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4 BEFORE THE WASHINGTON STATE BOUNDARY REVIEW BOARD
5 FOR KITSAP COUNTY, WASHINGTON

6 In the Matter of:

BRB FILE NO. 08-08-0135

7 Proposed Annexation of South Kitsap Industrial
8 Area "North" to the City of Bremerton

Findings of Fact, Conclusions of Law
And Decision Approving Annexation

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11 **I. INTRODUCTION**

12 The City of Bremerton proposes to annex 150 acres of the South Kitsap Industrial Area Urban
13 Growth Area, or SKIA "North" pursuant to RCW 35.13.125. The City of Port Orchard has invoked the
14 jurisdiction of the Washington State Boundary Review Board for Kitsap County (board) pursuant to
15 RCW 36.93.100.

16 **II. BASIS FOR REVIEW**

17 RCW 36.93.100 authorizes the board to conduct hearings and review the City of Bremerton's
18 Notice of Intent to annex. The board's decision has been guided by 36.93 RCW generally and the
19 following statutory provisions, in particular:

20 RCW 36.93.157 -- Decisions to be consistent with Growth Management Act.

21 RCW 36.93.170 -- Factors to be considered by the Boundary Review Board.

22 RCW 36.93.180 -- Objectives of the Boundary Review Board.

23 Based upon the record, testimony presented, and applicable law, the Washington State
24 Boundary Review Board for Kitsap County makes the following findings of fact, conclusions of law
25 and decision.

26 **III. FINDINGS OF FACT**

27 **A. Findings - The South Kitsap Industrial Area - Background.**

28 A-1 The South Kitsap Industrial Area Urban Growth Area (SKIA UGA) is located along
State Route 3 near the city limits of both Bremerton and Port Orchard, and generally centered on the
Bremerton National Airport. See, Kitsap County Comprehensive Plan, December 2006, at p. 15-6. It
is the largest undeveloped industrial property in Kitsap County and includes lands zoned for Airport,
Industrial, and Business Center uses. *Id.*

1 A-2 A sub-area plan was developed for the SKIA in December 2003 and then amended in
2 December 2006. *Id* at 15-8. The SKIA Sub-Area Plan is intended to “allow development of SKIA as
3 compact, individually master-planned industrial/business park developments. It is Kitsap County’s
4 only UGA without a residential component.” *Id*, at p. 15-6 and 15-8.

4 A-3 In December of 2006, Kitsap County adopted some of the goals and policies of the
5 SKIA Sub Area Plan into its Comprehensive Plan and incorporated the SKIA Sub-Area Plan itself by
6 reference. *Id*, at p.15-8. This was done as part of the County’s update to the County Comprehensive
7 Plan and pursuant to the Growth Management Act, RCW 36.70A.130(3). See, Kitsap County
8 Ordinances 367-2006; 368-2006; 369-2006 and 370-2006. An environmental impact statement (EIS)
9 analyzed the environmental impacts associated with the adoption of the Comprehensive Plan and a
10 Final EIS was issued December 2006.

9 A-4 After an administrative appeal of the County’s Comprehensive plan, the County revised
10 parts of the Plan and the Central Puget Sound Growth Management Hearings Board found the Plan in
11 compliance with the Growth Management Act. Kitsap County Ordinances 409-2008 and 411-2008 and
12 CPSGMHB decision 07-3-0019c.

12 **B. Findings - The City of Bremerton’s Proposed Annexation.**

13 B-1 On July 30, 2008, the City of Bremerton enacted Ordinance No. 5053 approving the
14 annexation of 150 acres of SKIA “North.” City of Bremerton Ordinance No. 5053, amended in
15 Ordinance No. 5059 to extend the effective date of the SKIA annexation from October 2008 to
16 November 2008.

17 B-2 The City of Bremerton filed a Notice of Intention, dated August 6, 2008, proposing to
18 annex 150 acres of the SKIA UGA. This Notice of Intention is known as SKIA “North.” The Notice
19 of Intention stated in part:

20 1: Description of the Proposal.

21 The proposal is to annex approximately 150 acres of currently unincorporated non-
22 municipal territory in Kitsap County to the City of Bremerton. The annexation was
23 initiated by the private property owners utilizing the 75% Petition method for First Class
24 cities per RCW 35.13.125-35.13.150.

25

26 2. General Background.

27 The annexation proposal is entirely within the South Kitsap Industrial Area (SKIA)
28 Urban Growth Area (UGA). Under the Growth Management Act (GMA) and Kitsap
County Countywide Planning Policies, UGAs are intended to develop as urban areas
and are intended to annex into cities. The area proposed for annexation is
geographically adjacent to the City of Bremerton.

Notice of intention Narrative at paragraphs 1 and 2.

B-3 On August 7, 2008, the Clerk of the Boundary Review Board forwarded the city’s

1 notice of intention to annex to the following:

2 Kitsap County Board of Commissioners, MS-4
3 Katrina Knutson, Community Development, MS-36
4 Dolores Gilmore, Kitsap County Auditor's Office, MS-31
5 Jim Barnard, Development Engineering, DCD, MS-36
6 John James, Kitsap County Department of Public Works, MS-26
7 Maxine Schoales, Kitsap County Assessor's Office, MS-22
8 Diane Mark, GIS Manager, MS-21
9 Angie Silva, Special Projects, MS-4

10 B-4 On August 18, 2008, after review, the City of Bremerton's Notice of Intention was
11 found to be not legally sufficient.

