



CITY COUNCIL MEETING AGENDA
Council Chambers, 1000 Laurel Street

February 9, 2015
Monday

Study Session
7:00 p.m.

- 1. Call to Order**
- 2. Roll Call of Council Members**
- 3. Discussion Items**
 - a. Open Government Training Act – Compliance Video**
 - b. Meet with Staff – Valerie Monsey/Storm Water Fee Audit**
 - c. Clear Firs/Sunridge Annexation**
 - d. Freeman Road Boundary Adjustment**
- 4. Adjournment**

Note: Public comment is generally not taken at Study Sessions. However, on some occasions, public comments may be allowed at the discretion of the Chair and Council. The public may also submit written communications, via letters or emails to dperry@cityofmilton.net. Any item received by noon on the day of the meeting will be distributed to Council.

If you need ADA accommodations, please contact City Hall at (253) 517-2705 prior to the meeting. Thank you.



To: Mayor Perry and City Council Members
From: Katie Bolam, City Clerk
Date: February 9, 2015
Re: Open Government Meetings Act

ATTACHMENTS: State Attorney General Informational Sheet

TYPE OF ACTION:

Information Only Discussion Action Public Hearing

Issue: As you may be aware, the Open Government Training Act, which took effect July 1, 2014, requires members of a governing body of a public agency to receive training on the Open Public Meetings Act. Elected officials must also receive training on the Public Records Act.

This training is required within 90 days after taking office, and a refresher course is required at intervals of no more than 4 years.

To comply with this requirement, there will be a 22-minute video presentation.



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

2014 Open Government Trainings Act

The Open Government Trainings Act, Chap. 66, 2014 Laws ([Engrossed Senate Bill 5964](#)) was enacted by the 2014 Washington State Legislature, effective July 1, 2014. Here is a guide.

1. Why did the Legislature enact this new law?

Answer: The bill was introduced at the request of the Attorney General, with bipartisan support. A 2012 Auditor’s Office report noted more than 250 “open government-related issues” among local governments. These included issues concerning the Open Public Meetings Act (OPMA) at RCW [42.30](#). In addition, in recent years the courts have imposed some significant monetary penalties against state and local public agencies due to their non-compliance with the Public Records Act (PRA) at RCW [42.56](#). Most violations are not malicious or intentional; they are often the result of insufficient training and knowledge. The comments to the Attorney General’s Office advisory Model Rules on the PRA, and case law, have recognized that PRA training for records officers is a best practice. See, for example, [WAC 44-14-00005](#).

The Legislature passed ESB 5964 in March 2014 and the Governor signed it on March 27, 2014. The Act is designed to foster open government by making open government education a recognized obligation of public service. The Act is also designed to reduce liability by educating agency officials and staff on the laws that govern them, in order to achieve greater compliance with those laws. Thus, the Act is a risk management requirement for public agencies. The Act provides for open public meetings and records trainings. In sum, the Act is intended to improve trust in government and at the same time help prevent costly lawsuits to government agencies. *[Section 1]*

2. What is the Act called?



Answer: The Open Government Trainings Act. *[Section 6]*

3. When is the Act effective?



Answer: July 1, 2014. *[Section 7]*

4. What is a quick summary of the Act’s requirements?



Answer: The Act requires basic open government training for local and statewide officials and records officers. Training covers two subjects: public records and records retention (“records training”), and open public meetings. *[Sections 1-4]* Whether you are

required to take trainings on one or both subjects depends on what governmental position you fill.



5. What is the Attorney General's Office role?

Answer: The Attorney General's Office may provide information, technical assistance, and training. [Section 5] See also RCW [42.56.570](#) and RCW [42.30.210](#). The office maintains and provides a public [web page](#) with training videos as well as training resources.

The office is also providing other assistance such as this Q & A guidance. The Assistant Attorney General for Open Government (ombudsman) is also available as a resource. See Q & A Nos. 13 and 22.



6. Who is subject to the Act's training requirements?

Answer:



► **Members of governing bodies.**

Members of a governing body of a public agency subject to the OPMA must receive **open public meetings training (OPMA training concerning RCW [42.30](#))**. "Public agency" and "governing body" are defined in the OPMA. RCW [42.30.020](#).

They include members of city councils, boards of county commissioners, school boards, fire district boards, state boards and commissions, and other public agency boards, councils and commissions subject to the OPMA. Effective July 1, 2014, those members must receive OPMA training no later than 90 days after they take their oath of office or assume their duties. They can take the training before they are sworn in or assume their duties of office. They must also receive "refresher" training at intervals of no more than four years, so long as they are a member of a governing body. [Section 2]

Note: If a member of a "governing body" is also an elected local or statewide official, he or she must receive both open public meetings and records trainings (see next bullet).

* * *



► **Elected local and statewide officials.**

Every local elected official, and every statewide elected official, must receive **records training (PRA training concerning RCW [42.56](#), plus records retention training concerning RCW [40.14](#))**.

Effective July 1, 2014, they must receive this training no later than 90 days after they take their oath of office or assume their duties. They can take the training before they are sworn in or assume their duties of office. They must also receive "refresher" training at intervals of no more than four years. [Section 3]

Note: If an elected local or statewide official is also a member of a “governing body,” the official must receive both open public meetings and records trainings.

* * *

► **Records officers.** 

Public records officers for state and local agencies, and state agency records (retention) officers designated under RCW [40.14.040](#), must receive **records training (PRA training concerning RCW 42.56 and records retention training concerning RCW 40.14)**. Effective July 1, 2014, they must receive this training no later than 90 days after they assume their duties. They must also receive “refresher” training at intervals of no more than four years. [Section 4]

Note: While Section 4(2) of the bill refers to “public records officers” in the training schedule, the act’s training requirements were intended to apply to both public records officers under the PRA and to state agency records officers designated under RCW 40.14.

* * *

► **Others.** 

Other public agency officials and employees who are not listed in the Act are not required to receive training. However, this Act sets only minimum training. Agencies may wish to provide or arrange for additional or more frequent training, or training for additional staff.

Training is essential because even one unintentional mistake can amount to a violation of the PRA or OPMA. PRA training reduces risks of lawsuits. As the State Supreme Court has explained, “An agency’s compliance with the Public Records Act is only as reliable as the weakest link in the chain. If an agency employee along the line fails to comply, the agency’s response will be incomplete, if not illegal.” *Progressive Animal Welfare Society v. University of Washington*, 125 Wn.2d 243 (1995). And the Supreme Court has held that PRA training can reduce PRA penalties. *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 244 (2010).

As a consequence, an agency may want persons who are not listed in the Act to receive training. How much training each employee receives may depend on his or her role. For example, an agency may want all employees to be trained on the basics of records management, search requirements, how to identify a request for records, and what is a public record. An agency could include basic records training in all its new employee orientations, covering both PRA and records retention.

Other employees may benefit from additional training. For example, public records officers may have other designated staff to assist them in responding to records requests. Thus, records training would be useful for those staff. And, that records training for those who regularly assist public records officers may be more detailed or frequent than, say, that provided to a board member.

Or, while a local government agency is not required to formally designate a records retention officer under RCW 40.14.040, as a practical matter, the agency may have staff who is key in maintaining records using the local government records schedules. Therefore, those local government agencies may want to provide or arrange for those staff to receive training on RCW 40.14.

Or, a board may have a staff member or clerk who posts meeting notices and agendas, and maintains minutes, so that person may likely benefit from training on the open public meetings requirements under the OPMA.

And, regular refresher training may be appropriate for any of these employees, depending upon the person's governmental position and developments in the law.

In sum, while training is not required for governmental positions not listed in the Act, the Attorney General's Office encourages agencies to consider that persons in other positions are subject to or working with these laws, and would likely benefit from receiving training, if feasible. Training on the laws is a best practice, even if not specifically required by the Act. Education helps support transparency in government and reduces risk to agencies.

7. Who is not subject to the Act's training requirements?



Answer: As noted in Q & A No. 6, public agency employees and officials not listed in the Act are not required to receive training. The courts and the State Legislature are also not required to receive training (unless the person also holds another governmental position where training is required, for example, serving on a governing body subject to the OPMA). Even so, the Act does not restrict them from receiving or participating in open government training.

Others not subject to the Act include board members, officials or employees of purely private organizations. Examples are nonprofit boards, homeowners associations, or other private entities that are not a public agency or the functional equivalent of a public agency.

8. What if I am in my elected position (an incumbent) on July 1, 2014, and I am not up for re-election in 2014? How does the training schedule work for me? What if I already received training in 2014?



Answer: Even if not specifically required by the Act, we recommend that incumbents in office on July 1, 2014 receive training for each of the required sections of law during 2014, if they have not already received such training. If they have already received training in 2014 for the required sections of law, we suggest they document it. (See Q & A No. 17). Then, calendar refresher trainings at intervals of no later than four years (as long as you are a member of the governing body or public agency). We suggest this approach for several reasons.

- First, the training will help establish a “**culture of compliance**” with open government laws in the agency if officials and others subject to the Act demonstrate they have recently received or are quickly willing to receive the training.
- Second, it will help set a similar “**base year**” for scheduling four-year refresher trainings if several officials in a public agency are required to receive that training.
- Third, it is a **good idea** for an elected official to receiving training in 2014, even if the training covers some of the same topics previously reviewed during an earlier year’s orientation or training. Given the public interest in these laws, it is good to keep them in the forefront of the official’s or employee’s base knowledge. And, there may be new developments in the statutes or court decisions that were not covered in a prior training.
- Finally, the **sooner training is received and documented, the sooner that information will be available** to a court or others if needed. Since 2010, the State Supreme Court has said it will consider PRA training in assessing penalties for public records violations specified in the PRA. (See more discussion under Q & A No. 20 discussing non-compliance with the Act.)

9. **What if I am in my elected position (an incumbent) on July 1, 2014, and I am seeking re-election in 2014? How does the training schedule work for me?**



Answer: Incumbents who are re-elected in November 2014 must receive training no later than 90 days after they take their new oath of office or otherwise assume their duties. However, they can take the training sooner. Therefore, they could either take the training some time by the end of 2014 (perhaps with other officials and staff receiving training in 2014), or they could wait to take the training within 90 days after they take their oath of office or otherwise assume their duties of office if re-elected in November.

Then, refresher training must be taken no later than every four years (as long as you are a member of the governing body or public agency).

10. **What if I am in my position as an incumbent public records officer or records officer on July 1, 2014? How does the training schedule work for me?**



Answer: If you were in your position prior to July 1, 2014, and you have already received training in 2014, we recommend you document it. However, if you did not receive any records training in 2014, we recommend you receive training this year, given the reasons and approach stated in Q & A No. 8, and document that training. (See Q & A No. 17). Then, 2014 becomes your “base year” from which you schedule the refresher

trainings that are required no more than four years later (as long as you are in the records officer position).

If you are appointed on or after July 1, 2014, you will need to receive training no later than 90 days after assuming your duties, and then receive refresher trainings no more than four years later.

You can receive more frequent trainings, too, if feasible. More frequent trainings are not restricted in the Act.

11. What must the training include?

Answer:



- **Open public meetings training** should cover the basics of the OPMA. [Section 2]

The Act does not provide further details. However, for example, the training could cover the purpose of the act, requirements for regular and special meetings, public notice, executive sessions, and penalties. The training may also include the requirement to maintain minutes and have them open for public inspection, as described in another law at RCW [42.32.030](#).

The Attorney General's Office online OPMA video and OPMA Power Point cover the basics of the OPMA and satisfy this requirement.



- **Records training – PRA.** Training on the Public Records Act should cover the basics of the PRA at RCW 42.56. Training must be consistent with the Attorney General's Office [Model Rules](#). [Sections 3, 4] The Act does not provide further details.

However, for example, the training could cover the purpose of the PRA, what is a "public record," basic public records procedures, how an agency responds to requests, searches, what an agency must do before withholding information in a record from the public, and penalties. The training might also cover an agency's particular PRA procedures set out in its rules or policies.

The Attorney General's Office online PRA video and PRA Power Point cover the basics of the PRA and satisfy this requirement.



- **Records training – records retention.** Record retention training should cover the basics of RCW 40.14. [Sections 3, 4]

The Act does not provide further details. However, for example, the training could cover basic retention requirements, what is a records retention schedule, and a brief description of what schedule(s) apply to the agency. For board members, it may

also specifically cover how to manage emails and other electronic records. For a records officer, the training may be much more detailed, addressing more specifically the agency's records retention schedules and categories of records.

The Washington State Archives records retention training covers the basics of records retention and satisfies this requirement.



- **The four-year “refresher” training** should cover the basic requirements in effect at the time of the training. It is a good idea to cover any recent developments in the law since the last training. Under the Act, the refresher trainings must occur at intervals of no more than four years.

There may be options an agency wants to consider for giving refresher training. For example, it may be useful to have a refresher training once a year such as at a board meeting or staff workshop. In that way, officials and employees subject to these laws can receive ongoing refreshers as well as updates on the laws, without needing to individually calendar the four-year cycle.



12. Who will provide the training?

Answer: That choice is up to each agency official and employee, depending on the agency's needs and resources. The Attorney General's Office has provided a [web page](#) with training information. That web page includes resources for PRA and OPMA training. Examples include Power Point presentations, videos, manuals, and links to other training resources. The web page also provides links to the Washington State Archives online training materials and other information describing records retention requirements. Other training options are available as well. See Q & A No. 13.

13. What are the training options for an official or employee?

Answer: There are many options to receive training. To illustrate, an official or employee could take training in any of the following ways:



- **In-House Training at the Agency.**
 - In-house training provided by the agency's legal counsel, assigned Assistant Attorney General, or agency staff familiar with the requirements of the law.
 - Training through videos or Power Points at a board meeting or staff meeting or workshop, perhaps with someone available to answer follow-up questions.
 - Training as part of the orientation for new members and new staff.



- **Internet or Remote-Technology Based Training.** [Sections 2, 3, 4]
 - Online or internet-based training, webinar training, or training via Skype.
 - The training resources provided on the Attorney General's Office training web page includes videos and links to training materials. The Attorney General's Office OPMA and PRA videos and two Power Point presentations linked there satisfy the OPMA and PRA training requirements. The State Archives records retention training linked there satisfies the records retention training requirements.



- **Training from Public Agencies or Public Agency Associations.**
 - Training offered by or at other public agencies or associations.
 - For example, training may be provided by a school board association, a fire district association, a public records officer association, and similar entities.
 - The Attorney General's Office is also examining whether its training videos can be made available online on the State of Washington Department of Enterprise Services "Learning Management System" website for state employees.



- **Outside Training.**
 - Training from an outside private trainer.
 - For example, a resource for local governments is the [Municipal Research and Services Center](#).
 - The Washington State Bar Association may also provide Continuing Legal Education (CLE) programs, particularly on the PRA and OPMA. These may be useful for persons who are attorneys who must receive training under the Act and who are also required by the WSBA to obtain CLE credits.



- **Washington State Archives - Records Retention Training.**
 - The Washington State Archives provides guidance and support to state and local government agencies in public records management by offering education and training opportunities.
 - Information about the State Archives training for state agencies and local agencies is available [online](#).
 - Another option is to ask the State Archives staff to provide records retention training or to guide the agency to other useful records retention training resources. An agency can contact the State Archives by email at recordsmanagement@sos.wa.gov or by telephone at (360) 586-4901.



- **Attorney General's Office In-Person Training.** [Section 5]
 - Ask the Assistant Attorney General for Open Government to provide PRA or OPMA training.
 - *Note:* There may be minimum audience size, travel and other factors to consider.

- **Other Training.**
 - Consider other training options that cover the open public meetings and records training requirements.

The Act was designed to be flexible so an agency official or employee could select a training option that best fits his/her needs, governmental position, and agency resources.

14. What does it mean when the Act says that the PRA training must be consistent with the Attorney General's Office PRA Model Rules?

Answer: The Attorney General has, in [chapter 44-14 WAC](#), adopted "Model Rules" on PRA compliance to provide information to agencies and to requestors about "best practices" for complying with the PRA. While the PRA Model Rules are advisory (RCW 42.56.570), they are also noted as a training tool in the Act. [Sections 3, 4]. We believe they are used and referenced by many agencies today. As such, they are a good training foundation from which an agency can conduct or design PRA training. The Model Rules are also available on the office's Open Government Training [web page](#).

The Attorney General's Office PRA training video available on our web page is consistent with the Model Rules.

15. Does the Act require the Attorney General's Office to approve or certify training?



Answer: No.

16. Are there a minimum number of hours required for training?



Answer: No.

However, basic training for the OPMA and PRA should probably last no less than 15 – 20 minutes each, and basic records retention training should probably last 10-15 minutes. More detailed and longer training may be appropriate for some positions. For example, records officers may want to receive more detailed training on the PRA and records retention schedules, and/or receive training more often than once every four years.



17. Should an official or employee document the training? If so, how?

Answer: The Act does not require training to be documented. Even so, we recommend officials and employees subject to the Act document this training, and we recommend that their agencies assist them. An agency will want to have training information available to a court or to others if needed. (See Q & A No. 20 regarding possible consequences of non-compliance.)

The Act also contains no requirements describing how to document training. Every agency may be different in how it maintains its employees' or officials' training records. Or, if the training is conducted at a board meeting, the minutes can reflect that the training was provided and who attended. The minutes would also qualify as documentation.

The AGO has prepared sample documentation forms (a sample certificate and a sample training roster) which are available on the open government training [web page](#). Other forms or methods of documenting training are fine as well.

If an incumbent official or staff member has already received training during 2014, we recommend the official or staff member, or agency, document that training, too, if they have not already done so.

18. Is an official, employee or agency required under the Act to report completed trainings or provide training documentation or data to the Attorney General's Office?

Answer: No.



19. What is the training cost to the official, employee or agency?

Answer: The cost depends on what trainings the officials or employees take. They may incur travel costs on behalf of their agency, but if they take online training, the "cost" is primarily only their time. There is no cost to take the online trainings available on the Attorney General's Office website; they are free. There is no cost to take the State Archives online trainings on records retention; they are also free.

Many agencies that currently arrange for training on these open government laws, or other topics, already either use their own staff to conduct the trainings (such as their attorneys) or seek out other trainings from other organizations/associations. Thus, those are the types of costs currently taken into account by agencies.

20. What is the penalty for an official's or employee's non-compliance with the Act?

Answer: The Act does not provide any new penalties for an official or staff member not receiving required training. The Act does not provide any new penalties for an agency

not providing training. The Act does not create a new cause of action in court regarding training under the OPMA, PRA, or records retention laws. Remember, the Act is intended to reduce liability, not create new lawsuits. [See, e.g., Section 1]

However, under current case law, a court can consider whether agency staff received training when it is determining whether to assess a penalty for violations of other sections of the PRA (as specified in the PRA). That is, under current case law, evidence of training can mitigate an agency's exposure to penalties; absence of training can aggravate penalties.

21. What is the bottom line?

Answer: In sum, training is required by the new Act effective July 1, 2014. And, under current law and guidance, training is also in the agency's and the public's best interests. That is, it is already a best practice for officials and other employees who work with those open government laws to receive training, so they can better comply. The new Act simply takes that best practice one step further, by requiring training for many officials and records officers.

22. Who can we contact for more information?



Answer: You may contact the Attorney General's Office:

Nancy Krier
Assistant Attorney General for Open Government
(360) 586-7842
Nancyk1@atg.wa.gov

Attorney General's Office Open Government Training Page:
<http://www.atg.wa.gov/OpenGovernmentTraining.aspx>

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Information about State Archives records management and retention training
for state and local agencies is available at:

<http://www.sos.wa.gov/archives/RecordsManagement/>

Agencies can contact the State Archives by email at recordsmanagement@sos.wa.gov
or by telephone at (360) 586-4901.

Back to Agenda Bill



Agenda Item #: 3C

[Back to Agenda](#)

To: Mayor Perry and City Council Members
From: Chris Larson, Contract Planner
Date: February 9, 2015
Re: Clear Firs/Sunridge Annexation

ATTACHMENTS: **Attachment A – Annexation Ordinance**
 Attachment B – Proposed Legal Description
 Attachment C – Letter to Pierce County PALS
 Attachment D – BRB Jurisdiction invoked
 Attachment E – Legal Description required by BRB
 Attachment F – City of Milton Prehearing Brief
 Attachment G – City of Milton Response Brief
 Attachment H – City of Milton Final Comment to BRB
 Attachment I – Pierce County Brief
 Attachment J – BRB Decision
 Attachment K – Four (4) lots map

TYPE OF ACTION:

Information Only Discussion Action Expenditure Required:

Recommendation/Action: No action; for information and discussion purposes only. The annexation will be brought back for final adoption at the February 17th, 2015 regular meeting.

Fiscal Impact/Source of Funds: Approximately \$2,000 for post annexation Census. Actual cost to be determined.

Previous Council Review: Council has previously reviewed the proposed annexation and approved circulation of the annexation petitions.

Below is a brief overview of the Council's actions and steps related to the annexation.

August 5th, 2013 – Council reviewed petitions requesting annexation proceedings to commence. Due to the anticipated impact on the Police Department, the Council did not approve circulation of the annexation petitions at this time.

November 18th, 2013 – Council approved the SOAP and SODA ordinance revolving around the Daffodil Motel. This alleviated pressure from the Police Department and made the annexation possible.

February 10th, 2014 – Council approved circulation of the annexation petitions, identified the simultaneous adoption of the Residential Multi-Family District (RM), and required assumption of existing City indebtedness.

March 14th, 2014 – The signed annexation petitions, signed by greater than 60% of the assessed valuation of the annexation area, were submitted back to the City.

March 20th, 2014 – Pierce County declared the petitions as sufficient.

April 4th, 2014 – City Council approved resolution 1845-14 declaring its intent to annex the proposed area after approval by the Pierce County Boundary Review Board (BRB).

April 8th, 2014 the “Notice of Intent” to annex was submitted to the BRB as required by RCW 35A.14.120. This was accepted on April 10th, 2014 with the 45-day period in which the BRB jurisdiction could be invoked ending on May 27th, 2014.

May 22nd, 2014 – Pierce County Executive’s Office invoked the jurisdiction of the BRB>

September 30th, 2014 – BRB Hearing held. Continued to November 4th, 2014.

November 4th, 2014 – BRB Hearing continued. Verbal decision issued.

December 1st, 2014 – Written decision issued along with revised legal description and map of the annexation area.

Issue: Approval of the Clear Firs/Sunridge annexation as amended by the Pierce County BRB. The BRB amended the City’s proposed annexation by adding 4 parcels (see attachment E & K). Per RCW 36.93.150 & 36.93.160 the BRB decision (attachment J) is now final and the City is now able to adopt the amended annexation by ordinance.

Discussion: On May 7th, 2014 while the 45-day period in which the BRB’s jurisdiction can be invoked was in effect, staff discussed the annexation with the Pierce County Planning and Land Services, who had inquired about adding 4 parcels to the annexation.

After looking into the request, it was determined that the 4 parcels are functionally a different neighborhood and did not make sense to include them in the annexation. The parcels included in the original annexation all accessed off of 70th Ave E, while the 4

parcels Pierce County wanted to add all access off of 68th Ave E. This is further detailed in the letter sent to Pierce County which is included as attachment C.

On May 22nd, 2014 Pierce County Executive Pat McCarthy invoked the jurisdiction of the BRB. The intent behind this action was to require the City of Milton to annex 4 additional parcels. See attachment D.

Had the jurisdiction of the BRB not been invoke, the City would have been set to adopt the annexation in June 2014. However, since the jurisdiction of the BRB was invoke by Pierce County, a public hearing was required to be held.

The BRB hearing was held on September 30th, 2014. Prior to the hearing, the City and Pierce County both submitted briefs, as is common for hearings of this type. The City's initial brief, and exhibits are included as attachment F and the County's initial brief is included as attachment I. The City also submitted a brief in response to the County's initial brief, which is included as attachment G.

During the hearing both the City and Pierce County made presentations, cross examined each other and addressed questions from the members of the BRB.

RCW 36.93.180 dictates the criteria for which the BRB can amend a proposed annexation. The applicable criteria are:

- (1) Preservation of natural neighborhoods and communities.
- (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;

As identified in the City's briefs to the BRB, the City felt that these objectives were met by the exclusion of the 4 parcels, rather than the inclusion. As identified in previous case law the BRB is not required to achieve all or even most of these objectives however, a decision that advances none is reversible.

The hearing was ultimately continued to November 4th, 2014 in order for the County to provide public notice to the 4 parcels. Prior to the November 4th, 2014 hearing the City submitted a final brief (attachment H) outlining the City's position and addressing discussion by the BRB during their September 30th, 2014 hearing.

After the BRB received input from property owners at the November 4th, 2014 hearing, they issued a verbal decision on that date. The decision (attachment J) was to add the 4 parcels. The revised legal description and map, as required by the Pierce County BRB is included as attachment E.

Per RCW 36.93.150 & 36.93.160 the annexation is deemed approved as amended by the BRB and is now ready for the City to annex by ordinance.

**CITY OF MILTON
ORDINANCE XXXX-15**

AN ORDINANCE OF THE CITY OF MILTON, WASHINGTON, ANNEXING CERTAIN REAL PROPERTY KNOWN AS CLEAR FIRS/SUNRIDGE TO THE CITY, REQUIRING THE ANNEXED PROPERTY TO BE ASSESSED AND TAXED AT THE SAME RATE AND BASIS AS OTHER PROPERTY WITHIN THE CITY, ESTABLISHING ITS ZONING AS RESIDENTIAL MULTI-FAMILY (RM) AND FIXING THE EFFECTIVE DATE OF THE ANNEXATION.

