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BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the Matter of the Appeals of:

Hearing Examiner File Nos.  
S-15-001; S-15-002

FOSS MARITIME COMPANY AND  
PORT OF SEATTLE,

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

ALASKA MARINE LINES, AMERICAN  
SEAFOODS COMPANY, AMERICAN  
WATERWAY OPERATORS, ARCTIC  
FJORD, INC., ARCTIC STORM, INC.,  
BALLARD OIL COMPANY, CROWLEY  
MARITIME CORPORATION, GLACIER  
FISH COMPANY, PREMIER PACIFIC  
SEAFOODS, SAILORS' UNION OF THE  
PACIFIC, SSA TERMINALS, LLC,  
TRANSPORTATION INSTITUTE AND  
VIGOR INDUSTRIAL LLC'S MOTION TO  
INTERVENE

(Code Interpretation No. 15-001)

**I. INTRODUCTION**

COMES NOW Intervenors Alaska Marine Lines, American Seafoods Company,  
American Waterway Operators, Arctic Fjord, Inc., Arctic Storm, Inc., Ballard Oil Company,  
Crowley Maritime Corporation, Glacier Fish Company, Premier Pacific Seafoods, Sailors'  
Union Of The Pacific, SSA Terminals, LLC, Transportation Institute and Vigor Industrial LLC

1 (Collectively, “T-5 Intervenors”),<sup>1</sup> by and through their attorneys, Joshua C. Allen Brower and  
2 Molly K.D. Barker of Veris Law Group PLLC, and respectfully requests the Hearing Examiner  
3 grant its Motion to Intervene (“Motion”) in this appeal. Foss Maritime Company (“Foss”) and  
4 the Port of Seattle (“Port”) filed separate appeals challenging the issuance of an interpretation by  
5 the Director (“Director”) of the Department of Planning and Development (“DPD” or  
6 “Department”) “in response to general questions it has received regarding a proposal to moor an  
7 exploratory drilling rig and two accompanying tugboats at the Port of Seattle’s (Port’s) Terminal  
8 5 facility” (DPD Interpretation No. 15-001, hereinafter the “Interpretation”).

10 T-5 Intervenors seek intervention because individually and collectively they possess  
11 interests in the outcome of this appeal that, if not allowed to intervene, will not be adequately  
12 represented. Specifically, T-5 Intervenors hold or rely upon various landward or water-dependent  
13 land use entitlements and permits from the DPD and the City of Seattle (“City”) and have made  
14 business decisions, including, among others, signing leases and contracts, in reliance thereon.  
15 Additionally, T-5 Intervenors use and rely upon Port and other water-dependent and landward  
16 facilities in Elliot Bay and throughout Seattle beyond Terminal 5, the continued and future use of  
17 which could be adversely impacted by the outcome of this matter. In particular, American  
18 Seafoods Company,<sup>2</sup> Arctic Storm, Inc.<sup>3</sup>, Arctic Fjord, Inc.<sup>4</sup> and Premier Pacific Seafoods<sup>5</sup> moor  
19  
20  
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22 <sup>1</sup> Additional maritime/industrial businesses and groups may be added to the T-5 Intervenor group. In that case, all  
23 members of the T-5 Intervenor group will be represented by the undersigned counsel and will follow and abide by  
24 the Hearing Examiner’s case schedule and orders hereunder.

<sup>2</sup> American Seafoods Company, based out of Seattle, is one of the largest seafood companies in North America.  
24 American Seafoods owns and operates a fleet of six catcher/processor vessels out of Seattle and regularly uses and  
25 relies upon the Port’s facilities and other facilities in Seattle.

<sup>3</sup> Arctic Storm, Inc. is a Seattle-based company that oversees the fishing and processing of four fishing vessels (one  
25 of which is the Arctic Storm, a 334 foot long catcher processor vessel) that operate throughout the West Coast and  
Alaska. Arctic Storm homeports in Seattle.

