

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 1000 FRIENDS OF OREGON,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF NORTH PLAINS,
10 *Respondent.*

11
12 LUBA No. 2023-056

13
14 FINAL OPINION
15 AND ORDER

16
17 Appeal from City of North Plains.

18
19 Andrew Mulkey represented petitioner.

20
21 Christopher D. Crean represented respondent.

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23 RYAN, Board Chair; RUDD, Board Member; ZAMUDIO, Board
24 Member, participated in the decision.

25
26 DISMISSED

05/24/2024

27
28 You are entitled to judicial review of this Order. Judicial review is
29 governed by the provisions of ORS 197.850.

1 Opinion by Ryan.

2 **NATURE OF THE DECISION**

3 Petitioner appeals Ordinance No. 490, which amends the city’s urban
4 growth boundary (UGB) and adopts associated comprehensive plan text
5 amendments.

6 **JURISDICTION**

7 ORS 197.825(2)(c) provides that, as relevant here, LUBA’s jurisdiction:

8 “Does not include a local government decision that is:

9 “(A) Submitted to the Department of Land Conservation and
10 Development for acknowledgment under ORS 197.251,
11 197.626 or 197.628 to 197.651 or a matter arising out of a
12 local government decision submitted to the department for
13 acknowledgment, unless the Director of the Department of
14 Land Conservation and Development, in the director’s sole
15 discretion, transfers the matter to [LUBA] * * *.”

16 ORS 197.626(1)(b) provides that a local government

17 “shall submit for review and the Land Conservation and
18 Development Commission shall review * * * [a]n amendment of an
19 urban growth boundary by a city with a population of 2,500 or more
20 within its urban growth boundary that adds more than 50 acres to
21 the area within the urban growth boundary[.]”

22 The appealed decision is an amendment of the city’s urban growth boundary
23 (UGB) by a city with a population of 2,500 or more within its UGB that adds
24 approximately 855 acres to the area within the UGB. Respondent’s Response to
25 April 1, 2024 Order, Exhibit 1 at 10, 70. On June 22, 2023 and on October 12,
26 2023, the city submitted the adopted Ordinance No. 490 to the Department of

1 Land Conservation and Development (DLCD). Respondent's Response to April
2 1, 2024 Order, Exhibit 2 at 6.

3 Petitioner bears the burden of establishing that LUBA has jurisdiction to
4 review the challenged decision. *Billington v. Polk County*, 299 Or 471, 475, 703
5 P2d 232 (1985). The city has established that Ordinance 490 has been submitted
6 to DLCD. LUBA lacks jurisdiction over the Ordinance under ORS
7 197.825(2)(c)(A). *Swalley Irrigation District v. City of Bend*, 59 Or LUBA 52,
8 59 (2009) (dismissing for lack of jurisdiction under ORS 197.825(2)(c)(A) an
9 appeal of an ordinance amending the City of Bend's UGB to add more than 50
10 acres where the ordinance had been submitted to DLCD for review pursuant to
11 ORS 197.626).

12 This appeal is dismissed.