Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2524
Phone: (503) 373-0050
First Floor/Coastal Fax: (503) 378-6033
Second Floor/Director's Office: (503) 378-5518
Web Address: http://www.oregon.gov/LCD

NOTICE OF ADOPTED AMENDMENT

February 7 2006

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Eugene/Springfield Plan Amendment
DLCD File Number 002-04R

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: February 22, 2006

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

*<u>NOTE:</u> **THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Marguerite Nabeta, DLCD Regional Representative
Stephanie Schult, City of Eugene/Springfield

<paa> ya/

FORM 2

D L C D NOTICE OF ADOPTION

DEPT OF

FEB 02 2006

LAND CONSERVATION AND DEVELOPMENT

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18

(See reverse side for submittal requirements)

Jurisdiction: Lane County Local File No.: Ordinance No. PA1230 (If no number, use none)

Date of Adoption: January 25, 2006 (Must be filled in) Date Mailed: January 31, 2006 (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: N/A

___ Comprehensive Plan Text Amendment
___ Comprehensive Plan Map Amendment
___ Land Use Regulation Amendment
___ Zoning Map Amendment
___ New Land Use Regulation
X Other: Remand Response Amending Ord. No. PA1209 (Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."

Responding to the LUBA Remand of Provisions in Ordinance No. PA 1209 and Amending that Ordinance by Adoption of a New Exhibit 'B' Showing Modifications to the *Eugene-Springfield Metropolitan Area Public Facilities and Services Plan*; Adopting Savings and Severability Clauses; and Declaring an Emergency

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

N/A - Remand

Plan Map Changed from: N/A to ~

Zone Map Changed from: N/A to ~

Location: Eugene-Spfld. Metro Acres Involved: ~

Specify Density: Previous: ~ New: ~

Applicable Statewide Planning Goals: 1, 2, 11

Was an Exception Adopted? Yes: ___ No: X

DLCD File No.: 002-04R (13488) [12303]

Did the Department of Land Conservation and Development **receive** a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing**. Yes: ___ No: X

If no, do the Statewide Planning Goals apply. Yes: X No: ___

If no, did The Emergency Circumstances Require immediate adoption. Yes: X No: ___

LUBA REMAND

Affected State or Federal Agencies, Local Governments or Special Districts: MWMC, Eugene, Springfield, DEQ

Local Contact: Stephanie Schulz Area Code + Phone Number: (541) 682-3958

Address: 125 E. 8th Ave. City: Eugene

Zip Code+4: 97401-2926 Email Address: Stephanie.Schulz@co.lane.or.u

---

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision** per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and **TWO (2) Copies** of the Adopted Amendment to:

ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.

3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.

4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.

5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the "Notice of Adoption" is sent to DLCD.

6. In addition to sending the "Notice of Adoption" to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.

7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Mara.Ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

PASSED

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

	) IN THE MATTER OF RESPONDING TO THE LUBA
	) REMAND OF PROVISIONS IN ORDINANCE NO. PA 1209
	) AND AMENDING THAT ORDINANCE BY ADOPTION
	) OF A NEW EXHIBIT"B" SHOWING MODIFICATIONS
ORDINANCE No. PA 1230	) TO THE *EUGENE–SPRINGFIELD METROPOLITAN AREA*
	) *PUBLIC FACILITIES AND SERVICES PLAN*; ADOPTING
	) SAVINGS AND SEVERABILITY CLAUSES; AND
	) DECLARING AN EMERGENCY

WHEREAS, the *Eugene–Springfield Metropolitan Area General Plan* (*Metro Plan*) identifies the *Eugene–Springfield Metropolitan Area Public Facilities and Services Plan* (*Public Facilities and Services Plan*) as a refinement plan which forms the basis for the Public Facilities and Services Element of the *Metro Plan* and guides the provision of public facilities and services in the metropolitan area; and

WHEREAS, the *Public Facilities and Services Plan* serves the goals, objectives and policies of the *Metro Plan* by addressing the provision of public facilities and services within the urban growth boundary (UGB), services to areas outside the UGB, locating and managing public facilities outside the UGB, and financing public facilities; and

WHEREAS, in July and August of 2004, amendments to the *Metro Plan* and the *Public Facilities and Services Plan* were adopted at the request of the Metropolitan Wastewater Management Commission (MWMC) to reflect updated information on facilities and improvement projects needed to meet state and federal discharge requirements, specifically on August 25, the Board of Commissioners adopted Ordinance No. PA 1209 and amended the *Metro Plan* and *Public Facilities and Services Plan* as set forth in Exhibits "A" and "B" to that ordinance, action that was identical to enactments of the Springfield and Eugene city councils; and

WHEREAS, those actions were appealed to the Oregon Land Use Board of Appeals (LUBA) and on September 2, 2005, LUBA issued its decision upholding the local government actions on most of the issues raised by the petitioners, but remanding the actions based on one issue as described in the staff report and LUBA decision attached as Exhibit "A" and incorporated herein, and directing only that the three jurisdictions describe Project 300 with greater specificity and consider describing Projects 301 and 302 with greater specificity in the *Public Facilities and Services Plan* to comply with Statewide Planning Goal 11 and the Goal 11 Rule; and

WHEREAS, in response to the LUBA remand, a new Exhibit "B", which is attached hereto and incorporated herein, has been prepared containing the additional detail and specificity for Project 300, 301 and 302 to comply with the Goal 11 Rule as directed or suggested by LUBA and described more fully in the staff reports accompanying this ordinance, and Ordinance No. PA 1209 should be amended by replacing the Exhibit "B" attached to that ordinance with the Exhibit "B" attached hereto, which is based on the same evidence and record that was before the Board when it acted on Ordinance No. PA 1209; and

WHEREAS, the MWMC will be unable to proceed with timely construction necessary to meet the new and more stringent discharge permit requirements imposed by the state Department of Environmental Quality (DEQ) if the revisions to the *Public Facilities and Services Plan* as effected by Ordinance No. PA 1209 and amended herein do not become immediately effective; and

WHEREAS, the Board of County Commissioners has conducted a public hearing and is now ready to take action based upon the evidence and testimony already in the record as well as the evidence and testimony presented at the public hearing held in the matter of amending Ordinance No. PA 1209 and the *Public Facilities and Services Plan* to address the LUBA remand.

NOW THEREFORE, the Board of County Commissioners of Lane County ordains as follows:

Section 1. Based on the above recitals and findings, which are hereby adopted, Ordinance No. PA 1209 is hereby amended by replacing the Exhibit "B" attached to it with the Exhibit "B" attached hereto, which is hereby adopted as an amendment to the *Eugene–Springfield Metropolitan Area Public Facilities and Services Plan* to be utilized as described in that ordinance.

Section 2. Except as amended herein, all other provisions of Ordinance No. PA 1209 and the attachments thereto, shall remain in full force and effect.

Section 3. The Board specifically finds that in order for MWMC to proceed with timely construction necessary to comply with state and federal discharge permit requirements and achieve mandatory compliance with certain regulatory requirements by the year 2010, an immediate effective date is necessary for this Ordinance.

FURTHER, the prior designations and provisions repealed by this Ordinance shall remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

An emergency is hereby declared to exist and this Ordinance, being enacted by the Board in the exercise of its police power for the purpose of meeting such emergency and for the immediate preservation of the public peace, health and safety, shall take effect immediately upon adoption.

ENACTED this 25th day of January, 2006.

Bill Dwyer
Chair, Lane County Board of Commissioners

Melissa A. Zimmer
Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM
Date 1-4-2006 Lane County
Stephen J. Vorhes
OFFICE OF LEGAL COUNSEL

EXHIBIT A

MEMORANDUM **City of Springfield**

To:	Springfield Mayor and City Council
From:	Meg Kieran, Office of the City Attorney Greg Mott, Planning Manager Susie Smith, Environmental Services Manager
Date:	December 23, 20056
Subject:	Land Use Board of Appeals (LUBA) Limited Remand of Amendments to the Public Facilities and Services Plan (PFSP) Incorporating Metropolitan Wastewater Management Commission (MWMC) Regional Wastewater Facilities Projects

COUNCIL BRIEFING MEMORANDUM

ISSUE AND PURPOSE:

In 2004, the City Councils of Springfield and Eugene and the Lane County Board of Commissioners adopted the 2004 MWMC Facilities Plan, MWMC Facilities Plan and associated amendments to the Metro Plan text and the text, tables and maps of the PFSP. The Home Builders Association of Lane County (HBA) appealed all of these actions to LUBA. LUBA upheld all of the Council/Board's actions except for a portion of the project descriptions included in the PFSP, which LUBA remanded for reconsideration.

The purpose of this memo and the proposed ordinance (see Attachment 1) is to fulfill the requirements of the limited LUBA remand by incorporating expanded project descriptions in the appropriate PFSP tables and maps consistent with information that is already in the record of the public hearing. The proposed ordinance also eliminates the clause making the ordinance effective only after acknowledgement (by the Department of Land Conservation and Development) due to the urgent need to begin construction. For the same reason, it is requested that the Council consider approving the proposed ordinance, following the required public hearing, with an emergency clause. The amendments proposed to remedy the limited remand would then become effective immediately upon adoption of identical ordinances by Lane County and the City of Eugene.

BACKGROUND/DISCUSSION:

In May of 2002, the Department of Environmental Quality (DEQ) imposed new and more stringent discharge permit requirements on the regional wastewater treatment facilities. MWMC, which had begun the pre-design process for new wet weather flow management facilities, recognized that a comprehensive evaluation of the existing system was needed to determine how to meet the new discharge permit requirements. The result of this evaluation is the MWMC Facilities Plan. The MWMC Facilities Plan determined that the existing regional wastewater system does not have sufficient capacity to meet state and federal discharge requirements and recommended $144--$160 million (in 2004 dollars) in capital improvement projects to provide adequate capacity for growth through 2025.

