

**CITY OF BLAINE**  
**REQUEST FOR COUNCIL ACTION**  
**MEETING DATE: MARCH 13, 2006**

**SUBJECT:** Settlement Agreement – Blaine vs Whatcom County

**SUBMITTING DEPT:** City Manager

**PREPARED BY:** Sheri Sanchez, City Clerk

**AGENDA LOCATION:** Comments / Communications ☐, Consent ☐,  
Public Meeting (Hearing) ☐, Unfinished Business ☐, Council Action Item ☒,  
Committee Reports ☐

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**ATTACHMENTS:** 1. Stipulation for Order of Dismissal  
2. Settlement Agreement

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**ANALYSIS / SUMMARY:**

On November 18, 2004, the City timely filed a Petition for Review to the Western Washington Growth Management Hearings Board (the “Board”) in the matter of the City of Blaine vs. Whatcom County Case No. 04-2-0026, asserting that the Ordinances were noncompliant with the Growth Management Act and certain Whatcom County-wide Planning Policies.

This request for council action is to approve a settlement agreement with Whatcom County whereby the parties work together by providing advance notice and discussion of these issues to avoid future appeals and disputes between the City of Blaine and Whatcom County

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**RECOMMENDATION:** ☒ Waive 2<sup>nd</sup> Reading: (Including conditions of approval if applicable)

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**FISCAL ANALYSIS:**

The parties are responsible for paying their own costs.

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**REVIEWED BY:**

City Manager \_\_\_\_\_ Finance Director \_\_\_\_\_ City Clerk \_\_\_\_\_

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**COUNCIL ACTION:** Approved ☐, Denied ☐, Tabled / Deferred ☐,  
Assigned to: \_\_\_\_\_

**DATE OF NEXT COUNCIL ACTION:** \_\_\_\_\_

## SETTLEMENT AGREEMENT

**THIS AGREEMENT** is entered into this \_\_\_\_\_ day of March, 2006, by and between the City of Blaine (the "City") and Whatcom County (the "County").

### I. RECITALS

**WHEREAS**, on September 28, 2004, the Whatcom County Council adopted three ordinances: Ordinance No. 2004-047, Ordinance No. 2004-048, and Ordinance No. 2004-049 ("Ordinances");

**WHEREAS**, on November 18, 2004, the City timely filed a Petition for Review to the Western Washington Growth Management Hearings Board (the "Board") in the matter of the City of Blaine vs. Whatcom County Case No. 04-2-0026, asserting that the Ordinances were noncompliant with the Growth Management Act and certain Whatcom County-wide Planning Policies;

**WHEREAS**, the Board has issued multiple Orders on Continuance of Proceedings and Extension of Final Decision and Order Deadline pursuant to RCW 36.70A.300(2)(b) and WAC 242-02-560 for purposes of allowing the City and County to work toward settlement of outstanding issues. The Fourth Order directed the parties to file a status report with the Board on or before February 28, 2006; and

**WHEREAS**, there are many issues that both the City and the County may need to coordinate and address as adjoining and abutting jurisdictions by and between the legislative bodies, many of which initially include the concerns that led to the initiation of the above appeal. There may well be other issues that call for coordination and/or joint action. The advance notice and discussion of these issues may well avoid future appeals and disputes between the City of Blaine and Whatcom County. An agreement as set forth below would seem to be in the interest of both of our clients. To avoid the risk and expense of further litigation, the parties wish to resolve all disputes between them upon the terms and conditions specified below.

### II. TERMS AND CONDITIONS

**IN CONSIDERATION** of the mutual promises and covenants set forth below, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Agreement to Dismiss Petition.** The City Agrees to voluntarily dismiss its Petition in Western Washington Growth Management Hearing Board matter City of Blaine vs. Whatcom County Case No. 04-2-0026.
2. **Agreement to Provide Written Notice.** The County agrees to provide written notice to the City of Blaine of any County Planning Commission and/or County Council (and/or committee thereof) public hearing or meeting where the following proposals would be considered: 1) A proposal to convert a long term planning area within the Birch Bay UGA to a short term planning area; 2) Any proposed changes to the Birch Bay Community Plan; 3) Any proposed changes to the County Comprehensive Plan involving changes to the Birch Bay UGA map or policy language; and 4) Any proposed changes to any development regulations solely applicable to the Birch Bay UGA. Such notice would be

required to be in writing and provided at least thirty (30) days prior to such a meeting or hearing. Such notice shall be sent to the attention of the Blaine City Manager.

3. **Attorney's Fees/Costs.** The parties shall pay their own attorney's fees and costs incurred.

4. **Binding Agreement.** Once approved by the parties, this Settlement Agreement is binding on the parties hereto and their respective successors, heirs, legal representatives, and assigns.

