

1                                   BEFORE THE LAND USE BOARD OF APPEALS

2                                   OF THE STATE OF OREGON

3  
4 NESTE RESINS CORPORATION, an       )  
5 Oregon corporation,                    )  
6    )  
7                    Petitioner,         )

8                                    )  
9            vs.                            )

10                                    )  
11 CITY OF EUGENE,                        )  
12    )  
13                    Respondent,         )

14                                    )  
15            and                            )

16                                    )  
17 GOOD NEIGHBOR CARE CENTERS, INC.,    )  
18 and CITY OF SPRINGFIELD,             )  
19    )  
20                    Intervenors-Respondent.         )

LUBA No. 91-156

FINAL OPINION  
AND ORDER

21  
22  
23            Appeal from City of Eugene.

24  
25            Michael E. Farthing, Eugene, filed the petition for  
26 review and argued on behalf of petitioner. With him on the  
27 brief was Gleaves, Swearingen, Larsen & Potter.

28  
29            No appearance by respondent.

30  
31            Allen L. Johnson, Eugene, filed a response brief and  
32 argued on behalf of intervenor Good Neighbor Care Centers,  
33 Inc. With him on the brief was Johnson & Kloos.

34  
35            Joseph J. Leahy, Springfield, filed a response brief  
36 and argued on behalf of intervenor City of Springfield.  
37 With him on the brief was Harms, Harold & Leahy.

38  
39            HOLSTUN, Chief Referee; SHERTON, Referee; KELLINGTON,  
40 Referee, participated in the decision.

41  
42                                    REMANDED                                    03/19/92

43  
44            You are entitled to judicial review of this Order.  
45 Judicial review is governed by the provisions of ORS

1 197.850.

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a City of Eugene ordinance amending  
4 the Eugene-Springfield Metropolitan Area General Plan  
5 (hereafter Metro Plan) to change the Metro Plan diagram  
6 (map) designations for approximately 53 vacant acres located  
7 in the City of Springfield from a combination of Light-  
8 Medium and Heavy Industrial to a combination of Light-Medium  
9 Industrial, Medium Density Residential and Commercial.

10 **MOTIONS TO INTERVENE**

11 Good Neighbor Care Centers, Inc., the applicant below,  
12 and the City of Springfield move to intervene on the side of  
13 respondent in this proceeding. There is no opposition to  
14 the motions, and they are allowed.

15 **FACTS**

16 The relevant facts are set forth in the petition for  
17 review as follows:

18 "The Applicant filed its application for plan  
19 amendment \* \* \* with the City of Springfield on  
20 December 27, 1990.<sup>[1]</sup> The Application requested a  
21 change in the land use designation of 53 acres of  
22 vacant land. \* \* \* The plan amendment proposed to  
23 change the land use designation for the Subject  
24 Property as set forth in the [Metro Plan] which is  
25 the comprehensive plan adopted jointly by the  
26 cities of Springfield and Eugene and Lane

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<sup>1</sup>The application also included a request for zoning map changes. Apparently the zoning map changes have not been granted by the City of Springfield. The challenged decision approves only the requested amendments to the Metro Plan diagram designations.

1 County.<sup>[2]</sup>

2 "The Lane County, Springfield and Eugene planning  
3 commissions reviewed the proposal in separate work  
4 sessions and then conducted a joint public hearing  
5 on April 3, 1991. At a subsequent work session  
6 held on April 16, 1991, all three planning  
7 commissions recommended that the Application be  
8 denied.

9 "On April 29, 1991, the City Councils of Eugene  
10 and Springfield and the Board of County  
11 Commissioners for Lane County conducted a joint  
12 public hearing to consider the recommendations of  
13 denial from their respective planning commissions.  
14 Another joint public hearing was held by the three  
15 governing bodies on May 6, 1991.

16 "At a public meeting held on May 13, 1991, the  
17 City Council of Eugene voted to deny the  
18 Application as proposed. At a subsequent meeting  
19 on May 28, 1991, the Eugene City Council  
20 reconsidered the matter and voted in favor of the  
21 Application. At the May 6, 1991 joint hearing,  
22 the City Council of Springfield voted to approve  
23 the Application. At a meeting held on May 7,  
24 1991, the [Lane County] Board of County  
25 Commissioners voted to deny the application.