The acknowledged Metro Plan and 2001 PFSP (the Land Use Plans) did not include the capital improvement projects that would be needed to meet state and federal discharge requirements through the year 2025. The Land Use Plans needed to be updated to include all existing regional

wastewater facilities and planned regional wastewater projects, so that the MWMC Facilities Plan would be consistent with them. Therefore, in 2004, MWMC proposed several changes to the Metro Plan and PFSP. The proposed changes to the PFSP included adding three tables (4a, 4b and 16a) to describe the projects recommended by the MWMC Facilities Plan and their projected cost and timing, and modifying Map 2 to show the location of the planned projects[1]. Table 4a listed three anticipated wastewater *treatment* system projects: Project 300, WPCF Treatment Project; Project 301, Residuals Treatment Project; and Project 302, Beneficial Reuse Project. Table 4b listed three anticipated *collection* system projects: Project 303, Willakenzie Pump Station; Project 304, Screw Pump Station; and Project 305, Glenwood Pump Station. Map 2 depicted the general physical locations of these projects and Table 16a provided an estimate of the cost of each project and its estimated completion date.

The Springfield City Council adopted the proposed amendments (Adopted Amendments) to the Metro Plan and PFSP on July 19, 2004 by Ordinance Nos. 6013 and 6004 respectively. Eugene and Lane County adopted similar ordinances adopting identical amendments. HBA disagreed with the Adopted Amendments and filed appeals with LUBA against the ordinances in late July, 2004.

HBA APPEAL TO LUBA:

HBA appealed the Adopted Amendments to the Land Use Plans on numerous grounds (i.e. assignments of error). HBA's first assignment of error argued that the Ordinances violated Goal 11 land use requirements because: 1) the lists of projects in Tables 4a and 4b were "categories" of projects; not projects; 2) the project descriptions were not sufficiently detailed; and 3) the cost estimates in Table 16a were deficient because they were based on "categories" of projects and not individual projects. Essentially, HBA wanted the Cities and Lane County to take the exact list of projects recommended in the MWMC Facilities Plan and incorporate it verbatim into the PFSP. HBA's other assignments of error were rejected by LUBA and will not be discussed.

LUBA'S DECISION:

LUBA's remand is limited to an instruction to the Cities and County that Project 300 (WPCF Treatment Project) should be described with greater specificity. LUBA suggested that the Cities and County also take a second look at the descriptions for Projects 301 (Residuals Treatment Project) and Project 302 (Beneficial Reuse Project) to see if greater specificity was warranted, but did not require that these project descriptions be revised.

REMAND RESPONSE:

In response to LUBA's remand, legal counsel and staff recommend four modifications to the PFSP. A complete copy of the Adopted Amendments is attached, with the recommended remand revisions shown in legislative format (Attachment 2).

1) Table 4a. First, staff recommends the addition of Projects 300A to 300I to provide the greater specificity expressly required by LUBA as to Project 300. Although not expressly required, staff also recommends the addition of Projects 301A, 301B, 302A and 302B.

---

[1] A new Map 2a was inserted to show the location of the existing regional wastewater system.

[2] Other changes were recommended, but they were not part of the appeal to LUBA.

Staff believes these additions are advisable in light of LUBA's directive to re-evaluate Projects 301 and 302.

2) Maps 2 and 2a. Staff recommends that Map 2 be modified to depict all of the projects and sub-projects, including the projects shown on Map 2 of the 2001 PFSP. Map 2a, contained in the Adopted Amendments, was misprinted. Staff also recommends that Map 2a be replaced with the correct map (from the Technical Background Report). The maps shown in Attachment 2 to this memo are the "misprinted" maps and are included for comparison with the corrected maps depicted in Attachment 1.

3) Table 16a. Because additional sub-projects were added to Table 16a, staff recommends that corresponding additions be made to Table 16a. The appropriate cost and timing estimates are set forth for each sub-project. The cost estimates for projects 300, 301 and 302 are lower than they were in the Adopted Amendments because several of the capital improvement projects recommended by the MWMC Facilities Plan are not "projects," as that term is defined in the Oregon Administrative Rules governing public facilities planning. Therefore, it is not appropriate for the cost of those capital improvement projects to be included in the PFSP.

4) Changes to the Text. Staff recommends the addition of text to the end of the "Treatment" discussion on page 4 of the remand revisions, to summarize the three treatment projects. Staff also recommends adding a discussion of the regional wastewater system's capacity, following the "Conveyance"dicussion on page 4 of the remand revisions. OAR 660-011-0020(2) requires that a public facility plan describe the capacity of each public facility. Although the data regarding capacity was contained in the record before the Council, the Adopted Amendments were not as clear as they could have been regarding this requirement. Therefore, an explicit description of existing capacity is recommended.

All of the evidence required to make the remand revisions is contained in the record that was before the Cities and County when they adopted the Adopted Amendments. Therefore, no additional analysis, documentation or Planning Commission review is required.

CHANGES TO THE ORDINANCES

Ordinances 6092 and 6093 each contained a clause stating that the Adopted Amendments to the Land Use Plans do not become effective until all three of the following have occurred: 1) the ordinance has been acknowledged; 2) at least 30 days have passed since the ordinance was approved; and 3) both Eugene and Lane County had adopted similar ordinances. Because the LCDC appealed the Adopted Amendments, the first condition has not been met. Therefore, the Adopted Amendments to the Land Use Plans are **not** in effect.

Legal Counsel and staff recommend adopting a new ordinance that modifies the previous ordinances and makes the remand revisions immediately effective[3] so that MWMC has the ability to obtain the needed approvals from DEQ and permits from the City of Eugene to

[3] The Council should be aware that, even if the remand revisions are immediately *effective*, they will not be *acknowledged* until all appeal periods have again passed. Therefore, interim permit approvals will not be issued pursuant to an acknowledged Metro Plan or PFSP. However, staff believes that any risk created by the lack of an acknowledged plan is outweighed by the danger of MWMC not being able to meet its permit requirements.

commence needed construction projects over the next several months. Construction must begin promptly in order to achieve mandatory regulatory compliance by the year 2010. Any delay now would affect all future stages of construction, including funding, designing the projects, bidding the projects and, finally, constructing them. Unless the projects are completed on schedule, MWMC could violate its NPDES permit.

RECOMMENDATION AND REQUESTED ACTION:

Legal Counsel and staff recommend that the Council adopt an ordinance that incorporates expanded MWMC facility projects descriptions in response to the limited LCDC remand, and that makes the remand revisions effective upon adoption pursuant to ORS 197.625(3)(a). Therefore, Council is requested to consider adoption of Ordinance No. _____, as proposed following the public hearing on January 17, 2006.

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

HOME BUILDERS ASSOCIATION OF LANE COUNTY and HOME BUILDERS CONSTRUCTION COMPANY,
Petitioners,

vs.

CITY OF SPRINGFIELD, CITY OF EUGENE and LANE COUNTY,
Respondents,

and

METROPOLITAN WASTEWATER MANAGEMENT COMMISSION,
Intervenor-Respondent.

LUBA Nos. 2004-118, 2004-122, 2004-126, 2004-127 and 2004-142

FINAL OPINION AND ORDER

Appeal from City of Springfield, City of Eugene and Lane County.

Bill Kloos, Eugene, filed the petition for review and argued on behalf of petitioner. With him on the brief was the Law Office of Bill Kloos, PC.

Meg E. Kieran, Springfield, filed a joint response brief and argued on behalf of respondent City of Springfield. With her on the brief was Harold, Leahy and Kieran.

Emily N. Jerome, Eugene, filed a joint response brief and argued on behalf of respondent City of Eugene. With her on the brief were Jerome Lidz and Harrang Long Gary Rudnick, PC.

Stephen L. Vorhes, Assistant County Counsel, Eugene, filed a joint response brief and argued on behalf of respondent Lane County.

G. David Jewett, Springfield, filed a joint response brief and argued on behalf of intervenor-respondent. With him on the brief was Thorp Purdy Jewett Urness Wilkerson, PC.

HOLSTUN, Board Member; DAVIES, Board Chair; BASSHAM, Board Member, participated in the decision.

REMANDED 09/02/2005

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal city and county decisions that adopt amendments to the Eugene-Springfield Metropolitan Area General Plan (Metro Plan) and the Eugene-Springfield Public Facilities and Services Plan (PFSP).[1] In this appeal we refer to these amendments as the PFSP amendments.

INTRODUCTION

The Metropolitan Wastewater Management Commission (MWMC), which was created by an intergovernmental agreement between the cities and county, adopted a MWMC Facilities Plan for the Eugene-Springfield Wastewater Treatment Facilities (MWMC

---

[1] A list and explanation of the more important acronyms and abbreviated document titles that we use in this opinion is set out below in alphabetical order to provide a single point of reference to assist in keeping up with them.

Metro Plan. The Eugene-Springfield Metropolitan Area General Plan (Metro Plan), along with numerous refinement plans, is the comprehensive plan for the cities of Eugene and Springfield and the urban area of Lane County. Citations in this opinion to the Metro Plan are to the Metro Plan as amended through 2002. The Metro Plan defines refinement plan, as follows:

> "Refinement plan: A detailed examination of the service needs and land use issues of a specific area, topic, or public facility. Refinement plans of the Metro Plan can include specific neighborhood plans, special area plans, or functional plans (such as TransPlan) that address a specific metro Plan element or sub-element on a city-wide or regional basis." Metro Plan V-5.

MWMC. The Metropolitan Wastewater Management Commission. An entity that was created by an intergovernmental agreement between the cities of Eugene and Springfield and Lane County, to manage and operate a regional wastewater collection and treatment system.

MWMC Facilities Plan. The Metropolitan Wastewater Management Commission Facilities Plan for the Eugene-Springfield Regional Wastewater Treatment Facilities, which was adopted in 2004. The city and county decisions adopting the MWMC Facilities Plan are the subject of this appeal.

PFSP. The Eugene-Springfield Public Facilities and Services Plan (PFSP) is a Metro Plan refinement plan that was adopted to comply with the requirements of Statewide Planning Goal 11 (Public Facilities and Services). City and county decisions adopting amendments to the PFSP and Metro Plan, which are related to the MWMC Facilities Plan, are the subject of a different LUBA appeal, LUBA Nos. 2004-090, 2004-105, and 2004-114.

