

Dear Chair Lieber and members of the committee,

My name is Aaron Nichols and I live and farm one farm over from North Plains. Thank you for this chance to testify and bring the important issues around the North Plains Referendum and HB 4026A to your attention. I have attached the evidence I refer to in this testimony in a separate pdf submitted as testimony.

Summary:

I will detail main contentions that I think expose North Plains and the state to legal liability regarding an unconstitutional bill. These are: (1) that North Plains exhibited a lack of voter engagement and then proceeded to blame the inevitable pushback on outsiders when much of the opposition was in their own town and almost entirely from those who will be affected by their plan; (2) that North Plains, far from following all the regulations and having a model UGB plan, is attempting the largest UGB expansion by percentage basis on the back of minimal planning and, as the DLCD itself has noted, “incorrect facts”; and, lastly, (3) that 4026A will not guarantee North Plains’ expansion nor will it save the city from their own lack of outreach and over ambitious expansion - at best it will leave open only less precise ballot options as happened with the recalls in King City. These contentions are backed up both with the narrative below and the attached exhibits, A-E.

A lack of public engagement:

North Plains has contended, both in testimony and in lobbying prior to the bill becoming public, that they went through the full process, “crossed all the ‘t’s and dotted all the ‘i’s” and were ambushed at the last minute by outside groups. This is false. **Of the 26 meetings North Plains points to as public evidence, only three of these were public hearings that both followed proper noticing requirements and had an opportunity for the public to engage.** Other meetings on their list were either noticed only on their website or by invitation to people who knew about the expansion and requested information and landowners who would bring land in. North Plains, a city that puts up banners and signs for every parade and event, never advertised the process in the city, with mailers, or in any way a person not within 250 feet of the proposed boundary or already following the North Plains website would understand. Certainly, the meetings early in the process, which took place in 2020, showed no serious attempts at outreach and had very little citizen participation. North Plains’ own list of outreach around this issue - an issue that will change the city and the surrounding working land for generations - is primarily a list of city website pages and facebook posts. I have attached it as [Exhibit A](#) in the evidence.

The first time the public was really invited to a meeting - through proper notice by the city and extensive, intentional outreach by groups opposing the expansion - the hearings brought more than forty people with the vast majority in the opposition. This trend continued at the county with a four hour public meeting and 64 pieces of testimony. While it certainly would have been better

to have this testimony earlier in the process, North Plains can hardly be surprised that **they only heard from the public the first time that North Plains actually asked to hear from them.**

Is this opposition from “outsiders”? No.

North Plains also contends that the opposition is entirely from outside groups. The evidence doesn't support this. The attached testimony analysis (Exhibit B) shows that, similar to the 78% of the total pieces of testimony submitted were opposed, the testimony from inside North Plains was 77% opposed. The only groups that could be identified as being disproportionately in favor of this expansion (and in fact make up almost all of the support) are city staff (who do not live in North Plains), landowners whose land will come into the UGB, and developers. Out of state and out of region interests were nearly 100% supportive, those in the region nearly 80% opposed.

North Plains shut out those most affected

Lastly, and in many cases, North Plains has specifically told residents who live outside city limits - even if they live one farm over from the city as I do or will farm across the street from the new UGB as Jacquie Jones, a cofounder of this group would - that their comments and opinions simply are not welcome. In the public hearings councilors repeatedly blame outsiders for the difficulty with the UGB plan ignoring that 12% of their voters signed the referendum in two weeks and that recent meetings have had about half residents and half close neighbors. Before voting, the council president, after hours of opposition testimony, said he didn't need to consider that testimony because he didn't represent those people. Certainly, farmers on the edge of a UGB are heavily affected by UGB decisions. It is not easy to move a farming operation: there is not much farmland left to move it to, and it is impossible to cart the class one soils with you. We farmers are stuck with this decision and **the Council's contention that they are only responsible to those who have the power to vote for them, not those who will be impacted by their actions, is false and ridiculous.**

A poorly researched, overly ambitious expansion:

While the lack of voter engagement is likely what led to a plan that has been exceptionally controversial, **the plan itself has been poorly supported and much of the basic evidence has been exaggerated or is simply missing.** North Plains is attempting the biggest UGB expansion by percentage basis ever, the largest by acres in the metro counties outside of Metro, and with an end result of more than doubling the town's size. This kind of expansion should be well planned and carefully thought through; North Plains' plan is not. The city has relied on an exemption intended for small cities outside of Metro to grow in small ways, mostly to accommodate housing. They are trying to fit 855.2 acres, about 700 of those for industrial and commercial lands, through that exemption. They have not done the regional studies to see if we need, as their EOA envisions, another 92-acre data center, they have not considered traffic impacts nor where the infrastructure money will come from. Certainly they haven't shown how they will pay for this sort of development - Hillsboro's similar expansion onto approximately 200 acres requires bonding authority of \$340 million dollars and a tax increment finance district that will not break even in 20 years.

