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OREGON LAND USE LAW

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June 22, 2004

Metro Area Elected Officials
c/o Lane Council of Governments
99 East Broadway, Suite 400
Eugene, OR 97401

Re: *Metro Plan* Text Amendments; *Public Facilities and Services Plan* Amendments
June 22, 2004 Joint Public Hearing

Dear Elected Officials:

Please accept this letter on behalf of the Home Builders Association of Lane County and its subsidiary, the Home Builders Construction Company.¹

1. What standards apply.

The standards that apply to these proposed plan amendments are found in several locations:

- State statutes apply. Statutes always apply to local governments' land use decisions. *McKay Creek Valley Assoc. v. Washington County*, 18 Or LUBA 71, 75 (1989) (acknowledgment of plan and code leaves statutes directly applicable).
- Statewide Planning Goals. ORS 197.175(2)(a).
- LCDC Rules implementing the statutes and the goals apply, for the same reasons that the statutes and goals apply.
- Acknowledged, unamended plan provisions apply to plan amendments, because plans have to be internally consistent. *South of Sunnyside Neighborhood League v. Bd. of Comr's of Clackamas County*, 280 Or 3, 13 (1977); ORS 197.015(5).

2. Planning Period: The 2025 planning horizon for the Wastewater Primary Collection System is inconsistent with and not coordinated with the planning period for the balance of the *Metro Plan*.

Both the *Metro Plan* and the *Public Facilities and Services Plan (PFSP)* amendments propose a

¹ The proposed amendments, if adopted, will be post-acknowledgment plan amendments (PAPAs). My clients request notice of the final decision of each local government on this matter, as required by ORS 197.615.

2025 plan horizon for the planning for treatment facilities. With these amendments the comprehensive plan will not be integrated and, in fact, will have inconsistencies. That's because the exiting plans have a 2015 planning horizon. A comprehensive plan, by definition, must be coordinated, integrated, and internally consistent. The definition of "comprehensive plan" in ORS 197.015(5) is:

"Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs.

"Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan.

"General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air."

A comprehensive plan really can't be "coordinated" in the meaning of the definition if different functional parts of the plan have conflicting planning time frames.

3. State statutes regarding public facilities planning, ORS 197.712(2)(e), requires a project list, which is not in the proposed amendments.

The statute that sets the stage for public facility plans is ORS 197.712(2)(e). It provides:

"A city or county shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons. The public facility plan shall include rough cost estimates for public projects needed to provide sewer, water and transportation for the land uses contemplated in the comprehensive plan and land use regulations. Project timing and financing provisions of public facility plans shall not be considered land use decisions."

It is worth noting that the statute anticipates a list of projects. The proposed amendments do not include a list of project. Instead, the amendments would include categories or baskets of projects. Presumably, the individual projects would be worked out administratively.

4. LCDC Rules relating to public facility planning.

The public facilities statute and Statewide Planning Goal 11 are implemented through the LCDC's Division 11 Rule – OAR 660-011-0000.

(a) Contents of “public facility plan.”

OAR 660-011-0010 defines the contents of a public facility plan. The definition is:

“(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;
- (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.”

The proposal is to bolster the existing *PFSP* to include the required components for the area's wastewater treatment system. The amendments made should be double checked against the required list of contents above. At first glance, it would appear that the proposed amendments fall short of meeting the minimum required contents in the following respects:

1. The amendments need to include an inventory and general assessment of the condition of all the significant aspects of the wastewater treatment system. The required evaluative information is missing. OAR 660-011-0010(1)(a).
2. A “list of significant public facility projects” needed to support the land uses designated in the *Metro Plan* is needed. OAR 660-011-0010(1)(b). No project list is proposed for the plan. Instead, categories of projects are proposed. This obfuscates the ultimate policy choices that Goal 2 and Goal 11 require to be reflected in the plan. Furthermore, the projects are to support the land use designations in the plan. Those designations have a 2015 planning horizon. The proposal is to designate projects for a longer timeframe, which would violate this rule.
3. Cost estimates need to be by project, not by categories of projects. OAR 660-011-0010(1)(c).

4. Each project needs to be mapped. OAR 660-011-0010(1)(d). Without a project listing, the mapping requirement can't be met.
5. An estimate is needed of when each project will be needed. OAR 660-011-0010(1)(f). Absent a project list, this requirement can't be complied with.
6. A discussion of the funding mechanisms and prospects for funding for each project. OAR 660-011-0010(1)(g). Again, a project list is the starting point for this discussion.

(b) Need for inventory of existing facilities and need for future projects.

OAR 660-011-0020 requires establishes inventory requirements and the need for a list of future projects. The Rule provides:

“(1) The public facility plan shall include an inventory of significant public facility systems. Where the acknowledged comprehensive plan, background document or one or more of the plans or programs listed in OAR 660-011-0010(3) contains such an inventory, that inventory may be incorporated by reference. The inventory shall include:

- (a) Mapped location of the facility or service area;
- (b) Facility capacity or size; and
- (c) General assessment of condition of the facility (e.g., very good, good, fair, poor, very poor).

(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.”

An inventory of existing facilities is needed, in terms of mapped location, capacity, and condition. OAR 660-011-0020(1). This inventory would provide the baseline for planning. It does not appear to be within the scope of the proposed amendments.

The plan must include a list of specific proposed projects. OAR 660-011-0020(2). There is no list of projects proposed. Approval of categories of projects would mean that the governing bodies are not making ultimate policy choices. Rather, they would be writing quasi-blank checks.

(c) Timing of required projects.

OAR 660-011-0025 requires that the plan include a general estimate of timing of projects. The Rule states:

“(1) The public facilities plan shall include a general estimate of the timing for the planned public facility projects. This timing component of the public facilities plan can be met in several ways depending on whether the project is anticipated in the short term or long term. The timing of projects may be related directly to population growth, e.g., the expansion or new construction of water treatment facilities. Other facility projects can be related to a measure of the facility's service level being met or exceeded, e.g., a major arterial or intersection reaching a maximum vehicle-per-day standard. Development of other projects may be more long term and tied neither to specific population levels nor measures of service levels, e.g., sewer projects to correct infiltration and inflow problems. These projects can take place over a long period of time and may be tied to the availability of long-term funding. The timing of projects may also be tied to specific years.

“(2) Given the different methods used to estimate the timing of public facilities, the public facility plan shall identify projects as occurring in either the short term or long term, based on those factors which are related to project development. For those projects designated for development in the short term, the public facility plan shall identify an approximate year for development. For those projects designated for development over the long term, the public facility plan shall provide a general estimate as to when the need for project development would exist, e.g., population level, service level standards, etc. Timing provisions for public facility projects shall be consistent with the acknowledged comprehensive plan's projected growth estimates. The public facility plan shall consider the relationships between facilities in providing for development.

“(3) Anticipated timing provisions for public facilities are not considered land use decisions as specified in ORS.712(2)(e), and, therefore, cannot be the basis of appeal under ORS 197.610(1) and (2) or 197.835(4).”

Although the timing analysis does not have to be precise under the Rule, it does have to be specific to projects. Where, as here, the proposal is to approve categories of projects, rather than a list of projects, it is not possible to comply with the rule.

(d) Need for rough cost estimates of specific projects.

OAR 660-011-0030 requires the plan to include rough cost estimates for projects listed in the plan. The Rule provides:

“(1) The public facility plan shall include rough cost estimates for those sewer, water, and transportation public facility projects identified in the facility plan. The intent of these rough cost estimates is to:

- (a) Provide an estimate of the fiscal requirements to support the land use designations in the acknowledged comprehensive plan; and
- (b) For use by the facility provider in reviewing the provider's existing funding mechanisms (e.g., general funds, general obligation and revenue bonds, local improvement district, system development charges, etc.) and possible alternative funding mechanisms. In addition to including rough cost estimates for each project, the facility plan shall include 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. These funding mechanisms may also be described in terms of general guidelines or local policies.

“(2) Anticipated financing provisions are not considered land use decisions as specified in ORS 197.712(2)(e) and, therefore, cannot be the basis of appeal under ORS 197.610(1) and (2) or 197.835(4).”

Again, the failure of the proposed plan amendments to list individual projects in the plan precludes compliance with this rule. The rule only requires “rough” cost estimates, but the estimates have to be by project, not large groups of projects.

(e) Required elements of the comprehensive plan.

OAR 660-011-0045 requires that certain elements of the public facilities plan be made a part of the plan itself. The Rule requires:

“(1) The governing body of the city or county responsible for development of the public facility plan shall adopt the plan as a supporting document to the jurisdiction's comprehensive plan and shall also adopt as part of the comprehensive plan:

- (a) The list of public facility project titles, excluding (if the jurisdiction so chooses) the descriptions or specifications of those projects;
- (b) A map or written description of the public facility projects' locations or service areas as specified in sections (2) and (3) of this rule; and
- (c) The policy(ies) or urban growth management agreement designating 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.”

The minimum requirement for inclusion in the comprehensive plan is the list of project titles and a map of the projects' location or service areas. Again, a project listing is required, not a description of categories of projects.

In summary, it appears that the proposed amendments conflict with the structure of the *Metro Plan* because they are for a different, longer time frame. As such, they can't be demonstrated to consist of the projects needed to implement the land use designations in the plan. They implement something more than what the plan provides for.

More significantly, it appears that the amendments are too skinny. The target for the amendments should be to provide, as a part of the *PFSP* and the *Metro Plan* the information that the LCDC Rules require be a part of any element of a public facilities plan. The essential information that is missing is baseline information on the existing infrastructure, its location, and its condition, and a listing of specific projects proposed, their location, their rough cost, and their approximate timing.

As a starting point, the Planning Commissions might ask staff to analyze their proposed amendments in light of the requirements of the LCDC Rule.

Thank you for your consideration.

Sincerely,



Bill Kloos

cc: Roxie Cuellar

MEMORANDUM OFFICE OF CITY ATTORNEY

DATE: May 27, 2004

TO: Interested Persons

FROM: Dave Jewett
Attorney for MWMC

Meg Kieran
Attorney for City of Springfield

Jerome Lidz
Attorney for City of Eugene

SUBJECT: MWMC Processes

The Home Builders Association's (HBA) complaint about the processes employed by MWMC to seek elected officials' approval for needed improvements to the regional sewerage facilities arises out of flawed assumptions about the statutory framework for government actions regarding the provision of public facilities for wastewater conveyance and treatment and their funding with System Development Charges.

