



LUMMI INDIAN BUSINESS COUNCIL

2616 KWINA ROAD • BELLINGHAM, WASHINGTON 98226 • (360) 384-1489

September 16, 2009

Mr. David Stalheim, Director
Whatcom County Planning and
Development Services
5280 Northwest Drive
Bellingham, WA 98226

**SUBJECT: Lummi Natural Resources Department Comments on Whatcom 2031
Draft EIS**

Dear Mr. Stalheim,

I urge Whatcom County to recognize the inextricable linkages between land use, water use, and water quality; water quantity, water quality, and salmon and shellfish habitat; and land use, energy use, and climate change and adopt a Comprehensive Plan that promotes maximizing the self-sufficiency and sustainability of the local population and economy to the extent practicable. To achieve these objectives Whatcom County should direct population growth to within the City of Bellingham water service area and should not allow expansion of Urban Growth Areas (UGAs), particularly for the City of Lynden, in the rest of unincorporated Whatcom County.

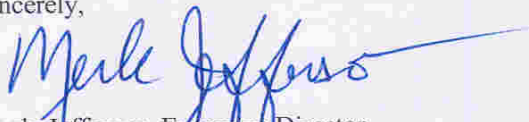
- 1. Population growth within Whatcom County should be located within the City of Bellingham water service area.** As you know, the City of Bellingham relies on Lake Whatcom for its potable water supply. Although the City of Bellingham has a diversion facility on the Middle Fork Nooksack River that can divert Nooksack River water into Lake Whatcom, the Lake Whatcom watershed was estimated to produce enough water without the diversion to meet the City of Bellingham's municipal water supply needs in 9 out of 10 years during the period when the Georgia-Pacific pulp mill was using 50 million gallons per day (mgd). The Georgia-Pacific mill is now closed. Since the current average daily water consumption in Bellingham is 10 mgd, and the peak day consumption is currently 19 mgd, the City of Bellingham has substantial capacity to accommodate additional population growth using the Lake Whatcom water supply without diverting any water from the Middle Fork Nooksack River. Because diversions from the Nooksack River watershed negatively impact the water quantity and water quality needed for salmon and shellfish habitat, promoting population growth in areas that do not need to rely on the Nooksack River helps achieve sustainable harvests of salmon and shellfish.
- 2. There should be no increase in the UGA for the City of Lynden.** Although the City of Lynden claims that they have substantial water rights, they admit that these claims have not been adjudicated or otherwise confirmed or secured. Despite the City of Lynden claims, an analysis performed by the Washington Department of Ecology (Ecology) and confirmed by the Washington State Attorney General's Office indicates that the current water use by the City of Lynden exceeds their state-issued water rights. Consequently, despite their claims to the contrary, the City of Lynden likely has no capacity to legally withdraw the amount of

water that they currently admit to diverting and therefore have no capacity to withdraw additional water to support further growth. The City of Lynden also fails to acknowledge that all of their state-based water rights claims are junior to the Lummi Nation federal reserved water rights to consumptive and instream flow uses. The Lummi Nation has been working cooperatively for over ten years to address these conflicting water rights claims and provide certainty to all parties. Increasing the UGA for Lynden will promote additional and likely illegal withdraws by Lynden in the midst of this complex and time consuming process, which will be detrimental to these cooperative efforts and will not promote a negotiated settlement of the conflict.

In contrast to the City of Bellingham, Lynden diverts water from the Nooksack River. The water quantity and water quality of the Nooksack River directly affects the Lummi Nation's treaty rights to a sustainable and harvestable surplus of salmon and shellfish. Since at least the year 2000, the Lummi Nation has urged the City of Lynden to not consider withdrawing additional water from the Nooksack River until all other options, particularly water conservation, have been exhausted. We notified Lynden that their water conservation options will have been exhausted if all of their existing and future water connections have been metered and a water rate structure that encourages conservation is adopted; low-flow fixtures have been retrofitted for all residential, municipal, and industrial connections; the existing wastewater treatment plant is modified so that water can be reclaimed and reused; and a reclaimed water distribution system is in place to support industrial and irrigation uses of the reclaimed water. We are not satisfied that all of the water conservation options have been instituted – especially water reclamation and reuse. We suspect that the cost of water conservation, particularly reclaiming and reusing water by the City of Lynden, has been judged to be too expensive and the City plans to continue to shift the costs of their diversions from the people who benefit from the use of the water to the natural resources that suffer from the loss of the water. Our view is that any expansion of the Lynden UGA should not be considered until all of these water conservation steps have been implemented.

In summary, Whatcom County should adopt a Comprehensive Plan that focuses population growth in the City of Bellingham service area where the growth will have the least impacts on natural resources (e.g., water resources, salmon, shellfish, agricultural lands). Expansion of the UGAs in more rural areas of Whatcom County will result in the greatest impacts to our natural resources and limit the capacity of the county to be self-sufficient and sustainable.

Sincerely,



Merle Jefferson, Executive Director,
Lummi Natural Resources Department

cc: Pete Kremen, Whatcom County Executive
Whatcom County Council Members