26 "The failure of all three jurisdictions to approve  
27 the plan amendment triggered a conflict resolution  
28 process set forth in the [Metro Plan] amendment  
29 procedures. The plan amendment proposal was  
30 referred to the Metropolitan Policy Committee to  
31 determine if the differences could be resolved.  
32 The Metropolitan Policy Committee conducted  
33 hearings on June 13, 1991 and July 11, 1991 to  
34 attempt to resolve conflicts between the three  
35 jurisdictions. As a result of those hearings and  
36 deliberations, the Metropolitan Policy Committee

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<sup>2</sup>Because the challenged plan amendment is classified as a major amendment under the Metro Plan, all three jurisdictions must hold public hearings and adopt the plan amendment in order for it to become effective. Metro Plan IV-2-3.

1 suggested modifications of the proposed amendment  
2 and agreed to send that proposed modification to  
3 the respective governing bodies.

4 "The City Council of Eugene received and accepted  
5 the recommendation of the Metropolitan Policy  
6 Committee and scheduled a hearing on September 9,  
7 1991, at which time the proposed amendment, as  
8 modified, was adopted. Prior to that time, the  
9 City of Springfield had also accepted the proposal  
10 and \* \* \* approved the plan amendment as modified.  
11 Likewise, the Board of Commissioners for Lane  
12 County \* \* \* adopted the proposed plan amendment,  
13 as modified by the Metropolitan Policy Committee  
14 [on August 28, 1991].

15 "Thereafter, on September 30, 1991, a notice of  
16 intent to appeal was filed with LUBA \* \* \*."  
17 (Footnote and record citations omitted.) Petition  
18 for Review 5-6.

19 **FIRST ASSIGNMENT OF ERROR**

20 "The governing bodies of the cities of Eugene and  
21 Springfield and Lane County erred in adopting the  
22 plan amendment without considering or addressing  
23 applicable policies and siting criteria set forth  
24 in the Metro Plan and the the Mid-Springfield  
25 Refinement Plan."

26 The Metro Plan is the controlling comprehensive  
27 planning document for the Cities of Springfield and Eugene  
28 and the unincorporated area of Lane County designated in the  
29 Metro Plan. The Metro Plan was adopted by the three  
30 jurisdictions and has been acknowledged by the Land  
31 Conservation and Development Commission (LCDC) as complying  
32 with the Statewide Planning Goals. Under the Metro Plan,  
33 the two cities and Lane County may (unilaterally) adopt more  
34 detailed refinement plans, programs and policies, provided  
35 these more detailed planning documents are consistent with

1 the Metro Plan.<sup>3</sup> The City of Springfield has adopted such a  
2 refinement plan, entitled the Mid-Springfield Refinement  
3 Plan.

4 Under this assignment of error, petitioner contends  
5 respondent erroneously failed to address and demonstrate  
6 compliance with Mid-Springfield Refinement Plan policies,  
7 standards and criteria designed to avoid conflicts between  
8 industrial and residential land uses within the City of  
9 Springfield. Specifically, petitioner contends that  
10 respondent erroneously relied on a Metro Plan conflict  
11 resolution provision as providing that the Mid-Springfield  
12 Refinement Plan provisions need not be applied and satisfied  
13 in approving the disputed Metro Plan diagram amendment.<sup>4</sup>

14 As relevant, the Metro Plan explains its function as  
15 follows:

16 "The [Metro Plan] is a policy document intended to  
17 provide the three jurisdictions and other agencies  
18 and districts with a coordinated guide for change  
19 over a long period of time. The major components  
20 of this policy document are: the written text,  
21 which includes findings, goals, objectives, and  
22 policies; the [Metro Plan] diagram; and other  
23 supporting materials. \* \* \*

24 \* \* \* \* \*

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<sup>3</sup>The Metro Plan establishes a procedure for ensuring that each of the three jurisdiction's refinement plans and land use regulations are consistent with the Metro Plan. Metro Plan IV-3.

<sup>4</sup>Intervenor City of Springfield concedes the Mid-Springfield Refinement Plan will have to be amended to make it consistent with the challenged Metro Plan Diagram amendment.

1            "[T]he written text of the [Metro Plan] takes  
2 precedence over the [Metro Plan] diagram where  
3 apparent conflicts or inconsistencies exist. The  
4 [Metro Plan] diagram is a generalized map which is  
5 intended to graphically reflect the broad goals,  
6 objectives, and policies. As such, it cannot be  
7 used independently from or take precedence over  
8 the written portion of the [Metro Plan].