1 their respective vessels at Terminal 91. Crowley Maritime Corporation<sup>6</sup> moors its vessels and  
2 provides services to its customers from Pier 17 at Terminal 18, while SSA Terminals, LLC<sup>7</sup>  
3 operates Terminal 18, the largest container facility in the Pacific Northwest, and other terminals  
4 within Seattle. Glacier Fish Company<sup>8</sup> and Sea Storm Fisheries, Inc.<sup>9</sup> moor their fishing vessels  
5 at Fisherman’s Terminal in Salmon Bay. Alaska Marine Lines<sup>10</sup> moors its vessels at Terminal  
6 115. Vigor Industrial<sup>11</sup> has a 27-acre vessel construction and repair facility located on Harbor  
7 Island at the entrance of Seattle’s Duwamish Waterway, which spans 170,000 square feet and is  
8 comprised of six piers and two dry docks, and serves the Pacific Northwest maritime community.  
9 Ballard Oil<sup>12</sup> operates a 350-foot marine fuel facility located on a pier on the north side of the  
10 Lake Washington Ship Canal, in Salmon Bay, that provides fuel and other goods and supplies to  
11

12  
13 <sup>4</sup> Arctic Fjord, Inc. is a Seattle-based company that oversees the fishing and processing of four fishing vessels (one  
14 of which is the Arctic Fjord, a 272 foot long catcher processor vessel) that operate throughout the West Coast and  
15 Alaska. Arctic Fjord homeports in Seattle.

16 <sup>5</sup> Premier Pacific Seafoods, based out of Seattle, manages and oversees the operation of two of the three at-sea fish  
17 processing ships for the North Pacific Pollock and Hake fisheries, which operate off of the coast of Alaska,  
18 Washington and Oregon. Premier’s fleet homeports in Seattle.

19 <sup>6</sup> Crowley Maritime Corporation is a worldwide company providing marine solutions, transportation and logistics to  
20 a wide variety of maritime, industrial and other businesses. In Seattle, among other services, Crowley provides  
21 vessel assist and escort services, and vessel preparation prior to deployment for destinations along the west coast and  
22 Alaska.

23 <sup>7</sup> SSA Terminals, LLC is a subsidiary of SSA Marine, Inc., based out of Seattle, which provides a full spectrum of  
24 transportation services, including marine terminal and rail operations, and operates more cargo terminals than any  
25 other company in the world, and is known for its unprecedented diversity of cargo, volumes, commercial models  
and ports throughout its industry.

<sup>8</sup> Glacier Fish Company, located in Seattle, Washington, operates three catching and processing vessels which  
operate off of the coast of Alaska, Washington and Oregon.

<sup>9</sup> Sea Storm Fisheries, Inc. is a Seattle-based company closely affiliated with Arctic Storm, Inc. and Arctic Fjord,  
Inc.’s fishing and processing vessels, and owns and operates its own vessel, Sea Storm.

<sup>10</sup> Alaska Marine Lines is a Seattle-based marine transportation provider with barge service to and from Alaska and  
Hawaii. For some communities, Alaska Marine Lines is the only regularly scheduled marine service; for example, it  
is the only barge line through Southeast Alaska, offering twice a week service to those communities, most of which  
lack road access.

<sup>11</sup> Vigor Industrial provides shipbuilding, complex fabrication, ship repair and conversion in Seattle. Vigor routinely  
services fishing vessels, ferries, barges, ships and vessels that are operated throughout the region. Vigor now owns  
and operates nine separate locations throughout the area, including Ketchikan and Seward in Alaska, Portland and  
Clackamas in Oregon, Tacoma, Seattle, Port Angeles, and Vancouver in Washington.

<sup>12</sup> Ballard Oil Company serves the Pacific Northwest and Alaska fishing fleets with diesel fuel, lubricants, hydraulic  
oils, filters and many other supplies and services.

