

This document is a list of evidence to support Aaron Nichols's testimony on
HB 4026A.

Exhibit A: North Plains Public Communications on UGB

Exhibit B: Testimony analysis showing consistent levels of disapproval in
and outside the city.

Exhibit C: Letter from the DLCD correcting North Plains' use of incorrect
facts in public hearings.

Exhibit D: A list of notes and timestamps to show North Plains' use of and
reliance on incorrect facts to pass their plan and move it through the
county. Also shows the county's determination that UGB expansions are
inherently legislative.

Exhibit E: Notes from a meeting between North Plains and the DLCD
showing that the city knew, prior to the 11/15 meeting where they continued
to use incorrect facts, the correct interpretation of the DLCD's position on
the referendum and how and EOA is appropriately used.

Exhibit A:

North Plains Public Communications on UGB

From North Plains' website:

https://cms3.revize.com/revize/northplains/Documents/Departments/Planning/ugb_project_public_communications_web_8_25_23.pdf



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

- 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

**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.*

Exhibit B:

Testimony analysis showing consistent levels of disapproval in and outside the city.

Compiled from testimony submitted to public hearings at the city and county. Compiled by Aaron Nichols for Friends of North Plains Smart Growth

**Written testimony analysis for ord. 899 by Aaron Nichols for Friends of North Plains Smart Growth.
Details and full testiomny available on request**

Loation:	At North Plains city council hearing	At the County Planning Commission hearing	Testimony submitted, in total, NP and PC	# who live in North Plains city limits	# of unique responses
Total in support	12	14	26	5	23
Total in opposition	42	50	92	17	75
Total submitted	54	64	118	22	98
% opposed	77.78%	78.13%	77.97%	77.27%	76.53%

Exhibit C:

Letter from the DLCD correcting North Plains' use of incorrect facts in public hearings.

From Public testimony to the county and available in a staff report:

https://washingtoncounty.civicweb.net/document/285673/&source=gmail&ust=1709418417519000&usg=AOvVaw12hN_Ogiui6ysk-1ubJiA6

Todd Borkowitz

Subject: FW: [EXTERNAL] Letter to Board of County Commissioners - Washington County
Attachments: WashCo_ResponseLetter_NPExpansion_DLCD_231117_Signed.pdf
Importance: High

From: KELLY Laura * DLCD <Laura.Kelly@dlcd.oregon.gov>
Sent: Tuesday, November 21, 2023 10:07 AM
To: Erin Wardell <Erin_Wardell@washingtonty.gov>
Cc: HOWARD Gordon * DLCD <Gordon.HOWARD@dlcd.oregon.gov>; BATEMAN Brenda O * DLCD <Brenda.O.Bateman@dlcd.oregon.gov>; Theresa Cherniak <Theresa_Cherniak@washingtonty.gov>
Subject: [EXTERNAL] Letter to Board of County Commissioners - Washington County

Ms. Wardell,

Please find attached a letter of comment from Oregon Department of Land Conservation and Development (DLCD) Director Brenda Bateman. During its November 15 meeting on Ordinance No. 899, the Planning Commission engaged in a lengthy q&a with city of North Plains staff, counsel, and mayor. During this exchange, several statements were made which do not accurately represent DLCD's position. The department respectfully requests the attached letter, providing DLCD's official position on these subjects, be submitted to the record for Ordinance No. 899. Please let me know if a discussion would be helpful or if I can answer any questions.

Sincerely,

Laura



Laura Kelly

Regional Representative for Metro, Washington County,
 and select cities of Columbia County | Portland Metro Regional Solutions
 Oregon Department of Land Conservation and Development
 1600 SW Fourth Avenue, Suite 109 | Portland, OR 97201
 Cell: 503-798-7587 | Main: 503-373-0050
laura.kelly@dlcd.oregon.gov | 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,

A handwritten signature in black ink that reads "Brenda D Bateman". The signature is written in a cursive, flowing style.

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

Exhibit D:

A list of notes and timestamps to show North Plains' use of and reliance on incorrect facts to pass their plan and move it through the county. Also shows the county's determination that UGB expansions are inherently legislative.

From public meeting testimony. Links to each meeting referenced are available above the notes and timestamps

Exhibit D:

Below are examples of North Plains misstating the facts in its public hearings. The examples in bold are uses of what the DLCDC calls "Incorrect facts" including a long explanation before the hearing closes that informs the councilors that they must take all the EOA land or be in violation of goal 14. This is directly contradicted in the DLCDCs letter.

City planning commission meeting, 8/9/23:

<https://www.youtube.com/watch?v=TdS9WwCuCOs&t=9505s>

2:34, Commissioner LaBonte asks directly if all the acreage has to come in. Heather (consultant) answers yes for HNA, no for EOA but you are compelled to look at 20 year needs. Mr. Crean jumps in saying the growth "has to be based on our need." He goes on to say that it would violate goal 14 rules and taking all the acreage in the EOA is required by state law.

3:27 A discussion of notice - LaBonte shows the misnoticing and reads the incorrect notice - stating that only the amendments can be commented on when the entire plan is up for a hearing. Chris Crean says it doesn't exist or was corrected despite actual evidence to the contrary in front of him.

North Plains meeting 9/5/23: <https://www.youtube.com/watch?v=5GqFqldrqSY>

47:42 land need explained

56:12 need is acknowledged and defined in the EOA

56:41 A consultant from Hillsboro, says "Goal 14 mandates that you bring in all the EOA land"

On Second 9/5/23 video: <https://www.youtube.com/watch?v=dfPZblAHnr8&t=2178s>

17:10 Chris Crean gives a long explanation of how you can't expand a UGB because you want to or not want to. "There are laws that have to be followed. "Goldmine" [hard to hear name of case] is the one for industrial and commercial lands which does show, which is now an acknowledged part of your comprehensive plan it is no longer subject to review and it shows a need for more land and now we have a housing needs analysis that shows a need for additional land and state laws do require you to address that and provide the necessary lands."