WHEREAS, The City Council was notified in writing by the owners of not less than ten percent in value of the real property legally described in Exhibit "A" attached hereto, of the owners' intention to commence annexation proceedings; and

WHEREAS, a meeting was held on the August 5th, 2013 and February 10th, 2014, between the initiating parties of this annexation and the Council of the City of Milton and authorized the circulation of an annexation petition for annexation of the real property legally described in Exhibit "A" attached hereto. At the meeting the Council also determined that it would require the simultaneous adoption of the zoning designations and require the assumption of indebtedness of the City by the area to be annexed upon annexation; and

WHEREAS, the petition was circulated, filed with Pierce County, and certified by the County Assessor as containing the signature of owners as set forth in RCW 35A.01.040(9), of not less than 60% in value, according to the assessed valuation for general taxation, of the property to be annexed; and

WHEREAS, the City properly filed a Notice of Intent and related documents with the Pierce County Boundary Review Board on April 10th, 2014; and

WHEREAS, on May 21st, 2014 the Office of the County Executive invoked the jurisdiction of the Boundary Review Board under RCW 36.93.100(2), seeking to add four (4) parcels the proposed annexation; and

WHEREAS, the Boundary Review Board held a public hearing on September 30th, 2014, and continued the hearing to November 4th, 2014, in order for Pierce County to provide notice to the owners of the four (4) parcels; and

WHEREAS, the City of Milton argued against the inclusion of the four (4) parcels, stating that the objectives of RCW 36.93.180 are not met with the addition of the four parcels to the proposed annexation; and

WHEREAS, the Boundary Review Board issued a decision on November 19th, 2015, to add the four (4) parcels to the proposed annexation area; and

WHEREAS, according to RCW 36.93.150 and 36.93.160 the proposed annexation area is deemed approved as amended by the Boundary Review Board; and

WHEREAS, the revised legal description and map were provided to the City by Pierce County on December 12th, 2014, and is attached hereto as Exhibit "B"; and

WHEREAS, pursuant to RCW 35A.14.130, the City held public hearing on February 17th, 2015, which hearing was duly noticed by the City Clerk through publication in a newspaper of general circulation in the City and the proposed annexation area, and through posting of a hearing notice in three public places within the territory proposed for annexation, specifying the time and place of the hearing and inviting interested persons to appear and voice approval or disapproval of the annexation; and

WHEREAS, the City Council has been fully advised and finds that all statutory requirements have been satisfied in order to accomplish the proposed annexation; now therefore

THE CITY COUNCIL OF THE CITY OF MILTON, PIERCE COUNTY, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. The unincorporated real property located in Pierce County, Washington, contiguous to the City of Milton and legally described in Exhibit "B" attached hereto and incorporated herein by this reference, is hereby annexed to and made part of the City of Milton, Pierce County, Washington.

Section 2. All property within the territory annexed shall be assessed and taxed at the same rate and on the same basis as other property within the City of Milton, including assessments or taxes in payment of all or any portion of the outstanding indebtedness of the City contracted for, incurred prior to, or existing on, the date of annexation.

Section 3. All property within the territory annexed is hereby zoned Residential Multi-Family (RM).

Section 4. The City Clerk is hereby directed to file a certified copy of this Ordinance with the Pierce County Council. The Clerk is further directed to file a certificate of annexation with the State Office of Financial Management as directed by RCW 35A.14.700.

Section 5. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 6. Effective Date of Annexation. This Ordinance shall be in full force and effect sixty (5) days from and after its passage, approval and publication as provided by law. A summary of this Ordinance may be published in lieu of publishing it in its entirety.

//

//

PASSED AND APPROVED by the City Council of the City of Milton,
Washington, at a regularly scheduled meeting this ____ day of _____, 2015.

CITY OF MILTON

Debra Perry, Mayor

ATTEST/AUTHENTICATED:

Katie Bolam, City Clerk

Approved as to form:

Phil Olbrechts, City Attorney

Date of Publication:

Effective Date:

DRAFT

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“EXHIBIT A”
Legal Description

Portions of Government Lot 1, and the Southeast Quarter of the Northeast Quarter of Section 6, Township 20 North, Range 04 East, W.M, more particularly described as follows:

BEGINNING at the intersection of the West right of way line of 70th Avenue East said line also being the West line of the Milton City limits per ordinance 1116 and the North line of the South half of the Southeast Quarter of said Government Lot 1;

THENCE South along said West right of way line and said City limit line to its intersection with the South line of the Northeast Quarter of the Southeast Quarter of the Northeast Quarter of Section 6;

THENCE West along said South line to the Southwest Corner of said subdivision;

THENCE North along the West line of said subdivision to the Northwest corner of the South 220 feet of said subdivision;

THENCE East along the North line of the South 220 of said subdivision to the West line of the East 480 feet of said subdivision;

THENCE North along the East 480 feet of said subdivision to the North line of said subdivision;

THENCE East along the North line of said subdivision to the Southwest Corner of Lot 4, Pierce County Short Plat No. 76-83, according to map recorded in Volume 7 of Short Plats, Page 53, Records of Pierce County, Washington;

THENCE North along the West line of said Lot 4 to the North line of the South 125 feet of the South half of the Southeast Quarter of said Government Lot 1;

THENCE West along said North line to the West line of the South half of the Southeast Quarter of said Government Lot 1;

THENCE North along said West line to the North line of the South half of the Southeast Quarter of said Government Lot 1;

THENCE East along said North line to the POINT OF BEGINNING.



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May 7, 2014

Mr. Dan Cardwell
Senior Planner
Pierce County Planning and Land Services
2401 S. 35th St. #2
Tacoma, WA 98409

SUBJECT: City of Milton - Clear Firs/Sunridge Annexation

Dear Mr. Cardwell:

This letter is a follow up to our May 5th, 2014 discussion regarding Pierce County's concerns over the proposed Clear Firs/Sunridge Annexation in Milton's UGA. As you may be aware this was proposed by the property owners of the annexation area through the direct petition method. The City Council did not geographically modify the proposed annexation area prior to approving circulation of the 60% petitions. There are a number of reasons to support the decision not to add parcel #s 0420065012, 0420065011, 0420061167 & 0420061165 to this annexation proposal.

First, the excluded parcels in question all gain access from 68th Avenue East through a private easement at the end of the established 68th Avenue East public right of way. 68th Avenue East is completely within the Fife/Milton UGA overlap (see attached map). By virtue of access and other considerations, these parcels are more associated with the neighborhood developed along 68th Avenue East than they are with the parcels included in the proposed annexation area, all of which access from 70th Avenue East. 70th Avenue East at this location is a City of Milton public street.

In addition, the excluded parcels in question are all located outside the City of Milton's Water Service Area. Instead they are located in Tacoma's Water Service Area, as are all the properties that are accessed off of 68th Avenue East. All the parcels proposed for annexation (with the exception of one) are located within the City of Milton's Water Service Area. The one parcel that is not in the City of Milton's Water Service Area (Parcel # 0420061004), is owned by the adjacent property (Parcel # 0420061075, which is in Milton's Water Service Area), and both of these properties gain access from 70th Avenue East, which is already in the City of Milton corporate limits.

It is my understanding that Fife and Milton (and any cities/towns with overlap areas for that matter) are to work together to identify an appropriate UGA boundary that removes any overlap area, consistent with the Countywide Planning Policies. The parcels in question should be part of a discussion between the two cities to resolve the Fife/Milton UGA overlap taking into account issues of access, service provisions and physical neighborhood boundaries. It would be inappropriate and premature to annex these four excluded parcels

Planning & Community Development
1000 Laurel St. Milton, WA 98354-8850
Ph 253.922.8738 / Fax 253.922.3466

into the City of Milton at this time, if a possible outcome of the UGA overlap discussion might be that the overlap area were to be solely included in the City of Fife's UGA (and eventually annexed by the City of Fife). Under this scenario, it would also likely be appropriate that these four parcels be removed from the City of Milton's UGA and included in the City of Fife's UGA to account for annexation along with the overlap area.

As you may be aware the numerous cities and towns, along with Pierce County have been working on updating the County's policies regarding annexations. I understand these are to be adopted by the Pierce County Council in due time and then transmitted to cities and towns for ratification. I believe these newly created annexation policies will provide Milton and Fife the direction needed to accurately address the Fife/Milton UGA overlap situation, in compliance with the Countywide Planning Policies.

I hope this addresses your concerns regarding the proposed annexation. I am available to discuss this further at your convenience. Please don't hesitate to contact me.

Sincerely,



Chris Larson
Contract Associate Planner
City of Milton
253-517-2715
clarson@cityofmilton.net

Enclosure:

Pierce County Urban Service Area Map

Mc:

Debra Perry, Mayor of Milton
Leticia Neal, Public Works Director
Annexation file

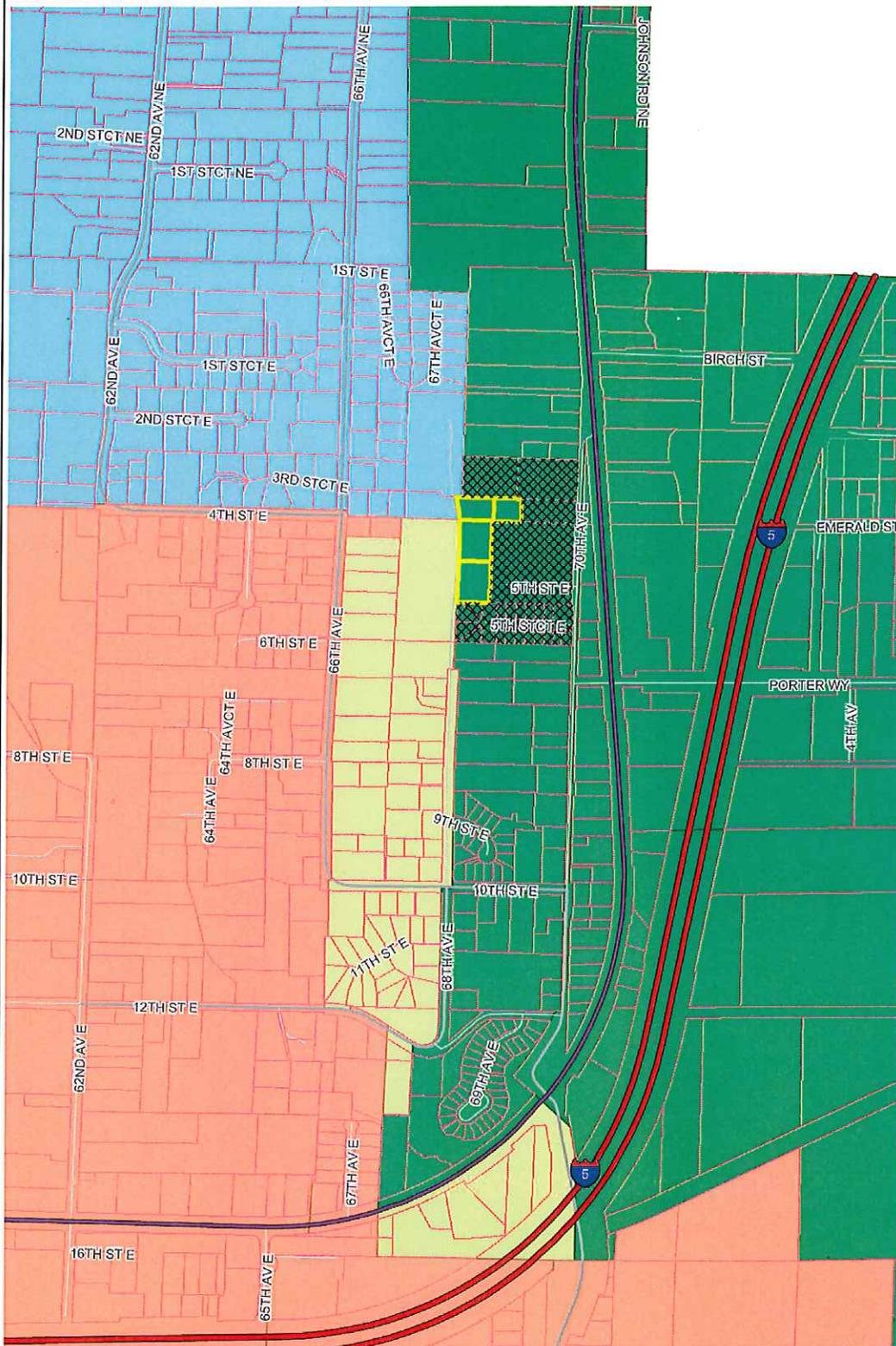
Clear Firs/Sunridge Annexation



City of Milton, WA

Map Legend

- Clear Firs/Sunridge Annexation Area
- Highlighted Tax Parcels
- Tax Parcels**
 - Base Parcel
 - Condominium
 - Other
- Roads**
 - Interstate
 - Limited Access State Routes
 - Other State Routes
 - Ramps
 - Major Arterial
 - Collector
 - Local Access
- Urban Growth/Urban Service Areas**
 - EDGEWOOD
 - FIFE
 - FIFE MILTON
 - MILTON
 - TACOMA
 - Other



Scale 1:10,340

The map features are approximate and are intended only to provide an indication of said feature. Additional areas that have not been mapped may be present. This is not a survey. Orthophotos may not align with other data. Pierce County assumes no liability for variations ascertained by actual survey. All data is expressly provided AS IS and WITH ALL FAULTS. Pierce County makes no warranty of fitness for a particular purpose.

Printed: 5/8/14 8:41 AM



Pierce County

Office of the County Executive

930 Tacoma Avenue South, Room 737
Tacoma, Washington 98402-2100
FAX (253) 798-6628
www.piercecountywa.org

PIERCE COUNTY PLANNING
& LAND SERVICES

MAY 22 2014

PAT McCARTHY
Executive
(253) 798-7477
pmccart@co.pierce.wa.us

KEVIN R. PHELPS
Deputy Executive
(253) 798-7477
kphelps@co.pierce.wa.us

May 21, 2014

Boundary Review Board
Attn: Toni Fairbanks, Clerk
2401 South 35th Street, Room 175
Tacoma, WA 98409

RE: Case Number A-14-2

Dear Ms. Fairbanks:

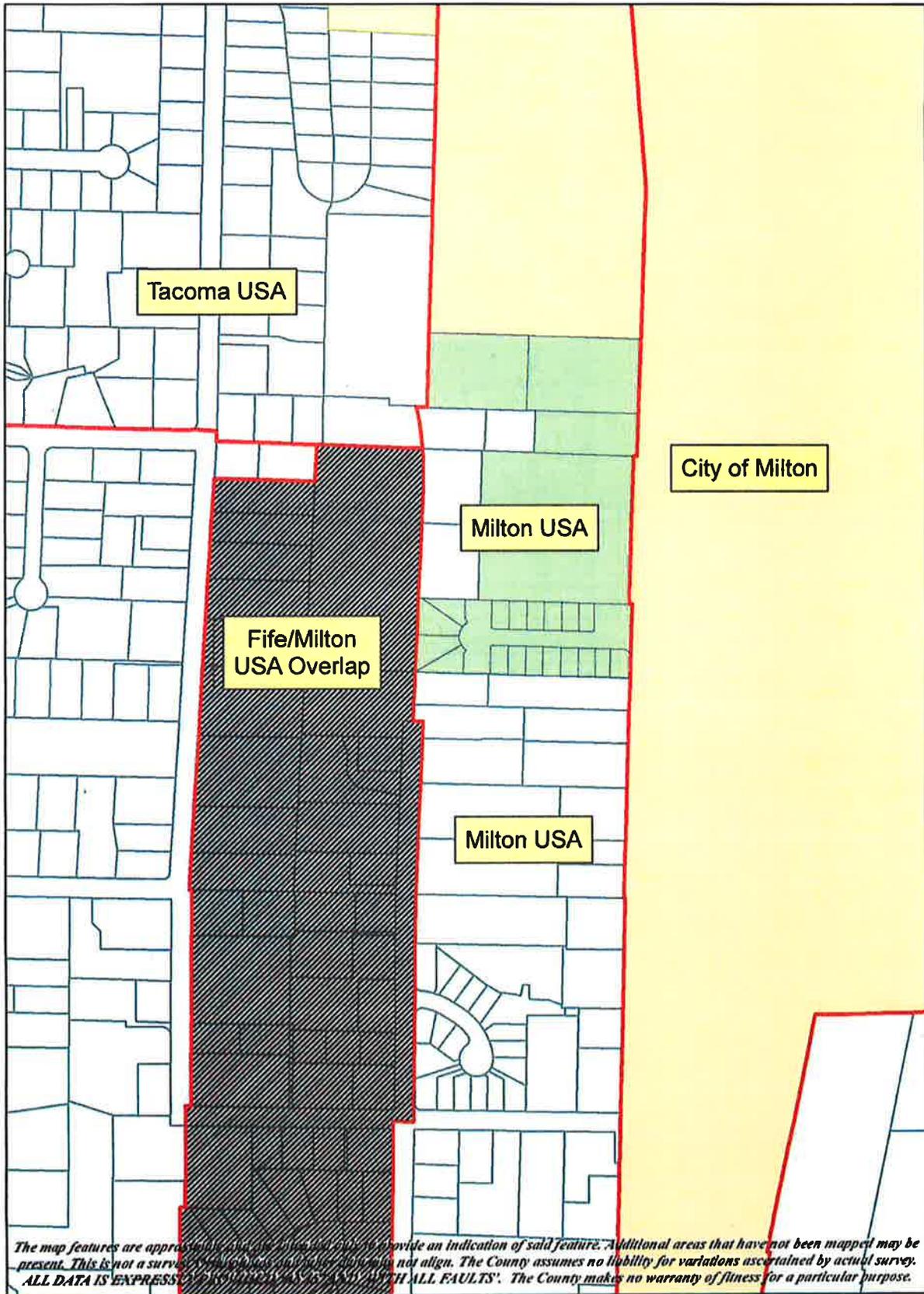
Pursuant to RCW 36.93.100(2), I hereby invoke the jurisdiction of the Pierce County Boundary Review Board, and request review of Case Number A-14-2 in a public hearing.

Sincerely,

Pat McCarthy
Pierce County Executive

cc: Dan Roach, Chair, Pierce County Council
Joyce McDonald, Exec. Pro Tem, Pierce County Council
Dennis Hanberg, Director, PALS





The map features are approximate and are provided only to provide an indication of said feature. Additional areas that have not been mapped may be present. This is not a survey and boundaries shown may not align. The County assumes no liability for variations ascertained by actual survey. ALL DATA IS EXPRESSED AS IS WITHOUT WARRANTY WITH ALL FAULTS. The County makes no warranty of fitness for a particular purpose.



Pierce County

Boundary Review Board

2401 South 35th Street
Tacoma, Washington 98409-7460
(253) 798-7156 • FAX (253) 798-3680

May 20, 2014

Mr. Chris Larson
City of Milton
1000 Laurel Street
Milton, WA 98354

RE: Boundary Review Board Case No. A-14-2
Applicant: City of Milton – Clear Firs/Sunridge Annexation

Dear Mr. Larson:

The Notice of Intention for the above referenced annexation proposal received in this office was deemed complete and has been sent out for review by affected agencies. The official filing date was set as April 10, 2014 and the 45-day period in which jurisdiction can be invoked was initially noted as ending on May 26, 2014. Please be advised that due to the holiday on May 26, 2014, the 45-day period has been extended until Tuesday, May 27, 2014.

If you have questions, please call me at (253) 798-7156.

Sincerely,

A handwritten signature in cursive script that reads "Toni Fairbanks".

Toni Fairbanks
Chief Clerk

c: Pete Philley, Legal Counsel to Board
Affected Agencies





Pierce County

Pierce County Planning and Land Services
(253) 798-3739
www.piercecountywa.org/pals

Pierce County Planning and Land Services
(253) 798-3739
www.piercecountywa.org/pals

ARTHUR
Executive
98-7477
@piercecountywa.us

HELPS
Executive
98-7477
@piercecountywa.us

Payment Date: 5/28/2014 15:47:29
Fee Desc: Boundary Review Board
Fee Amt: Quantity 1 @ \$50.00

Payment Date: 5/28/2014 15:48:21
Fee Desc: Boundary Review Board
Fee Amt: Quantity 3 @ \$150.00

Tendered Amt: \$50.00
Payment Type: Visa*****
Transaction: 40611-1

Tendered Amt: \$150.00
Payment Type: Visa*****
Transaction: 40612-1

Fee Total Amt: \$50.00

Fee Total Amt: \$150.00

Change Amt: \$0.00

Change Amt: \$0.00

By: bgarza 05/28/2014
Printed Date: 5/28/2014

By: bgarza 05/28/2014
Printed Date: 5/28/2014

Please retain for your records
Permit information can be located on our
web site at: www.piercecountywa.org/pals

Please retain for your records
Permit information can be located on our
web site at: www.piercecountywa.org/pals

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Review of Case Number A-14-2 in a phone meeting

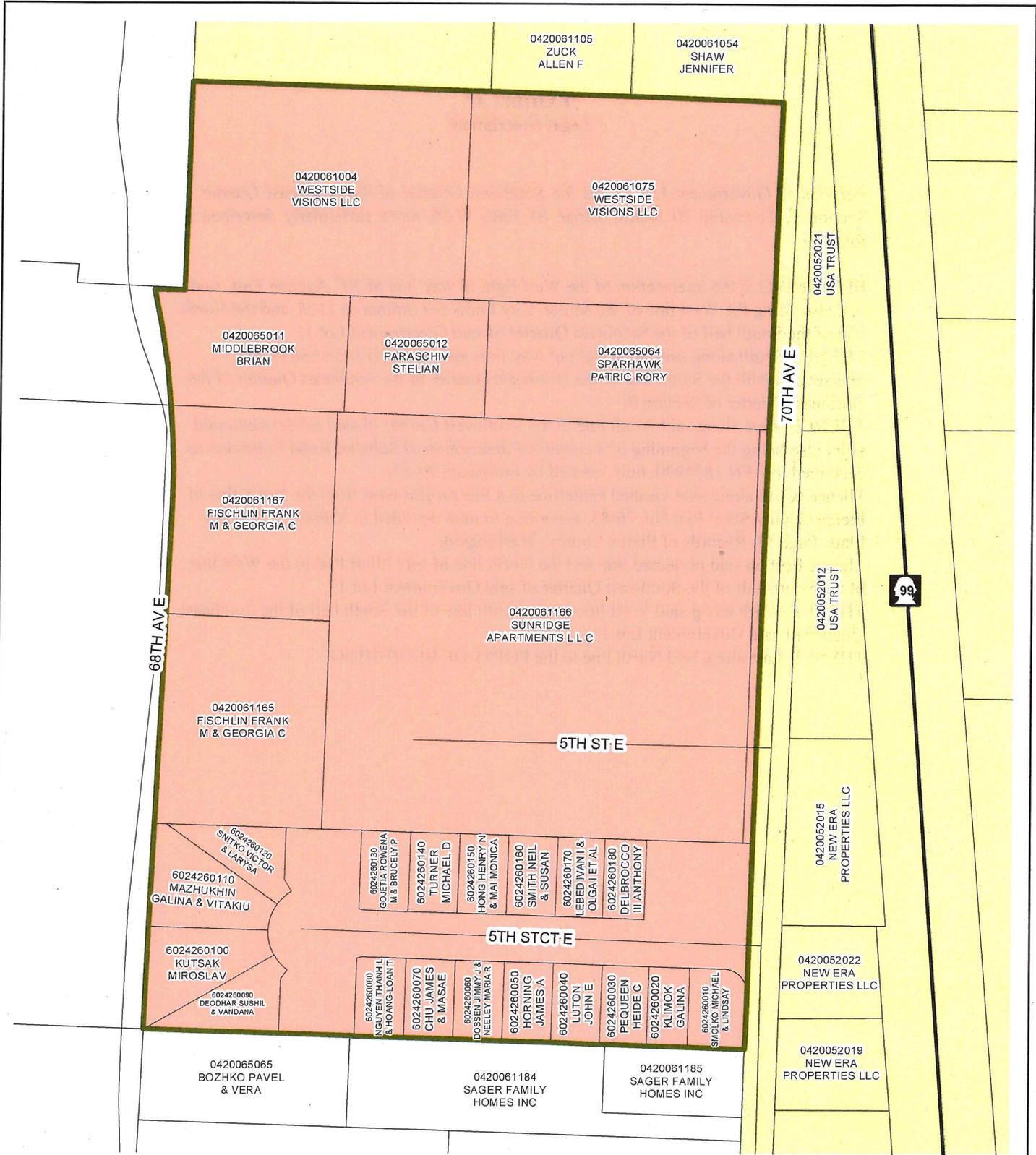
Sincerely,

Pat McCarthy
Pierce County Executive

cc: Dan Roach, Chair, Pierce County Council
Joyce McDonald, Exec. Pro Tem, Pierce County Council
Dennis Hanberg, Director, PALS

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**Milton Expand Annexation Area
Case #A-14-2**

- Tax Parcels
- City
- approved by BRB 11/19/2014



Pierce County
Assessor-Treasurer

Map produced on November 26, 2014
by tdepaul

"EXHIBIT A"
Legal Description

Portions of Government Lot 1, and the Southeast Quarter of the Northeast Quarter of Section 6, Township 20 North, Range 04 East, W.M, more particularly described as follows:

BEGINNING at the intersection of the West right of way line of 70th Avenue East, said line also being the West line of the Milton City limits per ordinance 1116, and the North line of the South half of the Southeast Quarter of said Government Lot 1;

THENCE South along said West right of way line, and said City limit line to its intersection with the South line of the Northeast Quarter of the Southeast Quarter of the Northeast Quarter of Section 6;

THENCE West along said South line to the Southwest Corner of said subdivision, said point also being the beginning of a centerline description of Schaller Road Extension as described in AFN 1854990, now vacated by ordinance 90-44;

Thence North along said vacated centerline to a line project west from the North line of Pierce County Short Plat No. 76-83, according to map recorded in Volume 7 of Short Plats, Page 53, Records of Pierce County, Washington;

Thence East on said projected line and the North line of said Short Plat to the West line of the South half of the Southeast Quarter of said Government Lot 1;

THENCE North along said West line to the North line of the South half of the Southeast Quarter of said Government Lot 1;

THENCE East along said North line to the POINT OF BEGINNING.