12 B-5 On August 21, 2008, the City of Bremerton submitted a letter with attachments to
13 address the items outlined in the letter of insufficiency. In part of the letter, the City of Bremerton
14 stated

15 Because of its location, the annexation of territory within SKIA UGA only directly
16 affects the governmental operations of Kitsap County. In the Financial Analysis the city
17 has demonstrated that the city will be following the provisions of the 2001 Interlocal
18 Agreement for Revenue Sharing between the City of Bremerton and Kitsap County,
19 (sic) this agreement seeks to balance revenue sharing provisions that support the orderly
20 evolution of logical land use patterns and jurisdictional boundaries. The County will
21 benefit from the economic development of the area.

22 B-6 On August 22, 2008, the Clerk of the Boundary Review Board forwarded the City of
23 Bremerton's revised Notice of Intention to the following:

24 Kitsap County Board of Commissioners, MS-4
25 Angie Silva, Special Projects, MS-4
26 Katrina Knutson, Community Development, MS-36
27 Dolores Gilmore, Kitsap County Auditor's Office, MS-31
28 John James, Kitsap County Department of Public Works, MS-26
Maxine Schoales, Kitsap County Assessor's Office, MS-22
Jim Barnard, Development Engineering, DCD, MS-36
Diane Mark, GIS Manager, MS-21
Phil Bacus, Prosecutor's Office, MS-35A

B-7 In October 2008, the City of Bremerton amended its comprehensive plan to include the
South Kitsap Industrial Area Urban Growth Area. City of Bremerton Ordinance No. 5062.

B-8 On October 9, 2008, at its regular meeting, the Board voted to accept the petition,
finding that it was both timely and sufficient. (10/9/08 Meeting Minutes)

1 **C. Findings - BRB's Jurisdiction Invoked and Public Hearing.**

2 C-1 In a letter dated October 1, 2008, the City of Port Orchard invoked the jurisdiction of the
3 Boundary Review Board. The City of Port Orchard sought review of the City of Bremerton's Notice of
4 Intention pursuant to RCW 36.93.100 and attached the statutory review fee of \$200.00.

5 C-2 Public notice was given pursuant to RCW 36.93.160 and specifically as follows. On
6 October 30, 2008, written notice of time, date and place of public hearing was sent to:

7 City of Bremerton
8 City of Port Orchard
9 Kitsap County Public Utility District No. 1
10 Port of Bremerton District No. 1
11 South Kitsap Fire & Rescue
12 South Kitsap School District No. 402
13 Sunnyslope Water District

14 C-3 On November 22, 2008, December 6, 2008, and December 11, 2008, Notice of Public
15 hearing was published in the Kitsap Newspaper Group.

16 C-4 On December 12, 2008, NOTICE OF PUBLIC HEARING signs were posted in ten
17 places on the property of the proposed annexation.

18 C-5 The following documents were submitted to the Boundary Review Board prior to the
19 public hearing:

Exhibit #	Date	Author	Summary
1	10/02/08	Lary Coppola	Letter from City of Port Orchard Invoking Board's Jurisdiction
2	10/07/08	Robert Johns	Letter regarding standing of Port Orchard as "affected jurisdiction"
3	10/09/08	Courtney Flora	Letter regarding standing of Port Orchard as "affected jurisdiction"
4	10/09/08	Roger Lubovich	Letter regarding Port Orchard's request to invoke jurisdiction
5	10/09/08	Gregory Jacoby	Letter regarding Port Orchard's request to invoke jurisdiction
6	10/29/08	Tracy Osbourne	Letter to Robert Johns regarding public hearing and written submission deadlines
7	10/29/08	Tracy Osbourne	Letter to Courtney Flora regarding public hearing and written submission deadlines
8	10/29/08	Tracy Osbourne	Letter to Sunnyslope Water District regarding public hearing and written submission deadlines
9	10/29/08	Tracy Osbourne	Letter to Kitsap County PUD #1 regarding public hearing and written submission deadlines
10	10/29/08	Tracy Osbourne	Letter to Port of Bremerton regarding public hearing

			and written submission deadlines
11	10/29/08	Tracy Osbourne	Letter to South Kitsap Fire & Rescue regarding public hearing and written submission deadlines
12	10/29/08	Tracy Osbourne	Letter to South Kitsap School District regarding public hearing and written submission deadlines
Exhibit #	Date	Author	Summary
13	10/29/08	Tracy Osbourne	Letter to City of Port Orchard regarding public hearing and request for additional information
14	10/29/08	Tracy Osbourne	Letter to City of Bremerton regarding public hearing and request for additional information
15	11/14/08	Andrea Spencer	City of Bremerton's response to request for additional materials
16	11/14/08	Gregory Jacoby	City of Port Orchard's Initial Brief
17	11/26/08	Robert Johns	Property Owner McCormick Land Co.'s initial submission letter
18	12/01/08	Carol Morris	Response Brief of City of Bremerton
19	12/01/08	Gregory Jacoby	Letter regarding City of Port Orchard not submitting responsive briefing
20	12/01/08	Gordon Walgren	Port of Bremerton initial submission letter regarding annexation
21	12/01/08	Courtney Flora	Property Owner Overton's initial submission letter regarding annexation
22	12/01/08	Ryan Sandstrom	Property Owner Alpine Evergreen Response to City of Port Orchard's Initial Brief

C-6 On December 19, 2008, a public hearing was held pursuant to RCW 36.93.160.

