

---

**TO:** Whatcom County Planning Commission  
**FROM:** Robert A. Carmichael and Simi Jain,  
Attorneys for Birch Bay Water and Sewer District  
**RE:** Public Comment re March 11, 2013 Draft Comprehensive Plan and Zoning Code  
Amendments  
**DATE:** March 28, 2013

---

### Issue 8

Birch Bay Water and Sewer District (“District”) submits this comment to address the new amendments proposed by Staff to WCC 20.82.030(3). Whatcom County (“County”) originally amended WCC 20.82.030(3) for several reasons, to address the Growth Management Hearings Board’s (“Board”) ruling in response to the challenge to Ordinance 2011-013 that the County’s previous regulations did not limit connections to water and sewer lines to rural lots, the City of Ferndale’s concerns and also the needs of the District and other water districts to run water lines through rural areas from water sources.

The provision of GMA at issue prohibits urban governmental services in rural areas with a few exceptions. RCW 36.70A.110(4) states:

In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

Water service is not itself an urban governmental service but rather a “rural service”. RCW 36.70A.030(17). The Board found the County not in compliance with RCW 36.70A.110(4):

The Board finds a continuing tension between WCC 24.11.050 which requires connection to water transmission lines and WCC 20.82.030(3) which requires connections to water transmission lines within Rural Neighborhoods and RCW 36.70A.110(4) which states it is not appropriate that urban governmental services be extended to or expanded in rural areas.

*(Futurewise et al v. Whatcom County, GMHB case no. 11-2-0010c and 05-2-0013, Compliance Order and Order Following Remand on Issue of LAMIRDs at 84 (01.04.13) (“Board Decision”).* The Board suggests that “transmission lines” be defined to exclude service connection to Rural Neighborhoods and remove the requirement that rural residents connect to adjacent transmission

---

lines from WCC 24.11.050. While Staff's proposed amendments address GMHB's suggestions, they go too far.<sup>1</sup>

First, a slight modification to Staff's proposed amendment to WCC 20.82.030(3) will still address the GMHB's concerns pertaining to this section and make clear what state water system plan this section addresses (addition in bold, additional deletion in strikethrough):

20.82.030 (3) New water lines with an inside diameter greater than eight inches except for new water lines in conformance with a state approved water comprehensive plan **under pursuant to RCW 43.20.260** and consistent with the Whatcom County Comprehensive Plan, which shall be permitted outright so long as they are water transmission lines as defined in WCC 20.97.452, or are located and installed by a public utility or municipality within urban growth areas, or limited areas of more intensive rural development (LAMIRDs) or Rural Neighborhoods. No service connections shall be made to water transmission lines in Rural or Rural Neighborhood designations

The reason for removing the last sentence from what Staff proposed is because WCC 24.11.050 is where the regulations pertaining to water availability and service connections are located. In reality the County has allowed connection to water transmission lines in rural areas and may continue to do so as long as the connection is for rural service. The size of the pipe is not what makes service urban or rural but rather the use made from the pipe. Therefore, a slight modification (addition in bold, additional deletion in strikethrough) to the definition of "water transmission line" is necessary:

---

<sup>1</sup> 20.82.030 (3) New water lines with an inside diameter greater than eight inches except for new water lines in conformance with a state approved water comprehensive plan and consistent with the Whatcom County Comprehensive Plan, which shall be permitted outright so long as they are water transmission lines as defined in WCC 20.97.452, or are located and installed by a public utility or municipality within urban growth areas, or limited areas of more intensive rural development (LAMIRDs) or Rural Neighborhoods. No service connections shall be made to water transmission lines in Rural or Rural Neighborhood designations

20.97.452 Water Transmission Lines

"Water transmission lines" means pipes used to convey water from source, storage, or treatment facilities to points of distribution or distribution mains, and from source facilities to treatment or storage facilities, but not to provide water service connections. This also can include transmission mains connecting one section of distribution system to another section of distribution system as long as this transmission main is clearly defined on the plans and no service connections are allowed along the transmission main.

WCC 24.11.050 General Requirements

C. The director shall evaluate the availability of a public water system prior to approving the use of a private water system. If it is determined that a public water system is available and willing to provide water pursuant to a water plan that complies with state law and the County Comprehensive Plan, the applicant must connect to that public water system when:

...

3. The existing public water system has ~~transmission~~ distribution lines adjacent to the property line of the applicant;  
or

WCC 20.97.452 "Water transmission lines" means pipes used primarily to convey water from source, storage, or treatment facilities to points of distribution or distribution mains, and from source facilities to treatment or storage facilities but not to provide water service connections. This also can include transmission mains connecting one section of distribution system to another section of distribution system as long as this transmission main is clearly defined on the plans and no service connections are allowed along the transmission main.

Finally, as the Board's concern with WCC 24.11.050(C) is consistency with WCC 20.82.030(3) and also because rural property owners are not required to connect to transmission lines, we propose the following edit (addition in bold, additional deletion in strikethrough) to what Staff proposes for this section:

C. The director shall evaluate the availability of a public water system prior to approving the use of a private water system. If it is determined that a public water system is available and willing to provide water pursuant to a **comprehensive water system** plan that complies with ~~RCW 43.20.260~~ state law and the County Comprehensive Plan, the applicant must connect to that public water system when:

...

3. The existing public water system has ~~transmission~~ distribution water lines adjacent to the property line of the applicant **and connection is consistent with RCW 36.70.110(4)**; or

This edit removes any potential confusion about the type of water line and limits the County to connections which are consistent with GMA. That is, connections which do not support urban use in the rural areas but, may be necessary to protect public health and safety and the environment and when such services are financially supportable at rural densities.

Thank you for your time and consideration.