27 (Willis).

### **III. THE INITIATIVE AND THE ORDINANCE**

#### **A. The Initiative**

196. On March 16, 2022, a citizens' group submitted a petition to the Town Council of Bar Harbor (the "Initiative"). PX 243A (3/16/22 Initiative).

197. The same citizens' group submitted a substantially similar version of the Initiative dated March 17, 2022. PX 209 (3/18/2022 Proposed Amendment); *see* DX 357 at 2 (Email).

198. The March 17 version of the Initiative references "persons," not "passengers" and is expressly retroactive to March 17, 2022. PX 209 (3/18/2022 Proposed Amendment); *see* DX 357 at 2 (Email).

199. Mr. Sidman led the citizen's group that submitted the Initiative. Tr. 13-Jul. at 262:17-21; 311:19-312:16; PX 209 (3/18/2022 Proposed Amendment); *see* PX 72 (Sidman Email),

200. The Initiative proposed an amendment to the Bar Harbor land use code. *See* Tr. 13-Jul. at 267:17-20PX 209 (3/18/2022 Proposed Amendment).

201. The Initiative proposed to prohibit the disembarkation of more than 1,000 persons, in the aggregate, on a single calendar day from any cruise ships. *See* Tr. 13-Jul. at 272:8-20; PX 209 (3/18/2022 Proposed Amendment); DX 485.

202. The Initiative's proposed 1,000 person per day limit was an experiment. *See* Tr. 13-Jul. at 312:20-22 (not a rigorously defensible finding or study or calculation).

203. The Initiative's proposed 1,000 person per day limit resulted from seat-of-the-pants calculations. *See* Tr. 13-Jul. at 312:20-22 (not a rigorously defensible finding or study or calculation).

204. The Initiative proposed to require the Harbor Master to devise a reservation system for cruise ships. PX 209 (3/18/2022 Proposed Amendment).

205. The Initiative proposed to require the Harbor Master to devise a mechanism for counting and tracking the number of passengers disembarking each day from cruise ships. PX 209 (3/18/2022 Proposed Amendment).

206. The Initiative proposed to require the Harbor Master to devise a mandatory procedure for reporting violations to the Code Enforcement Officer. PX 209 (3/18/2022 Proposed Amendment).

207. The Initiative proposed to require compliance with all Harbor Master rules and regulations by property owners issued a permit. PX 209 (3/18/2022 Proposed Amendment).

208. The Initiative proposed to empower the Code Enforcement Officer to impose fines, penalties, and actions. PX 209 (3/18/2022 Proposed Amendment).

209. The Initiative proposed a minimum penalty of \$100 per excess unauthorized person. PX 209 (3/18/2022 Proposed Amendment).

210. The Initiative proposed to impose the penalty on property owners holding permits. PX 209 (3/18/2022 Proposed Amendment); *see* PFF 211.

211. The only piers that currently accommodate the landing of cruise ship passengers into Bar Harbor are two privately-owned piers, Harborside and Harbor Place. Tr. 12-Jul. at 84:10-16, 86:16-87:5; 90:13-22; Tr. 13-Jul. 11-12;. PX 195 at 15 (Flink); *see* J. Stip. ¶ 7 (ECF No. 137).

212. The only property owners susceptible to fines under the Initiative are the Pier Owners because these entities are the only owners of property on which cruise ship disembarkations occur. Tr. 12-Jul. at 109:15-25; 110:1; Tr. 13-Jul. at 61:12-18; PX 197 at 112 (Wharff); PX 197 at 12 (Chamberlain); PX 209 (3/18/2022 Proposed Amendment).

213. The Initiative was expressly retroactive to March 17, 2022. PX 209 (3/18/2022 Proposed Amendment).

214. The Initiative proposed to protect from enforcement action, any cruise ship visits occurring prior to the date of adoption of the Initiative at the Town Meeting on November 8, 2022. PX 209 (3/18/2022 Proposed Amendment).

215. The Initiative was accompanied by a “Purpose” section. PX 243 (Ordinance, Purpose Section & Warrant Articles); Tr. 13-Jul. at 266:5-7, 267:1-20; 311:19-312:16.

216. The Purpose section of the Initiative was not enacted into law. PX 243 (Ordinance, Purpose Section & Warrant Articles).

217. The Purpose section of the Initiative identifies two reasons for the Initiative’s cruise ship disembarkation restrictions. PX 243 (Ordinance, Purpose Section & Warrant Articles); Tr. 13-Jul. at 268:6-272:12.

218. The Purpose section’s first reason for the disembarkation restrictions recites that large numbers of cruise ship passengers in Bar Harbor have resulted in excessive congestion and traffic on public streets and sidewalks, frequent overcrowding of parks and other public spaces, and inundating local amenities and attractions, which results in a diminished quality of life for Town residents. PX 243 (Ordinance, Purpose Section & Warrant Articles); Tr. 13-Jul. at 268:6-11.



