

settlement proposal had been presented to, and received by, the City of DuPont for their consideration.

On April 5, 1999, the Board issued “Notice of Hearing Location.”

B. Briefing and Hearing on the Merits

On March 9, 1999, the Board received “Petitioner’s Prehearing Brief” (**WRECO PHB**).

On March 22, 1999, the Presiding Officer received a telephone call from Respondent City of DuPont’s attorney, regarding a procedural matter. The City sought to file a Motion to Dismiss, based upon a challenge to WRECO’s standing. However, the scheduled period for filing such a motion had passed. Consequently, pursuant to WAC 242-04-532(2) the City sought the Presiding Officer’s written permission to file the requested motion. The Presiding Officer directed the City to: 1) include the Motion to Dismiss in Respondent’s Response brief; 2) immediately notify Petitioner WRECO of the City’s intent; and 3) forward a letter to the Presiding Officer for signature.

Also on March 22, 1999, the Presiding Officer received DuPont’s letter, via telefacsimile, requesting permission to file the Motion to Dismiss. The Presiding Officer counter-signed the letter, thereby **granting** permission to file the motion. The counter-signed letter was faxed to the parties. Pursuant to WAC 242-02-534, WRECO was given until April 6, 1999, to file a written response to the motion. DuPont was not given the opportunity to file a written reply brief. However, oral argument on the Motion to Dismiss was slated as the first order of business at the April 8, 1999, Hearing on the Merits.

On March 26, 1999, the Board received “City of DuPont’s Prehearing Brief and Motion to Dismiss in Whole or in Part” (**DuPont PHB**).

On April 6, 1999, the Board received “Petitioner’s Reply Brief” (**WRECO Reply**).

On April 8, 1999, the Board held a hearing on the merits in Suite 1022 of The Financial Center, 1215 4th Avenue, Seattle, Washington. Board members Edward G. McGuire, Presiding Officer, and Joseph W. Tovar were present for the Board. Petitioner was represented by Stephanie A. Arend, and the City of DuPont was represented by Roger D. Wynn. Andrew S. Lane, law clerk to the Board, was also present. Court reporting services were provided by Cynthia LaRose, of Robert H. Lewis and Associates, Tacoma.

c. Motion to supplement

On May 10, 1999, the Board received a post-hearing request to supplement the record from WRECO. WRECO’s letter included three attachments.

On May 12, 1999, the Board received a letter from the City of DuPont’s attorney objecting to and opposing WRECO’s request to supplement the record.

II. presumption of validity, burden of proof

and standard of review

Petitioner challenges the City of DuPont's adoption of Ordinance No. 98-612, which sets forth the procedures for the City to amend its Comprehensive Plan. Pursuant to RCW 36.70A.320(1), DuPont's Ordinance No. 98-612 is presumed valid upon adoption.

The burden is on Petitioner WRECO to demonstrate that the actions taken by DuPont are not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action by [DuPont] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find DuPont's actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

iii. Motion to supplement

The PHO established February 1, 1999, as the deadline for filing motions to supplement the record. PHO, at 2. WRECO's request to supplement the record was received by the Board on May 10, 1999. WAC 242-02-532(2) provides for filings beyond established deadlines with the Board's written permission. The Board never received a request for a late filing or authorized this late filing. WRECO's request to supplement the record is untimely, and is therefore, **denied**.

iv. board jurisdiction

The timeliness of WRECO's filing of the PFR and the Board's jurisdiction over the subject matter of the challenged Ordinance is undisputed in this case. However, the City of DuPont does challenge WRECO's standing.

Standing

DuPont challenges WRECO's standing to bring the present challenge before the Board. The procedural circumstances leading to the City's filing of its Motion to Dismiss are set forth in the Section I.B., *supra*. DuPont makes two arguments to support its plea for dismissal. First, it asserts that WRECO did not adequately specify the basis for its standing in the PFR; and second, WRECO failed to raise its concerns about Ordinance No. 98-612's notice provisions during the public process. Consequently, WRECO's PFR should be dismissed, or alternatively, WRECO should be precluded from raising the notice portion of Legal Issue 2 before this Board. DuPont PHB, at 5-10.

