Provided by
Greg H.. Brown
gbrown@pacser.com
503-647-5869

RE: HB 4026 - A

The below information and attachments are provided to clarify misimpressions in information provided to the House Rules Committee in a public hearing on 2/20/24 regarding HB 4026.

Summary:

- Per Legislative counsel letters dated 2/20/24 & 2/26/24 (Attachment 1 & 1A) The bill is either un-constitutional or redundant. Existing statue provides a means for municipalities to disallow a referendum. Per counsel, if that statute is unconstitutional, HB 4026 is unconstitutional.

- Per opinions of specialized land use attorneys, Washington County Planning Commission and Washington Count Counsel, the required process used for a UGB expansion is legislative, not administrative. If those expert opinions are more accurate than a quick opinion from a non-specialist in legislative counsel's office, the -1 amendment makes the bill unconstitutional.

- The need for the bill is based on assumptions, not facts or observed significant problems.

- The process used by the City of North Plains and some of the claims made by the City are inaccurate at best, deceptive at worst and some have been strongly corrected by the State. .

- The documented agenda of the North Plains referendum proponents has been inaccurately stated. It is not anti-growth of any kind, Rather it calls for smart growth, not just any growth.

- The -1 amendments turn the bill into an anti voter change which the public rarely supports.

- The -1 amendment may contradicts the "Relating to" clause of the original bill.

The -1 amendment's survival to this point is a good example of the problems inherent to a short legislative session. There is often insufficient time for a thorough analysis, legal or otherwise of proposed legislation. Quick, off the cuff comments are often relied upon with sufficient vetting, leading to unforeseen consequences, expensive litigation poor results and public dissatisfaction.

Constitutionality

Article 2, Sec 18, Parag 8 of the Oregon Constitution specifically prohibits statutory limitations being placed on citizens right of referendum for any "legislative" matters, including those made by any municipality. Municipal "legislative" decisions are specifically made subject to referendum in Article 4, Sec 1, Parag 5

During the 2/20/24 hearing, the opinion was given that an Urban Growth Boundary Expansion is an "Administrative" decision, not a "Legislative" decision, hence not subject to this limitation or even currently subject to referendum. The Legislative Counsel staff person proving this opinion made it very clear that she was not an expert in land use law, the staff person who is an expert is on leave, not available to testify The testifier was just filling in on short notice. Additional testimony from non-lawyers stated that past court decisions upheld this opinion, however no specific cases were named. Just vague references were given.

Land use law is a very specialized segment of the law which requires a detailed knowledge of the various actions and processes used to understand the types of proceedings. Some decisions and procedure are certainly "Administrative", some are certainly "Legislative". Expertise and specific experience is needed to differentiate between those types of process.

Attached to this letter is a letter (Attachment #2) from Kenneth Dobson, attorney at law, who is a specialist in land use law. That letter specifically cites Court of Appeals decisions which clearly contradict the preliminary & non-expert opinions provided the Committee. The Court has made it very clear that a discretionary, permanent decision is legislative, not administrative and hence is subject to referendum. As such, that right cannot be removed under the Constitution. Details of the discretionary & permanent characteristics of a specific UGB expansion, as well as specific citations are contained in Mr. Dobson's attached formal opinion.

This letter was generated in November 2023 as input to the Washington County Planning Commission whose concurrence with the North Plains decision to expand the UGB is required by law. That input was necessary due to an argument being made by the City that the expansion was "Administrative", not "legislative, hence not subject o referendum.

Washington County Counsel, who regularly advises the planning commission, advised the planning commission that the combination of the citations in that letter and the legislative process followed by the City to adopt the expansion made it inappropriate for the Planning Commission to approve the expansion until the referendum process had run it's course. EG, the "administrative", vs. "legislative" argument was both inaccurate and contradicted the process used by the City, and which the City could not re-designate as administrative.. The planning commission agreed & set the request for approval aside until the referendum process was completed.

Summary - Some land use decisions are certainly administrative. (dividing a parcel, zone changes, etc), but an ordinance more than doubling the size of a city is a legislative policy that is subject to the referendum process which cannot be limited.

Need for the bill

Testimony was provided that the uncertainty of the referendum process made it difficult for municipalities to expand a UGB and that this uncertainty caused problems with good planning.