36 Mayor asks re regional partners, Bill lists many agencies but highlights the DLCDC

38:16 Hearing closes

Washington County Planning Commission, 11/15/23

<https://washingtoncounty.civicweb.net/document/274045/?splitscreen=true&media=true>

Statements which are corrected by the DLCD letter of 11/20/23 in bold, number references the statement order of the DLCD letter:

At 1:24:14 Mr. Bovett, the county's land use attorney explains how this is a legislative hearing and the rules for such.

1:38:30 Bill Reed, the city's finance director, argues that the EOA "locks them in" to the expansion they are asking for here. This is corrected by the DLCDs letter as incorrect fact #2.

2:49:52 Bill Reed says that the state recognizes that the city's public outreach was done correctly. This is corrected in the DLCDs letter as incorrect fact #3

2:51:14 Chris Crean, the city attorney, says he received a letter from the state planning authority and it raised serious concerns about the referendum. This letter did not exist and was corrected in the DLCDs letter as incorrect fact #1. The only evidence of any letter existing is a letter signed by Mr. Varner, the North Plains City manager, stating that the UGB expansion is an administrative action and therefore not referable to the voters.

Washington County Planning Commission, 12/6/23 meeting:

3:48 Informed that the county commissioners, on advice from council, continued the hearing until after the referendum.

17:03 Mr. Bovett explains that UGB matters are legislative hearings and explains the rules for such.

45:00 In explaining the impact of the referendum, Mr. Bovett acknowledges getting both the city's letter and Mr. Dobson's letter submitted on behalf of Friends of North Plains Smart Growth. He acknowledges that the county's position is consistent with Mr. Dobson's position, i.e. that the UGB expansion is clearly legislative in nature and can be referred to the ballot.

Exhibit E:

Notes from a meeting between North Plains and the DLCD showing that the city knew, prior to the 11/15 meeting where they continued to use incorrect facts, the correct interpretation of the DLCD's position on the referendum and how and EOA is appropriately used.

From the DLCD via public records request.

Exhibit E: These notes were obtained in a public document request of the DLCD. It shows the record of a meeting the day before the planning commission where North Plains staff misrepresented the DLCD's position on the referendum, public involvement, and the proper understanding of an EOA. These incorrect facts were corrected by the DLCD's letter, Exhibit C in this document.

Emphasis is added in this document to show what the city knew before the 11/15 meeting.

North Plains and DLCD check in on UGB amendment

Tuesday, November 14, 2023 9:36 AM






Meeting Date: 11/14/2023 11:00 AM

Location: Microsoft Teams Meeting

Link to Outlook Item: [click here](#)

Invitation Message

Participants

- 
- 
- 
- 
- 

Notes

BR: update on process. Sept 18 council adoption of ordinance 490
County PC has taken up their own ord. PC meeting in Oct, tomorrow is deliberation.
Referendum on may ballot. Challenges ordinance.
Washco BOCC work session: whether to delay county ordinance.
Could be paused until June 24.
County opinion: should delay. Referendum renders process incomplete.
NP to argue it isn't incomplete. Possibly ambiguous. Don't want a delay

AV: NP think the legislative action can be challenged by referendum and this could be dangerous precedent. If local ordinance adoption to comply with state goals or law, this could delay. No certainty after June. What must city do to accommodate the county's wishes. What resources will be needed for this?

GH: county must approve in addition to city. Most times, that's not a big deal. But Millersburg is example of county rejection. County does have a role here. Referendum: as policy matter, agency opposes planning by referendum. **City to resolve whether referendum is legal, not DLCD issue.** GH- there are court cases; administrative v legislative. legislative decisions that are based on state laws. Referendum could fail in May and petitioners could lead to serial referenda. Could make this point to county. We'd need to talk to our atty and director about whether to weigh in to county. And would be advice, not binding. GH doesn't think referenda on land use issues is good policy but **DLCD may not formally comment to that**

LK: county finds itself in a bind; looking for path of least political resistance so makes sense to delay action until after vote

BR: NP thinks this is driven by those outside the city. Referendum is second one, as first was not valid

GH: vote will tell. Opponents may be signaling they don't have a good legal case. NP need to make your arguments to county, not DLCD about why to keep going. Whats to prevent serial referenda? Challenging the legality of the referendum could be another avenue for NP research. GH doesn't know if referendum can be used for this,, what repercussions. e.g. what if referendum is about no more building permits?

AV: DLCD willing to comment on other ?

GH: **don't think we could act quickly enough to comment. If we had time, we could ask our attorney and director about whether to comment.**

AV: NP have a placeholder letter in. there is likely time to put in a letter of comment. Would love a paragraph about UGB process for cities with their own UGBs. Commissioners and PC members are confused about this. What are the steps. Comp plan, zoning, where does it occur in the process.

SM: 20 year land supply issue: people think it's only for residential. Applies to employment lands too.

GH: we can help explain that. **Although unlike residential lands, you're not required to cure your employment lands**

deficit GH: If county continues for further discussion, we can talk further- to KG, BB, SS about whether we weigh in on this.

AV: could you include clarification about processes, etc. BOCC: they're behind this and would like to move forward. Looking for best info possible, not outright advocacy.

GH: when it comes to UGB, county can be a co-equal part of process. That's not always clearly understood. Some think they must rubber stamp. Its up to them to make a decision. how much deference to give city decision is up to the county. Counties tend to respect the city's process.