

**Exhibit B**  
**FINDINGS OF FACT**  
**ORDINANCE No. 2002-10**

**A. General Findings.**

1. These findings serve as the basis for the City Council's decision to adopt Ordinance No. 2002-10, which adds tree retention requirements to the Sandy Development Code.
2. The regulations primarily implicate Statewide Planning Goals 4 (Forestlands), 6 (Air, Water and Land Quality), and 7 (Natural Hazards).

**B. Statewide Planning Goal Findings.**

1. Goal 1: Citizen Involvement. The regulations have been the subject of extensive public review prior to and during the public hearing process.
  - i) An Urban Forestry Committee was established by the City Council in March of 1999. The Committee was instructed to draft an ordinance regulating tree harvests that would require tree retention within the Sandy Urban Growth Boundary (UGB). The breadth of the regulation was based upon the City Council's desire to regulate forest practices within Sandy's UGB and allow property owners to make reasonable use of their lands for tree cutting purposes. The Committee completed its work in October of 1999.
  - ii) Several public hearings were held before the Planning Commission and the City Council on the regulations. Changes were made to the regulations as a result of these hearings.
  - iii) Having provided several opportunities for public input into this legislative decision-making process, the City of Sandy complies with Goal 1.
2. Goal 2: Land Use Planning. Goal 2 requires that comprehensive plans include an adequate information base, consideration of alternatives, and implementing measures that are consistent with and adequate to carry out the policy direction found in the local plan. The regulations also demonstrate that Sandy has coordinated with affected state agencies. Goal 2 is met in the following ways:
  - i) By adopting the regulations, Sandy is making a clear public statement regarding its intent to regulate forest practices within its UGB.
  - ii) The regulations adopted by the Council have changed as a result of the public hearing process. Both the Planning Commission and Council

considered a range of alternatives before adopting the final version of the regulations.

- iii) Through the public hearing process, significant effort has been expended to provide greater clarity regarding key provisions and definitions used in the regulations.
- iv) Throughout the process, the City has engaged in and maintained a dialogue with the Department of Forestry regarding the regulations. Based upon its conversations with the Department, the City has incorporated into the regulations many of the Department's suggestions.
- v) Upon successful acknowledgement of the regulations, the City will seek to amend its Growth Management Agreement with Clackamas County in order to regulate forest practices within Sandy's UGB but outside of its city limits.

- 3. Goal 3: Agricultural Lands. This goal is not applicable to the regulations.
- 4. Goal 4: Forest Lands. The regulations mostly affect property within Sandy's city limits – property not zoned as forest land. However, the City Council acknowledges that it intends to eventually regulate forest practices on property outside Sandy's city limits and within Sandy's UGB – including property zoned forest land by Clackamas County. With regard to those lands, compliance with Goal 4 is demonstrated via the following:
  - i) Via ORS 527.722, the Oregon Legislature has specifically authorized Sandy to regulate forest practices on such lands.
  - ii) Land use designations on such lands shall remain the same. With the exception of a modest 3 tree per acre retention requirement and stream buffers, forest operations shall continue to be allowed on forest lands.
  - iii) The regulations shall not alter existing land divisions standards on forest lands, nor shall the regulations alter existing dwelling citing standards on such lands.
  - iv) Through the retention requirement, a modest amount of forest land is guaranteed to be conserved, consistent with the Goal's plain language.
  - v) In certain areas where water quality is threatened and/or natural hazards exist, the regulations will interface with Sandy's Flood Slope Hazard Overlay zone, which will regulate forest practices consistent with sound management of soil, air, water, and fish and wildlife resources.
  - vi) Overall, the regulations will maintain the forest land base and will continue to allow economically efficient forest practices that assure a continuous supply of harvest stock as the leading use on forest land.
- 5. Goal 5: Natural Resources. Based on the following discussion, the City Council concludes that Goal 5 does not apply to the regulations. As defined at OAR 660-023-0010(5), the regulations are a "post-acknowledgement plan amendment" (PAPA) because, in pertinent part, they constitute an "adoption of [a] new . . . land use regulation." In adopting a PAPA, local governments

are required to apply Goal 5 only if the PAPA “affects a Goal 5 resource.” OAR 660-023-0250(3). As defined further in 0250(3), a PAPA affects a Goal 5 resource “only” if the PAPA (1) “creates or amends” a “resource list;” or “a portion of a land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;” or (2) “allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list.”