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BEFORE THE PIERCE COUNTY BOUNDARY REVIEW BOARD

RE: Clear Firs/Sunridge Annexation	City of Milton Prehearing Brief
Case No. A-14-2	

SUMMARY

Pierce County has invoked the Boundary Review Board’s (BRB) jurisdiction solely because it wants to add four lots (“Four Lots”) to a small annexation of residential properties. The addition of the Four Lots will divide a small neighborhood enclave in two without any corresponding public benefit. The division will also illogically divide the enclave’s fire and police service areas in half with a narrow private access road. The only conceivable justification for imposing these hardships upon the property owners of the enclave is to configure the annexation area into a tidy square box and to chip away at a larger area that the County considers to be an unincorporated island. As discussed in this memo, the creation of a tidy box here accomplishes nothing. Other than illogically dividing fire and police service areas it doesn’t change any other utility or public service area. As to chipping away at the “island”, now is not the appropriate time. If and when Milton annexes further into the “island”, the BRB can at that time add the Four Lots while also keeping neighborhoods intact. Consequently, the incremental approach taken by the County in reducing its “island” will have no material long term benefit. In point of fact, the County practice of expanding residential annexations beyond the boundaries requested by its residents and the Milton City Council will dissuade Milton from engaging in any future annexations into the “island” area, ultimately extending the time it will take for its elimination.

BACKGROUND

As far as Milton staff have been able to ascertain, the only reason that Pierce County has invoked jurisdiction is because it wants to add the Four Lots to the Clear Firs/Sunridge Annexation. The City of Milton filed a Notice of Intent for this annexation on April 8, 2014. This memorandum focuses exclusively on the addition of the four lots. The BRB is referred to the April 8 2014 Notice of Intent for any information it may need on the originally proposed annexation.

The Four Lots are identified in light blue in the vicinity map, Att. 1. The arguments in this brief are limited to addressing the addition of the Four Lots to Milton’s proposed annexation. The “neighborhood enclave” referenced in this memorandum is composed of the Four Lots and the two adjoining lots in unincorporated Pierce County to the west. 68th Ave. E. right of way ends a few hundred feet to the south

1 and it is extended northward from that point by a private road easement that ends in a
2 lot adjoining the neighborhood enclave to the north. The private easement is the sole
access to the neighborhood enclave.

3 The Four Lots are composed of tax parcels 0420065012, 0420065011, 0420061167
4 and 0420061165. The size of each of those lots is 0.4299 acres, 0.606 acres, 0.9449
5 acres and 0.9149 acres respectively. Across the private easement from the Four Lots
6 in unincorporated Pierce County, completing the “neighborhood enclave”, are two
7 large lots. The southern lot is 0.906 acres in size and the northern lot is 4 acres in
size. The southern lot is located in an overlapping Fife/Milton urban growth area.
The northern lot is located in the City of Tacoma urban growth area. The Four Lots
are located in the City of Milton urban growth area. See Att. 2.

8 Inclusion of the Four Lots in the annexation area would split the neighborhood
9 enclave in half by placing the homes on the east side of their access road in Milton
10 and those on the west side will most likely remain in unincorporated Pierce County
11 for the foreseeable future. If the Four Lots are included in the annexation, that
12 narrow easement will serve as an illogical dividing line for local government services
13 and development standards. Milton fire and police services will have to serve the lots
14 on the east side of the road and the Pierce County Sheriff and Tacoma Fire District
15 #10 will have to serve the lots on the west side. Milton has its own police department
16 and its fire service is provided by East Pierce County Fire and Rescue, the service
17 area of which will expand along with any Milton annexation.

18 The addition of the Four Lots would not change any utility service areas within the
19 neighborhood enclave. With or without the Four Lots added to the proposed
20 annexation, the neighborhood enclave would be served by City of Tacoma water,
21 Tacoma power, and Pierce County sewer. The City of Milton’s water service area
22 runs along the border of the annexation proposed by the City of Milton except for the
23 northwestern lot of Milton’s proposed annexation, which is in the Tacoma water
24 service area. The latter lot is included in Milton’s proposed annexation area because
25 it has the same ownership with the adjoining lot to the east and both lots are accessed
off of 70 Ave. E. All of the Four Lots are located with the Tacoma water service
area. Their inclusion in the annexation would place lots served by Tacoma water into
the City of Milton. See Att. 3, Chris Larson declaration.

22 APPLICATION OF REVIEW FACTORS AND OBJECTIVES

23 As the BRB is likely aware, RCW 36.93.180 dictates the objectives that the BRB
24 must attempt to achieve in its review of proposed annexations. While a boundary
25 review board is not required to achieve all or even most of these objectives, a
decision which advances none is reversible. See *Spokane Boundary Review Fire
Protection Dist. No. 9 v. Spokane County Boundary Review Bd.*, 97 Wn.2d 922
(1982). Relevant RCW 36.93.180 objectives are quoted and assessed below. As

1 determined below, three of the four objectives are best advanced by exclusion of the
2 Four Lots and none are materially advanced by their inclusion into Milton's proposed
annexation area.

3 **RCW 36.93.180(1):** *Preservation of natural neighborhoods and communities.*

4 It is no mistake that preservation of natural neighborhoods is the first objective listed
5 in RCW 36.93.180. The preservation of natural neighborhoods is clearly the most
6 significant reason justifying exclusion of the Four Lots. As shown in the photographs
7 attached as att. 4, the neighborhood enclave is quietly sequestered on the side of a hill
8 that spans from 70th Ave at the toe to 66th Ave and 62nd Ave at the top of the hill. Its
private access is composed of a dirt road that dead-ends approximately 415 feet north
of the Four Lots. As previously noted, the lots in this enclave currently share all of
the same municipal utilities and police and fire service providers.

9 Inclusion of the Four Lots will serve to partially disenfranchise the lot owners in the
10 enclave. The shared access brings up numerous issues of common concern where
11 redress may sometimes have to be requested from local government. Most notably,
12 the lots are still relatively large and undeveloped. As noted in the Chris Larson
13 declaration, there is a potential to subdivide the Four Lots into 11 lots, and the other
14 two lots comprising the "neighborhood enclave" into approximately 24 lots. See
15 Att. 3. This amount of development can certainly lead to concerns from
16 neighborhood enclave residents. Under current conditions, all enclave residents can
express their concerns over new enclave development by petitioning their elected
Pierce County Council representatives or by submitting comment at Pierce County
land use hearings. If the Four Lots are included in the proposed annexation,
unincorporated County residents from the west side of the private access road will
have to express their concerns to the City of Milton as nonresidents of the City.

17 Similar problems relate to the improvement and dedication of the private access road.
18 The owners of the Four Lots will not be able to make a very compelling case to
19 Pierce County for extension of 68th Ave E if they have to present themselves as
20 Milton residents. Further, if the road is improved and dedicated through the
21 subdivision approval process, completion of the road would require coordination
22 between Milton and Pierce County. Subdivision applicants along the private
easement could not legally be required to dedicate and improve more than half street
(to the centerline) improvements along subdivision frontage¹, resulting in Pierce
County requiring half street improvements for the west half of the access road² and

23
24 ¹ See, e.g., *Burton v. Clark County*, 91 Wn. App. 505, 516-17 (1998)

25 ² The "access" road may not necessarily be in the current private easement location if
the enclave lots are subdivided. It is entirely possible that the property owners will
have to relocate the access road to their property boundaries in order to keep frontage

1 the City of Milton requiring the remaining half on the east side. If the entire access
2 road is placed within Milton or left in unincorporated Pierce County as a result of the
annexation, one jurisdiction would have to require frontage improvements to be
located in another jurisdiction, subject to that other jurisdiction's street standards.

3 Another adverse neighborhood impact from the addition of the Four Lots would be to
4 place those residents in a community to which they have no connection. The owners
5 of the Four Lots access their property from I5 by driving through Fife, not the City of
6 Milton. The route they would take likely take is shown in Att. 5, as this provides the
7 most direct access to the Four Lots from I5. Given that Fife also has a full
complement of commercial services, residents of the Four Lots may rarely need to
drive into Milton.

8 One very important point to consider on the Four Lot issue is that it sets a precedent
9 for Pierce County to continue fragmenting neighborhoods, which in turn will operate
10 to dissuade Milton from annexing additional residential property along 70th Ave E.
11 As is hopefully evident now, Milton has taken a highly responsible and logical
12 approach to the addition of residential land in its city by focusing upon properties that
13 will avoid the division of neighborhoods by roads. In doing this, Milton acceded to
14 the wishes of the residents who petitioned it to become annexed into the City. This
15 despite the fact that residential property is generally not a positive revenue source for
16 a city. The properties comprising the proposed annexation are the first residential
17 extension of the City southward along 70th Ave E. All properties north of the
18 annexation area are commercially zoned, a positive revenue source for the City. If
19 the Four Lots are added by the BRB to the proposed annexation just to complete a
20 "tidy box" of parcels, this will pave the way for the County to continue this practice
for other properties along 70th Ave E. Milton likely has no interest in annexing
residential properties against its financial interest without a request from the residents
who live there. There would be no rational reason to undertake such annexations. In
its chilling impact against future 70th Ave E. annexations, the end result of a
decision adding the Four Lots would be to decrease the number of residential lots
annexed into the City of Milton.

19 **RCW 36.93.180(3):** *Creation and preservation of logical service areas;*

21 _____
22 improvements on their property and also to provide for a straight extension of 68th
23 Ave E. This very possible result reveals another problem associated with the Four
24 Lots addition – the annexation boundary will likely be placed along the property
25 boundaries, since the private easement is ill-suited to serve as an annexation boundary
for reasons discussed elsewhere in this memo. Consequently, the jurisdictional
boundary between Pierce County and Milton could end up being the centerline of a
68th Ave E extension.

1 The preservation of logical service areas is another important objective relating to the
2 Four Lots issue. Addition of the Four Lots to the proposed annexation undermines
3 this objective by illogically dividing the fire and police service area of the
4 neighborhood enclave when there is no need to do so.

5 Use of a road to serve as the border of a service area creates numerous jurisdictional
6 issues for fire and police departments. As to police issues: crimes, traffic violations
7 and accidents can originate on a road but can easily end on an adjoining property.
8 That adjoining property can very well be within the jurisdiction of another police
9 department if the Four Lots are included in the proposed annexation. For both fire
10 and police, vague 911 calls can also come in asking for service “at the end of 68th
11 Ave E” or something similar, creating confusion as to who must respond when there
12 is little time for dealing with these types of issues. Fire Chief Thorson of East Pierce
13 Fire and Rescue has written that adding the Four Lots will increase fire response
14 times and create a confusing patchwork of fire service areas. See Att. 9.

15 Of course, mutual aid agreements and other measures can be taken to mitigate against
16 the jurisdictional problems associated with border roads. Also, border roads are a
17 common feature of most jurisdictions. However, the proposed annexation presents an
18 opportunity to avoid the entire problem by excluding the Four Lots as proposed by
19 Milton. Given that the Four Lots will not change any other service area, it must be
20 concluded that the logical service area objective is best served by exclusion of the
21 Four Lots.

22 **RCW 36.93.180(2):** *Use of physical boundaries, including but not limited to bodies
23 of water, highways, and land contours;*

24 The Four Lots do not make use of any physical boundaries to serve as an annexation
25 boundary. RCW 36.93.180(2) specifically makes reference to use of “highways” as a
boundary as opposed to “road” or “street”. Although the meaning of “highway” can
be subject to debate, it is fairly clear that the private easement serving the small
number of lots of the neighborhood enclave does not qualify as a “highway”.

Even if the private easement did serve as a “physical boundary”, it likely will not
serve as the boundary of an annexation including the Four Lots. As shown in Att. 1,
the private easement does not run along lot lines, but rather meanders along the
eastern side of the southwestern lot of the neighborhood enclave. If the easement
were set as the boundary of a Four Lot annexation, a small portion of the
southwestern lot (the portion on the east side of the easement) would be annexed into
Milton and the rest would remain in unincorporated Pierce County.

In point of fact the most clearly defined physical boundary in the proposed
annexation is 70th Ave E. Milton has used 70th Ave E to define the scope of the
annexation by only including the lots that access it directly. Addition of the Four

1 Lots fails to employ this physical boundary in such a logical fashion. The use of
2 physical boundaries objective is best served by exclusion of the Four Lots.

3 **RCW 36.93.180(4):** *Prevention of abnormally irregular boundaries;*

4 One of the few arguments to be made in favor of adding the Four Lots is that it would
5 provide for a straight line along the western border of the annexation area. It would
6 complete the “tidy box” pursued by Pierce County. There is no conceivable public
7 benefit from having a straight line for the western border of the proposed annexation.
8 As previously discussed, the “tidy box” will create plenty of problems for enclave
9 residents and the jurisdictions that serve them, but Pierce County can point to no
10 material benefit.

11 The objective of irregular boundaries also ties into another apparent basis of the
12 County’s invocation of jurisdiction. As far as City staff have been able to surmise,
13 County staff would like to add the Four Lots in order to reduce the size of what they
14 consider to be an existing island of unincorporated territory. As shown in att. 6, this
15 “island” is apparently the unincorporated area between Milton, Fife and Tacoma. The
16 island situation could be exacerbated further if Milton were to annex the lots on the
17 west side of the private access easement, leaving the Four Lots surrounded on almost
18 all sides by Milton.

19 Of course, adding the Four Lots does nothing on its own to materially reduce the size
20 of what the County considers to be an unincorporated island. The County’s strategy
21 can only make a difference at a cumulative level, where adding a few lots to multiple
22 annexations could conceivably result in a material reduction of the unincorporated
23 island. This incremental approach to reducing the annexation area will only work if
24 there will in fact be multiple annexations that incorporate a majority of the
25 unincorporated island, or at least some large annexations. That strategy is
unnecessary because the only municipality that can annex into the island area
adjoining the Four Lot is Milton.

In order to make sense of the preceding statement some background on the “island”
area adjoining the Four Lots is necessary. The majority³ of the unincorporated island
adjoining the neighborhood enclave is an area designated in the Pierce County
Comprehensive Plan as a joint urban growth area for the cities of Fife and Milton.
See Att. 7. Despite Pierce County’s joint urban growth area designation, Fife cannot
annex into the area because this would be contrary to its own comprehensive plan.

³ The City of Tacoma Urban Growth Area borders the northwestern lot of the Four
Lots. It is remotely possible that some day Tacoma could annex all the way up to this
corner of the Four Lots, located a half mile from the current Tacoma city limits. If
that happens there is not much that can be done to prevent the removal of a corner of
the neighborhood enclave into the City of Tacoma.

1 The Fife Comprehensive Plan designates the joint urban growth area as outside of its
2 own urban growth area. See Fife Comprehensive Plan, p. 2-9, Att. 8. Under the
3 Washington State Growth Management Act, Pierce County would normally be
4 responsible for adopting Fife’s urban growth area and Fife’s comprehensive plan
5 should be consistent with that urban growth area designation. See RCW 36.70A.110.
6 However, any challenge to the compliance of a local comprehensive plan with the
7 GMA must be made within 60 days of adoption or that challenge is waived until the
8 allegedly noncompliant provision is modified by the adopting jurisdiction or
9 applicable statutory requirements have been amended. See *Clallam County v. Dry
10 Creek Coalition*, 161 Wn. App. 366, 381-392 (2011). The result in this case is that
11 Fife is barred by its own comprehensive plan from annexing into the joint Fife/Milton
12 urban growth area designated by Pierce County. Even if the comprehensive plan
13 weren’t legally binding, it certainly establishes a legislative policy against annexation
14 into the area.

9 The only other jurisdiction that could annex into the shared Milton/Fife urban growth
10 area is the City of Milton. As noted by the declaration of Chris Larson, the City of
11 Milton has no current plan to annex into this area. If the City were to annex in a
12 manner that would create a small Four Lots unincorporated island, the BRB would
13 have ample justification to add the Four Lots to the annexation proposed at that time.

13 **RCW 36.93.157:** *The decisions of the boundary review board located in a county
14 that is required or chooses to plan under RCW 36.70A.040 must be consistent with
15 RCW 36.70A.020, 36.70A.110, and 36.70A.210.*

15 **RCW 36.70A.020(1):** *Urban growth. Encourage development in urban areas where
16 adequate public facilities and services exist or can be provided in an efficient
17 manner.*

17 **RCW 36.70A.020(11):** *Citizen participation and coordination. Encourage the
18 involvement of citizens in the planning process and ensure coordination between
19 communities and jurisdictions to reconcile conflicts.*

19 RCW 36.93.157 requires BRB decisions to be consistent with the goals of the Growth
20 Management Act as listed in RCW 36.70A.020. Inclusion of the Four Lots is directly
21 counter to two of the goals, RCW 36.70A.020(1) and (11), as quoted above. The
22 splitting of police and fire service areas as advocated by Pierce County for the Four
23 Lots creates potential jurisdictional complications that serves to undermine efficient
24 provision of fire and police services for reasons previously discussed. Consequently,
25 the inclusion of the Four Lots would be prevent the provision of fire and police
service in an efficient manner as contemplated in RCW 36.70A.020(1). Also for
reasons previously discussed, inclusion of the Four Lots would make unwilling
Milton citizens of residents who have no ties to the City of Milton. Citizens with no
ties to a community have little incentive to participate in that community’s planning

1 activities. Those citizens are unlikely to be involved in any planning process as
2 encouraged by RCW 36.70A.020(11).

3 **CONCLUSION**

4 On March 14, 2014, the residents of the proposed annexation area presented the
5 Milton City Council with a 60% petition requesting annexation into the City of
6 Milton. The Milton City Council approved that annexation pursuant to the requests
7 of the petitioners without modification. Pierce County now wants to add four lots to
8 that annexation for properties that did not request inclusion, contrary to the wishes of
9 the Milton City Council. As established in this memorandum, the addition of those
10 lots will fracture a neighborhood enclave and split its fire and police service areas
11 with no public benefit in return. Further, if the BRB approves the Four Lots addition,
12 this will set a precedent that will chill any further residential annexations along 70th
13 Ave E. The BRB is requested to honor the wishes of the citizens of the proposed
14 annexation area and the efforts of the City of Milton City Council to annex in a
15 logical and responsible fashion. The BRB should deny the request of Pierce County
16 to include the Four Lots in the proposed annexation.

17 Dated this 11th day of September, 2014.

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Phil A. Olbrechts

Milton City Attorney

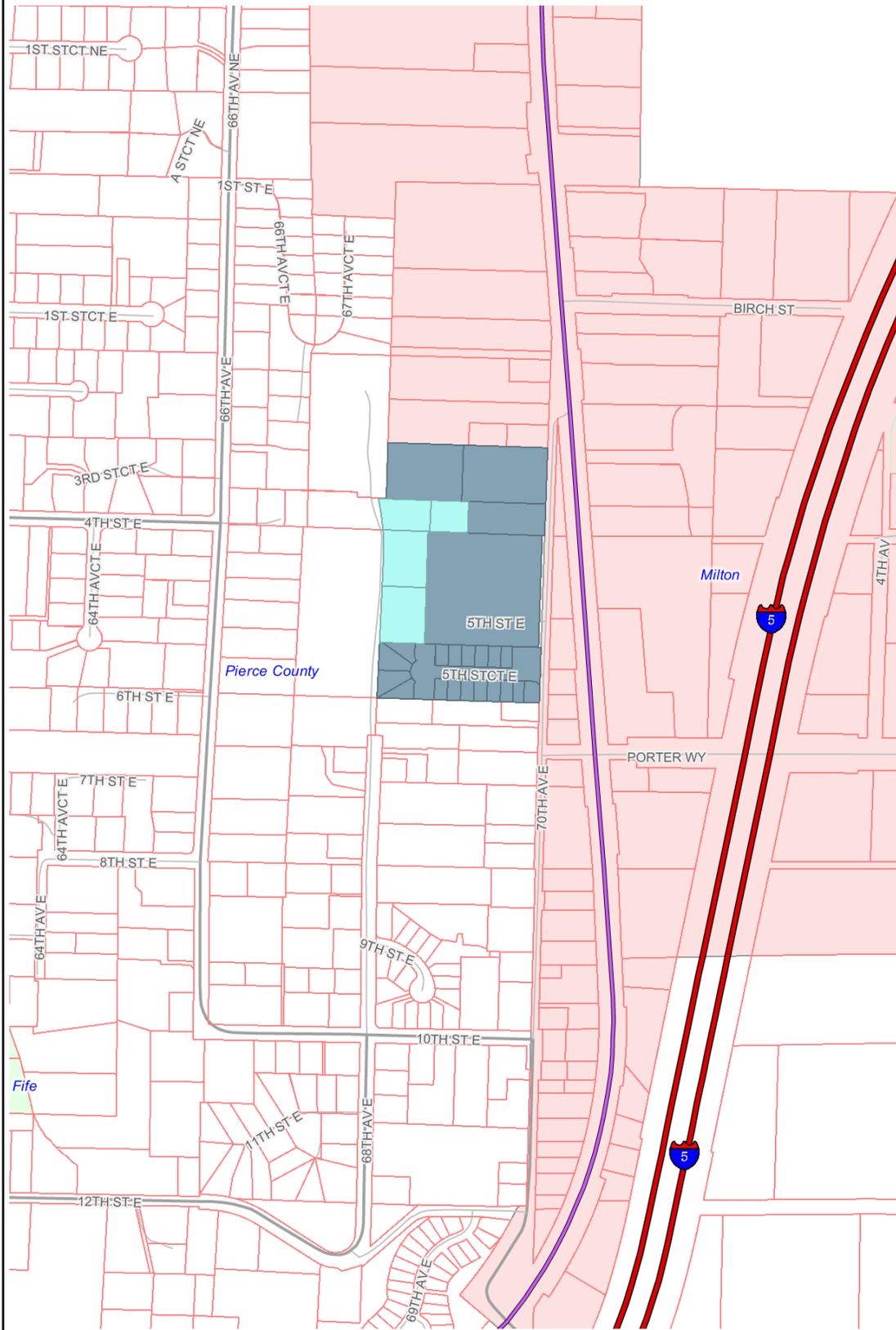
CountyView Web Map



City of Milton, WA

Map Legend

- Four Lots
- Proposed Annexation Area
- Tax Parcels**
- Base Parcel
- Condominium
- Other
- Roads**
- Interstate
- Limited Access State Routes
- Other State Routes
- Ramps
- Major Arterial
- Collector
- Local Access
- Pierce County Basemap**
- Unincorporated County
- Tacoma
- Lakewood, Edgewood, Bonney Lake, Buckley, South Prairie
- Steilacoom, Fircrest, Fife, Gig Harbor, Orting, Eatonville, Roy, Carbonado, Wilkeson, Mt Rainier
- University Place, Puyallup, Auburn
- DuPont, Milton, Sumner
- Fort Lewis, McChord, McNeil Island
- Water



0 600 ft.



Scale 1:7,416

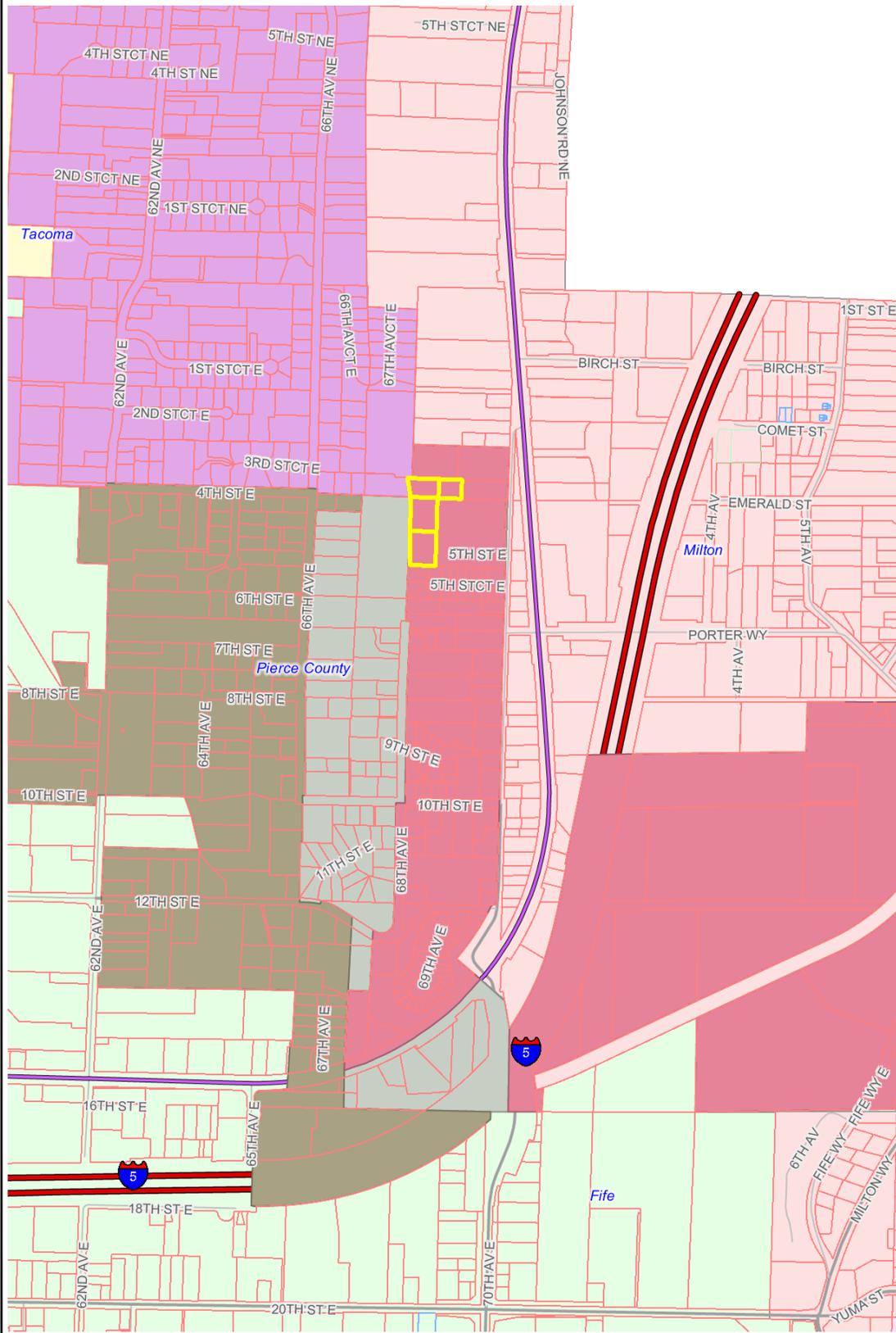
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CountyView Web Map



City of Milton, WA



Map Legend

- Highlighted Tax Parcels
- Tax Parcels**
 - Base Parcel
 - Condominium
 - Other
- UGA's**
 - FIFE
 - FIFE MILTON
 - MILTON
 - TACOMA
 - Other
- Roads**
 - Interstate
 - Limited Access State Routes
 - Other State Routes
 - Ramps
 - Major Arterial
 - Collector
 - Local Access
- Pierce County Basemap**
 - Unincorporated County
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 - University Place, Puyallup, Auburn
 - DuPont, Milton, Sumner
 - Fort Lewis, McChord, McNeil Island
 - Water

0 1000 ft.



