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

In the Matter of:

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

BRB FILE NO.

Findings of Fact, Conclusions of Law
And Decision Approving Annexation

I. INTRODUCTION

The City of Bremerton proposes to annex 3100 acres of the South Kitsap Industrial Area Urban Growth Area, or SKIA "South" pursuant to RCW 35.13.125 – 35.13.150. 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.

II. BASIS FOR REVIEW

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

- RCW 36.93.157 -- Decisions to be consistent with Growth Management Act.
- RCW 36.93.170 -- Factors to be considered by the Boundary Review Board.
- RCW 36.93.180 -- Objectives of the Boundary Review Board.

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

III. FINDINGS OF FACT

A. Findings - The South Kitsap Industrial Area – Background.

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.

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

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

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

17 B-1 On September 3, 2008, the City of Bremerton proposed annexing territory within the
18 SKIA UGA. City of Bremerton Ordinance No. 5057.

19 B-2 The City of Bremerton filed a Notice of Intention, dated September 16, 2008, proposing
20 to annex 3100 acres of the SKIA UGA. This Notice of Intention is known as SKIA “South.”

21 B-3 On September 16, 2008, the Clerk of the Boundary Review Board forwarded the city’s
22 notice of intention to annex to the following:

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

B-3 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-4 On October 9, 2008, at its regular meeting, the Board voted to accept the City of
Bremerton’s notice of intention, 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 28, 2008, the City of Port Orchard invoked the jurisdiction of
3 the Boundary Review Board. The City of Port Orchard sought review of the City of Bremerton's
4 Notice of 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 X,
6 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 January 9, 2009, January 14, 2009 and January 16, 2009, Notice of Public hearing
15 was published in the Kitsap Sun.

16 C-4 On January 16, 2009, NOTICE OF PUBLIC HEARING signs were posted in ten places
17 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	10/28/08	Lary Coppola	City of Port Orchard's request to invoke Board's jurisdiction
2	10/28/08	Tracy Osbourne	Receipt for Payment of Filing Fee
3	10/31/08	Courtney Flora	Letter from counsel for Overton & Associates regarding Port Orchard's standing to invoke
4	11/14/08	Philip Bacus	Letter to City of Bremerton and City of Port Orchard requesting additional information
5	12/04/08	Courtney Flora	Letter from counsel for Overton & Assoc. regarding Port Orchard's standing
6	12/4/08	Carol Morris	Brief of City of Bremerton (re Port Orchard's "standing")
7	12/4/08	Gregory Jacoby	Brief of City of Port Orchard regarding BRG Jurisdiction
8	12/05/08	Tracy Osbourne	Letter to board members enclosing briefs
9	12/12/08	Tracy Osbourne	Notice of Public Hearing to City of Port Orchard
10	12/12/08	Tracy Osbourne	Notice of Public Hearing to City of Bremerton
11	12/12/08	Tracy Osbourne	Notice of Public Hearing to South Kitsap School District No. 402

Exhibit #	Date	Author	Summary
12	12/12/08	Tracy Osbourne	Notice of Public Hearing to South Kitsap Fire & Rescue
13	12/12/08	Tracy Osbourne	Notice of Public Hearing to Port of Bremerton District No. 1
14	12/12/08	Tracy Osbourne	Notice of Public Hearing to Sunnyslope Water District No. 15
15	12/12/08	Tracy Osbourne	Notice of Public Hearing to Kitsap County Public Utility District No. 1
16	12/12/08	Tracy Osbourne	Notice of Public Hearing to Courtney Flora
17	12/12/08	Courtney Flora	Letter to Board re Annexation
18	12/13/08	Roger Lubovich	Brief of City of Bremerton
19	12/14/08	Gregory Jacoby	Brief of City of Port Orchard

C-6 On January 23, 2009, 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
20	01/16/09	Jason Rice	Affidavit of Posting
21	01/16/09	Steve Mount	Affidavit of Posting
22	01/21/09	Suzy Meyer	Letter regarding Lake Flora Woods
23	01/23/09	N/A	Testimony Sign-Up Sheet
24	01/23/09	Unknown	City of Port Orchard Proposed Findings
25	01/29/09	Laura Wessels	Affidavit of Publication

