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ENVIRONMENTAL
POLLUTION CONTROL HEARINGS BOARD HEARINGS OFFICE
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,)	
)	No. 01-160
Appellant,)	
)	DECLARATION OF THOMAS R.
v.)	LUSTER
)	
STATE OF WASHINGTON,)	
DEPARTMENT OF ECOLOGY; and)	
THE PORT OF SEATTLE,)	
)	
Respondents.)	
_____)	

Thomas R. Luster declares under penalty of perjury as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts stated herein. I have been made aware of a Motion in Limine filed by Ecology requesting that portions of my pre-filed testimony be struck from this appeal. I understand that the basis of this request is Ecology's contention that I am inappropriately serving as an expert witness. I am providing this declaration to the Board in response to that motion.

2. My understanding is that my involvement in this appeal has been not to necessarily advocate for any one party, but to provide the Board with the benefit of my experience at Ecology with water quality certifications in general and with this proposed project

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DECLARATION OF THOMAS R. LUSTER - 1

AR 003146

specifically. I do not have a contractual arrangement with any party in this appeal agreeing to serve as an expert witness, and I am not being paid for my time. I am, however, being reimbursed for some of my expenses in this matter – the Port of Seattle has agreed to reimburse me for travel expenses associated with my deposition; the Washington Public Employees for Environmental Responsibility (PEER) agreed to pay a portion of my attorney fees associated with my deposition; and the ACC has agreed to reimburse me only for travel expenses associated with the upcoming hearing.

3. In addition, I have not been involved in helping develop the ACC's strategies in this appeal. In fact, last August when the ACC first asked me to provide my declarations, I informed them that some of my testimony may not be in line with arguments they wished to put forward, and that my main focus would be whether Ecology's review and certification complied with the applicable provisions of the Clean Water Act and state water quality standards. I also informed them that I might decline to offer testimony on various parts of Ecology's review, or that I may find that portions of Ecology's review or certification met the applicable provisions.

4. Additionally, before I made the decision to provide sworn testimony to the Board, I took steps to ensure my involvement was permitted consistent with provisions of state law. I informed Ecology management and counsel that I intended to provide such testimony and asked that they let me know if they had any concerns, but I did not hear back from them. I also researched the applicable provisions of state ethics law on the Ethics Board's web site, and spoke with the Executive Director of the Ethics Board, Mr. Brian Malarky, regarding my potential

involvement in this appeal. We generally discussed my understanding of the appeal and my role in it, and his opinion was that my involvement did not seem to raise any issues.

5. I also note that the WAC 371-08-475(7) cited in Ecology's Motion refers to "...an active part in the investigation as a representative of the department..." As noted previously in several declarations in this appeal, I was reassigned from the proposed project review in mid-October 2000 and therefore did not serve as the department's representative in reviewing the Port's request for water quality certification from the time it was sent out on public notice in late December 2000 until I left the department in late January 2001.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 5th day of March, 2002, at San Francisco, California.

Thomas R. Luster
Thomas R. Luster

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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION)
And CITIZENS AGAINST SEA-TAC)
EXPANSION,)

No. 01-160

CERTIFICATE OF SERVICE

Appellant,)

v.)

STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY; and)
THE PORT OF SEATTLE,)

Respondents.)

I, Michelle Isaacson, an employee of Helsell Fetterman LLP, attorneys for the Airport
Communities Coalition, certify that:

I am now, and at all times herein mentioned was, a resident of the State of Washington, and
over the age of eighteen years.

On March 7, 2002, I caused to be hand-delivered ACC's and CASE's Opposition By
ACC and CASE to Department of Ecology's Motion in Limine Re WAC 371-08-475(7),
Declaration of Peter J. Eglick in Support of Opposition by ACC and CASE to Department of
Ecology's Motion in Limine Re WAC 371-08-475(7); and the Declaration of Thomas Luster, to:

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CERTIFICATE OF SERVICE - 1

AR 003149

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10 I certify under penalty of perjury under the laws of the State of Washington that the
11 foregoing is true and correct.

12 DATED this 7th day of March, 2002, at Seattle, Washington.

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14 Michelle Isaacson
15 Michelle Isaacson

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CERTIFICATE OF SERVICE - 2

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AR 003150