Nonsense. A UGB expansion can currently be delayed by either the referendum process or litigation. Statutory deadlines for both force a choice. As can be seen in the North Plains example, the referendum process is quick. Litigation, including the initial appeal to the Land Use Board of Appeal, & further appeals to the Court of Appeals and Supreme Court are very lengthy. Often years long. If the referendum process should be removed, the litigation/appeals process remains and will draw a final decision out much further than does a referendum.

As evidenced by the retroactive action of the bill it is clearly aimed at The City of North Plains UGB expansion. There are no other such current referendum, nor has this been an ongoing statewide issue. HB 4026 appears to be a solution is search of a problem, other than for those do not want the citizen's opinion as to how North Plains should grow.

Process followed by City of North Plains

The City of North Plains has painted a picture of a thorough, fact based planning process with many opportunities for public input with that process closely adhering to law.

Numerous examples exist which contradict that premise. The most clear cut, objective example is the attached 11/20/23 letter from the State Department of Land Conservation and Development. (DLCD) (Attachment #3) to the Washington County Planning Commission on correcting blatant misrepresentations made by the City of North Plains to the Planning Commission. (Attachment #2)

Many other examples of the poor process and lack of thorough planning relied on by the City exist and can be utilized in an appeal of the expansion which would occur after the required approval by Washington County. That would be a much longer, drawn out process than the resolution given by an election in May.

Agenda of opponents to current UGB

Proponents of HB 4026 have painted the citizens who successfully referred the expansion to the ballot as radicals who don't want growth. Not so. Review of published campaign material (Attachment #4) and the groups web site

(https://www.friendsofnorthplainssmartgrowth.org/

will show acknowledgment that North Plains will grow in the future, but that it should grow in a carefully planned manner. The goal of the referendum is to force the City to do what it should have done in the first place. EG, expand in a way that takes account of existing infrastructure, geography and actual needs for more developable land in the future as well as the other issues which statute requires addressing.

Public perception

The public typically does not approve of having their voting rights taken away. This bill is beginning to draw public attention. (See Hillsboro Herald, 2/23/24, Oregonian

2/29/24). Other media is beginning to take notice. In these days of lost trust in the government, it is not good policy to needlessly feed that mis-trust.

Relating clause

Per https://www.oregonlegislature.gov/citizen_engagement/Pages/Legislative-Glossary.aspx#R -

> " **Relating-to Clause:** The title of a bill begins with the phrase "Relating to" and expresses the subject of that bill. For example, HB 2000, relating to charter schools. In Oregon, a bill may only address one subject, and for this reason the relating-to clause becomes an important element of the bill" (Emphasis added)

The relating clause of the original bill, says the subject of the bill is "Requires the Secretary of State to study how to improve voter access in this state."

The -1 amendment does not in any way "...improve voter access...". By eliminating a specific type of voter access, it is the opposite of the subject. This, of course, increases the likelihood the bill will be overturned on appeal.

In addition to the possible constitutional violation of the -1 amendment, this issue will likely become a subject of litigation. Arguing that eliminating the right to vote is part of improving voter access should be entertaining to watch.

Thank you for your time.

Attachement 1

DEXTER A. JOHNSON
LEGISLATIVE COUNSEL

STATE CAPITOL BUILDING
900 COURT ST NE S101
SALEM, OREGON 97301-4065
(503) 986-1243
FAX: (503) 373-1043

STATE OF OREGON
Legislative Counsel Committee

February 20, 2024

To: Representative Mark Gamba

From: Catherine M. Tosswill, Special Counsel and Chief Editor

Subject: HB 4026 -1 —Withdrawing referenda authority for urban growth boundary decisions

You have asked whether the proposed -1 amendments to House Bill 4026 are compatible with Article IV, section 1 of the Oregon Constitution. We believe that land use decisions made under a statutory administrative process already are not subject to referendum. These decisions are more likely administrative, rather than legislative, bringing them outside the ambit of Article IV, section 1(5), which reserves to local voters the initiative and referendum powers as to all "local, special and municipal legislation." As a result, while the -1 amendments are likely constitutional, they are also probably redundant.

