

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

|  |   |                      |
|--|---|----------------------|
| PUGET SOUNDKEEPER ALLIANCE, a<br>Washington corporation, et al.,     | ) | NO. 15-2-05143-1 SEA |
|  | ) |                      |
| Plaintiffs,  | ) | NOTICE OF APPEAL TO  |
|  | ) | WASHINGTON COURT OF  |
|  | ) | APPEALS, DIVISION I  |
| vs.  | ) |                      |
|  | ) |                      |
| PORT OF SEATTLE, a special purpose municipal<br>corporation, et al., | ) |                      |
|  | ) |                      |
| Defendants,  | ) |                      |
|  | ) |                      |
| and  | ) |                      |
|  | ) |                      |
| FOSS MARITIME COMPANY, a Washington<br>corporation,                  | ) |                      |
|  | ) |                      |
| Joined Party-Defendant.  | ) |                      |
|  | ) |                      |

INTRODUCTION

1. Pursuant to RAPs 2-6, Puget Soundkeeper Alliance, Sierra Club, Washington Environmental Council, and Seattle Audubon Society (collectively “Soundkeeper”) appeal the Order Granting Port of Seattle’s Motion for Summary Judgment and Denying Plaintiffs’ Motion for Summary Judgment of July 31, 2015.

1            2.        This appeal challenges the Port of Seattle’s entry into a lease with Foss Maritime  
2 Company to locate Royal Dutch Shell’s Arctic drilling fleet’s vessel supply base and homeport at  
3 Terminal 5 of the Port of Seattle. The Port entered into the lease without complying with the  
4 State Environmental Policy Act (“SEPA”) by invoking a categorical exemption to SEPA that  
5 applies to leases of real property only when the use will remain “essentially the same as the prior  
6 use.” Terminal 5 previously housed a container terminal, and the new use is off-season moorage  
7 and a vessel supply base for Shell’s Arctic drilling fleet, a substantively different use with  
8 distinct environmental impacts. The Port’s mischaracterization of the Shell homeport use and  
9 erroneous invocation of the SEPA exemption were arbitrary, capricious, and illegal.

10            3.        Soundkeeper challenged that decision by seeking a constitutional writ of review  
11 in King County Superior Court. The Court granted Soundkeeper’s motion for a constitutional  
12 writ on March 20, 2015, finding that Shell’s activities at Terminal 5 “appear to be qualitatively  
13 different than Eagle Marine Services’ previous use of Terminal 5 as a marine container  
14 terminal.” Order Granting Writ of Review at 4. However, on July 31, 2015, the Court granted  
15 the Port of Seattle’s motion for summary judgment and denied Soundkeeper’s motion for  
16 summary judgment. Soundkeeper now appeals that decision.

#### NAMES AND ADDRESSES OF APPELLANTS

18            4.        The names and mailing addresses of the Appellants are as follows:

19            Puget Soundkeeper Alliance  
20            130 Nickerson St.  
21            Seattle, WA 98109

22            Seattle Audubon Society  
23            8050 35th Avenue NE  
24            Seattle, WA 98115

1 Sierra Club  
2 85 Second Street, Second Floor,  
3 San Francisco, CA 94105

4 Washington Environmental Council  
5 1402 Third Avenue, Suite 1400,  
6 Seattle, WA 98101

7 NAMES AND ADDRESS OF COUNSEL FOR APPELLANTS

8 5. Appellants are represented by:

9 Patti Goldman, WSBA No. 24426  
10 Matthew Baca, WSBA No. 45676  
11 Earthjustice  
12 705 Second Avenue, Suite 203  
13 Seattle, WA 98104-1711

14 NAMES AND ADDRESSES OF THE APPELLEES

15 6. The names and addresses of the Appellees are:

16 Port of Seattle  
17 2711 Alaskan Way  
18 Seattle, WA 98121

19 Foss Maritime Company  
20 1151 Fairview Avenue N.  
21 Seattle, WA 98109

22 NAMES AND ADDRESS OF COUNSEL FOR APPELLEES

23 7. Appellee Port of Seattle is represented by:

24 Patrick J. Schneider, WSBA No. 11957  
25 Richard L. Settle, WSBA No. 3075  
26 Adrian Urquhart Winder, WSBA No. 38071  
W. Adam Coady, WSBA No. 44165  
FOSTER PEPPER PLLC  
1111 Third Ave., Suite 3400  
Seattle, WA 98101-3299