Background:

MWMC was formed by a 1977 IGA between Eugene, Springfield and Lane County to construct, operate, maintain and update regional sewerage facilities (Regional Facilities). MWMC is governed by seven commissioners appointed by the Governing Bodies, three of whom are elected officials of the Governing Bodies.

MWMC constructed the Regional Facilities with about \$115,000,000 in federal grants and local matching funds based on a facilities plan that was developed by MWMC's consultant, CH2M Hill, in 1979 (208 Plan). Pursuant to state and federal rules, the 208 Plan planned the Regional Facilities to have a design life of 20 years. The Regional Facilities opened in 1984. Since then, the community has invested several million dollars more in preserving and upgrading the Regional Facilities.

While MWMC operates the Regional Facilities pursuant to a NPDES Permit issued by DEQ (Permit), the Permit implements federal and state discharge requirements to protect the water quality of the Willamette River. For several years it has been clear that, without significant improvements, the Regional Facilities will soon be incapable of accommodating projected metro area growth while meeting the discharge requirements of the Permit. The driving factors include the need to manage peak flows to the Water Pollution Control Facility, to properly dispose of residuals and to meet new Permit requirements governing the temperature and ammonia levels of discharges to the Willamette River.

Determining the scope of the needs, planning to address them and funding their cost is complex. The HBA's complaint about the processes employed by MWMC oversimplifies and misstates the rules that govern the processes.

MWMC 2004 Facilities Plan:

The MWMC 2004 Facilities Plan is a comprehensive 20-year facility plan that replaces the 208 Plan. However, the 2004 Facilities Plan is the product of a long, multi-phased planning process that has involved significant public involvement, including three citizen advisory committees. It is an outgrowth of and combines and updates prior studies such as the 1997 Master Plan, the 1997 Biosolids Management Plan, the 1997 Systems Development Charge Methodology Update, the 2001 Wet Weather Flow Management Plan, and the 2003 Management Plan for a Dedicated Biosolids Land Application Site. The previous plans were reviewed by MWMC, the public, and the Governing Bodies and have provided the basis for the annual MWMC Capital Improvements Program (CIP) since their adoption. Of the \$144,000,000 in projects currently anticipated in the 2004 Facilities Plan, \$100,000,000 in projects are carried forward from the prior plans. MWMC has proceeded to implement each of the projects and policies in the plans, which has been reflected in each annual MWMC budget and CIP.

Several key planning considerations were factored into the completion of the 2004 Facilities Plan. Among them was the implementation of recommendations from Citizen Advisory Committees that represented diverse community interests, values and involvement and which had been adopted by MWMC as plans and policies. The City Councils have also adopted the Wet Weather Flow Management Plan. The 2004 Facilities Plan also needed to factor in new regulatory limitations DEQ included in the Permit. This factor caused some modifications to the type and phasing of already planned projects, and resulted in \$44,000,000 in additional projects over twenty years. The 2004 Facilities Plan was adopted by MWMC on May 6, 2004 after a number of public meetings and two public hearings. MWMC chose to refer it to the Governing Bodies for concurrence pursuant to Section 3 of the IGA.

Land Use Planning:

The proposed upgrades to the wastewater treatment facilities system are to be done at three different locations including the Water Pollution Control Facility, the residuals site and the beneficial reuse site as well as upgrades to pump stations serving the primary collection system at three separate locations. Since the Metro Plan did not include wastewater among the list of services to develop within the UGB and did not identify the wastewater treatment facility system, MWMC proposed a number of amendments to the Metro Plan to correct the omissions. In addition, MWMC proposed a number of changes to the Public Facilities and Services Plan to correct similar omissions and make this functional plan internally consistent with the Metro Plan. Consistency was to be achieved by inserting various tables and maps identifying the six overall projects and showing their location as well as including a condition assessment for MWMC's treatment and primary collection system. The proposed amendments to the Metro Plan and the PFSP were submitted for consideration by the Governing Bodies' planning commissions and subsequently by all three Governing Bodies as required by the Springfield Development Code, the Eugene Code, and the Lane Code. That process is continuing with its attendant public

meetings and hearings.

System Development Charges:

MWMC has had a SDC since 1991. The methodology that is the basis for the current SDC was adopted in 1997. In June 2003, partly in response to concerns expressed by HBA, MWMC directed staff to retain a consultant and form a CAC to review the 1997 Methodology and recommend changes. Home Builders designated a representative who participated on the CAC. The consultant, CH2M Hill, and the CAC recommended changes to the 1997 Methodology. On April 1, 2004, MWMC adopted a revised methodology after a number of public meetings and a public hearing (Proposed SDC Methodology).

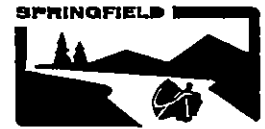
ORS 223.297 to 223.314 governs SDCs. ORS 223.309(1) requires the adoption of a facilities plan and a capital improvements list prior to the establishment of a SDC. The pertinent MWMC resolution states that the 2004 Facilities Plan including the 20-year project list are being adopted to provide the facilities plan and list of capital improvements that are required by ORS 223.309(1). ORS 223.314 provides that the establishment, modification and implementation of a system development charge and a facilities plan and list adopted pursuant to ORS 223.309 are not land use decisions pursuant to ORS chapters 195 and 197.

Pursuant to Section 3 of the IGA, MWMC referred the Proposed SDC Methodology and the 2004 Facility Plan and list to the Cities of Eugene and Springfield for implementation through their respective City Codes in accordance with the SDC statute and applicable city code procedures. That process is continuing.

Conclusion:

Three separate processes are involved in MWMC's effort to obtain the Governing Bodies' approvals necessary to plan, site and fund the improvements that are necessary so the Regional Facilities can continue to meet federal and state environmental standards governing wastewater discharges to the Willamette River as well as the disposition and beneficial reuse of residuals. For the reasons explained above, HBAs' complaint inappropriately combines and misstates the processes involved with which MWMC has fully complied.

CITY COUNCIL AGENDA



City of Springfield ■ 225 Fifth Street ■ Springfield ■ Oregon ■ 97477 ■ (541) 726-3700
Contact ■ Amy Sowa ■ City Manager's Office
www.ci.springfield.or.us

The meeting location is wheelchair-accessible. For the hearing-impaired, an interpreter can be provided with 48 hours notice prior to the meeting. For meetings in the Council Meeting Room, a "Personal PA Receiver" for the hearing impaired is available. To arrange for these services, call 726-3700. Meetings will end prior to 10:00 p.m. unless extended by a vote of the Council.

All proceedings before the City Council are recorded

June 21, 2004

6:00 p.m. Work Session
Jesse Maine Room

CALL TO ORDER

ROLL CALL - Mayor Leiken __, Councilors Ballew __, Fitch __, Ralston __, Lundberg __,
and Woodrow __.

1. Springfield's Acknowledgement of National Home Ownership Month and an Allocation of \$52,976 in American Dream Downpayment Incentive (ADDI) Funding From Housing and Urban Development (HUD).
[Jodi Peterson] (15 Minutes)
2. Proposed Springfield Development Code Amendments.
[Gary Karp] (30 Minutes)
3. Development Code Fees Ordinances and Resolution.
[Mel Oberst] (15 Minutes)

ADJOURNMENT

7:00 p.m. Regular Meeting
Council Meeting Room

CALL TO ORDER

ROLL CALL - Mayor Leiken __, Councilors Ballew __, Fitch __, Ralston __, Lundberg __,
and Woodrow __.

PLEDGE OF ALLEGIANCE

ATTACHMENT

4-1

SPRINGFIELD UPBEAT

CONSENT CALENDAR

1. Claims

2. Minutes

- a. June 7, 2004 – Regular Meeting
- b. June 14, 2004 – Work Session
- c. June 14, 2004 – Special Regular Meeting

3. Resolutions

- a. RESOLUTION NO. 1 – A RESOLUTION TO ACCEPT PERMIT PROJECT P30370, PUBLIC IMPROVEMENTS IN SHADY CREEK SUBDIVISION.

4. Ordinances

- a. ORDINANCE NO. 1 – AN ORDINANCE AMENDING THE EUGENE-SPRINGFIELD METROPOLITAN AREA PUBLIC FACILITIES AND SERVICES PLAN (PFSP), TABLE 8 AND MAP 4: PLANNED ELECTRICAL FACILITIES TO SHOW A NEW 115KV TRANSMISSION LINE FROM THE MARCOLA SUBSTATION SITE TO THE LAURA STREET SUBSTATION, AND ADOPTING A SEVERABILITY CLAUSE.
- b. ORDINANCE NO. 2 – AN ORDINANCE PERTAINING TO SIGN STANDARDS, AMENDING CHAPTER 8 OF THE SPRINGFIELD MUNICIPAL CODE BY REVISING, ADDING, AND DELETING PORTIONS OF SECTION 8.254, ADDING SECTION 8.267, REVISING MAP NO. 2 AND ADDING MAP NO. 4.

5. Other Routine Matters

- a. Award the Bid for One Vehicle for the Land and Drainage Alteration Permit Program with Funds Contained in the FY03-04 Budget and Award a Bid for One Vehicle for the Capital Improvement Program Contingent on the Adoption of the Proposed FY04-05 Budget for a Total of \$43,202.50 to Kendall Ford.
- b. Award the Subject Contract for Project P20404 to Eugene Sand and Gravel in the Amount of \$102,966.50.
- c. Approval of the Recommended 2.5 Percent Pay Increase for City Non-Unionized Employees for FY2005.
- d. Approval of Amendment Number One to the Intergovernmental Agreement Providing Housing for Springfield Prisoners in the Lane County Adult Correction Facility.
- e. Approval of the Proposed Management Agreement Between the City of Springfield and the Springfield Museum Board.

MOTION: APPROVE/REJECT THE CONSENT CALENDAR

ITEMS REMOVED FROM THE CONSENT CALENDAR

PUBLIC HEARINGS - Please limit comments to 3 minutes. Request to speak cards are available at both entrances. Please present cards to City Recorder. Speakers may not yield their time to others.

1. Fiscal Year 2004/05 City Budget Adoption.
[Bob Duey]

(20 Minutes)

RESOLUTION NO. 2 – A RESOLUTION ADOPTING THE FISCAL YEAR 2004/05 SPRINGFIELD CITY BUDGET, MAKING APPROPRIATIONS, LEVYING A PROPERTY TAX, AND APPROVING THE CITY OF SPRINGFIELD'S PARTICIPATION IN THE STATE REVENUE SHARING PROGRAM.