Scale 1:12,317

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3 **BEFORE THE PIERCE COUNTY BOUNDARY REVIEW BOARD**

4 RE: Clear Firs/Sunridge Annexation

Chris Larson Declaration

5 Case No. A-14-2

6 I, Chris Larson, make the following declaration:

7 1. I am a resident of the State of Washington, over the age of 18 years, and
8 am competent to be a witness herein.9 2. I have served as a planner for the City of Milton for 5 years and have
10 operated as a professional planner for a total of 7 years.11 3. From my review of GIS data provided by Pierce County, I have
12 determined that the Four Lots referenced in the September 10th 2014 Milton City
13 Attorney memorandum are currently served by the following service providers:

14 Fire: Pierce County Fire District #10 (contracted with Tacoma Fire Department)

15 Police: Pierce County Sherriff

16 Water: City of Tacoma

17 Sewer: Pierce County Sewer

18 Power: Tacoma Public Utilities

19 4. I have also determined from GIS data provided by Pierce County that the
20 only service providers that will change as a result of an addition of the Four Lots to
21 the Clear Firs/Sundridge Annexation would be fire to East Pierce Fire and Rescue and
22 police to the Milton Police Department.23 5. I have reviewed the development standards for Pierce County and the City
24 of Milton. From this review I have determined that if the Four Lots are included in
25 the Clear Firs/Sundridge Annexation, the total number of lots that could be
subdivided out of the "neighborhood enclave" referenced in the September 10, 2014
Milton City Attorney prehearing memorandum is approximately 35. 24 of these lots
are attributed to the two large lots on the west side of the access easement, and 11
from the "four lots".

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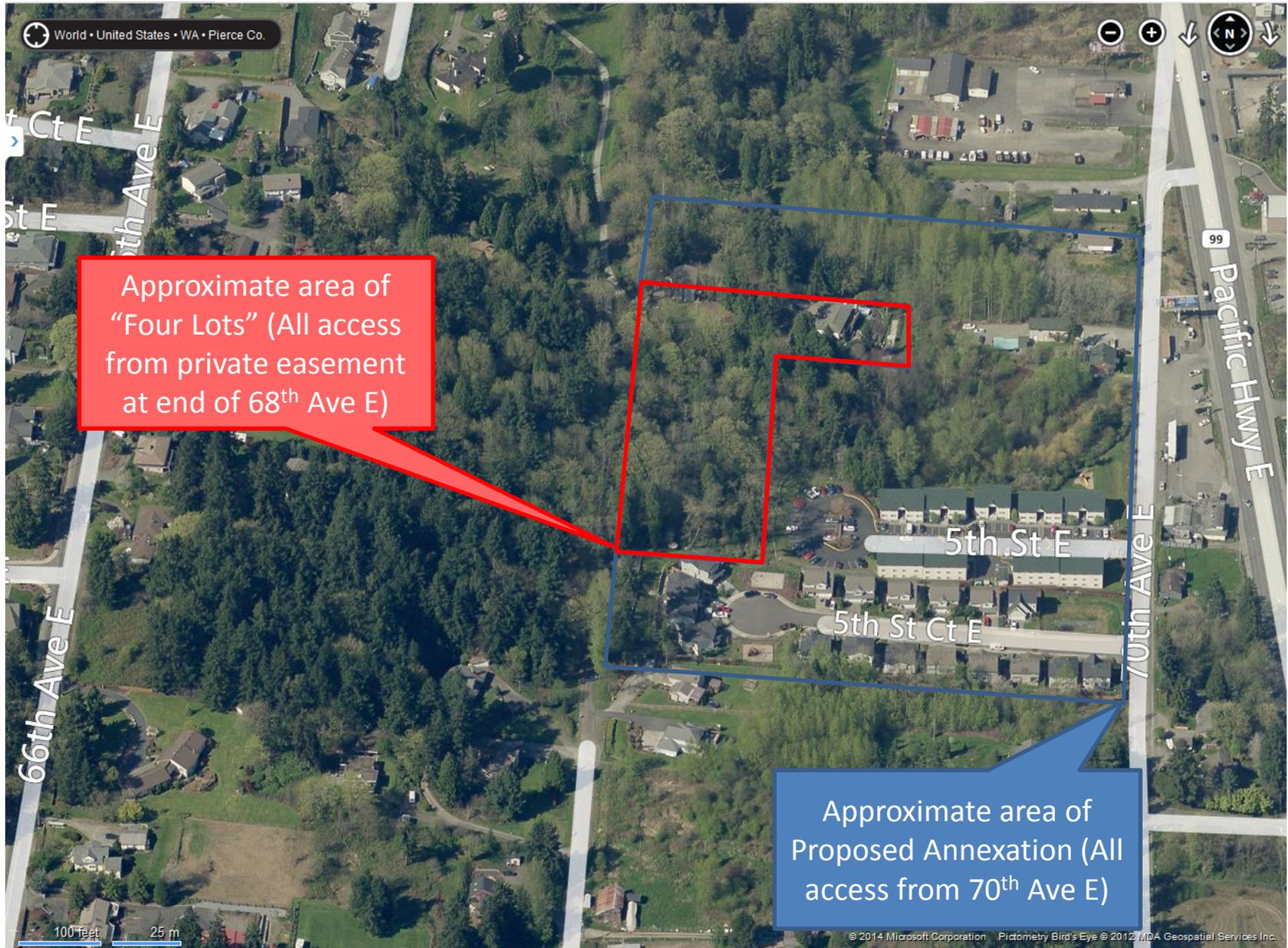
6. As a planner for both the cities of Milton and Fife, I am very familiar with the road network used to access the Four Lots. The route depicted in Att. 5 to the September 10, 2014 Milton City Attorney prehearing memorandum is the most direct route from I5 to the four lots, and therefore the most likely route used from I5 by the residents of the neighborhood enclave.

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

EXECUTED at Milton, Washington, this 12 th day of September, 2014.


Chris Larson

Attachment 4



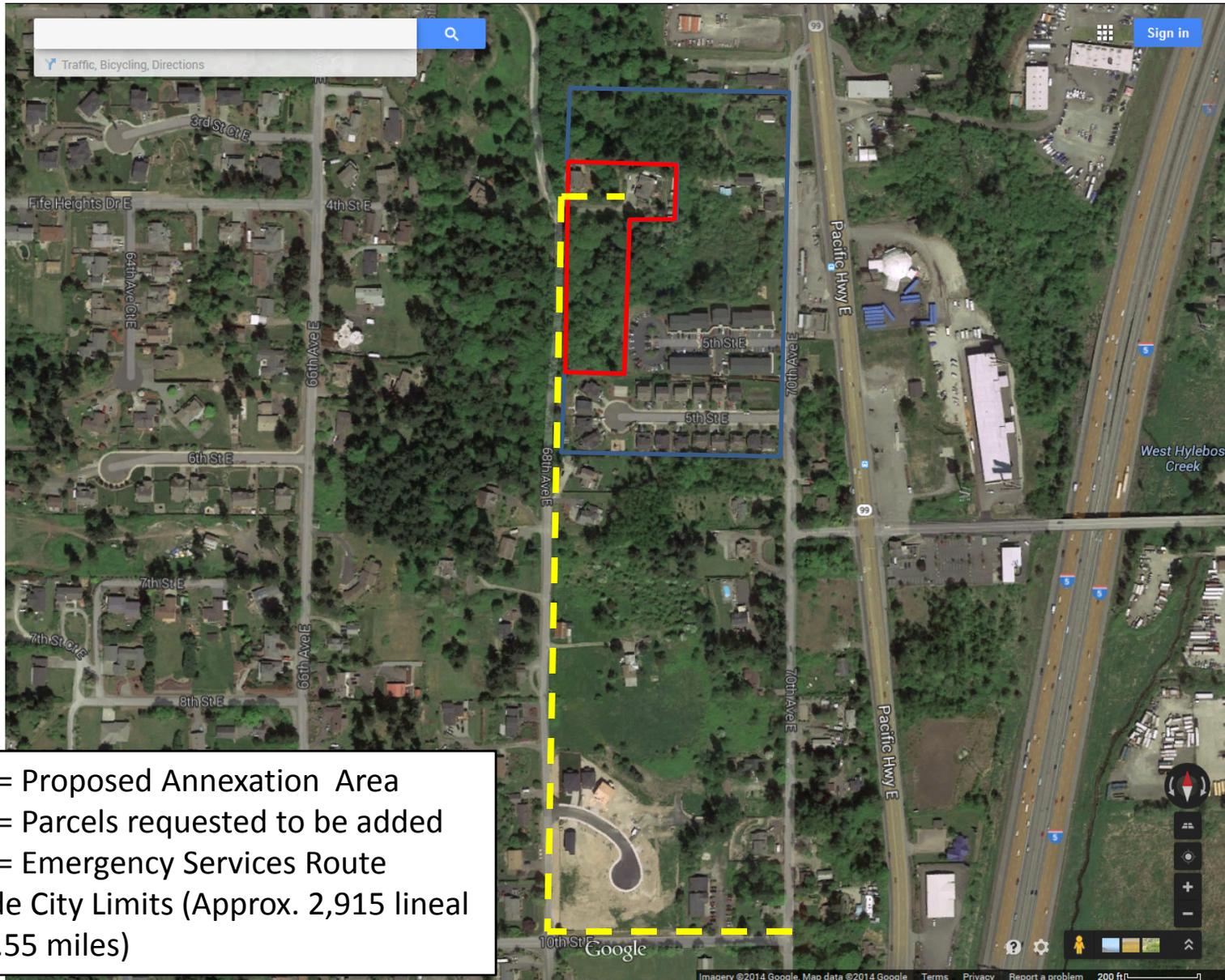
Approximate area of "Four Lots" (All access from private easement at end of 68th Ave E)

Approximate area of Proposed Annexation (All access from 70th Ave E)

Attachment 4

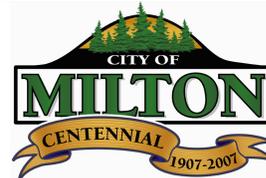


Attachment 4



 = Proposed Annexation Area
 = Parcels requested to be added
 = Emergency Services Route
outside City Limits (Approx. 2,915 lineal
ft. or .55 miles)

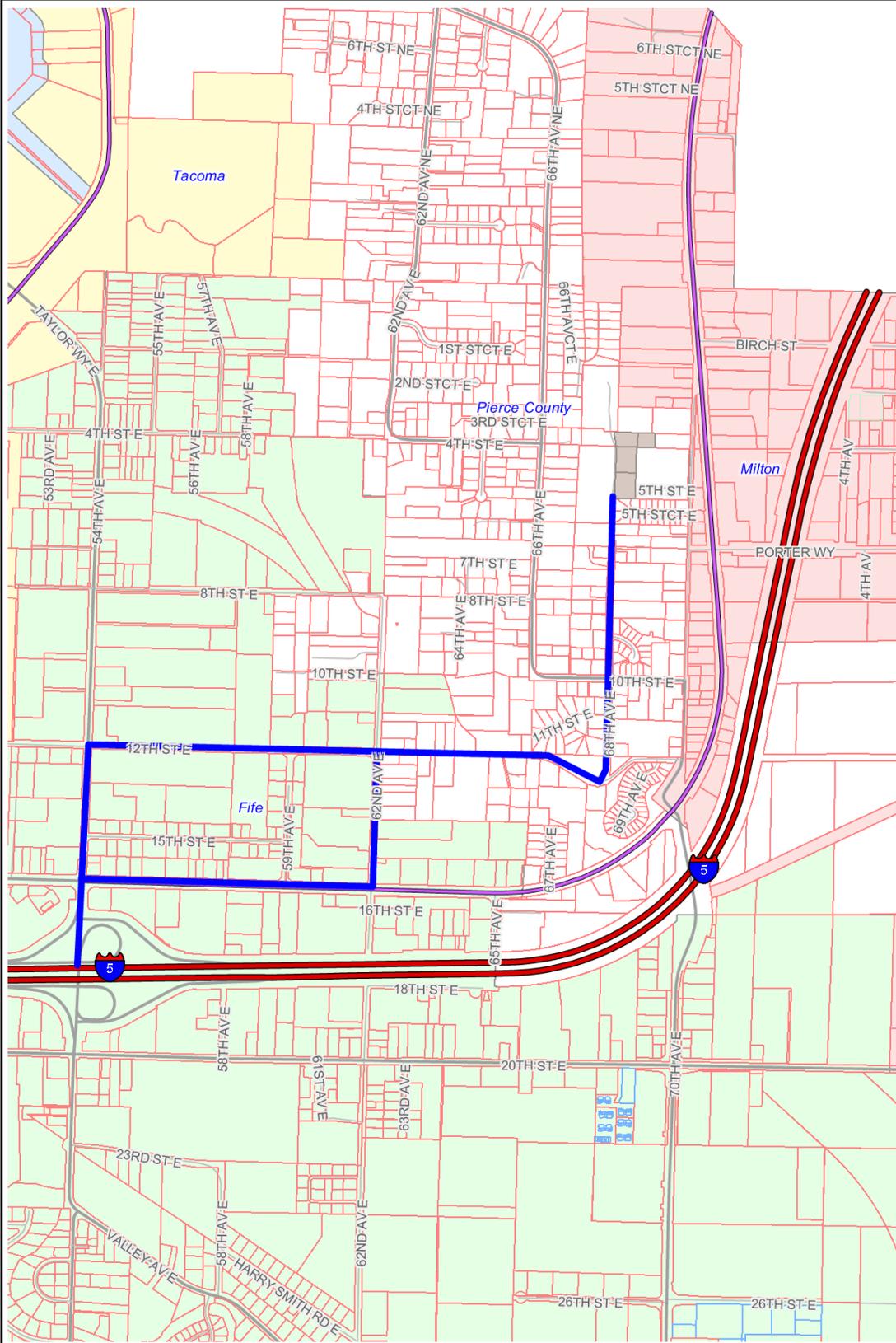
CountyView Web Map



City of Milton, WA

Map Legend

- Four Lots
- Tax Parcels
- Base Parcel
- Condominium
- Other
- Roads**
- Interstate
- Limited Access State Routes
- Other State Routes
- Ramps
- Major Arterial
- Collector
- Local Access
- Pierce County Basemap**
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- University Place, Puyallup, Auburn
- DuPont, Milton, Sumner
- Fort Lewis, McChord, McNeil Island
- Water



0 1400 ft.



Scale 1:16,262

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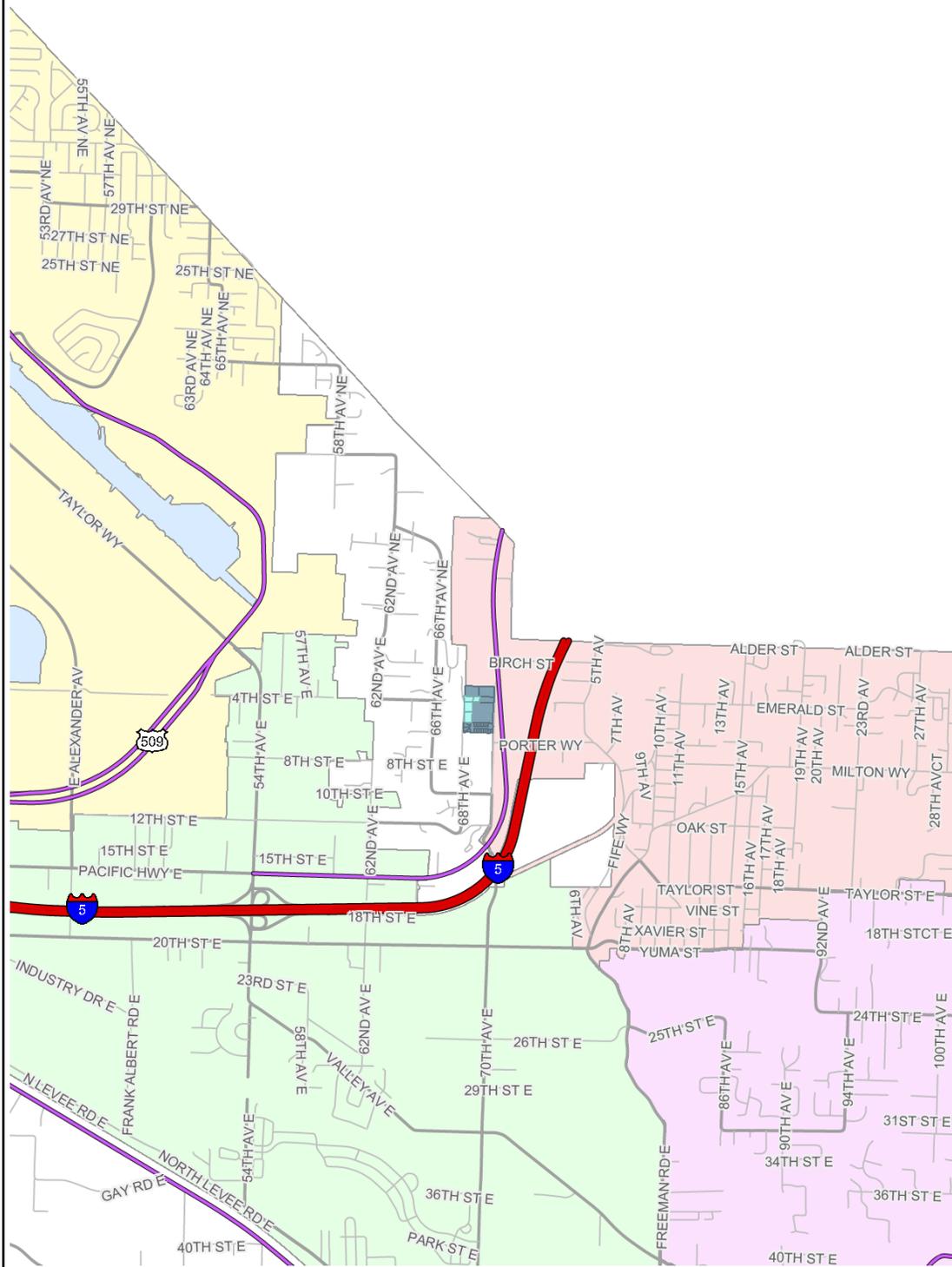
CountyView Web Map



City of Milton, WA

Map Legend

- Four Lots
- Proposed Annexation Area
- Roads**
- Interstate
- Limited Access State Routes
- Other State Routes
- Ramps
- Major Arterial
- Collector
- Local Access
- Pierce County Basemap**
- Unincorporated County
- Tacoma
- Lakewood, Edgewood, Bonney Lake, Buckley, South Prairie
- Steilacoom, Fircrest, Fife, Gig Harbor, Orting, Eatonville, Roy, Carbonado, Wilkeson, Mt Rainier
- University Place, Puyallup, Auburn
- DuPont, Milton, Sumner
- Fort Lewis, McChord, McNeil Island
- Water



0 3500 ft.



Scale 1:43,366

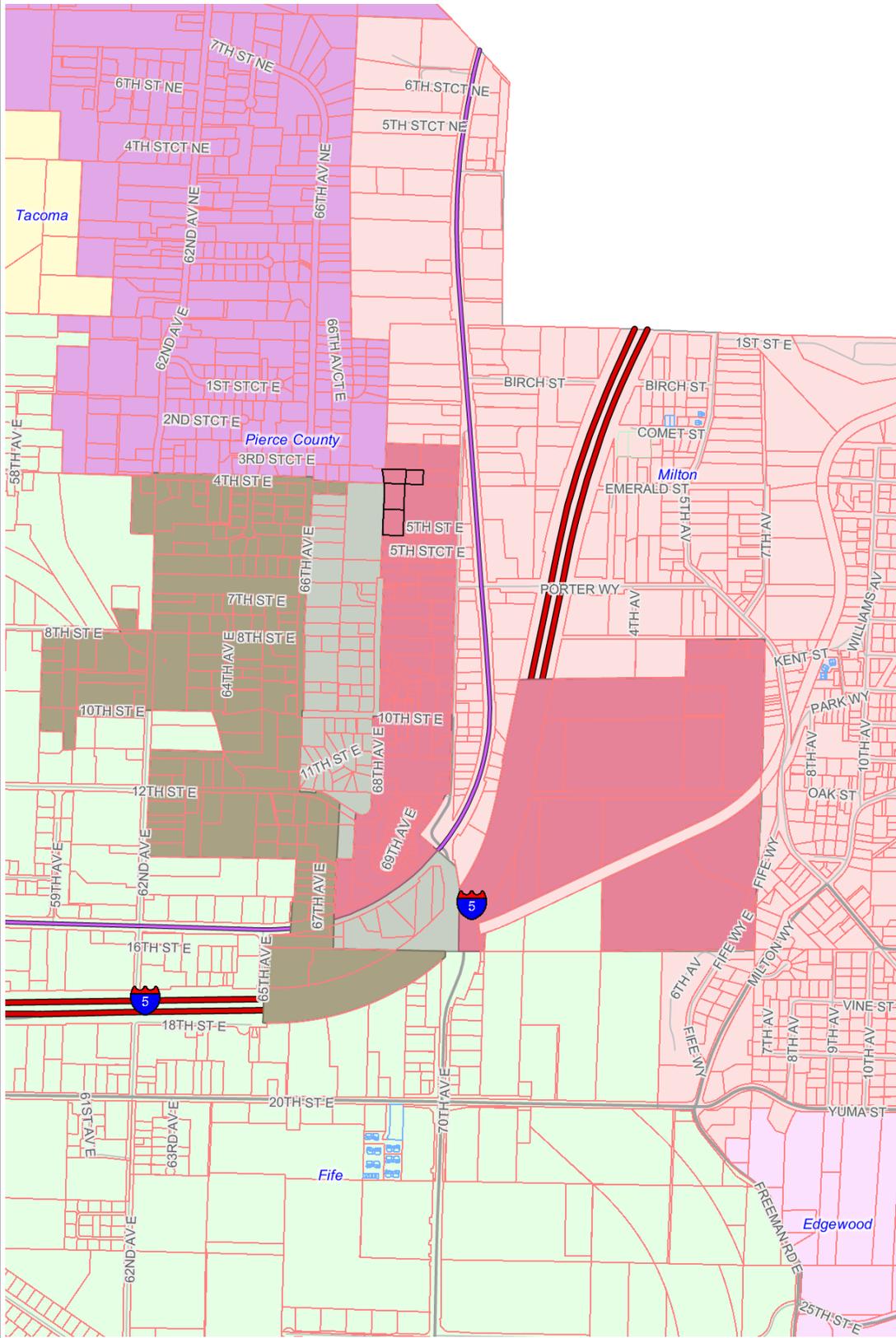
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CountyView Web Map



City of Milton, WA



Map Legend

- Four Lots
- Tax Parcels
- Base Parcel
- Condominium
- Other
- UGA's**
- FIFE
- FIFE MILTON
- MILTON
- TACOMA
- Other
- Roads**
- Interstate
- Limited Access State Routes
- Other State Routes
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- DuPont, Milton, Sumner
- Fort Lewis, McChord, McNeil Island
- Water

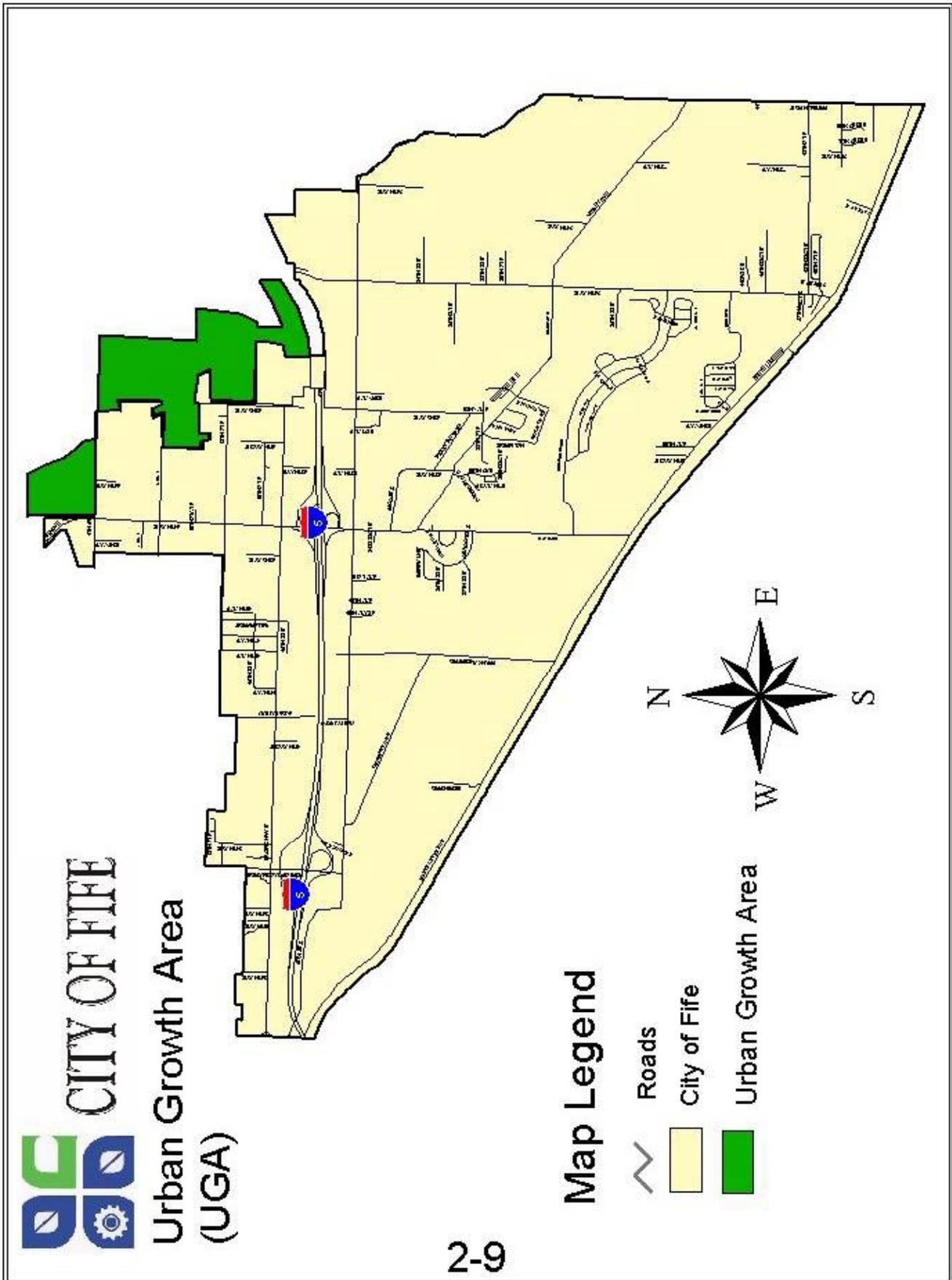
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Scale 1:16,262