By way of background, electors' right to a referendum of a local government's political decision is a right given by the Oregon Constitution.[1] However, although the referendum right is constitutional, it is not unlimited. Referendum is available only for legislative acts and does not apply to the executive or administrative actions of local governments.[2] Determining whether a decision is legislative or administrative is not always a clear-cut process. But courts are more inclined to find an action legislative if it is generally applicable, is permanent, or is prescribing a rule of civil conduct.[3] An action is more likely administrative if it is specific to a situation or circumstance, is temporary or implements a previously made decision or follows an adopted decision-making process.[4] The form of the decision is not dispositive: even if a decision is made by an ordinance of a legislative body, it may still be administrative for the purposes of determining whether it is subject to a referendum.[5] Of importance with respect to local land use decisions is the idea that, if there is a "prescribed legislative process" or a "complete scheme" that the governing body is bound to follow, then even if the final decision takes the form of an ordinance, the action is not legislative.[6] Because land use decisions are governed by specific land use provisions created under a statutory framework, even if the local code considers a significant change legislative, it is likely that a court will find it adjudicative and not subject to referendum.[7] As the court has explained, "to hold that a land use decision may be referred to the electorate would be the equivalent of holding that it need not be made in compliance with

[1] Article IV, section 1 (5) (municipalities and districts); Article VI, section 10 (counties); Article XI, section 14 (metropolitan service district).
[2] *Rossolo v. Multnomah Cty. Elections Div.*, 272 Or. App. 572, 584 (2015).
[3] *Id.* at 584-585.
[4] *Id.* at 584-586.
[5] *Id.* at 585.
[6] *Id.* at 586 (*citing Foster v. Clark*, 309 Or. 464 (1990)).
[7] *Dan Gile & Asso., Inc. v. McIver*, 113 Or. App. 1, 3-5 (1992).

the procedural and substantive requirements of state statutes."[8] Currently, a change to an urban growth boundary is subject to complex state statutory and regulatory schemes, requiring the discovery of facts and the application of law to those facts[9] that simply could neither be conducted through the initiative process nor reversed by the referendum process.

Accordingly, what the -1 amendments add to ORS 197.626 (6) simply states what a court would very likely decide anyway with respect to an attempted referendum petition.

We are aware of reference to *Allison v. Washington County*[10] as a reason that this amendment was arguably necessary and permissible, as *Allison* upheld the referral of a comprehensive plan and stated that through legislation, "the delegation can be withdrawn from the local governing body and the local voters."[11] However, there are some issues with this argument. First, the case was decided early in the history of Oregon's statewide land use planning law, when land use laws and procedures were still crystallizing.[12] Second, the legislative direction in *Allison* to Washington County was simply that their "governing body shall adopt and may from time to time revise a comprehensive plan,"[13] which was far less detailed than the current statutory and regulatory land use regime for comprehensive plans or urban growth boundary amendments. Finally, that the court in *Allison* suggested that the Legislative Assembly could remove the decision from the county electorate does not mean that they endorsed simply literally removing the referendum rights to specific decisions. On the contrary, the court seemed to suggest that because land use planning was a matter of statewide concern, the legislature could enact its own statewide zoning map or comprehensive plan, or delegate that role to the Land Conservation and Development Commission rather than to Washington County.[14]

In fact, the *Allison* court makes a salient comment that specifically contradicts the approach taken by the -1 amendments: "The minimum guarantee of the [C]onstitution should not be allowed to be diluted by either legislative action or inaction."[15] In researching this matter, we could not find any comparable instance in the Oregon Revised Statutes where the right to referendum of a local matter was explicitly limited by the legislature. This is not surprising; the Legislative Assembly is not empowered to withdraw constitutional rights from the electorate.

In short, under the Oregon Constitution, the Legislative Assembly probably cannot limit citizens' use of the referendum process, but under court precedent, land use decisions made under a statutory administrative process already are not subject to referendum—which is to say that this statutory fix is very likely redundant. And if it is not, it is very likely unconstitutional.

---

[8] *Id.* at 5-6.
[9] ORS chapter 197A.
[10] 24 Or. App. 571 (1976).
[11] *Id.* at 588.
[12] *Webber v. Skoko*, 432 F. Supp. 810, 813 (D. Or. 1977) ("Oregon courts are still deciding to what extent the state and its municipalities may limit the development of private property, and what procedures are to be followed in enacting such limitations.") (*citing Allison v. Washington* in n.13).
[13] ORS 215.050 (1975 Edition).
[14] *Allison*, 24 Or. App. at 585.
[15] *Allison*, 24 Or. App. at 575.

