

# SUPPLEMENTAL MATERIAL

## SUPPLEMENTAL MEMO

N. 8. 10

**DATE OF MEMO:** November 28, 2005

**TO:** Board of County Commissioners

**FROM:** Kent Howe/LMD Planning Director

**RE:** In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA 05-5680, George Hinnenkamp Trust)

**Scheduled board date for final action is November 29, 2005.**

After an initial public hearing on November 8th, the Board chose to continue the hearing in order to allow the applicant's agent to submit information concerning the George Hinnenkamp Trust. The agent granted a timeline waiver to secure that information, and provided it on November 22<sup>nd</sup>. That submittal is attached to this memo.

The trust is revocable. To the extent the original owner, George Hinnenkamp, retains an interest in the property and the trust could be revoked, leaving him in possession, a waiver might be possible to allow uses that could have occurred in 1967, when the property was first acquired. The Board heard a similar claim, PA 05-5579 for the Bruce Family Trust, and decided that the owner had retained an interest in the property via a revocable trust, sufficient to grant a waiver.

If the Board should decide that the Hinnenkamp trust information does not establish a continued interest by Mr. Hinnenkamp, then a waiver of the F-2 and E-40 regulations back to 1996, when the trust was established, could be selected. The 1996 regulations did not allow the development proposed by the applicant.

A draft Order granting a waiver back to regulations in effect in 1967 is attached, and is so recommended by the County Administrator.

**Attachments:**

1. Trust information received on 11-22-05
2. Draft Order

11-22-05A08:20 RCVD

**"THE TRUST OF  
GEORGE LELAND JOHN HINNENKAMP"**

**ARTICLE 1**

**Declaration of Trust**

**1.01. ESTABLISHMENT OF REVOCABLE LIVING TRUST:**

GEORGE LELAND JOHN HINNENKAMP, born August 26, 1920, as the settlor, with this instrument declares the establishment of a revocable living trust by delivering to trust without consideration all property described in the Schedule of Trust Property and referred to in this instrument as the "Trust Estate".

**1.02. TRUST PARTICULARS:** For convenient reference, the following information applies to this trust:

1) Name of Trust:

**THE TRUST OF  
GEORGE LELAND JOHN HINNENKAMP**

2) Date Established:

August 9, 1996

3) Settlor/Trustee:

**GEORGE LELAND JOHN HINNENKAMP**

4) Beneficiary:

**GEORGE LELAND JOHN HINNENKAMP**

5) Remainder Beneficiaries:

**MICHAEL PUENTES**

**AGNES CRONIN**

**DOROTHY MOELLER**

**KATHERYN KOLESAR**

**BEVERLY CAHN**

6) Successor Trustee(s):

First: **KATHERYN KOLESAR**

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GEORGE LELAND JOHN HINNENKAMP**  
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Second: MARLENE CORREY

**1.03. SEPARATE TRUST ESTATE:** The property transferred to the Revocable Living Trust of GEORGE LELAND JOHN HINNENKAMP shall be known as the "separate trust estate" or "trust estate".

**1.04. ALLOCATION OF TRUST ESTATE:** Initially the trust estate shall be allocated for the benefit of GEORGE LELAND JOHN HINNENKAMP, beneficiary.

## ARTICLE 2

Trust During GEORGE LELAND JOHN HINNENKAMP's Life

**2.01. INTRODUCTION:** GEORGE LELAND JOHN HINNENKAMP, as trustee, will hold, administer, and distribute all property allocated to the "Trust During GEORGE LELAND JOHN HINNENKAMP's Life" for GEORGE LELAND JOHN HINNENKAMP's own benefit.

**2.02. USE OF INCOME - BROAD STANDARD:** GEORGE LELAND JOHN HINNENKAMP shall be entitled to utilize as much of the net income from the trust estate as is necessary for the health, education, support, comfort, or welfare of GEORGE LELAND JOHN HINNENKAMP and to maintain at a minimum GEORGE LELAND JOHN HINNENKAMP's accustomed manner of living. Any net income not so distributed shall be added to principal.

**2.03. USE OF PRINCIPAL - BROAD STANDARD:** If the income is insufficient, GEORGE LELAND JOHN HINNENKAMP may utilize as much of the principal of the separate trust estate as is necessary for GEORGE LELAND JOHN HINNENKAMP's health, education, support, comfort, or welfare to maintain at a minimum the accustomed manner of living of GEORGE LELAND JOHN HINNENKAMP.