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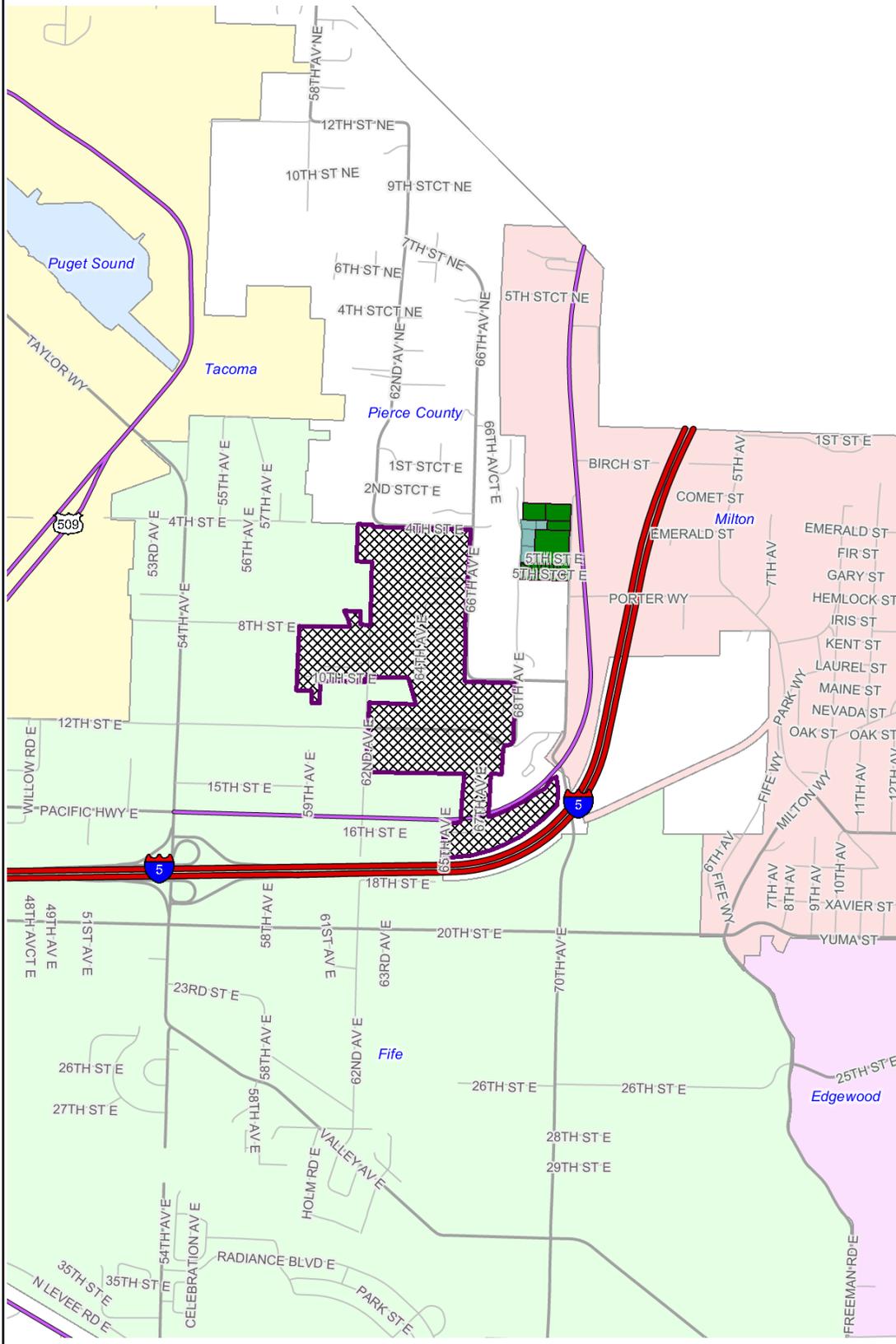


CountyView Web Map

City of Fife, WA

Map Legend

- Proposed Milton Annexation Boundary
- Four Lots
- Annexation Boundary
- Roads**
- Interstate
- Limited Access State Routes
- Other State Routes
- Ramps
- Major Arterial
- Collector
- Local Access
- Pierce County Basemap**
- Unincorporated County
- Tacoma
- Lakewood, Edgewood, Bonney Lake, Buckley, South Prairie
- Steilacoom, Fircrest, Fife, Gig Harbor, Orting, Eatonville, Roy, Carbonado, Wilkeson, Mt Rainier
- University Place, Puyallup, Auburn
- DuPont, Milton, Sumner
- Fort Lewis, McChord, McNeil Island
- Water



0 2000 ft.



Scale 1:24,959

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“WHERE COMPASSION AND ACTION MEET.”



September 9, 2014

Pierce County Boundary Review Board
2401 S. 35th St. #2
Tacoma, WA 98409

SUBJECT: City of Milton- Clear Firs/Sunrise Annexation

EAST PIERCE FIRE & RESCUE

JERRY E. THORSON, FIRE CHIEF
18421 VETERANS MEMORIAL DRIVE E.
BONNEY LAKE, WA 98391

WWW.EASTPIERCEFIRE.ORG

PHONE: 253-863-1800
FAX: 253-863-1848

To Whom it may concern,

I'm writing this letter in reaction to the city of Milton's effort to annex the Clear Firs/Sunridge annexation and the potential impact on East Pierce Fire & Rescue. The city of Milton has annexed into the fire district, so per RCW as their boundaries expand, ours follow along with their changes. While the district supports the effort to annex the properties as requested by the City, we are opposed to Pierce County's effort to add four additional parcels accessed from 68th Ave East. It's my understanding that the county wishes to add parcels: 042006512, 0420065011, 0420061167, and 0420061165 to the area to be annexed.

Our opposition is based on access to the parcels listed above and their distance from our fire stations. We have clear and rapid access to the proposed properties that are accessed off of 70th Ave East; however the properties the County is proposing to include are accessed off of 68th Ave East and 10th Street E.. This means that our emergency vehicles must drive over a half mile through the area protected by Pierce County Fire District 10 (covered by Tacoma Fire) just to get to the area in question. Furthermore, the travel route for Pierce County Fire District #10 has less intersections and turning maneuvers to negotiate, than the travel route for East Pierce Fire and Rescue. These two items will likely increase the response times into the four lot area. Since the access point on 68th Ave East is in Fire District #10, it makes more sense that they would provide coverage at the north end of that street.

The changes proposed by Pierce County mean that properties along 68th, and the private driveway extending from the end of 68th Ave right of way, would have some covered by Tacoma, some by East pierce and beyond that back to Tacoma again. It's important to note that 68th bends to the West in the area so it would add unnecessary confusion about which parcels on the east side of the street are covered by our jurisdiction and those covered by Tacoma. This confusion will likely lead to delays in response and coverage, a situation that is not created with Milton's original proposal.

In summary, we support Milton's annexation plan and oppose adding the four parcels as proposed by Pierce County. The additional parcels will create a negative impact on emergency response and confusion among the residents in the area.

Sincerely,

Jerry E. Thorson

Jerry E. Thorson
Fire Chief

Back to Agenda Bill

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BEFORE THE PIERCE COUNTY BOUNDARY REVIEW BOARD

RE: Clear Firs/Sunridge Annexation Case No. A-14-2	City of Milton Response to Pierce County Pre-Hearing Brief, Ex. 17
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This memo provides a summary response to the Pierce County Pre-Hearing Brief:

1. The BRB is Prohibited from Expanding Proposed Annexation Areas by More than 100%. RCW 36.93.150(2) provides as follows:

(2) Subject to RCW 35.02.170, modify the proposal by adjusting boundaries to add or delete territory. Subject to the requirements of this chapter, a board may modify a proposal by adding territory that would increase the total area of the proposal before the board. A board, however, may not modify a proposal for annexation of territory to a city or town by adding an amount of territory that constitutes more than one hundred percent of the total area of the proposal before the board.

Milton is proposing an annexation are comprising 11.9 acres. Pierce County (PC) is requesting the addition of 19 acres. The PC proposal clearly violates RCW 36.93.150(2).

2. Nothing in the GMA dictates the Timing of Annexation. PC has manufactured some duty from the Growth Management Act (“GMA”) and the comprehensive plans and county-wide policies adopted pursuant to it that cities have a duty to annex within their urban growth areas within a certain period of time. Absolutely nothing in the GMA creates any such duty. It certainly is anticipated that cities will annex within the UGA, but nothing in the GMA dictates the timing of that annexation.

3. County-wide Planning Policies are Prohibited from Dictating the Timing of Annexation. PC refers to county-wide planning policies (CPP) as justification for adding lots to the proposed annexation. RCW 36.70A.210(1) provides that county-wide planning policies may not “alter the land use powers of cities”. The Central Puget Sound Growth Management Hearings Board has held that annexation is an exercise of a city’s land use powers. *See City of Poulsbo v. Kitsap County*, CPSGMHB FDO Case No. 92-3-0009 (4/6/93). The *Poulsbo* case dealt with a CPP dictating the election method of annexation for cities. In this case the County seeks to use its CPP to alter an annexation power just as fundamental by altering the size of a proposed annexation. A CPP clearly could not dictate that cities adopt comprehensive plan policies requiring that all

1 proposed annexations maximize area in order to annex UGAs as quickly as
2 possible. If the GMA prohibits a County from dictating the size or timing of
3 annexations in its CPPs, the GMA should not be used as an end run on this
4 prohibition to force the expansion of annexation areas in BRB review.

4. County-wide Planning Policies may Only be Used to Guide the Adoption of Comprehensive Plans. RCW 36.70A.210(1) provides that a CPP is:

5
6 *...a written policy statement or statements used solely for establishing a
7 county-wide framework from which county and city comprehensive plans are
8 developed and adopted pursuant to this chapter...* (emphasis added).

9 As noted in the statute quoted above, CPPs are to be used solely for the
10 formulation of comprehensive plans. They do not serve as independent policy
11 documents. They may have some utility in clarifying ambiguities in
12 comprehensive plans, but PC has yet to identify a single-comprehensive plan
13 policy that addresses the timing of annexation by cities.

- 14 5. A “Future Annexation Area” Doesn’t Dictate Timing. Ex. 17, par. 4 references
15 PC Comp Plan Policy 19A.30.010B.1.c, which notes that urban growth areas are
16 “intended to show future annexation areas.” Nothing in this language requires
17 cities to annex within any specific “future” time or dictates the size of
18 annexations.

- 19 6. City Policies Don’t Dictate Timing or Require Land Use Coordination During Annexation. Ex. 17 references several City of Milton comprehensive plan
20 policies that anticipate annexing into Milton’s urban growth area. None of these
21 policies require or suggest that these annexations be completed at any specific
22 time. Reference is also made to Pol. LU1.7, which provides that “cooperative
23 land use planning shall occur” in Milton’s urban growth area. The policy choices
24 involved in “land use planning” have already occurred in the formulation of
25 comprehensive plans and implementing development regulations. Annexation is
not part of “land use planning”.

7. Annexation is not a County GMA Policy Tool. PC cannot use the annexation
process as a blunt policy tool to implement its GMA objectives. RCW
36.93.150(5) provides that an annexation cannot be denied or modified unless
supported by a need to meet one or more of the objectives of RCW 36.93.180.
The RCW 36.93.180 objectives do not include consistency with GMA.
Consistency with GMA is required by another statute, RCW 36.93.157. The
courts require that in the case of multiple statutes or provisions governing the
same subject matter, effect will be given to both to the extent possible. ,155 Wn.
App. 199, 208 (2010). Efforts will be made to harmonize statutes, particularly if

1 the legislation itself recognizes that multiple statutes may govern. *Id.* The
2 requirements of RCW 36.93.180 and RCW 36.93.157 can be harmonized to a
3 large extent by interpreting the objectives of RCW 36.93.180 in a manner that is
4 consistent with the requirements of the GMA.

5 If the BRB were to come to the unlikely conclusion that the GMA actually does
6 impose a duty to annex within urban growth areas within a specific timeframe,
7 then that duty could be applied through the RCW 36.93.180(3) objective of
8 creation of logical service areas. However, the objectives of RCW 36.93.180 are
9 designed to assess the merits of specific annexation proposals and not the broader
10 goal of PC extricating itself from servicing urban growth areas. The objectives of
11 RCW 36.93.180 do not give license to PC to double the annexation area of every
12 annexation it encounters to fill out the boundaries of an urban growth area. If an
13 annexation is expanded to reduce an urban growth area, it should be done so
14 within the scope and scale of the annexation after a careful weighing of all RCW
15 36.93.180 objectives.

16 8. BRB Review is Not the Time to Revisit or Question UGA Policy Choices. PC
17 requests that the proposed annexation be denied so that it can legislatively modify
18 its urban growth area policies. In short, PC bases most of its argument on existing
19 urban growth area policies and if that doesn't work PC wants the BRB to deny the
20 annexation so it can adopt new urban growth area policies. The policies in place
21 now allow Milton to annex into the proposed annexation area and the GMA does
22 not dictate that any additional area be annexed at this time. Annexation decisions
23 should be based upon current policies and laws and not be denied on the basis of
24 policies that might be denied in the future.

25 9. The Addition of the 19 Acres Creates the Same Problems as the Addition of the
Four Lots. The problems of divided neighborhoods and service areas associated
with the Four Lots are the same for the additional 19 acres proposed by PC. As
with the Four Lots, the only service areas that would be affected by the
annexation are police and fire and the impact would be adverse since the service
areas would be divided by 68th Ave E. As with the Four Lots, the 19 acres form a
neighborhood physically distinct from the lots accessed off 70th Ave. The lots in
the 19 acre area are fairly large and can be subdivided into a large number of lots,
creating the same disenfranchisement issues identified for the Four Lots.

Dated this 29th day of September, 2014.



Phil A. Olbrechts

Milton City Attorney

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BEFORE THE PIERCE COUNTY BOUNDARY REVIEW BOARD

RE: Clear Firs/Sunridge Annexation	City of Milton Final Comments
Case No. A-14-2	

It is the City of Milton’s understanding that the Boundary Review Board has never been asked to add property to a proposed annexation before. Given that this case will set a precedent affecting all Pierce County cities, the City of Milton wishes to take this opportunity to ensure that it has made its points as clear as possible. The City would like to emphasize the following points:

1. The Four Lots will Never Turn Into an Unincorporated Island. During the hearing, Pierce County presented a map depicting unincorporated small “islands” throughout Pierce County. That cannot happen with the Four Lots. The Four Lots are connected to over 700 acres of unincorporated land. The only jurisdiction that could annex unincorporated land that adjoins the Four Lots, and thus create an “island”, is the City of Milton. If Milton annexes this adjoining land in the future, the BRB could at that time require the Four Lots to be annexed as well, preventing the creation of an island.

Pierce County asserts that the City of Fife could annex into the Fife/Milton Split UGA adjoining the Four Lots, and thus create an island. This is incorrect. As noted in Milton’s prehearing brief, the City of Fife comprehensive plan prohibits Fife from annexing into this area because its adopted urban growth area does not extend anywhere near the Four Lots.

As shown in the attached letter from the State of Washington, the City of Fife completed its comprehensive plan update in 2007. This update included the Fife UGA, which did not include any land in the Fife/Milton Split UGA, adjacent to the Four Lots. Pierce County adopted its Urban Growth Area for Fife, which included the joint Fife/Milton Split UGA in 2003 by Pierce County Ordinance No. 2003-103S. Ordinance No 2003-103S was a change in the law that made Fife’s UGA “live¹” for purposes of appeal to the Growth Management Hearings Board. Since Pierce County did not appeal Fife’s UGA adoption in 2007, it is no longer subject to challenge until the law changes again.

¹ As noted in Milton’s prehearing brief, any challenge to a comprehensive plan must be made within 60 days of adoption or that challenge is waived until the allegedly noncompliance provision is modified by the adoption jurisdiction or applicable statutory requirements have been amended. See *Clallam County v. Dry Creek Coalition*, 161 Wn. App. 366, 381-392 (2011). Fife adopted its UGA well before Pierce County adopted its current Fife/Milton shared UGA (which extends to the Four Lots). That change in UGA boundaries constituted a change in applicable statutory requirements that made the Fife UGA “live” for challenge when it was re-adopted by Fife in its comprehensive plan update in 2007.

1 2. Adding the Four Lots Essentially Creates an Island for Milton. The problem with
2 an island, of course, is that the County can only reach the island by sending service
3 providers through adjoining cities. The only services at issue for the Four Lots is
4 police and fire, since all other municipal services will not change as a result of the
5 annexation. If the Four Lots are added to the proposed annexation, Milton police and
6 fire will have to drive through unincorporated Pierce County to reach the Four Lots.
7 In short, the BRB will create a service island for Milton if the Four Lots are added to
8 the annexation. If the BRB denies the addition, the Four Lots will likely never turn
9 into an island for the reasons identified in the preceding paragraph.

6 3. Pierce County Improperly Bases Its Argument Exclusively Upon GMA Policies.
7 As noted in Milton's power point presentation during the hearing, RCW 36.93.150(5)
8 provides that a BRB "shall not modify" a proposed annexation unless there is
9 evidence in the record that the action is inconsistent with one or more objectives
10 under RCW 36.93.180. The legal basis for the County's argument was provided in its
11 September 17, 2014 response, Ex. 17. Pierce County doesn't identify a single reason
12 why any objective of RCW 36.93.180 would be violated by the annexation as
13 proposed by Milton. All of Pierce County's arguments have been exclusively based
14 upon Growth Management Act policies. Until and unless the BRB can show that an
15 RCW 36.93.180 objective is violated by Milton's proposed annexation, it has no
16 authority to add the Four Lots.

13 Dated this 29th day of October, 2014.

15 
16 Phil A. Olbrechts

17 Milton City Attorney

21 Back to Agenda Bill



Pierce County

Office of Prosecuting Attorney

REPLY TO:
CIVIL DIVISION
955 Tacoma Avenue South, Suite 301
Tacoma, Washington 98402-2160
FAX: (253) 798-6713

Exhibit 17

MARK LINDQUIST
Prosecuting Attorney

Main Office: (253) 798-6732
(WA Only) 1-800-992-2456

September 19, 2014

Boundary Review Board
Attn: Toni Fairbanks, Clerk
2401 South 35th Street, Room 175
Tacoma, WA 98409

Re: Milton Annexation, Case No. A-14-2

Dear Ms. Fairbanks:

Enclosed please find a letter signed by the Pierce County Executive regarding the County's position on the proposed annexation. We ask that you forward this letter to the members of the Boundary Review Board; Phil Olbrechts, attorney for Milton; and Chris Larson, planner for Milton, prior to the hearing on September 30, 2014.

I want to personally apologize to you and the BRB for the fact that this letter is overdue. The delay was entirely my fault and was due to my work schedule.

Very truly yours,


Jill Guernsey
Deputy Prosecuting Attorney
(253) 798-7742

JG:jaa
Enclosure





Pierce County

Office of the County Executive

930 Tacoma Avenue South, Room 737
Tacoma, Washington 98402-2100
FAX (253) 798-6628
www.piercecountywa.org

PAT McCARTHY
Executive
(253) 798-7477
pmccart@co.pierce.wa.us

KEVIN R. PHELPS
Deputy Executive
(253) 798-7477
kphelps@co.pierce.wa.us

September 19, 2014

Pierce County Boundary Review Board
2401 So 35th St
Tacoma, WA 98409

Re: Case Number A-14-2

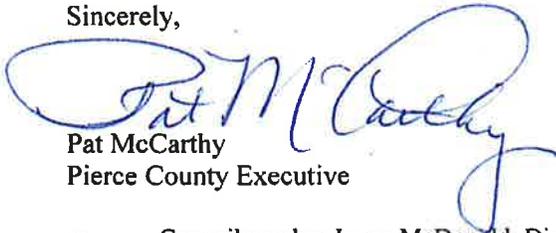
The City of Milton ("City") has provided notice to annex approximately 11.9 acres. The Pierce County Executive invoked the Boundary Review Board's jurisdiction to review this proposal, not in opposition of annexation, rather to expand the property to be annexed. Pierce County requests that the Boundary Review Board take one of three actions:

1. Expand the annexation area to include 44 additional parcels, totaling approximately 19.5 acres. This area extends from roughly 5th St Ct E. down to 10th Street East and includes four parcels between 70th Ave. E. and 68th Ave. E., just north of 5th St. Ct E. (See map #1 within attachment) This area is currently identified as an area within the City's urban growth area as documented in the City's current Comprehensive Plan, as well as within the City's urban service area as designated by the County; or
2. Expand the annexation area to include 4 additional parcels, totaling approximately 2.9 acres. This area is between 70th Ave. E. and 68th Ave. E., just north of 5th St. Ct E. (See map #2 within attachment). This area is currently identified as an area within the City's urban growth area as documented in the City's current Comprehensive Plan, as well as within the City's urban service area as designated by the County; or
3. Deny the annexation and recommend that the City amend its Comprehensive Plan to modify the urban growth area line as drawn on its Land Use map to exclude the 4 parcels identified under 2, above, and to enter into discussions with the City of Fife and Tacoma to identify the appropriate jurisdiction to annex these properties.

The County is making this request to avoid a situation where an unincorporated urban area is surrounded by two or three cities with no expectation for any of them to annex in the future. I have attached additional information that provides justification for Pierce County's position.

I thank you in advance for your consideration of Pierce County's request.

Sincerely,



Pat McCarthy
Pierce County Executive

cc: Councilmember Joyce McDonald, District #2
Jeff Cox, Senior Legal Analyst, County Council



Pierce County's Rationale for Expansion of Annexation Area

The City of Milton has provided notice to annex approximately 11.9 acres. The Pierce County Executive invoked the Boundary Review Board's jurisdiction to review this proposal, not in opposition of annexation, rather to expand the property to be annexed. Pierce County requests that the Boundary Review Board take one of three actions:

1. Expand the annexation area to include 44 additional parcels, totaling approximately 19.5 acres. This area extends from roughly 5th St Ct E. down to 10th Street East and includes four parcels between 70th Ave. E. and 68th Ave. E., just north of 5th St. Ct E. (See map #1) This area is currently identified as an area within the City's urban growth area as documented in the City's current Comprehensive Plan, as well as within the City's urban service area as designated by the County.
2. Expand the annexation area to include 4 additional parcels, totaling approximately 2.9 acres. This area is between 70th Ave. E. and 68th Ave. E., just north of 5th St. Ct E. (See map#2) This area is currently identified as an area within the City's urban growth area as documented in the City's current Comprehensive Plan, as well as within the City's urban service area as designated by the County.
3. Deny the annexation and recommend that the City amend its Comprehensive Plan to modify the urban growth area line as drawn on its Land Use map to exclude the 4 parcels identified under 2, above, and to enter into discussions with the City of Fife and Tacoma to identify the appropriate jurisdiction to annex these properties.

The County is making this request to avoid a situation where an unincorporated urban area is surrounded by two or three cities, with no expectation for any of them to annex it in the future. I have attached information that supports Pierce County position.

The County's position is supported by:

1. Growth Management Act (GMA). RCW 36.70A.110(4) states,

"In general, cities are the units of local government most appropriate to provide urban governmental services."

Pierce County Comment: This provision infers cities and towns should be annexing neighboring unincorporated urban growth areas.

2. Vision 2040. A goal of the Multi-County Planning Policies reads,

"All unincorporated lands within the urban growth area will either annex into existing cities or incorporate as new cities."

Policy MPP-DP-18 further states,

“Affiliate all urban unincorporated lands appropriate for annexation with an adjacent city or identify those that may be feasible for incorporation. To fulfill the regional growth strategy, annexation is preferred over incorporation.”

Pierce County Comment: These policies direct cities and the County to pursue opportunities to annex unincorporated urban areas into neighboring cities. The areas identified within proposed area 1. and 2. are currently identified as the City's urban growth area within its current Comprehensive Plan and designated as the City's urban service area by the County.

3. Pierce County Countywide Planning Policies. The CPPs state,

“A long-term purpose of the CPPs is to facilitate the transformation of local governance in urban growth areas so that cities become the primary providers of urban governmental services”

Pierce County Comment: This statement again infers that unincorporated urban areas shall be annexed by neighboring cities.

4. Pierce County Comprehensive Plan. The Comprehensive Plan policy 19A.30.010.B.1c. states,

“Jurisdictions which claim an interest in the overlap areas identified on the Urban Growth Area/Urban Service Area Map are strongly encouraged to resolve the conflicting designations through a public process which results in agreement with the other jurisdictions, and/or cooperative efforts with the County.”

