

Chair Fahey and members of the committee,

My name is Aaron Nichols, I am a vegetable farmer one farm over from North Plains and a founding member of Friends of North Plains Smart Growth. The -1 amendment to HB 4026 would invalidate a referendum that my group - a group of North Plains citizens and neighbors - brought to stop the biggest UGB expansion by percentage basis ever in Oregon - an expansion that would dramatically change the town, harm the agricultural community, and pave over our best soils. Indeed, as it is the only referendum on a UGB expansion ever, our referendum is the only thing HB 4026 refers to.

I understand your hesitancy about allowing UGB decisions to go to the voters. UGBs are technical decisions that require a lot of attention and a lot of care, something that is best handled by the land use system we have already. Overall, I agree with this - when used correctly the land use system can handle almost every UGB expansion proposal. 95% of UGB expansions are approved, 80% within 1 year. Referenda are a very rare last resort.

The framers of our constitution clearly wanted residents at every level of government to have access to the ballot box through referenda. Yet it is a high hurdle to meet the requirements of bringing a referendum - a hurdle that has been sufficient to keep any UGB expansions from going to the ballot over the last 50 years. However, like all other legislative actions by a public body, the option was left open for extreme cases to be decided by the voters directly and that option needs to remain.

The North Plains case demonstrates the appropriate use of the referendum provisions: it was both a difficult last resort and used as a remedy to an extreme case that was at the edge of what our land use system is set up for.

**Extreme expansion:** Anyway it is analyzed, North Plains' expansion is extremely large. It more than doubles the size of the city - the largest by percentage basis in Oregon's history of UGBs. For a city outside of Metro in the three Metro counties, the 855 acre expansion is the largest in acres and ten times the size of the median UGB expansion. This is not an issue of neighborhood NIMBYs not wanting development near them or a fringe group trying to stop all growth; residents of the city are legitimately worried that their town won't be recognizable after adding 700 acres of what the city manager has called North Hillsboro style development in the largely residential city. Virtually all of this expansion is onto the State's very best farmland - farmland that is disappearing faster than in 49 other states.

But the city's UGB proposal isn't just extremely large, it is extreme in its disregard for the intent, and often the text, of the land use laws. North Plains is trying to grow as if it's part of Metro, while taking advantage of lax standards for UGB expansions for small towns outside Metro to avoid doing the kind of regional or even local planning that is necessary for an expansion of this size. They have no number on how much this will cost nor how it will be paid for (a similar expansion in Hillsboro onto 200 acres required the bonding of 340 million dollars and an understanding it would not break even in 20 years - no word on where North Plains, a city of

about 3000, would find that kind of money). They haven't done a regional transportation study nor worked with Metro to see if this kind of rapid growth right outside of Metro's borders fits with the larger plan for the region - it certainly isn't what is in Metro's latest plans. The DLCD itself has said publicly that North Plains relied on "incorrect facts" to push their proposal through hearings. This is not an orderly transition into urbanization - it is a land grab.

Most glaringly however, this UGB expansion process ignored goal one - public involvement. The greatest evidence of this is simply that a referendum was brought and the city, rather than letting it go to a vote, grasps at straws to avoid having to hear from their own citizens. When shepherding this through the initial planning phases, a point where other cities advertise with street signs or by going out to community groups, North Plains assembled a group of city insiders and those landowners with much to gain by selling newly developable land. Their own list of outreach, which I have included in your packet, shows a list of city website postings and council meetings, and no intentional outreach. When I and others who joined our group went to the city before the public hearings, we were told, directly, that even though our farms might border the new UGBs, our opinions were not welcome at the city - we could talk to the county after the plan was entirely baked. When the public hearings came up, the entire first round of hearings and the vote were rescinded after the city failed to public notice them following their own, quite lax, notice requirements. The second time they came up, city staff told people directly and posted on their website that the public could not comment on the decision itself - just on minor amendments - when this was false. The city refused to fix this before its first hearing and this strategy surely suppressed turnout at the public hearings. If a state agency made such a significant change with such poor outreach, you all would, rightly, have the head of that agency here to answer some very hard questions. With the city of North Plains, I think you should, at least, refuse to further this attempt to suppress public process and public input and let the voters have a say.

**Difficult process:** Merely bringing a referendum to the voters is a very difficult process - not one likely to be used again in lesser cases. There is a very brief window where referenda can be brought - 30 days after the ordinance is passed - and, with no regulations on how long cities have to approve signature sheets, this is in practice closer to two weeks. The procedure requires ten percent of the registered voters to sign up making this a big hurdle in any size city. Furthermore, the process requires registering with the secretary of state and Orstar, engaging a lawyer, finding volunteers - in short all the steps needed for a campaign but compressed over a month. This took a number of volunteers taking on part time unpaid jobs to get done - and many of us are still working ten to twenty hours a week to keep the referendum and raise awareness. I and many others went to the city a number of times asking to negotiate, we filled rooms with opposition testimony at multiple meetings but were unable to get even a meeting with decision makers. We chose a referendum as a last resort and found the process intentionally difficult and time consuming. It is not an option we'd recommend to other groups and not one we would use again in less dire circumstances.

And for all the work a referendum is, it is only a referendum. It does not bind the city into any course of action nor prohibit any future course. The city is welcome to use its planning

documents again, legally they could even pass the exact same ordinance after the election in May. What the referendum mandates is that the city slow down and see what the voters think of this plan - the city's fear isn't that they will be prevented from expanding but that their specific expansion plan will prove to be very unpopular. Furthermore, though referenda can only be brought at this point in the process - after an ordinance is passed - it is much better than seeing a UGB plan pass with no support from the electorate. The necessary bonding and the continued election of pro-expansion politicians will be necessary to get the plan from a plan to a reality will require broad public support. If this doesn't exist, it is better to know now than when bonds are repeatedly voted down or councilors are forced to take a no annexation position to be elected leaving an empty UGB that is no good for anyone.