Facilities Plan) on May 6, 2005. Thereafter, the cities and county adopted that MWMC Facilities Plan. Those decisions were appealed to LUBA. In a separate decision issued this date, we dismiss that appeal and explain the relationship between that consolidated appeal and this consolidated appeal. *HBA of Lane County v. City of Springfield, City of Eugene and Lane Co.*, ___ Or LUBA ___ (LUBA Nos. 2004-090, 2004-105 and 2004-114). For the reasons explained in that opinion, we conclude that the MWMC Facilities Plan was not adopted by the cities and county to comply with Goal 11 (Public Facilities and Services) or the Goal 11 administrative rule at OAR chapter 660, division 11. We agreed with the cities and county that the MWMC Facilities Plan was adopted for other purposes and, therefore, the decisions adopting that MWMC Facilities Plan are not land use decisions.

In reaching our conclusion that the decisions adopting the MWMC Facilities Plan are not land use decisions, we explained that the related decisions that are before us in this appeal are land use decisions. The land use decisions that are before us in this consolidated appeal are the cities' and county's attempt to amend the Metro Plan and PFSP so that the public facilities that are called for in the MWMC Facilities Plan can be constructed. The PFSP is the cities' and county's Goal 11 public facility plan. The regional sewerage collection and treatment facilities that are recommended in the MWMC Facilities Plan were not identified in the PFSP when the MWMC Facilities Plan was adopted. In adopting the disputed PFSP and Metro Plan amendments, we understand the cities and county to have been attempting to amend their Goal 11 public facilities plan so that it will be consistent with the MWMC Facilities Plan and the projects that are recommended in the MWMC Facilities Plan can be constructed consistently with the amended PFSP and Metro Plan.

FIRST ASSIGNMENT OF ERROR

The question presented in the first assignment of error is whether the Metro Plan and PFSP amendments that have been adopted by respondents are sufficient to comply with the public facility planning requirements imposed by Goal 11 and the Land Conservation and

Development Commission's (LCDC's) Goal 11 administrative rule, OAR chapter 660, division 11. The dispute under the first assignment of error concerns a number of new regional wastewater collection and treatment system improvement projects that are included for the first time in the Metro Plan and the PFSP by the challenged amendments.[2] Petitioners contend that the identification and description of those improvement projects in the PFSP and Metro Plan amendments is too general, and that far more specificity is required under the Goal 11 rule. All parties agree that the six improvement projects listed in the PFSP and Metro Plan amendments were derived from a larger more detailed list of improvement projects in the MWMC Facilities Plan. We illustrate below the manner in which those improvement projects are listed and described in the MWMC Facilities Plan and PFSP and Metro Plan amendments, before turning to the relevant provisions of the Goal 11 administrative rule and the parties' arguments.

A. MWMC Facilities Plan Improvement Projects

Forty-six regional wastewater facility improvement projects, in 13 separate phases, are listed in Table 7.7-2 of the MWMC Facilities Plan, along with the estimated cost of each project. Table 7.7-2 is almost six pages long. We set out one of the six pages (Record 2073) on the following page to illustrate the level of detail in the listing of facility improvement projects, and their costs, in the MWMC Facilities Plan. The MWMC Facilities Plan actually goes further and includes 24 "Project Fact Sheets" that provide more detailed descriptions of each project. Record 2113-36. To illustrate, we have also included the project fact sheet page that describes the "South Aeration Basin Improvements" and "Outfall Mixing Zone Study" projects. Record 2114.

---

[2] The PFSP that respondents adopted in 2001, along with related provisions in the Metro Plan itself, proposed improvements to the local portions of the wastewater collection system, but proposed no regional wastewater system improvement projects.

TABLE 7.7-2
Recommended Project Phasing Plan with Capital Cost Estimates
MWMC Facilities Plan, Eugene-Springfield

Phase	Description	Cost Estimates ($)
South aeration basin	Add step feed, anoxic selectors, and fine bubble diffusers. Remove hydraulic restrictions in both south and north basins (effluent gates). Includes future primary effluent flow control gates for both north and south basins.	$6,900,000
Outfall mixing zone study	Update 1994 Mixing Zone Study to account for additional 100 mgd (approximate) bankside outfall capacity and for changes to the Willamette River morphology that may have occurred since the last study was conducted	$150,000
Temporary construction management facilities	Modular space at WPCF for staff to manage construction of capital projects	$100,000
Fiber Optic Wiring	Install wiring between BMF and WPCF	$10,000
Digester Improvements	Digester mixing improvements for existing three digesters	$2,000,000
	Phase 1 Subtotal	**$15,660,000**
Phase 2 (2005/2006)		
Secondary Clarifier Enhancements - Part 2	Baffle, add inlet energy dissipation, change out flocculation well, construct outboard launder, and retrofit suction header for existing eight clarifiers; enhancement conducted in two parts, each part consisting of four clarifiers	Funded in FY2004/2005
River Avenue Improvements	From existing MWMC FY 03/04 Budget - Regional Wastewater Program; assessment to MWMC from Eugene revised from $228K to $330K in February 2004	$330,000
Biocycle Farm - Part 2	130 acres - site preparation begins in 8/05; planting in 3/06	$300,000
GBT Building Expansion (Waste Activated Sludge Thickening)	Add a third gravity belt thickener (GBT) with associated at grade building. Assumes additional basement floor space is not required.	$2,500,000
Odorous Air Treatment Expansion - Part 1	Two 14-foot diameter, 30 foot tall bioscrubber tower for air collected from two primary clarifier center wells and launders and new sludge building addition	$2,300,000
Biocycle Farm Distribution Equipment	Four hose reels for Biocycle Farm	$250,000
WWFMP Update	Evaluate recently collected collection system flow monitoring data, update and run collection system model, and confirm (or revise) convey and treat approach	$250,000

1

2

Project Name:	South Aeration Basin Improvements
Description:	Add step feed, anoxic selectors, and fine bubble diffusers to south aeration basin. Remove hydraulic restrictions in both south and north aeration basins (effluent gates). Includes future primary effluent flow control gates for both north and south aeration basins.
Justification:	Increase the dry weather aeration basin treatment capacity to 65 mgd with respect to ammonia (i.e., with nitrification) and increase the sustained (i.e., on a weekly basis) wet weather treatment capacity to 130 mgd.
Project Driver:	NPDES permit includes ammonia limit requiring nitrification in dry weather and expansion of wet weather capacity to treat wet weather flows to meet NPDES monthly and weekly suspended solids limits.
Project Trigger:	Maximum month dry weather flow of 25 mgd requiring nitrification. May flows and temperatures could require the use of the south aeration basins in conjunction with the north aeration basins. Peak wet weather flows above 103 mgd require hydraulic modifications.
Type of Project	50% Capacity; 50% Performance
Estimated Project Cost (2004 Dollars):	$6,900,000
Phasing:	Budgeted for FY2004/05

Project Name:	Outfall Mixing Zone Study
Description:	Update 1994 Mixing Zone Study to account for additional 100 mgd (approximate) bankside outfall capacity and for changes to the Willamette River morphology that may have occurred since the last study was conducted
Justification:	
Project Driver:	
Project Trigger:	
Type of Project	100% Performance
Estimated Project Cost (2004 Dollars):	$150,000
Phasing:	Budgeted for FY2004/05

2114

1

2

Read together, Table 7.7.2 and the individual "Project Fact Sheets" present a detailed description of the recommended public facility projects in the MWMC Facilities Plan.

B. The PFSP and Metro Plan Amendments

The PFSP and Metro Plan Amendments list only six regional wastewater system improvement projects. Those projects and their estimated costs and completion dates are set out in Tables 4a, 4b and 16a which appear at Record 643 and 646 and are set out below.

Table 4a
MWMC Wastewater Treatment System Improvement Projects

Project Number	Project Name/Description
300	WPCF Treatment Project
301	Residuals Treatment Project
302	Beneficial Reuse Project

Table 4b
MWMC Primary Collection System Improvement Projects

Project Number	Project Name/Description
303	Willakenzie Pump Station
304	Screw Pump Station
305	Glenwood Pump Station

-

Table 16a
MWMC Wastewater Treatment and, Collection System Improvements, Rough Cost Estimate, and Timing Estimate

Project Number	Project Name/Description	Cost* ($000)	Estimated Completion Year
300	WPCF Treatment Project	$120,500	2025
301	Residuals Treatment Project	$6,000	2018
302	Beneficial Reuse Project	$25,000	2018
303	Willakenzie Pump Station	$6,000	2010
304	Screw Pump Station	$2,000	2010
305	Glenwood Pump Station	$500	2012

C. The Goal 11 Rule

It is a tedious exercise, but we begin by reviewing the key sections of LCDC's Goal 11 rule. That exercise is necessary, because there is nothing in Goal 11 or the Goal 11 rule that clearly and expressly supports either respondents' or petitioners' position concerning the requisite level of specificity that must be included in a public facility plan project list. However, there are provisions in the Goal 11 rule that suggest significantly more specificity is required than the cities and county included in the Metro Plan and PFSP amendments that are before us in this appeal.

We begin with the definitions of "public facility," "public facility project," and "public facility systems."[3] These definitions are not particularly helpful in answering the

[3] OAR 660-011-0005 is the Goal 11 rule definition section, and it provides the following relevant definitions:

> "'Public Facility': A public facility includes water, sewer, and transportation facilities, but does not include buildings, structures or equipment incidental to the direct operation of those facilities." OAR 660-011-0005(5).
>
> "'Public Facility Project': A public facility project is the construction or reconstruction of a water, sewer, or transportation facility within a public facility system that is funded or utilized by members of the general public." OAR 660-011-0005(6).

question that must be answered under this assignment of error. The OAR 660-011-0005(6) definition of public facility project gives no hint regarding the required level of specificity when local governments "list" and "describe" public facility projects, as required by OAR 660-011-0020(2). Similarly, the OAR 660-011-0005(5) definition of public facility provides no real guidance regarding how to go about listing individual public facility projects, although it does specify that incidental "buildings, structures, or equipment," are not included.[4] Finally, the definition of public facility systems is not particularly helpful either, but it does explain that a sanitary sewer system is a collection of facilities and is made up of a treatment system and a collection system.