The Pierce County Comprehensive Plan includes the designation of Urban Service Areas within the County's Comprehensive Urban Growth Area. The Urban Service Areas are affiliated with a neighboring city(ies) and are intended to show future annexation areas. The City of Milton requested and the County designated this area as part of the City's Urban Service Area in 1994.

Pierce County Comment: These areas are already identified as urban growth areas for the City. If the City has no intention of pursuing annexation of this area in the future, appropriate planning documents need to be modified and neighboring jurisdictions need to be consulted to determine the appropriate city to annex the area(s).

5. City of Milton's Comprehensive Plan. The City's Comprehensive Plan clearly identifies this area as within the City's urban growth area. Further review of its Comprehensive Plan indicates the City has already considered service provisions as it stated through policies:

- **“Summary of the Plan Element – Land Use Element--** In addition to the land within Milton City limits, the planning area includes the surrounding lands that have been designated as the City's urban growth area (UGA). Milton's UGA represents the growth

area for the City -- the area that the City expects to annex and provide services as circumstances and the wishes of the residents and property owners allow.”

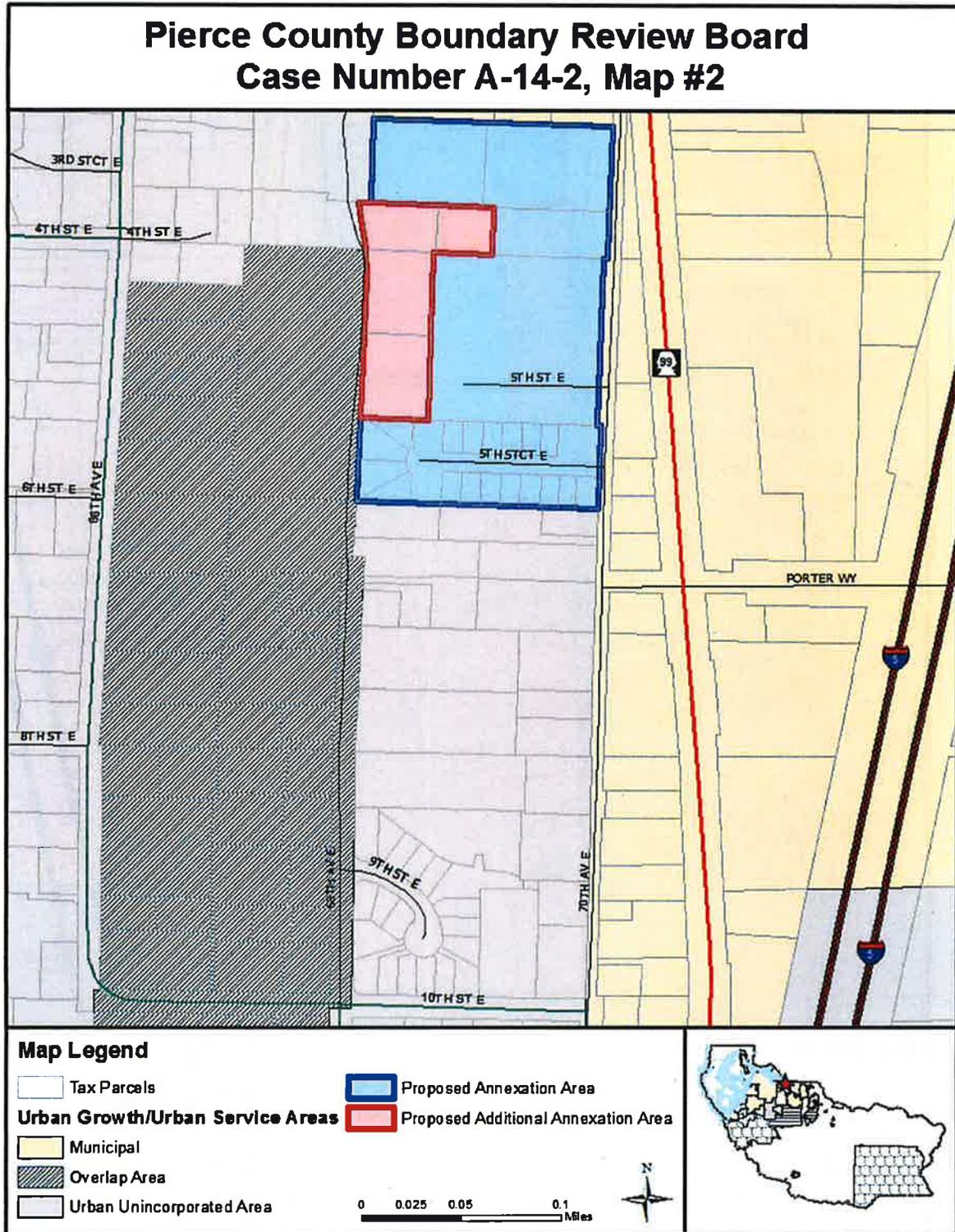
- The **Land Use Element** identifies the areas as identified in both Map #1 and Map #2 as within the City’s Urban Growth Area. The City has gone to the extent of providing a future land use designation – Residential Multi-Family (RM) to this area.
- Text on page II-20 states, “ Milton has designated an UGA which will be used to control the extent and timing of areas for annexation.” It further states, “ Areas identified for annexation to Milton include:

In Pierce County:

- Areas south and west of Milton adjacent to the Fife city limits
- Areas east of Pacific Highway South / S.R. 99 between 70th and 66th Avenues East.”

- Pol LU1.7 states, “For areas in the urban growth area that are not currently under the City’s jurisdiction, cooperative land use planning shall occur. This will require cooperation with King County, Pierce County, the City of Federal Way, the City of Edgewood, the City of Fife and the Puyallup Tribe.”
- Pol. UGA 1.2 states, “The City’s urban growth area (depicted in Map LU-1) has been designated based on the following factors, consistent with the King and Pierce Countywide policies:
 - a. geographic and topographic features - particularly the surrounding hills, and watershed of the Hylebos Creek.
 - b. public facility and service availability, limits and extensions, especially the water service boundary.

***Pierce County Comment:** The City of Milton’s Comprehensive Plan clearly identifies the area(s) Pierce County is requesting to be within the annexation as within the City’s urban growth area. The text and policies within the City’s adopted Comprehensive Plan clearly state the City’s intention to annex the areas within its urban growth area. The adopted policies further reinforce that the City designated its urban growth area taking into consideration geographic and topographic features, as well as its ability to provide public service. If the City has no intention of pursuing annexation of this area in the future, appropriate planning documents need to be modified and neighboring jurisdictions need to be consulted to determine the appropriate city to annex the area(s). Since 1994, the City of Milton has had numerous opportunities to request the County to remove these parcels from its Urban Service/Urban Growth Area. To date the City has made no such request.*



RECEIVED

NOV 19 2014

Pierce County Council

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5 **PROCEEDINGS OF THE WASHINGTON STATE BOUNDARY REVIEW BOARD**
6 **FOR PIERCE COUNTY**

7 PIERCE COUNTY,

8 Petitioner,

9 vs.

10
11
12 CITY OF MILTON

13 Respondent.
14

CASE NO. A-14-2

RE: CITY OF MILTON PROPOSED
ANNEXATION

FINAL DECISION

15
16 **I. PROCEDURAL BACKGROUND**

17 On April 10, 2014, the City of Milton (the **City**) filed a "Notice of Intention" (the
18 **Notice of Intention**)¹ with the Washington State Boundary Review Board for Pierce County
19 (**BRB** or the **Board**) regarding its intent to annex approximately 11.938 acres within the
20 City's Comprehensive Plan area described as "Clear Firs/Sunridge Annexation." *Exhibit 1 -*
21 *Notice of Intent- at 2-3.*

22 On May 21, 2014, in response to the City's Notice of Intention, Pierce County
23 Executive Pat McCarthy submitted a written request on behalf of Pierce County (the **County**)
24
25

¹ Exhibit 1 in the administrative record.

1 to invoke the Board's jurisdiction pursuant to RCW 36.93.100(2). *See Exhibit 4-Pierce*
2 *County Executive Letter dated 05/21/14.*

3 On September 19, 2014, Pierce County invoked the Board's jurisdiction not to oppose
4 the City's annexation proposal, but to request the Board expand the property to be annexed.
5 *See Exhibit. 17-Pierce County Executive Letter dated 09/19/14.* By invoking the Board's
6 jurisdiction, the County sought to avoid creating "islands" of land where an unincorporated
7 area is surrounded by two or three cities with no expectation for any of them to annex in the
8 future. *Exhibit 17 at 1.* The County proposed two alternatives for the Board to expand the
9 proposed annexation. Under the first alternative, the County sought to include 44 additional
10 parcels totaling 19.5 acres. Under the second alternative, the County sought to include four
11 additional parcels totaling approximately 2.9 acres. In the event the Board declined to review
12 expansion of the proposed annexations, the County proposed the Board deny annexation to
13 allow the County and the Cities of Milton, Fife, and Tacoma to work out the appropriate
14 annexation for the 4 parcels. *Exhibit 17.*

15
16 On September 30, 2014, the Board held the first of two public hearings. Four of the
17 Board's five members were present: Carl Vest, Chair; Barbara Skinner; Susan Claus; and Bill
18 Giddings. Attorney Phil Olbrechts represented the City while Deputy Prosecutor Jill
19 Guernsey represented the County.

20 At the beginning of the hearing, the Chair of the Board indicated the Board would not
21 consider the County's request to expand the proposed annexation area to include 44 additional
22 parcels (approximately 19.5 acres) because this area is more than 100% greater than the
23 originally proposed annexation area of 11.93 acres pursuant to RCW 36.93.150(2).
24
25

1 The Board then took testimony and heard oral argument from the parties on the
2 substance of the City's annexation proposal. The County did not oppose the City's proposed
3 annexation. No other members of the public or interested parties appeared at the hearing to
4 address the proposed annexation.

5 At the conclusion of the public hearing, the Board entertained a motion by Board
6 Member Claus to continue the hearing to consider the four parcel increase to the proposed
7 annexation area and to notify affected citizens and interested parties of the modification of the
8 proposed annexation. The Board approved the motion by a 3-1 vote. The Board continued the
9 hearing to allow proper notification of the County's modified annexation proposal pursuant to
10 RCW 36.93.150(5) and RCW 36.93.160.

11
12 On November 4, 2014, the Board reconvened the hearing and heard additional
13 testimony and oral argument of the parties regarding the modification of the annexation
14 proposal. Proper notice was sent to the taxpayers/owners of the 4 parcels and all affected
15 agencies and interested parties. *See Exhibits 25-29*. Notice was also published three times in
16 the Tacoma News Tribune, once in the Puyallup Herald, and posted conspicuously in five
17 places near the four parcels. *See Exhibits 30-31*

18 At the conclusion of the second public hearing, the Board deliberated and reviewed
19 the annexation proposal for consistency with the factors and objectives found in RCW
20 36.93.170 and RCW 36.93.180, as well as the Countywide Planning Policies (CPP), Pierce
21 County Comprehensive Plan, and goals of the Growth Management Act (GMA). After
22 deliberation and discussion, the annexation proposal as modified was approved by a vote of
23 three approving, none disapproving and one abstention (3-0-1).
24
25

1 **II. FACTUAL BACKGROUND**

2 The Board notes the following relevant facts. In addition, other key facts are contained
3 throughout this Final Decision especially in the “Factors” and “Objectives” discussions
4 further below.

5 The modified annexation area includes four parcels totaling approximately 2.9 acres.²
6 The area lies between 70th Ave. E. and 68th Ave. E., just north of 5th St. Ct. E. *See Maps*
7 *attached as pages 4 and 5 to Exhibit 17, Map Attachments to Exhibit 15.* The area is currently
8 identified in the City’s current Comprehensive Plan and in the City’s urban service area. *See*
9 *Exhibit 15-City of Milton’s Brief- Attachment 2.* Two of the four parcels are vacant. Each of
10 the other two parcels contains a single family dwelling.³

11
12 Since the early 1990s there has been a UGA overlap between the City of Fife and the
13 City of Milton.⁴ The overlap lies between 66th and 68th Avenue East, an area that lies west of
14 both the proposed annexation and four-parcel expansion. *See e.g., Exhibit 15, Map*
15 *Attachment 7; Exhibit 24, Map 2.* In 2003, the County amended its Comprehensive Plan and
16 designated the area to the west of the four lots as the Fife-Milton overlap.⁵ *Exhibit 17, Maps 1*
17 *and 2.* The City of Fife did not appeal the County’s designation the overlap. The City of
18 Milton’s Comprehensive Plan also recognizes the UGA overlap. Exhibit 15-Attachment 7.

19 In 2007, Fife conducted its Comprehensive Plan update and adopted its UGA, which
20 extended east only to 66th Avenue East, thus not recognizing the County’s Fife-Milton overlap
21 designation. *Exhibit 15, Attachment 8.* No timely appeal was ever filed regarding Fife’s
22 adoption of its 2007 UGA.
23

24 ² Pierce County tax parcel numbers 0420065011, 0420065012, 0420061167, and 0420061165. Exhibit 15 at 2.

25 ³ Testimony of Chris Larson, City of Milton Associate Planner (November 4, 2014 hearing).

⁴ Testimony of Dan Cardwell, Pierce County Senior Planner (September 30, 2014 hearing).

⁵ Pierce County Ordinance 2003-103S.

1 Mike Smolko, the president of the Clear Firs Home Owner's Association (HOA),
2 testified that the HOA initiated the annexation for a number of reasons, chief of which was to
3 improve police and fire service. He indicated the HOA preferred the Board consider the
4 annexation as initially proposed and recommend the parties work out the four parcel issue
5 outside this annexation proposal. Later when asked by the Board if the HOA had an opinion
6 regarding the "four extra lots," the president stated the HOA did not have an opinion
7 regarding the four parcels, if the addition does not affect the HOA.⁶

8 **III. DISCUSSION OF ANNEXATION PROPOSAL**

9 In deciding whether to approve, modify, or deny proposed annexation, the Board must
10 consider the statutory factors and objectives set forth in RCW 36.93.170 and RCW 36.93.180.
11 The Board must also consider whether the proposal is consistent with the Growth
12 Management Act under RCW 36.93.157.

13 Pierce County invoked the Board's jurisdiction seeking to modify the City of Milton's
14 original annexation proposal in an effort to prevent the isolation ("island") of four parcels.
15 After conducting the public hearing, a BRB may approve, deny or modify the boundaries of
16 the proposed annexation by adjusting boundaries to add or delete territory. RCW 36.93.150.
17 The Board's power to modify the proposal, however, is limited by RCW 36.93.150(5), which
18 provides:
19

20 "The board shall not modify or deny a proposed action unless there is evidence
21 on the record to support a conclusion that the action is inconsistent with one or
22 more of the objectives under RCW 36.93.180. The board may not increase the
23 area of a city or town annexation unless it holds a separate public hearing on
24 the proposed increase and provides ten or more days' notice of the hearing to
25 the registered voters and property owners residing within the area subject to
the proposed increase. Every such determination to modify or deny a proposed

⁶ Testimony of Mike Smolko (November 4, 2014 hearing).

1 action shall be made in writing pursuant to a motion, and shall be supported by
2 appropriate written findings and conclusions, based on the record.”

3 Pierce County does not oppose Milton’s proposed annexation and thus does not
4 contend that any objectives or factors were not met. Nonetheless, the Board considers the
5 relevant factors below.

6 **A. FACTORS**

7 RCW 36.93.180 sets forth the objectives that the BRB must attempt to achieve when
8 reviewing proposed annexation. In making its ultimate decision to grant the City’s annexation
9 proposal as modified, the Board considered all the factors listed at RCW 36.93.170 in its
10 effort to determine whether the City’s proposed annexation achieved the objectives listed at
11 RCW 36.93.180. RCW 36.93.170, entitled “Factors to be considered by board,” states:

12 In reaching a decision on a proposal or an alternative, the board shall consider
13 the factors affecting such proposal, which shall include, but not be limited to
14 the following:

15 (1) Population and territory; population density; land area and land uses;
16 comprehensive plans and zoning, as adopted under chapter 35.63, 35A.63, or
17 36.70 RCW; comprehensive plans and development regulations adopted under
18 chapter 36.70A RCW; applicable service agreements entered into under
19 chapter 36.115 or 39.34 RCW; applicable interlocal annexation agreements
20 between a county and its cities; per capita assessed valuation; topography,
21 natural boundaries and drainage basins, proximity to other populated areas; the
22 existence and preservation of prime agricultural soils and productive
23 agricultural uses; the likelihood of significant growth in the area and in
24 adjacent incorporated and unincorporated areas during the next ten years;
25 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 governmental services and controls in 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 area and adjacent area; the effect on the
finances, debt structure, and contractual obligations and rights of all affected
governmental units; and

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

4 RCW 36.93.170 is a list of non-exclusive factors which the Board is required to consider in
5 reaching a decision. However, RCW 36.93.160(4) provides in part:

6 ... The [Board's] written decision need not include specific data on every
7 factor required to be considered by the board, but shall indicate that all
8 standards were given consideration....

9 As a result of RCW 36.93.160(4), appellate courts have not imposed strict
10 requirements upon Board decision-making based on these "factors". The Supreme Court has
11 held that as long as a BRB stated it had considered the "factors" and singled several of them
12 out for "particular attention", then RCW 36.93.170 was satisfied.⁷ In reviewing the City's
13 proposal, the Board considered all the factors listed in RCW 36.93.170 and gave "particular
14 attention" to the ones discussed below:⁸

15 **Population and Territory.**

16 The proposed annexation area has a population of approximately 170 residents, which
17 constitutes approximately 2.4 percent of Milton's 2010 Census population. *Exhibit 1 at 2.*
18 The four-parcel (2.9 acres) modification includes two additional single family dwelling units
19 on two parcels and the other two parcels are vacant.⁹ The proposed annexation area with or
20 without the four-parcel area represents a minor population increase to the City of Milton's
21 population.

22
23
24 ⁷ *King County v. Washington State Boundary Review Board for King County*, 122 Wash.2d 648, 672, 860 P.2d
25 1024 (1993), citing *King County Water District No. 54 v. King County Boundary Review Board*, 87 Wash.2d
536, 543, 554 P.2d 1060 (1976)

⁸ *King County Water District No. 54 vs. King County Boundary Review Board*, 87 Wn.2d 536, 543, 554 P.2d
1060 (1976).

⁹ Testimony of Chris Larson, City of Milton Associate Planner (November 4, 2014 hearing).

1 The proposed annexation area comprises approximately 11.93 acres of Land. *Exhibit 1*
2 - *Notice of Intent*, at 2. The modified annexation, if approved, would increase the size of the
3 city by an additional 2.9 acres

4 **Population Density.**

5 The approximate density of only the currently developed portion of the proposed
6 annexation area is 14 persons per acre. *Exhibit 1 - Notice of Intent*, at 2;

7 **Land Area and Land Uses.**

8 Some information about the land area is contained above under "Population and
9 Territory" discussion. The current County zoning for the two northernmost parcels of the
10 proposed annexation areas HRD (High Density Residential). The remainder of the area is
11 zoned MSF (Moderate Density Single Family). *Exhibit 1, at 3*. Under the City of Milton
12 Comprehensive Plan, it is anticipated future land use will be designated as Residential Multi-
13 Family. *See Exhibit 24, slide 2*. Similarly, it is anticipated that the future use for the four
14 parcel expansion would be Multi-Family. This objective would be furthered by annexation.

15 **Interlocal Annexation Agreements between the County and the City.**

16 There are no interlocal annexation agreements between the County and the City
17 regarding the proposal. *See Exhibit 1 at 7*. Therefore, the objective is not applicable.

18 **Topography and Natural Boundaries.**

19 The primary feature of topography is a large hill that extends west from the annexation
20 area. The large hill is also the only "natural boundary" of any significance.

21 **Municipal Services.**

22 **Fire:** Pierce County Fire District 10 (Tacoma Fire) currently provides service to the
23 proposed annexation area. *See Exhibit 1, at 5; Exhibit 15, Attachment 9*. Post annexation,
24
25

1 East Pierce Fire and Rescue would provide such service. *See Exhibit 15, Attachment 9.* The
2 relevant fire stations that would service the annexation area are located at Milton Station 114-
3 1000, Laurel St., and Station 18-10105 24th Street, Edgewood will service the area. *See*
4 *Exhibit 1 at 6.*

5 **Police:** Currently, the Pierce County Sheriff's Office serves the proposed annexation
6 area. Post annexation, police protection would transfer to the City of Milton Police
7 Department. The HOA initiated the annexation proposal, in part, to improve police response
8 times. It is anticipated that Milton Police will achieve better police coverage, resulting in
9 improved police response times.

10
11 The City of Milton does not anticipate a significant cost increase as it adopted Stay
12 Out of Areas of Prostitution (SOAP) and Stay Out of Drug Areas (SODA) programs, which
13 apparently defray cost. *See Exhibit 23, City of Milton Power Point Presentation at slide 16.*
14 Regardless, the City of Milton acknowledged the burden the proposed annexation placed on
15 the City, but concluded the obligation was greater than the cost burden. *Exhibit 20 –City of*
16 *Milton Council Minutes-August 5, 2013.*

17 **Power, Water and Sewer.** Puget Sound Energy currently serves both the City and
18 the proposed annexation area, including the four parcels. Tacoma Public Utilities (TPU)
19 currently provides water service to the proposed annexation area. This would not change with
20 the proposed annexation. *Exhibit 1 at 5, Exhibit 15-Attachment 3.* A different water purveyor
21 may currently serve the four parcels and this would not change post annexation. Pierce
22 County currently provides sewer service to the annexation area and will continue to provide
23 service post annexation. *Exhibit 15 at 6.*

24
25 **Fiscal Effects on Affected Governmental Agencies and Adjacent Areas.**

1 The proposed annexation will result in an approximate annual revenue gain to the City
2 of Milton in the amount of \$11,765. The proposal indicates the County's lost (property tax)
3 revenue would be based on the assessed value of the annexation area (\$7,353,200). See
4 *Exhibit 1 at 4*. Additionally, there would be a reduction of expenditures for Fire District #10
5 and a corresponding increase in expenditures to East Pierce County Fire and Rescue, though
6 specific numbers are not known. *Exhibit 1 at 4*. The Board notes that the County does not
7 oppose the proposed annexation so the County is probably not overly concerned with the lost
8 property tax revenue.

9
10 **B. OBJECTIVES AS APPLIED TO ORIGINAL PROPOSAL**

11 RCW 36.93.180 provides:

12 The decisions of the boundary review board shall attempt to achieve the
13 following objectives:

- 14 (1) Preservation of natural neighborhoods and communities;
- 15 (2) Use of physical boundaries, including but not limited to bodies of water,
16 highways, and land contours;
- 17 (3) Creation and preservation of logical service areas;
- 18 (4) Prevention of abnormally irregular boundaries;
- 19 (5) Discouragement of multiple incorporations of small cities and
20 encouragement of incorporation of cities in excess of ten thousand population
21 in heavily populated urban areas;
- 22 (6) Dissolution of inactive special purpose districts;
- 23 (7) Adjustment of impractical boundaries;
- 24 (8) Incorporation as cities or towns or annexation to cities or towns of
25 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.

1 Unlike the “factors” listed in RCW 36.93.170, these “objectives” are more than simply
2 aspirational.¹⁰ The Washington State Supreme Court has stated:

3 ... King County contends a reviewing court should engage in a comprehensive
4 “balancing” of the various objectives to determine whether the objectives were
5 more advanced or harmed by a boundary review board's decision.

6 On the whole, the statute and the case law favor King County's position.
7 Boundary review board decisions may be reversed when “[u]nsupported by
8 material and substantial evidence in view of the *entire record as submitted*”.
9 (Emphasis in original.) RCW 36.93.160(6). The statute's reference to the
10 “entire record” supports the proposition that judicial review of the RCW
11 36.93.180 objectives is to involve examination of each of the objectives. It
12 would be anomalous to interpret this provision as requiring a reviewing court
13 to uphold a board decision based on the furtherance of only one objective when
14 the remainder of the record manifestly displayed the hindrance of the other
15 eight.

16 The “one objective” approach proposed by appellants could also work to
17 subvert the purposes of judicial review of boundary review board decisions.
18 Under appellants' approach, boundary review boards would have little
19 incentive to engage in complete and careful review of the evidence, since they
20 could completely insulate their decisions from judicial review by considering
21 only one of the RCW 36.93.180 objectives. A comprehensive approach, by
22 way of contrast, would provide incentives for boundary review boards to
23 consider each of the statutory objectives in detail, thus providing for better
24 decision making in the long-run.¹¹

25 ...
In rejecting an argument that only one objective must be met for a proposed action to be
approved by a BRB, the Court, instead, approved a comprehensive but balanced review where
the BRB reviews all *relevant* objectives.

The majority of the other cases involving substantial evidence review of
boundary review board decisions included discussion of all of the objectives
which were relevant in that particular case.¹²

¹⁰ *King County v. Washington State Boundary Review Board for King County*, 122 Wash.2d 648, 673, 860 P.2d 1024 (1993) citing *Spokane County Fire Protection District No. 9 v. Spokane County Boundary Review Board*, 97 Wash.2d 922, 926, 652 P.2d 1356 (1982).

¹¹ *King County v. Washington State Boundary Review Board for King County*, 122 Wash.2d 648, 673-674, 860 P.2d 1024 (1993).

¹² *Id.* at 674, (Citing *e.g., Richland*, 100 Wash.2d at 871, 676 P.2d 425; *Snohomish*, 61 Wash. App. at 381-82, 810 P.2d 84).

1 A decision is supported by substantial evidence if:

2 ... the record contains evidence of sufficient quantity to persuade a fair-
3 minded, rational person of the truth of the declared premise.' ” Applying this
4 standard, we conclude that, while there is evidence that one of the objectives of
5 RCW 36.93.180 would be detrimentally affected by the proposed annexations,
6 there is sufficient evidence in the record to convince a rational person that
7 overall the objectives would be furthered.¹³ *Emphasis added.*

8 Conversely, if one objective is met, but the other relevant objectives are not achieved, a BRB
9 can reject a proposed action. The Board reviewed the evidence before it to determine whether
10 its decision to approve the annexation proposal achieves the following applicable objectives:

11 (1) **Preservation of natural neighborhoods and communities.**

12 This objective would be furthered by annexation. The Clear Firs HOA and Sunridge
13 Apartments spearheaded the annexation proposal. The annexation would bring an
14 unincorporated area under the same jurisdiction and City governance of adjoining areas and,
15 thus, unify natural neighborhood and communities. Therefore, the Board voted unanimously
16 that this objective is met.