219. The Town does not have any empirical data or study that support the assertion that there is excessive congestion and traffic on public streets and sidewalks caused by persons disembarking from cruise ships. *See* PX 197 at 81 (Peacock).

220. The Town does not have empirical data that indicate that the presence of disembarking persons from cruise ships has an impact on the Town outside of the immediate landing area (the private piers). PX 197 at 53 (Peacock).

221. The statement in the Purpose section is based on Mr. Sidman's personal observations of congestion in the downtown district. *See* Tr. 13-Jul. at 272:8-20 (Sidman proposed the number without empirical support).

222. The second reason in the Purpose section is that disembarking cruise ship passengers in the downtown area jeopardize the Town's ability to deliver municipal services, namely public safety services (police and fire), emergency medical services (EMS), inpatient and out-patient services at local hospitals, pandemic control measures, and public sanitation services, and impacts the ability of local shops, restaurants and other businesses to attract and serve customers. PX 243 (Ordinance, Purpose Section & Warrant Articles).

223. The Town has no information that cruise ship passengers are jeopardizing the ability of the fire department to provide fire or EMS services. PX 197 at 6 (Bartlett).

224. The Town responded to approximately 35 calls to cruise ship disembarkation locations in 2022. PX 197 at 4 (Bartlett).

225. In comparison, the Town responds to approximately 1,500-1,600 emergency calls every year. PX 197 at 11 (Bartlett).

226. Cruise ships do not strain the Town's fire department. PX 197 at 6 (Bartlett).

227. Crowds have never interfered with the fire department's ability to perform fire or EMS services. PX 197 at 10 (Bartlett).

228. The Town does not have any information that identifies whatever impact persons who disembark cruise ships and enter the Town on foot may have on municipal infrastructure as opposed to any other persons. PX 197 at 111 (Wharff).

229. Cruise ship passengers do not impose any identifiable risk to public safety in the Town as opposed to persons coming in via other means of conveyance. PX 197 at 113 (Wharff).

230. The Town cannot differentiate any draw on municipal services between passengers who disembark cruise ships and all other persons who come to Bar Harbor by all other means of conveyance. *See* PX 197 at 145-46 (Willis); *see also* PX 197 at 49-53 (Peacock).

231. Historically, passengers who have disembarked and walked into town have not had uniquely burdened municipal services as compared to persons who arrive in Bar Harbor by other means of conveyance. PX 197 at 133 (Willis).

232. The Purpose section identified only passengers arriving by cruise ship as the cause of the alleged burdens on the Town's streets, amenities, public services, and businesses. PX 243 (Ordinance, Purpose Section & Warrant Articles).

233. The Purpose section makes no reference to visitors or tourists arriving by other means of transport. PX 243 (Ordinance, Purpose Section & Warrant Articles).

234. The Initiative does not assert that the impacts on the Town and its residents caused by persons coming via cruise ship, either individually or collectively, are any different from impacts caused by persons arriving in Bar Harbor by other means of conveyance. PX 243 (Ordinance, Purpose Section & Warrant Articles).

235. The Initiative does not refer to the impact of non-cruise visitors in Bar Harbor. PX 243 (Ordinance, Purpose Section & Warrant Articles).

236. The Town has no information that cruise ship passengers place particular or special demands on fire or EMS services as compared to visitors to the Town coming by all other means of conveyance. *See* PX 197 at 145-46 (Willis); *see also* PX 197 at 49-53 (Peacock); Tr. 13-Jul. at 318:6-23 (actual experience of police, fire and EMS not pertinent to Sidman).

237. The Town does not have any information that differentiates between effects or impacts of persons disembarking from cruise ships and persons entering the Town by any other means of conveyance. PX 197 at 17-18 (Chamberlain).

238. [Reserved]

239. The Town's public works may feel the impacts of overall tourism but those impacts cannot be distinguished between land-based and cruise tourism. PX 197 at 53 (Peacock).

240. According to Mr. Sidman, the Initiative will "get rid of the biggies (and 930 pax is still a honking large boat!), with the much proposed alternative being to welcome the smaller, generally wealthier-passengered, 'boutique' ships that might contribute to rather than destroying life for BH taxpayers ..." DX 357 (Email).

#### **B. Town Council Actions on Initiative**

241. On August 2, 2022, the Town Council voted to place the Initiative on the warrant articles calling the November town meeting. PX 243 (Ordinance, Purpose Section & Warrant Articles); J. Stip. ¶ 21. The Town's Planning Board and Warrant Committee recommended rejection of the Initiative. PX 243 (Ordinance, Purpose Section & Warrant Articles).

242. The Initiative was listed as Article 3 on the Warrant for the November 8, 2022, Special Town Meeting. PX 243 (Ordinance, Purpose Section & Warrant Articles).

243. On November 8, 2022, the Bar Harbor Town Meeting passed Article 3. PX 210 (Ordinance); Tr. 13-Jul. at 132:14.

244. Pursuant to the Town Charter, Article 3 became the Ordinance, effective December 8, 2022. J. Stip. ¶ 22 (ECF No. 137).