Attachement 1a

Dexter A. Johnson
LEGISLATIVE COUNSEL

900 COURT ST NE S101
SALEM, OREGON 97301-4065
(503) 986-1243
FAX: (503) 373-1043
www.oregonlegislature.gov/lc

STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

February 26, 2024

Representative Mark Gamba
900 Court Street NE H477
Salem OR 97301

Re: Referral of urban growth boundary expansion measure to city election

Dear Representative Gamba:

You have followed up on advice we provided last week regarding the -1 amendments to House Bill 4026. You inquire about the City of North Plains and ask whether the Secretary of State has "a different interpretation of these constitutional provisions and therefore allowed the ballot initiative to move forward?" We conclude that while a determination of constitutionality regarding a referral petition must be made, in the case of a city election it is to be made by the city elections officer, not the Secretary of State. Additionally, while under state law this determination is to be made in writing, we have been unable to locate any written determination of legality. We cannot therefore comment on any grounds that the city elections officer, namely the North Plains City Recorder, relied upon in making this determination.

In our previous memorandum, we examined the proposed HB 4026-1 amendments, which amend ORS 197.626. These amendments seek to add a new subsection (5) that provides: "A local government determination described in subsection (1) of this section is not subject to being referred to voters by referendum petition and is reviewable exclusively under this section." We opined that this amendment would likely have limited legal impact. We concluded that the relevant measures are likely already not subject to referral to the voters. Conversely, if such measures are subject to referral, the exercise of the voters of the initiative and referendum power under Article IV, section 1, of the Oregon Constitution, cannot be limited statutorily. The Legislative Assembly may not through a statutory change alter the text or meaning of the Oregon Constitution.

We understand that the City of North Plains City Council passed an ordinance that will expand the city's urban growth boundary (UGB).[1] An adequate number of North Plains voters subsequently submitted signatures to refer the UGB expansion proposal to voters, to be voted on at the May 2024 election. If effective, the -1 amendments to HB 4026 would then appear to bar this referendum from the ballot. Again, we expect that the same result would occur if this question were considered by an Oregon court.

There are specific procedures in place in North Plains to exercise the powers reserved by Article IV, section 1 (5), to North Plains voters to refer North Plains legislation to the ballot. The North Plains City Code provides a process by which persons interested in referring a legislative action undertaken by the North Plains City Council may file a prospective petition with

[1] City of North Plains Ordinance No. 490, adopted September 18, 2023.

the City Recorder.[2] After receiving the prospective petition, the City Recorder determines whether the prospective petition "complies with . . . state law. . . ."[3] Also, prior to the end of the fifth business day after a prospective petition is filed, the City Recorder, among other duties, is to determine if the prospective referendum petition refers city legislation.[4] This process aligns with the provisions of ORS 250.265 to 250.346, which govern the exercise of initiative or referendum power regarding city measures.

To answer your current question, we observe that, because this is a city ordinance referred to a city election, it is the city elections officer, namely the North Plains City Recorder, who is tasked with making a determination of constitutionality when presented with a referendum petition, not the Secretary of State. This direction issues from both the North Plains City Code, and more precisely, the relevant ORS provisions regarding city elections. State law directs a city elections officer to "determine in writing" the specific question of compliance with Article IV, section 1 (2)(d) and (5).[5,6] Further, the city elections officer must publish a statement that the measure has been determined to comply with Article IV, section 1 (2)(d) and (5), as part of the required newspaper publication of the notice regarding the ballot title.[7]

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel

By
Catherine M. Tosswill
Special Counsel and Chief Editor

[2] North Plains City Code section 33.50 (A).
[3] North Plains City Code section 33.50 (C).
[4] North Plains City Code section 33.51 (A) (prospective initiative petition must propose city legislation) and section 33.51 (H) (procedures in section 33.51 (A) through (G) also apply to referendum measures).
[5] ORS 250.270.
[6] Article IV, section 1 (2)(d), is the requirement that the proposed law or amendment embrace one subject only.
[7] ORS 250.270, 250.275.

Attachment #2

KENNETH P. DOBSON
ATTORNEY AT LAW

telephone: (971) 717-6582
email: landlaw.oregon@gmail.com
www.pdxlandlaw.com

324 S. Abernethy Street
Portland, Oregon 97239

December 5, 2023

VIA ELECTONIC MAIL

Washington County Planning Commission
155 N. First Ave., Ste 350, MS14
Hillsboro, OR 97124

1. lutplanningcommission@washingtoncountyor.gov

Re: *Voter Referendum on City of North Plains Ordinance 490*

Greetings:

I represent Friends of North Plains Smart Growth ("FNPSG"). Please accept this letter as FNPSG's supplemental testimony for the December 6, 2023 Planning Commission meeting on the issue of whether the City of North Plains Ordinance 490, which established land use policies in the Urban Growth Boundary ("UGB") expansion area. is subject to a voter referendum.