Basis for Standing

DuPont poses its first question as:

Does WRECO lack standing because the PFR fails to specify the provision of RCW 36.70A.280(2) under which WRECO asserts standing, in violation of WAC 242-02-210(2)(d)?

DuPont PHB, at 6.

Among other things, the applicable Board Rule requires a PFR to contain a statement specifying the basis for standing before the Board. It also requires a petitioner to “distinguish between participant standing under the act, governor certified standing, standing pursuant to the Administrative Procedures Act, and standing pursuant to the State Environmental Policy Act, as the case may be.” WAC 242-02-210(2)(d).

In applying this rule the Board has stated:

[P]etitioners must specify within their petitions for review which method of standing allows them to proceed with a case before the Board. For instance, petitions for review relying on APA standing must *either* allege that the petitioners are within the zone of interests of the GMA and that they have been injured by the local government’s action, *or* they must cite to the specific GMA standing provision under which they qualify (i.e. RCW 36.70A.280(2)’s language “qualified pursuant to RCW 34.05.530”).

Hapsmith v. City of Auburn, CPSGMHB Case No. 95-3-0075c, Final Decision and Order (May 10, 1996) at 16 (emphasis supplied).

In other words, the petitioner can allege standing by *either* citing to RCW 36.70A.280(2)(a), (b), (c) or (d); *or* by alleging facts clearly indicating the basis for their standing.

In its PFR, WRECO states:

WRECO owns substantially all of the undeveloped property within the City of DuPont. The procedure by which the Comprehensive Plan is reviewed and amended will have a significant impact on WRECO’s property and investment. *WRECO participated in the public hearings adopting Ordinance No. 98-612.*

WRECO PFR, at 3 (emphasis supplied).

The PFR does not cite to the specific GMA standing provision (RCW 36.70A.280(2)(a),(b),(c) or (d)) under which WRECO may qualify for standing. However, the last sentence states that WRECO participated in the public hearing process for the adoption of Ordinance No. 98-612. This assertion clearly distinguishes the basis of WRECO’s standing as participation standing. Nonetheless, the City contends that the PFR does not allege “whether such participation was

‘orally or in writing’ as specified in RCW 36.70A.280(2)(b).” ^[1] DuPont PHB, at 7. DuPont overstates the requirements of the GMA and the Board. The GMA does not mandate, nor has the Board ever required this degree of specificity in the standing allegations in a PFR. WRECO’s PFR clearly alleges facts specific enough to distinguish the basis for its standing as GMA participant standing.

It is noteworthy that DuPont does not dispute that WRECO participated in the public hearings surrounding the adoption of Ordinance No. 98-612. In fact, the City acknowledges that “WRECO’s counsel submitted a letter commenting [in writing] on the draft Ordinance, Ex. 2, and testified [orally] on the draft Ordinance before both the City Planning Agency and the City Council. Exs. 3-7.” DuPont PHB, at 9. Not only has WRECO alleged an adequate basis for

standing, but DuPont has verified that WRECO has established GMA participant standing pursuant to RCW 36.70A.280(2)(b) and is thus entitled to seek review before this Board.

Issue Specific Standing Re: Notice (Legal Issue 2 - part)

DuPont poses its second question as:

In the alternative, did WRECO fail to raise concerns about the Ordinance’s notice provisions during the City’s public process for the Ordinance, as required to maintain standing either under the APA (RCW 34.05.544) or the GMA (RCW 36,70A.280(2)(b)), and if so, should the Board dismiss Issue 2 as it relates to the Ordinance’s notice provisions?

DuPont PHB, at 8.

DuPont contends that, during the course of the City’s public process on Ordinance No. 98-612, WRECO never raised its concerns regarding notice. DuPont PHB, at 8-10. WRECO responds that it did raise public participation concerns during the City’s process and that “Public participation includes a variety of things, but at its core is public notice, without which there can be no public participation.” WRECO Reply, at 7.

The City urges the Board to embrace an “issue specific” standing test to qualify issues for Board review. On several occasions the Board has rejected this notion. In *Bremerton v. Kitsap County / Port Gamble v. Kitsap County (Bremerton/Port Gamble)*, CPSGMHB Case No 95-3-0039c Coordinated with Case No. 97-3-0024c, Order on Motions (Apr. 22, 1997), the Board stated:

In order to raise issues before the Board, it is not necessary for participants and petitioners to have addressed those specific issues when they appeared before the county or city during the public participation process regarding the adoption of the comprehensive plan.