### **C. The Ordinance**

245. The Ordinance applies to “persons” (both crew and passengers). PX 204 (5/13/2023 Gilbert Memo); DX 357 (Email).

246. The Town’s intention is to count all disembarking persons from cruise ships, not just passengers, including crew members and pilots. PX 197 at 11(Chamberlain).

247. The Ordinance applies to “cruise ships” as defined in Section 153-22(B) in the Town Code. PX 210 (Ordinance).

248. The Ordinance does not apply to any other vessel of any type or size. PX 210 (Ordinance).

249. The Ordinance only restricts the number of persons who visit Bar Harbor by cruise ship. PX 210 (Ordinance).

250. Persons gaining access to Bar Harbor by any other means of conveyance (such as land-based conveyance) are unaffected. *See* PX 210 (Ordinance).

251. The Ordinance sets an absolute limit of 1,000 disembarking persons per day (*for every day of the year*) before violations can be assessed, regardless of whether any person counted in the first 1,000 persons returns to the ship. PX 197 at 29 (Wharff).

252. The Ordinance was not supported by any formal findings about the asserted putative benefits of restricting the number of individuals visiting Bar Harbor via cruise ship. PX 210 (Ordinance).

253. The Town does not have any empirical data or any study that supports the 1,000-person limit in the Ordinance. PX 197 at 82-84 (Peacock).

254. The Town does not have any empirical data or study that support the 1,000-person limit *for persons visiting Bar Harbor from cruise ships for every day of the year* as appropriate or necessary to protect, preserve, and promote general welfare, safety, and peace of the community. PX 197 at 97 (Peacock).

255. The Town does not have information or data that a dramatic decline in persons visiting by cruise ship coupled with a commensurate increase in persons coming by all other means of transportation would not present a risk to the general health, safety, welfare, and peace of the community. PX 197 at 85 (Peacock).

256. Pier owners with permits are the only entities capable of being sanctioned for violations of the Ordinance. PX 197 at 20-21 (Chamberlain).

257. Because the only tender piers in Bar Harbor where cruise ship passengers disembark are Harbor Place and Harborside Docks owned by the Pier Owners, the Pier Owners are the only persons subject to asserted violations and fines under the Ordinance. *See* PX 197 at 20-21 (Chamberlain); Tr. 12-Jul. at 84:10-16, 86:16-87:5. PX 195 at 15 (Flink); *see* J. Stip. ¶ 7 (ECF No. 137).

**D. Effect of the Ordinance**

258. Foreign-flagged cruise vessels re-entering the United States that cannot call at Bar Harbor will need to call at another Class A port. J. Stip. ¶ 25 (ECF No. 137).

259. Maine has three Class A ports: Bar Harbor, Portland, and Eastport. J. Stip. ¶ 21 (ECF No. 137); J. Stip. ¶ 26 (ECF No. 137); J. Stip. ¶ 28 (ECF No. 137); PX 195 at 64 (Flink).

260. The port of entry at Portland is more than a 170-mile drive from Acadia National Park. J. Stip. ¶ 27 (ECF No. 137).

261. The port of entry at Eastport is more than a 110-mile drive from Acadia national Park. J. Stip. ¶ 29 (ECF No. 137).

262. The port of entry at Bar Harbor is less than a 2-mile drive from Acadia National Park. J. Stip. ¶ 29 (ECF No. 137).

263. If cruise ships re-entering the United States cannot clear customs in Bar Harbor, Eastport, or Portland, they will need to clear customs at a port outside Maine, such as MassPort. *See* PX 195 at 64 (Flink).

264. The majority of cruise lines schedule vessels in excess of 1,000-passenger lower berth capacity for calls at Bar Harbor. *See* PX 6 (PortCall excerpt); DX 471 (Cruise Management Plan v. Article 3); PX 195 at 42 (Flink).

265. In 2019, prior to the COVID-19 pandemic, approximately 158 cruise ships (counted per call or visit), carrying a potential 249,080 passengers, were scheduled to call at Bar Harbor. J. Stip. ¶ 32 (ECF No. 137).

266. As of December 2022, 134 cruise vessels (counted per call or visit) were booked to call at Bar Harbor for the 2023 cruise season. *See* PX 8 (PortCall excerpt).

267. As of December 2022, the 134 cruise vessel calls for the 2023 cruise season were distributed between cruise lines as follows:

	<b>Total Calls</b>
<b>American Cruise Lines</b>	18
<b>Carnival Plc</b>	1
<b>Celebrity</b>	3
<b>Holland America Line</b>	25
<b>Norwegian Cruise Lines</b>	36
<b>Oceania</b>	4
<b>Pearl Seas</b>	5
<b>Ponant</b>	1
<b>Princess</b>	15
<b>Regent</b>	6
<b>Royal Caribbean</b>	11
<b>Seaborn</b>	5
<b>Silversea</b>	3
<b>TUI</b>	1

See PX 8 (PortCall excerpt).