MOTION: ADOPT/NOT ADOPT RESOLUTION NO. 2.

2. Proposed Resolution Establishing a New Regional Wastewater System Development Charge (SDC) Methodology and a New Regional Wastewater SDC Fee Schedule.
[Gary Colwell]

(20 Minutes)

RESOLUTION NO. 3 – A RESOLUTION OF THE CITY OF SPRINGFIELD COMMON COUNCIL ESTABLISHING A NEW METHODOLOGY AND FEE SCHEDULE FOR THE REGIONAL WASTEWATER SYSTEM DEVELOPMENT CHARGE AS SET FORTH IN THE SPRINGFIELD CITY CODE.

MOTION: ADOPT/NOT ADOPT RESOLUTION NO. 3

3. Proposed Springfield Development Code Amendments.
[Gary Karp]

(20 Minutes)

MOTION: CONTINUE THE PUBLIC HEARING UNTIL JULY 6, 2004.

4. An Ordinance Repealing Appendix 1 of the Springfield Development Code.
[Mel Oberst]

(05 Minutes)

ORDINANCE NO. 3 – AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SPRINGFIELD REPEALING APPENDIX 1, DEVELOPMENT CODE FEE SCHEDULE OF THE SPRINGFIELD DEVELOPMENT CODE AND DECLARING AN EMERGENCY.

Ordinance Enactment and Effective Date: In the event an ordinance contains an emergency clause, the ordinance shall become operative immediately upon passage by the council by a two-thirds majority of all members of the council. Ordinances not containing an emergency clause shall not take effect until 30 days after its passage.

MOTION: ADOPT/NOT ADOPT ORDINANCE NO. 3.

5. An Ordinance Amending Section 1.070 "Fees" of the Springfield Development Code.
[Mel Oberst]

(05 Minutes)

ORDINANCE NO. 4 – AN ORDINANCE AMENDING SECTION 1.070 "FEES" (1) OF ARTICLE 1 "GENERAL PROVISIONS" OF THE SPRINGFIELD DEVELOPMENT CODE TO PROVIDE THE CITY COUNCIL TO ESTABLISH FEES BY ORDINANCE OR RESOLUTION FOR THE PERFORMANCE OF THE ACTIONS AND REVIEWS REQUIRED BY THE SPRINGFIELD DEVELOPMENT CODE, AND DECLARING AN EMERGENCY.

Ordinance Enactment and Effective Date: In the event an ordinance contains an emergency clause, the ordinance shall become operative immediately upon passage by the council by a two-thirds majority of all members of the council. Ordinances not containing an emergency clause shall not take effect until 30 days after its passage.

MOTION: ADOPT/NOT ADOPT ORDINANCE NO. 4.

BUSINESS FROM THE AUDIENCE - Limited to 20 minutes. Please limit comments to 3 minutes. Request to Speak cards are available at both entrances. Please present cards to City Recorder. Speakers may not yield their time to others.

COUNCIL RESPONSE

CORRESPONDENCE AND PETITIONS

1. Correspondence from Andrew H. Stamp, Attorney at Law, 4248 Galewood Street, Suite 2, Lake Oswego, OR Regarding MWMC Regional Sewer SDC Methodology. (see attached memo)
2. Correspondence from Roxie Cuellar, Home Builders Association, 2053 Laura Street, Springfield, OR Regarding Attached Letter from Michael H. Kortenhoff of the Department of Environmental Quality (DEQ).
3. Correspondence Submitted by Reed Fuel and Trucking, 4080 Commercial Avenue, Springfield, OR Signed by Eight Individuals Representing the Trucking Industry Regarding the Springfield Fuel Tax with Attached Letters of Incurred Costs Since Three Cent Tax was Implemented.

MOTION: ACCEPT FOR FILING AND/OR PROVIDE STAFF DIRECTION/FOLLOWUP.

BIDS

ORDINANCES

BUSINESS FROM THE CITY COUNCIL

1. Committee Appointments

- a. Police Planning Task Force Appointments.
[Jerry Smith]

(05 Minutes)

MOTION: APPOINT MARK WATSON TO THE POLICE PLANNING TASK FORCE AS THE SPRINGFIELD SCHOOL DISTRICT REPRESENTATIVE WITH A TERM EXPIRING JUNE 21, 2008.

MOTION: APPOINT DIANA GARCIA, BRUCE WEBBER AND FRED SIMMONS TO THE POLICE PLANNING TASK FORCE AS CITIZEN-AT-LARGE MEMBERS WITH TERMS EXPIRING JUNE 21, 2008.

2. Business from Council

- a. Committee Reports
- b. Other Business

BUSINESS FROM THE CITY MANAGER

1. Amend the Master Schedule of Miscellaneous Fees and Charges, Rates, Permits and Licenses to Include all Fees in the Attached Development Code Use Fee Schedule.
[Mel Oberst]

(05 Minutes)

RESOLUTION NO. 4 – A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF SPRINGFIELD
AMENDING THE CITY OF SPRINGFIELD MASTER SCHEDULE OF MISCELLANEOUS FEES AND
CHARGES, RATES, PERMITS AND LICENSES TO INCLUDE ALL FEES AS SET FORTH IN THE
ATTACHED REVISED DEVELOPMENT CODE FEE SCHEDULE.

MOTION: ADOPT/NOT ADOPT RESOLUTION NO. 4.

BUSINESS FROM THE CITY ATTORNEY

ADJOURNMENT

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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,

Respondent,

and

THE METROPOLITAN WASTEWATER
MANAGEMENT COMMISSION,

Intervenor-Respondent.

LUBA No. 2004-090
(MWMC 2004 Facilities Plan;
Springfield Res. 04-19)

**RESPONDENT CITY OF
SPRINGFIELD'S MOTION TO
DISMISS**

Respondent, City of Springfield, moves the Board for an order dismissing this appeal. Intervenor, Metropolitan Wastewater Management Commission (MWMC), joins in this Motion to Dismiss. Petitioner's appeal challenges a resolution adopted by the City of Springfield Common Council, Resolution 04-19 (attached as Exhibit 1 and by this reference incorporated herein). For the reasons set forth below, LUBA does not have jurisdiction to consider Resolution 04-19 and therefore should dismiss this appeal.

I. Background Facts.

Metropolitan Wastewater Management Commission ("MWMC") is a regional Commission established by an Intergovernmental Agreement, signed by the governing bodies of Eugene, Springfield and Lane County in February of 1977. (Resolution 04-19, para. 1). The regional wastewater facilities were designed and

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& KIERAN
Attorneys At Law
223 A Street
Suite D
Springfield Oregon
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Fax:(541)746-4109

1 constructed in the early and mid-1980s with a projected design life of 20 years.
2 (Resolution 04-19, para. 2). In MWMC Resolution 02-05, MWMC entered into a
3 contract with a consulting firm for professional services for, among other matters, a
4 recommendation for an MWMC facilities plan update and 20-year project list.
5 (Resolution 04-19, paras. 4, 5, 7 and 10). On May 6, 2004, MWMC adopted the
6 MWMC 2004 Facilities Plan and 20-year Project List, the first comprehensive
7 facilities plan update since the original facilities were designed and constructed in the
8 early 1980s. On May 17, 2004, the Common Council of the City of Springfield
9 adopted Resolution 04-19, approving the MWMC 2004 Facilities Plan and the 20-
10 Year Project List that were adopted by MWMC on May 6, 2004. That decision is the
11 subject of this appeal.

12 **II. The Merits.**

13 The MWMC 2004 Facilities Plan and 20-year Project List were prepared to
14 provide the public facilities plan and list of capital improvements that are required by
15 ORS 223.309(1)¹ prior to the establishment of a system development charge
16 ("SDC"). (Resolution 04-19, para. 8). ORS 223.297 to 223.314 govern the
17 establishment, modification and implementation of a System Development Charge
18 and Methodology. The adoption of a public facilities plan and/or capital improvement
19 plan is required prior to the establishment of a system development charge. (ORS

20 **////**
21 **///**
22 **//**
23 **/**

24 _____
25 ¹ORS 223.309(1) states: "Prior to the establishment of a system development
26 charge by ordinance or resolution, a local government shall prepare a capital
improvement plan, public facilities plan, master plan or comparable plan that includes
a list of the capital improvements that the local government intends to fund, in whole
or in part, with revenues from an improvement fee and the estimated cost, timing and
percentage of costs eligible to be funded with revenues from the improvement fee for
each improvement."

1 223.309(1). As relevant here, that statute requires Respondent to prepare a "capital
2 improvement plan, public facilities plan, master plan, or comparable plan that
3 includes a list of the capital improvements that the local government intends to fund"
4 with revenues from the SDC's.

5 ORS 223.314 provides:

6 "The establishment, modification, or implementation of a system
7 development charge, or a plan or list adopted pursuant to ORS
8 223.309, or any modification of a plan or list, is not a land use
9 decision pursuant to ORS Chapters 195 and 197." (Emphasis added).

10 With certain exceptions not applicable here, ORS 197.825(1) gives LUBA
11 exclusive jurisdiction for "review of any land use decision or limited land use decision
12 of a local government, special district or a state agency." In the absence of this
13 statutory jurisdictional requirement, LUBA may not review a decision of a local
14 government.

15 Here, the decision at issue is a facilities plan and capital improvement plan
16 enacted under the provisions of ORS 223.297 *et seq.* Such plans are specifically
17 excluded from LUBA's jurisdiction by the provisions of ORS 223.314. Consequently,
18 LUBA does not have jurisdiction over this matter.

19 **Conclusion.**

20 As explained in detail above, the facts set forth in Resolution 04-19, the
21 definitional language of ORS 223.314 and LUBA's jurisdictional limits under ORS
22 197.825(1) should compel this Board to dismiss this appeal.

23 DATED this 18th day of June, 2004.

24 Respectfully submitted,

25 HAROLD LEAHY & KIERAN

26 By: 

Meg E. Kieran, OSB No. 89068
Of Attorneys for Respondent City of Springfield

RESOLUTION

NO. 04-19

A RESOLUTION OF THE CITY OF SPRINGFIELD COMMON COUNCIL APPROVING THE MWMC 2004 FACILITIES PLAN AND ADOPTING THE 20-YEAR PROJECT LIST.