Bremerton/Port Gamble, at 6.

In *Alpine Evergreen, et al., v. Kitsap County (Alpine)*, CPSGMHB Case No. 98-3-0032c Coordinated with Case No. 95-3-0039c, Order on Dispositive Motions (Oct. 7, 1998), the Board stated:

The County urges the Board to accept an issue-specific standing requirement. To the extent the County urges the Board to require petitioners to have raised before the County the specific issues now before the Board, the Board again rejects the County’s urging.

Alpine, at 7.

Nonetheless, in the same Order, the Board acknowledged its concern about potential petitioners not alerting the local governments to issues that it should weigh in its deliberations. Thus, the Board indicated it may inquire into the nature of petitioner’s participation. The Board stated:

If a petitioner’s participation [before the local government] is reasonably related to the petitioner’s issue as presented to the Board, then the petitioner has standing to raise and argue that issue [before the Board].

Id. at 8.

The record demonstrates that WRECO raised its concerns about public participation on several occasions [2] during the amendment process. Legal Issue No. 2 in the PHO specifically includes notice in the public participation challenge. The question then becomes whether WRECO's participation before the City is reasonably related to the issue [notice provisions] as presented to the Board.

The Board agrees with WRECO's characterization of public notice as being at the core of public participation. The Board recently stated, "It is axiomatic that without effective notice, the public does not have a reasonable opportunity to participate": *Andrus, et al., v. City of Bainbridge Island*, CPSGMHB Case No 98-3-0030, Final Decision and Order (Mar. 31, 1999), at 7. Effective notice is a necessary and essential ingredient in the public participation process. Notice is reasonably related to public participation. Raising concerns about a local jurisdiction's public participation process is sufficient to challenge the jurisdiction's notice procedures before this Board. Here, WRECO brought its concerns regarding the public participation process to the City during consideration of Ordinance No. 98-612. Therefore, the "notice provisions" of Ordinance No. 98-612 are a viable portion of Legal Issue 2 that may be challenged by WRECO.

Conclusions

PFR 98-3-0035 was timely filed and raises issues over which the Board has jurisdiction. Petitioner WRECO has alleged and established participant standing to bring the challenges set forth in the PFR, including the challenge to DuPont's notice provisions. Effective notice is a necessary and essential ingredient in the public participation process. In this case, the fact that WRECO raised its concerns about the proposed public participation process to the City is a sufficient basis to challenge DuPont's notice provisions before this Board. Therefore, the notice provisions of Ordinance No. 98-612 are a viable portion of Legal Issue No. 2 subject to challenge by WRECO.

v. legal issues

A. Legal Issue No. 1

The Board's PHO set forth Legal Issue No. 1:

1. Did the City of DuPont fail to comply with RCW 36.70A.130 when it adopted Ordinance No. 98-612, because the ordinance allows a different process for City initiated amendments and privately initiated amendments?

Applicable Law and Discussion

RCW 36.70A.130 provides, in relevant part:

(2)(a) Each . . . city shall establish and broadly disseminate to the public a public participation program identifying procedures whereby proposed amendments or revisions of the comprehensive plan are considered by the governing body of the . . .

city no more frequently than once every year. . . .

(b) . . . all proposals [for amendment or revision of the comprehensive plan] shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained.

WRECO contends that this section of the Act requires proposed plan amendments to be *processed concurrently* or that the Act requires *concurrent review* of plan amendments. WRECO PHB, at 3-4; and WRECO Reply, at 8. To demonstrate that DuPont has a different process (non-concurrent, not at the same time) for privately initiated and city initiated plan amendments, WRECO cites Ordinance No 98-612, Section 8, establishing cut-off dates for privately initiated amendments, but none for city initiated amendments; Section 7, providing that private amendments can be filed only in odd numbered years, but there is no similar restriction for city initiated amendments; and Sections 9 and 10, where WRECO asserts that these sections contain different decisional criteria for privately initiated and city initiated amendments. WRECO PHB, at 4-5.