9            "The degree to which the [Metro Plan] provides  
10 sufficient detail to meet the needs of each  
11 jurisdiction will have to be determined by the  
12 respective jurisdictions; and where conflicts  
13 exist among the [Metro Plan], refinement plans and  
14 existing zoning, each jurisdiction will have to  
15 establish its own schedule for bringing the zoning  
16 and refinement plans into conformance with the  
17 [Metro Plan]." Metro Plan I-3 through I-4.

18            The Metro Plan goes on to further explain the  
19 relationship between the Metro Plan and "Other Plans and  
20 Policies," as follows:

21            "Where the [Metro Plan] is the basic guiding land  
22 use policy document, it is not the only such  
23 document. [T]he [Metro Plan] is a framework plan,  
24 and it is important that it be supplemented by  
25 more detailed refinement plans, programs, and  
26 policies. Due to budget limits and other  
27 responsibilities, all such plans, programs, and  
28 policies cannot be pursued simultaneously.  
29 Normally, however, those of a metropolitan-wide  
30 scale should receive priority status.

31            "Refinements to the [Metro Plan] can include:  
32 1) city-wide comprehensive policy documents, such  
33 as the 1984 Eugene Community Goals and Policies;  
34 2) functional plans and policies addressing single  
35 subjects throughout the area, such as water,  
36 sewer, or transportation plans; and 3)  
37 neighborhood plans or special area studies that  
38 address those issues that are unique to a specific  
39 geographical area. In all cases, the [Metro Plan]  
40 is the guiding document, and refinement plans and  
41 policies must be consistent with the [Metro Plan].

1           Should inconsistencies occur, the [Metro Plan] is  
2           the prevailing policy document."<sup>5</sup>       (Emphasis  
3           added.) Metro Plan I-5.

4           We understand the above Metro Plan provisions to  
5           establish several important points. First, the Metro Plan  
6           is composed of the Metro Plan goals, objectives, policies  
7           and the map or diagram; the Metro Plan does not include the  
8           Mid-Springfield Refinement Plan, which is a separate  
9           planning document. Second, within the Metro Plan, the text  
10          controls in cases of conflict between the text and the  
11          diagram. Third, the Metro Plan is to be further refined by  
12          adoption of, inter alia, refinement plans. Such refinement  
13          plans must be consistent with the Metro Plan and, to the  
14          extent any inconsistencies occur, the Metro Plan controls.  
15          Finally, the Metro Plan specifically recognizes it is  
16          possible that refinement plan amendments needed to achieve  
17          consistency with the Metro Plan will not occur  
18          simultaneously with adoption of the Metro Plan.

19          Petitioner makes a variety of arguments in support of  
20          its contention that respondent erred by not addressing the  
21          Mid-Springfield Refinement Plan provisions that may be  
22          inconsistent with the challenged Metro Plan amendment. Each  
23          of those arguments fails because the Metro Plan together

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<sup>5</sup>The emphasized Metro Plan language is the conflict resolution provision. Petitioner contends respondent improperly relied upon it in not addressing, as part of the Metro Plan amendment, the inconsistencies that the amendment creates with the Mid-Springfield Refinement Plan.

1 with refinement plans, such as the one adopted by the City  
2 of Springfield, establish a two part comprehensive plan  
3 document for the cities of Eugene and Springfield and Lane  
4 County. The Metro Plan is the hierarchically superior part  
5 of that comprehensive plan. More importantly for purposes  
6 of this case, the Metro Plan explicitly recognizes that at  
7 any given point in time, refinement plan provisions may  
8 conflict with the Metro Plan text or map and provides that  
9 all such conflicts are resolved in favor of the Metro Plan.  
10 Additionally, the Metro Plan specifically recognizes that  
11 amendments to refinement plans that may be needed to make  
12 the refinement plan consistent with the Metro Plan may be  
13 delayed due to budget limitations and other  
14 responsibilities.