268. As of December 2022, 107 of the 134 cruise vessel calls for the 2023 cruise season were scheduled for vessels that have a lower berth capacity in excess of 1,000:

	<b>Total Calls</b>	<b>Vessel Size</b>
<b>Carnival Plc</b>	1	Above 1K
<b>Celebrity</b>	3	Above 1K
<b>Holland America Line</b>	25	Above 1K
<b>Norwegian Cruise Lines</b>	36	Above 1K
<b>Princess</b>	15	Above 1K
<b>Royal Caribbean</b>	11	Above 1K

See PX 8 (PortCall excerpt).

269. As of December 2022, 48 of the 134 cruise vessel calls for the 2023 cruise season were scheduled to arrive from a foreign port. See PX 8 (PortCall excerpt).

270. In the cruise industry, the trend in vessel size is toward larger ships. The average size of a cruise ship in terms of the number of berths has expanded over the years steadily and consistently. Tr. 12-Jul. at 168:2-6.

271. Larger ships enable the cruise lines to offer more amenities to their passengers and entertain their passengers in a larger variety of ways. *See* Tr. 12-Jul. at 168:8-14.

272. The ability to offer a wider variety of experiences is a competitive element for cruise lines in the vacation market. *See* Tr. 12-Jul. at 168:8-14.

273. From a volume and density standpoint, larger ships can accommodate more guests onboard and generate more revenue. They also lead to greater efficiencies and economies of scale. *See* Tr. 12-Jul. at 168:8-14; PX 192 at 3-4 (Kuryla).

274. Many cruise lines that call at Bar Harbor exclusively deploy cruise vessels with lower berth capacities above 1,000 for these itineraries. In addition to passengers, each vessel carries hundreds of crew. For example, a vessel with 4,000 lower berth capacity would also carry 1,500 to 1,600 crew. Some of these cruise lines do not have cruise vessels with lower berth capacities below 1,000 in their vessel fleets. *See* PX 192 at 2-3 (Kuryla); PX 191 at 2 (Grigsby).

275. If cruise lines are limited to disembarking a thousand passengers a day, cruise lines with fleets of vessels in excess of 1,000 passengers would not be able to call at Bar Harbor with those vessels. *See* PX 193 at 4 (Martin); *see also* Tr. 12-Jul. at 181:23-182:10. All of these vessels are foreign-flag. *See* PX 6 (PortCall excerpt); PX 7 (PortCall excerpt).

276. American Cruise Lines (ACL) vessels that call at Bar Harbor sail under the flag of the United States. *See* PX 7 (PortCall excerpt); J. Stip. ¶ 31 (ECF No. 137). American Cruise Lines generally deploys vessels with lower berth capacities of 100 for its itineraries that include a call at



Bar Harbor. *See* PX 7 (PortCall excerpt). American Cruise Lines operates two vessels in Maine. *See* PX 195 at 10 (Flink).

277. The Ordinance restricts disembarkation of passengers at Bar Harbor. *See* PX 210 (Ordinance and Purpose Section); *see also* Tr. 13-Jul. at 264:10-22 (Sidman testimony re committee’s goals in passing Ordinance).

278. Any vessel with a lower berth capacity in excess of 1,000 will not be able to disembark its full complement of potential passengers. *See* Tr. 12-Jul. at 109:10-14.

279. Any vessel with a lower berth capacity of fewer than 1,000 passengers will not be able to disembark its full complement of potential passengers (or crew) if one or more other cruise vessels already has disembarked passengers (or crew) that day. *See* Tr. 12-Jul. at 109:10-14 (Salvatore agreeing that “the ordinance at issue here would limit the number of persons who could disembark from a cruise ship onto a pier without penalty to 1,000 per day every day of the year[.]”).

280. The cruise ship industry cannot bring people to port and only allow a certain number of people to disembark. *See* Tr. 12-Jul. at 181:23-182:10 (Goldstein testifying that it would be unprecedented for a cruise line to call at a port without being able to guarantee every passenger would be able to disembark).

281. No cruise vessel will call at a port where all passengers and crew, whether by law or by the happenstance of timing, cannot disembark. *See* Tr. 12-Jul. at 181:23-182:10 (Goldstein testifying that it would be unprecedented for a cruise line to call at a port without being able to guarantee every passenger would be able to disembark); PX 191 at 13 (Grigsby).

282. Large cruise vessels will not include Bar Harbor in their itineraries if they cannot permit any passenger wishing to visit the Town to go ashore. PX 191 at 7-9, 12 (Grigsby); PX 192

at 13-14 (Kuryla); PX 193 at 4 (Martin); PX 211 (CLIA Letter); PX 212 (CLIA Letter); PX 213 (CLIA Letter).

283. The Town concluded that the Initiative would result in a 95 percent reduction in passenger visits. *See* PX 197 at 92 (Peacock); DX 471 (Cruise Management Plan v. Article 3).