In his letter dated November 15, 2023 and addressed to the Washington County Planning Commission, City of North Plains City Manager, Andy Varner, opined that that Ordinance 490 was not subject to a voter referendum. Mr. Varner's letter sets forth citations to various case law but offers no legal analysis supporting the City's position. I have reviewed the case law cited by Mr. Varner and, for the reasons set forth below, respectfully disagree with his conclusion.

The legal authority for a voter referendum on a municipal ordinance is Article IV, section 1 of the Oregon Constitution which states in relevant part:

> "(3)(a) The people reserve to themselves the referendum power, which is to approve or reject at an election any Act, or part thereof, of the Legislative Assembly . . . (5) The initiative and referendum powers reserved to the people by subsections (2) and (3) of this section are further reserved to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district."

Under this section, the right of a referendum applies to municipal ordinances that are "legislative" in character. *Rossolo v. Multnomah Cnty. Elections Div*., 272 Or App 572, 584, 357 P3d 505 (2015). By contrast, the right of referendum does not apply to municipal ordinances that are "administrative" in nature. *Id.* The Oregon Court Appeals explained the difference:

> "In classifying an enacted or proposed law as legislative in character (and subject to the initiative and referendum provisions in the Oregon Constitution) and not executive, administrative, or adjudicative in nature (and outside the scope of those provisions), Oregon courts assess the law to determine if it makes policy of general applicability and is more than temporary in duration (and is thus legislative in nature), or if it applies previous policy to particular actions, or is otherwise compelled in substance or process by predicate policy (and is thus executive, administrative, or adjudicative in nature." *Id.*

In this case, Ordinance 490 establishes a "policy of general applicability" and is "more than temporary in duration." Specifically, the ordinance establishes future land use planning policies in a large swath of land in the UGB expansion area totaling 855.2 acres which the City determined was needed for 20 years of growth. Because Ordinance 490 creates policies of general applicability over a large area, it is legislative in nature. *See Parelius v. City of Lake Oswego*, 22 Or App 429, 430, 539 P2d 1123 (1975) (rezoning of a 72.9-acre area made up of numerous separately owned parcels of property was a legislative matter); *Culver v. Dagg*, 20 Or App 647, 654, 532 P2d 1127 (1975) (holding that rezoning of half of the land in Washington County was legislative).

Moreover, Ordinance 490 is not "compelled in substance." On the contrary, the various reports appended to the Ordinance make clear that the City had a large degree of discretion in crafting the policies for the UGB expansion area. For example, the Supplemental Staff Report dated August 3, 2023 notes on page 7 that "Goal 9 rules and recent Court decisions make clear that North Plains has ***"reasonable discretion"*** in determining what method it uses to determine how much land it needs to accommodate a demonstrated need for improved City livability as allowed by Goal 14." (emphasis added). Similarly, page 64 of the UGB Expansion Report discussed how the PAC used information to deliberate various options for the direction of the UGB expansion area, including competing alternatives for road configurations in certain subareas.

Other sections of the UGB Expansion Report further highlight the degree of discretion the City had in developing the land use policies, explaining "[t]o expand the UGB, North Plains must complete a boundary location analysis, comparing alternative locations and considering which addition to the UGB will result in the most accommodating and cost-effective boundary, while creating the fewest conflicts with neighboring land uses, and causing the fewest negative environmental, economic, social and energy consequences." UGB Expansion Report p. 25. Importantly, the report notes:

> "The analyses that follow ***do not provide any definitive conclusion*** as to where the North Plains UGB should be expanded. Rather, they provide the data City leaders need to make an informed decision about how the City should grow over the next 20 years." Id. (emphasis added)

In another section discussing the Goal 5 ESEE analysis similarly states: "Like the other boundary location analyses, the ESEE analysis ***does not provide a definitive conclusion*** as to where the North Plains UGB should be expanded but contains information to help inform

decision makers." Id. p. 54 (emphasis added). The fact that the vote to approve Ordinance 490 was not unanimous further highlights that it was not "preordained."