In response, DuPont counters that the decisional criteria of Section 9 apply to all amendments, regardless of who initiated them. The City further contends that its plan amendment process complies with the concurrent consideration requirements of .130, since Section 7 of the Ordinance provides: “All amendments to the Comprehensive Plan shall be considered concurrently” DuPont PHB, at 13. This Section means that concurrent review occurs when the amendments are considered by the governing body (i.e. the City Council). DuPont PHB, at 14. The City also noted a recent Board decision where the Board recognized the broad discretion local governments have in developing their plan amendment process. [3] DuPont PHB, at 14.

In reply, WRECO asserts that concurrent review begins when an amendment is submitted to the City and although the City may establish filing cut-off dates and a schedule for the frequency of review, “all proposals must be subject to the same review procedures, including cut-off dates for submittals and frequency of review.” WRECO Reply, at 8-9.

The Act is clear: “all proposals *shall be considered by the governing body concurrently* so the cumulative effect of the various proposals can be ascertained.” RCW 36.70A.130(2)(b) (emphasis supplied). The governing body must consider proposed plan amendments concurrently, and as the Board noted in *Lawrence Michael Investments, L.L.C.; Chevron USA INC., and Chevron Land and Development Company v. Town of Woodway (LMI/Chevron)*, CPSGMHB Case No. 98-3-0012, Final Decision and Order (Jan. 8, 1999), how it chooses to do this is left to the local government to decide. WRECO may be correct, in that the City may encounter practical

[4] difficulties in implementing its plan amendment process as presently designed; however, the Act does not require DuPont’s amendment process to subject all proposed plan amendments to the same submittal or administrative review timeframes. The Act does require the governing body (City Council) to consider all proposals concurrently. It is during this final deliberative phase that

the decisionmakers must have all proposals before them, at the same time, in order to ascertain the cumulative effects of the various proposals and make their decisions. The City's process includes this requirement.

Ordinance No. 98-612 provides:

All amendments to the Comprehensive Plan shall be considered concurrently and no more frequently than once each calendar year. . . . The City Council shall consider proposed amendments concurrently with the City's annual budget.

Section 7, at 2 (emphasis supplied).

Conclusions

Local governments have discretion in designing and establishing their required RCW 36.70A.130 plan amendment procedures, including setting different submittal and review timeframes for different types of amendments. However, the Act does require DuPont's City Council to consider all Plan amendment proposals concurrently. The City's process includes this requirement. The Board is **not** persuaded that the City's action was **clearly erroneous** in view of the entire record before the Board and in light of the goals and requirements of the Act.

B. Legal Issue No. 2

The Board's prehearing order set forth Legal Issue No. 2:

2. Did the City of DuPont fail to comply with RCW 36.70A.140, RCW 36.70A.130 and WAC 365-195-600 when it adopted Ordinance No. 98-612, because the ordinance fails to provide procedures for broad dissemination of proposals and alternative and public participation, including notice and public hearings before the Council, in the amendment of DuPont's Comprehensive Plan.

Applicable Law and Discussion

WRECO challenges the adequacy of DuPont's notice provisions and complains that the City does not allow public hearings on plan amendments before the City Council. WRECO PHB, at 6-8.

DuPont asserts that its process of providing notice to adjacent property owners, if anything, "may be excessive," since virtually all property owners will likely be considered "adjacent" to proposed amendment areas. Therefore, they will receive mailed notice. DuPont PHB, at 19. Also, the City contends that the Act's public participation provisions do not require public hearings before the City Council. DuPont PHB, at 20.

Notice Provisions:

As discussed earlier in this decision, WRECO's challenge to the notice provisions of Ordinance No. 98-612 is a viable portion of Legal Issue No. 2, as stated in the PHO.

RCW 36.70A.140 provides in relevant part:

Each . . . city . . . shall establish and *broadly disseminate* to the public a public participation program identifying procedures providing for early and continuous

public participation in the development and amendment of comprehensive plans and development regulations implementing such plans. The procedures shall provide for *broad dissemination of proposals* and alternatives, opportunity for written comments, public meetings *after effective notice*, provision for open discussion, communication programs, information services, and consideration and response to comments.

(Emphasis supplied.)

This dispute focuses on how broad the public participation process is and *who* receives notice, not necessarily on the *means* of providing notice. The GMA's notice requirements provide:

The public participation requirements of this chapter *shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, and organizations* of proposed amendments to comprehensive plans and development regulations.

