**Miller Tree Farm, LLC**
**110 NE Greenwood Avenue**
**Bend, OR 97701**

May 5, 2010

Mr. John Van Landingham, Chair
Land Conservation and Development Commission
635 Capitol Street, NE, Suite 150
Salem, OR 97301-2540

Subject: UGB Locational Analysis (Issue Area 9)

Dear Chair Van Landingham & Commissioners,

I represent Miller Tree Farm, LLC, and have objector status regarding this issue area. The Bend UGB hearings have been lengthy and detailed and we appreciate the work of the Commission.

Our land is within the Bend Urban Area Reserve (UAR) and has been since it was designated and acknowledged in 1981. All of the City's UAR lands are acknowledged exception lands (both Goals 3 and 4). Further, the acknowledged Bend Urban Area General Plan specifically guides future UGB expansions onto the Urban Reserve lands. "Lands in this Urban Reserve area are considered first for any expansion of the Urban Growth Boundary," Bend Area General Plan, pages 1 – 4. These lands are therefore the highest priority for inclusion in the UGB.

Per ORS 197.298, lands within the highest priority class must be included in UGB expansions <u>first</u> to provide the needed amount of urbanizable land. If the highest priority lands cannot provide the needed acreage then lower priority lands are considered next for inclusion. Some in this debate argue that other, lower priority lands are more suitable for inclusion at the expense of the existing UAR/exceptions lands. This is contrary to state law and case law. As LUBA found in Parklane v. Metro:

"The issue for the purpose of exceptions criterion (ii) is not whether lower priority lands are "more appropriate" or "better" in some particulars than higher priority lands, <u>but whether the need at issue can be "reasonably accommodated" on those higher priority lands.</u>" Parklane, 35 Or LUBA at 569. The City has found, and the evidence in the record supports, that these URA-designated lands can reasonably accommodate the identified land need for residential and employments lands under ORS 197.298 and Goal 14. This decides the question under <u>Parklane</u>, and under the more recent cases of <u>City of West Linn v. LCDC</u>, 201 Or App 419, 119 P3d 285 (2005) and <u>Hildenbrand. City of Adair Village, 217 Or App 623, 177 P3d 40 (2008)</u>

Both state law and locally adopted land use policy direct UGB expansions onto the urban reserve/exceptions land in question. All of the UAR property owners have made investments in and decisions for their land based on the policy direction provided in the Bend Urban Area General Plan and the statutory priorities. In addition, the UAR property owners have submitted testimony to the record relating to the obligation to follow the statutory priorities in choosing where the City of Bend will grow. We are confident that the Commission will rely on the statutory priority scheme as required by state law in its review of the City of Bend UGB appeals.

Thank you for this opportunity to comment and again, we appreciate your hard work in reviewing the Bend UGB expansion proposal.

Charley Miller
Miller Tree Farm

Cc:
Tumalo Creek Development
Shevlin Sand and Gravel
Ed Elkins
Harvest Development, LLC
Brooks Resources Corporation