C-7 The following documents were added to the above record:

Exhibit #	Date	Author	Summary
23	12/16/08	Steve Mount	Affidavit of Posting
24	12/18/08	Cheryl Kincer	Letter from Port of Bremerton Commissioner
25	12/17/08	Rich Peterson	Affidavits of Publication
26	12/19/08	City of Port Orchard	Map – Port Orchard Urban Growth Area- Comprehensive Sanitary Sewer Plan Update
27	12/19/08	N/A	Speaker Sign-Up Sheet
28	01/08/09	City of Port Orchard	Ordinance No. 042-08 Regarding 10-Year Update of City's Comp Plan
29	01/08/09	City of Port Orchard	Port Orchard Comprehensive Plan

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1 C-8 The following people provided sworn testimony at the public hearing:

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#	Name	Title or Association
3 1	Roger Lubovich	City of Bremerton
4 2	Greg Jacoby	City of Port Orchard
5 3	James Weaver	City of Port Orchard Development Director
6 4	David Overton	Overton & Associates
7 5	Ryan Sandstrom	Alpine Enterprises

8 **D. Findings - Board's Authority.**

9 D-1 Municipal annexations proceed solely in accordance with chapters 35.13 RCW (cities and towns) and 35A.14 RCW (optional municipal code).

10 D-2 The City of Bremerton proposes to annex 150 acres of SKIA "North" pursuant to RCW 35.13.125.

11 D-3 Annexations are "subject to potential review by a boundary review board." RCW 35.13.001 and see, Interlake Sporting Association, Inc. v. Washington State Boundary Review Board for King County, 158 Wash.2d 545, 553, 146 P.3d 904 (2006).

12 D-4 The City of Port Orchard has invoked the jurisdiction of the Washington State Boundary Review Board for Kitsap County (board) pursuant to RCW 36.93.100.

13 D-5 A boundary review board gains jurisdiction upon formal request by a party with standing. Interlake, at p.553.

14 D-6 RCW 36.93.100 provides:

15 The board shall approve, disapprove or modify any actions set forth in RCW 36.93.090 when any of the following shall occur within forty-five days of the filing of the notice of intention:

16

17 (2) Any governmental unit affected ... files a request for review of the specific action.

18 D-7 The City of Port Orchard's municipal boundary is within approximately three miles of the proposed annexation area.

19 D-8 Since 1998, the City of Port Orchard has been engaged in joint planning efforts that have sought to provide waste water and other services to SKIA UGA, a portion of which is being considered for annexation in this proposal.

20 D-9 The City of Port Orchard is a "governmental unit affected" by this annexation proposal because the City of Port Orchard's boundary is within three miles of the proposed annexation area and because the City of Port Orchard has been engaged in joint planning for the SKIA UGA.

1 D-10 The Supreme Court has stated that “arguably, the boundary review board is without
2 authority to refuse to take action on a proposal to incorporate.” In the same case, though, the court held
3 that “mandamus does not ... lie to compel a vain, useless or illegal act.” Vashon Island Committee for
4 Self-Government v. Washington State King County Boundary Review Board, 127 Wash. 2d 759, 903
5 P.2d 953 (1995).

6 D-11 After its jurisdiction is invoked, a boundary review board conducts a public hearing to
7 gather evidence and testimony regarding the proposal. RCW 36.93.100. On December 19, 2008, the
8 board conducted a hearing to gather evidence and hear testimony regarding the City of Bremerton’s
9 annexation proposal. The board reconvened on January 8, 2009 to deliberate.

10 D-12 As quasi judicial boards, boundary review boards are limited to the power granted to
11 them under their enabling legislation, 36.93 RCW.

12 (A)ministrative agencies are creatures of the Legislature, without inherent or common-
13 law powers and, as such, may exercise only those powers conferred by statute, either
14 expressly or by necessary implication.

15 Skagit Surveyors & Eng’rs, LLC v. Friends of Skagit County, 135 Wash. 2d 542, 565, 958 P.2d 962
16 (1998) (citing RCW 36.70A.280(1) and Kaiser Aluminum & Chem. Corp. v. Department of Labor &
17 Indus., 121 Wash. 2d 776, 780, 854 P.2d 611 (1993); Human Rights Comm’n v. Cheney Sch. Dist. 30,
18 97 Wash. 2d 118, 125, 641 P.2d 163 (1982).

19 D-13 The power of an administrative tribunal to fashion a remedy is strictly limited by statute.
20 *Id.* Stated another way, “the Legislature grants agencies authority, and takes a dim view of agencies
21 granting themselves additional authority.” Honesty in Environmental Analysis and Legislation (HEAL)
22 v. Central Puget Sound Growth Hearings Board, 96 Wash.App. 522, 979 P.2d 864 (1999).

23 D-14 The board’s enabling legislation grants the board the authority to “approve, deny, or
24 modify the boundaries of the proposed annexation.” Interlake Sporting Association, Inc. v.
25 Washington State Boundary Review Board for King County, 158 Wash.2d 545, 146 P.3d 904 (2006)
26 citing RCW 36.93.150.

27 D-15 Boundary review boards have been found to have exceeded their authority when they
28 have attempted to decide the propriety of certain zoning designations. See, Stewart v. King County
Boundary Review Board, 100 Wash App. 165, 996 P.2d 1087 (2000). In Stewart, the Court of Appeals
held that the board did not have authority to determine whether the county’s designation of the property
as “agricultural” in its comprehensive plan was factually correct. The court also noted that the GMA
board, not the BRB, had the authority to decide if requirements for pre-annexation interlocal
agreements, adopted in a comprehensive plan, violate the GMA. Stewart, at p.175, citing CPSGMHB
98-30039c and 98-30032c.

D-16 Boundary review boards have also been found to have exceeded their authority when
they have expanded the territory sought to be annexed. Interlake Sporting Association, Inc. v.
Washington State Boundary Review Board for King County, 158 Wash.2d 545, 146 P.3d 904 (2006)

1 citing RCW 36.93.150. In Interlake, the State Supreme Court held that the board exceeded its authority
2 when it expanded the territory sought to be annexed to three times the original proposal.

3 D-17 In reaching a decision on a proposal, the BRB must consider the effect of the proposal
4 on three factors: (1) population and territory, (2) municipal services, and (3) impact on adjacent areas.
RCW 36.93.170.