The fact that Ordinance 490 sets general land use policy for a large geographic area and involved the exercise of discretion by the City Council distinguishes this matter from the various cases cited in Mr. Varner's November 15 letter. For example, *Dan Gile and Associates, Inc. v. McIver* involved the rezoning of a single property, which is inherently different from establishing land use policies for an area covering 687 acres. 831 P2d 1024, 113 Or App 1 (1992); see also Oregon Attorney General Opinion 80-113 (Sept. 10, 1980) (referendum provisions of Oregon Constitution applicable to land use decisions "except in the case of ordinances which apply to property so limited in area or ownership as not to be legislative in nature.").

Rossolo v. Multnomah County is also distinguishable because it involved the use of specific transient lodging taxes, which the court characterized as a "closely circumscribed factual situation" that "does not establish or repeal general policies applicable to expenditures of tax funds." 272 Or App at 587. Moreover, the "hotel bond funding portions of the ordinance were preordained and compelled by the previously adopted intergovernmental agreement and board resolution." *Id.* As discussed above, however, the content of the Ordinance 490 was not "preordained" and was instead the product the City Council's balancing of various policy considerations and competing alternatives as to the location and size of subareas, density requirements, and allowed uses.

The other cases cited by Mr. Varner involved relatively routine municipal business that can readily be characterized as administrative in manner. For example, *Monahan v. Funk* involved the sale of single tract of land, which the Supreme Court found to be the type of action "necessary to the successful administration of the business affairs of a city." 137 Or 580, 587-88, 3 P2d 778 (1931). Similarly, *Foster v. Clark* involved an ordinance renaming a street in the City of Portland, which, as in *Monahan*, was deemed merely "administrative" in nature. 309 Or 464, 474, 790 P2d 1 (1990). *Lane Transit Dist. v. Lane County* involved the salary of a transit district's general manager, which the Court likewise found to be administrative in nature. 957 P2d 1217, 1221. 327 Or 161, 169 (1998).

By comparison, Ordinance 490 does not involve the sort of routine day-to-day management of the business of the city that has been found to be administrative in nature. Because the City Council's exercise of discretion to craft general land use policies for an expansive area is a classic example of "legislative" action, it is therefore subject to the referendum provisions of Article IV, section 1 of the Oregon Constitution.

Sincerely,

Kenneth P. Dobson

Cc: Client

Oregon
Tina Kotek, Governor

Department of Land Conservation and Development
Director's Office
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
Phone: 503-373-0050
Fax: 503-378-5518
www.oregon.gov/LCD

November 20, 2023

Board of County Commissioners
Washington County
155 N. First Ave.
Hillsboro, OR 97124
Sent via email

Dear Chair Harrington and Commissioners:

On behalf of the Oregon Department of Land Conservation and Development (DLCD), I am writing to respond to several topics raised at the November 15, 2023 Planning Commission meeting regarding Ordinance No. 899, relating to the expansion of North Plains Urban Growth Boundary (UGB). Several comments provided at the meeting by non-departmental staff appeared to represent departmental positions on various topics. We appreciate the opportunity to speak about these matters directly. In the paragraphs below, DLCD responds to each statement. If useful, we are available to meet and to discuss these statements further.

Incorrect statement: The department has concerns with, and has notified the city about, the validity of the upcoming referendum.

It is our understanding that the city's ordinance to expand its UGB has been referred to the voters, with the signatures certified by the County's Elections and the matter to be placed on the May 2024 ballot. The department has taken no official position on the referendum, nor does it have any official opinion about the measure's legality or validity. The department does not have jurisdiction over elections issues and does not provide formal legal advice on such matters. Should legal advice be needed, the department would recommend the city and county rely on their own respective counsels.

Incorrect statement: The amount of land needed for UGB expansion is based on the use of state-mandated forecasts and is "locked in" by state-acknowledged EOA and HNA:

The city's proposed Housing Needs Analysis (HNA) includes its housing needs projection, based on its 20-year population forecast as required by ORS 197.296 and Goal 10 administrative rule. When a city's analysis identifies a deficit in the supply of buildable residential land within its UGB, it is required to adopt one or more of the actions described in statute to remedy the identified deficit, which may include UGB expansion. Because the city identifies a deficit of

167.4 acres of land for needed housing and proposes to remedy this deficit through UGB expansion, the department will review both the HNA and UGB expansion proposals concurrently. The department's review of the HNA and UGB expansion can occur only after the city and county adopt an identical UGB expansion and submit to DLCD for review.

