

**PORT OF SEATTLE**  
**MEMORANDUM**

**COMMISSION AGENDA**  
**ACTION ITEM**

**Item No.** 6a  
**Date of Meeting** May 12, 2015

**DATE:** May 11, 2015  
**TO:** Port of Seattle Commission  
Ted Fick, Chief Executive Officer  
**FROM:** Mike Merritt, Interim Chief of Staff  
**SUBJECT:** Notifying Foss Maritime of City of Seattle Interpretation for Interim Use of Terminal 5

**ACTION REQUESTED**

Request the CEO to advise Foss Maritime Company that the City of Seattle has determined the proposed moorage of the Royal Dutch Shell exploratory drilling rig and two accompanying tugboats are not a permitted use at Port cargo terminals.

**BACKGROUND**

**“Big Ship Ready”**

Terminal 5 had been vacant since July 2014 with the termination of the lease agreement between the Port and Eagle Marine Services, Ltd, as the Port pursues the modernization and upgrade of the terminal. Including Terminal 5, efforts to make Port facilities “Big Ship Ready” include new larger cranes, strengthening of the pier, berth dredging and other improvements.

**Interim Usage**

The Port of Seattle has entered into a lease with Foss Maritime for the use of approximately 50 acres at Terminal 5. Foss Maritime Company, with Royal Dutch Shell as its customer, secured the property as a short-term berth for vessels used in oil and gas exploration in Alaska.

Foss Maritime’s intended use of the leased area at T-5 is to receive, inventory, and stage equipment and supplies that would be loaded to a fleet of vessels, including exploration drill rigs, ice-breakers, provisioning vessels, environmental response vessels, tugs and barges for seasonal operations in Alaska. The fleet of vessels would depart for Alaska in June and would likely return to Seattle around October, staying through May. The project began March of 2015 with a two year lease agreement, signed on February 9, 2015.

On March 2, 2015, a coalition of conservation organizations filed a lawsuit against the Port of Seattle and the Port Commissioners, challenging the Port’s entry into the lease with Foss Maritime. That lawsuit is expected to come to trial in 2016 and scheduled for a dispositive motion on July 31, 2015.

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On March 24, the Commission unanimously adopted a motion to require explicit Commission approval for any extension of time for the Foss Maritime Lease, changes in the lease area, or other modifications of the lease.

### **City of Seattle Land Use Interpretation**

On March 9, 2015, the City of Seattle announced that the Department of Planning and Development would review, investigate and determine whether the Terminal 5 interim use would be allowed under the terminal's Shoreline Substantial Development Permit. Upon the early March announcement of additional review by the city, the Port promptly responded to city requests for information about the T-5 project only days later, on March 13.

Following a subsequent exchange of information, on May 7, 2015, DPD formally issued an interpretation that concluded the proposed moorage of oil-exploration vessels and related activity is not consistent with the city's cargo-use definition and that an additional permit is necessary.

Subsequently, DPD clarified that – under SMC 23.88.020 – land use code interpretations are site specific. Thus, DPD Interpretation #15-001 cannot be directly applied to activities occurring at other Port facilities. Seattle Mayor Ed Murray, in a letter to the Port Commission on May 8, 2015, reiterated that the DPD Interpretation applied to the specific Terminal 5 use for oil-exploration activities alone. The Mayor offered to consider revisions in city regulations if they do not reflect historic, current or future uses at cargo terminals. Such changes in city regulations, however, could not be accomplished within the current schedule for the arrival of the Shell oil-exploration vessels.

Analysis by Port staff concludes unless a vessel meets with the City's interpretation of a "cargo vessel," it could not lay berth at Port cargo terminals. Since the Interpretation does not construe the Shell drilling rigs or support tugs to be "cargo vessels," these particular Shell vessels would not satisfy City code requirements for mooring at Terminal 5.

Regardless of the city's follow-up communication, unless the interpretation is further clarified, the Interpretation could be used in the future, by either the City or by business competitors of the Port's tenants and licensees, to challenge future moorage by these types of vessels. The conclusion to the Interpretation states that an "additional use permit" is required, but the Interpretation does not identify what that permit might be.

If the conclusion instead means that the Port must obtain shoreline conditional use permits before the Port can allow moorage of non-cargo vessels (as defined in the Interpretation), this permitting process also would likely take at least a year or more. It is also possible that the permit conditions required for a shoreline conditional use permit or a special use permit might be too onerous, or expensive to satisfy.

On May 8, 2015, Foss Maritime announced the company's intention to appeal the DPD Interpretation, citing impacts on Foss Maritime activities as well as potential conflicts with common maritime operational practices throughout the city.

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### **Summary of Proposed Motion for Commission Consideration**

The Port Commission directs the Port of Seattle Chief Executive Officer to notify Foss Maritime Company that, according to a zoning code interpretation issued by the Director of the Department of Planning and Development of the City of Seattle, the proposed moorage of the Royal Dutch Shell exploratory drilling rig and two accompanying tugboats at Terminal 5 is not consistent with the legally established use of Terminal 5 as a cargo terminal under applicable zoning laws, and that, if and when this code interpretation is deemed a final decision by the City of Seattle, should such moorage occur, the Port of Seattle would consider its options under the lease including the right to declare a default by Foss Maritime Company under Term Lease Agreement No. 002652

### **ATTACHMENTS TO THIS REQUEST**

- City of Seattle DPD Land Use Interpretation issued May 2, 2015
- March 24, 2015 Port of Seattle Commission motion regarding Seaport Accountability
- May 8, 2015 letter from Diane Sugimura, DPD Director regarding T-5 interpretation
- May 8, 2015, letter from Mayor Ed Murray to the Port Commission
- May 8, 2015, statement from Foss Maritime concerning appeal of DPD interpretation
- Proposed motion of the Port of Seattle Commission regarding Foss Maritime Interim Lease at Terminal 5

### **PREVIOUS COMMISSION ACTIONS OR BRIEFINGS**

- July 22, 2014, Lease termination agreement authorization for Terminal 5
- May 13, 2014, Terminal 5 Facility Modernization Briefing
- January 13, 2015, Interim uses of Terminal 5 Briefing
- March 24, 2015, Adoption of Port of Seattle Commission motion regarding Seaport Accountability