WHEREAS, on February 9, 1977, the City of Springfield, the City of Eugene, and Lane County (the Governing Bodies) entered into an intergovernmental agreement (IGA) which established the Metropolitan Wastewater Management Commission (MWMC) as an ORS Chapter 190 entity responsible to construct, operate, and maintain regional wastewater facilities; and,

WHEREAS, the regional wastewater facilities, which include the Eugene-Springfield Water Pollution Control Facility (WPCF), the Biosolids Management Facility (BMF), Biocycle Farm (BF), the Seasonal Industrial Waste Facility (SIWF), several regional wastewater pump stations and regional conveyance system, were designed and constructed in the early and mid-1980s with a projected design life of 20 years; and,

WHEREAS, the MWMC has undertaken several plans and studies between 1996 and 2001 to determine short- and long-term regional wastewater facilities improvements needed to provide adequate wastewater treatment capacity and meet all applicable regulatory permit requirements, including but not limited to the MWMC Master Plan, 1997, the Biosolids Management Plan, 1997, and the Wet Weather Flow Management Plan, 2001 (WWFMP); and,

WHEREAS, the MWMC enacted Resolution 02-05, authorizing the execution of a contract with CH2M HILL, Inc. for professional services for an MWMC predesign study and facilities plan update (Project no. P80010); and

WHEREAS, the MWMC enacted Resolution 03-11, amending the professional services contract with CH2M HILL, Inc. to include technical support for: (a) MWMC's system development charges (SDC) methodology update, and (b) evaluation of the best use of MWMC's SIWF property for facilities planning purposes, and (c) MWMC's 2004 Facilities Plan adoption process; and,

WHEREAS, applicable adopted MWMC goals, policies and management strategies, such as those contained in the FY 03-04 Regional Wastewater Program Budget, the WWFMP and the Biosolids Management Plan, along with the requirements of the MWMC National Pollutant Discharge Elimination System (NPDES) permit issued by the Oregon Department of Environmental Quality (DEQ) in May, 2002, the "DEQ Guidelines for the Preparation of Facilities Plans and Environmental Reports for Community Wastewater Projects," (1999) (DEQ Guidelines), and MWMC guidance provided the foundation and direction for the MWMC 2004 Facilities Plan (attached hereto and by this reference incorporated herein); and

RESOLUTION 04-19

WHEREAS, the MWMC 2004 Facilities Plan analyses show that capital improvements contained in the 20-Year Project List Included in the MWMC 2004 Facilities Plan need to be implemented in accordance with the 20-Year Project List Schedule in order to achieve the regulatory compliance and capacity objectives stated in the MWMC 2004 Facilities Plan; and,

WHEREAS, the MWMC 2004 Facilities Plan and 20-Year Project List have been prepared, in part, to provide the public facilities plan and list of capital improvements that are required by ORS 223.309(1) prior to the establishment of a system development charge; and

WHEREAS public meetings and MWMC work sessions were conducted to provide guidance on preparation of the draft MWMC 2004 Facilities Plan on November 24, 2003, January 8, 2004, and March 3, 2004; and

WHEREAS, public hearings were noticed and conducted by the MWMC to accept and consider public comment on the draft MWMC 2004 Facilities Plan on April 22, 2004 and May 6, 2004; and

WHEREAS, on May 6, 2004 MWMC enacted Resolution 04-04 adopting the MWMC 2004 Facilities Plan and 20-Year Project List; and

WHEREAS, the Springfield City Council conducted a public hearing on the MWMC 2004 Facilities Plan and the 20-Year Project List on May 17, 2004; and

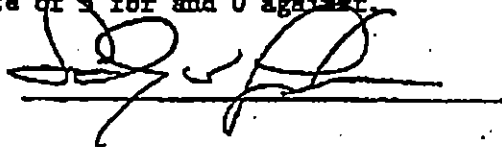
WHEREAS, the Springfield City Council has reviewed and considered testimony from the public and discussed the MWMC 2004 Facilities Plan and 20-Year Project List.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Springfield as follows: The Common Council of the City of Springfield approves the MWMC 2004 Facilities Plan and hereby adopts the 20-Year Project List.

This Resolution shall take effect upon adoption by the City Council and approval by the Mayor.

Adopted by the Common Council of the City of Springfield the 17th day of May, 2004.
by a vote of 5 for and 0 against.

Mayor



ATTEST:

Amy Sowa
Amy Sowa, City Recorder

EXHIBIT 1

Page 2 of 2

APPROVED
[Signature]
5/13/04
OFFICE OF CITY ATTORNEY

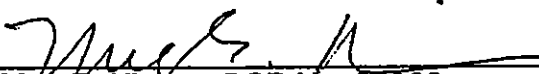
CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion to Dismiss by depositing true, full and exact copies thereof in the United States Post Office at Springfield, Oregon on June 18, 2004, enclosed in a sealed envelope, with postage paid, addressed to:

Bill Kloos
Attorney at Law
P.O. Box 11906
Eugene, OR 97440
Attorney for Petitioners

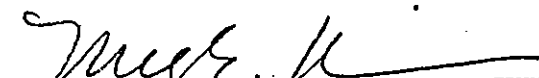
Laurence E. Thorp
THORP PURDY JEWETT
URNESS & WILKENSON, P.C.
1011 Harlow Road, Suite 300
Springfield, OR 97477
Of Attorneys for Intervenor-Respondent

HAROLD, LEAHY & KIERAN

By: 
Meg E. Kieran, OSB No. 89068
Of Attorneys for Respondent City of Springfield

I certify that the foregoing is a true and full copy of the original.

DATED this 18 day of June, 2004.

By: 
Meg E. Kieran, OSB No. 89068
Of Attorneys for Respondent City of Springfield

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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,

Respondent,

and

THE METROPOLITAN WASTEWATER
MANAGEMENT COMMISSION,

Intervenor-Respondent.

LUBA No. 2004-090
(MVMC 2004 Facilities Plan;
Springfield Res. 04-19)

**RESPONDENT'S MOTION TO
EXTEND RECORD FILING
DEADLINE PENDING DECISION ON
MOTION TO DISMISS**

Pursuant to OAR 661-010-0067, Respondent City of Springfield (the City) moves the Board to extend the June 25, 2004 deadline for filing the Record on Appeal to allow time for the Board to rule on a Motion to Dismiss LUBA No. 2004-090, filed contemporaneously with this Motion. In the event the Board grants Respondent's Motion to Dismiss, no Record on Appeal will be necessary. If the Board denies the Motion to Dismiss, the City requests 21 days from the Board's ruling to submit the Record on Appeal. Accordingly, this extension is reasonable and necessary to prevent the City from incurring unnecessary costs and attorney fees.

HAROLD, LEAHY
& KIERAN
Attorneys At Law
223 A Street
Suite D
Springfield Oregon
(541) 748-9621
Fax: (541) 748-4109

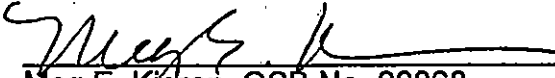
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Intervenor-Respondent Metropolitan Wastewater Management Commission joins in this Motion. Petitioner's attorney objects to this Motion to Extend the Record.

DATED this 18th day of June, 2004.

Respectfully Submitted

HAROLD, LEAHY & KIERAN

By: 
Meg E. Kieran, OSB No. 89068
Of Attorneys for Respondent City of Springfield


CERTIFICATE OF SERVICE

I certify that I served the foregoing Respondent's Motion to Extend Record Filing Deadline Pending Decision on Motion to Dismiss by depositing true, full and exact copies thereof in the United States Post Office at Springfield, Oregon on June 18th, 2004, enclosed in a sealed envelope, with postage paid, addressed to:

Bill Kloos
Attorney at Law
P.O. Box 11906
Eugene, OR 97440
Attorney for Petitioners


Laurence E. Thorp
THORP PURDY JEWETT
URNESS & WILKENSON, P.C.
1011 Harlow Road, Suite 300
Springfield, OR 97477
Of Attorneys for Intervenor-Respondent

HAROLD, LEAHY & KIERAN

By: 
Meg E. Kieran, OSB No. 89068
Of Attorneys for Respondent City of Springfield

I certify that the foregoing is a true and full copy of the original.

DATED this 18th day of June, 2004.

By: 
Meg E. Kieran, OSB No. 89068
Of Attorneys for Respondent City of Springfield

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CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion to Dismiss by depositing true, full and exact copies thereof in the United States Post Office at Springfield, Oregon on June 18, 2004, enclosed in a sealed envelope, with postage paid, addressed to:

Bill Kloos
Attorney at Law
P.O. Box 11906
Eugene, OR 97440
Attorney for Petitioners

Laurence E. Thorp
THORP PURDY JEWETT
URNES & WILKENSON, P.C.
1011 Harlow Road, Suite 300
Springfield, OR 97477
Of Attorneys for Intervenor-Respondent

HAROLD, LEAHY & KIERAN

By: Meg E. Kieran
Meg E. Kieran, OSB No. 89068
Of Attorneys for Respondent City of Springfield

I certify that the foregoing is a true and full copy of the original.

DATED this 18 day of June, 2004.

By: Meg E. Kieran
Meg E. Kieran, OSB No. 89068
Of Attorneys for Respondent City of Springfield

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BRIEFLY

REGION

Book sale scheduled at Waldport library

WALDPOR — The Friends of the Waldport Public Library will host a sale of more than 12,000 donated books June 24 to 26. The sale will be from 5 p.m. to 8 p.m. Thursday; 10 a.m. to 6 p.m. Friday; and 9 a.m. to noon Saturday. After 12:30 p.m. Saturday, a bag sale will offer remaining books at \$1 per bag.

The group has raised more than \$25,000 to supplement the library's budget during the past eight years. Donations have funded computers, a bicycle rack, a copy machine and other items as well as a capital improvement fund for future needs.

Car show to benefit area food bank

JUNCTION CITY — A classic car show Saturday will benefit a local food bank. Grandview Rehabilitation

and Specialty Care, along with Junction City Residential Center, will host Summer Splash Show 'n' Shine 2004 from noon to 4 p.m. at 530 Birch St.

Admission is a suggested donation of two canned food items, to be given to Junction City Local Aid to help hungry people and the homeless. Prizes, free lemonade and cookies, and oldies music will be featured.