Unlike an HNA, the use of a population forecast to determine land need in an Economic Opportunities Analysis (EOA) is optional. Through an EOA, a city identifies the land needed to accommodate future industrial and other employment uses based on the types of industries the city wishes to attract, consistent with its comprehensive plan. It is our understanding that a recent change to community economic development aspirations led the city of North Plains to select an approach focused on attracting tech-based and supporting industries and businesses, and through its EOA, to conclude that it did not have sufficient buildable employment land within its UGB to accommodate them. The city adopted this EOA, which was filed with the department on 12/9/22 and acknowledged 12/31/22. The city's proposal includes bringing 687.8 acres into its UGB for employment uses, based on this acknowledged EOA. The city is not "locked in" to its acknowledged EOA, nor is it required to amend its UGB to resolve this identified employment land deficit, as it has the discretion to modify its economic development approach and adopt a revised EOA at any time. However, it has the option to use the acknowledged EOA as justification for UGB expansion based on employment land need, which the department would review only after the city and county adopt an identical UGB expansion and submit to DLCD for review.

Incorrect statement: The state has acknowledged that the city's process for public engagement related to the UGB expansion proposal complies with the statewide planning program:

The department has not yet reviewed the city's UGB expansion proposal and has not taken a position about the city's process for public engagement. The department would review these matters only after the city and county adopt an identical UGB expansion and submit to DLCD for review.

Conclusion:

We recognize the hard work of both city and county staff to navigate the UGB amendment process; department staff have been engaged in this effort for several years now and are committed to continued assistance as needed.

If you have further questions, please feel free to contact Laura Kelly, our Regional Representative for Washington County (Laura.Kelly@dlcd.oregon.gov or 503-798-7587)

Sincerely,

Brenda D Bateman

Brenda Bateman, Ph.D.
Director

cc:
Erin Wardell, LUT Planning and Development Services Manager, Washington County
Rob Bovett, Senior Assistant County Counsel, Washington County
Theresa Cherniak, Principal Planner, Washington County
Todd Borkowitz, Senior Planner, Washington County
Andy Varner, City Manager, City of North Plains
Bill Reid, Finance Director, City of North Plains
Gordon Howard, Community Services Division Manager, DLCD
Kirstin Greene, Deputy Director, DLCD
Laura Kelly, Regional Representative, DLCD

Friends of North Plains SMART GROWTH

Attachment #4

Help North Plains Grow Smart, Not Huge

THIS MAY, VOTE NO ON MEASURE 34-327

Friends of North Plains Smart Growth is a group of North Plains residents and neighbors working to make sure that North Plains grows smart, not huge!

WE SUPPORT:

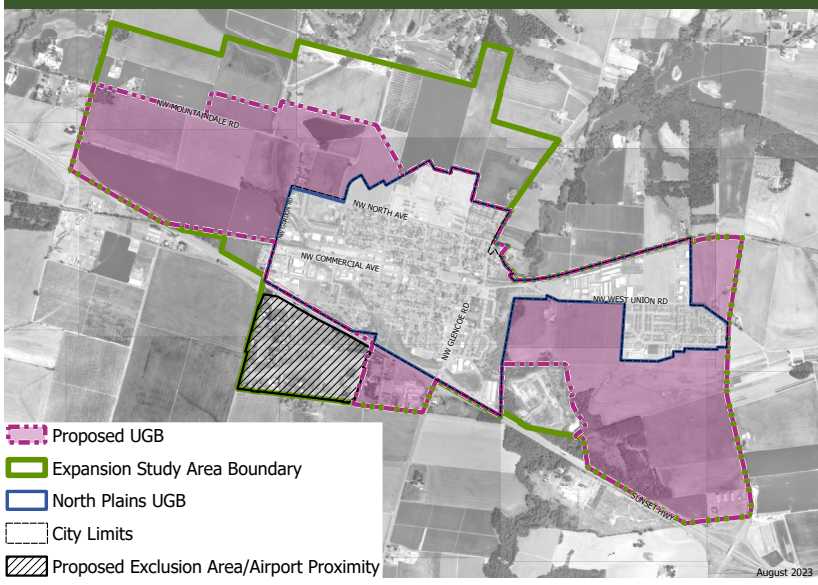
- A **NO vote** on Measure 34-327, to prevent a huge expansion of the city's Urban Growth Boundary by 855 acres. This expansion would more than double the size of North Plains without a plan for what kind of businesses will come, or who will pay for it.
- A smaller, more targeted expansion that first improves conditions inside North Plains. A NO vote on the city's excessive, poorly-planned expansion helps get us there.