5 D-18 In addition, the BRB must consider several "objectives" for any proposal, listed in RCW
6 36.93.180.

7 D-19 After the BRB has reviewed the proposal and considered the factors and objectives, it
8 may approve the proposal as submitted; modify the proposal by adjusting boundaries to add or delete
9 territory or disapprove the proposal.

10 D-20 The board shall not modify or deny a proposed action unless there is evidence on the
11 record to support a conclusion that the action is inconsistent with one or more of the objectives under
RCW 36.93.180. RCW 36.93.150.

12 **E. Findings - Issues Raised by Port Orchard.**

13 E-1 The City of Port Orchard states that it “does not object to the proposed annexation
14 provided the annexation is not deemed to assign or extend any particular privilege to Bremerton when
15 it comes to providing sewer service to SKIA North.” City of Port Orchard’s brief at p. 1.

16 E-2 Noting that the function of the boundary review board is to “resolve competition among
17 municipalities for unincorporated **territory**,” Port Orchard also states that “(t)he present dispute arises
18 less from the proposed act of annexation than from the proposed **terms** of annexation.” City of Port
Orchard brief at p. 7, emphasis added.

19 **2003 ILA**

20 E-3 The City of Port Orchard submitted a 2003 Interlocal Agreement executed by the City of
21 Port Orchard and the Port of Bremerton. One of the factors the board is required to consider includes
22 how “interlocal annexation agreements between a **county and its cities**” affect the proposed
23 annexation. RCW 36.93.170 (1) emphasis added. The county is not a party to the ILA referred to by
24 the City of Port Orchard; again, the ILA was executed by the City of Port Orchard and the Port of
Bremerton.

25 E-4 Another factor requires the board to consider how “applicable **service** agreements”
26 affect the annexation proposal. RCW 36.93.170(1) emphasis added. While the 2003 ILA cannot be
27 considered an “annexation agreement” under section 170 for the reasons stated above, the City of Port
28 Orchard suggests that it may be considered an “applicable **service** agreement” because the ILA was
executed for the purpose of planning waste water service in the general SKIA UGA. See, Port
Orchard’s Brief at p. 5 and 2003 ILA at p. 1 and 2.

1 E-5 In response, the City of Bremerton states that the 2003 ILA is “irrelevant to the matter at
2 hand, as Bremerton’s annexation of SKIA North does not affect the rights and responsibilities of these
3 parties. Again, the annexation does not include any property owned by the Port of Bremerton.” City of
Bremerton’s Brief at p.4.

4 E-6 The City of Port Orchard also suggests that the ILA is relevant to the proposed
5 annexation because it is consistent with various County and county-wide plans affirming the desire for
6 joint planning among jurisdictions. Specifically, the City of Port Orchard states that the County has
7 recognized the City of Port Orchard as the “preferred **provider**” of sewer service in the SKIA. City of
Port Orchard’s brief at p.7, emphasis added.

8 E-7 The County’s Comprehensive Plan did adopt some of the policies of the Sub Area Plan
9 and incorporated the Sub-Area Plan itself by reference. See, County’s Comprehensive Plan at Chapter
10 15. In a narrative section of the Sub-Area Plan, the Sub-Area Plan states that “representatives,” not the
11 county, have “selected” the city of Port Orchard/Karcher Creek Sewer District as the “preferred
alternative,” not the preferred provider.

12 SKIA Representatives have reviewed the technical data, cost information and support
13 documentation for each of the basic alternatives. Based on this review they have
selected the City of Port Orchard/KCSD as the preferred alternative.

14 SKIA Area Plan, December 8, 2003 at p. 79.

15 E-8 The SKIA Sub-area policies adopted in the 2006 County Comprehensive Plan do not
16 include the above narrative. The 2006 County Comprehensive Plan, SKIA Sub-Area element, which
17 relate to the City of Port Orchard’s wastewater service do provide the following:

18 Policy SKIA-2

19 Kitsap County will support and assist the Port of Bremerton, the Cities of Bremerton
20 and Port Orchard and landowners in the provision of basic urban infrastructure, sewers,
water, stormwater and transportation facilities to serve the SKIA.

21

22 Policy SKIA-39

Use of temporary OSS will be determined finally by the City of Port Orchard.

23

24 Policy SKIA-42

25 Mobilize planning, design and construction of permanent sewers during Phase II to
26 allow for completion of these facilities by 2008 and allow for a transition from
Port OSS to the City of Port Orchard Sewer System in 2009

27 County Comprehensive Plan, at p. 15-8; 15-19 and 15-20.

28 E-9 Among other factors, the board is required to consider how applicable service
agreements and comprehensive plans and zoning affect the proposed annexation. RCW 36.93.170. In
addition, the board’s decision must be consistent with the Growth Management Act. RCW 36.93.157.

1 E-10 The 2003 ILA is an “applicable service agreement” pursuant to RCW 36.93.170 because
2 it was executed pursuant to chapter 39.34 RCW and relates to the provision of waste water service in
3 the general SKIA UGA, a portion of which is being considered for annexation in this proposal. The
2003 ILA is subject to the board’s review in this annexation proposal.

4 E-11 No evidence has been presented demonstrating that the 2003 ILA has been revoked or is
5 otherwise no longer in effect.

6 **1998 MOA**

7 E-12 The City of Port Orchard also submitted a 1998 Memorandum of Understanding
8 (MOA). The City of Port Orchard, Exhibit #1. The 1998 MOA was entered into by Kitsap County,
9 City of Bremerton, City of Port Orchard, and Port of Bremerton.