1 commercial, government and private vessels, including the Pacific Northwest fishing fleet. Its  
2 shoreline activities, along with Vigor's, are heavily regulated pursuant to State and local water-  
3 dependent permits and land use entitlements and their operations would be greatly impacted by  
4 after-the-fact permit reinterpretation. The Transportation Institute,<sup>13</sup> Sailors' Union Of The  
5 Pacific<sup>14</sup> and The American Waterways Operators'<sup>15</sup> advocate for the development and  
6 implementation of sound maritime policy and labor and environmental standards. These entities  
7 are at the forefront of ensuring that maritime laws and industry regulations are constructed in a  
8 way that is supportive of a flourishing and vibrant maritime economy.  
9

10 The continued vitality of the T-5 Intervenor—individually and collectively as a maritime  
11 community—is dependent upon the enjoyment of constitutional rights of navigation, moorage  
12 and use, and upon the sanctity and reliability of water-dependent permits, land use entitlements  
13 and sound maritime policy. As such, the T-5 Intervenor have a significant interest in the  
14 outcome of this appeal separate and distinct from the other parties.  
15

16 The interests of the T-5 Intervenor also are separate and distinct from those of Foss and  
17 the Port based on the varied nature of the operations, services and functions they provide. As  
18 illustrated above, the T-5 Intervenor are fishing vessel owners and operators, a worldwide  
19 maritime company, a shipyard, freight shipping and barge companies, labor unions, one of four  
20 remaining fixed-fueling facilities in the entire State of Washington, and industry and trade  
21

22 <sup>13</sup> Transportation Institute is a Washington-based non-profit dedicated to maritime education and promotion. The  
23 Institute campaigns for ensuring a robust and sustainable maritime policy through promoting and safeguarding the  
24 development of waterborne commerce, transportation, and international security.

24 <sup>14</sup> Sailors' Union of the Pacific is an American labor union of mariners, fisherman and boatmen working on deck,  
25 engine and steward's departments aboard U.S. flag vessels. The headquarters of the Union is in San Francisco,  
California, with branch offices in Wilmington, California, Seattle, Washington and Honolulu, Hawaii.

25 <sup>15</sup> The American Waterways Operators is the national trade association representing the nation's tugboat, towboat  
and barge industry, which operates along the rivers, coasts, Great Lakes and harbors of the U.S. American  
Waterways lobbies for an efficient, environmentally sustainable, and productive maritime industry.

1 groups, all operating on different scales in terms of vessel size, dock location, and range of  
2 economic industries reached, as compared to Foss or the Port. If the Hearing Examiner upholds  
3 DPD’s Interpretation, the decision would directly and indirectly impair the T-5 Intervenors’  
4 ability to carry out their many activities of fish processing, vessel assist, ship repair, vessel  
5 fueling, freight shipping and ensuring that sound maritime policies are in place for the greater  
6 Pacific Northwest maritime community. To protect these interests, T-5 Intervenors respectfully  
7 request that the Hearing Examiner grant intervention.  
8

## 9 II. STATEMENT OF FACTS

10 On February 9, 2015, Foss entered into a lease with the Port to utilize Terminal 5 as a  
11 marine cargo terminal (the “Lease”). Pursuant to the Lease, Foss intends to provide a variety of  
12 services (the “Operations”) to Shell Offshore, Inc. (“Shell”) and its contractors. The Operations  
13 will generally include receiving and storing goods, cargo, equipment, supplies, stores, provisions  
14 and other materials; loading and unloading goods, cargo, equipment, supplies, stores, provisions  
15 and other materials on to and off of vessels; for those vessels to use and to transport those goods  
16 and cargo to other locations; temporary moorage of vessels; and other related activities,  
17 including standard routine “run and maintain” activities.  
18

19 In apparent response to political controversy about Shell, the City— through DPD—  
20 undertook review regarding whether the Operations are consistent with the previously approved  
21 cargo terminal use of Terminal 5. The Director issued the Interpretation on May 7, 2015, “in  
22 response to general questions [DPD] has received regarding a proposal to moor an exploratory  
23 drilling rig and two accompanying tugboats at the Port of Seattle’s (Port’s) Terminal 5 facility.”  
24 See Foss Amended Notice of Appeal, Exh. 1. The Interpretation purports to interpret certain  
25