15 Under Statewide Planning Goal 2 (Land Use Planning) and  
16 Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or 3, 18,  
17 569 P2d 1063 (1977), a local government may not amend its  
18 comprehensive plan map in a way that conflicts with the  
19 unamended textual provisions of the comprehensive plan.<sup>6</sup>  
20 However, we do not agree with petitioner that the challenged  
21 amendment to the Metro Plan creates an internal  
22 inconsistency in the Metro Plan. The only alleged

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<sup>6</sup>Although Goal 2 does not impose this requirement explicitly, it adopts the definition of comprehensive plan at ORS 197.015(5) which provides that a comprehensive plan is to be "coordinated." The requirement that a comprehensive plan be coordinated would be violated by an amendment of the comprehensive plan creating an unresolved internal inconsistency.

1 inconsistency is between the Metro Plan and the  
2 Mid-Springfield Refinement Plan. Unlike the comprehensive  
3 plan at issue in Sunnyside, the Metro Plan and Mid-  
4 Springfield Refinement Plan are separate and distinct  
5 (albeit related) plans. Moreover, the Metro Plan includes  
6 an explicit conflict resolution mechanism making it clear  
7 the Metro Plan controls at all times until a refinement plan  
8 can be amended to conform to the Metro Plan. The Metro  
9 Plan, including its conflict resolution mechanism, has been  
10 acknowledged by LCDC as complying with Goal 2.

11 We conclude that while there is no reason why the  
12 amendments to the Mid-Springfield Refinement Plan that will  
13 ultimately be required to make the Mid-Springfield  
14 Refinement Plan consistent with the Metro Plan as amended  
15 could not have been adopted contemporaneously with the  
16 challenged Metro Plan amendment, there is no statutory or  
17 Metro Plan provision requiring that the conforming  
18 amendments to refinement plans be adopted contemporaneously  
19 with Metro Plan amendments or that such amendments be  
20 adopted within any particular time period thereafter.<sup>7</sup>

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<sup>7</sup>The Metro Plan provides that when presented with an application for a change to a refinement plan or land use regulation a planning commission may (1) find the request is consistent with the Metro Plan and recommend approval, (2) recommend that the Metro Plan be amended to conform to the proposal, (3) recommend that the proposal be amended to comply with the Metro Plan, or (4) recommend denial. Metro Plan IV-3. However, the Metro Plan does not clearly state whether a proposed amendment to a refinement plan or land use regulation must occur contemporaneously with adoption of a similar Metro Plan amendment or can occur at a later date. The section of

1           It may be that practical difficulties or uncertainties  
2 associated with adopting contemporaneous amendments to the  
3 Metro Plan (which must be adopted in identical form by three  
4 jurisdictions) and to refinement plans (which are adopted by  
5 a single jurisdiction) are the reason for the conflict  
6 resolution provision. In any event, we reject petitioner's  
7 argument that respondent committed error in failing to amend  
8 the Mid-Springfield Refinement Plan contemporaneously with  
9 the challenged Metro Plan amendment.<sup>8</sup> The above noted  
10 conflict resolution provision avoids any impermissible  
11 internal comprehensive plan conflict during the time it  
12 takes individual jurisdictions to act to make their  
13 refinement plans conform to the Metro Plan or amendments to  
14 the Metro Plan.

15           The first assignment of error is denied.

16       **SECOND ASSIGNMENT OF ERROR**

17           "The governing bodies erred in adopting the plan  
18 amendment which did not properly address and  
19 demonstrate compliance with Goal 9, Economy of the  
20 State."

21           Petitioner contends that pursuant to Goal 9 (Economy of

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the Metro Plan addressing Metro Plan amendments is silent about when  
conforming refinement plan amendments should be adopted.

<sup>8</sup>Although no party cites Springfield Development Code (SDC) 7.040(2)(c),  
it specifically provides that one of the criteria applied to determine  
whether a Metro Plan amendment is classified as a "Major Metro Plan  
Amendment" is whether the amendment "[c]reates a substantial inconsistency  
between the Metro Plan and an existing Refinement Plan \* \* \* [.]". This  
provision seems to recognize that a Metro Plan amendment may create an  
inconsistency with a refinement plan, requiring a subsequent refinement  
plan amendment to eliminate the inconsistency.

1 the State) respondent was obligated to demonstrate that the  
2 challenged plan amendment does not leave the city without  
3 sufficient suitable industrially designated sites.<sup>9</sup>  
4 Petitioner argues respondent relied on general statistics  
5 and vague estimates and failed to demonstrate that  
6 redesignation of the subject property leaves the Metro area  
7 without sufficient suitable industrial sites.

