

BEFORE THE SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

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2 STATE OF WASHINGTON, )  
3 DEPARTMENT OF ECOLOGY, )  
4 Appellant, ) SHB No. 01-023, 01-024, 01-025 & 01-026  
5 FRIENDS OF GRAYS HARBOR and ) PRE-HEARING ORDER  
6 WILDLIFE FOREVER OF GRAYS )  
7 HARBOR, )  
8 Intervenor, )  
9 v. )  
10 PORT OF GRAYS HARBOR, MOX )  
11 CHEHALIS, LLC, AND THE CITY OF )  
12 WESTPORT, )  
13 Respondents. )

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13 On September 4, 21 and 24, 2001, four separate appeals were filed with the Shoreline  
14 Hearings Board (“Board”) requesting a review of different aspects of a proposed destination  
15 resort in the City of Westport (Westport). The project proponent is Mox Chehalis LLC. Some  
16 of the appeals challenge the Shoreline Substantial Development Permit issued by Westport.  
17 Some of the appeals challenge the denial of the Conditional Use Permit by the Department of  
18 Ecology (Ecology). These appeals were filed by Ecology, Westport, Mox Chehalis and the Port  
19 of Grays Harbor (Port). On October 9, 2001, the Board consolidated these four appeals. On  
20 December 4, 2001, the Board granted Intervention status to Friends of Grays Harbor and  
21 Wildlife Forever of Grays Harbor (collectively referred to as Intervenors).

1 A pre-hearing conference was held on January 24, 2002. Kaleen Cottingham presided for  
2 the Shoreline Hearings Board.

3 Appearances for the parties were as follows:

- 4 1. Charles B. Roe, Jr. and Barnett Kalikow, representing Mox Chehalis LLC;
- 5 2. Jeffrey S. Myers, representing Westport;
- 6 3. Art Blauvelt, representing the Port;
- 7 4. Andrew Fitz, representing Ecology; and
- 8 5. Knoll Lowney, representing the Intervenors.

9 Based on the conference, the following pre-hearing order is entered:

10 **I. HEARING**

11 At the request of the parties, the original hearing date has been cancelled to allow the  
12 parties to pursue settlement discussions, in particular to gain acceptance for a proposed  
13 settlement agreed to by some but not all of the parties. This proposed settlement shall be  
14 provided to all the parties no later than **February 8, 2002**. Should settlement not be achieved,  
15 the Board, in its de novo review capacity, shall evaluate the proposed project as modified by the  
16 project proponents in its attempt to reach settlement.

17 The new hearing has been set for a primary date and an earlier secondary date. Unless a  
18 settlement is reached, parties shall be prepared to go to hearing without further notice on the  
19 secondary date. Availability of the secondary date is dependent on another case settling or being  
20 continued prior to that date. The Board's hearing coordinator, Judy Greear, will attempt to call  
21 all parties, at the earliest possible date but not later than the last business day prior, regarding the  
availability of the secondary date.

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1 The hearing is scheduled (secondary setting) for **May 22, 23, and 24, 2002**. The primary  
2 setting is **July 24, 25 and 25, 2002**. The hearing will be held at a location to be determined in  
3 Westport. The hearing will commence at 9:30 a.m. on each day. On the first day of the hearing,  
4 a site visit will be arranged.

5 A tentative date for oral argument on dispositive motions has been set for **April 24, 2002**,  
6 commencing at 1:30 p.m. in the Board's Office in Lacey. This hearing date will be confirmed by  
7 the Board after receiving the written briefing materials as set forth below.

## 8 **II. MEDIATION**

9 Parties are encouraged to engage in mediation or settlement discussions with each other  
10 at any time without the presence of the presiding officer of the Board or with his or her presence  
11 if all parties and the presiding officer agree.

12 The parties have agreed to a structured approach to settlement discussions. The parties  
13 have requested the assignment of one of the Board's Administrative Appeals Judges to help  
14 mediate settlement discussions between the parties. Deborah Mull has been assigned as the  
15 mediator and will be in contact with the parties regarding scheduling of meetings consistent with  
16 the following schedule: Settlement discussions will commence on **February 28, 2002** and  
17 conclude no later than **March 29, 2002**. Settlement discussions will attempt to reach closure by  
18 March 15<sup>th</sup>. If settlement is not reached by March 15<sup>th</sup>, but it appears that settlement might be  
19 reached with a little more effort, the parties may continue settlement discussions through March  
20 29, 2002.

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1 The parties, through Mox Chehalis' attorney, shall file a joint settlement status report on  
2 **March 15, 2002**, setting forth settlement possibilities in the case and whether such discussions  
3 will be continuing beyond March 15, 2002. If the settlement status report concludes the  
4 discussion will continue, a final joint settlement status report shall be filed on or before **March**  
5 **29, 2002**, indicating whether settlement has been reached and, if it has, when a signed settlement  
6 document can be expected.