10 E-13 The City of Port Orchard notes that the “MOA identified several issues that would be
11 the subject of future joint planning, including the provision of water and sewer service, future
annexations and resolution of service areas.” City of Port Orchard’s Initial Brief at p. 3

12 E-14 The MOA was executed in August of 1998 pursuant to Interlocal Co-operation Act
13 Chapter 39.34 RCW and provides in part:

14 6. Governance. The Cities, County and Port agree that no annexation(s) of the areas
15 subject to this agreement shall be proposed until the parties have executed the ILA
16 contemplated herein and the Cities have amended their Comprehensive Plans, as
17 necessary, in accordance with the interlocal agreement. The County shall review the
joint plan/ILA as a subarea plan pursuant to Policy UGA-11 of the County’s
Comprehensive Plan.

18 MOA between County, City of Bremerton, City of Port Orchard, and Port of Bremerton for the South
19 Kitsap Industrial Area.

20 E-15 As noted by the City of Port Orchard, the County included similar language in its
21 Comprehensive Plan. City of Port Orchard’s Initial Brief at p. 3.

22 E-16 In October of 1998, the City of Bremerton challenged the County’s 1998
23 Comprehensive Plan. See, Bremerton v. Kitsap County, CPSGMHB case Nos. 95-3-0039c/98-3-
24 0032c. Specifically, the City of Bremerton objected to Policy UGA 13’s associated text which
provided in part:

25 (N)o annexations will occur until the joint plans and interlocal agreements are adopted
26 and the city or cities have amended their comprehensive plans in accordance with the
27 interlocal agreements(.)

28 *Id* at p. 3229.

1 E-17 In February of 1999, a GMA board found the County's 1998 Comprehensive Plan out of
2 compliance with the GMA:

3 The Board holds that, once a UGA has been designated, the provisions of a county plan
4 may not condition or limit exercise of a city's annexation land use power.

5 The act strongly encourages collaborative and cooperative joint planning efforts.
6 However, Policy UGA-13 and the accompanying Plan text appear non-negotiable and
7 directive. If the County intends the provisions of Policy UGA-13 and associated text ...
8 to be "voluntary and consensual" when applied within a UGA ... then the language of
the Plan must clearly say so. The Board will remand Policy UGA-13 and the associate
text for the county to clarify its intent.

9 *Id* at p. 3230

10 E-18 It was the above GMHB holding that was quoted in Stewart v. King County Boundary
11 Review Board, 100 Wash App. 165, 996 P.2d 1087 (2000), discussed below.

12 E-19 The County subsequently "remove(d) the joint planning overlay from the designated
13 urban growth areas on the Land Use Map and delete(d) from the text of the Plan, joint planning
14 language addressed to urban growth areas." Kitsap County Ordinance 234-1999.

15 E-20 In November of 1999, GMHB found the County in compliance with GMA.

16 E-21 No evidence has been presented demonstrating that the 1998 MOA has been revoked or
17 is otherwise no longer in effect.

18 E-22 The City of Port Orchard suggests that like the 2003 ILA, the 1998 MOA should be
19 considered a "service" agreement, or alternatively an "annexation" agreement under section 170 and
that the board must consider it in making its decision.

20 E-23 In response, the City of Bremerton states that the MOA is not applicable to their
21 annexation proposal because "the SKIA North area does not include any property owned by the Port of
22 Bremerton" and that "Bremerton knows of no agreement in which any property owner in SKIA North
23 agreed to Port Orchard's provision of sewer service to this area." City of Bremerton's brief at p. 2.
Bremerton further states that the board has no jurisdiction to review the 1998 MOA or the 2003 ILA.
24 *Id* at. P.7, citing Stewart, supra.

25 E-24 Stewart held that GMA boards, not the BRB, have the authority to decide if
26 **requirements** for pre-annexation interlocal agreements, adopted in GMA plans, violate the GMA.

27 E-25 The courts have also held that GMA boards do not have jurisdiction to review interlocal
28 agreements themselves; GMA board jurisdiction is limited to GMA adopted plans and regulations.
City of Burien v. Central Puget Sound Growth Management Hearings Board, 113 Wn. App 375, 388-
89, 53 P.3d 1028 (2202), and recently cited in Spokane v. City of Spokane, 26988-4-III (2009).

1 E-26 Pursuant to RCW 36.93.170(1) BRB boards are statutorily required to review applicable
2 interlocal agreements.

3 E-27 Because the 1998 MOA was entered into by the county and its cities and relates to
4 planning and service provision in the SKIA UGA, a portion of which is being considered for
5 annexation in this proposal, the 1998 MOA is an “applicable interlocal annexation agreement()” and an
6 “applicable service agreement” pursuant to 36.93.170(1) and is subject to the board’s review in this
7 annexation proposal.

8 **Municipal Services and the Effect on Adjacent areas.**

9 E-28 The City of Port Orchard notes that the board must also consider the statutory factor of
10 “municipal services” and how those services affect the annexation proposal. Specifically, the City of
11 Port Orchard states: “you must consider the factor of municipal services, including the present cost and
12 adequacy of those services, future needs, the prospects for services from sources other than the
13 annexing jurisdiction, and the probable effect of annexation on the cost and adequacy of municipal
14 services.” City of Port Orchard Brief at p. 10.

15 E-29 The City of Port Orchard states that “Port Orchard is the a likely provider of sewer
16 service to SKIA” and asks the board to “reference that while either Port Orchard or Bremerton is
17 capable of providing sewer service to the proposed annexation area, County planning documents
18 identify Port Orchard as the preferred provider.” *Id* at p. 10-11.

19 E-30 In response, the City of Bremerton states that the board has “no jurisdiction to evaluate
20 Port Orchard’s ability to provide waste water services in a cost effective manner to SKIA North, given
21 that the action before the board is annexation by Bremerton, not the extension of sewer services by Port
22 Orchard.” City of Bremerton’s Brief at p. 7.