8 Respondent found that Goal 9 requires an inventory of  
9 sufficient buildable acres of industrial land, planned and  
10 zoned for such use, to meet projected needs. Respondent  
11 first found that the region has an excess of constraint free  
12 industrial land.<sup>10</sup> Respondent then adopted the following

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<sup>9</sup>Goal 9 provides in part:

"Comprehensive Plans for urban areas shall:

"\* \* \* \* \*

"3. Provide for at least an adequate supply of sites of  
suitable sizes, types, locations, and service levels for  
a variety of industrial and commercial uses consistent  
with plan policies \* \* \*.

"\* \* \* \* \*"

<sup>10</sup>Based on a 1991 Draft Metro Area Industrial Lands Study, respondent  
found the supply of industrially designated land in the Metro region is as  
follows:

"Short-term supply:	1,947 acres
"Short-term demand:	228 to 410 acres
"Long-term demand:	650 to 1,170 acres
"Gross supply	4,039 acres
"Buildable supply	3,604 acres

1 findings addressing the importance of the subject property's  
2 availability for industrial use both on a local and regional  
3 level:

4 "[A] detailed and in-depth study of the site's  
5 absolute and relative potential for industrial  
6 development was conducted for the City of  
7 Springfield in 1990 as part of the EDA Study.  
8 This study concludes that the [subject property]  
9 would require major off-site improvements, at a  
10 cost of \$2,000,000, raising overall development  
11 costs to approximately \$3,600,000 or over \$100,000  
12 per acre. The principal need is for an access  
13 road to Interstate Connector I-105, access which a  
14 number of otherwise comparable sites in the region  
15 already have. The study notes that the city's  
16 resources for infrastructure are limited and  
17 recommends that it concentrate them on its one or  
18 two best sites, which do not include the [subject  
19 property]. Even with such improvements, the study  
20 finds that the [subject property] is so configured  
21 that it would best be developed in phases,  
22 eliminating its value as a single large site. The  
23 study finds that the neighboring Giustina site,  
24 across Main Street to the South, is similar in  
25 many ways, as a large site in single ownership in  
26 the same location, but that it can be developed at  
27 far less cost in infrastructure improvements. The  
28 study recommends that the southern end of the site  
29 be developed commercially, as is proposed by the  
30 applicant.

31 "The draft Industrial Lands Study also finds that  
32 the most likely projected long-term demand for  
33 industrial land throughout the entire Metropolitan  
34 Urban Growth Area 'is estimated to be 650 acres.'  
35 A less-likely scenario projects a long-term demand  
36 of 1,172 acres. Springfield has half of the 48  
37 100-percent constraint-free, short term sites.  
38 West Eugene and West Springfield, which includes  
39 the [subject property], have the best supplies of

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"Constraint free 1,688 acres" Record 112.

1 'constraint-free industrial sites that are  
2 presently within a city and [are] well-served with  
3 improvements.' West Springfield has 627  
4 industrial acres, with the 'fewest potential  
5 constraints and the most constraint-free sites  
6 (20) of all regions and it is generally  
7 well-served by public improvements.' West  
8 Springfield's current short-term supply exceeds  
9 the 'most likely' long-term demand for the entire  
10 Metropolitan Urban Growth Area. Projected demand  
11 for heavy industrial land is not anticipated in  
12 the study." Record 91.

13 In Hummel v. City of Brookings, 16 Or LUBA 1, 5 (1987),  
14 we explained that a city may not, consistent with Goal 9,  
15 amend its acknowledged comprehensive plan to reduce the  
16 supply of industrially designated land without considering  
17 the effect of such an amendment on the remaining supply of  
18 industrially designated land. Further, we determined that  
19 such an amendment must include consideration of the  
20 suitability of the remaining industrially designated land  
21 for industrial use.

22 Petitioner offers no specific challenge to the above  
23 quoted findings or their evidentiary support. Applying the  
24 analysis we required in Hummel in this case, we conclude the  
25 above quoted findings are more than adequate to demonstrate  
26 compliance with Goal 9. Before and after the amendment, the  
27 Metro region and the City of Springfield have more than  
28 enough constraint free industrially designated land to meet  
29 projected demand. The amendment is therefore consistent

1 with Goal 9.<sup>11</sup>

2 The second assignment of error is denied.

3 **THIRD ASSIGNMENT OF ERROR**

4 "The governing bodies erred in adopting the plan  
5 amendment which did not properly address and  
6 demonstrate compliance with Goal 11, Public  
7 Facilities and Services, and did not satisfy the  
8 coordination requirement of Goal 2, Land Use  
9 Planning."