We turn next to OAR 660-011-0010(1)(b) which requires that a Goal 11 public facilities plan must include:

> "A list of the *significant* public facility projects which are to support the land uses designated in the acknowledged comprehensive plan [and p]ublic facility project descriptions or specifications of these projects as necessary[.]" (Emphasis added.)

OAR 660-011-0020(2) and (3) elaborate on the "list of * * * significant public facility projects" that is required by OAR 660-011-010(1)(b) and 660-011-0045. Petitioners and respondents draw opposite conclusions from these sections of the rule. OAR 660-011-0020

"'Public Facility Systems': Public facility systems are those facilities of a particular type that combine to provide water, sewer or transportation services.

"For purposes of this division, public facility systems are limited to the following:

"* * * * *

"(b) Sanitary sewer:

"(A) Treatment facilities system;

"(B) Primary collection system." OAR 660-011-0005(7).

[4] While a parking garage, a security guard structure, and lawn mowing equipment would seem to fit easily within the meaning of "incidental buildings, structures or equipment," the ultimate scope of this qualification on the definition of public facility is unclear.

specifically addresses the inventory and the list of public facility projects that must be included in a Goal 11 public facility plan.[5] OAR 660-011-0020(2) calls for identification of "significant public facility projects" and requires that respondents "list the title of the project and describe each project facility project in terms of the type of facility, service area, and facility capacity." OAR 660-011-0020(3) expressly recognizes that "project descriptions" may need to be changed later during more detailed planning and construction phases. OAR 660-011-020(3) goes on to require that Goal 11 public facility plans "anticipate * * * changes as specified in OAR 660-011-0045." As relevant here, OAR 660-011-0045 does two things.[6]

---

[5] OAR 660-011-0020 provides, in part:

> "(2) The public facility plan shall identify *significant* public facility projects which are to support the land uses designated in the acknowledged comprehensive plan. The public facility plan shall list the title of the project and describe each public facility project in terms of the type of facility, service area, and facility capacity.
>
> "(3) Project descriptions within the facility plan may require modifications based on subsequent environmental impact studies, design studies, facility master plans, capital improvement programs, or site availability. The public facility plan should anticipate these changes as specified in OAR 660-011-0045." (Emphasis added.)

[6] OAR 660-011-0045(2), (3) and (4) provide:

> "(2) Certain public facility project descriptions, location or service area designations will necessarily change as a result of subsequent design studies, capital improvement programs, environmental impact studies, and changes in potential sources of funding. It is not the intent of this division to:
>
> > "(a) Either prohibit projects not included in the public facility plans for which unanticipated funding has been obtained;
> >
> > "(b) Preclude project specification and location decisions made according to the National Environmental Policy Act; or
> >
> > "(c) Subject administrative and technical changes to the facility plan to ORS 197.610(1) and (2) or 197.835(4).
>
> "(3) The public facility plan may allow for the following modifications to projects without amendment to the public facility plan:
>
> > "(a) Administrative changes are those modifications to a public facility project which are minor in nature and do not significantly impact the project's general description, location, sizing, capacity, or other general characteristic of the project;

First, OAR 660-011-0045(2) expressly recognizes that the OAR 660-011-0020(2) Goal 11 public facility plan project list and description will likely have to be changed to accommodate (1) projects that receive unanticipated funding in the future, (2) changes required by the National Environmental Policy Act, and (3) administrative and technical changes. Second, OAR 660-011-0045(3) explains when those future changes can occur without amending the Goal 11 public facilities plan, and OAR 660-011-0045(4) identifies when those future changes will require a Goal 11 public facilities plan amendment.

The elements that must be included in a public facility plan are set out in OAR 660-011-0010.[7] There are a number of required elements. For purposes of petitioners' first

---

> "(b) Technical and environmental changes are those modifications to a public facility project which are made pursuant to 'final engineering' on a project or those that result from the findings of an Environmental Assessment or Environmental Impact Statement conducted under regulations implementing the procedural provisions of the National Environmental Policy Act of 1969 **(40 CFR Parts 1500-1508)** or any federal or State of Oregon agency project development regulations consistent with that Act and its regulations.
>
> "(c) Public facility project changes made pursuant to subsection (3)(b) of this rule are subject to the administrative procedures and review and appeal provisions of the regulations controlling the study **(40 CFR Parts 1500-1508** or similar regulations) and are not subject to the administrative procedures or review or appeal provisions of ORS Chapter 197, or OAR Chapter 660 Division 18.
>
> "(4) Land use amendments are those modifications or amendments to the list, location or provider of, public facility projects, which significantly impact a public facility project identified in the comprehensive plan and which do not qualify under subsection (3)(a) or (b) of this rule. Amendments made pursuant to this subsection are subject to the administrative procedures and review and appeal provisions accorded 'land use decisions' in ORS Chapter 197 and those set forth in OAR Chapter 660 Division 18."

[7] As relevant, OAR 660-011-010 provides:

> "(1) The public facility plan shall contain the following items:
>
> "(a) An inventory and general assessment of the condition of all the significant public facility systems which support the land uses designated in the acknowledged comprehensive plan;
>
> "(b) A list of the significant public facility projects which are to support the land uses designated in the acknowledged comprehensive plan. Public facility project descriptions or specifications of these projects as necessary;

assignment of error, the key elements are the list of significant public facilities projects, and rough cost estimates for those projects. OAR 660-011-0010(1)(b) and (c). OAR 660-011-0010(3) is also potentially significant. That rule makes it clear that if there are existing planning documents that meet "all or some of the requirements" of OAR chapter 660, division 11, those other existing planning documents may be "incorporated by reference into the public facility plan" that is required by the rule. In that event, only the referenced and incorporated parts of such existing plans become part of the Goal 11 public facility plan.

Petitioners and respondents read the Goal 11 rule to permit very different levels of specificity in the facility project list that is required under OAR 660-011-0020(2). Petitioners argue:

> "The six 'projects' added to the PFSP in Tables 4a and 4b are really categories of multiple discrete construction projects. One can't tell from the list of six, because the PFSP amendments are so cryptic. The six 'projects," with their

---

> "(c) Rough cost estimates of each public facility project;
>
> "(d) A map or written description of each public facility project's general location or service area;
>
> "(e) Policy statement(s) or urban growth management agreement identifying the provider of each public facility system. If there is more than one provider with the authority to provide the system within the area covered by the public facility plan, then the provider of each project shall be designated;
>
> "(f) An estimate of when each facility project will be needed; and
>
> "(g) A discussion of the provider's existing funding mechanisms and the ability of these and possible new mechanisms to fund the development of each public facility project or system.
>
> "* * * * *
>
> "(3) It is not the purpose of this division to cause duplication of or to supplant existing applicable facility plans and programs. Where all or part of an acknowledged comprehensive plan, facility master plan either of the local jurisdiction or appropriate special district, capital improvement program, regional functional plan, similar plan or any combination of such plans meets all or some of the requirements of this division, those plans, or programs may be incorporated by reference into the public facility plan required by this division. Only those referenced portions of such documents shall be considered to be a part of the public facility plan and shall be subject to the administrative procedures of this division and ORS Chapter 197."

total of only 18 words of project titles and descriptions are opaque, or nearly so, in the PFSP. What is really going to happen over the 20-year period is unclear from the PFSP. Instead, it is spelled out in Chapter 7 of the MWMC 2004 Facilities Plan, which is disclaimed as a land use plan.

"The list of six categories of projects in Tables 4a and 4b needs to be broken down into the approximately four dozen construction projects that are contained in the six categories. These are the 'projects' anticipated by the Rule. The Rule requires an identification of 'projects' in the plan, not categories of projects. The projects have been identified in the MWMC 2004 Facilities Plan, but that is not the land use plan, according to the Respondents.

"If LUBA would entertain finding that the six categories of projects are 'projects' in the meaning of the [Goal 11] Rule, then LUBA should be just as willing to find that a single project listing would be ok, too. It would be a very small step to go from the list of 6 to a list of 1 project, described as 'upgrades to MWMC wastewater conveyance and treatment facilities.' Neither the current approach nor a single mega project description is what the rule anticipates." Petition for Review 17.

Respondents counter:

"Petitioners' interpretation of the Goal 11 rules inserts words into the rules that are not there. Petitioners construe the term 'list of significant public facility projects' in OAR 660-011-0010(1)(b) to mean 'detailed list' of 'each and every' public facility project. In addition, Petitioners insert the word 'discrete' into the definition of public facility project, which is 'the construction and reconstruction of a water, sewer or transportation facility within a public facility system.' The rule does not include the word 'discrete.'

"Looking at the plain meaning of the words, Websters II New College Dictionary (Hough Miffliin Co; 2001) defines 'significant' in relevant part as: 'having or expressing a meaning: meaningful; momentous; important.' The term 'facility' is defined as something created to serve a particular function. Thus, the requirement that the land use plan include a 'list of significant public facility projects,' (where 'projects' is defined in the rule as the construction of or reconstruction of a facility) requires local governments to identify important or meaningful construction or reconstruction improvements to particular facility systems in terms of their function.

"The six project titles named in the 2004 PFSP tables satisfy this requirement. They are representative of particular meaningful functions and geographic areas in the regional wastewater treatment and collection systems. Nothing more is required by OAR 660-011-0010(1)(b)." Respondents' Brief 24.