Traci Goodwin, WSBA No. 14974  
PORT OF SEATTLE  
2711 Alaskan Way  
Seattle, WA 98121-1107

1 8. Appellee Foss Maritime Company is represented by:

2 David R. West, WSBA No. 13680  
3 Donald B. Scaramastra, WSBA No. 21416  
4 Daniel Vecchio, WSBA No. 44632  
5 GARVEY SCHUBERT BARER  
6 1191 - 2nd Ave., Suite 2800  
7 Seattle, WA 98101-3438

8 John C. McCullough, WSBA No. 12740  
9 Courtney E. Kaylor, WSBA No. 27519  
10 Katie Kendall, WSBA No. 48164  
11 MCCULLOUGH HILL LEARY, PS  
12 701 – 5th Avenue, Suite 6600  
13 Seattle, WA 98104

14 IDENTIFICATION OF DECISION AT ISSUE

15 9. Appellants seek review of King County Superior Court’s Order Granting Port of  
16 Seattle’s Motion for Summary Judgment and Denying Plaintiffs’ Motion for Summary Judgment  
17 of July 31, 2015, in King County Superior Court Cause No. 15-2-05143-1 SEA. The Order is  
18 attached as Exhibit A.

19 JURISDICTION AND VENUE

20 10. The Washington Court of Appeals has jurisdiction over this matter pursuant to  
21 RAP 2.2(a)(1). Venue is proper in Division I of the Washington Court of Appeals.

22 REQUEST FOR RELIEF

23 Appellants are entitled to and respectfully request the following relief:

24 1. An order declaring that the Superior Court erred in deferring to the Port’s  
25 interpretation of the City of Seattle’s Shoreline Master Program in deciding whether the lease is  
26 categorically exempt as essentially the same as the prior use when it is the City that is owed  
deference in construing its SMP, not the Port, and the SEPA categorical exemption should be  
construed in the context of SEPA and its purposes, not the Shoreline Management Act;



# **EXHIBIT A**

The Honorable Douglass A. North  
Hearing: July 31, 2015, at 1:30 p.m.  
*With Oral Argument*

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

PUGET SOUNDKEEPER ALLIANCE, a  
Washington corporation; SIERRA CLUB, a  
California corporation; and WASHINGTON  
ENVIRONMENTAL COUNCIL, a  
Washington corporation; and SEATTLE  
AUDUBON SOCIETY, a Washington  
corporation,

Plaintiffs,

v.

PORT OF SEATTLE, a special purpose  
municipal corporation; TOM ALBRO, in his  
official capacity as a Port of Seattle  
Commissioner; STEPHANIE BOWMAN, in  
her official capacity as a Port of Seattle  
Commissioner; BILL BRYANT, in his official  
capacity as a Port of Seattle Commissioner;  
JOHN CREIGHTON in his official capacity as  
a Port of Seattle Commissioner; and  
COURTNEY GREGOIRE in her official  
capacity as a Port of Seattle Commissioner;

Defendants,

and

FOSS MARITIME COMPANY, a Washington  
corporation,

Joined Party-Defendant.

No. 15-2-05143-1 SEA

ORDER GRANTING PORT OF  
SEATTLE'S MOTION FOR SUMMARY  
JUDGMENT AND DENYING  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT

ORDER GRANTING PORT OF SEATTLE'S MOTION FOR  
SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT - 1

FOSTER PEPPER PLLC  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
PHONE (206) 447-4400 FAX (206) 447-9700

1           THIS MATTER came before the Court on the Port of Seattle's Motion for Summary  
2 Judgment and the Plaintiffs' Motion for Summary Judgment. The Court has considered all of the  
3 records and files herein, including the following:

