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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeals of:

FOSS MARITIME COMPANY AND
PORT OF SEATTLE,

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

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

T-5 INTERVENORS’ REPLY IN SUPPORT
OF ITS MOTION TO INTERVENE

The Department of Planning and Development’s (DPD) Opposition To T-5 Intervenors’ Motion To Intervene (“DPD’s Opposition”) is both substantively illogical and procedurally ironic. DPD argues, inconsistently with its own statements and positions, that the T-5 Intervenors—*who work in and represent nearly all facets of Seattle’s maritime/industrial industry*—have no standing to contest the application of DPD’s Interpretation because “none of them [are] located at Terminal 5.”¹ Not only is this factually wrong,² but DPD flagrantly avoids squaring this allegation with the fact that it did not object to intervention by Puget Soundkeeper Alliance, Seattle Audubon Society, Sierra Club, and Washington Environmental Council, none

¹ DPD’s Opposition at p. 1:22-23.

² Union members of the Seafarer’s International Union load and unload cargo at Terminal 5 and thus they have a direct and substantial interest in the outcome of this matter.

1 of whom have direct, working connections to the Port facilities at issue here similar in scope and
2 scale to the T-5 Intervenors, and all of whom only sought intervention to argue issues involving
3 “pollution” based on a mistaken belief that this appeal involves and will somehow affect global
4 climate change issues. DPD cannot reconcile its opposition to intervention by the very people
5 and businesses who rely every day upon the type of permits at issue here while failing to oppose
6 intervention by policy groups focused on national, international and global issues completely
7 unrelated to this appeal. As she did for the policy groups, the Hearing Examiner should grant
8 intervention to the T-5 Intervenors.

9 **I. DPD’s Arguments Are Illogical And Contradictory.**

10 DPD’s arguments are illogical and contradict each other and should be disregarded. DPD
11 first argues that the T-5 Intervenors are not affected by nor interested in this matter because none
12 of them operate at Terminal 5 and instead “operate elsewhere,”³ while simultaneously stating
13 that Foss and the Port adequately represent T-5 Intervenors’ interests.⁴ One need only look at the
14 composition of the T-5 Intervenors’⁵ group to see that DPD is wrong. For example, union
15 members of the Seafarer’s International Union work at Terminal 5 daily loading and unloading
16 cargo and have been and will continue to be impacted by DPD’s “Interpretation.” DPD then
17 argues that the T-5 “Intervenors’ issue [...] is not ‘the matter appealed,’” but then reverses its
18 argument in its following sentence, stating that “both [Foss and the Port] have raised this specific
19 issue in their appeals.”⁶ DPD cannot have it both ways. The Interpretation applies to *all* cargo
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21 ³ DPD’s Opposition at p.4:7.

22 ⁴ DPD’s Opposition at p. 5:13-14.

23 ⁵ The T-5 Intervenors group now also includes the Seafarer’s International Union (“SIU”), Harley Marine Services,
24 Inc. and the Pacific Merchant Shipping Association (“PMSA”), who are added pursuant to the reservation in the T-5
25 Intervenors’ Motion. Following the ruling on this Motion, no additional parties will be added to the T-5 Intervenors
group without the Examiner’s prior permission. The SIU is based in Seattle and has approximately 35,500 members,
many of whom work at Terminal 5. Harley Marine Services, Inc. is a Seattle-based marine transportation company
that operates a fleet of tugs and barges in the Puget Sound region that use and rely on various Port facilities. The
PMSA is a not-for-profit association focused on global maritime trade, representing owners and operators of marine
terminals and U.S. and foreign vessels, many of whom operate in Seattle at Port facilities and throughout the world.

⁶ DPD’s Opposition at p. 5:10-14.

1 terminals in Seattle and thus its reach and import goes beyond Terminal 5 and encompasses the
2 facilities used by the T-5 Intervenors. DPD’s scattered reasoning illustrates how it is bending
3 over backwards to oppose intervention by members of Seattle’s maritime and industrial
4 community after giving a pass to the environmental groups.

