

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

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REMANDED

09/02/2005

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

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 Facilities Plan) on May 6, 2005. Thereafter, the cities and county adopted that MWMC Facilities Plan. Those decisions

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.

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

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

21 **FIRST ASSIGNMENT OF ERROR**

22 The question presented in the first assignment of error is whether the Metro Plan and PFSP
23 amendments that have been adopted by respondents are sufficient to comply with the public facility
24 planning requirements imposed by Goal 11 and the Land Conservation and Development
25 Commission's (LCDC's) Goal 11 administrative rule, OAR chapter 660, division 11. The dispute
26 under the first assignment of error concerns a number of new regional wastewater collection and

1 treatment system improvement projects that are included for the first time in the Metro Plan and the
2 PFSP by the challenged amendments.² Petitioners contend that the identification and description of
3 those improvement projects in the PFSP and Metro Plan amendments is too general, and that far
4 more specificity is required under the Goal 11 rule. All parties agree that the six improvement
5 projects listed in the PFSP and Metro Plan amendments were derived from a larger more detailed
6 list of improvement projects in the MWMC Facilities Plan. We illustrate below the manner in which
7 those improvement projects are listed and described in the MWMC Facilities Plan and PFSP and
8 Metro Plan amendments, before turning to the relevant provisions of the Goal 11 administrative rule
9 and the parties' arguments.

10 **A. MWMC Facilities Plan Improvement Projects**

11 Forty-six regional wastewater facility improvement projects, in 13 separate phases, are
12 listed in Table 7.7-2 of the MWMC Facilities Plan, along with the estimated cost of each project.
13 Table 7.7-2 is almost six pages long. We set out one of the six pages (Record 2073) on the
14 following page to illustrate the level of detail in the listing of facility improvement projects, and their
15 costs, in the MWMC Facilities Plan. The MWMC Facilities Plan actually goes further and includes
16 24 "Project Fact Sheets" that provide more detailed descriptions of each project. Record 2113-
17 36. To illustrate, we have also included the project fact sheet page that describes the "South
18 Aeration Basin Improvements" and "Outfall Mixing Zone Study" projects. Record 2114.
19

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
MWWC 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 MWWC FY 03/04 Budget - Regional Wastewater Program; assessment to MWWC 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, 90 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	\$260,000
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

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

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

3 **B. The PFSP and Metro Plan Amendments**

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

7
8 Table 4a
9 MWMC Wastewater Treatment System Improvement Projects
10

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

11
12 Table 4b
13 MWMC Primary Collection System Improvement Projects
14

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

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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

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6 **C. The Goal 11 Rule**

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

13 We begin with the definitions of “public facility,” “public facility project,” and “public facility
14 systems.”³ These definitions are not particularly helpful in answering the question that must be

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).

“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:

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

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

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

14 OAR 660-011-0020(2) and (3) elaborate on the “list of * * * significant public facility
15 projects” that is required by OAR 660-011-010(1)(b) and 660-011-0045. Petitioners and
16 respondents draw opposite conclusions from these sections of the rule. OAR 660-011-0020
17 specifically addresses the inventory and the list of public facility projects that must be included in a
18 Goal 11 public facility plan.⁵ OAR 660-011-0020(2) calls for identification of “significant public

“* * * * *

“(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.

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

1 facility projects” and requires that respondents “list the title of the project and describe each project
2 facility project in terms of the type of facility, service area, and facility capacity.” OAR 660-011-
3 0020(3) expressly recognizes that “project descriptions” may need to be changed later during more
4 detailed planning and construction phases. OAR 660-011-020(3) goes on to require that Goal 11
5 public facility plans “anticipate * * * changes as specified in OAR 660-011-0045.” As relevant
6 here, OAR 660-011-0045 does two things.⁶ First, OAR 660-011-0045(2) expressly recognizes

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;

“(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.