284. The Town based its 95 percent reduction figure on the assumption that cruise ships would not call at Bar Harbor if they could not disembark all their passengers. *See* PX 197 at 92 (Peacock); PX 195 at 30 (Flink) (removed all ships larger than 1,000 passengers because “it would not be any kind of normal cruise line practice to bring passengers to a port of call and not allow them to disembark if they wanted to”).

285. The Ordinance will cause cruise lines to make and alter decisions about how they manage their New England/Canada cruise itineraries. *See* PX 192 at 13 (Kuryla).

286. The Ordinance will affect vessel routing decisions. *See* PX 192 at 13 (Kuryla); PX 193 at 4 (Martin).

287. The Ordinance will force changes in embarkation and disembarkation operations at the vessel while lying in federal anchorage grounds in waters near Bar Harbor. *See* PX 191 at 8 (Grigsby); PX 193 at 4 (Martin).

288. The Ordinance will require cruise vessels to “work around” the unavailability of Bar Harbor, including the unavailability of Bar Harbor as a first port of entry. The other two Class A ports of entry in Maine are limited in their ability to absorb the amount of business that Bar Harbor is able to provide as a Class A port of entry in Maine. PX 195 at 64-65, 68-69 (Flink).

289. The Ordinance will cause adverse collateral impacts for Maine's maritime commerce as a result of degradation of the system of pilotage in the region. Tr. 11-Jul. at 118:23-119:15; DX 442 (Email).

290. Cruise ships will not come to Bar Harbor if the Ordinance is enforced. *See* Tr. 12-Jul. at 181:23-182:10 (Goldstein testifying that it would be unprecedented for a cruise line to call at a port without being able to guarantee every passenger would be able to disembark); PX 191 at 13 (Grigsby); PX 195 at 48 (Flink); PX 192 at 12-14 (Kuryla).

#### **E. Pedestrian Traffic in Bar Harbor**

291. The Town does not have a definitive number for the number of tourists that come into Bar Harbor. J. Stip. ¶ 8 (ECF No. 137).

292. The only way to determine if a pedestrian on the sidewalks of Bar Harbor is a cruise ship passenger is a sticker or lanyard. Tr. 13-Jul. at 309:25-310:4.

293. The number of persons on the sidewalks in Bar Harbor increases after 6 p.m., after most of the cruise ship passengers have returned to their ships. *See* Tr. 12-Jul. at 233:18-237:8; PX 85 (Video of evening pedestrian activity).

#### **F. Less Restrictive Means**

294. Removal of obstructions, such as benches, on the sidewalks of Bar Harbor may allow for better flow of pedestrian traffic. *See* Tr. 13-Jul. 240:6-25; 328:19-21.

### **IV. FEDERAL GOVERNMENT REGULATION**

295. Cruise vessels are subject to federal inspection and supervision in a variety of areas, including construction standards, environmental protection requirements, operational procedures,

customs and immigration compliance, security measures, and health and safety requirements. PX 192 at 4 (Kuryla); PX 194 at 3-7 (Van Den Hof); Tr. 12-Jul. at 174:11-175:25, 176:23-177:14.

296. Cruise ships calling at the port of Bar Harbor operate under valid Coast Guard Certificates of Inspection issued pursuant to regulations at Title 46, Chapter 1, Subchapter H. *See, e.g.*, PX 192 at 5 (vessels are subject to federal regulation and inspection).

297. Among other things, the Part 105 regulations require that the owner or operator of a covered maritime facility ensure shore access to individuals who work on the vessels (“seafarers”, *i.e.*, the crew) and those who provide services to seafarers. 33 C.F.R. § 105.237. A maritime facility operating pursuant to Part 105 must provide timely access to all seafarers. *See* 33 C.F.R. § 105.237.

298. BH Piers and Harborside administer maritime facilities regulated by the federal government, including the United States Coast Guard. Each has approvals pursuant to 33 C.F.R. Part 105 from the Coast Guard to operate their facilities. Tr. 12-Jul. at 88:11-21.

299. Every cruise ship journey involves advanced planning for complex vessel itineraries, the interstate and foreign travel of passengers not only aboard the vessel but, upon reaching a particular port of call, may also, as is true for Bar Harbor, involve providing waterborne conveyances on which the cruise ship passengers and crew can travel to and from the ship. Tr. 12-Jul. at 171:10-18 (planning is “an extremely complicated process that goes on endlessly into the future”).

300. This advanced planning includes developing itineraries that comply with U.S. cabotage laws. DX 250A at 219 (explaining that Bar Harbor is well positioned because U.S.

cabotage rules require foreign vessels to visit one international port while carrying U.S. passengers).

301. This advanced planning also includes long-term coordination for the availability of Coast Guard-approved cruise ship terminal facilities and barge services, procuring and tendering provisions and supplies, all of which move in the interstate and foreign commerce of the United States. *See generally* PX 211 (CLIA Letter); Tr. 12-Jul. at 89:8-25.