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6 **II. T-5 Intervenors Have A Substantial Interest Not Otherwise Represented: T-5
Intervenors Meet The Standard For Intervention.**

7 In its attempt to exclude Seattle’s maritime and industrial interests from this appeal, DPD
8 overstates the legal threshold to obtain intervention. In Washington, “not much of a showing is
9 required, however, to establish an interest. And insufficient interest should not be used as a factor
10 for denying intervention.” *Columbia Gorge Audubon Soc’y v. Klickitat Cnty.*, 98 Wash. App.
11 618, 629, 989 P.2d 1260, 1266 (1999). In fact, the “intervenor need make only a minimal
12 showing that its interests may not be adequately represented.” *Id.*

13 Here, intervention is appropriate because T-5 Intervenors meet all of the requirements
14 mandated by HER 3.09 and granting intervention will not cause any undue delay, expansion of
15 issues or prejudice. First, “the matter appealed” by Foss and the Port relates to the “meaning,
16 application or intent” of certain development regulations in Title 23.⁷ As maritime and industrial
17 businesses, unions and advocacy groups, the T-5 Intervenors are affected by and interested in
18 DPD’s “application” of the provisions in Title 23 to the use and occupation of Port facilities,
19 both at Terminal 5 and throughout the City of Seattle. Individually and collectively, they use and
20 rely upon these facilities every day. Second, T-5 Intervenors interest is substantial because they
21 have entered into contracts and other business relations in reliance upon the permits DPD issued
22 to them or to the parties with whom they work. The question of whether DPD can reinterpret an
23 issued permit under the cloak of Title 23 authority appears to go beyond the plain language and
24 historical application of the City’s land use code. Third, T-5 Intervenors’ interest is not

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⁷ DPD’s Opposition at p. 5:11.

1 otherwise represented because, although the Appellants raised concern over DPD’s *ex-post facto*
2 reinterpretation of a permit in their appeals,⁸ the T-5 Intervenors’ interest embodies the effect
3 that such *ex-post facto* decision making will have on maritime/industrial commerce throughout
4 Seattle, beyond Terminal 5. Moreover, being related to a “specific property”⁹ such as Terminal 5
5 as DPD puts it, while a possible element of certain code interpretations, is not a prerequisite for
6 intervention under HER 3.09. The T-5 Intervenors have a far more substantial interest in this
7 appeal compared to the environmental groups who DPD did not oppose and who have already
8 been granted intervention.

9 Lastly, intervention will not cause undue delay, expand issues beyond those stated in the
10 appeal, nor prejudice any party. T-5 Intervenors have committed to abide by the Hearing
11 Examiner’s case schedule and orders and any testimony it presents at the hearing will be
12 efficiently done with the Appellants and will be germane to the issues they raised.¹⁰ Dovetailing
13 with this point, T-5 Intervenors’ interests do not expand on Appellants’ issues already
14 enumerated in their appeals of DPD’s application of its Interpretation since both focus,
15 inherently, on DPD’s *ex-post facto* reinterpretation of an issued permit. Finally, DPD has
16 neglected to illustrate any prejudice it would suffer if T-5 Intervenors are allowed to participate
17 in this action and instead simply claims that permitting intervention will cause some inchoate
18 delay. Such an unsubstantiated claim is insufficient to overcome Washington’s liberal policy of
19 intervention. As the Court stated in *Columbia Gorge Audubon Soc’y*, “when in doubt,
20 intervention should be granted.” *Id.* at 630.

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24 ⁸ See Foss Amended Notice of Appeal, p. 6:23-27; p. 7:1-5, 13-14, 23-26; p. 8:1-8, 22-27; See also Appeal of Port of
Seattle, p. 5:9-18.

25 ⁹ DPD’s Opposition at p. 4:20.

¹⁰ See Foss Amended Notice of Appeal, p. 6:23-27; p. 7:1-5, 13-14, 23-26; p. 8:1-8, 22-27; See also Appeal of Port
of Seattle, p. 5:9-18.

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III. CONCLUSION

T-5 Intervenors meet the intervention criteria in HER 3.09 and respectfully request the Hearing Examiner grant its Motion to Intervene.

DATED this 22nd day of June, 2015.

VERIS LAW GROUP PLLC

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

1 **DECLARATION OF SERVICE**

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

5 Foss Maritime Company
6 John C. McCullough
7 McCullough Hill Leary
8 jack@mhseattle.com

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

8 David R. West
9 Garvey Shubert Barer
10 DrWest@gsblaw.com

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

11 Port of Seattle
12 Traci Goodwin
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- First Class Mail via USPS
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- First Class Mail via USPS
- Hand-Delivered via ABC Legal Messenger
- Facsimile
- E-mail

25 Dated at Seattle, Washington, this 22nd day of June, 2015.

/s/ Whitney Jackson
Whitney Jackson
Legal Assistant