

**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. A motion to intervene in this matter was filed on June 10, 2015, by 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 ("T-5 Intervenors"). The Department filed a response in opposition to the motion on June 18, 2015. The Appellants, Foss Maritime and the Port of Seattle, filed responses supporting the motion. T-5 Intervenors filed a reply on June 22, 2015. The Hearing Examiner has reviewing the filings and enters the following order.

2. Hearing Examiner Rule 3.09 contains the criteria for intervention. Intervention is not a substitute means of appealing a decision for those who could have appealed but failed to do so. Under HER 3.09(b), a request for intervention must state how the entity making the request is affected by or interested in the matter appealed, and must demonstrate a substantial interest that is not otherwise adequately represented. In determining the merits of the request, the Hearing Examiner shall consider whether the hearing process would be unduly delayed, whether the issues would be expanded beyond those stated in the appeal, or prejudice the rights of the parties. Under HER 3.09(d), intervention can be granted to any substantially interested person for the purpose of preserving the right to appeal.

3. The T-5 Intervenors' motion and reply identify a number of their members' activities, both landward and water-dependent, which take place at Terminal 5 and other terminals in the City. The activities include operation of fishing vessels and barges that call into and dock at facilities, loading and unloading of cargo, vessel fueling and repairs, and other activities. The T-5 Intervenors include three organizations which "advocate for the development and implementation of sound maritime policy and labor and environmental standards;" T-5 Intervenors' Motion at 4. As noted by movants, only a minimal showing is generally required by the courts in determining whether a substantial interest has been demonstrated and whether that interest is adequately represented; *Columbia Gorge Audubon Society v. Klickitat County*, 98 Wn.App. 618, 629, 989 P.2d 1260, 1266 (1999).

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4. The movants have demonstrated that they have a substantial interest in the matter being appealed, in light of their activities at Terminal 5, and their organizational interests in maritime regulation of activities at the Terminal. However, the next question is whether their interest is adequately represented. The T-5 Intervenor's posture in this matter is the same as the Appellants', i.e., they seek reversal of the Director's Interpretation, and HER 3.09(a) provides that intervention cannot be a substitute for appealing a decision by those who could have appealed but did not. The T-5 Intervenor deny that they are attempting to expand the issues on appeal, but assert that their interest is focused on the effects of what they claim to be DPD's "ex-post facto reinterpretation of a permit;" T-5 Reply, page 4. Both appeals claim that DPD's Interpretation unlawfully changes a previously-granted permit or authorization, which goes to the movants' asserted interest. That the T-5 Intervenor are more interested in this claim than other claims raised by the appeals does not change the fact that the claim is being pursued by both Foss Maritime and the Port of Seattle. The T-5 Intervenor's interest is adequately represented in this matter, so they do not meet HER 3.09(b).

5. Under HER 3.09(d), entities who are substantially interested may be allowed to intervene for the purpose of preserving the right to appeal, and under this provision, T-5 Intervenor will be allowed to intervene for the purpose of preserving the right to appeal.

6. The motion to intervene is granted but limited to intervention for the purpose of preserving the right to appeal the Hearing Examiner's decision, and to providing prehearing and any post-hearing written statements.

Entered this 23rd day of June, 2015.



Anne Watanabe
Deputy Hearing Examiner
Office of Hearing Examiner
P.O. Box 94729
Seattle, Washington 98124-4729
(206) 684-0521 FAX: (206) 684-0536

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CITY OF SEATTLE**

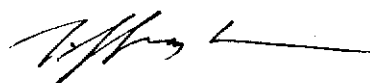
CERTIFICATE OF SERVICE

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 Company and Port of Seattle**, Hearing Examiner Files: **S-15-001 & S-15-002**, in the manner indicated.

Party	Method of Service
<p>Foss Maritime Company c/o John C. McCullough McCullough Hill Leary, P.S. 701 Fifth Avenue, Suite 6600 Seattle, WA 98104 jack@mhseattle.com</p> <p>David R. West Garvey Shubert Barer drwest@gsblaw.com</p> <p>Laura Counley lcounley@mhseattle.com</p> <p>Dominique Barrientes dbarrientes@gsblaw.com</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger</p>
<p>Port of Seattle c/o Traci Goodwin Senior Port Counsel PO Box 1209 Seattle, WA 98111 goodwin.t@portseattle.org</p> <p>Patrick Schneider Foster Pepper schnp@foster.com</p> <p>Adrian Winder winda@foster.com</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger</p>

<p>Brenda Bole boleb@foster.com</p>	
<p>Andy McKim DPD SMT-18-00 Andy.McKim@seattle.gov</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger</p>
<p>Eleanore Baxendale City Attorney's Office 701 Fifth Avenue, Suite 2050 Seattle, WA 98104 Eleanore.Baxendale@seattle.gov</p> <p>Rose Hailey Rose.Hailey@seattle.gov</p> <p>Trudy Jaynes Trudy.Jaynes@seattle.gov</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger</p>
<p>Molly Barker Veris Law Group molly@verislawgroup.com</p> <p>Joshua Brower josh@verislawgroup.com</p> <p>Patti Goldman Earthjustice pgoldman@earthjustice.org</p> <p>Matthew Baca mbaca@earthjustice.org</p> <p>Eudora Powell epowell@earthjustice.org</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger</p>

Dated: June 23, 2015



Tiffany Ku
Legal Assistant