10 Under Goal 11 (Public Facilities and Services)  
11 respondent is required to "plan and develop a timely,  
12 orderly and efficient arrangement of public facilities and  
13 services to serve as a framework for urban and rural  
14 development." In response to an earlier proposal for  
15 residential development of the subject property, issues were  
16 raised concerning the ability of the school system to  
17 accommodate the 150 new students anticipated to be generated  
18 by that proposal.

19 Petitioner argues that under the challenged plan  
20 amendment sufficient multi-family units could be constructed

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<sup>11</sup>Petitioner also suggests that respondent was required to and failed to demonstrate that the need for the property for housing outweighs the need for the property for industrial use and that respondent should have adopted findings explaining why the lower ranked industrially designated sites in the City of Springfield could not be used to satisfy whatever housing needs may exist. Respondent is not obligated under Goal 9 to explain why a lower ranked site was not chosen. Neither must respondent demonstrate that the need for residential use of the property outweighs any need for industrial use. Respondent's obligation under Goal 9 is to assure that sufficient suitable industrially designated land remains after the Metro Plan amendment. So long as respondent demonstrates that such is the case, and we conclude that it is, respondent is free to redesignate the subject parcel for other than industrial use without violating Goal 9.

1 to generate many more than 150 new students. Petitioner  
2 argues respondent erred by failing to find school facilities  
3 will be adequate to accommodate the potential student  
4 population from development of the subject property under  
5 the proposed Metro Plan diagram designations.

6 In response to the initial concerns expressed about  
7 school capacity, the applicant agreed to develop the  
8 property with housing for the elderly, which would not  
9 impact existing school facilities. Intervenor City of  
10 Springfield argues

11 "[i]t was clear that the mechanics of restricting  
12 the residential units to affordable housing for  
13 the elderly would be left to the City of  
14 Springfield through amendment of the [Mid-  
15 ]Springfield Refinement Plan, subsequent zoning,  
16 and site review." Intervenor City of  
17 Springfield's Brief 12-13.

18 Intervenor contends this manner of addressing the school  
19 issue "was specifically endorsed by the attorney for  
20 Petitioner before the Metro Policy Committee on June 13,  
21 1991." Intervenor City of Springfield's Brief 13.

22 If petitioner's attorney had specifically agreed that  
23 concerns about the impact of development of the subject  
24 property on school facilities would be resolved through  
25 limitations to be imposed when the Mid-Springfield  
26 Refinement Plan and city zoning ordinance are amended and  
27 during site review, petitioner would not be permitted to now  
28 take a contrary view in its appeal of the decision before  
29 this Board. Newcomer v. Clackamas County, 92 Or App 174,

1 186-87, 758 P2d 369, modified 94 Or App 33 (1988). However,  
2 the statement cited by intervenor to establish petitioner's  
3 agreement to this procedure does not show such agreement.  
4 We agree with petitioner that its argument in the statement  
5 cited by intervenor is that the Metro Plan amendment cannot  
6 be conditioned to limit the kind of housing, not that it  
7 need not be so conditioned. We therefore consider whether  
8 the challenged decision adequately demonstrates compliance  
9 with Goal 11, with regard to school facilities.

10 The challenged findings simply state, without any  
11 further explanation, that schools are available. As far as  
12 we can tell, there is no attempt in the decision, the  
13 supporting findings or elsewhere in the record to  
14 demonstrate that school facilities are adequate or can  
15 accommodate the students that would be generated if the the  
16 property is fully developed to the maximum permissible  
17 density with multi-family dwellings occupied with families  
18 with school children. While there may well be other parts  
19 of the Metro area where such a project could be accommodated  
20 by existing school facilities, this area of the City of  
21 Springfield apparently cannot.