RCW 36.70A.035(1) (emphasis supplied).

Ordinance No. 98-612 provides in relevant part:

Public Hearing Required by the Planning Agency - Notice Required

(a) When a proposed adoption of the Comprehensive Plan, adoption of successive parts thereof, or an amendment to the Comprehensive Plan is under consideration, the Planning Agency shall hold at least one public hearing, and *notice of such hearing shall be given prior to the Planning Agency public hearing. The notice shall conform to Section 14.07.020 DMC.*

(b) The public hearing shall be the forum for broad dissemination of proposals and alternatives, opportunity for written comments after effective notice, provision for meaningful open discussion and consideration of and response to public comments. Errors in exact compliance with the established procedures shall not render the comprehensive plan or development regulations invalid if the spirit of the procedure is observed.

Ordinance No. 98-612, Section 3 (emphasis supplied).

The referenced section of DuPont's Municipal Code provides:

Notice of administrative approvals subject to notice under Section 14.09.020 shall be made as follows:

A. Notification of Preliminary Approval: The Mayor or his designee *shall notify the adjacent property owners* of his intent to grant approval. *Notification shall be made by mail only.* The notice shall include:

1. A description of the preliminary approval granted, including any conditions of approval.
2. A place where further information may be obtained.
3. A statement that final approval will be granted unless an appeal requesting a public hearing is filed with the City Clerk within fifteen (15) days of the date of

notice.

DMC 14.07.020 (emphasis supplied).

DuPont's adopted notice procedures for plan amendments includes only mailed notice to adjacent [5]

property owners. This falls short of the requirements of RCW 36.20A.035(1). There are no provisions for notifying non-adjacent property owners. There are no provisions for notifying other affected and interested individuals. There are no provisions for notifying tribes. There are no provisions for notifying government agencies. There are no provisions for notifying businesses or organizations. Unless these individuals, groups or entities owned property adjacent to a proposed amendment area, they would not have any notice of the proposal. Additionally, the language of DMC 14.07.020 suggests amendments will be approved without public hearing unless a notified adjacent property owner appeals. This language is contradictory to the Ordinance language of Section 3(a) and (b).

The City seems to be trying to fit a new broad GMA peg into an existing narrow notice procedures hole. The peg does not fit. DuPont's notice provisions for Plan amendments are far from excessive, as asserted by the City; they are extremely limiting, contradictory, confusing and do not comply with the notice requirements of the Act. The City can, and must, do better.

Public Hearing before the City Council:

Again, the challenged portion of DuPont's Ordinance is Section 3, which provides:

Public Hearing Required by the Planning Agency - Notice Required

(a) *When a proposed adoption of the Comprehensive Plan, adoption of successive parts thereof, or an amendment to the Comprehensive Plan is under consideration, the Planning Agency shall hold at least one public hearing, and notice of such hearing shall be given prior to the Planning Agency public hearing. The notice shall conform to Section 14.07.020 DMC.*

(b) The public hearing shall be the forum for broad dissemination of proposals and alternatives, opportunity for written comments after effective notice, provision for meaningful open discussion and consideration of and response to public comments. Errors in exact compliance with the established procedures shall not render the comprehensive plan or development regulations invalid if the spirit of the procedure is observed.

Ordinance No. 98-612, Section 3 (emphasis supplied).

WRECO contends that the City Council is required to hold a public hearing when it considers plan amendments. As supporting authority for this proposition, WRECO cites RCW 36.70A.035 (2)(a), WAC 365-195-600(2)(v) and a prior Board decision.

The cited relevant section of the Act provides:

Except as otherwise provided in (b) of this subsection, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for

review an comment has passed under the county's or city's procedures, *an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change.*

RCW 36.70A.035(2)(a); and WRECO PHB, at 7 (emphasis in original).

The cited section of the Department of Community, Trade and Economic Development's procedural guidelines provides:

Public hearings. When the final draft of the plan has been completed, at least one public hearing should be held prior to the presentation of the final draft to the legislative authority of the jurisdiction adopting it. When the plan is proposed for adoption, the legislative authority *should* conduct another public hearing prior to voting on adoption.

WAC 365-295-600(2)(v); and WRECO PHB, at 8 (emphasis supplied).