302. The Ordinance prevents the Pier Owners from being able to provide timely access to all seafarers (i.e., crew) seeking to disembark at their facilities. *See* Tr. 12-Jul. at 89:8-25.

303. [Reserved]

## **V. STATE PILOTAGE**

### **A. The System of Pilotage**

304. Maritime pilots provide critical independent local knowledge and navigational information to vessels and bring the highest level of ship-handling skills to maneuver vessels within their pilotage area. Tr. 11-Jul. at 14:13-15:17.

305. Safety is the primary objective of pilotage. *See* Tr. 11-Jul. at 32:4-9, 44:9-14; 90:18-24.

306. Pilots make large capital investments in pilot boats, office facilities and equipment, dispatch systems, communication equipment and other facilities, and equipment and support services. *See generally* Tr. 11-Jul. at 50:14-24.

307. Pilots also must invest in training and retaining capable crew for pilot boat operations and maintenance. *See* Tr. 11-Jul. at 51:16-18.

308. Pilotage is a time-proven service that provides great benefits to the State, residents, and visitors (human, vessel, and cargo). *See* Tr. 11-Jul. at 33:2-15.

309. Reserved.

310. Pilotage groups face high fixed operating costs. *See generally* Tr. 11-Jul. at 50:12-24.

311. Pilots must acquire, maintain, and insure purpose-built pilot boats that are specifically designed to operate under challenging conditions. Tr. 11-Jul. at 38:24-44:14.

312. They must employ and retain qualified mariners in sufficient numbers to operate reliable, efficient service 24 hours a day, 7 days a week, 365 days a year. *See* Tr. 11-Jul. at 51:16-18.

313. Pilotage is a regulated industry. J. Stip. ¶ 33 (ECF No. 137).

314. A pilotage system's various aspects (participants, rates, territories) are carefully balanced to provide sufficient revenues to each pilotage group so that each group can cover its fixed costs, maintain the skills of the group's pilots, and attract future pilots to the profession. *See* Tr. 11-Jul. at 56:12-60:10, 100:14-19 (when circumstances could not support pilotage).

315. Reserved.

316. Reserved.

317. Reserved.

## **B. The Pilots Association's Pilotage System**

318. The Pilots Association maintains the state-mandated system of pilotage for the Penobscot and Frenchman Bays and the Penobscot River. *See* Tr. 11-Jul. at 29:21-30:15; *see also* PX 22 (Map of Pilotage Area).

319. The Pilots' area includes the ports of Searsport, Bucksport, Bangor/Brewer, Bar Harbor, and Rockland. *See* Tr. 11-Jul. at 29:21-30:15; *see also* PX 22 (Map of Pilotage Area).

320. The Pilots Association's pilotage operations are regulated by the Maine Pilotage Commission. J. Stip. ¶ 34 (ECF No. 137).

321. The Pilots Association's pilotage region extends 75 miles across from Boothbay Harbor to Frenchman Bay and 75 miles from the west pilot station on Penobscot Bay to the Penobscot River Port of Brewer. J. Stip. ¶ 35 (ECF No. 137).

322. The Pilots Association's pilots are responsible for guiding any vessel required to take a pilot within the Pilots Association's designated area in accordance with state law. *See* Tr. 11-Jul. at 14:13-25.

323. The Pilots are harbor pilots and docking pilots. Tr. 11-Jul. at 14:12.

324. The Pilots board vessels 8 to 12 miles offshore as they approach state waters coming into ports like Penobscot Bay and Frenchman Bay. Tr. 11-Jul. at 14:14-17.

325. The Pilots physically land alongside the side of the vessel and once onboard are responsible for directing the navigation of the vessel on the way to its final destination in port. Tr. 11-Jul. at 14:18-25.

326. The pilots board vessels at offshore pilot stations 24 hours a day, 365 days a year (weather permitting) and navigate them safely to their destination. *See* Tr. 11-Jul. at 33:8-10.

327. Once a vessel's port visit is complete, the pilots reverse the process and direct the navigation of the vessels until they are safely clear of state waters. *See* Tr. 11-Jul. at 14:17 (Gelinas describing the Pilots' jurisdiction as "anything from 8 to 20 miles offshore").

328. The Pilots Association facilitates year-round commercial traffic in Penobscot Bay and River ports of Searsport and Bucksport. Tr. 11-Jul. at 16:5-14.

329. Searsport and Bucksport receive commercial traffic supporting trade in petroleum products and other liquid bulk cargos. PX 141 (Ship Movement Spreadsheet); Tr. 11-Jul. at 16:5-14.

330. Searsport receives liquid cargos such as petroleum products, gasoline, diesel, heating oil, as well as liquid clay slurry and caustic soda. Tr. 11-Jul. at 20:20-23. *See* PX 146.2 (Photo); PX 146.10 (Photo); PX 146.92 (Photo); PX 146.40 (Photo); PX 146.87 (Photo).

