

**MOTION  
OF THE PORT OF SEATTLE COMMISSION REGARDING FOSS  
MARITIME INTERIM LEASE AT TERMINAL 5**

**ADOPTED ON MAY 12, 2015**

**TEXT OF MOTION**

The Port Commission hereby directs the Chief Executive Officer to notify the 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. This interpretation was formally issued on May 7, 2015.

In light of the City's Interpretation, the Port requests that Foss Maritime inform Royal Dutch Shell that its moorage of the oil exploration vessel and tugs, and any other activities deemed by the City to be inconsistent with the legally established cargo terminal use at Terminal 5 should be delayed pending further legal review of the City's Interpretation. If, and when, this code interpretation is deemed a final decision by the City of Seattle, should such moorage occur, the Port of Seattle will consider all of its options under the lease including a default by Foss Maritime Company under Term Lease Agreement No. 002652.

**STATEMENT IN SUPPORT OF THE MOTION**

On February 9, 2015 the Port of Seattle entered into Term Lease Agreement No. 002652 (Lease) with Foss Maritime Company (Foss Maritime), granting Foss Maritime leasehold rights to a portion of Terminal 5. Section 5.1 (Use of Premises) of the Lease establishes the agreed use:

*“Lessee shall use the Premises for a cargo terminal which means a transportation facility in which quantities of goods or container cargo are stored without undergoing any manufacturing process, transferred to other carriers or stored outdoors in order to transfer them to other locations. Cargo terminals may include accessory warehouses, railroad yards, storage yards, and offices. Lessee shall not use the Premises for any other purpose without the written consent of the Port.”*

Section 5.1 of the Lease limits Foss Maritime's use of the leased portion of Terminal 5 for cargo terminal purposes as defined in the Lease and by the Seattle Municipal Code, and Sections 5.2 and 5.3 of the Lease further require Foss Maritime to comply with all “Legal Requirements” defined in the Lease, which definition expressly includes all local zoning requirements.

On March 24, 2015, the Port of Seattle Commission (the Port Commission) by unanimous motion (Motion Regarding Seaport Accountability) reserved to the Port Commission key

decisions concerning the Lease. The Port Commission reserved all decisions about any amendments to the Lease and any decisions about certain elements of the Lease.

Among the elements of the Lease reserved to the Port Commission in the Motion Regarding Seaport Accountability was the right to elect remedies in case of a Tenant default under the Lease (Section 14.2). A Tenant default occurs when, among other things, the Tenant fails to observe or perform any covenant, condition, or agreement to be observed or performed by the Tenant under the Lease (Section 14.1.3).

On May 7, 2015, the City of Seattle issued an Interpretation from the Director of the Department of Planning and Development (DPD) Interpretation 15-001 (the Interpretation) concluding that the proposed moorage of the Royal Dutch Shell exploratory drilling rig and two accompanying tug boats is not consistent with the legally established use of Terminal 5 as a cargo terminal. On May 8, 2015, Foss Maritime announced its intentions to formally appeal the Interpretation.