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

#	Name	Title or Association
1	Greg Jacoby	City Attorney, City of Port Orchard
2	R	Alpine Evergreen Co.
3	David Overton	Overton & Associates
4	Carol Morris	City Attorney, City of Bremerton
5	Lindsey Schmel	Planner, City of Bremerton
6	Lary Coppola	

D. Findings - Board's Authority.

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

D-2 The City of Bremerton proposes to annex 3100 acres of SKIA "South" pursuant to RCW 35.13.125.

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

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

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

8 D-6 RCW 36.93.100 provides:

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

12

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

14 D-7 In 2001, the City of Port Orchard annexed territory that is within 2.55 miles of SKIA
15 “South.”

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

19 D-9 The City of Port Orchard is a “governmental unit affected” by this annexation proposal
20 because the City of Port Orchard has annexed territory that is within three miles of the proposed
21 annexation area and because the City of Port Orchard has been engaged in joint planning for the SKIA
22 UGA.

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

28 D-11 After its jurisdiction is invoked, a boundary review board conducts a public hearing to
gather evidence and testimony regarding the proposal. RCW 36.93.100. On December 19, 2008, the
board conducted a hearing to gather evidence and hear testimony regarding the City of Bremerton’s
annexation proposal.

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

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

4 Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County, 135 Wash. 2d 542, 565, 958 P.2d 962
5 (1998) (citing RCW 36.70A.280(1) and Kaiser Aluminum & Chem. Corp. v. Department of Labor &
6 Indus., 121 Wash. 2d 776, 780, 854 P.2d 611 (1993); Human Rights Comm'n v. Cheney Sch. Dist. 30,
7 97 Wash. 2d 118, 125, 641 P.2d 163 (1982).

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

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

16 D-15 Boundary review boards have been found to have exceeded their authority when they
17 have attempted to decide the propriety of certain zoning designations. See, Stewart v. King County
18 Boundary Review Board, 100 Wash App. 165, 996 P.2d 1087 (2000). In Stewart, the Court of Appeals
19 held that the board did not have authority to determine whether the county's designation of the property
20 as "agricultural" in its comprehensive plan was factually correct. The court also noted that the GMA
21 board, not the BRB, had the authority to decide if requirements for pre-annexation interlocal
22 agreements, adopted in a comprehensive plan, violate the GMA. Stewart, at p.175, citing CPSGMHB
23 98-30039c and 98-30032c.

24 D-16 Boundary review boards have also been found to have exceeded their authority when
25 they have expanded the territory sought to be annexed. Interlake Sporting Association, Inc. v.
26 Washington State Boundary Review Board for King County, 158 Wash.2d 545, 146 P.3d 904 (2006)
27 citing RCW 36.93.150. In Interlake, the State Supreme Court held that the board exceeded its authority
28 when it expanded the territory sought to be annexed to three times the original proposal.

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

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

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

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

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

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

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

12 **2003 ILA**

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

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

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

E-6 The City of Port Orchard also suggests that the ILA is relevant to the proposed
annexation because it is consistent with various County and county-wide plans affirming the desire for
joint planning among jurisdictions. Specifically, the City of Port Orchard states that the County has
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.

E-7 The County’s Comprehensive Plan did adopt some of the policies of the Sub Area Plan
and incorporated the Sub-Area Plan itself by reference. See, County’s Comprehensive Plan at Chapter

1 15. In a narrative section of the Sub-Area Plan, the Sub-Area Plan states that “representatives,” not the
2 county, have “selected” the city of Port Orchard/Karcher Creek Sewer District as the “preferred
3 **alternative,”** not the preferred provider.