17 (2) **Use of physical boundaries, including but not limited to bodies of water,**
18 **highways, and land contours.**

19 The Board voted that this objective was not applicable by a 3 to 1 vote.

20 (3) **Creation and preservation of logical service areas;**

21 After reviewing the applicable services currently provided within the annexation area
22 and after noting the changes, if any, that would occur if annexation occurred, the Board
23 unanimously concluded that this objective is met by the proposed annexation.

24 (4) **Prevention of abnormally irregular boundaries.**

25

¹³ *King County v. Washington State Boundary Review Board for King County*, 122 Wash.2d 648, 675-676, 860 P.2d 1024 (1993).

1 After reviewing the boundaries of the proposed annexation, the Board determined that
2 the proposed annexation would contribute to an irregular west boundary along the City's
3 UGA. The Board unanimously concluded this objective is **NOT** met by the proposed
4 annexation.

5 (5) **Discouragement of multiple incorporations of small cities and**
6 **encouragement of incorporation of cities in excess of ten thousand**
7 **population in heavily populated urban areas.**

8 Given the size and scope of the proposed annexation area, the Board voted
9 unanimously that this objective was not applicable.

10 (6) **Dissolution of inactive special purpose districts.**

11 The Board voted unanimously that this objective was not applicable.

12 (7) **Adjustment of impractical boundaries.**

13 The proposed annexation area contains an impractical boundary on the west excluding
14 four parcels from a more geometric configuration. *See Exhibit 24-Pierce County Power Point*
15 *Presentation, slides 3-5.* The County is seeking to avoid situations where "islands" of
16 unincorporated urban areas are formed with little expectancy of future annexation (see
17 discussion below). At the second public hearing, the County presented examples of such
18 "islands" it seeks to avoid. *Exhibit 24, slide 1.* The Board concluded by a 3-1 vote that this
19 objective was **not** met.

20 (8) **Incorporation as cities or towns or annexation to cities or towns of**
21 **unincorporated areas which are urban in character.**

22 The Board voted unanimously that this objective was not applicable.

23 (9) **Protection of agricultural and rural lands which are designated for long**
24 **term productive agricultural and resource use by a comprehensive plan**
25 **adopted by the county legislative authority.**

1 There are no lands of long term productive agricultural or resource use identified as
2 being located within the annexation area. Therefore, the Board voted unanimously that this
3 objective was not applicable.

4 **C. FACTORS AS APPLIED TO 4 PARCEL MODIFICATION**

5 The four parcel modification is small in scope, consisting of 2.9 acres and containing
6 two vacant parcels and two parcels each developed with a single family home. As such, the
7 expansion does not significantly change the original annexation proposal as to implicate
8 additional review under Objectives 2,5,6,8 and 9. Therefore, the Board voted unanimously
9 that these objectives are not applicable to the proposed annexation as modified.
10

11 **(1) Preservation of natural neighborhoods and communities.**

12 Although somewhat undeveloped, the modification preserves a natural neighborhood
13 area and “squares off” the boundaries of the proposed annexation proposal within the City of
14 Milton’s UGA. See *Exhibit 4 at 2; Exhibit 17-Attachment at 5*. The Board notes the Clear
15 Firs HOA does not oppose the four parcel expansion and the Board received no objections by
16 affected property owners or interest citizens after proper notice of the second hearing.

17 The City asserted that the modification would split a “neighborhood enclave.” The
18 City defined the term as an area on the side of the hill that is served by an undeveloped road.
19 The Board notes this “neighborhood enclave” is largely a green belt consisting of several
20 different tax parcels and is not a true community or neighborhood. The Board concluded by a
21 3-1 vote that this objective is met.
22

23 **(3) Creation and preservation of logical service areas.**

24 The Board recognizes the City’s concerns regarding the police and fire service area to
25 the four-parcel area. Post annexation, the four parcels would fall under the jurisdiction of

1 East Pierce Fire and Rescue and the Milton Police Department thus avoiding much confusion
2 between these agencies and outside agencies.

3 The Board also recognized the access to the four parcels is not as direct as the
4 proposed annexation area which has frontage on 70th Avenue E. According to East Pierce
5 Fire and Rescue Chief Jerry Thorson, emergency vehicles would travel a half mile through
6 another fire district to reach the four parcels. *See Exhibit 15-Attachment 8 at 1.* The Board,
7 however, concluded the impact of the extra half mile of travel for Milton police and East
8 Pierce Fire and Rescue response is negligible. Indeed, the annexation area is at the northern
9 most boundary of Pierce County. Possibly because of the location, there is a history of
10 delayed or no response from the Pierce County Sheriff's Department, which is one of the
11 reasons the HOA initiated annexation. Further, the modification benefits the four parcels by
12 unifying them with the proposed annexation service area, thus avoiding a split between
13 service providers. Therefore, the Board determined the boundaries are more practical with the
14 inclusion of the four-parcel modification into the annexation area and concluded by a 3-1 vote
15 that this objective is met.
16

17 **(4) Prevention of abnormally irregular boundaries.**

18 The west boundary of the proposed annexation area is irregular as evidenced by
19 numerous maps in the record. *See e.g., Exhibit 1, Attachment 7 at 2; Exhibit 24, slide 3.* The
20 four-parcel modification fills out the west boundary consistent with the west boundaries of the
21 north and south portions of the proposed annexation area, thus completing a more geometric
22 configuration within the City's UGA. The additional parcels would also incorporate some of
23 the large hill area that is excluded by the proposed annexation. The Board unanimously
24 concluded that this objective is met.
25

1 **(7) Adjustment of impractical boundaries.**

2 The City's primary concern regarding this factor was related to police and fire
3 services. As discussed is factor (3) above, the Board considered the four-parcel modification
4 as it related to an impractical boundary of the proposed annexation area. The Board
5 concluded by a 3-1 vote that the inclusion of the four-parcel modification resolved the
6 impractical boundary of the proposed annexation.

7 **D. CONSISTENCY WITH THE GROWTH MANAGEMENT ACT**

8 RCW 36.93.157, "Decisions to be consistent with growth management act," provides:

9 The decisions of a boundary review board located in a county that is required
10 or chooses to plan under RCW 36.70A.040 must be consistent with RCW
11 36.70A.020, 36.70A.110, and 36.70A.210.

12 The City is required to plan under the GMA pursuant to RCW 36.70A.040. Therefore, the
13 Board's decision must be consistent with three GMA provisions specified by RCW
14 36.93.157. Having concluded above the City's proposed annexation is inconsistent with one
15 or more of the objectives, and having concluded the annexation as modified is consistent with
16 the objectives, the Board must consider whether its decision to approve the proposed
17 annexation as modified is consistent with these provisions of the GMA.

18 **RCW 36.70A.020**

19 The first provision, RCW 36.70A.020, contains thirteen of the GMA's "planning
20 goals"¹⁴ and states, in pertinent part:

21 The "goals are adopted to guide the development and adoption of
22 comprehensive plans and development regulations of those counties and cities
23 that are required or choose to plan under RCW 36.70A.040 [the] goals are not

24 ¹⁴ The GMA's fourteenth planning goal was added when RCW 36.70A.480, "shorelines of the state," was
25 enacted. Subsection (1) provides in part:

"(1) For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW 90.58.020 are added as one of the goals of this chapter as set forth in RCW 36.70A.020 without creating an order of priority among the fourteen goals...." The fourteenth goal is not relevant here as there are no shorelines.

1 listed in order of priority and shall be used exclusively for the purpose of
2 guiding the development of comprehensive plans and development regulations:
3 (1) Urban growth. Encourage development in urban areas where adequate
4 public facilities and services exist or can be provided in an efficient manner ...

5 (11) Citizen participation and coordination. Encourage the involvement of
6 citizens in the planning process and ensure coordination between communities
7 and jurisdictions to reconcile conflicts ...

8 The Board has reviewed all the goals and concludes that its decision to approve the
9 proposed annexation as modified is consistent with the following applicable GMA goals. In
10 particular:

11 (1) **Urban growth:** Under the City of Milton's Comprehensive Plan, it is anticipated
12 the City of Milton will designate the future land use for the modified annexation area as
13 Multi-Family. Although water, sewer and power services will not be altered by annexation,
14 police and fire service will be enhanced under the City of Milton's governance. Similar to the
15 proposed annexation, the modified annexation proposal encourages development in urban
16 areas where adequate public facilities and services exist or can be provided in an efficient
17 manner.

18 The City of Milton expressed concern that addition of four parcels to the annexation
19 would increase response times for fire and police services and potentially create jurisdictional
20 complications between responding police and fire agencies. The Board recognized the access
21 to the four parcels is not as direct as the proposed annexation area which has frontage on 70th
22 Avenue E. The Board, however, concluded that the extra half mile of travel was not
23 significant enough to warrant concern. Additionally, the four parcels contain two single
24 family dwellings and two vacant lots, which would now fall under the jurisdiction of East
25 Pierce Fire and Rescue and the Milton Police Department. Hence, there should not be
jurisdictional complications between these and other police/fire service agencies. Therefore,

1 the modified annexation is consistent with RCW 36.70A.020(1), encouraging development in
2 urban areas where there are adequate public services.

3 **(11) Citizen participation and coordination:** Notice of the potential expansion to
4 the proposed annexation was conducted pursuant to RCW 36.93.150 and RCW 36.93.160. *See*
5 *Exhibits 29, 30, and 31*. No affected property owner or interested citizens responded to the
6 notice or voiced any objection to the expansion of the annexation proposal. Moreover, the
7 modified annexation is consistent with this goal because it encourages the involvement of
8 citizens in the planning process and ensures coordination between communities and
9 jurisdictions to reconcile conflicts.

10
11 **RCW 36.70A.110**

12 The second listed statute, RCW 36.70A.110, is entitled “Comprehensive plans —
13 Urban growth areas” and discusses the process for designating urban growth areas. It provides
14 in relevant part:

15 (1) Each county that is required or chooses to plan under RCW 36.70A.040
16 shall designate an urban growth area or areas within which urban growth shall
17 be encouraged and outside of which growth can occur only if it is not urban in
18 nature. Each city that is located in such a county shall be included within an
19 urban growth area. An urban growth area may include more than a single city.
20 An urban growth area may include territory that is located outside of a city
only if such territory already is characterized by urban growth whether or not
the urban growth area includes a city, or is adjacent to territory already
characterized by urban growth, or is a designated new fully contained
community as defined by RCW 36.70A.350.

21 ...

22 (3) Urban growth should be located first in areas already characterized by
23 urban growth that have adequate existing public facility and service capacities
24 to serve such development, second in areas already characterized by urban
25 growth that will be served adequately by a combination of both existing public
facilities and services and any additional needed public facilities and services
that are provided by either public or private sources, and third in the remaining
portions of the urban growth areas. Urban growth may also be located in
designated new fully contained communities as defined by RCW 36.70A.350.

...

1 (4) In general, cities are the units of local government most appropriate to
2 provide urban governmental services. In general, it is not appropriate that
3 urban governmental services be extended to or expanded in rural areas except
4 in those limited circumstances shown to be necessary to protect basic public
5 health and safety and the environment and when such services are financially
6 supportable at rural densities and do not permit urban development; and
7 (6) Each county shall include designations of urban growth areas in its
8 comprehensive plan ...

9 Simply put, the statute calls for each county to designate an urban growth area and to
10 direct urban growth into areas with existing public facilities and services or into areas that will
11 eventually be served with such facilities and services. RCW 3670A110(1), (3)and (6). The
12 statute further states that “(in) general, cities are the units of local government most
13 appropriate to provide urban services.” RCW 37.70A.110(4). This provision implies that
14 cities and towns should be annexing neighboring unincorporated urban growth areas.

15 The Board notes that, at first glance it seems somewhat illogical for the Board to have
16 to consider RCW 36.70A.110 since a BRB lacks authority to determine whether UGA
17 boundaries comply with the GMA and a BRB cannot modify a designated UGA even if it
18 considered the boundaries were inappropriate. Nonetheless, the Legislature enacted RCW
19 36.93.157 after it adopted RCW 36.70A.110. Hence, the Board must give meaning to the
20 Legislature’s intent for the Board to consider RCW 36.70A.110. Therefore, the Board must
21 determine whether the proposed annexation area as modified is appropriate at this time under
22 the circumstances of this case.

23 In 2003, the County designated the Milton-Fife UGA overlap in its Comprehensive
24 Plan. Neither the City of Milton nor Fife appealed the UGA Comprehensive Plan
25 amendment. In 2007, the City of Fife updated their Comprehensive Plan UGA and adopted a
UGA designation that did not recognize the UGA overlap. The new UGA line stops at the
west boundary of the UGA overlap. Therefore, the City of Fife does not recognize the UGA

1 overlap. The County did not timely appeal the City of Fife's 2007 adoption of its UGA
2 designation. The City of Milton's Comprehensive Plan also contains the Milton-Fife UGA
3 overlap consistent with the County's designation of the Milton-Fife UGA.

4 The County's reason for invoking the jurisdiction of the Board was to eliminate a
5 possible "island" created by the proposed annexation. According to the County, an "island" is
6 created "where an unincorporated urban area is surrounded by two or three cities with no
7 expectation for any of them to annex in the future." *Exhibit 17 -Letter of Pierce County*
8 *Executive Pat McCarthy dated September 19, 2014.* The County asserts an "island" is created
9 here because there is a discrepancy between the County's Comprehensive Plan designation of
10 the Fife-Milton UGA overlap that lies west of the proposed annexation and the City of Fife's
11 2007 Comprehensive Plan, which does not recognize the UGA overlap. Further, the City of
12 Tacoma's UGA boundary runs along the northern portion of the proposed annexation as well
13 as the west "corner" parcel of the modified annexation area. *See Exhibit 15-Attachment 2.*
14 Thus, the possibility exists that the four parcels would be left as an island with little
15 expectation that a City would annex the parcels until the UGA discrepancy is resolved.
16

17 Ultimately, the County is the final arbiter of comprehensive plan UGA designations,
18 not the Cities. Pursuant to RCW 36.70A.110(1), the County's Comprehensive Plan takes
19 precedent. Hence, there is a discrepancy regarding the Fife-Milton UGA overlap that still
20 needs to be resolved. Until such time, there is possibility of the creation of a 2.9 acre
21 "island."
22

23 Moreover, it is not disputed that the proposed annexation area as modified is within
24 the City of Milton's adopted UGA. The proposed annexation area is partially developed,
25 including the homes in the Clear Firs development, the Sunridge Apartments, and at least two

1 other developed parcels north of these homes. Additionally, only two parcels of the four
2 parcel (2.9 acres) expansion remain undeveloped. Hence, the modified annexation is
3 characterized as urban growth and promotes urban growth into the City of Milton where there
4 is more adequate facilities and services. Therefore, the Board's decision to approve the
5 proposed annexation as modified is consistent with RCW 36.70A.110.

6 **RCW 36.70A.210**

7 The third provision listed in RCW 36.93.157 is RCW 36.70A.210, which deals with
8 countywide planning policies. The relevant portions state:
9

10 (1) The legislature recognizes that counties are regional governments within
11 their boundaries, and cities are primary providers of urban governmental
12 services within urban growth areas. For the purposes of this section, a
13 "countywide planning policy" is a written policy statement or statements used
14 solely for establishing a countywide framework from which county and city
comprehensive plans are developed and adopted pursuant to this chapter. This
framework shall ensure that city and county comprehensive plans are
consistent as required in RCW 36.70A.100. Nothing in this section shall be
construed to alter the land-use powers of cities.

15 (2) The legislative authority of a county that plans under RCW 36.70A.040
16 shall adopt a countywide planning policy in cooperation with the cities located
in whole or in part within the County ...

17 (3) A countywide planning policy shall at a minimum, address the following:

18 (a) Policies to implement RCW 36.70A.110;

19 (b) Policies for promotion of contiguous and orderly development and
provision of urban services to such development;

20 (c) Policies for siting public capital facilities of a countywide or statewide
nature, including transportation facilities of statewide significance as defined
in RCW 47.06.140;

21 (d) Policies for countywide transportation facilities and strategies;

22 (e) Policies that consider the need for affordable housing, such as housing
for all economic segments of the population and parameters for its distribution;

23 (f) Policies for joint county and city planning within urban growth areas;

24 (g) Policies for countywide economic development and employment, which
must include consideration of the future development of commercial and
industrial facilities; and

25 (h) An analysis of the fiscal impact.

1 In *Stewart v. Washington State Boundary Review Bd. for King County*, 100
2 Wash.App. 165, 172-173, 996 P.2d 1087 (2000), the Supreme Court discussed the
3 countywide planning policy component of RCW 36.93.157 as follows:

4 The decisions of a boundary review board located in a county that is required
5 or chooses to plan under RCW 36.70A.040 must be consistent with RCW
6 36.70A.020, 36.70A.110, and 36.70A.210.

7 The first cited section with which consistency is required includes the goals of
8 the GMA (RCW 36.70A.020). The second concerns urban growth areas (RCW
9 36.70A.110), and the third concerns county-wide planning policies (RCW
10 36.70A.210). The parties debate the legislative intent regarding the third
11 section, involving consistency with county-wide planning policies. While
12 RCW 36.70A.210 chiefly describes a planning process, the underlying
13 legislative goal is to ensure that comprehensive plans adopted by the county
14 and by cities within the county are coordinated and consistent. The
15 requirement of RCW 36.93.157 that a boundary review board's decision be
16 consistent with RCW 36.70A.210 is thus an expression of legislative intent
17 that a boundary review board ensure annexations are consistent with the
18 substantive provisions of the planning policies. *Emphasis added; footnotes
19 omitted.*

20 Pierce County Countywide Planning Policies (CPP) state:

21 "A long-term purpose of the CPP's is to facilitate the transformation of local
22 governance in urban growth areas so that cities become the primary providers
23 of urban governmental services."

24 The modified annexation facilitates the transformation of urban areas into City governance
25 and services. Moreover, the Multi-County Planning Policies found in Vision 2040 support
annexation of unincorporated lands within urban growth areas into existing cities.¹⁵

Therefore, the annexation is consistent with CPP's and Vision 2040 regarding cities as the
preferred providers of urban services.

Finally, the modified annexation is consistent with the City's Comprehensive Plan
Policies, which identifies the annexation area within its UGA. The City's Comprehensive Plan

¹⁵ Police MPP-DP-18 states, "affiliate all urban unincorporated lands appropriate for annexation with an adjacent city or identify those that may be feasible for incorporation. To fulfill the regional growth strategy, annexation is preferred over incorporation." *Exhibit 17 - Attachment at 2.*

1 encourages the transfer of such lands within the UGA. *See Exhibit 17-Attachment at 3(citing*
2 *portions of the City's Comprehensive Plan)*. Specifically, under Section II Urban Growth
3 Area Goals and Policies, the plan states,

4 "Goal UGA 1: Pol. UGA 1.8 The City will encourage and facilitate
5 annexation of lands within the Urban Growth Area (Pierce County) and
6 Potential Annexation Area (King County) to the extent allowable under state
7 law."

7 *Exhibit 19-City of Milton Ordinance 1714-07 at 2.*

8 Hence the City's action to not consider the four parcels in the proposed annexation is
9 inconsistent with both the CPPs and the City's own planning policies. As discussed above,
10 the modified annexation into the City of Milton meets the Growth Management criteria for
11 City governance of urban areas. The modified annexation is also consistent with the GMA
12 (RCW 36.80A.020), which calls for integration of urban areas into communities which can
13 accommodate the annexation areas by providing services and facilities. As such, the Board
14 concludes that its decision to approve a modified annexation proposal is consistent with RCW
15 36.70A.210.
16

17 IV. CONCLUSION

18 The proposal was reviewed in detail in light of the Pierce County Comprehensive
19 Plan, the Countywide Planning Policies, and all the relevant provisions of the Growth
20 Management Act. The Board, after considering the applicable factors listed in RCW
21 36.93.170, applying the relevant objectives listed under RCW 36.93.180, and reviewing the
22 proposal for consistency with those portions of the GMA listed in RCW 36.93.157, and based
23 upon the testimony and argument presented at the public hearing and examination of the
24 exhibits filed in this case, concludes as follows:
25

1 **NOW, THEREFORE, BE IT DETERMINED BY THE WASHINGTON STATE**
2 **BOUNDARY REVIEW BOARD FOR PIERCE COUNTY THAT**, for the above reasons,
3 the proposed City of Milton annexation as modified is hereby **approved** as described in
4 Exhibits attached hereto and incorporated herein by reference.

5 **ADOPTED BY SAID BOARD**, by a vote of three (3) in favor of approving the
6 annexation proposal as modified and one abstention on the 19th day of November,
7 2014.

8
9 WASHINGTON STATE BOUNDARY
10 REVIEW BOARD FOR PIERCE COUNTY

11 

12 Carl Vest, Chair

13 Filed by me this 19th day of November, 2014.

14 

15 Toni Fairbanks, Chief Clerk

16 NOTICE OF RIGHTS TO APPEAL:
17 RCW 36.93.160(5) states:

18 ... Decisions [of the boundary review board] shall be final and conclusive unless within thirty
19 days from the date of the action a governmental unit affected by the decision or any person
20 owning real property or residing in the area affected by the decision files in the superior court
21 a notice of appeal.

22 The filing of the notice of appeal within the time limit shall stay the effective date of the
23 decision of the board until such time as the appeal shall have been adjudicated or withdrawn.
24 On appeal the superior court shall not take any evidence other than that contained in the
25 record of the hearing before the board.

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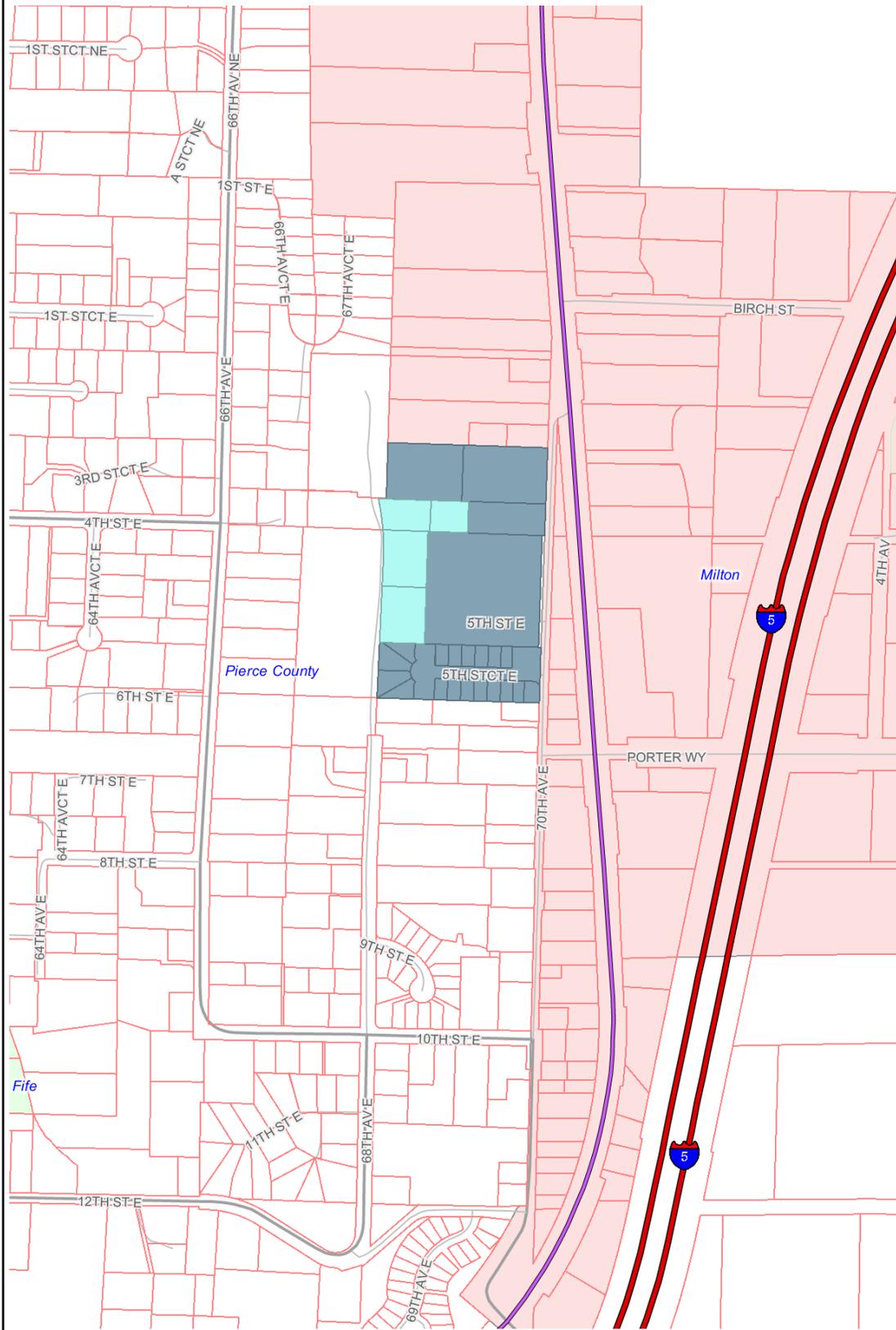
CountyView Web Map



City of Milton, WA

Map Legend

- Four Lots
- Proposed Annexation Area
- Tax Parcels**
- Base Parcel
- Condominium
- Other
- Roads**
- Interstate
- Limited Access State Routes
- Other State Routes
- Ramps
- Major Arterial
- Collector
- Local Access
- Pierce County Basemap**
- Unincorporated County
- Tacoma
- Lakewood, Edgewood, Bonney Lake, Buckley, South Prairie
- Steilacoom, Fircrest, Fife, Gig Harbor, Orting, Eatonville, Roy, Carbonado, Wilkeson, Mt Rainier
- University Place, Puyallup, Auburn
- DuPont, Milton, Sumner
- Fort Lewis, McChord, McNeil Island
- Water



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0 600 ft.