Republican women plan Monday meeting

The Republican Women of Central Lane will hold their next meeting Monday at the Ramada Inn, 225 Coburg Road, with the doors opening at 11:15 a.m., lunch at 11:30 a.m. and the meeting at noon. The speaker will be Jarrett White, a college Republican from the University of Oregon.

The cost of lunch is \$8, with reservations needed by Thursday. Call Muriel at 344-4753 for reservations.

Retiree

Several schools in the Eugene, Springfield and Bethel districts see shift

Students at some schools the Eugene, Springfield and Bethel school districts will see new principals when they come back to school in the fall, most because of a continuing flurry of retirements.

These are the changes, some of which have been previously announced:

Eugene School District: Sa Cramer, currently principal River Road/El Camino del F Elementary, will be the new principal at Cal Young Elementary School. Her replacement will be Paco Furlan, who is currently assistant principal North Eugene High School. Young Principal Tom Maloney, meanwhile, will be the new principal at Edison Elementary taking over from Janis Sw

CALENDAR

Coburg TODAY

Fire District Board — 7 p.m., Fire Station, 91232 N. Coburg Road. Open house and grant discussion. 686-1573.

Eugene TODAY

Joint Meeting of Eugene City Council, Springfield City Council, Lane County Board of Commissioners — 6 p.m., Library Meeting Room, Springfield City Hall, 225 N. Fifth St. 682-5017.

Neighborhood Leaders Council — 7 p.m., Sloat Room, Atrium Building, 99 W. 10th Ave. 682-5009.

WEDNESDAY

City Council work session — Noon, McNutt Room, City Hall, 777 Pearl St. 682-5017.

Housing Policy Board Allocations Subcommittee — 2 p.m., Saul Room, Atrium Building, 99 W. 10th Ave. 682-5529.

Public Works Rates Advisory Committee — 6 p.m., Garden Room, Public Works Engineering, 244 E. Broadway. 682-6887.

Racial Profiling Task Team — 6:30 p.m., Emergency Services Training Center, 1705 W. Second Ave., Room 1.

Fifth St. Presentation of ACTSO certificates; work session and public hearing on amendments to Metropolitan Area General Plan public facilities element. 682-4203.

Commission on Children and Families — 4 p.m. to 8 p.m., Fireside Room, Laurelwood Golf Course, 2700 Columbia St., Eugene. 682-6656.

Fair Board — 5 p.m., Meeting Room No. 2, Convention Center Building, Lane Events Center, 796 W. 13th Ave., Eugene. 682-7338.

Finance and Audit Committee — 1:30 p.m., Commissioners' Conference Room, Public Service Building, 125 E. Eighth Ave., Eugene. 682-6503.

Lane Workforce Partnership, Employer Workforce Committee — 8 a.m., Suite 120, 300 Country Club Road, Eugene. Review status of local workforce training fund projects. 686-3570.

Local Government Boundary Commission — Noon, Fourth Floor Large Conference Room, Lane Council of Governments, 99 E. Broadway, Eugene. Meet with advisory committee. 682-4425.

WEDNESDAY

Board of Commissioners — 9 a.m., Commissioners' Conference Room, Public Service Building, 125 E. Eighth Ave., Eugene. Public hearing on 2003-04 supplemental budget; Siuslaw

1 BDRM V



MEMORANDUM **OFFICE OF CITY ATTORNEY**

[REDACTED]

DATE: May 6, 2004

TO: Springfield Planning Commission
 Eugene Planning Commission
 Lane County Planning Commission

FROM: Meg Kieran
 Springfield City Attorney

SUBJECT: *Metro Plan* amendments; *Public Facilities and Services Plan* amendments; response to material submitted by Home Builders Association at April 20, 2004 public hearing

Home Builders Association submitted written materials into the record of the above proceeding. MWMC submits this response.

1. Applicable standards.

Mr. Kloos states, without specificity, that "[s]tate statutes apply." Certainly, this proceeding is governed, in part, by state statutes, particularly, those provisions of ORS Chapter 197 that govern post-acknowledgment plan amendments. In addition, the amendments must be consistent with applicable statewide planning goals. The LCDC administrative rules implement the statewide planning goals. In addition, the proposed plan amendments must be consistent with existing, acknowledged plan provision.

2. Planning Horizon.

Home Builders states that the use of the 2025 planning horizon for the *PFSP* list of wastewater treatment and collection facilities is inconsistent with the existing *Metro Plan* provisions. Home Builders is incorrect.

First, the existing *PSFP*, dated December 2001, includes projects that extend out 20 years from that time. For example, the introductory text to the project lists contained in the existing Plan states: "Long-term projects are anticipated to be built in six to 20 years..." (*PFSP*, P.28). That horizon would extend to 2021. EWEB's list includes, as long-term projects, water system improvements 218 through 237, none of which has a date more specific than the six to 20 year reference quoted above.

Second, the Department of Environmental Quality guidelines recommend that sewer treatment facilities should be planned and constructed for a 20-year population projection period.

The planning horizon in the amendments is appropriate for the nature of the planned facilities. Sewer treatment facilities should be constructed with long range planning goals.

3. The proposed PFSP amendments are a project list as required by state statutes and implementing regulations.

Home Builders insists that the proposed PFSP amendments, particularly the proposed new tables, are not a "project list" within the meaning of state statutes and regulations. Home Builders argument is without merit. The proposed sanitary sewer project list is comparable to the existing project lists in the PFSP by Springfield Utility Board, EWEB and the other participating jurisdictions' lists. The proposed list also complies with the LCDC's Goal 11 implementing administrative rules.

OAR 660-001-0005(6) defines "public facility project" as follows:

"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 public."

Public facility system, as it relates to sanitary sewers, are limited to the following: a) treatment facility system; and/or b) primary collection system. (OAR 660-011-0005(7)).

Proposed Table 16a lists six treatment facility system projects: WPCF Treatment Project; Residual Treatment Project; and Beneficial Reuse Project. It also includes three pump stations (i.e., collection system projects): Willakenzie Pump Station, Screw Pump Station and Glenwood Pump Station. This list complies with both the statute and the administrative rule definition of "project list."

In their oral testimony Home Builders stated that a more appropriate list of projects for PFSP purposes would be MWMC's 20-year project list that is included in MWMC's 2004 Facilities Plan. MWMC adopted the 2004 Facilities Plan and 20-year project list to satisfy DEQ requirements for facilities planning and to comply with the requirements of ORS 223.309(1) that a facilities plan and list of proposed capital improvements be adopted prior to the establishment of a system development charge.

ORS 223.314 provides:

"The establishment, modification or implementation of a *** a plan or list adopted pursuant to ORS 223.309, or any modification of a plan or list, is not a land use decision pursuant to ORS Chapter 195 and 197."

Therefore, requiring the inclusion of MWMC's 20-year project list in the PFSP would be inappropriate.

4. The proposed amendments comply with applicable administrative rules; both the Metro Plan and PFSP, with the proposed changes, satisfy all planning requirements.

A. Public Facility Plan.

Home Builders' recitation of various Oregon Administrative Rules that govern public facilities plans assumes that the proposed amendments are the complete plan. They are not. The complete plan is the entire Metro Plan Chapter III, Section G and the complete PFSP. Read in context, the Metro Plan and the PFSP include all the requirements recited by Home Builders from OAR 660-011-0010. The existing PFSP was enacted and acknowledged as in compliance with the statewide planning goals in 2002 as part of the region's comprehensive plan periodic review process. Even without the proposed amendments, the PFSP has been found, by virtue of being acknowledged, in compliance with Goal 11. The proposed amendments only bolster and augment the existing plan, they do not remove any critical elements of the plan.

The complete inventory required by subsection (1)(a) is found in the existing PFSP.

The plan includes a project list. The proposed amendments, read in the context of the existing plan, include a "list of significant public facility projects." Any contention that it does not is merely a restatement of Home Builders' earlier argument that the proposed project list is not a "project list," as they would define it.

The plan includes cost estimates. The required "rough cost estimates" are defined as "approximate costs expressed in current-year (year closest to the period of public facility plan development) dollars. It is not intended that project cost estimates be as exact as is required for budgeting purposes." OAR 660-011-0005(2). The cost estimates provided are sufficient to satisfy the rule.

Again, by looking at the entire PFSP as amended, the remainder of the requirements cited by Home Builders are also present: maps of

the projects; an estimate of when each project will be needed; and a discussion of the possible funding mechanisms for each project.

B. Inventory.

The PFSP as amended by the proposed amendments includes a complete inventory of the region's sanitary sewer system. Again, Home Builders attempts to restate its "project list" is not a "project list" argument. Clearly, the existing list, which passed muster prior to the proposed amendments without the addition of the new projects, satisfied LCDC's definition of "project list." It is hard to imagine how the addition of projects somehow makes an already sufficiently descriptive list no longer sufficient within the meaning of the rule.

C. Timing.

Home Builders argument here is not really about timing, but about the definition of "project list:" "Where, as here, the proposal is to approve categories of projects, rather than a list of projects, it is not possible to comply with the rule." (Home Builders letter, p.5). MWMC has responded to that argument above.

D. Rough Cost Estimates.

As explained above, the cost estimates provided in proposed Table 16a satisfy the rule's definition of rough cost estimates.

E. Elements of the comprehensive plan.

Home Builders again re-state their unsupported "project list" argument: "Again, a project listing is required, not a description of categories of projects." The *Metro Plan* and PFSP, as amended, satisfy OAR 660-011-0045.

Conclusion.

The proposed amendments comply with state statutes, statewide planning goals, and the administrative rules that implement Goal 11. The proposed amendments to Chapter III, Section G, and Chapter IV of the Metro Plan are necessary additions concerning proposed improvement and capacity to the conveyance and treatment facilities. This information should have been included with the recently adopted amendments to Chapter III that occurred as a requirement of Periodic Review. The amendments to the PFSP are also a compilation of information that should have been included with the adoption of the PFSP in 2001. Such additional information has no effect on policies of the Plan either specific

to public facilities or other chapters other than to demonstrate that these urban facilities will be constructed to accommodate planned build-out within Eugene's and Springfield's urban growth boundary. These amendments therefore satisfy the Metro Plan amendment criteria of approval that requires internal consistency.