We are unable to agree completely with either petitioners or respondents. Petitioners' argument that the Goal 11 public facility plan project list and description that is required by OAR 660-011-0010(1)(b) and 660-011-0020(2) must be exactly the same as the project list that is included in the MWMC Facilities Plan finds no support in the text of the Goal 11 rule. As respondents correctly note, both of those sections of the rule include the adjective "significant," and petitioners make no attempt to argue that all of the public facility projects in the MWMC Facilities plan are significant.[8] Petitioners also make no attempt to differentiate among the six projects that are listed in Tables 4a and 4b. With regard to Projects 303, 304 and 305, we note there are three projects listed in Table 7.7-2 that seem to correspond exactly or very closely with both the description and costs listed in Tables 4a and 4b for those three projects.[9] Absent a more developed and focused argument from petitioners concerning Projects 303, 304 and 305, we reject petitioners' challenge to the adequacy of the listing and description of those projects.

On the other hand, respondents make no attempt to explain why the concept of "public facility projects" should be dramatically different in the MWMC Facilities Plan and the Goal 11 public facilities plan. Even if the Goal 11 public facilities plan operates at a more general regional level, the cryptic reference to "WPCF Treatment Project" in Project 300 does not suffice as an adequate description for a significant public facility project that in

---

[8] That would probably be difficult to do. One of the public facility projects listed on the page from Table 7.7-2 included earlier in this opinion lists a $10,000 "Fiber Optic Wiring" project. Without deciding the question here, that hardly seems like a "significant public facility project" that must be separately listed and described in a Goal 11 public facility plan. Other listings of public facility projects in Table 7.7-2 include listings for MWMC Facility Plan updates. Record 2073-77. It seems somewhat questionable that those are accurately classified as "significant public facility projects."

[9] Phase 2 projects include a project entitled "Screw Pump Station Expansion," which is described as "Install 5th pump to increase capacity from 84 to 99 mgd," with an estimated cost of "$1,700,000." Record 2074. Phase 2 also includes another project entitled "Willakenzie Pump Station Expansion," which is described as "install four additional 14-mgd pumps to increase capacity from 80 to 135 mgd," with an estimated cost of "$6,000,000." *Id.* Finally, Phase 7 includes a project entitled "Glenwood Pump Station Upgrade," which is described as "from existing MWMC FY 03/04 Budget – Regional Wastewater Program," with an estimated cost of "$500,000." Record 2075.

fact is made up of a large number of individual projects in the MWMC Facilities Plan. Those individual projects will be constructed in a number of different phases over a 15 year period at a total cost of $120 million. We agree with petitioners that, at a minimum, Project 300 must be broken down into its significant public facility project components. While that breakdown does not necessarily need to match the project detail and specificity that is provided in the MWMC Facilities Plan, we agree with petitioners that the current Project 300 description is either meaningless or describes a number of significant public facilities projects that are set out in the MWMC Facilities Plan. We particularly agree with petitioners that the OAR 660-011-0045(3) and (4) provisions that describe when and how future public facility project changes must be reflected in Goal 11 public facility plan amendments are meaningless if such a broad and general listing and description is permissible under OAR 660-011-0010(1)(b) and 660-011-0020(2).

Because we must remand the challenged decisions so that respondents may more specifically list and describe the significant public facility projects that are now grouped as Project 300 in any event, we do not consider whether additional specificity is required for Projects 301 and 302. The parties have not directed their arguments specifically at those projects and we have some question about the particular projects in the MWMC Facilities Plan that make up Projects 301 and 302. However, it appears as though further breakdowns are possible and may be required under the Goal 11 rule for Projects 301 and 302 as well. On remand respondents must consider that question.

The further detail that will be required on remand to separately list the significant public facility projects in Project 300 and the further detail that may be required to separately list any separate significant public facility projects in Project 301 and 301 will resolve one of petitioners' objections concerning the cost estimates. Petitioners also object that the estimated total cost of facilities in the MWMC Facilities Plan is $144 million, whereas the estimated total in PFSP Table 16a is approximately $160 million. Respondents explain that

the $160 million figure includes the cost of a possible DEQ required improvement that is not included in the MWMC Facilities Plan total. We do not understand petitioners to dispute that explanation. We do not consider petitioners' arguments concerning cost estimates further.

The first assignment of error is sustained with regard to Projects 300, 301 and 302 and denied with regard to Project 303, 304 and 305.

SECOND ASSIGNMENT OF ERROR

In their second assignment of error, petitioners contend the challenged decisions violate Goal 2 (Land Use Planning) because the 2025 planning period identified in the Metro Plan and PFSP amendments for the recommended wastewater treatment facility improvements is different from the planning period specified elsewhere in the Metro Plan for other planning purposes. Petitioners cite nothing in the statewide planning goals that mandates that planning periods for different planning considerations must in all cases be identical. Without further argument from petitioners regarding why these different planning periods constitute a *conflict* that amounts to a violation of Goal 2, we deny the second assignment of error.

THIRD ASSIGNMENT OF ERROR

Petitioners' argument under the third assignment of error relies in part on new Metro Plan policy G.9, which provides:

> "Wastewater conveyance and treatment shall be provided to meet the needs of projected growth inside the urban growth boundary that are capable of complying with regulatory requirements governing beneficial reuse or discharge of effluent and beneficial reuse or disposal of residuals." Record 18.

Petitioners contend that while the disputed PFSP and Metro Plan amendments propose facility improvements that will dramatically increase the MWMC regional wastewater treatment and disposal capacity, respondents "have ignored * * * the need for collection capacity that will allow development of undeveloped or underdeveloped areas in the [urban growth boundary]." Petition for Review 25. According to petitioners, this failure means the

challenged PFSP and Metro Plan amendments lack the "adequate basis in fact" that is required by Goal 2 and are inadequate to comply with Goal 11.

Respondents explain that the larger wastewater collection, treatment and reuse system is made up of a primary collection system which begins with private laterals that convey wastewater from private properties to the cities' collection systems which in turn convey that wastewater to the MWMC system of collection pipes and pumping stations. The MWMC collection pipes convey that wastewater to the regional water pollution control facility, a biosolids facility and a beneficial reuse facility. Respondents go on to respond to petitioners' argument as follows:

> "Collection system improvement projects are included in Table 4b and 16a and are pump station improvements. Tables 3 and 4 of the 2001 PFSP also describe planned collection system projects. The Executive Summary of the MWMC Facilities Plan describes the conveyance system; Chapter 3 also describes the condition of the existing wastewater conveyance system; Section 5.41 describes the design capacity of the conveyance system; and Section 7.1.2 recommends conveyance system improvements. The recommended conveyance system improvements are the Willakenzie Pump Station, the Glenwood Pump Station and the Screw Pump Station, which are included in the PFSP Tables 4b and 16a. There are no recommended projects related to sewer pipes. Hence, no such projects are contained in Tables 4b and 16a. In fact, Section 7.1.1 of the MWMC Facilities Plan expressly states that additional conveyance system improvements are not necessary.
>
> "Petitioners do not, and cannot explain how the above descriptions, findings and explanations in the record and the list of pump station improvement projects are not adequate to serve the existing and future collection needs of the service area. As such, the Board should deny Petitioners' third assignment of error." Respondents' Brief 37-38 (citations and footnote omitted).

We are not sure we understand petitioners' argument. They seem to be arguing that more collection pipes or improved collection pipes will be needed to utilize the extra treatment capacity that the disputed PFSP and Metro Plan amendments recommend. We understand respondents to contend that with the wastewater treatment system improvements that are recommended in the PFSP and Metro Plan amendments and the MWMC Facilities Plan, no further improvements in the collection system are needed. Other than possibly

disagreeing with respondents' contention, petitioners offer no reason to question it. Without a more developed argument from petitioners under their third assignment of error, we agree with respondents that it does not present an additional basis for remand.

The third assignment of error is denied.

Respondents' decisions are remanded.

Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2004-118/122/126/127/142 on September 2, 2005, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Bill Kloos
Law Office of Bill Kloos
PO Box 11906
Eugene, OR 97440

Emily N. Jerome
Harrang Long Gary Rudnick PC
360 E 10th Avenue, Suite 300
Eugene, OR 97401

G. David Jewett
Thorp Purdy Jewett Urness & Wilkinson PC
1011 Harlow Road Suite 300
Springfield, OR 97477

Meg Kieran
Harold Leahy & Kieran
233 A Street Suite D
Springfield, OR 97477

Stephen L. Vorhes
Assistant County Counsel
125 E. 8th Street
Eugene, OR 97401

Dated this 2nd day of September, 2005.

Kelly Burgess
Paralegal

Kristi Seyfried
Administrative Specialist

EXHIBIT B
CHANGES TO THE PUBLIC FACILITIES AND SERVICES PLAN (PFSP)

1. Modify the text preceding existing Table 3 to read as follows:

Planned Wastewater System Improvements

Planned wastewater system improvement projects are listed in tables 3, 4, 4a and 4b. The general location of these facilities is shown in Map 2: *Planned Wastewater Facilities*, and Map 2a: Existing Wastewater Collection and Treatment Systems. **[NOTE: This map presently exists as Map 6 in the Technical Background Report: Existing Conditions and Alternatives and should be incorporated without change.]**