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

7 The elements that must be included in a public facility plan are set out in OAR 660-011-
8 0010.⁷ There are a number of required elements. For purposes of petitioners' first assignment of

“(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;

“(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;

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

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

11 “The six ‘projects’ added to the PFSP in Tables 4a and 4b are really categories of
12 multiple discrete construction projects. One can’t tell from the list of six, because
13 the PFSP amendments are so cryptic. The six ‘projects,” with their total of only 18
14 words of project titles and descriptions are opaque, or nearly so, in the PFSP.
15 What is really going to happen over the 20-year period is unclear from the PFSP.
16 Instead, it is spelled out in Chapter 7 of the MWMC 2004 Facilities Plan, which is
17 disclaimed as a land use plan.

18 “The list of six categories of projects in Tables 4a and 4b needs to be broken down
19 into the approximately four dozen construction projects that are contained in the six
20 categories. These are the ‘projects’ anticipated by the Rule. The Rule requires an

“(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.”

1 identification of ‘projects’ in the plan, not categories of projects. The projects have
2 been identified in the MWMC 2004 Facilities Plan, but that is not the land use plan,
3 according to the Respondents.

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

10 Respondents counter:

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

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

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

30 We are unable to agree completely with either petitioners or respondents. Petitioners’
31 argument that the Goal 11 public facility plan project list and description that is required by OAR
32 660-011-0010(1)(b) and 660-011-0020(2) must be exactly the same as the project list that is
33 included in the MWMC Facilities Plan finds no support in the text of the Goal 11 rule. As
34 respondents correctly note, both of those sections of the rule include the adjective “significant,” and
35 petitioners make no attempt to argue that all of the public facility projects in the MWMC Facilities

1 plan are significant.⁸ Petitioners also make no attempt to differentiate among the six projects that
2 are listed in Tables 4a and 4b. With regard to Projects 303, 304 and 305, we note there are three
3 projects listed in Table 7.7-2 that seem to correspond exactly or very closely with both the
4 description and costs listed in Tables 4a and 4b for those three projects.⁹ Absent a more
5 developed and focused argument from petitioners concerning Projects 303, 304 and 305, we reject
6 petitioners' challenge to the adequacy of the listing and description of those projects.

7 On the other hand, respondents make no attempt to explain why the concept of "public
8 facility projects" should be dramatically different in the MWMC Facilities Plan and the Goal 11
9 public facilities plan. Even if the Goal 11 public facilities plan operates at a more general regional
10 level, the cryptic reference to "WPCF Treatment Project" in Project 300 does not suffice as an
11 adequate description for a significant public facility project that in fact is made up of a large number
12 of individual projects in the MWMC Facilities Plan. Those individual projects will be constructed in
13 a number of different phases over a 15 year period at a total cost of \$120 million. We agree with
14 petitioners that, at a minimum, Project 300 must be broken down into its significant public facility
15 project components. While that breakdown does not necessarily need to match the project detail
16 and specificity that is provided in the MWMC Facilities Plan, we agree with petitioners that the
17 current Project 300 description is either meaningless or describes a number of significant public
18 facilities projects that are set out in the MWMC Facilities Plan. We particularly agree with

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.

1 petitioners that the OAR 660-011-0045(3) and (4) provisions that describe when and how future
2 public facility project changes must be reflected in Goal 11 public facility plan amendments are
3 meaningless if such a broad and general listing and description is permissible under OAR 660-011-
4 0010(1)(b) and 660-011-0020(2).

5 Because we must remand the challenged decisions so that respondents may more
6 specifically list and describe the significant public facility projects that are now grouped as Project
7 300 in any event, we do not consider whether additional specificity is required for Projects 301 and
8 302. The parties have not directed their arguments specifically at those projects and we have some
9 question about the particular projects in the MWMC Facilities Plan that make up Projects 301 and
10 302. However, it appears as though further breakdowns are possible and may be required under
11 the Goal 11 rule for Projects 301 and 302 as well. On remand respondents must consider that
12 question.