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NOTICE OF JOINT PUBLIC HEARING - SPRINGFIELD AND EUGENE CITY COUNCILS AND THE LANE COUNTY BOARD OF COMMISSIONERS

NOTICE IS HEREBY GIVEN that on Tuesday, June 22, 2004, at 7:00 p.m. in the Library Meeting Room of Springfield City Hall, 225 Fifth Street, Springfield, OR, the Springfield and Eugene City Councils and the Lane County Board of Commissioners will conduct a joint public hearing on the following proposals:

Amendments to the Eugene-Springfield Metropolitan Area General Plan, Chapter III, Section G, Public Facilities and Services Element and Chapter V Glossary:

- Modifying the Introductory text, pages III-G-1 and III-G-2; modifying Policy G.2 at page III-G-4; modifying Finding 6, page III-G-4; modifying Policy G.3 at page III-G-4; inserting new heading, "Services to Development Within the Urban Growth Boundary" following Policy G.6 at page III-G-6; adding new Findings 11 and 12 after Policy G.8 at page III-G-6; adding new Policy G.9 at page III-G-8; subsequent renumbering of remaining policies and findings in Chapter III-G; modifying Chapter V Glossary, by modifying the definition of Public Facilities Projects at page V-4; Wastewater Chapter V Glossary. (For exact language contained in this proposal see additional information included with this notice.)
- Amendments to the Eugene-Springfield Public Facilities and Services Plan (PFSP):
- Modify text preceding existing Table 3 at page 28; insert new Tables 4a and 4b at page 28; modify Map 2 at page 35; insert new Map 2a after page 35; modify Chapter IV, Wastewater System Condition Assessment at page 82; modify text long term Services Availability Within Urbanizable Areas at page 97; add Table 16a following existing Table 16 at page 101; add new Chapter IV Amendments to the Plan. This new chapter includes descriptions of modifications to existing identified projects which require, or do not require, amendment to the Public Facilities and Services Plan. (For exact language, maps and tables contained in this proposal see additional information included with this notice.)

Applicant: The Metropolitan Wastewater Management Commission (MWMC). The Springfield City Council initiated these amendments on February 17, 2004.

Description of the Request: The applicant is proposing to modify text in the Metro Plan to more accurately describe the role of the MWMC to include local capital improvement plans as a means to implement policy in the PFSP and information to Tables and Maps identifying MWMC projects and facilities; expand the definition of Wastewater; revise description of Wastewater System Condition Assessment; and adding a new chapter that governs amendments to the PFSP. (See additional descriptions above for page, table and map numbers.)

Criteria of Approval: Criteria to be used to evaluate a Metro Plan Text Amendment is found in Springfield Development Code, Section 7030(3)(a&b), Eugene Code, Section 9.128(3)(a&b), and Lane Code, Section 12.225(2)(a&b) and reads as follows:

The amendment must be consistent with the relevant statewide planning goals adopted by the Land Conservation and Development Commission; and

Adoption of the amendment must not make the Metro Plan internally inconsistent.

Additional Information: Staff Report, Providing testimony.

Anyone wishing to testify on this matter may do so in person, in writing, or both, by appearing at the hearing or sending written correspondence, including e-mail, to the Development Services Department, 20 Greg Mott Planning Manager, 225 Fifth Street, Springfield, OR 97477, or mail to: gmott@ci.springfield.or.us.

The application, supporting documents submitted by the applicant and the staff notes will be available for viewing or purchase by 3:00 p.m. on Friday, June 11, 2004, in the Springfield Development Services Department.

The joint elected officials will conduct a work session discussion of these proposed amendments at 5:30 p.m. in the Library Meeting Room the same evening as the public hearing. The work session meeting is open to the public, but no public testimony will be

Affidavit of Publication

State of Oregon, County of Lane-ss

I, Belinda DuBell being duly sworn, depose And say that I am the legal clerk of the Springfield News a newspaper of general circulation, as defined by ORS 193.010 and 193.020; printed and published at Springfield in the aforesaid county and state, that the legal publication re: Notice of Joint Public Hearing in Springfield and Eugene City Councils and the Lane Co. Board of Commissioners.

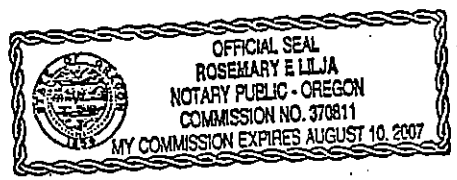
A printed copy of which is hereto annexed, was Published in the entire issue of said newspaper one successive and consecutive weeks in the following issues: June 09, 2004.

THE SPRINGFIELD NEWS

by: Belinda DuBell

Subscribed and sworn to me this 11th day of June, 2004 by: Belinda DuBell

Rosemary E. Lilja
Notary Public for Oregon



NOTICE OF JOINT PUBLIC HEARING & SPRINGFIELD, EUGENE AND LANE COUNTY PLANNING COMMISSIONS'

NOTICE IS HEREBY GIVEN that on Tuesday, April 20, 2004, at 7:00 p.m. in the Library Meeting Room of Springfield City Hall, 225 Fifth Street, Springfield, OR, the Planning Commissions of Springfield, Eugene and Lane County will conduct a joint public hearing on the following proposals:

Amendments to the Eugene-Springfield Metropolitan Area General Plan, Chapter III, Section G. Public Facilities and Services Element and Chapter V - Glossary: Modifying the introductory text, pages III-G-1 and III-G-2; modifying Policy G.2 at page III-G-4; modifying Finding 6, page III-G-4; modifying Policy G.3 at page III-G-4; inserting new heading "Services to Development Within the Urban Growth Boundary" following Policy G.3 at page III-G-5; adding new Findings 11 and 12 after Policy G.3 at page III-G-5; adding new Policy G.3 at page III-G-6; subsequent renumbering of remaining policies and findings in Chapter III-G; Modify Chapter V Glossary, by modifying the definition of Public Facilities Projects at page IV-4: "Wastewater" Chapter V Glossary.

Amendments to the Eugene-Springfield Public Facilities and Services Plan (PFSP): Modify text preceding existing Table 3 at page 28; insert new Tables 4a and 4b at page 28; modify Map 2 at page 35; insert new Map 2a after page 35; modify Chapter IV, Wastewater

System Condition Assessment at page 82; modify text Long-term Service Availability Within Urbanizable Areas at page 97; add Table 16a following existing Table 16 at page 101; add new Chapter IV: Amendments to the Plan. This new chapter includes descriptions of modifications to existing identified projects which require, or do not require, amendment to the Public Facilities and Services Plan.

Applicant: The Metropolitan Wastewater Management Commission (MWMC), under the auspices of the City of Springfield (initiator of the amendment).
Description of the Request

The applicant is proposing to modify text in the Metro Plan to more accurately describe the role of the MWMC; to include local capital improvement plans as a means to implement policy in the PFSP; add information to Tables and Maps identifying MWMC projects and facilities; expand the definition of Wastewater; revise description of Wastewater System Condition Assessment; and adding a new chapter that governs amendments to the PFSP. (See additional descriptions above for page, table and map numbers.)

Criteria of Approval
Criteria to be used to evaluate a Metro Plan Text Amendment is found in Springfield Development Code, Section 7.030(3)(a&b), Eugene Code Section 8.128(3)(a&b), and Lane Code Section 12.225(2)(a&b) and reads as follows:

(a) The amendment must be consistent with the relevant statewide planning goals adopted by the Land Conservation and Development Commission; and

(b) Adoption of the amendment must not make the Metro Plan internally inconsistent.

Additional information in Staff Report, Providing Testimony.

Anyone wishing to testify on this matter may do so in person, in writing, or both by appearing at the hearing or sending written correspondence, including e-mail, to the Development Services Department, c/o Greg Mott, Planning Manager, 225 Fifth Street, Springfield, OR 97477, or gmott@ci.springfield.or.us

The application, supporting documents submitted by the applicant and the staff notes will be available for viewing or purchase by 3:00 p.m., on Friday, April 2, 2004 in the Springfield Development Services Department.

The joint planning commissions will conduct a work session discussion of these proposed amendments at 5:30 p.m. in the Library Meeting Room the same evening as the public hearing. The work session meeting is open to the public, but no opportunity for public testimony will be provided.
m.31

(968)

GUARD PUBLISHING COMPANY

P.O. BOX 10188 EUGENE, OREGON 97440 PHONE (541) 485-1234

Legal Notice 2714156

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Legal Notice Advertising

CITY OF SPRINGFIELD
ATTN: BRENDA
225 5TH STREET
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AFFIDAVIT OF PUBLICATION

STATE OF OREGON, }
COUNTY OF LANE, } ss.

I, Kelly Gant, being first duly affirmed, depose and say that I am the Advertising Manager, or his principal clerk, of The Register-Guard, a newspaper of general circulation as defined in ORS 193.010 and 193.020; published at Eugene in the aforesaid county and state; that the Notice of Public Meeting/Hearing, printed copy of which is hereto annexed, was published in the entire issue of said newspaper for one successive and consecutive day(s) in the following issues:

March 31, 2004

NOTICE OF JOINT PUBLIC HEARING - SPRINGFIELD, EUGENE AND LANE COUNTY PLANNING COMMISSIONS NOTICE IS HEREBY GIVEN that on Tuesday, April 20, 2004, at 7:00 p.m. in the Library Meeting Room of Springfield City Hall, 225 Fifth Street, Springfield, OR, the Planning Commissions of Springfield, Eugene and Lane County will conduct a joint public hearing on the following proposals:

Amendments to the Eugene-Springfield Metropolitan Area General Plan, Chapter III, Section G, Public Facilities and Services Element and Chapter V Glossary; Modifying the introductory text, pages III-G-1 and III-G-2; modifying Policy G.2 at page III-G-4; modifying Finding 6, page III-G-4; modifying Policy G.3 at page III-G-4; inserting new heading "Services to Development Within the Urban Growth Boundary" following Policy G.3 at page III-G-5; adding new Findings 11 and 12 after Policy G.3 at page III-G-5; adding new Policy G.9 at page III-G-6; subsequent renumbering of remaining policies and findings in Chapter III-G; Modify Chapter V Glossary, by modifying the definition of Public Facilities Projects at page V-4: "Wastewater" Chapter V Glossary.