2. Insert, following Table 4, Tables 4a and 4b, as follows:

Table 4a
MWMC Wastewater Treatment System Improvement Projects

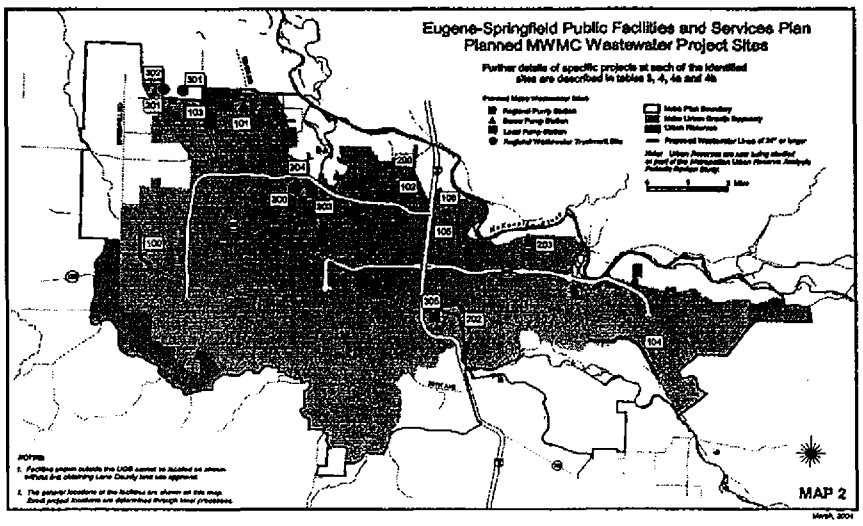
PROJECT #	PROJECT NAME	PROJECT DESCRIPTION
300	**WPCF Treatment Project**	**Includes several construction packages designed to manage and treat wastewater at the WPCF to the year 2025.**
300A	Preliminary Treatment	Increase preliminary treatment capacity of headworks to meet anticipated 2025 peak wet weather flows
300B	Primary Treatment	Enhance existing primary clarifiers and add primary sludge thickening facilities to increase primary treatment capacity to meet anticipated peak wet weather flows
300C	Secondary Treatment	Convert aeration basins, enhance existing secondary clarifiers, and add secondary clarifiers to increase secondary treatment capacity to meet anticipated peak wet weather flows
300D	Disinfection/Outfall	Convert disinfection system, and increase bankside outfall capacity
300E	Biosolids Treatment	Increase digestion capacity by enhancing existing digesters and sludge thickening capacity and/or adding a digester
300F	Filtration	Add filtration and build related infrastructure and support facilities
300G	Reuse Facilities	Expand effluent reuse capacity
300H	Odor Control	Expand and/or add odor control facilities

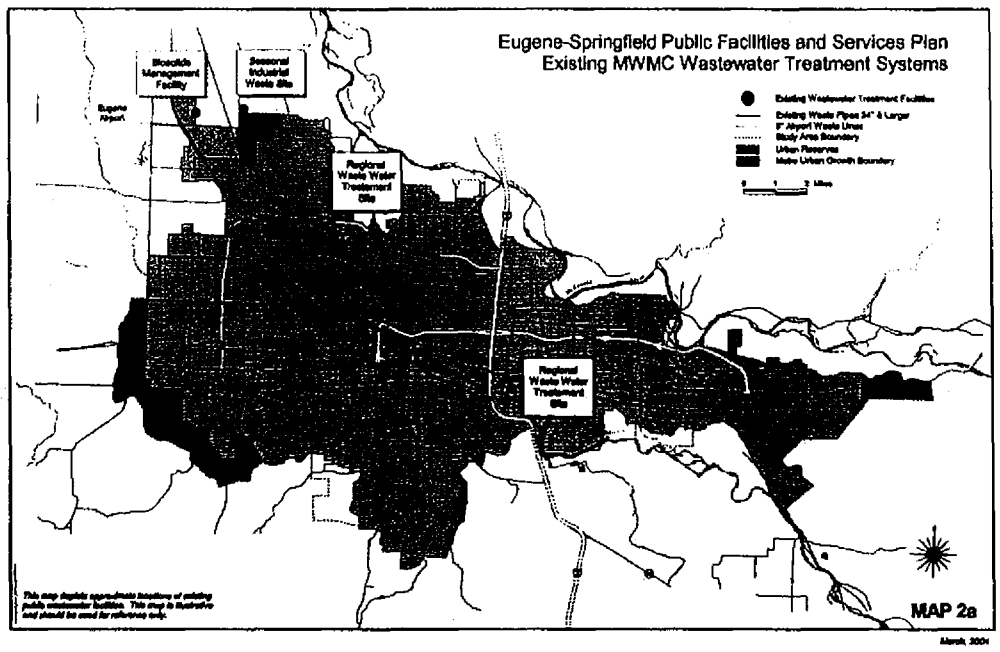
300I	Flow Management Facilities	Piping, pumping and related infrastructure improvements to allow parallel operation of primary and secondary treatment facilities
301	**Residuals Treatment Project**	**Includes several construction packages designed to manage and treat residuals.**
301A	Lagoon Rehabilitation	Rehabilitate lagoons at Biosolids Management Facility
301B	Composting Facility	Expand composting facility at Biosolids Management Facility
302	**Beneficial Reuse Project**	**Includes several construction packages designed to expand reuse of effluent.**
302A	Biocycle Farm	Expand biosolids land application area
302B	Effluent Reuse	Expand effluent reuse at Biocycle Farm (including former Seasonal Industrial Waste site)

Table 4b
MWMC Primary Collection System Improvement Projects

Project Number	Project Name/Description
303	Willakenzie Pump Station
304	Screw Pump Station
305	Glenwood Pump Station

3. Modify Map 2 to show Projects 300 through 305, and insert Map 2a.





4. Modify Chapter IV. Of the Public Facilities and Services Plan, by modifying the subdivision entitled "Wastewater System condition Assessment" (presently on page 82) to read as follows:

Wastewater System Condition Assessment

Treatment: ***MWMC Wastewater Treatment System***

MWMC existing infrastructure is monitored for problems that need to be addressed during operational and maintenance activities. MWMC has ongoing programs to help plan for and implement equipment replacement and major rehabilitation of existing systems. With these on going programs used to detect existing problems, the infrastructure can be maintained and preserved to help extend its useful life for future years.

In March of 2003, MWMC hired CH2M HILL to evaluate and plan for regional wastewater capital improvements that will serve the Eugene/Springfield urban growth boundary into year 2025. MWMC will need to implement the recommended improvements to meet regulatory requirements based on projected pollution loads and flows. CH2M HILL as part of its work to evaluate and plan for regional wastewater improvements has prepared a technical memo related to "Flow and Load Projections" dated April 12, 2004. This historical and projected information is being used to plan for needed MWMC capital improvements based on engineering evaluation methods and by comparing technology options. It is estimated that approximately $160 million dollars (in 2004 dollars) are needed for MWMC projects to address regulatory requirements and growth through year 2025.

The Water Pollution Control Facility (WPCF), located on River Avenue in Eugene, replaced the separate plants previously owned and operated by Eugene and Springfield. Its function is to meet the region's needs for increased sewerage service and ensure compliance with the facility's NPDES discharge permit.

The Residuals Treatment Project is located at the Biosolids Management Facility (BMF) on Awbrey Lane in Lane County. The BMF's function is to store, further stabilize, and dry digested biosolids received from the WPCF.

The Beneficial Reuse Project is located at the Biocycle Farm along Highway 99 in Lane County. The Biocycle Farm's function is to apply biosolids from the adjacent BMF to poplar trees, which absorb the water and nutrients contained in the biosolids.

Conveyance:
Conveyance capacity and inflow and infiltration (I/I) ratios are important criteria by which to assess the performance of a wastewater collection system. Conveyance capacity is a function of adequate pipe sizing and measures a system's ability to move effluent efficiently. Inflow and infiltration ratios express the amount of stormwater entering a sewer system through defective pipes and pipe joints, or through the cross connection of stormwater lines, combined sewers, catch basins, or manhole covers. Such extraneous stormwater entering the wastewater system unnecessarily burdens both conveyance and treatment facilities.

Capacity:
The capacity of the wastewater system is expressed in four measures: average flow, peak flow, biochemical oxygen demand (BOD) and total suspended solids (TSS). The system's current capacities and projected 2025 needed capacities are:

Capacity Measure	Current	2025
Average flow	49 mgd	59.3 mgd
Peak flow	175 mgd	277 mgd
BOD	66,000 lbs/day	74,000 lbs/day
TSS	71,600 lbs/day	87,600 lbs/day

Projects 300 through 305, described in Tables 4a and 4b, are designed to work together to increase the overall system capacities to meet the projected 2025 need.

5. Modify Chapter IV. Of the Public Facilities and Services Plan, by modifying the discussion of wastewater, in the subdivision entitled "Long-Term Service Availability Within Urbanizable Areas" (presently on page 97) to read as follows:

1. There are no areas within the metropolitan UGB that will be difficult to serve with wastewater facilities over the long-term (six to 20 years) assuming that public infrastructure specifications and requirements of the developing area can be addressed. Appropriate engineering design practices must be used during the development and expansion into sensitive areas that are approved for development (ex. – hillside construction, etc.). Expansion of the existing

collection system will be necessary to meet demands of growth over this time period.

2. Based on 2003 analysis, the Eugene-Springfield metropolitan area treatment facilities will require facility improvements to address both dry and wet weather regulatory requirements relating to pollutant loads and wastewater flows. Regional and local wastewater improvements to the collection and treatment systems are being planned for and will be implemented to allow for growth within the UGB and for regulatory compliance.

6. Add Table 16a following Table 16, as follows:

Table 16a
MWMC Wastewater Treatment and Collection System Improvements, Rough Cost Estimate, and Timing Estimate

Project Number	Project Name/Description		Cost (Millions)	Estimated Completion Year
300	**WPCF Treatment Project**		$120.3	
300A	Preliminary Treatment	($12.8)		2010
300B	Primary Treatment	($4.8)		2012
300C	Secondary Treatment	($24.7)		2017
300D	Disinfection/Outfall	($5.6)		2010
300E	Biosolids Treatment	($18.3)		2013
300F	Filtration	($20.2)		2020
300G	Reuse Facilities	($16.)		2018
300H	Odor Control	($6.9)		2012
300I	Flow Management Facilities	($11.)		2010
301	**Residuals Treatment Project**		$5.2	
301A	Lagoon Rehabilitation	($4.5)		2012
301B	Composting Facility	($.7)		2017
302	**Beneficial Reuse Project**		$4.6	
302A	Biocycle Farm	($0.6)		2008
302B	Effluent Reuse	($4.)		2017
303	**Willakenzie Pump Station**		$6.	2010
304	**Screw Pump Station**		$2.	2010
305	**Glenwood Pump Station**		$0.5	2012
	TOTAL:		$138.6	

**Cost estimated in 2004 dollars*

7. Add a new chapter to the Public Facilities and Services Plan, to be Chapter VI., reading as follows:

VI. Amendments to the Plan

This chapter describes the method to be used in the event it becomes necessary or appropriate to modify the text, tables or the maps contained in the Public Facilities and Services Plan ("the Plan").

