

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeals of

S-15-001 and S-15-002

FOSS MARITIME and PORT OF SEATTLE

From an interpretation by the Director,
Department of Planning and Development

Director's Interpretation:
15-001

**ORDER ON MOTION TO
INTERVENE**

1. On May 27, 2015, a motion to intervene in the above-referenced appeals was filed by Puget Soundkeeper Alliance, Seattle Audubon Society, Sierra Club, and Washington Environmental Council ("proposed intervenors"). The Appellants, Foss Maritime and Port of Seattle, filed objections to the motion on June 2, 2015. The proposed intervenors filed supporting declarations on June 2, 2015 and a reply on June 3, 2015. The Hearing Examiner has reviewed the filings, and grants the motion for the reasons stated below.

2. These appeals challenge the Director of the Department of Planning and Development's Interpretation 15-001, which concluded that a use permit is required for the seasonal moorage of an exploratory drilling rig and two accompanying tugboats at the Port of Seattle's Terminal 5 facility. The appeal hearing is currently scheduled for July 23, 2015.

3. Hearing Examiner Rule 3.09 addresses intervention. Under HER 3.09(a), intervention is not a substitute means of appealing a decision. The proposed intervenors' request indicates that they seek to defend the City's interpretation; the intervention request here is not an attempt to appeal the decision.

4. Under HER 3.09(b), a person or entity seeking to intervene must demonstrate a substantial interest that is not otherwise adequately represented. The motion and declarations indicate that the proposed intervenors have longstanding interests in the use, protection, and restoration of Puget Sound, Elliott Bay, and the Duwamish River. The motion asserts that these interests will be harmed if the appeals are granted and the subject activities are not required to obtain a new use permit, since a new permit process will require environmental review and public involvement regarding the subject use of this shoreline area, all of which are of integral interest to the proposed intervenors. The filings also indicate that the proposed intervenors operate a monitoring program which includes regular boat patrols near the terminus of Longfellow Creek, and that this program is impaired by the exclusion zone that has been set up around Terminal 5 on account of the

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activities which are the subject of the interpretation. The proposed intervenors have shown a substantial interest in this matter.

5. Courts have noted that only a minimal showing may be required regarding whether an intervenor's interests are adequately represented; *Columbia Gorge Audubon Society v. Klickitat County*, 98 Wash. App. 618, 629, 989 P.2d 1260, 1266 (1999)(citations omitted). In this case, the Department would not seek judicial review if the Hearing Examiner were to reverse the Department's interpretation. The proposed intervenors have demonstrated that they have a substantial interest that is not otherwise adequately represented.

6. Intervention will not delay the hearing process; expand the issues or prejudice the rights of other parties. As noted by the Appellants, the appeals concern the Director's interpretation, not the alleged environmental impacts of the subject activities, but the intervention request does not on its face seek to expand the issues beyond those relevant to the appeals, delay the process, or otherwise show that intervention will prejudice the rights of the other parties. The motion for intervention is therefore granted.

Entered this 5th day of June, 2015.



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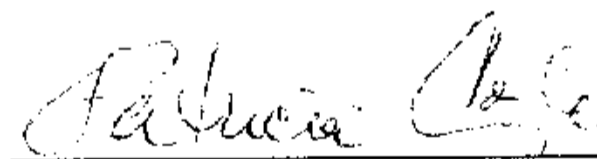
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached ORDER ON MOTION TO INTERVENE to each person listed below, or on the attached mailing list, in the matter of FOSS MARITIME AND PORT OF SEATTLE, HEARING EXAMINER File S-15-001 AND S-15-002, in the manner indicated.

Party	Method of Service
<p><u>Appellant Legal Counsel</u> John C. McCullough McCullough Hill Leary <u>jack@mhseattle.com</u></p> <p>David R. West Garvey Shubert Barer <u>drwest@gsblaw.com</u></p> <p>Traci Goodwin Port of Seattle <u>goodwin.t@portseattle.org</u></p> <p>Patrick Schneider Foster Pepper <u>schnp@foster.com</u></p> <p>Laura Counley McCullough Hill Leary <u>laura@mhseattle.com</u></p> <p>Brenda Bole Foster Pepper <u>boleb@foster.com</u></p> <p>Dominique Barrientes <u>dbarrientes@gsblaw.com</u></p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid</p> <p><input type="checkbox"/> Inter-office Mail</p> <p><input checked="" type="checkbox"/> E-mail</p> <p><input type="checkbox"/> Fax</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Legal Messenger</p>

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Dated: June 5, 2015



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