Lastly, the same framers who put many protections around and wanted referenda to be a last resort wanted to ensure that, in extreme cases, this right would be accessible. Article IV, section 1 makes it clear that the legislature is not meant to change what can and can not be referred to the voters:

“(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.” (emphasis added).

As we've seen, HB 4026 lacks broader application beyond North Plains, has little effect even in North Plains other than the elected officials having to hear from their constituency, and is unlikely to pass constitutional muster. I urge you to vote NO on this bill and let the referendum play out as the voters wish and the constitution demands.

Thank you for hearing from us on this matter.

Aaron Nichols



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](mailto:Laura.Kelly@dlcd.oregon.gov) or 503-798-7587)

Sincerely,



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



## Urban Growth Boundary Project Public Communications (2021-2023\*)

*Updated 8/25/23*

### Facebook Posts (17):

2023 -

- August 25 - North Plains awarded State grant for UGB concept planning to begin this fall
- August 9 - UGB Amendment public hearing at Planning Commission tonight
- August 7 - City Council meets tonight, agenda includes consideration of rescinding UGB ordinances for public hearings on amendments to add
- Aug 4 - August E-news is out including info on new UGB public hearings
- July 25 - UGB update message, new hearings
- June 22 - City Council approved UGB expansion report and HNA
- June 8 - UGB in June E-news content headline
- June 5 - City Council meets tonight, agenda includes UGB
- March 3 - UGB Public Advisory Committee (PAC) Consensus on expansion area, next steps
- Feb 24 - UGB PAC to hold its 8th meeting on Feb 28 to consider expansion area scenarios
- Jan 24 - UGB PAC to hold its 7th meeting on Feb 2 to consider expansion area scenarios

2022 -

- Oct 21 - City awarded grant for UGB Concept Planning/Expansion Project info
- Aug 2 - UBG PAC meets Aug 4 to review preliminary results of UGB study
- May 4 - Join us for May 4 UGB PAC mtg to review preliminary results from the North Plains Urban Growth Boundary analysis.
- April 25 - Same as above

2021 -

- Nov 29 - Update on the UGB Project
- May 17 - UGB Public Meeting

### Connected Print Newsletter:

(all available here: <https://www.northplains.org/community/page/city-newsletter>)

1. August 2023 - UGB update message and new hearings

2. July 2023 - Mayor's Corner: Planning for our Future (UGB)
3. June 2023 - UGB FAQ
4. February 2023 - City Manager's Message
5. October 2022 - UGB Update
6. September 2022 - Economic Opportunity Analysis Public Hearing
7. July 2022 - City 101: Budget Perspective Part 3
8. May 2022 - 5/4 UGB Expansion Project Advisory Committee in Calendar/EOA Public Hearing article
9. May 2021 - UGB Public Meeting Flyer

### **E-Connect E-Newsletter:**

(all available here: <https://www.northplains.org/community/page/city-newsletter>)

1. August 2023 - UGB update message, new hearings
2. June 2023 - UGB FAQ available
3. March 2023 - UGB Project update
4. October 2022 - UGB Concept Planning Grant/UGB Update
5. August 2022 - UGB Aug 4 PAC mtg in calendar
6. May 2021 - UGB Public Meeting

### **Website Pages/News Articles:**

1. North Plains Awarded State Grant for UGB Expansion Area Concept Planning:  
<https://www.northplains.org/planning/page/north-plains-awarded-state-grant-ugb-expansion-area-concept-planning>
2. UGB Expansion Update; New Hearings:  
<https://www.northplains.org/planning/page/urban-growth-boundary-expansion-update-new-hearings>
3. UGB FAQ -  
<https://www.northplains.org/planning/page/north-plains-urban-growth-boundary-faq>
4. UGB Project Page: <https://www.northplains.org/UGB>
5. City FAQs -  
<https://www.northplains.org/cityhall/faq/what-urban-growth-boundary-ugb-and-what-does-ugb-expansion-mean>
6. Oct 1, 2022 News Article -  
<https://www.northplains.org/planning/page/urban-growth-boundary-expansion-project-update>
7. June 1, 2021 News Article -  
<https://www.northplains.org/planning/page/north-plains-exploring-urban-growth-boundary-expansion>

### **OTHER:**

- March 2023 - Included in the Mayor's State of the City
- All public meetings posted to City website calendar - [www.northplains.org/calendar](http://www.northplains.org/calendar)



- Hillsboro News Times Article March 10, 2023 - [https://www.hillsboronewstimes.com/news/local/north-plains-in-home-stretch-of-expanding-its-urban-growth-boundary/article\\_81b1439a-bf9f-11ed-be7d-aff098709652.html](https://www.hillsboronewstimes.com/news/local/north-plains-in-home-stretch-of-expanding-its-urban-growth-boundary/article_81b1439a-bf9f-11ed-be7d-aff098709652.html)

*\*Public meetings among the current administration date back to 2018 when City Council and Planning Commission held joint hearings to discuss a UGB expansion approach. There were also many years of public planning that pre-date this North Plains UGB Expansion Project with cities, counties, and farmland advocates in the Portland metropolitan region setting the current urban and rural reserves, along with the urban growth boundary. This list is not meant to be exhaustive of all communications applicable to the UGB expansion efforts.*