Amendments to the Eugene-Springfield Public Facilities and Services Plan (PFSP): Modify text preceding existing Table 3 at page 28; insert new Tables 4a and 4b at page 28; modify Map 2 at page 35; insert new Map 2a after page 35; modify Chapter IV, Wastewater System Condition Assessment at page 82; modify text "Long-term Service Availability Within Urbanizable Areas" at page 97; add Table 16a following existing Table 16 at page 101; add new Chapter IV, Amendments to the Plan. This new chapter includes descriptions of modifications to existing, identified projects which require, or do not require, amendment to the Public Facilities and Services Plan.

Applicant
The Metropolitan Wastewater Management Commission (MWM-C) under the auspices of the City of Springfield (initiator of amendment).

Description of the Request
The applicant is proposing to modify text in the Metro Plan to more accurately describe the role of the MWM-C; to include local capital improvement plans as a means to implement policy in the PFSP; add information to Tables and Maps identifying MWM-C projects and facilities; expand the definition of Wastewater; revise descriptions of Wastewater System Condition Assessment; and adding a new chapter that governs amendments to the PFSP. (See additional descriptions above for page, table and map numbers.)

Criteria of Approval
Criteria to be used to evaluate a Metro Plan Text Amendment is found in Springfield Development Code, Section 7.030(3)(a&b), Eugene Code Section 9.128(3)(a&b), and Lane Code Section 12.225(2)(a&b) and reads as follows:

- (a) The amendment must be consistent with the relevant statewide planning goals adopted by the Land Conservation and Development Commission; and
- (b) Adoption of the amendment must not make the Metro Plan internally inconsistent.

Additional Information - Staff Report, Providing Testimony
Anyone wishing to testify on this matter may do so in person, in writing, or both by appearing at the hearing or sending written correspondence, including e-mail, to the Development Services Department, c/o Greg Mott, Planning Manager, 225 Fifth Street, Springfield, OR 97477, or gmott@ci.springfield.or.us

The application, supporting documents submitted by the applicant and the staff notes will be available for viewing or purchase by 3:00 p.m. on Friday, April 2, 2004 in the Springfield Development Services Department.

The joint planning commissions will conduct a work session discussion of these proposed amendments at 5:30 p.m. in the Library Meeting Room the same evening as the public hearing. The work session meeting is open to the public, but no opportunity for public testimony will be provided.

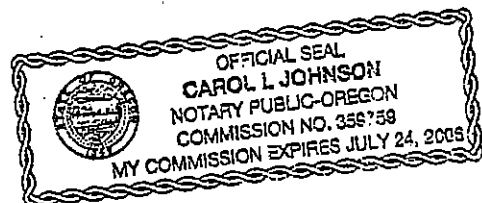
No. 2714156 - March 31, 2004

Subscribed and affirmed to before me this April 6, 2004

[Signature]
Notary Public of Oregon

My commission expires: July 24, 2006

Account #: 110787
INVOICE 2714156
Case: Eugene-Springfield Metropolitan Area



General Plan and PFSP

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AFFIDAVIT OF PUBLICATION

STATE OF OREGON, }
COUNTY OF LANE, } ss.

I, Kelly Gant, being first duly affirmed, depose and say that I am the Advertising Manager, or his principal clerk, of The Register-Guard, a newspaper of general circulation as defined in ORS 193.010 and 193.020; published at Eugene in the aforesaid county and state; that the Notice of Joint Public Hearing printed copy of which is hereto annexed, was published in the entire issue of said newspaper for one successive and consecutive day(s) in the following issues:

June 9, 2004

NOTICE OF JOINT PUBLIC HEARING - SPRINGFIELD AND EUGENE CITY COUNCILS AND THE LANE COUNTY BOARD OF COMMISSIONERS.

NOTICE IS HEREBY GIVEN that on Tuesday, June 22, 2004, at 7:00 p.m. in the Library Meeting Room of Springfield City Hall, 225 Fifth Street, Springfield, OR, the Springfield and Eugene City Councils and the Lane County Board of Commissioners will conduct a joint hearing on the following proposals:

Amendments to the Eugene-Springfield Metropolitan Area General Plan, Chapter III, Section G. Public Facilities and Services Element and Chapter V Glossary: Modifying the introductory text, pages III-G-1 and III-G-2; modifying Policy G.2 at page III-G-4; modifying Finding 6, page III-G-4; modifying Policy G.3 at page III-G-4; inserting new heading "Services to Development Within the Urban Growth Boundary" following Policy G.8 at page III-G-5; adding new Findings 11 and 12 after Policy G.8 at page III-G-5; adding new Policy G.9 at page III-G-6; subsequent renumbering of remaining policies and findings in Chapter III-G; Modify Chapter V Glossary, by modifying the definition of Public Facilities Projects at page V-4; "Wastewater" Chapter V Glossary. (For exact language contained in this proposal see additional information included with this notice.)

Amendments of the Eugene-Springfield Public Facilities and Services Plan (PFSP): Modify text preceding existing Table 3 at page 28; insert new Tables 4a and 4b at page 28; modify Map 2 at page 35; insert new Map 2a after page 35; modify Chapter IV, Wastewater System Condition Assessment at page 82; modify text "Long-term Service Availability Within Urbanizable Areas at page 97; add Table 16a following existing Table 16 at page 101; add new Chapter IV, Amendments to the Plan. This new chapter includes descriptions of modifications to existing, identified projects which require, or do not require, amendment to the Public Facilities and Services Plan. (For exact language, maps and tables contained in this proposal see additional information included with this notice.)

Applicant
The Metropolitan Wastewater Management Commission (MWMC). The Springfield City Council initiated these amendments on February 17, 2004.

Description of the Request
The applicant is proposing to modify text in the Metro Plan to more accurately describe the role of the MWMC; to include local capital improvement plans as a means to implement policy in the PFSP; add information to Tables and Maps identifying MWMC projects and facilities; expand the definition of Wastewater; revise description of Wastewater System Condition Assessment; and adding a new chapter that governs amendments to the PFSP. (See additional descriptions above for page, table and map numbers.)

Criteria of Approval
Criteria to be used to evaluate a Metro Plan Text Amendment is found in Springfield Development Code, Section 7.030(3)(a&b), Eugene Code Section 9.128(3)(a&b), and Lane Code Section 12.225(2)(a&b) and reads as follows:

(a) The amendment must be consistent with the relevant statewide planning goals adopted by the Land Conservation and Development Commission; and
(b) Adoption of the amendment must not make the Metro Plan internally inconsistent.

Additional Information - Staff Report, Providing Testimony

Anyone wishing to testify on this matter may do so in person, in writing, or both by appearing at the hearing or sending written correspondence, including e-mail, to the Development Services Department, c / o Greg Mott, Planning Manager, 225 Fifth Street, Springfield, OR 97477, or gmott@springfield.or.us

The application, supporting documents submitted by the applicant and the staff notes will be available for viewing or purchase by 3:00 p.m. on Friday, June 11, 2004 in the Springfield Development Services Department.

The Joint Elected officials will conduct a work session discussion of these proposed amendments at 5:30 p.m. in the Library Meeting Room the same evening as the public hearing. The work session meeting is open to the public, but no public testimony will be accepted until the public hearing begins at 7:00 p.m.

No. 2750475 - June 9, 2004

Subscribed and affirmed to before me this June 18, 2004

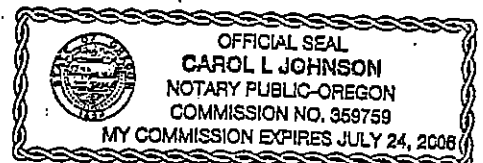
Carol L. Johnson
Notary Public of Oregon

My commission expires: July 24, 2006

Account #: 110787

INVOICE 2750475

Case: Springfield & Eugene City Council & Lane Co. - June 22, 2004



PUBLIC HEARING
SPRINGFIELD AND
EUGENE
CITY COUNCILS AND
THE LANE COUNTY
BOARD OF
COMMISSIONERS
NOTICE IS HEREBY
GIVEN that a public hearing will be held on June 11, 2004, at 7:00 p.m. in the Library Meeting Room of Springfield City Hall, 225 Fifth Street, Springfield, OR, the Springfield and Eugene City Councils and the Lane County Board of Commissioners will conduct a joint public hearing on the following proposed amendments to the Eugene-Springfield Metropolitan Area General Plan, Chapter II, Section G - Public Facilities and Services Element and Chapter V Glossary:

- Modifying the introductory text, pages II-G-1 and II-G-2; modifying Policy G-2 at page II-G-2; modifying Findings G-3, page II-G-3; modifying Policy G-3 at page II-G-3; inserting new heading, "Urban Growth Boundary" following Policy G-3 at page II-G-3; adding new Findings G-4 and G-5 after Policy G-3 at page II-G-3; adding new Policy G-4 at page II-G-3; subsequent renumbering of remaining policies and findings in Chapter II-G-3; Modify Chapter V Glossary by modifying the definition of Public Facilities Project at page V-4; "Wastewater" Chapter V Glossary. (For exact language contained in this proposal, see additional information included with this notice.)
- Amendments to the Eugene-Springfield Public Facilities and Services Plan (PFSP):
 - Modify text preceding existing Table 3 at page 28; insert new Tables 4a and 4b at page 28; modify Map 2 at page 28; insert new Map 2a at page 28; modify Chapter IV Wastewater Treatment System Condition Assessment at page 32; modify Table 1 (Form Services Availability Within Urbanizable Areas at page 37) and Table 1 (a) following existing Table 1 (a) at page 30; add new Chapter IV Amendments to the Plan. This new chapter includes descriptions of modifications to existing identified projects which require, or do not require, amendment to the Public Facilities and Services Plan. (For exact language, maps and tables contained in this proposal, see additional information included with this notice.)

Applicant
 The Metropolitan Wastewater Management Commission (MWWMC), The Springfield City Council, initiated these amendments on February 17, 2004.

Description of the Request
 The applicant is proposing to modify text in the Metro Plan to more accurately describe the role of the MWWMC to include local capital improvement plans and means to implement policy in the PFSP; add information to Tables and Maps; identifying MWWMC projects and facilities; expand the definition of Wastewater; revise description of Wastewater System Condition Assessment; and adding a new chapter that governs

amendments to the PFSP. (See additional descriptions above for page, table, and map numbers.)

Criteria of Approval
 Criteria to be used to evaluate Metro Plan Text Amendment is found in Springfield Development Code, Section 7.030(3)(a&b), Eugene Code, Section 9.128(3)(a&b), and Lane Code, Section 12.225(2)(a&b) and reads as follows:

The amendment must be consistent with the relevant statewide planning goals adopted by the Land Conservation and Development Commission; and

Adoption of the amendment must not make the Metro Plan internally inconsistent.