331. The liquid products coming into Searsport are shipped primarily on foreign-flagged vessels. Tr. 11-Jul. at 20:24-21.

332. Some of the products coming into Searsport are sourced domestically, outside Maine, and arrive on domestic-flagged vessels. Tr. 11-Jul. at 21:1-13.

333. Most of the refined product delivered into Searsport comes from Canadian ports. Tr. 11-Jul. at 21:12-17.

334. Dry products are also shipped through Searsport, including road salt and petroleum coke. Components for wind turbines are also shipped through Searsport. Tr. 11-Jul. at 21:19-24.

335. The Pilots bring oil tankers and petroleum products to the port of Bucksport. Tr. 11-Jul. at 23:14-20.



336. The port of Brewer exports construction modules from the Cianbro modular fabrication facility in Brewer that are used to construct refineries and mineral-processing facilities in the United States and Canada. *See* Tr. 11-Jul. at 23:14-20.

337. Reserved.

338. The Pilots occasionally guide yacht traffic in the port of Bar Harbor. Tr. 11-Jul. at 16:16:5-9, 86:23-87:3.

339. Reserved.

340. The Pilots also guide the international fast ferry, the CAT. Tr. 11-Jul. at 16:8-9.

341. The Pilots facilitate the movement of vessels carrying two big classes of commodities: products and people. Tr. 11-Jul. at 27:10-13.

342. The Pilots facilitate hundreds of ship movements every year. Tr. 11-Jul. at 31:15-17.

343. All of the vessels guided by the Pilots are moving commodities in interstate commerce. Tr. 11-Jul. at 21:16-18, 27:2-29:14.

344. The Pilots Association covers its region with four individual state-licensed pilots, two pilot boats, and a host of support staff in the form of contract pilots, pilot boat captains, deckhands, boat maintenance staff, and drivers for shoreside transportation. *See* Tr. 11-Jul. at 29:15-31:19. They are supported by an extensive system that enables the Pilots to safely get out to sea and back and travel up and down the coast. Tr. 11-Jul. at 32: 13-23.

345. The Pilots maintain two different pilot boats in two different regions. Each pilot boat has its own dedicated crew. The most dangerous part of a pilot's job is embarking and disembarking vessels, especially when the vessels are moving. The Pilots' dedicated, purpose-built

pilot boats contribute to the safety of the Pilots when embarking and disembarking vessels. Tr. 11-Jul. at 37:20-39:11.

346. Reserved.

347. The pilots also provide their own “back office” support, including dispatching, billing, accounting, invoicing, and correspondence with agents and interested shippers regarding potential ship movements. *See generally* Tr. 11-Jul. at 32:13-20 (discussing logistics), 37:16-19 (dispatching).

348. An efficient pilotage system keeps Maine’s ports efficient and keep commerce flowing. The Pilots’ system of pilotage is designed to provide pilots on an “as needed” basis, meaning that pilots are available 24 hours a day, 7 days a week, every day of the year. Tr. 11-Jul. at 33:8-10.

349. The Pilots’ system of pilotage enables the Pilots to work around and within Maine’s sometimes-challenging weather conditions and avoid vessel delays occasioned by the unavailability of a pilot at the day and time the vessel can move into or out of a port. Tr. 11-Jul. at 33:4-8.

350. The Pilots’ system of pilotage helps the flow of goods back and forth and avoids the shortage of commodities that may result if pilots were not available to move the vessels. Tr. 11-Jul. at 33:8-10.

351. The Pilots’ system of pilotage enables the pilots to work within weather and timing constraints at certain ports. For example, in Bucksport, vessels can be brought in only during daylight hours and only during high or low tide, depending on the vessel draft. Tr. 11-Jul. at 33:16-34:18.

352. Sometimes, vessels moving products and vessels moving people arrive at the same time and need pilots at the same time. *See* Tr. 11-Jul. at 37:2-24.

353. The Pilots' system of pilotage enables the Pilots to serve both vessels. Tr. at 37:2-24.

354. The Pilots' system of pilotage is contrasted by an "as available" system of pilotage under which vessels would wait for an available pilot. Tr. 11-Jul. at 36:17-18.

355. Pilotage rates are set by the Maine Pilotage Commission. Tr. 11-Jul. at 56:15-18.

356. Pilots must charge the rates set by the Maine Pilotage Commission for their regions. Pilots cannot give discounts, kickbacks, or rebates. Pilots also cannot charge more than the published rates. Tr. 11-Jul. at 56:19-22.

357. The Pilots Association last sought a rate increase from the Maine Pilotage Commission in 2022, effective for the 2023 calendar year. Tr. 11-Jul. at 58:9-59:3. As a result, the Pilots' rates increased substantially for 2023. The substantial increase was necessary to account for the loss of cruise traffic during the height of COVID and rising inflation, as well as to bring the Pilots' rates in parity with rates for similar vessels in other New England ports. Tr. 11-Jul. at 58:9-59:3.