7 **III. LEGAL ISSUES**

8 The parties have agreed to a structured process for delineating the issues to be addressed  
9 by the Board. By **January 29, 2002**, the Intervenors shall submit to the other parties a  
10 preliminary statement of the legal issues. The parties shall attempt to reach agreement on the list  
11 of issues. If agreement is reached, the parties shall jointly file and serve a stipulated list of issues  
12 on or before **April 5, 2002**. If agreement on the statement of the issues appears unlikely to be  
13 reached by **April 5, 2002**, the parties shall independently submit lists of issues to the Board.

14 **IV. WITNESSES**

15 Preliminary lists of witnesses shall be served on the parties and filed with the Board by  
16 **April 5, 2002**. Final lists of witnesses shall be served on the parties and filed with the Board by  
17 **May 1, 2002**. Telefax is allowed, provided that the original is mailed the same day. Any  
18 witness listed herein or in final lists may be called by any party. The party calling a witness has  
19 the responsibility to ensure his or her attendance at the hearing.

20 A witness' expertise shall be established by résumé offered as an exhibit.  
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1 **V. PRELIMINARY EXHIBITS**

2 Preliminary exhibit lists shall be served on the parties and filed with the Board by **April**  
3 **5, 2002**. Final exhibit lists shall be served on the parties and filed with the Board by **May 1,**  
4 **2002**. Telefax is allowed, provided that the original is mailed the same day. The parties shall  
5 exchange exhibits by **May 8, 2002**. The parties are directed to meet either in person or by phone  
6 prior to filing the final exhibit list for the purpose of attempting to stipulate in advance of hearing  
7 to exhibits' authenticity and admissibility and to remove any duplicative exhibits. Parties are  
8 encouraged to offer only those exhibits, or portions they intend to rely upon in their case. Even  
9 though the parties may stipulate to the admissibility of exhibits, the exhibits generally should be  
10 offered through a witness at the hearing.

11 When meeting with the presiding officer on the first hearing day, each party shall have  
12 available for the Board an original and six (6) copies of its exhibits and exhibit lists which shall  
13 identify those admissible by stipulation of the parties. An original or one copy of any exhibit  
14 which cannot be conveniently copied due to size, bulk, reproduction difficulty, etc., must be  
15 available for the Board at the hearing.

16 Each exhibit shall be pre-marked and organized by tab for identification (A-1, A-2, etc.,  
17 for appellant and R-1, R-2, etc., for respondent, respectively) and so identified on the exhibit  
18 lists. The number given to an exhibit does not limit the order of its introduction at hearing.

19 Any exhibit listed by one party may be introduced by another party.  
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1 **VI. DISCOVERY**

2 The discovery deadline is **May 1, 2002**. Written discovery requests shall be served in a  
3 manner to allow response by the discovery deadline. The parties shall endeavor to resolve any  
4 discovery disputes. If a dispute persists, any party may file a discovery motion provided such  
5 motion is accompanied by an affidavit reciting efforts to resolve the discovery dispute.

6 An original and one (1) copy of discovery motions and supporting documents must be  
7 filed with the Board.

8 Depositions, interrogatories, requests for production or inspection, requests for admission  
9 and the responses shall not be filed. It is the initiating party's responsibility to maintain the  
10 original together with answers to interrogatories and to make them available for proceedings.

11 **VII. DISPOSITIVE MOTIONS**

12 Any motion, which would be dispositive of the case or any legal issue shall be filed and  
13 served by **April 5, 2002**. An original and six (6) copies of motion pleadings shall be filed with  
14 the Board and served on opposing parties. Opposing parties shall have until **April 12, 2002**, to  
15 file and serve a response. Reply is due no later than **April 18, 2002**. Oral argument has been  
16 scheduled for **April 24, 2002**, at 1:30 p.m. in the Board's Office in Lacey, unless the Board  
17 decides to render a decisions based on the written record.

18 Note: Service and filing of motion, answer, and reply (if 10 pages or less) may be by  
19 telefax; provided that the original and required number of copies are mailed the same day.

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**VIII. BRIEFS**

Pre-hearing briefs are optional. If submitted, they shall be filed and served no later than **May 15, 2002** with an original and six (6) copies for the Board.

Briefs are limited to 15 pages in length, absent an order granting a motion to lengthen. If a citation is made to a case other than a Shoreline Board decision, Wn. App., Wn. or Wn.2d, a complete copy of the referenced citation must be filed and served.

**IX. COMMUNICATION**

All correspondence and filings with the Board shall be sent to the attention of the presiding officer with copies sent at the same time to all other parties.

**X. MISCELLANEOUS**

"Filed and "served" means the date received by the Board.

**ORDER**

This order shall govern the proceedings, unless subsequently modified by order of the Board for good cause upon a party's motion or the Board's volition.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2002.

**SHORELINE HEARING S BOARD**

\_\_\_\_\_  
**KALEEN COTTINGHAM,**  
Presiding

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