**2.04. GEORGE LELAND JOHN HINNENKAMP's INCAPACITY - ASCERTAINABLE STANDARD:** If a court declares GEORGE LELAND JOHN HINNENKAMP incompetent or if GEORGE LELAND JOHN HINNENKAMP's

conservator, after consultation with medical professionals, considers **GEORGE LELAND JOHN HINNENKAMP** unable to manage **GEORGE LELAND JOHN HINNENKAMP**'s own affairs by reason of physical or mental disability, then the successor trustee may pay to or for **GEORGE LELAND JOHN HINNENKAMP** as much of the net income and principal of the separate trust estate as is necessary for **GEORGE LELAND JOHN HINNENKAMP**'s health, education, or support to maintain **GEORGE LELAND JOHN HINNENKAMP**'s accustomed manner of living. The successor trustee shall add to principal any income not so distributed.

**2.05. PAYMENTS TO OTHERS:** **GEORGE LELAND JOHN HINNENKAMP** may at any time pay single sums or periodic payments from the trust estate to any person or organization. Additionally, **GEORGE LELAND JOHN HINNENKAMP**'s conservator may exercise this power for payments qualifying for the federal gift tax annual donee exclusion.

**2.06. REVOCATION DURING GEORGE LELAND JOHN HINNENKAMP'S LIFE:** **GEORGE LELAND JOHN HINNENKAMP** may at any time revoke the separate trust estate in whole or in part.

**2.07. AMENDMENT DURING GEORGE LELAND JOHN HINNENKAMP'S LIFE:** **GEORGE LELAND JOHN HINNENKAMP** may at any time amend any of the terms of this trust by a written document.

**2.08. POWERS OF REVOCATION AND AMENDMENT PERSONAL:** The powers of **GEORGE LELAND JOHN HINNENKAMP** to revoke or amend this trust are personal, and no guardian, conservator or other person shall exercise them.

### ARTICLE 3

#### DISTRIBUTION OF RESIDUE AFTER DEATH OF TRUSTOR

After my death:

After the payment of the amounts authorized in the preceding Article, the

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**GEORGE LELAND JOHN HINNENKAMP**  
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remaining assets of the trust, including all principal and all accrued, accumulated and undistributed income, shall be administered and distributed as follows:

**3.01. PERSONAL PROPERTY.** The Trustee shall distribute and allocate the remaining trust estate as follows:

If included as property of this trust, and except as specifically specified otherwise in Section 3.02. of this Article, my Trustee shall distribute the following specific bequests, to the following, per stirpes:

MICHAEL PUENTES shall receive the following specific bequests:

ALL TRACTORS

ALL AUTOMOBILES

**3.02. DIVISION INTO SEPARATE SHARES.** The remaining assets of the trust estate shall be distributed as follows:

MICHAEL PUENTES shall receive TEN PERCENT (10%) of the remaining trust estate, PER STIRPES.

BEVERLY CAHN shall receive FIVE PERCENT (5%) of the remaining trust estate, PER CAPITA.

The REST, RESIDUE AND REMAINDER of the trust estate shall be divided equally among the following sisters, as indicated:

AGNES CRONIN

DOROTHY MOELLER

KATHERYN KOLESAR

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In the event that DOROTHY MOELLER should predecease GEORGE LELAND JOHN HINNENKAMP, or die before full distribution of a share, then in that event her share shall be divided equally among her issue, per stirpes.

In the event that AGNES CRONIN or KATHERYN KOLESAR should predecease GEORGE LELAND JOHN HINNENKAMP, or die before full distribution of a share, then in that event the share shall be distributed to the then living sister(s) listed herein, per capita.

**3.03. DISTRIBUTION OF SPECIFIC PERSONAL PROPERTY.** My Trustee shall make distribution of specific items of my personal property as indicated in the Minutes of this Trust, attached hereto, and by this reference incorporated herein.

**3.04. DIVISION INTO SEPARATE SHARES FOR LINEAL DESCENDANTS.** A share for the surviving lineal descendants of a deceased child of mine, shall take by right of representation. The share shall be administered and distributed as follows:

1. **Distribution of a Lineal Descendant's Share.** A share established for a surviving child or other lineal descendant of a deceased child of mine shall be distributed forthwith; provided, however, that if any such grandchild or other lineal descendant is under twenty-five (25), his or her share shall be retained by my Trustee until the beneficiary is twenty-five (25), and in the interval my Trustee shall pay to or for the benefit of the beneficiary such amounts of income and principal of the share as my Trustee shall determine to be necessary for his or her health, education, support and maintenance. If any such beneficiary dies prior to receiving distribution in full of the share, all remaining assets of the share shall be distributed per stirpes.