## **VI. STANDING**

### **A. Injury to the Tender Vessel Owners and the Pier Owners**

358. If the Ordinance caused large cruise ship to stop calling at Bar Harbor, the tender vessels could no longer be used to tender passengers, which is the only reason they were built. Tr. 12-Jul. at 111:24-112:13.

359. The reduction in the number of disembarking persons as a result of the Ordinance would cause a reduction in revenue to the Pier Owners from the use of their piers for disembarkation and re-embarkation of cruise ship passengers. Tr. 12-Jul. at 11:19-23.

360. The reduction in the number of disembarking persons as a result of the Ordinance will cause the loss of the vast majority of the tendering business of the Tender Owners and BHWW.

361. The reduction in the number of disembarking persons as a result of the Ordinance renders the tendering operations of the Tender Owners effectively obsolete. Tr. 12-Jul. at 111:24-112:13.

362. The reduction in the number of disembarking persons as a result of the Ordinance will render the property interests of the Pier Owners in their U.S. Coast Guard approvals essentially valueless. Tr. 12-Jul. at 88:9-21.

363. The reduction in the number of disembarking persons as a result of the Ordinance will substantially reduce the value of the disembarkation points owned by the Pier Owners. Tr. 12-Jul. at 111:19-23.

#### **B. Injury to APPLL Members**

364. The reduction in or virtual elimination of the number of disembarking persons caused by the Initiated Ordinance impacts the economic viability of a substantial number of APPLL members and will result in the loss of the tens of millions of dollars of annual economic benefit to the Bar Harbor economy. Tr. 12-Jul. at 271:5-10 (Bond describing APPLL's purpose); Tr. 12-Jul. at 271:14-18 (175 members); Tr. 12-Jul. at 284:1-12; Tr. 12-Jul. at 208:20-25 (Gabe estimating multiplier effect of cruise ship passenger spending in Bar Harbor).

365. APPLL Members' businesses, which include restaurants, tour businesses, and retail businesses, will be severely damaged by the Initiated Ordinance and its implementation will harm the ability of many of their employees to earn a living. *See* Tr. 12-Jul. at 271:6-7 ("like-minded business owners and residents"); Tr. 12-Jul. at 273:24-25; 274:1-2; 274:14-21; Tr. 12-Jul. 277:14-19; Tr. 12-Jul. at 311:16-22.

366. APPLL Members relied on the cruise ship visits to staff their businesses. Tr. 12-Jul. at 274:25; 275: 1-12; Tr. 12-Jul. at 314:5-19.

367. APPLL Members schedule their seasonal staffing around the cruise ship itineraries published on Port of Call. Tr. 12-Jul. at 281:7-17; Tr. 12-Jul. at 314:5-19.

368. APPLL Members have expanded, renovated and updated their businesses as a result of the historical cruise ship visitation in Bar Harbor. *See* Tr. 12-Jul. at 312:10-23; 319:5-25; 320:1-18.

369. APPLL Members have financed their expansion, renovation and updates to their businesses through local Bar Harbor financial institutions. Tr. 12-Jul. at 282:12-15; 21-25; Tr. 12-Jul. at 312:10-23; 319:5-25; 320:1-18.

370. Some APPLL Members may not be able to pay their outstanding loan payments to their local Bar Harbor financial institution if the Ordinance is enforced. Tr. 12-Jul. at 312:10-23; 319:5-25; 320:1-18.

371. Some local businesses, who are not members of APPLL, but supply goods and services to APPLL members, will suffer economically if the Ordinance is enforced. Tr. 12-Jul. at 284:6-11.

### **C. Injury to the Pilots Association**

372. Approximately 50 percent of the Penobscot Pilots Association's annual revenues come from pilotage services provided to cruise vessels anchoring in Frenchman Bay. Tr. 11-Jul. at 54:8-19; DX 442 (Gelinas email stating that cancelling a cruise ship season would mean a 50% reduction in the Pilots' revenue).

373. These revenues cannot be replaced. DX 442 (Gelinas email stating that cancelling a cruise ship season would mean a 50% reduction in the Pilots' revenue).

374. The loss of revenue will negatively impact the Pilots Association's ability to cover its fixed costs. Tr. 11-Jul. at 35:12-36:19, 69:7-72:15.

375. The loss of revenue will negatively impact the Pilots Association's ability to attract and retain well-qualified mariners to the profession and in service of the Pilots Association's designated area. Tr. 11-Jul. at 35:12-36:19.

376. The disruption of the Pilots Association's resources, and the consequent inability of the Pilots Association to perform its vital role, will compromise the safety, environmental resources, and security of traffic in the Pilot Association's pilotage area to the detriment of all persons, property, and vessels that rely on its pilotage services for safe navigation. Tr. 11-Jul. at 32:8-9, 39:7-11, 44:9-14 (safety obligations under the Pilotage Act).