HERE'S WHY NORTH PLAINS' PLAN WOULD BE BAD FOR THE CITY AND YOUR POCKETBOOK:

- Doubling the city and adding massive industrial areas for three miles along the highway will turn the city into a lesser Hillsboro, not the rural community it has always been.
- This type of expansion is very expensive! The city has no estimate for how much it will cost, but said the 700 acres of industrial land will "look like North Hillsboro." A recent expansion of 200 acres in Hillsboro required $370 million just for infrastructure. **Who will foot the bill for North Plains?**
- The city wants to expand onto some of the state's (and the world's) best farmland. Losing this land forever and encouraging land speculation will put farmers out of business and sacrifice food security—all in exchange for delivering huge profits for a few developers and landowners.
- The city did very little outreach outside the usual circles. Doubling the city's size is not a small decision and should be made and informed by all of us—not a select few.
- The city has no detailed plan and gives conflicting statements on how the industrial land will be used. Although city staff and counselors often distance themselves from it, the document the city uses to justify its massive expansion calls for huge data centers north of Sunset Ridge and semiconductor manufacturing at the Dersham exit. Without a plan, and with well-funded Hillsboro expanding just across the highway, North Plains will likely receive projects that aren't good enough for Hillsboro.
- The plan does very little to address the acknowledged lack of affordable housing.

> **If we want a smaller expansion—one that is inclusive and better uses our limited land—we first have to vote NO on Measure 34-327 in May 2024.**

NORTH PLAINS PROPOSED UGB EXPANSION MAP



www.FriendsOfNorthPlains.org

Friends of North Plains
SMART GROWTH

WHAT IS HAPPENING?

In September 2023, the City Council passed ordinance 490, which proposed adding 855 acres to the city's Urban Growth Boundary. Over the next two decades or less, North Plains would more than double the size of the city. This would grow North Plains by far more in two decades than it has since it was founded, and would be 10 times larger than the median expansion outside of Metro in the tri-county area. This ordinance passed the council with very little discussion, despite many people coming forward who asked for more time and engagement on this issue, a flood of testimony opposing this ordinance, and even advice from state agencies that the city was relying on "incorrect facts."

To bring the city back to the negotiating table and meaningfully involve all residents and surrounding businesses that will be affected, instead of just the developers and landowners who stand to make millions, the citizens of North Plains referred this decision to the voters on the May 2024 ballot. Our group knocked on hundreds of doors in North Plains and collected signatures from well over 10% of the electorate. Despite the city's efforts to delay and obstruct this vote, the question "Shall the city expand its Urban Growth Boundary" will be on ballots in the city in May.

WHAT IS A "UGB?"

The UGB, or Urban Growth Boundary, is the outer limit of growth for a city. By setting these limits, and by involving the public in their creation, Oregon has kept its cities efficient and dense and protected thousands of acres of working and recreational lands from sprawl. The reason the Willamette Valley doesn't look like Orange County—and North Plains isn't just the name of a Hillsboro suburb—is Oregon's 50-year-old system of Urban Growth Boundaries.

HOW CAN I HELP?

Visit our website, **www.friendsofnorthplains.org** to:

- Sign up for notices and let us know you'll vote NO
- Get a free yard sign (available April 9th)
- Donate to the campaign! As a 501(c)(4), donations to Friends of North Plains Smart Growth are not tax deductible.
- Volunteer with our entirely volunteer-run organization

UPCOMING EVENTS:

- **February Launch Party:** Free food and lots of fun (and some information too!) at the Rogue Brewery on Sunday, February 18th from 3-5 PM! Celebrate Oregon's Birthday week and help us protect what makes Oregon Oregon while helping out your local city!
- **Invite us to your events!** We love speaking to North Plainsers! Have an HOA or PTO meeting? Maybe a garden club or neighborhood block party where folks want to learn more? Send an email and let us know, we'll be there if we can!

Email: friendsnorthplainssmartgrowth@gmail.com

Above Left: Developed farmland on Meek Road in North Hillsboro—North Plains' fate with the city's current expansion plan.

Above Right: Undeveloped farmland in North Plains.