5. **Modifications.** No amendments, modifications, or alterations of the terms of this Agreement shall be valid or binding unless made in writing and signed by the parties hereto.

6. **Choice of Law.** The interpretation and enforcement of this Agreement shall be governed by the law of the State of Washington.

7. **Enforcement/Jurisdiction/Attorney's Fees.** If it is necessary for any party hereto or its authorized representative, successor, or assign, to institute suit in connection with this Agreement or the breach thereof, the prevailing party in such suit or proceeding shall be entitled to recover its reasonable costs, expenses, and attorneys' fees incurred. The parties agree that any action in connection with this Agreement or the breach thereof shall be submitted to the Whatcom County Superior Court, and hereby consent to the jurisdiction of that body.

8. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall be deemed a single document.

9. **Duty to Execute Further Documents.** Both parties agree to fully cooperate and to execute all documents that may be necessary to implement the terms of this Agreement.

10. **No Admission of Violation of Growth Management Act.** It is understood that this Agreement is for the purpose of compromise and settlement, and that neither the fact of this Agreement nor any of its terms are to be construed as an admission of violation or noncompliance with the Growth Management Act by Whatcom County, by whom violation is expressly denied.

**IN WITNESS WHEREOF,** the parties have executed this Settlement Agreement as of the date and year first above written.

WHATCOM COUNTY

CITY OF BLAINE

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
Gary Tomsic, City Manager

**OTHER SIGNATURE LINES MAY NEED TO BE ADDED**

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**BEFORE THE WESTERN WASHINGTON GROWTH  
MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON**

CITY OF BLAINE, a Washington municipal )  
corporation, )  
 )  
Petitioners, ) Case No. 04-2-0026  
 )  
vs. )  
 )  
STIPULATION FOR ORDER  
WHATCOM COUNTY, a Washington ) OF DISMISSAL  
municipal corporation, )  
 )  
Respondent. )  
 )  
 )  
\_\_\_\_\_ )

**COMES NOW**, the above named parties by and through their undersigned  
attorneys of record, and stipulate and agree that the dispute between the parties, which is  
the subject of this action, has been fully and completely settled by a separate agreement  
and that the petition for review in this action should be dismissed with prejudice and  
without costs to any party.

DATED this \_\_\_\_ day of \_\_\_\_, 2006.

\_\_\_\_\_  
Jon Sitkin, WSBA #17604  
Attorney for Petitioner

\_\_\_\_\_  
Karen Frakes, WSBA #13600  
Attorney for Respondent

1                                   **BEFORE THE WESTERN WASHINGTON GROWTH**  
2                                   **MANAGEMENT HEARINGS BOARD**  
                                      **STATE OF WASHINGTON**

3   CITY OF BLAINE, a Washington municipal   )  
4   corporation,                                    )  
  )  
5                                   Petitioners,       )   Case No. 04-2-0026  
  )  
6                                   vs.                    )  
  )   ORDER OF DISMISSAL  
7   WHATCOM COUNTY, a Washington            )  
8   municipal corporation,                        )  
  )  
9                                   Respondent.       )  
  )  
  )  
  )

10                   **PURSUANT** to the Stipulation for Order of Dismissal, it appearing that the above  
11   entitled action has been fully settled, and that the parties have agreed to a dismissal of all  
12   claims; **NOW, THEREFORE,**

13                   **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the above entitled  
14   petition for review and associated claims are hereby dismissed with prejudice and without  
15   costs to either party.

16                   DONE IN OPEN COURT this \_\_\_\_ day of \_\_\_\_, 2006.

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19                                   \_\_\_\_\_  
                                      PRESIDING OFFICER

20   Presented By:

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22                   \_\_\_\_\_  
23   Jon Sitkin, WSBA # 17604  
          Attorney for Petitioner

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26   STIPULATION FOR ORDER OF DISMISSAL AND  
     ORDER OF DISMISSAL - 2

**CHMELIK SITKIN & DAVIS P.S.**  
ATTORNEYS AT LAW  
1500 Railroad Avenue Bellingham, Washington 98225  
phone 360.671.1796 • fax 360.671.3781

1 Agreed to By/Notice of Presentation  
2 Waived By:

3  
4 Karen Frakes, WSBA #13600  
5 Attorney for Respondent

6 F:\BLAINE, CITY OF\PLANNING\Birch Bay UGA Opposition\GMHBAppeal\Settlement Agreement & Stipulated Order of Dismissal\ORDER OF DISMISS & STIPULATION.doc

26 STIPULATION FOR ORDER OF DISMISSAL AND  
ORDER OF DISMISSAL - 3

**CHMELIK SITKIN & DAVIS** P.S.  
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