1 rights of use under Projects 9404118 and 9404124 (among others) issued to the Port of Seattle,  
2 as applicant, for the property located at Terminal 5 (2701 26<sup>th</sup> Avenue SW) in Seattle (the  
3 “Permit”). *Id.* The Interpretation specifically objects to the moorage of one of two drilling rigs  
4 and two tug boats “during winter months.” *Id.* The Interpretation concludes that the Operations  
5 are consistent with the category of “transportation use,” but concludes that the Operations are not  
6 consistent with the cargo terminal use, contrary to DPD’s historical implementation of its Land  
7 Use Code. *Id.* The City has historically shared the same interpretation of the scope of a cargo  
8 terminal use that would include the intended Operations and similar activities, as reflected in  
9 permitting decisions on Port projects presented in the Port’s submission.  
10

11 Foss filed a Notice of Appeal challenging the Director’s Interpretation on May 13, 2015,  
12 and filed its Amended and Restated Notice of Appeal on May 21, 2105, which is incorporated  
13 herein by reference (the “Foss Appeal”). The Port of Seattle also filed a separate Notice of  
14 Appeal challenging the Interpretation on May 15, 2015, which is also incorporated by reference  
15 (the “Port Appeal”) (the Foss Appeal and the Port Appeal are, collectively, the “Appeals”). The  
16 Hearing Examiner consolidated the Appeals on May 27, 2015, and has scheduled a hearing  
17 beginning on Thursday, July 23, 2015. T-5 Intervenors now seek to intervene in the Appeals.  
18

### 19 III. STATEMENT OF THE ISSUE

20 Should the Hearing Examiner grant T-5 Intervenors’ Motion when T-5 Intervenors has  
21 demonstrated that it satisfies the Hearing Examiner Rule of Procedure Rule 3.09?  
22

### 23 IV. EVIDENCE RELIED UPON

24 This Motion relies upon the pleadings and papers on file in this matter.

### 25 V. ARGUMENT

1 The Hearing Examiner Rules of Procedure (“HER” or “Rules”) on intervention state:

- 2 (a) Intervention is not a substitute means of appealing a decision for those who could  
3 have appealed but failed to do so.
- 4 (b) A person, organization or other entity who has not filed an appeal may request by  
5 motion to participate in the appeal. The request must state how the person or  
6 entity making it is affected by or interested in the matter appealed, and must  
7 demonstrate a substantial interest that is not otherwise adequately represented.  
8 Except as provided in HER 3.09(d) below, a written request for intervention must  
9 be filed with the Hearing Examiner and served on all parties to the appeal no later  
10 than 10 business days prior to the scheduled hearing date.
- 11 (c) In determining the merits of a request for intervention, the Hearing  
12 Examiner shall consider whether intervention will unduly delay the hearing  
13 process, expand the issues beyond those stated in the appeal, or prejudice the  
14 rights of the parties. If intervention is granted, the Hearing Examiner may limit its  
15 nature and scope.
- 16 (d) The Hearing Examiner may allow a substantially interested person, organization,  
17 or other entity who has not filed an appeal to intervene for the sole purpose of  
18 preserving the right to appeal. Such intervention may be permitted at any time up  
19 to the start of the hearing.

20 HER 3.09. T-5 Intervenors meet the requirements of this rule.

21 T-5 Intervenors are both affected by and interested in this Appeal. The T-5 Intervenors  
22 handle, load and unload various kinds cargo, goods and foods at numerous facilities, both Port  
23 and otherwise, throughout the City of Seattle. They operate fishing vessels and barges that call  
24 into and dock at facilities in the City of Seattle, where they load and unload goods and supplies.  
25 They operate water-dependent businesses that moor vessels of many types including but not  
limited to loading/unloading of cargo, fueling and repairing/fabricating vessels at various  
locations throughout the City of Seattle. They represent organized labor working in maritime  
industries. They operate the terminals themselves. They also work to create and protect  
consistent policies and standards necessary for a productive and viable maritime economy in  
Seattle and the Pacific Northwest. If upheld in this Appeal, DPD’s reinterpretation of the Permit  
could adversely impact all of these operations by directly affecting operations at Terminal 5; by

1 indirectly adversely impacting operations at other Port or maritime facilities throughout Seattle;  
2 and by calling into question the validity/viability of permits and land use entitlements issued to  
3 the T-5 Intervenor or the parties with whom they do business.

