

**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 FOR A PROTECTIVE
ORDER CONCERNING THE DEPOSITION
OF ANDREW MCKIM**

The Director, Department of Planning and Development (DPD) filed a motion for a protective order in the deposition of Andrew McKim, barring questions on "(1) political motivation or opposition to the activity of the oil rig in Alaska; (2) DPD past approvals of activities on other sites; and (3) DPD enforcement or lack of enforcement of activities on other sites;" DPD Motion, page 1. Appellants Foss Maritime and the Port of Seattle filed responses in opposition to the motion.

Under HER 3.11, appropriate prehearing discovery is permitted. The Hearing Examiner may limit or prohibit discovery if the Examiner determines it to be unduly burdensome, harassing, or unnecessary under the circumstances of the appeal. Under HER 1.03, the Hearing Examiner may look to the Superior Court Civil Rules for guidance. CR 26 provides that "*Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action,*" and that it is not ground for objection "*that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.*"

DPD's motion argues that the three areas identified in its motion would not lead to the discovery of admissible evidence. Foss and the Port raise numerous arguments in opposition to the motion.

As to the subject area of "political motivation or opposition" Appellants argue that they seek evidence to show that DPD's Interpretation was arbitrary and capricious, an issue raised in the appeals. By separate order, the Hearing Examiner has granted in part DPD's Motion to Dismiss and rejected Appellants' claims that the "arbitrary and capricious" standard, as opposed to the "clearly erroneous" standard would apply to this appeal, or that the deference to be granted DPD's decision may vary depending on facts, including alleged biased or arbitrary behavior by DPD. Because evidence of political motivations or bias by DPD is not reasonably calculated to lead to the discovery of admissible evidence in this appeal, the discovery is not warranted under CR 26, and would be unnecessary. The motion is granted as to subject area 1 noted above.

As to subject areas 2 and 3 above, the information sought is reasonably calculated to lead to the discovery of admissible evidence regarding the issues that remain in these appeals, and no

privilege has been demonstrated. Therefore, the motion is denied as to the topics of DPD past approvals of activities on other sites and DPD enforcement or lack of enforcement of activities on other sites.

Entered this 6th day of July, 2015.



Anne Watanabe, Deputy Hearing Examiner
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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 for a Protective Order Concerning the Deposition of Andrew McKim** 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 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
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| <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</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: July 6, 2015



Tiffany Ku
Legal Assistant