Flexibility of the Plan

Certain public facility project descriptions, location or service area designations will necessarily change as a result of subsequent design studies, capital improvement programs, environmental impact studies and changes in potential sources of funding. The Plan is not designed to either prohibit projects not included in the plan for which unanticipated funding has been obtained, preclude project specification and location decisions made according to the National Environmental Policy Act, or subject administrative and technical changes to the plan to post-acknowledgement review or review by the Land Use Board of Appeals.

For the purposes of this Plan, two types of modifications are identified.

A. Modifications requiring amendment of the Plan.
The following modifications require amendment of the Plan:

1. Amendments, which include those modifications or changes (as represented by Table 16a) to the location or provider of public facility projects which significantly impact a public facility project identified in the comprehensive plan, and which do not qualify as administrative or technical and environmental changes, as defined below. Amendments are subject to the administrative procedures and review and appeal procedures applicable to land use decisions.
2. Adoption of capital improvement program project lists by any service provider does not require modification of this Plan unless the requirements of subparagraph 1 above are met.

B. Modifications permitted without amendment of the Plan.
The following modifications do not require amendment of this Plan:

1. Administrative changes are those modifications to a public facility project which are minor in nature and do not significantly impact the project's general description, location, sizing, capacity or other general characteristic of the project.
2. Technical and environmental changes are those modifications to a public facility project which are made pursuant to "final engineering" on a project or those which result from the findings of an Environmental Assessment or Environmental Impact Statement conducted under regulations implementing the procedural provisions of the National Environmental Policy Act of 1969 or any federal or state agency project development regulations consistent with that Act and its regulations.

Process for making Changes

A. Administrative and Technical or Environmental Changes. Any jurisdiction may make an administrative or technical and environmental change, as defined herein, by forwarding to each jurisdiction covered by this Plan, and to the Lane Council of Governments a copy of the resolution or other final action of the governing board of the jurisdiction authorizing the change.

B. Amendments

For purposes of processing amendments, as defined herein, such amendments are divided into two classes.

a. Type I Amendments include amendments to the text of the Plan, or to a list, location or provider of public facility projects which significantly impact a public facility project identified herein, which project serves more than one jurisdiction.

b. Type II amendments include amendments to a list, location or provider of public facility projects which significantly impact a public facility project identified herein, which project serves only the jurisdiction proposing the amendment.

C. Processing Amendments

Any of the adopting agencies (Lane County, Eugene, or Springfield) may initiate an amendment to this plan at any time on their own motion or on behalf of a citizen.

a. Type I amendments shall be forwarded to the planning commissions of the respective agencies and, following their recommendation, shall be considered by the governing boards of all agencies. If a Type I amendment is not adopted by all agencies, the amendment shall be referred to MPC for conflict resolution. Subsequent failure by agencies to adopt an MPC-negotiated proposal shall defeat the proposed amendment. If an amendment is adopted, all agencies shall adopt substantively identical ordinances

b. Type II amendments shall be forwarded to the Planning Commission of the initiating agency and, following their recommendation, shall be considered by the governing board of the initiating agency.

EXHIBIT B
~~PROPOSED~~ CHANGES TO THE PUBLIC FACILITIES AND SERVICES PLAN (PFSP)

1. Modify the text preceding existing Table 3 to read as follows:

Planned Wastewater System Improvements

Planned wastewater system improvement projects are listed in tables 3 4, 4a and 4b. The general location of these facilities is shown in Map 2: *Planned Wastewater Facilities*, and Map 2a: Existing Wastewater Collection and Treatment Systems. **[NOTE: This map presently exists as Map 6 in the Technical Background Report: Existing Conditions and Alternatives and should be incorporated without change.]**

2. Insert, following Table 4, Tables 4a and 4b, as follows:

Table 4a
MWMC Wastewater Treatment System Improvement Projects

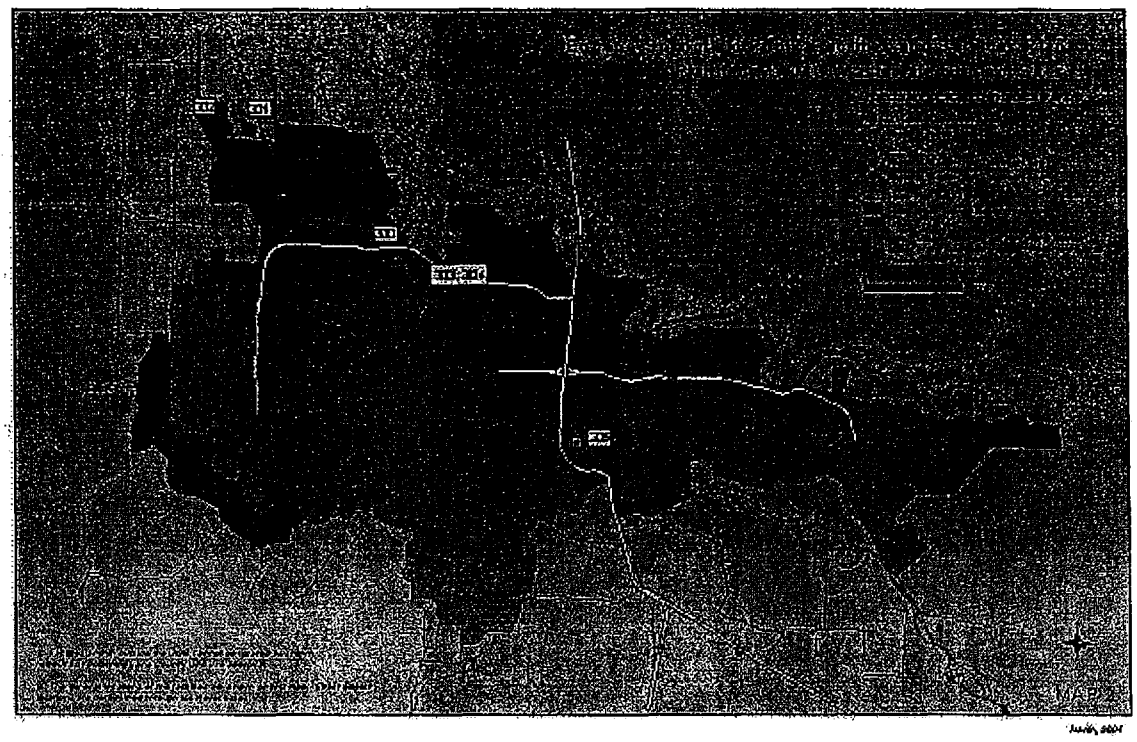
~~Project Number~~**PROJECT #**	~~Project Name/Description~~ **PROJECT NAME**	**PROJECT DESCRIPTION**
300	**WPCF Treatment Project**	**Includes several construction packages designed to manage and treat wastewater at the WPCF to the year 2025.**
300A	Preliminary Treatment	Increase preliminary treatment capacity of headworks to meet anticipated 2025 peak wet weather flows
300B	Primary Treatment	Enhance existing primary clarifiers and add primary sludge thickening facilities to increase primary treatment capacity to meet anticipated peak wet weather flows
300C	Secondary Treatment	Convert aeration basins, enhance existing secondary clarifiers, and add secondary clarifiers to increase secondary treatment capacity to meet anticipated peak wet weather flows
300D	Disinfection/Outfall	Convert disinfection system, and increase bankside outfall capacity
300E	Biosolids Treatment	Increase digestion capacity by enhancing existing digesters and sludge thickening capacity and/or adding a digester
300F	Filtration	Add filtration and build related infrastructure and support facilities
300G	Reuse Facilities	Expand effluent reuse capacity
300H	Odor Control	Expand and/or add odor control facilities
300I	Flow Management Facilities	Piping, pumping and related infrastructure improvements to allow parallel operation of primary and secondary treatment

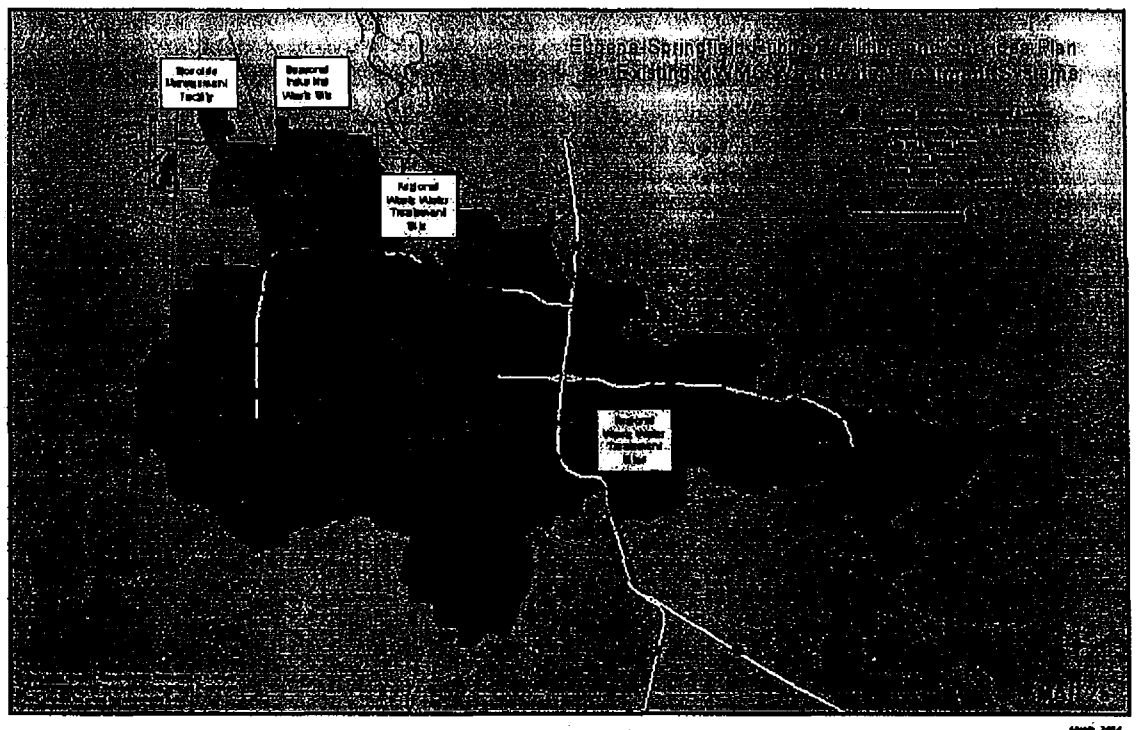
		facilities
301	**Residuals Treatment Project**	**Includes several construction packages designed to manage and treat residuals.**
301A	Lagoon Rehabilitation	Rehabilitate lagoons at Biosolids Management Facility
301B	Composting Facility	Expand composting facility at Biosolids Management Facility
302	**Beneficial Reuse Project**	**Includes several construction packages designed to expand reuse of effluent.**
302A	Biocycle Farm	Expand biosolids land application area
302B	Effluent Reuse	Expand effluent reuse at Biocycle Farm (including former Seasonal Industrial Waste site)