- 4           1.     Port of Seattle's Motion for Summary Judgment;
- 5           2.     Foss Maritime Company's Joinder in Port of Seattle's Motion for Summary  
6 Judgment;
- 7           3.     Plaintiffs' Opposition to Port of Seattle's Motion for Summary Judgment and  
8 Foss Maritime Company's Joinder in that Motion;
- 9           4.     Port of Seattle's Reply to Plaintiffs' Response to Motion for Summary Judgment;
- 10          5.     Foss Maritime Company's Joinder in Port of Seattle's Reply to Plaintiffs'  
11 Response to Motion for Summary Judgment;
- 12          6.     Plaintiffs' Motion for Summary Judgment and Supporting Memorandum of  
13 Authorities;
- 14          7.     Declaration of Paul Fredrickson;
- 15          8.     Declaration of Elinor Vivian ("Vicky") Gannon;
- 16          9.     Declaration of Jerry Joyce;
- 17          10.    Declaration of Susan North;
- 18          11.    Declaration of Mark Powell;
- 19          12.    Declaration of Chris Wilke;
- 20          13.    Port of Seattle's Response to Plaintiffs' Motion for Summary Judgment and Port  
21 of Seattle's Motion to Strike;
- 22          14.    Foss Maritime Company's Response to Plaintiffs' Motion for Summary  
23 Judgment;
- 24          15.    Plaintiffs' Reply in Support of Plaintiffs' Motion for Summary Judgment;
- 25          16.    Plaintiffs' Opposition to Port of Seattle's Motion to Strike and Foss Maritime  
26 Company's Joinder in that Motion;



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

- 17. Port of Seattle's Reply in Support of its Motion to Strike;
- 18. The Port of Seattle's Record for Constitutional Writ of Certiorari;
- 19. The documents attached to the Declaration of Mathew R. Baca that accompanied Plaintiffs' Motion to Complete the Record;
- 20. The documents attached to the Second Declaration of Mathew R. Baca that accompanied Plaintiffs' Reply in Support of the Motion to Complete the Record;
- 21. and
- 22. \_\_\_\_\_.

The Court is fully advised in the premises and now,

**HEREBY ORDERS** that the Port of Seattle's Motion for Summary Judgment as to Plaintiffs' appeal by constitutional writ of certiorari is **GRANTED**, and the Plaintiffs' Motion for Summary Judgment is **DENIED**. The Port acted within its jurisdiction and authority as SEPA lead agency, and the Port's actions were not arbitrary and capricious. All issues raised by Plaintiffs' appeal by constitutional writ of certiorari are hereby **DISMISSED WITH PREJUDICE**.

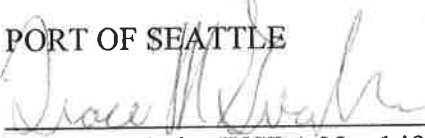
The Court **FURTHER ORDERS** that the Port of Seattle's Motion to Strike the Declarations of Paul Fredrickson, Elinor Vivian ("Vicky") Gannon, Jerry Joyce, Susan North, Mark Powell, and Chris Wilke filed in support of Plaintiffs' Motion for Summary Judgment is **DENIED**.

DATED this 31st day of July, 2015.

Douglass A. North  
The Honorable Douglass A. North  
Superior Court Judge

1 **Presented by:**

2 PORT OF SEATTLE

3   
\_\_\_\_\_

4 Traci Goodwin, WSBA No. 14974  
5 Senior Port Counsel  
6 Email: goodwin.t@portseattle.org

6 FOSTER PEPPER PLLC

7   
\_\_\_\_\_

8 Richard L. Settle, WSBA No. 3075  
9 Patrick J. Schneider, WSBA No. 11957  
10 Adrian Urquhart Winder, WSBA No. 38071  
11 Email: settr@foster.com; schnp@foster.com;  
12 winda@foster.com

11 *Attorneys for Defendants Port of Seattle,*  
12 *Tom Albro, Stephanie Bowman, Bill Bryant, John*  
13 *Creighton, and Courtney Gregoire*

14 **Copy received:**

15 EARTHJUSTICE

16   
\_\_\_\_\_

17 Patti A. Goldman, WSBA No. 24426  
18 Matthew R. Baca, WSBA No. 45676  
19 *Attorneys for Plaintiffs*

19 GARVEY SCHUBERT BARER

20   
\_\_\_\_\_

21 David R. West, WSBA No. 13680  
22 Daniel Vecchio, WSBA No. 44632  
23 *Attorneys for Defendant Foss Maritime Company*

23 MCCULLOUGH HILL LEARY, P.S.

24   
\_\_\_\_\_

25 John C. McCullough, WSBA No. 12740  
26 *Attorneys for Defendant Foss Maritime Company*