For additional support, WRECO cites a line from this Board's decision in *Sky Valley v. Snohomish County (Sky Valley)*, CPSGMHB Case No. 94-3-0068c, Final Decision and Order (Mar. 12, 1996), as follows: "The Board has also held that local officials have a duty to hear and consider public opinion." WRECO PHB, at 12 quoting *Sky Valley*, at 34.

DuPont's interpretation of RCW 36.70A.035(2)(a) differs from WRECO's and the City counters the Board quote from *Sky Valley*, by citing a different Board case. The City quotes this Board in *West Seattle Defense Fund, et al. v. City of Seattle (WSDF I)*, CPSGMHB Case No. 94-3-0016, Final Decision and Order (April 4, 1995), as follows:

[T]he Act does not require the Council to have a hearing at all. . . . While the Board does not encourage local legislative bodies to dismiss out of hand the value of holding one or more hearings prior to adopting the proposed comprehensive plan, we are compelled to point out that the GMA does not impose such a requirement. The decision to do so, or not, is left to the discretion of each local legislative body.

DuPont PHB, at 20 (quoting *WSDF*, at 76).

DuPont's reading of RCW 36.70A.035 is as follows:

The implication of RCW 36.70A.035(2)(a) for the City is that, if certain changes [footnote omitted] are made to a proposed amendment after the close of the Planning Agency public hearing, the City (but not necessarily the Council) must provide an opportunity for public review and comment on that change (but not necessarily another hearing).

DuPont PHB, at 24.

The Board agrees with DuPont. As the Board noted in *WSDF I* in 1995, the Act did not require a City Council to hold a public hearing prior to adopting its GMA plan. Although amended every year since, the legislature has not included a requirement that the local legislative body itself must conduct a public hearing prior to undertaking a GMA action. Even the 1997 amendment to the GMA, that added RCW 36.70A.035, does not require a Council conducted public hearing, as asserted by WRECO. The Board also concurs with DuPont's reading of RCW 36.70A.035(2)(a).

[6]

Further, DuPont correctly notes that this Board has also stated that “Local governments are not required to comply with the recommendations set forth in the Procedural Guidelines at Chapter 365-195 WAC.” DuPont PHB, at 21, citing *Children’s Alliance and Low Income Institute v. City of Bellevue*, CPSGMHB Case No. 95-3-0015, Order Partially Granting Bellevue’s Dispositive Motion (May 17, 1995), at 12. Therefore, the City’s decision to enable the Planning Agency to hold its public hearings on plan amendments, as provided in Section 3(a) of Ordinance No. 98-

[7]

612, is not clearly erroneous.

Conclusions

The City’s provisions for notice fall woefully short of the required “broad dissemination” and “notice procedures that are reasonably calculated to provide notice to property owners *and other affected and interested individuals, tribes, government agencies, businesses, and organizations.*” RCW 36.70A.140 and 035(1). The City’s selection of notice provisions for its public participation process for plan amendments, as contained in Ordinance No. 98-612, was **clearly erroneous**. The City of DuPont has **failed to comply** with the notice requirements of RCW 36.70A.140 and .035. However, the City’s decision to enable the Planning Agency to hold its public hearings on plan amendments without requiring a public hearing before the City Council, as provided in Section 3(a) of Ordinance No. 98-612, is **not clearly erroneous**.

Vi. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

1. The City of DuPont’s Ordinance No. 98-612, does **not comply** with the notice requirements of RCW 36.70A.140 and .035. The City’s notice provisions for its public participation process for plan amendments, as contained in Ordinance No. 98-612, are **clearly erroneous**.
2. In order for DuPont to achieve compliance with the Act, as set forth in this Final Decision and Order, the Board **remands** Ordinance No. 98-612 to the City of DuPont with direction to include in its GMA plan amendment process procedures to encourage broad public participation and provide effective notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses and organizations.
3. The Board directs the City of DuPont to comply with the goals and requirements of the Act, as set forth in the Final Decision and Order, by no later than **Friday, September 17, 1999**. The City shall submit to the Board a “Statement of Compliance” (SOC). The SOC shall include: 1) a description of the legislative actions taken by the City to comply with the Act; and 2) copies of all legislative enactments adopted to achieve compliance with the Act, as directed in this FDO. The City shall provide four copies of the SOC to the Board and a copy to Petitioner by no later than **Friday, September 24, 1999**.