Scale 1:7,416

The map features are approximate and are intended only to provide an indication of said feature. Additional areas that have not been mapped may be present. This is not a survey. Orthophotos may not align with other data. Pierce County assumes no liability for variations ascertained by actual survey. All data is expressly provided AS IS and WITH ALL FAULTS. Pierce County makes no warranty of fitness for a particular purpose.

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To: Mayor Perry and City Councilmembers
From: Interim Public Works Director Perteet
Date: February 9, 2015
Re: Freeman Road Boundary Adjustment

ATTACHMENTS: Memo of Understanding
Presentation document

TYPE OF ACTION:

Information Only Discussion Action Expenditure Required:

Recommendation/Action:

No action required, informational only

Fiscal Impact: None

Previous Review: None

Background: Currently the City of Fife has a road construction project that is partially within the City of Milton city limits. The Benaroya Companies are in the process of developing over 80 acres of land along the west side of Freeman Road in Fife, between 20th Street East and the 3400 block. The majority of this segment of Freeman Road is in the City of Fife, but approximately 800 feet south from 20th Street East are in the City of Milton. Benaroya Companies have agreed to straighten and widen Freeman Road along their entire frontage, with straightening and widening in the Milton segment. These improvements will extend along Freeman Road East from 20th Street East to the south property line of the proposed development, and will also include improvements at and near the Valley Avenue/Freeman Road East intersection.

Final design will be approved by the City of Fife except that the roadway improvements within the City of Milton will be designed to our standards and will be approved by our public works department.

It appears to be in the best interest of the cities that the City Limits be revised upon completion of the construction to follow a more logical path along the new right of way lines.

The City of Fife has prepared a Memorandum of Understanding (MOU) that has been reviewed by our city staff but has not yet been reviewed by our Council. The MOU does not commit the Cities of Fife or Milton to move the boundaries, but only to consider resolutions to move the boundaries after construction has been completed.

Discussion: Discuss the possibility of moving the City of Milton city limits line after the City of Fife's construction project is complete. The proposed MOU is attached.

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF FIFE AND THE CITY OF MILTON
REGARDING BOUNDARY ADJUSTMENT**

1. Date and Parties. This Memorandum of Understanding (“MOU”), for reference purposes only, is dated the _____ day of _____ 2014, and is entered into between the City of Fife (hereinafter “Fife”) and the City of Milton (hereinafter “Milton”).

2. Recitals.

2.1 The City of Fife is planning improvements to Freeman Road East as shown in Exhibit A attached hereto which will be constructed by Benaroya Capital Company, LLC as a condition of development of property in Fife adjoining Freeman Road (the “Improvements”). The Improvements will widen and straighten Freeman Road.

2.2 As shown on the map attached hereto as Exhibit B, the portion of Freeman Road just south of 20th Street East is currently solely within the City of Milton. The proposed straightening and widening of Freeman Road at this location will result in an irregular boundary between the Cities as also shown in Exhibit B.

2.3 It is in both Cities’ best interests to have the entire width of a segment of right of way solely in one jurisdiction.

2.4 RCW 35.10.217 provides a mechanism for a portion of one city to be annexed into another city by resolution of each city’s legislative body. The areas proposed to be annexed consist solely of street right of way.

2.7 The purpose of this MOU is to set forth the parties’ intent adjust their respective boundaries as shown in Exhibit C attached hereto, using the process set forth in RCW 35.10.217, upon completion of the Improvements, and to establish the enforcement and permitting responsibilities for this area between the date of this MOU and the completion of the annexations under RCW 35.10.217.

3. Agreement to Consider Annexation. Fife and Milton agree to give due consideration, including public participation as deemed appropriate by each City, to adjusting their city limits as shown in Exhibit C attached hereto using the process set forth in RCW 35.10.217 effective upon completion of the Improvements.

4. Design Review and Permitting Authority. While this MOU is in effect, street construction and related standards, land use and environmental review and permitting authority, and land use regulation and enforcement between the cities shall be according to the proposed adjusted boundaries shown in Exhibit C. All other authority and jurisdiction between the cities shall be in accordance with the actual boundaries between the cities. By its signature below, Benaroya consents to the division of permitting and regulatory authority set forth in this Section 4, and agrees to submit its permit applications for the Improvements accordingly.

5. Termination. Either party may terminate this MOU after giving due consideration in accordance with Section 3, by giving 60 days written notice to the other party. In the event of termination under this section, all permits and approvals regarding property within the proposed annexation areas shown in Exhibit C issued under Section 4 by one city shall be given full effect by the other city. Any complete applications for permits and approvals under Section 4 regarding property within the proposed annexation areas shown in Exhibit B that are pending at the time of termination under this section and are vested under applicable law shall remain subject to the standards and regulations under Section 4 that were in effect on the date of complete application, and the city who accepted the application shall proceed with review and processing of the application as an agent of the other city.

6. Annexation. Within 30 days after completion and acceptance of the Improvements within the proposed annexation areas, each City shall present to its governing body for approval, the resolutions required for annexation under RCW 35.10.217 in accordance with Exhibit C attached hereto. Upon completion of the annexations under RCW 35.10.217, this MOU shall terminate.

7. Indemnification.

7.1 Fife shall defend, indemnify and hold Milton its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this MOU, to the extent caused by the negligence or willful misconduct of Fife, its officers, employees, agents or volunteers.

7.2 Milton shall defend, indemnify and hold Fife, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this MOU, to the extent caused by the negligence or willful misconduct of Milton, its officers, employees, agents or volunteers.

7.3 In the event of a claim, loss, or liability based upon the alleged concurrent or joint negligence of the parties, the parties shall bear their respective liability, including cost, in accordance with their respective liability established in accordance with the laws of the State of Washington.

7.4 FOR PURPOSES OF INDEMNIFICATION ONLY, THE PARTIES, BY MUTUAL NEGOTIATION, HEREBY WAIVE, AS RESPECTS THE OTHER PARTY ONLY, ANY IMMUNITY THAT WOULD OTHERWISE BE AVAILABLE AGAINST SUCH CLAIMS UNDER THE INDUSTRIAL INSURANCE PROVISIONS OF TITLE 51 RCW.

7.5 The provisions of this section shall survive the expiration or termination of this MOU with respect to acts and omissions occurring during the term hereof.

8. Contract Administration. The parties do not by this MOU create any separate legal or administrative entity. The City Manager of Fife, or his designee shall be responsible for working with the Mayor of Milton, or his/her designee to administer the terms of this MOU. The parties do not intend to jointly own any real or personal property as part of this undertaking. The parties will cooperatively work together to further the intent and purpose of this MOU.

9. Notice. Any notice or information required or permitted to be given to the parties under this MOU may be sent to the following addresses unless otherwise specified:

City of Fife
Attn: Public Works Director
5411 23rd Street East
Fife, WA 98424

City of Milton
Attn: Public Works Director

10. Modification. This MOU constitutes the complete and final agreement of the parties, and replaces and supersedes all oral and/or written proposals and agreements heretofore made by the parties on the subject matter. No provision of this MOU may be amended or added to except by agreement, in writing, signed by both parties.

11. Governing Law; Venue; Attorneys Fees. This MOU shall be governed by the laws of the State of Washington. In any suit or action instituted to enforce any right granted in the MOU, the exclusive venue shall be the courts of Pierce County, Washington, and the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney's fees from the other party.

12. Signature Authority

12.1 The Fife City Manager was authorized to execute this MOU by Resolution No. ____ adopted by a majority of the entire City Council on the _____ day of _____ 2014 at a regularly scheduled Council meeting.

12.2 The Mayor of Milton was authorized to execute this MOU by Resolution No. ____ adopted by a majority of the entire City Council on the _____ day of _____ 2014 at a regularly scheduled Council meeting.

13. Severability. Should any clause, phrase, sentence or paragraph of this Agreement or its application be declared invalid or void by a court of competent jurisdiction, the remaining provisions of this Agreement or its applications of those provisions not so declared shall remain in full force and effect.

CITY OF FIFE

CITY OF Milton

By: _____
Subir Mukerjee, Interim City Manager

By: _____
Debra Perry, Mayor

ATTEST:

ATTEST:

Carol Etgen, City Clerk

Katie Bolam, City Clerk

Approved as to form:

Approved as to form:

Gregory F. Amann
Assistant City Attorney

Bio Park
City Attorney

Approved and Consented as to Section 4:

Benaroya Capital Company, LLC

By: _____

EXHIBIT A

Show preliminary plan sheet for Freeman Road Improvements
from 20th to the Current Fife-Milton Boundary

EXHIBIT B
Current Boundary

EXHIBIT C
Proposed Boundary

Back to Agenda Bill



**Boundary Adjustment at Freeman Road
Fife Council Study Session
November 18, 2014**

Existing Conditions

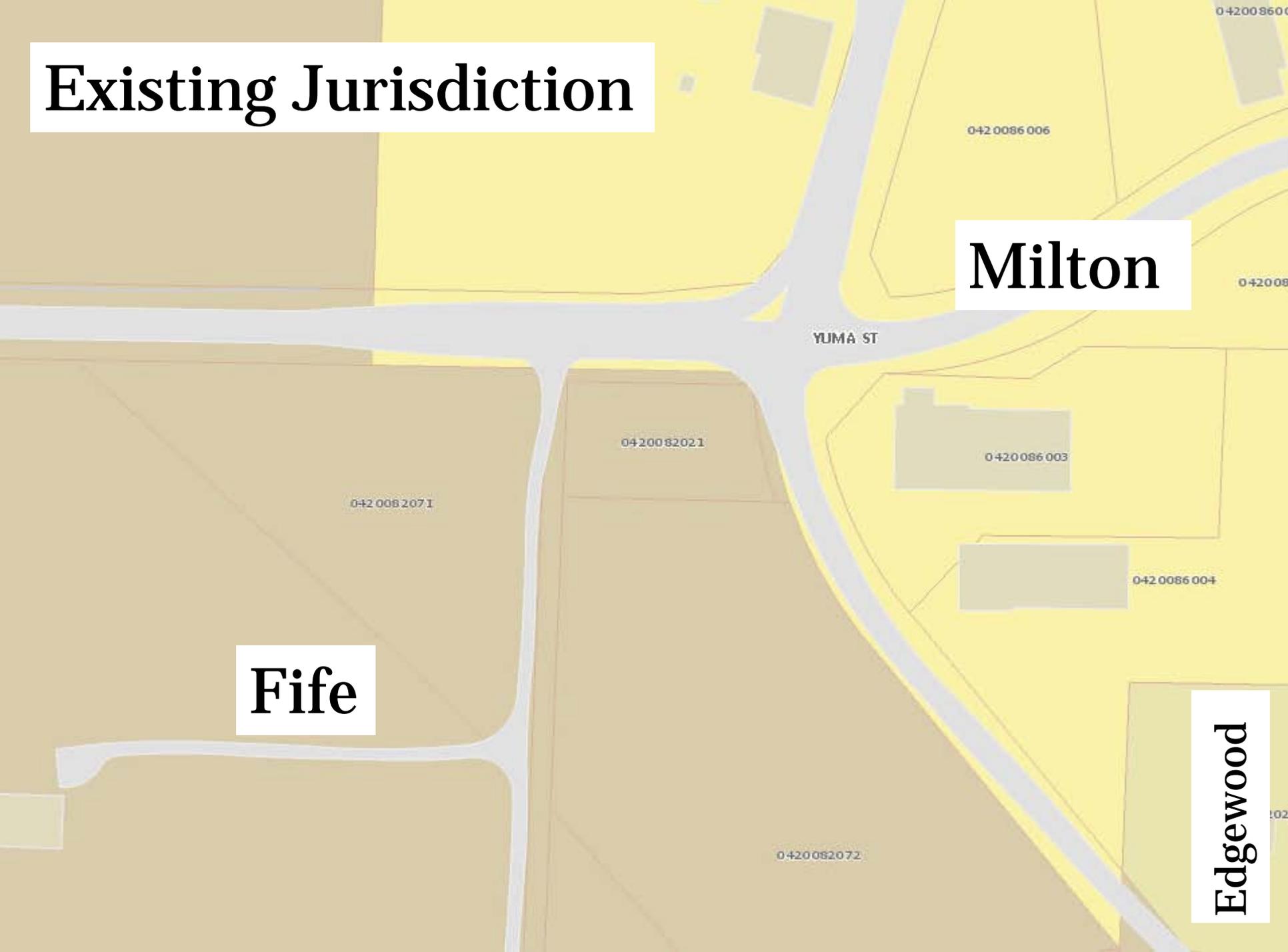


Existing Jurisdiction

Milton

Fife

Edgewood



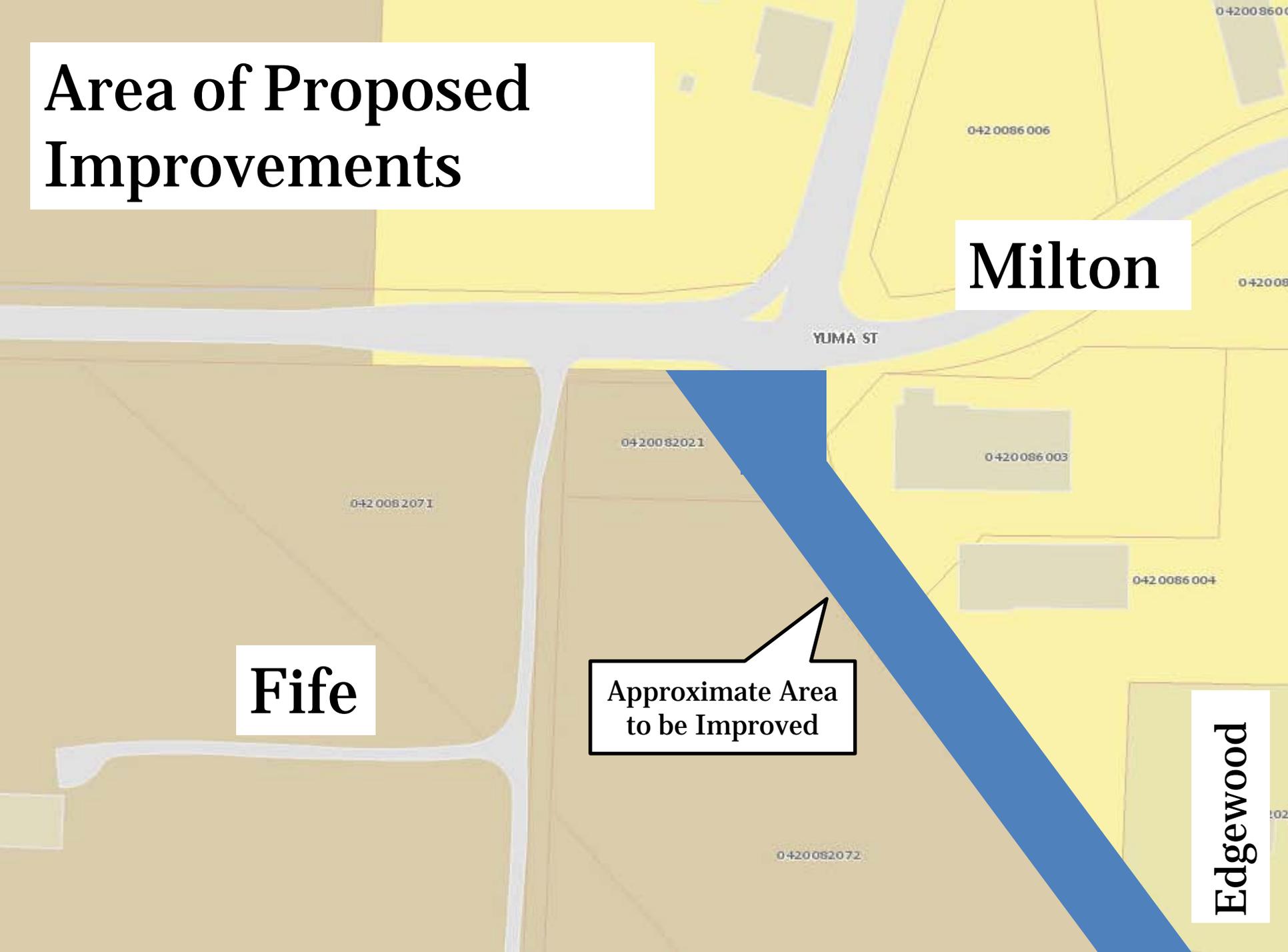
Area of Proposed Improvements

Milton

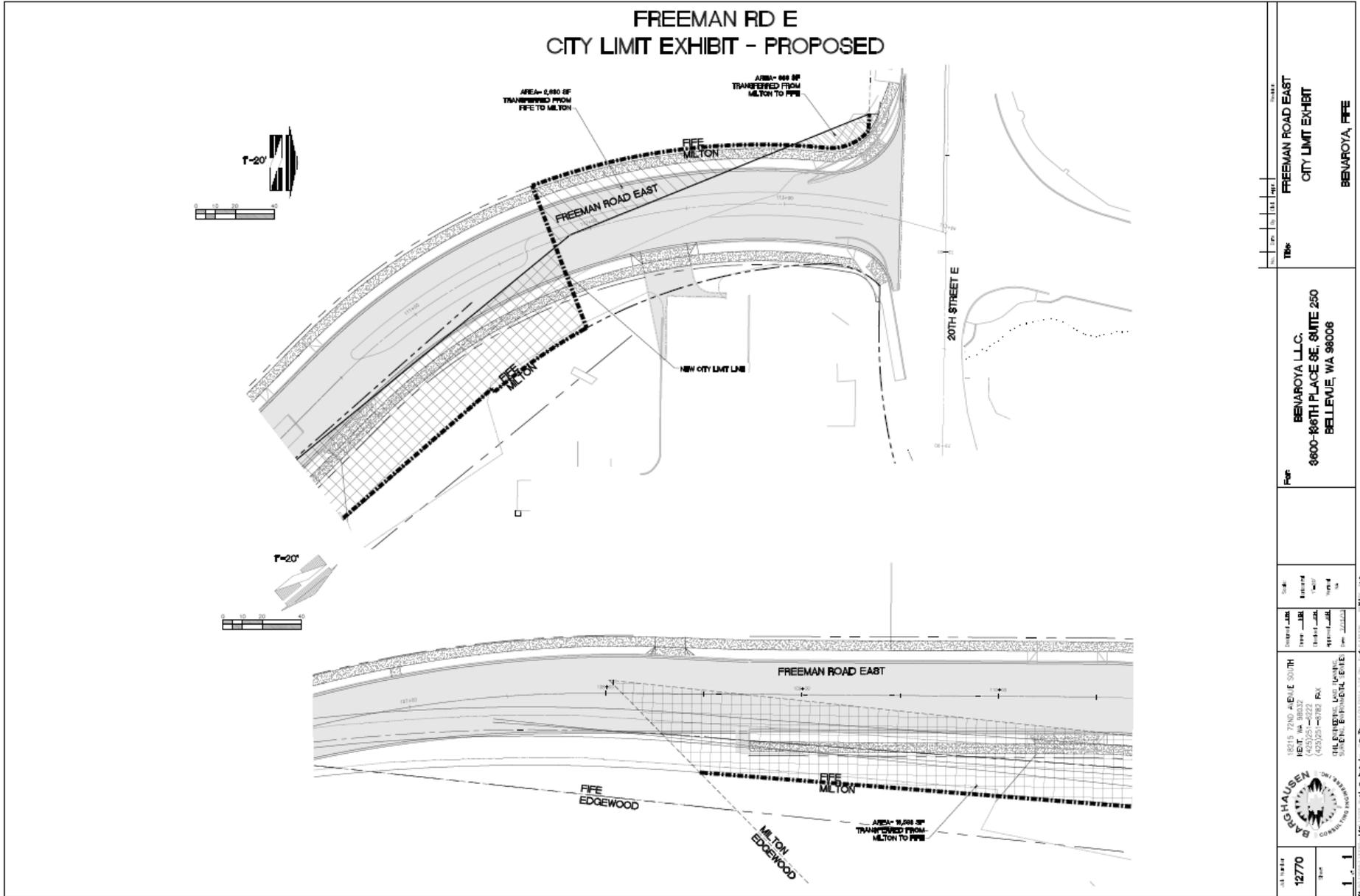
Fife

Approximate Area to be Improved

Edgewood



Proposed Improvements & Proposed Boundaries



	12770 1st Floor	18115 72ND AVENUE SOUTH BELLEVUE, WA 98007 (425)251-5222 (425)251-5785 FAX QUILLEN@BAGHAUSEN.COM WWW.BAGHAUSEN.COM	Scale: Overall Scale: 1" = 400' Detail Scale: 1" = 20' Title Scale: 1" = 100'	File: BENAROYA L.L.C. 3600-36TH PLACE SE, SUITE 250 BELLEVUE, WA 98008	Title: FREEMAN ROAD EAST CITY LIMIT EXHIBIT BENAROYA, PFE
	12770 1st Floor	18115 72ND AVENUE SOUTH BELLEVUE, WA 98007 (425)251-5222 (425)251-5785 FAX QUILLEN@BAGHAUSEN.COM WWW.BAGHAUSEN.COM	Scale: Overall Scale: 1" = 400' Detail Scale: 1" = 20' Title Scale: 1" = 100'	File: BENAROYA L.L.C. 3600-36TH PLACE SE, SUITE 250 BELLEVUE, WA 98008	Title: FREEMAN ROAD EAST CITY LIMIT EXHIBIT BENAROYA, PFE

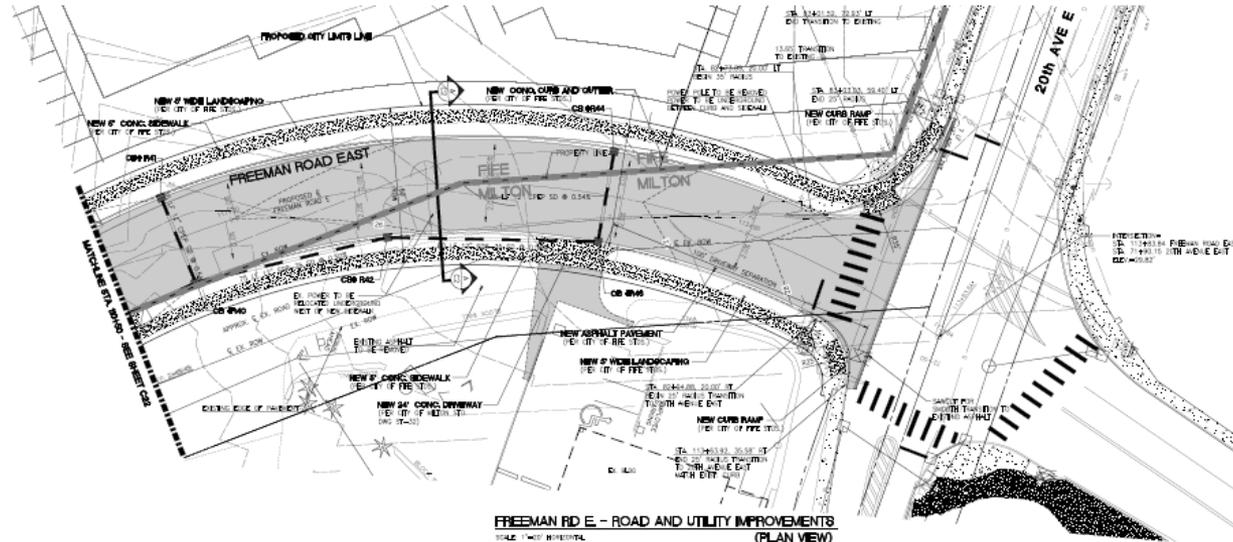
Proposed Improvement Detail – North Segment

FREEMAN RD E - ROAD AND UTILITY IMPROVEMENTS PLAN AND PROFILE STA. 110+50 TO STA. 114+00

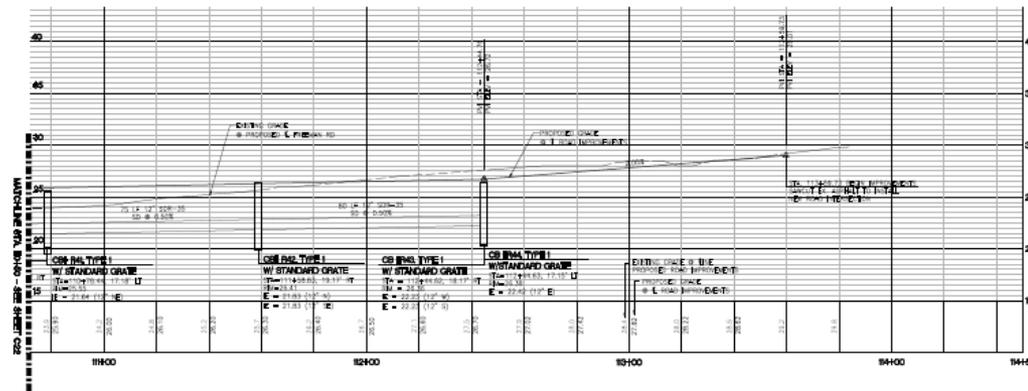


Know what's below.
Call before you dig.

1"=20'



FREEMAN RD E - ROAD AND UTILITY IMPROVEMENTS
SCALE: (1"=20') HORIZONTAL
ALL IN RED LETTERS SHALL BE FOR THE
OWNER'S WRITTEN REVISIONS.
(PLAN VIEW)



FREEMAN RD E - ROAD AND UTILITY IMPROVEMENTS
SCALE: (1"=20') HORIZONTAL, (1"=10') VERTICAL
(PROFILE VIEW)

	BENAROYA LLC 3800-36TH PLACE SE, SUITE 250 BELLEVUE, WA 98006
12/70	12/70
FREEMAN ROAD EAST ROAD AND UTILITY IMPROVEMENTS PLAN AND PROFILE STA. 110+50 TO STA. 114+00	BENAROYA, P.E.