Additional Information
 Staff Report, Providing Testimony

Anyone wishing to testify on this matter may do so in person, in writing, or both, by appearing at the hearing or sending written correspondence, including e-mail, to the Development Services Department, c/o Greg J. Moll, Planning Manager, 225 Fifth Street, Springfield, OR 97477, or gmoll@ci.springfield.or.us

The application, supporting documents submitted by the applicant and the staff notes will be available for viewing or purchase by 3:00 p.m. on Friday, June 11, 2004, in the Springfield Development Services Department.

The joint elected officials will conduct a work session discussion of these proposed amendments at 5:20 p.m. in the Library Meeting Room the same evening as the public hearing. The work session meeting is open to the public, but no public testimony will be accepted until the public hearing begins at 7:00 p.m. (1160)

MEMORANDUM OFFICE OF CITY ATTORNEY

DATE: May 17, 2004

TO: Springfield Planning Commission
Eugene Planning Commission
Lane County Planning Commission

FROM: Meg Kieran
Springfield City Attorney

SUBJECT: Staff response to material submitted into the
record by Home Builders Association on May 6,
2004

On May 6, 2004, Home Builders Association submitted written materials into the record. MWMC submits this brief outline of issues in response.

A. MWMC'S Poplar Farm Project. (Homebuilders' letter at pp 2-3)

1. The 596 acre Poplar Farm site has been in farm use for more than 20 years;
2. The Poplar Farm is a permitted use in an EFU zone. ORS215.213(1)(bb) & 215.283(1)(y);
3. The Poplar Farm is a permitted use in Eugene's industrial zone. EC9.2450
4. Lane County's Notice of Land Use Decision that the Poplar Farm complies with land use requirements was April 14, 2000.
5. DEQ issued a permit for the operation of the Poplar Farm on the 596 acre site on June 27, 2000;
6. Construction is on schedule and the poplar trees have been planted by MWMC's contractor.

B. Liquid Effluent Dry and Wet Weather Capacity and Biosolids Loading. (Homebuilders' letter at pp 9 - 18)

1. MWMC adopted its 2004 Facilities Plan after a public hearing on May 6, 2004;

2. HBA made the same arguments found at pages 9 through 18 in its written testimony to the MWMC at its May 6, 2004 Facilities Plan public hearing;
3. MWMC's consultant, CH2M Hill, responded in writing to each of HBA's capacity and biosolids loading arguments; the responses were inserted in the HBA testimony in red text (a copy of the Homebuilder's letter containing the CH2M Hill response is attached hereto as Attachment 1.

C. Goal 6. (Homebuilders' letter at p 3)

1. Statewide Planning Goal 6 is "to maintain and improve the quality of the air, water and land resources of the state." Goal 6 requires that "all waste and process discharges from future development * * * shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards." The Goal 6 guidelines state that "all plans and programs affecting waste and process discharges should be coordinated within the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plan." In addition, plans "should buffer and separate those land uses which create or lead to conflicting requirements and impacts upon the air, water and land resources."
2. The treatment facilities and collection system improvements included in the proposed PFSP amendments are responsive to the requirements of MWMC's NPDES permit. A copy of MWMC's NPDES permit, setting forth the federal and state water treatment requirements is attached as Attachment 2.

D. Miscellaneous Issues: Timing of Projects; Definition of Wastewater

Other issues raised by Home Builders have been addressed by MWMC in our memo dated May 6, 2004 or are resolved by the plain language of the proposed amendments, existing Metro Plan language and administrative rules that implement Goal 11. These include challenges to the completeness of the project list; the timing, cost estimates and possible financing methods for the projects; and the definition of wastewater. Some of these issues were raised and discussed at the May 6, 2004 MWMC public hearing on the MWMC 2004 Facilities Plan and 20-year project list. A copy of the minutes of that meeting is attached as Attachment 3.

MEMORANDUM OFFICE OF CITY ATTORNEY

DATE: May 27, 2004

TO: Interested Persons

FROM: Dave Jewett
Attorney for MWMC

Meg Kieran
Attorney for City of Springfield

Jerome Lidz
Attorney for City of Eugene

SUBJECT: MWMC Processes

The Home Builders Association's (HBA) complaint about the processes employed by MWMC to seek elected officials' approval for needed improvements to the regional sewerage facilities arises out of flawed assumptions about the statutory framework for government actions regarding the provision of public facilities for wastewater conveyance and treatment and their funding with System Development Charges.

Background:

MWMC was formed by a 1977 IGA between Eugene, Springfield and Lane County to construct, operate, maintain and update regional sewerage facilities (Regional Facilities). MWMC is governed by seven commissioners appointed by the Governing Bodies, three of whom are elected officials of the Governing Bodies.

MWMC constructed the Regional Facilities with about \$115,000,000 in federal grants and local matching funds based on a facilities plan that was developed by MWMC's consultant, CH2M Hill, in 1979 (208 Plan). Pursuant to state and federal rules, the 208 Plan planned the Regional Facilities to have a design life of 20 years. The Regional Facilities opened in 1984. Since then, the community has invested several million dollars more in preserving and upgrading the Regional Facilities.

While MWMC operates the Regional Facilities pursuant to a NPDES Permit issued by DEQ (Permit), the Permit implements federal and state discharge requirements to protect the water quality of the Willamette River. For several years it has been clear that, without significant improvements, the Regional Facilities will soon be incapable of accommodating projected metro area growth while meeting the discharge requirements of the Permit. The driving factors include the need to manage peak flows to the Water Pollution Control Facility, to properly dispose of residuals and to meet new Permit requirements governing the temperature and ammonia levels of discharges to the Willamette River.

MWMC Memorandum re: process
 May 21, 2004
 Page 2

Determining the scope of the needs, planning to address them and funding their cost is complex. The HBA's complaint about the processes employed by MWMC oversimplifies and misstates the rules that govern the processes.

MWMC 2004 Facilities Plan:

The MWMC 2004 Facilities Plan is a comprehensive 20-year facility plan that replaces the 208 Plan. However, the 2004 Facilities Plan is the product of a long, multi-phased planning process that has involved significant public involvement, including three citizen advisory committees. It is an outgrowth of and combines and updates prior studies such as the 1997 Master Plan, the 1997 Biosolids Management Plan, the 1997 Systems Development Charge Methodology Update, the 2001 Wet Weather Flow Management Plan, and the 2003 Management Plan for a Dedicated Biosolids Land Application Site. The previous plans were reviewed by MWMC, the public, and the Governing Bodies and have provided the basis for the annual MWMC Capital Improvements Program (CIP) since their adoption. Of the \$144,000,000 in projects currently anticipated in the 2004 Facilities Plan, \$100,000,000 in projects are carried forward from the prior plans. MWMC has proceeded to implement each of the projects and policies in the plans, which has been reflected in each annual MWMC budget and CIP.

Several key planning considerations were factored into the completion of the 2004 Facilities Plan. Among them was the implementation of recommendations from Citizen Advisory Committees that represented diverse community interests, values and involvement and which had been adopted by MWMC as plans and policies. The City Councils have also adopted the Wet Weather Flow Management Plan. The 2004 Facilities Plan also needed to factor in new regulatory limitations DEQ included in the Permit. This factor caused some modifications to the type and phasing of already planned projects, and resulted in \$44,000,000 in additional projects over twenty years. The 2004 Facilities Plan was adopted by MWMC on May 6, 2004 after a number of public meetings and two public hearings. MWMC chose to refer it to the Governing Bodies for concurrence pursuant to Section 3 of the IGA.

Land Use Planning:

The proposed upgrades to the wastewater treatment facilities system are to be done at three different locations including the Water Pollution Control Facility, the residuals site and the beneficial reuse site as well as upgrades to pump stations serving the primary collection system at three separate locations. Since the Metro Plan did not include wastewater among the list of services to develop within the UGB and did not identify the wastewater treatment facility system, MWMC proposed a number of amendments to the Metro Plan to correct the omissions. In addition, MWMC proposed a number of changes to the Public Facilities and Services Plan to correct similar omissions and make this functional plan internally consistent with the Metro Plan. Consistency was to be achieved by inserting various tables and maps identifying the six overall projects and showing their location as well as including a condition assessment for MWMC's treatment and primary collection system. The proposed amendments to the Metro Plan and the PFSP were submitted for consideration by the Governing Bodies' planning commissions and subsequently by all three Governing Bodies as required by the Springfield Development Code, the Eugene Code, and the Lane Code. That process is continuing with its attendant public

MWMC Memorandum re: process
May 21, 2004
Page 3

meetings and hearings.

System Development Charges:

MWMC has had a SDC since 1991. The methodology that is the basis for the current SDC was adopted in 1997. In June 2003, partly in response to concerns expressed by HBA, MWMC directed staff to retain a consultant and form a CAC to review the 1997 Methodology and recommend changes. Home Builders designated a representative who participated on the CAC. The consultant, CH2M Hill, and the CAC recommended changes to the 1997 Methodology. On April 1, 2004, MWMC adopted a revised methodology after a number of public meetings and a public hearing (Proposed SDC Methodology).

ORS 223.297 to 223.314 governs SDCs. ORS 223.309(1) requires the adoption of a facilities plan and a capital improvements list prior to the establishment of a SDC. The pertinent MWMC resolution states that the 2004 Facilities Plan including the 20-year project list are being adopted to provide the facilities plan and list of capital improvements that are required by ORS 223.309(1). ORS 223.314 provides that the establishment, modification and implementation of a system development charge and a facilities plan and list adopted pursuant to ORS 223.309 are not land use decisions pursuant to ORS chapters 195 and 197.

Pursuant to Section 3 of the IGA, MWMC referred the Proposed SDC Methodology and the 2004 Facility Plan and list to the Cities of Eugene and Springfield for implementation through their respective City Codes in accordance with the SDC statute and applicable city code procedures. That process is continuing.

Conclusion:

Three separate processes are involved in MWMC's effort to obtain the Governing Bodies' approvals necessary to plan, site and fund the improvements that are necessary so the Regional Facilities can continue to meet federal and state environmental standards governing wastewater discharges to the Willamette River as well as the disposition and beneficial reuse of residuals. For the reasons explained above, HBAs' complaint inappropriately combines and misstates the processes involved with which MWMC has fully complied.