So ORDERED this 19th day of May, 1999.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

Appendix

Findings of Fact

1. PFR 98-3-0035 challenges Ordinance No. 98-612's compliance with the GMA. Ordinance No. 98-612 sets forth DuPont's procedures for amending its comprehensive plan. PFR, at 2.
2. DuPont's Ordinance No. 98-612 was adopted by the DuPont City Council on September 22, 1998. PFR, at 2.
3. PFR 98-3-0035, challenging Ordinance No. 98-612, was filed with the Board on November 20, 1998. *Supra*, at 1.
4. The date of publication is not stated in the PFR. PFR, at 1-4.
5. The City of DuPont has neither indicated the date it published Ordinance No. 98-612, nor disputed the timeliness of Petitioner's filing of the PFR.
6. Petitioner alleges participation standing derived from WRECO's participation in the public participation process used by DuPont in adopting Ordinance No. 98-612. PFR, at 3.
7. DuPont acknowledges and verifies that WRECO participated, both orally and in writing, regarding Ordinance No. 98-612, before the City's Planning Agency and Council. DuPont PHB, at 9.
8. WRECO raised its concerns about public participation at the August 5, 1999, Planning Agency Meeting and the August 25, 1999, City Council meeting. WRECO Reply, attached transcripts of Exs. 12 and 16.
9. The City's plan amendment process provides: "All amendments to the Comprehensive Plan shall be considered concurrently . . . The City Council shall consider proposed [plan] amendments concurrently with the City's annual budget." Ex. 26, Section 7, Ordinance No. 98-612.
10. The City's plan amendment process establishes a cut-off date and frequency of review timetable for privately initiated plan amendments, but no similar restrictions apply to city initiated amendments. Ex. 26, Sections 7 and 8, Ordinance No. 98-612.
11. The criteria for review of proposed plan amendments, submitted privately or by the city,

are the same.Ex. 26, Section 9, Ordinance No. 98-612; and DuPont PHB, at 16.

12.The City’s plan amendment notice provisions rely upon Section 14.07.020 DuPont Municipal Code.Ex. 26, Section 3, Ordinance No. 98-612.

13.Only adjacent property owners are notified by mail of proposed amendments.Section 14.07.020 DuPont Municipal Code.

14.The City’s plan amendment procedures require the City’s Planning Agency to hold at least one public hearing to take public comments.Ex. 26, Section 3(a) and (b), Ordinance 98-612.

15.The PHO established February 1, 1999 as the deadline for filing motions to supplement the record.PHO, at 2.

16.WRECO’s request to supplement the record was received by the Board on May 10, 1999. *Supra*, at 2-3.

[1] RCW 36.70A.280(2)(b) provides:A petition for review may be filed only by: . . . (b) a person who has participated orally or in writing before the county or city regarding the matter on which review is being requested.

[2] Ms. Arend testified on behalf of WRECO at the August 5, 1998, public hearing before the Planning Agency. Transcript of Ex. 12, at 3.Also, during the general citizen comment period of the August 25, 1998, City Council meeting Ms. Arend addressed the public participation issue.Transcript of Ex. 16, at 2-3.The Board notes that during its consideration of Ordinance No. 98-612, the DuPont City Council did not conduct any public hearing on the Ordinance.*See* Exs. 17, 21, 25 and transcripts of Exs. 16, 20 and 24, attached to DuPont PHB and WRECO Reply.

[3] “The Board recognizes that each local government has discretion in establishing and designing its .130 plan amendment process.”*LMI/Chevron*,, at 12.

[4] For example, WRECO suggests potential problems in conducting environmental review and providing public notice if different submittal and agency review timeframes are used.

[5] It is not clear how “adjacency” would be determined when the text or a policy of the Plan is amended.

[6] The Board notes that the “local officials” mentioned in the *Sky Valley* case would include non-elected local officials, such as members of the Planning Commission.

[7] However, DuPont’s procedures may be unique among jurisdictions in this region; the Board is unaware of any local elected legislative body within the Central Puget Sound Region that does not conduct at least one public hearing of its own when considering GMA actions.