23 E-31 RCW 36.93.170 provides, in pertinent part:

24 In reaching a decision on a proposal ..., the boundary review board shall consider the
25 factors affecting the proposal, which shall include, but not be limited to the following:
26

27 (2) Municipal services; need for municipal services; effect of ordinances, governmental
28 codes, regulations and resolutions on existing uses; present cost and adequacy of
governmental services and controls in the area; prospects of governmental services from
other sources; probable future needs for such services and controls; probable effect of
proposal or alternative on cost and adequacy of services and controls in the area and
adjacent area; the effect on the finances, debt structure, and contractual obligations and
rights of all affected governmental units; and

(3) The effect of the proposal or alternative on adjacent areas, on mutual economic and
social interests, and on the local governmental structure of the county.

1 E-32 The board has jurisdiction to consider municipal services and the effect of the proposal
2 on adjacent areas pursuant to RCW 36.93.170.

3 E-33 The County's Comprehensive Plan and the SKIA Sub-Area Plan note that
4 representatives reviewed alternatives for sewer service provision for the general SKIA UGA and stated
5 that Port Orchard was their preferred alternative. County's Comprehensive Plan at Chapter 15 and
6 SKIA Area Plan, December 8, 2003 at p. 79.

7 E-34 The 1998 MOA, the 2003 ILA and the County and Cities' GMA Plans demonstrate that
8 local service providers have been and will continue to jointly plan for the provision of services to the
9 SKIA UGA, including the area under consideration in this annexation proposal.

10 E-35 In a letter dated August 21, 2008, the City of Bremerton states that the proposal "only
11 directly affects the governmental operations of Kitsap County" but that "the city has demonstrated that
12 the City will be following the provisions of the 2001 Interlocal Agreement for Revenue Sharing
13 between the City of Bremerton and Kitsap County" and that this "agreement seeks to balance revenue
14 sharing provisions that support the orderly evolution of logical land use patterns and jurisdictional
15 boundaries. The County will benefit from the economic development of the area."

16 E-36 No evidence has been presented demonstrating that the 2001 ILA has been revoked or is
17 otherwise no longer in effect.

18 E-37 The 2001 Interlocal Agreement for Revenue Sharing between the City of Bremerton and
19 the County demonstrates that the County and its Cities have been working cooperatively to ensure that
20 the urban designation and possible incorporation of SKIA UGA, of which this proposal is part, will not
21 adversely affect adjacent areas.

22 **F. Findings - Factors.**

23 F-1 As noted above, in reaching a decision on a proposal, the boundary review board shall
24 consider the factors affecting the proposal which shall include, but not be limited to the following:

25 (1) Population and territory; population density; land area and land uses; comprehensive
26 plans and zoning, as adopted under chapter 35.63, 35A.63 RCW; comprehensive plans
27 and development regulations adopted under chapter 36.70A RCW; applicable service
28 agreements entered into under chapter 36.115 or 39.34 RCW; applicable interlocal
annexation agreements between a county and its cities; per capita assessed valuation;
topography, natural boundaries and drainage basins, proximity to other populated areas;
the existence and preservation of prime agricultural soils and productive agricultural
uses; the likelihood of significant growth in the area and in adjacent incorporated and
unincorporated areas during the next ten years; location and most desirable future
location of community facilities;

(2) Municipal services; need for municipal services; effect of ordinances, governmental
codes, regulations and resolutions on existing uses; present cost and adequacy of

1 governmental services and controls in the area; prospects of governmental services from
2 other sources; probable future needs for such services and controls; probable effect of
3 proposal or alternative on cost and adequacy of services and controls in the area and
4 adjacent area; the effect on the finances, debt structure, and contractual obligations and
rights of all affected governmental units; and

5 (3) The effect of the proposal or alternative on adjacent areas, on mutual economic and
6 social interests, and on the local governmental structure of the county.

7 **RCW 36.93.170.**

8 F-2 The board has considered the factors listed in RCW 36.93.170.

9 F-3 The City of Bremerton and the City of Port Orchard have adopted comprehensive plans
10 and zoning pursuant to chapter 35.63 RCW.

11 F-4 The proposed territory is shown as part of the "SKIA Manufacturing/Industrial Center"
12 in the City of Bremerton's plan, as amended in City of Bremerton Ordinance No. 5062, October 15,
2008, Exhibit D, LU-23b.

13 F-5 The proposed territory is shown as part of the SKIA UGA in The City of Port Orchard's
14 Comprehensive Plan, as amended in City of Port Orchard Ordinance No. 042-08, dated 12-09-
15 08, Appendix A, Figure 3-1 Comprehensive Sanitary Sewer Plan Update - Port Orchard Urban Growth
16 Area.

17 F-6 Kitsap County has adopted a comprehensive Plan and development regulations pursuant
18 to chapter 36.70A RCW. The proposed territory is part of an area designated as an Urban Growth Area
which includes lands zoned for Airport, Industrial, and Business Center uses.

19 F-7 The following service agreements entered into under chapter 39.34 RCW affect the
20 proposed territory: the 1998 Memorandum of Agreement entered into by Kitsap County, City of
21 Bremerton, City of Port Orchard, and Port of Bremerton and the 2003 Interlocal Agreement entered
into by the City of Port Orchard and the Port of Bremerton.

22 F-8 The following interlocal annexation agreement between a county and its cities affect the
23 proposed territory: the 1998 Memorandum of Agreement entered into by Kitsap County, City of
24 Bremerton, City of Port Orchard, and Port of Bremerton.