**ARTICLE 4****Office of Trustee**

**4.01. NOMINATION OF TRUSTEES FOR ALL TRUSTS:** For all trusts under this instrument, the trustee and successor trustees shall be those persons named below. Each successor trustee shall serve in the order designated if the prior trustee fails to qualify or ceases to act.

Trustee:

**GEORGE LELAND JOHN HINNENKAMP**

Successor Trustee(s):

First: **KATHERYN KOLESAR**

Second: **MARLENE CORREY**

**4.02. EMPLOYMENT OF CONSULTANTS - GENERAL:** The trustee may employ custodians, attorneys, accountants, investment advisers, corporate fiduciaries, or any other agents or advisers to assist the trustee in the administration of this trust and may rely on the advice given by these agents. The trustee shall pay reasonable compensation for all services performed by these agents from the trust estate out of either income or principal as the trustee in the trustee's reasonable discretion determines. These payments shall not decrease the compensation to which the trustee is entitled.

**4.03. EXCULPATORY CLAUSE - ALL TRUSTEES:** No trustee shall be liable to any person interested in this trust for any act or default unless it results from the trustee's bad faith, willful misconduct, or gross negligence.

**4.04. WAIVER OF LIABILITY FOR PREDECESSOR TRUSTEE:** Any trustee may accept as correct any accounting of trust assets made by any predecessor trustee. However, a trustee may institute any action or proceeding for the settlement of the accounts, acts, or omissions of any predecessor trustee.

**4.05. BOND - WAIVER:** No trustee, including a nonresident, shall be required to post bond or security.

**4.06. RETAIN OR ABANDON PROPERTY:** The trustee shall have the

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power to retain any property, including shares of the trustee's own stock, or to abandon any property that the trustee receives or acquires.

**4.07. UNPRODUCTIVE PROPERTY:** Except when specifically restricted, the trustee shall have the power to retain, purchase, or otherwise acquire unproductive property.

**4.08. SELL, EXCHANGE, REPAIR:** The trustee shall have the power to manage, control, grant options on, sell (for cash or on deferred payments with or without security), convey, exchange, partition, divide, improve, and repair trust property.

**4.09. LEASE:** The trustee shall have the power to lease trust property for terms within or beyond the terms of the trust and for any purpose, including exploration for and removal of gas, oil, and other minerals and to enter into community oil leases, pooling, and unitization agreements.

**4.10. INVESTMENTS - GENERAL POWER:** The trustee shall have the power to invest and reinvest the trust estate in every kind of property, real, personal, or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, stocks, preferred or common, shares in investment trusts, investment companies, mutual funds, mortgage participations, life insurance policies on the life of any beneficiary that men of prudence, discretion, and intelligence acquire for their own account, and any common trust fund administered by the trustee.

**4.11. SECURITIES:** The trustee shall have all the rights, powers and privileges of an owner of the securities held in trust, including, but not by way of limitation, the power to vote, give proxies and pay assessments; to participate in voting trusts and pooling agreements (whether or not extending beyond the term of the trust); to enter into shareholders' agreements; to consent to foreclosure, reorganizations, consolidations, merger liquidations, sales and leases, and, incident to any such action, to deposit securities with and transfer title to any protective or other committee on such terms as the trustee may deem advisable;



and to exercise or sell stock subscription or conversion rights.

**4.12. INVESTMENT FUNDS:** The trustee shall have the power to invest in mortgage participations, in shares of investment trusts and regulated investment companies, including any under the control of any investment counsel employed by the trustee, in mutual funds, money market funds, and index funds that investors of prudence, discretion and intelligence acquire for their own account.

**4.13. NOMINEE'S NAME:** The trustee shall have the power to hold securities or other property in the trustee's name as trustee under this trust, or in the trustee's own name, or in the name of a nominee, or the trustee may hold securities unregistered in such condition that ownership will pass by delivery.

**4.14. INSURANCE:** The trustee shall have the power to carry, at the expense of the trust, insurance of such kinds and in such amounts as the trustee deems advisable to protect the trust estate against any damage or loss and to protect the trustee against liability with respect to third parties.

**4.15. LOAN:** The trustee shall have the power to loan money to any person, including a trust beneficiary or the estate of a trust beneficiary, at prevailing interest rates and with or without security as the trustee deems advisable.