Table 4b
MWMC Primary Collection System Improvement Projects

Project Number	Project Name/Description
303	Willakenzie Pump Station
304	Screw Pump Station
305	Glenwood Pump Station

3. Modify Map 2 to show Projects 300 through 305, and insert Map 2a.





4. **Modify Chapter IV. Of the Public Facilities and Services Plan, by modifying the subdivision entitled "Wastewater System condition Assessment" (presently on page 82) to read as follows:**

Wastewater System Condition Assessment

Treatment: ***MWMC Wastewater Treatment System***

MWMC existing infrastructure is monitored for problems that need to be addressed during operational and maintenance activities. MWMC has ongoing programs to help plan for and implement equipment replacement and major rehabilitation of existing systems. With these on going programs used to detect existing problems, the infrastructure can be maintained and preserved to help extend its useful life for future years.

In March of 2003, MWMC hired CH2M HILL to evaluate and plan for regional wastewater capital improvements that will serve the Eugene/Springfield urban growth boundary into year 2025. MWMC will need to implement the recommended improvements to meet regulatory requirements based on projected pollution loads and flows. CH2M HILL as part of its work to evaluate and plan for regional wastewater improvements has prepared a technical memo related to "Flow and Load Projections" dated April 12, 2004. This historical and projected information is being used to plan for needed MWMC capital improvements based on engineering evaluation methods and by comparing technology options. It is estimated that approximately $160 million dollars

(in 2004 dollars) are needed for MWMC projects to address regulatory requirements and growth through year 2025.

The Water Pollution Control Facility (WPCF), located on River Avenue in Eugene, replaced the separate plants previously owned and operated by Eugene and Springfield. Its function is to meet the region's needs for increased sewerage service and ensure compliance with the facility's NPDES discharge permit.

The Residuals Treatment Project is located at the Biosolids Management Facility (BMF) on Awbrey Lane in Lane County. The BMF's function is to store, further stabilize, and dry digested biosolids received from the WPCF.

The Beneficial Reuse Project is located at the Biocycle Farm along Highway 99 in Lane County. The Biocycle Farm's function is to apply biosolids from the adjacent BMF to poplar trees, which absorb the water and nutrients contained in the biosolids.

Conveyance:
Conveyance capacity and inflow and infiltration (I/I) ratios are important criteria by which to assess the performance of a wastewater collection system. Conveyance capacity is a function of adequate pipe sizing and measures a system's ability to move effluent efficiently. Inflow and infiltration ratios express the amount of stormwater entering a sewer system through defective pipes and pipe joints, or through the cross connection of stormwater lines, combined sewers, catch basins, or manhole covers. Such extraneous stormwater entering the wastewater system unnecessarily burdens both conveyance and treatment facilities.

Capacity:
The capacity of the wastewater system is expressed in four measures: average flow, peak flow, biochemical oxygen demand (BOD) and total suspended solids (TSS). The system's current capacities and projected 2025 needed capacities are:

Capacity Measure	Current	2025
Average flow	49 mgd	59.3 mgd
Peak flow	175 mgd	277 mgd
BOD	66,000 lbs/day	74,000 lbs/day
TSS	71,600 lbs/day	87,600 lbs/day

Projects 300 through 305, described in Tables 4a and 4b, are designed to work together to increase the overall system capacities to meet the projected 2025 need.

5. **Modify Chapter IV. Of the Public Facilities and Services Plan, by modifying the discussion of wastewater, in the subdivision entitled "Long-Term Service Availability Within Urbanizable Areas" (presently on page 97) to read as follows:**

1. There are no areas within the metropolitan UGB that will be difficult to serve with wastewater facilities over the long-term (six to 20 years) assuming that public infrastructure specifications and requirements of the developing area can be

addressed. Appropriate engineering design practices must be used during the development and expansion into sensitive areas that are approved for development (ex. – hillside construction, etc.). Expansion of the existing collection system will be necessary to meet demands of growth over this time period.

2. Based on 2003 analysis, the Eugene-Springfield metropolitan area treatment facilities will require facility improvements to address both dry and wet weather regulatory requirements relating to pollutant loads and wastewater flows. Regional and local wastewater improvements to the collection and treatment systems are being planned for and will be implemented to allow for growth within the UGB and for regulatory compliance.

6. Add Table 16a following Table 16, as follows:

Table 16a
MWMC Wastewater Treatment and Collection System Improvements, Rough Cost Estimate, and Timing Estimate

300	WPCF Treatment Project	$120.3~~,500~~	2025
300A	Preliminary Treatment ($12.8)		2010
300B	Primary Treatment ($4.8)		2012
300C	Secondary Treatment ($24.7)		2017
300D	Disinfection/Outfall ($5.6)		2010
300E	Biosolids Treatment ($18.3)		2013
300F	Filtration ($20.2)		2020
300G	Reuse Facilities ($16.)		2018
300H	Odor Control ($6.9)		2012
300I	Flow Management Facilities ($11.)		2010
301	**Residuals Treatment Project**	$~~6,000~~5.2	2018
301A	Lagoon Rehabilitation ($4.5)		2012
301B	Composting Facility ($.7)		2017
302	**Beneficial Reuse Project**	$~~25,000~~4.6	2018
302A	Biocycle Farm ($0.6)		2008
302B	Effluent Reuse ($4.)		2017
303	**Willakenzie Pump Station**	$6.~~,000~~	2010
304	**Screw Pump Station**	$2.~~,000~~	2010
305	**Glenwood Pump Station**	$0.~~500~~	2012
	TOTAL:	$138.6	

**Cost estimated in 2004 dollars*

7. Add a new chapter to the Public Facilities and Services Plan, to be Chapter VI., reading as follows:

VI. Amendments to the Plan

This chapter describes the method to be used in the event it becomes necessary or appropriate to modify the text, tables or the maps contained in the Public Facilities and Services Plan ("the Plan").

Flexibility of the Plan

Certain public facility project descriptions, location or service area designations will necessarily change as a result of subsequent design studies, capital improvement programs, environmental impact studies and changes in potential sources of funding. The Plan is not designed to either prohibit projects not included in the plan for which unanticipated funding has been obtained, preclude project specification and location decisions made according to the National Environmental Policy Act, or subject administrative and technical changes to the plan to post-acknowledgement review or review by the Land Use Board of Appeals.

For the purposes of this Plan, two types of modifications are identified.

A. Modifications requiring amendment of the Plan.
The following modifications require amendment of the Plan:

1. Amendments, which include those modifications or changes (as represented by Table 16a) to the location or provider of public facility projects which significantly impact a public facility project identified in the comprehensive plan, and which do not qualify as administrative or technical and environmental changes, as defined below. Amendments are subject to the administrative procedures and review and appeal procedures applicable to land use decisions.
2. Adoption of capital improvement program project lists by any service provider does not require modification of this Plan unless the requirements of subparagraph 1 above are met.

B. Modifications permitted without amendment of the Plan.
The following modifications do not require amendment of this Plan:

1. Administrative changes are those modifications to a public facility project which are minor in nature and do not significantly impact the project's general description, location, sizing, capacity or other general characteristic of the project.
2. Technical and environmental changes are those modifications to a public facility project which are made pursuant to "final engineering" on a project or those which result from the findings of an Environmental Assessment or Environmental Impact Statement conducted under regulations implementing the procedural provisions of the National Environmental

Policy Act of 1969 or any federal or state agency project development regulations consistent with that Act and its regulations.

Process for making Changes

A. Administrative and Technical or Environmental Changes. Any jurisdiction may make an administrative or technical and environmental change, as defined herein, by forwarding to each jurisdiction covered by this Plan, and to the Lane Council of Governments a copy of the resolution or other final action of the governing board of the jurisdiction authorizing the change.

B. Amendments

For purposes of processing amendments, as defined herein, such amendments are divided into two classes.

a. Type I Amendments include amendments to the text of the Plan, or to a list, location or provider of public facility projects which significantly impact a public facility project identified herein, which project serves more than one jurisdiction.

b. Type II amendments include amendments to a list, location or provider of public facility projects which significantly impact a public facility project identified herein, which project serves only the jurisdiction proposing the amendment.

C. Processing Amendments

Any of the adopting agencies (Lane County, Eugene, or Springfield) may initiate an amendment to this plan at any time on their own motion or on behalf of a citizen.

a. Type I amendments shall be forwarded to the planning commissions of the respective agencies and, following their recommendation, shall be considered by the governing boards of all agencies. If a Type I amendment is not adopted by all agencies, the amendment shall be referred to MPC for conflict resolution. Subsequent failure by agencies to adopt an MPC-negotiated proposal shall defeat the proposed amendment. If an amendment is adopted, all agencies shall adopt substantively identical ordinances

b. Type II amendments shall be forwarded to the Planning Commission of the initiating agency and, following their recommendation, shall be considered by the governing board of the initiating agency.