25 **G. Findings - Objectives.**

26 G-1 The boundary review board is obligated to consider its statutory objectives and attempt
27 to achieve those objectives that are relevant. RCW 36.93.180 and King County v. Washington State
28 Boundary Review Board, 122 Wash. 2d 648, 860 P.2d 1024 (1993). Specifically, the decision of the
boundary review board shall attempt to achieve the following objectives:

- 1) Preservation of natural neighborhoods
- 2) Use of physical boundaries, including but not limited to bodies of water, highways, and land contours;
- 3) Creation and preservation of logical service areas
- 4) Prevention of abnormally irregular boundaries;
- 5) Discouragement of multiple incorporations of small cities and encouragement of incorporation of cities in excess of ten thousand population in heavily populated urban areas;
- 6) Dissolution of inactive special purpose districts;
- 7) Adjustment of impractical boundaries;
- 8) Incorporation as cities or towns or annexation to cities or towns of unincorporated areas which are urban in character; and
- 9) Protection of agricultural and rural lands which are designated for long term productive agricultural and resource use by a comprehensive plan adopted by the county legislative authority.

RWC 36.93.180.

G-2 The board considered the above objectives.

G-3 The proposed area is currently used as forest land and industrial and no “neighborhoods” or “communities” exist.

G-4 The proposed annexation effectively uses physical boundaries, including but not limited to bodies of water, highways, and land contours. Specifically, State Highway 3 bounds the proposed annexation area as a clear physical north western boundary.

G-5 The proposed annexation preserves logical service areas. Both the City of Bremerton and the City of Port Orchard have submitted evidence that they are capable of providing adequate public facilities and services to the area and they, together with the County and the Port of Bremerton, have been jointly planning for the provision of service to the SKIA UGA, a portion of which is under consideration in this proposal.

G-6 The proposal prevents abnormally irregular boundaries. The proposed area is a logically drawn boundary that follows lot lines and does not create any isolated county “islands,” but is next to the City of Bremerton.

G-7 The objective providing “(d)iscouragement of multiple incorporations of small cities and encouragement of incorporation of cities in excess of ten thousand population in heavily populated urban areas” is not relevant to this proposal. Bremerton is a first class city with a population of approximately 38,000 people.

G-8 The objective providing “(d)issolution of inactive special purpose districts” is not relevant to this proposal

1 G-9 The objective providing “(a)adjustment of impractical boundaries” is not relevant to this
2 proposal; this proposal has no impractical boundaries.

3 G-10 The proposal annexes unincorporated area which is urban in character and has been
4 designated as an Urban Growth Area in the County’s Comprehensive Plan.

5 G-11 The objective providing, “(p)rotection of agricultural and rural lands which are
6 designated for long term productive agricultural and resource use by a comprehensive plan adopted by
7 the county legislative authority” is not relevant to this proposal because the area is not designated
8 agricultural or rural. The area sought to be annexed is designated as an urban growth area in the
County’s Comprehensive Plan, which has been found in compliance with the Growth Management Act
by the Central Puget Sound Growth Management Hearings Board.

9 **H. Findings -Growth Management Act.**

10 H-1 The boundary review board’s decision must be consistent with the Growth Management
11 Act. RCW 36.93.157.

12 H-2 The proposed annexation encourages development in urban areas where adequate public
13 facilities and services exist or can be provided in an efficient manner.

14 H-3 The proposed annexation encourages economic development within the capacities of the
15 area’s natural resources, public services and public facilities.

16 H-4 The proposed annexation area has been designated as an Urban Growth Area in the
17 County’s Comprehensive Plan which has been found in compliance with the Growth Management Act
18 by the Central Puget Sound Growth Management Hearings Board. The Comprehensive Plans of both
19 the City of Bremerton and the City of Port Orchard show the area as an UGA. The area is
20 characterized by urban growth and adequate public facilities and service capacities exist or are planned
21 to serve urban, industrial uses.

22 H-5 The SKIA UGA, a portion of which is under consideration in this annexation proposal,
23 is the product of joint planning among the County and its cities. It is uncontested that the County met
24 the process and criteria outlined in the County-Wide Planning Policies prior to adopting the SKIA
25 UGA.

26 **IV. CONCLUSIONS OF LAW**

27 **A. Conclusions - Standing.** The City of Port Orchard has standing to invoke the jurisdiction of the
28 Washington State Boundary Review Board for Kitsap County because the City of Port Orchard is a
“governmental unit affected” by this annexation, within three miles of the proposal, pursuant to RCW
36.93.100.

B. Conclusions - Jurisdiction. The City of Bremerton’s proposed annexation, brought pursuant to
RCW 35.13.125, is “subject to potential review by a boundary review board.” RCW 35.13.001 and

1 see, Interlake Sporting Association, Inc. v. Washington State Boundary Review Board for King
2 County, 158 Wash.2d 545, 553, 146 P.3d 904 (2006). A boundary review board gains jurisdiction
3 upon formal request by a party with standing. Interlake, at p.553. The board has jurisdiction to review
4 the City of Bremerton’s proposal to annex SKIA “North” because the City of Port Orchard, as a party
5 with standing, has timely and properly requested review pursuant to RCW 36.93.100.

6 **C. Conclusions - Factors.** The board has considered the factors listed in RCW 36.93.170. Among
7 other factors, the board is required to consider 1) how “comprehensive plans and zoning” affect the
8 proposed annexation 2) how “applicable service agreements” affect the proposed annexation and 3)
9 how “applicable interlocal annexation agreements” affect the proposed annexation. RCW 36.93.170.

10 **C-1** The County and both the City of Bremerton and the City of Port Orchard have planned
11 for the SKIA UGA, which includes the area now proposed for annexation, in their GMA
12 comprehensive plans. Therefore, the GMA plans are relevant to the proposed annexation and the board
13 must consider them in the context of this annexation proposal.

14 **C-2** The 2003 ILA is an “applicable **service** agreement” because the ILA was executed for
15 the purpose of planning waste water service in the general SKIA UGA, a portion of which is under
16 consideration in this annexation proposal. Because the 2003 ILA is an “applicable service agreement”
17 it must be considered by the board in the context of this annexation proposal.