22 Intervenor City of Springfield cites several documents  
23 reflecting efforts made to reach a compromise concerning the  
24 proposal. Those documents indicate the applicant agreed to  
25 develop the property with housing limited to senior  
26 citizens, using federal Fair Housing Act guidelines, and to

1 adopt conditions, covenants and restrictions to limit the  
2 housing units to senior citizens so that the school crowding  
3 issue would be resolved. However, as far as we can tell,  
4 the challenged decision was not conditioned on development  
5 of the property being so limited and no conditions,  
6 covenants and restrictions to that effect have been adopted  
7 by the applicant.<sup>12</sup>

8 The applicant did agree not to seek permits to develop  
9 the property until the City of Springfield had an  
10 opportunity to amend its Mid-Springfield Refinement Plan.<sup>13</sup>  
11 There was a significant amount of discussion about various  
12 limitations that the applicant agreed could be imposed on  
13 the development. The problem is that those conditions were  
14 not imposed on the property as a part of the challenged  
15 Metro Plan amendment. Neither does the challenged decision  
16 require that such conditions be imposed prior to  
17 development, as part of required Mid-Springfield Refinement  
18 Plan amendments, rezoning, site review or other appropriate  
19 means.<sup>14</sup> In short, as petitioner argues, there is no reason

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<sup>12</sup>A list of conditions proposed as a textual element of the challenged Metro Plan diagram amendment is included in the record. Record 551. However, those conditions were not adopted as part of the challenged decision.

<sup>13</sup>An unsigned copy of this agreement is included at Record 131. The agreement expired on February 3, 1992 and, in any event, does not limit the proposed multi-family housing to housing for the elderly.

<sup>14</sup>"Other appropriate means" could include appropriate nonregulatory measures, such as recorded covenants, conditions and restrictions, to

1 the applicant and the City of Springfield could not,  
2 consistent with the challenged decision, amend the Mid-  
3 Springfield Refinement Plan and rezone the property to allow  
4 multi-family residential development, without regard to the  
5 number of new students that would be generated. In view of  
6 the apparently limited existing school facilities in the  
7 area, respondent is required to impose sufficient  
8 limitations to assure compliance with Goal 11 now, or to  
9 require as part of the challenged decision that such  
10 limitations be imposed as part of the Mid-Springfield  
11 Refinement Plan amendments before development proceeds.  
12 Respondent did neither.

13 Finally, we reject intervenor-respondent Good Neighbor  
14 Care Center's suggestion in its arguments under the fourth  
15 assignment of error, that it is sufficient that the evidence  
16 in the record demonstrates that it is more likely than not  
17 that the property will be developed with housing units  
18 limited to the elderly. Where a limitation is necessary to  
19 assure that the development that is allowed by a  
20 comprehensive plan amendment will comply with the statewide  
21 planning goals, more than an expression of current  
22 intentions by the applicant for a plan amendment is  
23 required.

24 The third assignment of error is sustained.

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provide the required assurances that the property will not be developed in a way that violates Goal 11 school facility availability requirements.

1 **FOURTH ASSIGNMENT OF ERROR**

2 "The governing bodies erred in adopting the plan  
3 amendment without substantial evidence to support  
4 the change."

5 Petitioner's substantial evidence challenge is not  
6 clearly developed. To the extent petitioner contends the  
7 challenged decision is not supported by substantial evidence  
8 that the development allowed by the challenged Metro Plan  
9 amendment will be adequately served by schools, we agree.  
10 However, most of petitioner's evidentiary challenge is  
11 directed at issues or findings that petitioner makes no  
12 attempt to demonstrate are critical to the challenged  
13 decision and that we conclude are not critical to the  
14 challenged decision. Lack of evidentiary support for issues  
15 or findings that are not critical to the decision provides  
16 no basis for reversal or remand. Bonner v. City of  
17 Portland, 11 Or LUBA 40 (1984).

18 For example, petitioner contends there is not  
19 substantial evidence to show that there is a need to change  
20 the Metro Plan designation from industrial at this time.  
21 Petitioner cites no legal standard requiring such a  
22 demonstration and we are aware of none. See Neuberger v.  
23 City of Portland, 288 Or 155, 170, 603 P2d 603, rehearing  
24 den 288 Or 585 (1980). Similarly, petitioner contends the  
25 record shows respondent failed to consider other  
26 residentially zoned areas for the project, without citing

1 any legal requirement that respondent do so.<sup>15</sup> Id.