- i) Based on the exclusive categories above, the PAPA does not affect any Goal 5 resource.
  - (1) Trees are not a part of any resource list maintained by the City of Sandy – therefore the PAPA is not amending such a list. Neither is a resource list being created via the regulations.
  - (2) The regulations are not creating or amending a land use regulation adopted in order to protect a significant Goal 5 resource, because trees are not a significant Goal 5 resource under OAR 660, Division 23. Nor will the regulations create or amend a land use regulation adopted in order to address specific requirements of Goal 5, because the City Council does not intend to address those requirements through these regulations. LUBA precedent supports this conclusion. *See Home Builders Ass’n of Lane County v. City of Eugene*, 41 Or LUBA 370 (2002) (no authority for the proposition that local jurisdiction is required to apply Goal 5 before it regulates resources that are not a part of the local jurisdiction’s Goal 5 inventory); *Ramsey v. City of Portland*, 30 Or LUBA 212 (1995) (an ordinance regulating the cutting of trees does not affect any Goal 5 site nor implicate Goal 5).
  - (3) Finally, the regulations are not providing for any new “uses;” therefore there will be no conflicts with any particular Goal 5 resource sites.

6. Goal 6: Air, Land and Water Resources Quality. The City Council finds that Goal 6 is met in the following ways:
  - i) By requiring trees to be retained on certain properties within Sandy’s UGB, the regulations will have a modest effect on improving water quality when compared to the current lack of a tree retention requirement, because runoff and sedimentation to sensitive surface and groundwater areas will likely decrease.
  - ii) The retention requirement, alone and in combination with other applicable provisions of Sandy’s development code, shall further ensure that waste and process discharges from future development will comply with applicable state and federal environmental statutes and rules
  - iii) The retention requirement will also contribute to ensuring that such discharges will not degrade, overload, or threaten the availability of air, water or land with Sandy’s UGB.
7. Goal 7: Natural Disasters and Hazards. Chapters 17.56 and 17.60 of the Sandy Municipal Code primarily address Goal 7. However, these regulations

will also address Goal 7 by adding additional safeguards to development in potentially hazardous areas. As applied to potentially hazardous areas, the tree retention requirement will reduce the possibility of landslides and encourage a less dense development pattern in such areas. Goal 7 is met.

8. Goal 8: Recreation. By requiring tree retention, the regulations assist in preserving trees for Sandy's future. Thus, the regulations will only increase general recreational opportunities today and in the future for Sandy's residents and visitors. However, the regulations do not authorize nor address the citing of recreational and destination resorts. The City Council finds that Goal 8 is met.
9. Goal 9: Economy of the State. The regulations will have a negligible effect on the profitability of forest practices. The value of certain properties may increase as a result of this ordinance. Goal 9 is met.
10. Goal 10: Housing. Because a developer may choose where on a given property to retain trees, and because the vast majority of developments voluntarily retain trees above the regulations' retention requirement, the regulations will have little to no effect on Sandy's ability to provide needing housing. Goal 10 is met.
11. Goal 11: Public Facilities and Services. The regulations will have no effect on the ability of the City to provide public facilities and services. Goal 11 is met.
12. Goal 12: Transportation. The regulations will have no effect the City's Transportation System Plan. Goal 12 is met.
13. Goal 13: Energy Conservation. The regulations arguably encourage a more energy-efficient and compact urban growth form. The retention requirement could also provide shade in the summer months. Otherwise, the regulations have a negligible affect on energy conservation. Goal 13 is thus met.
14. Goal 14: Urbanization. As above, the regulations arguably encourage a more compact urban growth form, thus reducing pressure on agricultural and farmland. Otherwise, the regulations have a negligible affect on urban growth management objectives. Goal 14 is thus met.

### **C. Conclusion.**

For all of the above reasons, the Sandy City Council finds Ordinance No 2002-10 to be in conformance with the State of Oregon's Statewide Planning Goals.