18 **C-3** The 1998 MOA is an “applicable interlocal annexation agreement” or alternatively, an
19 “applicable service agreement” because the 1998 MOA was entered into by the county and its cities
20 pursuant to 39.34 RCW and relates to planning and service provision in the SKIA UGA, a portion of
21 which is under consideration in this annexation proposal. Because the 1998 MOA is an “applicable
22 interlocal annexation agreement” or alternatively, an “applicable service agreement” the 1998 MOA
23 must be considered by the board in the context of this annexation proposal.

24 **C-4** Pursuant to RCW 36.93.170(2), the board must consider the general factor of municipal
25 services in relation to the proposed annexation. Specifically, the board must consider:

26 (N)eed for municipal services; effect of ordinances, governmental codes, regulations and
27 resolutions on existing uses; present cost and adequacy of governmental services and controls
28 in the area; prospects of governmental services from other sources; probable future needs for
such services and controls; probable effect of proposal or alternative on cost and adequacy of
services and controls in the area and adjacent area; the effect on the finances, debt structure, and
contractual obligations and rights of all affected governmental units

RCW 36.93.170(2) in part.

C-5 The 1998 MOA, the 2003 ILA and the County and Cities’ Comprehensive Plans
demonstrate that the area under consideration is within the County’s Urban Growth Area and that
adequate public facilities and services exist or can be provided in an efficient manner.

1 **C-6** The 1998 MOA , the 2001 Interlocal Agreement for Revenue Sharing, the 2003 ILA and
2 the County and Cities' Comprehensive Plans demonstrate that local service providers and governments
3 have been jointly planning for the provision of adequate public facilities to the SKIA UGA, including
4 the area now proposed for annexation, for several years and that they plan to continue to jointly plan
5 for the area. The proposed annexation does not change or otherwise affect joint planning efforts and
6 prior agreements and therefore, the proposed annexation will not adversely affect municipal services or
7 adjacent areas.

8 **D. Conclusions - Objectives.** The annexation proposal is consistent with the relevant objectives
9 listed in RCW 36.93.180 because the proposal effectively uses physical boundaries; preserves logical
10 service areas so that adequate public facilities and services may be provided to the area; is a logically
11 drawn boundary; and annexes unincorporated area which is urban in character and has been designated
12 as an Urban Growth Area in the County's Comprehensive Plan as well as appearing as an UGA in the
13 Comprehensive Plans of both the City of Bremerton and the City of Port Orchard.

14 **E. Conclusions -Growth Management Act.** The board's decision to approve the proposed
15 annexation is consistent with the Growth Management Act (GMA).

16 **E-1** The board's decision to approve the proposed annexation is consistent with the GMA
17 because the proposed annexation encourages development in urban areas where adequate public
18 facilities and services exist or can be provided in an efficient manner, consistent with RCW
19 36.70A.020.

20 **E-2** The board's decision to approve the proposed annexation is consistent with the GMA
21 because the proposed annexation encourages economic development within the capacities of the area's
22 natural resources, public services and public facilities, consistent with RCW 36.70A.020.

23 **E-3** The board's decision to approve the proposed annexation is consistent with the GMA
24 because the proposed annexation area has been designated as part of an Urban Growth Area in the
25 County's Comprehensive Plan and the County's Plan has been found in compliance with the GMA by
26 the Central Puget Sound Growth Management Hearings Board. The Comprehensive Plans of both the
27 City of Bremerton and the City of Port Orchard also show the area as part of an UGA. Finally, the area
28 is characterized by urban growth and adequate public facilities and service capacities exist or are
planned to serve urban, industrial uses, consistent with RCW 36.70A.110.

E-4 The board's decision to approve the proposed annexation is consistent with the GMA
because The SKIA UGA, a portion of which is under consideration in this annexation proposal, is the
product of joint planning among the County and its cities, consistent with RCW 36.70A.210. It is
uncontested that the County met the process and criteria outlined in the County-Wide Planning Policies
prior to adopting the SKIA UGA, as well as other UGAs.

F. Conclusions - Conditional Decisions. While the board has the authority to approve, deny or
modify territorial boundaries of an annexation proposal, the board does not have the authority to
conditionally approve, conditionally deny or conditionally modify an annexation proposal.

1 **G. Conclusions – SEPA.** Environmental review for this proposal has not been challenged. Under the
2 provisions of WAC 197-11-630, the City of Bremerton adopted the existing environment document:
3 "Kitsap County Integrated Comprehensive Plan and Environmental Impact Statement Volume II Final
4 EIS" dated December 11, 2006. The adoption of this existing environmental document is for a City of
5 Bremerton Non-Project Action. This is phased environmental review under WAC 197-11-060(5).
SEPA review will be required for development applications and any other project specific actions that
exceed the categorical exemption thresholds set forth in WAC 197-11-800.

6 **V. DECISION**

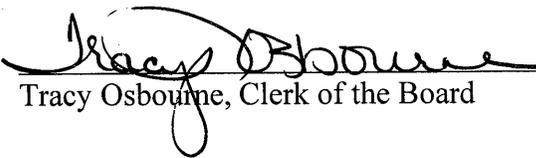
7 Based on the foregoing findings and conclusions and the record and testimony presented, the
8 Washington State Boundary Review Board for Kitsap County approves the City of Bremerton's
9 proposed annexation of 150 acres known as South Kitsap Industrial Area "North."

10 DATED this 23rd day of January, 2009.

11 KITSAP COUNTY BOUNDARY REVIEW BOARD

12
13
14 
15 _____
John Szymanski, Chairman

16
17 ATTEST:

18
19
20 
21 _____
Tracy Osbourne, Clerk of the Board