Incorrect information:

To justify this plan North Plains makes many assertions, as they have here in Salem, but rarely backs those up with facts. In fact, in the last public hearing for this bill at the Washington County Planning Commission, **the city was called out in a public letter from Dr. Brenda Bateman, the director of the DLCD, for relying on “incorrect facts.”** This letter is Exhibit C in your packet. These misstatements ranged from misstating the DLCD’s position on North Plains’ voter engagement, to misinforming the county about the existence of a letter from DLCD regarding the legality of the referendum (no such letter existed), to misunderstanding or misusing the role of their EOA - the document that purports to mandate 700 acres of the expansion. DLCD explained that, far from guaranteeing the city the full amount of acreage, as they had claimed in their own meetings and at the county, the city was expected to do the Goal 14 test knowing they could take anywhere from 0-700 acres. Exhibit D gives timestamps and meeting links so you can see the many times the city relies on its EOA erroneously, including a long explanation by the city’s attorney, minutes before the council goes to start voting, relying precisely on what the DLCD calls “incorrect information.” Other uses of incorrect facts meant to move the UGB plan past the contentious hearings at the County Planning Commission are also listed. Lastly, Exhibit E is a set of meeting minutes from the DLCD’s meeting with North Plains the day before they used these incorrect facts. It shows that, in at least two of the cases, they had been told that their contentions were unsupported by the evidence. The fact that they chose to use these in the meeting the following evening and claim support from DLCD is likely why such a strongly worded letter was sent in the first place. This looseness with the facts in public meetings also calls into question the city’s assertions here in Salem- especially when they are not backed up by real evidence.

HB 4026A will not solve North Plains’ problems:

Given the anger over the lack of public engagement and the poor quality and unprecedented size of the UGB plan, neither this bill nor any other legislative action will protect North Plains and its UGB plan from its own unpopularity and critical flaws. I

believe that this is one reason that the legislators who were most familiar with this issue - those in districts that include or border North Plains, all voted against HB 4026A. HB 4026A however, is a particularly poor way to go about helping North Plains. The results of this bill in North Plains have so far been much angry testimony at the Council meeting and talk of following King City’s example of recalling their entire Council. Our group has not supported any recalls as we believe that the Councilors made a mistake in this instance, partially based on incorrect facts, but still are good people who want the best for their town. What we want to do is bring North Plains to the table to negotiate, not flip the table over and storm out of the room.

By removing the most precise tool voters have to hold elected officials accountable for their votes, this bill invites the use of much more broad and less discriminate ballot options. That is not good for North Plains and it is not good for Oregon. Furthermore, as my colleague Nellie McAdams’s testimony states, this bill has immense legal liability, will invite a court challenge as soon as it is signed, and almost surely be declared unconstitutional. HB 4026A is a bad bill being rushed through to address a problem it can’t fix. If this remains a

problem after North Plains has had its vote, the Legislature can make a more tailored and constitutional bill in the next long session after hearing from all sides on the issue.

Lastly, I believe that the city is not being entirely forthright about why they seek this bill. The city is well aware that a UGB ordinance is an exercise of a city's legislative power and therefore referable to the ballot and that that right is protected in Oregon's constitution. **If North Plains had reasonable doubt in the matter, they would have sued to have the referendum removed from the ballot.** They have not.

Inappropriate use of State power in local issues:

What HB 4026A does, in fact the only thing HB 4026A does, is have the legislature insert itself into a local issue to put a roadblock in the way of a community group. This bill forces our group to sue the state and, though as we and the city know full well, the law will be quickly overturned, the city hopes that we will either be unable to raise the money for the lawsuit or it will exhaust our resources and harm our campaign. It is obvious that this, placing a hurdle in the road for one side in one election, is not the place of the Oregon Legislature nor worth the time used on this bill in a short session.

For all of these reasons, and particularly for the evidence that is gathered here and in Ms. McAdam's testimony, I ask you to vote no on HB 4026A.

Aaron Nichols,
Friends of North Plains Smart Growth