2 The fourth assignment of error is sustained in part.

3

4 **INTERVENOR GOOD NEIGHBOR CARE CENTERS' ADDITIONAL GROUNDS**  
5 **FOR AFFIRMANCE**

6 Intervenor Good Neighbor Care Centers points out  
7 several somewhat unusual aspects of the decision challenged  
8 in this appeal. The subject property is located in the City  
9 of Springfield. The requested Metro Plan amendment was  
10 approved by the City of Springfield on August 19, 1991, and  
11 that decision is not the subject of this appeal. Rather  
12 this appeal challenges the September 9, 1991 decision of the  
13 City of Eugene, which, under the Metro Plan, was the  
14 decision that made the challenged Metro Plan amendment  
15 (affecting property in the City of Springfield) final. See  
16 Elliott v. Lane County, 2 Or LUBA 240, 241 (1980). In view  
17 of the above, intervenor offers the following additional  
18 bases for affirming the City of Eugene's decision:

19 "1. The City of Eugene has no authority to  
20 legislate the use of lands located outside of  
21 the City of Eugene and inside the City of  
22 Springfield.

23 "2. The City of Springfield lacks authority to  
24 abdicate its legislative authority to the  
25 legislative body of a neighboring city. As a  
26 result, it retained full and final  
27 legislative authority concerning the subject

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<sup>15</sup>Petitioner's remaining arguments under this assignment fail to develop an argument concerning the alleged lack of evidentiary support or fail to explain why the cited deficiency is critical to the decision. For those reasons, they are rejected without further discussion.

1 amendment, notwithstanding anything to the  
2 contrary in local ordinances or the Metro  
3 Plan.

4 "3. The City of Eugene's authority with respect  
5 to the City of Springfield's decision in this  
6 case was limited to requiring coordination  
7 prior to Springfield's final decision. The  
8 City of Eugene has the authority to enforce  
9 its right to coordination through appellate  
10 processes provided by state law, not by  
11 exercising coordinate legislative authority  
12 outside its territorial jurisdiction and  
13 inside the territorial jurisdiction of a  
14 neighboring city.

15 "4. The Springfield and Lane County ordinances  
16 are neither directly nor indirectly under  
17 review in this proceeding.

18 "5. The Springfield ordinance became final for  
19 purposes of LUBA review upon adoption.  
20 (Aug. 19, 1991).

21 "6. The time allowed by ORS 197.830(1) for  
22 appealing the two earlier ordinances has  
23 expired.

24 "7. The two unappealed ordinances must be  
25 presumed to have correctly applied all  
26 applicable land use policies based upon  
27 substantial evidence in the whole record.

28 "8. There is no intergovernmental agreement  
29 between the City of Eugene and the City of  
30 Springfield in the record, or anywhere else,  
31 that conveys or purports to convey such  
32 legislative authority, and none could."  
33 (Emphasis in original.) Intervenor Good  
34 Neighbor Care Centers' Brief 24-25.

35 Assuming without deciding that the above arguments have  
36 merit, we have some difficulty seeing how they could require  
37 that we affirm the challenged decision. Rather, to the  
38 extent they have any bearing on this appeal, they would

1 appear to offer reasons why we should reverse or remand the  
2 challenged decision or dismiss this appeal. Intervenor Good  
3 Neighbor Care Centers intervened only as a respondent, not  
4 as a petitioner, and has neither moved to dismiss the appeal  
5 nor filed a cross-petition for review seeking reversal or  
6 remand of the challenged decision. See OAR 661-10-10-050;  
7 661-10-075(3).

8 More importantly, petitioner and intervenor City of  
9 Springfield contend none of the above issues were raised as  
10 an issue below and, pursuant to ORS 197.763(1) and  
11 197.835(2), our scope of review is limited to issues raised  
12 during the local proceedings. See Boldt v. Clackamas  
13 County, 107 Or App 619, 813 P2d 1078 (1991). Intervenor  
14 Good Neighbor Care Centers does not contend that it raised  
15 these issue during the local proceedings, or that the  
16 procedures required by ORS 197.763 were not provided by  
17 respondent.

18 To the extent the issues intervenor Good Neighbor Care  
19 Centers identifies could have any bearing on this appeal,  
20 they attack the jurisdiction or authority of the City of  
21 Eugene to render the challenged decision. We agree that,  
22 unless such issues are raised during the local government  
23 proceedings, under ORS 197.763(1) and 197.835(2), we lack  
24 authority to review such issues.

25 The city's decision is remanded.