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

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

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

11 Policy SKIA-2

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

15

16 Policy SKIA-39

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

18

19 Policy SKIA-42

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

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

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

27 E-10 The 2003 ILA is an “applicable service agreement” pursuant to RCW 36.93.170 because
28 it was executed pursuant to chapter 39.34 RCW and relates to the provision of waste water service in
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.

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

1998 MOA

E-12 The City of Port Orchard also submitted a 1998 Memorandum of Understanding

1 (MOA). The City of Port Orchard, Exhibit #1. The 1998 MOA was entered into by Kitsap County,
2 City of Bremerton, City of Port Orchard, and Port of Bremerton.

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

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

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

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

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

18 E-16 In October of 1998, the City of Bremerton challenged the County’s 1998
19 Comprehensive Plan. See, Bremerton v. Kitsap County, CPSGMHB case Nos. 95-3-0039c/98-3-
20 0032c. Specifically, the City of Bremerton objected to Policy UGA 13’s associated text which
21 provided in part:

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

25 *Id* at p. 3229.

26 E-17 In February of 1999, a GMA board found the County’s 1998 Comprehensive Plan out of
27 compliance with the GMA:

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

The act strongly encourages collaborative and cooperative joint planning efforts.
However, Policy UGA-13 and the accompanying Plan text appear non-negotiable and
directive. If the County intends the provisions of Policy UGA-13 and associated text ...
to be “voluntary and consensual” when applied within a UGA ... then the language of

1 the Plan must clearly say so. The Board will remand Policy UGA-13 and the associate
2 text for the county to clarify its intent.

3 *Id* at p. 3230

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

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

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

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

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

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

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

23 E-25 The courts have also held that GMA boards do not have jurisdiction to review interlocal
24 agreements themselves; GMA board jurisdiction is limited to GMA adopted plans and regulations.
25 City of Burien v. Central Puget Sound Growth Management Hearings Board, 113 Wn. App 375, 388-
26 89, 53 P.3d 1028 (2202), and recently cited in Spokane v. City of Spokane, 26988-4-III (2009).

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

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

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

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

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

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

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

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

19

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

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

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

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

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

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

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

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

16 **F. Findings - Factors.**

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

19 (1) Population and territory; population density; land area and land uses; comprehensive
20 plans and zoning, as adopted under chapter 35.63, 35A.63 RCW; comprehensive plans
21 and development regulations adopted under chapter 36.70A RCW; applicable service
22 agreements entered into under chapter 36.115 or 39.34 RCW; applicable interlocal
23 annexation agreements between a county and its cities; per capita assessed valuation;
24 topography, natural boundaries and drainage basins, proximity to other populated areas;
25 the existence and preservation of prime agricultural soils and productive agricultural
26 uses; the likelihood of significant growth in the area and in adjacent incorporated and
27 unincorporated areas during the next ten years; location and most desirable future
28 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
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 **RCW 36.93.170.**

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

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

5 F-4 The proposed territory is shown as part of the "SKIA Manufacturing/Industrial Center"
6 in the City of Bremerton's plan, as amended in City of Bremerton Ordinance No. 5062, October 15,
7 2008, Exhibit D, LU-23b.

8 F-5 The proposed territory is shown as part of the SKIA UGA in The City of Port Orchard's
9 Comprehensive Plan, as amended in City of Port Orchard Ordinance No. 042-08, dated 12-09-
10 08, Appendix A, Figure 3-1 Comprehensive Sanitary Sewer Plan Update - Port Orchard Urban Growth
11 Area.

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

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

19 F-8 The following interlocal annexation agreement between a county and its cities 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.

22 **G. Findings - Objectives.**

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

- 27 1) Preservation of natural neighborhoods
28 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;

- 1 7) Adjustment of impractical boundaries;
2 8) Incorporation as cities or towns or annexation to cities or towns of unincorporated
3 areas which are urban in character; and
4 9) Protection of agricultural and rural lands which are designated for long term
5 productive agricultural and resource use by a comprehensive plan adopted by the county
6 legislative authority.