4 T-5 Intervenor's substantial interests also are not adequately represented by Foss or the  
5 Port. While Appellants are focused on DPD's Interpretation that the Operations are no longer a  
6 cargo terminal use, DPD's Interpretation carries a broader significance to the T-5 Intervenor.  
7 DPD's attempt to reinterpret an issued permit after-the-fact has serious far-reaching implications  
8 on the viability and reliability of the myriad and numerous permits granted to and relied upon by  
9 the T-5 Intervenor. For example, any one of the T-5 Intervenor could potentially receive a  
10 Notice of Violation at a moment's notice upon DPD's reinterpretation of their permits in  
11 response to intense political pressure. Or fishing vessels or freight barges could be barred from  
12 calling into and docking or mooring for off-season storage and maintenance at Port facilities  
13 because DPD changed its mind regarding those operations for similar perceived political reasons  
14 at issue in the Appeal. Such a reinterpretation that effectively ejects vessels from their regular  
15 operation will undoubtedly and indirectly affect Vigor's, SSA Terminals, LLC's and Ballard  
16 Oil's ability to service the array of shipbuilding, repairing, fueling and loading needs of such  
17 vessels and operators throughout the region. Neither T-5 Intervenor— nor anyone doing  
18 business in Seattle for that matter— can afford to have the terms of their permits and  
19 entitlements redefined after issuance. While the Appellants are focused on the Permit and  
20 Interpretation at issue in this Appeal, the T-5 Intervenor are focused on the sanctity and security  
21 of the permits and entitlements that are part of the bedrock of the maritime industrial community  
22 in Seattle and the Pacific Northwest.



1 Without intervention, T-5 Intervenors would be deprived of the ability to present relevant  
2 factual information and legal argument to challenge the broad and unintended consequences of  
3 DPD's Interpretation. The failure to litigate T-5 Intervenors Code Interpretation concerns at this  
4 stage could result in a decision that has a binding impact on T-5 Intervenors without its consent  
5 or participation. *See Loveless v. Yantis*, 82 Wn.2d 754, 759, 513 P.2d 1023, 1026 (1973).  
6

7 Lastly, T-5 Intervenors' Motion is timely as it is filed and served on all parties at least 10  
8 days before the hearing date set for the week of July 23, 2015. The existing parties will not  
9 suffer any prejudice as a result of T-5 Intervenors' intervention.

10 Because "substantial interest" is not defined in HER 3.09(b), the Hearing Examiner may  
11 also look to the Civil Rules of Procedure when evaluating a motion to intervene. HER 1.03.  
12 Intervention as of right under CR 24(a) has been allowed broadly in the land use context. *See*  
13 *Loveless*, 82 Wn.2d at 759. For example, in *Loveless*, the court found that the parties had an  
14 interest in the subject matter of the action, an interest they would be unable to protect if they  
15 were not allowed to intervene. *Id.* Such is also the case here. T-5 Intervenors' distinct interests  
16 in the finality of the validly issued permits and entitlements is what is at stake here. Intervention  
17 under CR 24(a) should be allowed.  
18

### 19 RELIEF REQUESTED

20 T-5 Intervenors meet the intervention criteria set forth in HER 3.09 in this Appeal and  
21 respectfully requests that the Hearing Examiner grant its Motion to Intervene.  
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DATED this 10<sup>th</sup> day of June, 2015.

VERIS LAW GROUP PLLC

By           /s/ Joshua Brower            
Joshua C. Allen Brower, WSBA #25092  
Molly K.D. Barker, WSBA #46587  
Attorneys for T-5 Intervenors

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**DECLARATION OF SERVICE**

I declare under penalty of perjury under the laws of the State of Washington that on this date I caused the foregoing document to be served on the following persons via the methods indicated:

**Foss Maritime Company**  
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McCullough Hill Leary  
[jack@mhseattle.com](mailto:jack@mhseattle.com)

- Overnight Delivery via Fed Ex
- First Class Mail via USPS
- Hand-Delivered via ABC Legal Messenger
- Facsimile
- X E-mail

and

David R. West  
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Dated at Seattle, Washington, this 10<sup>th</sup> day of June, 2015.

/s/ Whitney Jackson  
Whitney Jackson  
Legal Assistant