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BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the Matter of the Appeal of: ) Hearing Examiner File:  
 ) **S-15-001 and S-15-002**  
 )  
**FOSS MARITIME COMPANY** ) DEPARTMENT OF PLANNING AND  
 ) DEVELOPMENT'S RESPONSE ON  
 ) FOSS'S MOTION FOR CONTINUANCE  
from an interpretation by the Director, ) OF HEARING DATE  
Department of Planning and Development. )  
 )

**I. RELIEF REQUESTED**

Respondent DPD requests this matter be continued to the week of August 24 or August 31, rather than August 13 and 14. As noted in Foss's motion, DPD advised counsel that DPD planner Ben Perkowski is not available on those dates; he is in New York. Foss's proposal that Mr. Perkowski's testimony be by deposition is not acceptable to the DPD.

**II. FACTS AND ARGUMENT**

DPD moved to quash this deposition, and the Hearing Examiner on July 6, 2015, denied that motion, finding it was reasonably calculated to lead to information that could be relevant to the remaining issues at the hearing. Also on July 6, in the Order on DPD's Motion to Dismiss the Hearing Examiner stated that evidence "concerning past activities deemed by the City to be a cargo terminal use may be offered at the hearing for this purpose." (Order, page 2, paragraph 8.)

1           DPD believes that Mr. Perkowski's testimony will show that he considered restoring a  
2 bollard to its former size as being consistent with the established cargo terminal use, not that he  
3 considered mooring an oil rig at Terminal 5 to be consistent with a cargo terminal use. Clearly,  
4 the Hearing Examiner will need to determine the scope of Mr. Perkowski's permit decision  
5 based on his testimony. Part of that determination is his credibility, which is best determined  
6 based on live testimony, rather than transcript of deposition testimony. Having Mr. Perkowski  
7 present will also allow the Hearing Examiner to rule on evidentiary matters that arise, to have his  
8 testimony presented in the context of other testimony at the hearing, and if necessary to seek  
9 clarification of Mr. Perkowski's testimony.

10           Counsel for Foss has stated his clients prefer to have the matter heard at the earlier date; a  
11 delay of 11 days is not an unreasonable delay, and will allow the Hearing Examiner to hear this  
12 witness live.

### 13   **III.    CONCLUSION**

14           DPD respectfully requests that Foss's Motion for Continuance be granted for a  
15 continuance to the week of August 24 or 31.

16           DATED this 7<sup>th</sup> day of July, 2015.

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   Department of Planning and Development

1 **CERTIFICATE OF SERVICE**

2 I certify that on this date, I electronically filed a copy of the **Department of Planning and**  
3 **Development's Response on Foss's Motion for Continuance of Hearing Date** with the Seattle  
4 Hearing Examiner using its e-filing system.

5 I also certify that on this date, a copy of the same document was sent to the following  
6 parties listed below in the manner indicated:

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the foregoing being the last known address of the above-named parties.

Dated this 7<sup>th</sup> day of July, 2015, at Seattle, Washington.

12   
13 ROSIE LEE HAILEY