13 The further detail that will be required on remand to separately list the significant public
14 facility projects in Project 300 and the further detail that may be required to separately list any
15 separate significant public facility projects in Project 301 and 301 will resolve one of petitioners'
16 objections concerning the cost estimates. Petitioners also object that the estimated total cost of
17 facilities in the MWMC Facilities Plan is \$144 million, whereas the estimated total in PFSP Table
18 16a is approximately \$160 million. Respondents explain that the \$160 million figure includes the
19 cost of a possible DEQ required improvement that is not included in the MWMC Facilities Plan
20 total. We do not understand petitioners to dispute that explanation. We do not consider
21 petitioners' arguments concerning cost estimates further.

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

24 **SECOND ASSIGNMENT OF ERROR**

25 In their second assignment of error, petitioners contend the challenged decisions violate
26 Goal 2 (Land Use Planning) because the 2025 planning period identified in the Metro Plan and

1 PFSP amendments for the recommended wastewater treatment facility improvements is different
2 from the planning period specified elsewhere in the Metro Plan for other planning purposes.
3 Petitioners cite nothing in the statewide planning goals that mandates that planning periods for
4 different planning considerations must in all cases be identical. Without further argument from
5 petitioners regarding why these different planning periods constitute a *conflict* that amounts to a
6 violation of Goal 2, we deny the second assignment of error.

7 **THIRD ASSIGNMENT OF ERROR**

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

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

14 Petitioners contend that while the disputed PFSP and Metro Plan amendments propose facility
15 improvements that will dramatically increase the MWMC regional wastewater treatment and
16 disposal capacity, respondents “have ignored * * * the need for collection capacity that will allow
17 development of undeveloped or underdeveloped areas in the [urban growth boundary].” Petition
18 for Review 25. According to petitioners, this failure means the challenged PFSP and Metro Plan
19 amendments lack the “adequate basis in fact” that is required by Goal 2 and are inadequate to
20 comply with Goal 11.

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

27 “Collection system improvement projects are included in Table 4b and 16a and are
28 pump station improvements. Tables 3 and 4 of the 2001 PFSP also describe

1 planned collection system projects. The Executive Summary of the MWMC
2 Facilities Plan describes the conveyance system; Chapter 3 also describes the
3 condition of the existing wastewater conveyance system; Section 5.41 describes the
4 design capacity of the conveyance system; and Section 7.1.2 recommends
5 conveyance system improvements. The recommended conveyance system
6 improvements are the Willakenzie Pump Station, the Glenwood Pump Station and
7 the Screw Pump Station, which are included in the PFSP Tables 4b and 16a.
8 There are no recommended projects related to sewer pipes. Hence, no such
9 projects are contained in Tables 4b and 16a. In fact, Section 7.1.1 of the MWMC
10 Facilities Plan expressly states that additional conveyance system improvements are
11 not necessary.

12 “Petitioners do not, and cannot explain how the above descriptions, findings and
13 explanations in the record and the list of pump station improvement projects are not
14 adequate to serve the existing and future collection needs of the service area. As
15 such, the Board should deny Petitioners’ third assignment of error.” Respondents’
16 Brief 37-38 (citations and footnote omitted).

17 We are not sure we understand petitioners’ argument. They seem to be arguing that more
18 collection pipes or improved collection pipes will be needed to utilize the extra treatment capacity
19 that the disputed PFSP and Metro Plan amendments recommend. We understand respondents to
20 contend that with the wastewater treatment system improvements that are recommended in the
21 PFSP and Metro Plan amendments and the MWMC Facilities Plan, no further improvements in the
22 collection system are needed. Other than possibly disagreeing with respondents’ contention,
23 petitioners offer no reason to question it. Without a more developed argument from petitioners
24 under their third assignment of error, we agree with respondents that it does not present an
25 additional basis for remand.

26 The third assignment of error is denied.

27 Respondents’ decisions are remanded.