7 **RWC 36.93.180.**

8 G-2 The board considered the above objectives.

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

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

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

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

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

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

28 G-9 The objective providing "(a)djustment of impractical boundaries" is not relevant to this
proposal; this proposal has no impractical boundaries.

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

G-11 The objective providing, "(p)rotection 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" is not relevant to this proposal because the area is not designated

1 agricultural or rural. The area sought to be annexed is designated as an urban growth area in the
2 County's Comprehensive Plan, which has been found in compliance with the Growth Management Act
3 by the Central Puget Sound Growth Management Hearings Board.

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

5 H-1 The boundary review board's decision must be consistent with the Growth Management
6 Act. RCW 36.93.157.

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

9 H-3 The proposed annexation encourages economic development within the capacities of the
10 area's natural resources, public services and public facilities.

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

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

21 **IV. CONCLUSIONS OF LAW**

22 **A. Conclusions - Standing.** The City of Port Orchard has standing to invoke the jurisdiction of the
23 Washington State Boundary Review Board for Kitsap County because the City of Port Orchard is a
24 "governmental unit affected" by this annexation, within three miles of the proposal, pursuant to RCW
25 36.93.100.

26 **B. Conclusions - Jurisdiction.** The City of Bremerton's proposed annexation, brought pursuant to
27 RCW 35.13.125, is "subject to potential review by a boundary review board." RCW 35.13.001 and
28 see, Interlake Sporting Association, Inc. v. Washington State Boundary Review Board for King
County, 158 Wash.2d 545, 553, 146 P.3d 904 (2006). A boundary review board gains jurisdiction
upon formal request by a party with standing. Interlake, at p.553. The board has jurisdiction to review
the City of Bremerton's proposal to annex SKIA "North" because the City of Port Orchard, as a party
with standing, has timely and properly requested review pursuant to RCW 36.93.100.

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

1 how “applicable interlocal annexation agreements” affect the proposed annexation. RCW 36.93.170.

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

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

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

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

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

24 RCW 36.93.170(2) in part.

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

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

D. Conclusions - Objectives. The annexation proposal is consistent with the relevant objectives
listed in RCW 36.93.180 because the proposal effectively uses physical boundaries; preserves logical

1 service areas so that adequate public facilities and services may be provided to the area; is a logically
2 drawn boundary; and annexes unincorporated area which is urban in character and has been designated
3 as an Urban Growth Area in the County's Comprehensive Plan as well as appearing as an UGA in the
4 Comprehensive Plans of both the City of Bremerton and the City of Port Orchard.

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

7 **E-1** The board's decision to approve the proposed annexation is consistent with the GMA
8 because the proposed annexation encourages development in urban areas where adequate public
9 facilities and services exist or can be provided in an efficient manner, consistent with RCW
10 36.70A.020.

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

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

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

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

G. Conclusions - SEPA. Environmental review for this proposal has not been challenged. Under the
provisions of WAC 197-11-630, the City of Bremerton adopted the existing environment document:
"Kitsap County Integrated Comprehensive Plan and Environmental Impact Statement Volume II Final
EIS" dated December 11, 2006. The adoption of this existing environmental document is for a City of
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.

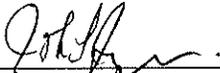
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V. DECISION

Based on the foregoing findings and conclusions and the record and testimony presented, the Washington State Boundary Review Board for Kitsap County approves the City of Bremerton's proposed annexation of approximately 3,100 acres known as South Kitsap Industrial Area "South."

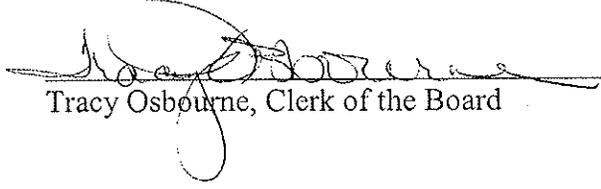
DATED this ____ day of February, 2009.

KITSAP COUNTY BOUNDARY REVIEW BOARD



John Szymanski, Chairman

ATTEST:



Tracy Osbourne, Clerk of the Board