**4.16. PRIVATE ACCOUNTING:** The trustee shall periodically render an account of its administration of the trusts under this instrument for the benefit of the current income and current principal beneficiaries who are then adults. The beneficiary's written approval of the accounting shall be a complete protection of the trustee as to all matters and transactions stated or shown by the accounting. Failure to transmit to the trustee either (a) the written approval of such accounting, or (b) a written objection to the accounting, with reasons specified, within a period of ninety (90) days after a written request by the trustee for such approval shall constitute a written approval of the guardian, conservator or representative of such person entitled to the accounting. To the extent

permitted by law, the written approval of the adult beneficiaries shall bind minor and contingent remainder interests. Except as provided in this paragraph, any reports or accounts otherwise required by law are hereby waived to the fullest extent of the law.

**4.17. PRINCIPAL AND INCOME - ACT GOVERNS:** The trustee shall determine all matters with respect to what is principal and income of the trust estate and the apportionment and allocation of receipts and expenses between these accounts by the provisions of the Oregon Revised Uniform Principal and Income Act from time to time existing. When this instrument or such Act does not provide, the trustee, in the trustee's reasonable discretion, shall determine the characterization.

**4.18. DEPRECIATION RESERVE - MANDATORY:** The trustee shall establish reasonable reserves for depreciation, notwithstanding any other provision of this instrument or the Oregon Revised Uniform Principal and Income Act.

**4.19. UNDISTRIBUTED INCOME:** Income accrued or unpaid on trust property when received into the trust shall be treated as any other income. Income accrued or held undistributed by the trustee at the termination of any trust or any interest in a trust created under this instrument, other than a trust that may be a qualified terminable interest property trust, shall go to the next beneficiaries of that interest or trust in proportion to their interest in it. Income accrued or held in trust on the termination of a qualified terminable interest property trust shall go to the beneficiary of that trust immediately before the termination or to his or her estate.

**4.20. EXPENSE ALLOCATION - PRORATION:** The trustee shall prorate on a daily basis all taxes and current expenses among successive beneficiaries over the period to which they relate.

**4.21. TAX CONSEQUENCES - ADJUSTMENT:** The trustee shall have the power, in the trustee's reasonable discretion, to take any action and to

make any election to minimize the tax liabilities of any trust and its beneficiaries, to allocate the benefits among the various beneficiaries and to make adjustments in the rights of any beneficiaries, or between the income and principal accounts, to compensate for the consequences of any tax election or any investment or administrative decision that the trustee believes has had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over others.

**4.22. MULTIPLE TRUSTS - NO PHYSICAL DIVISION:** If more than one trust is held under this instrument, the trustee shall not be required to physically segregate or divide assets among the various trusts, except on the termination of any of the trusts. However, the trustee shall keep separate accounts for the separate undivided interests, and the trust may hold undivided interests in the same assets.

**4.23. DEATH TAXES OF BENEFICIARY - AUTHORITY TO PAY:** The trustee, in the trustee's reasonable discretion, shall have the power to pay from the trust estate and to allocate between income and principal, any death taxes to the extent that such taxes are attributable to the trust estate or any part of it (calculated at the average rates applicable to such tax). However, any trust property otherwise exempt from federal estate tax shall not be subject to the payment of any such death taxes.

**4.24. BENEFICIARY'S LAST ILLNESS AND FUNERAL EXPENSES:** The trustee must pay the last illness expenses, funeral expenses, and other obligations incurred for the beneficiary's support from the income or principal of the beneficiary's trust.

**4.25. DISTRIBUTIONS - CONSIDERATION OF BASIS OF ASSETS:** In making nonprorata distributions to beneficiaries, the trustee shall consider and attempt to equalize, as far as practicable, the aggregate income tax basis of assets distributed to the various beneficiaries. Any such determination by the trustee shall bind all parties in interest.

**4.26. DISTRIBUTION - BROAD POWERS:** When the trustee must

divide any trust property into parts or shares for the purpose of distribution or otherwise, the trustee may, in the trustee's reasonable discretion, make the division and distribution in identical interests, in kind, or partly in kind and partly in money, prorata or nonprorata. Also, the trustee may make such sales of the trust property as the trustee deems necessary to accommodate such distributions.

**4.27. SMALL TRUST TERMINATION - TRUSTEE DISCRETION:**

The trustee may determine, in it's reasonable discretion, if the principal of the trust is uneconomical to administer. The trustee may then, in it's reasonable discretion, (1) distribute the trust assets to the beneficiaries in proportion to their interests in income; (2) purchase and deliver to the income beneficiaries a restrictive savings account, certificate of deposit, annuity, or endowment; (3) distribute the trust assets to a custodian for the beneficiaries under the Oregon Uniform Transfers to Minors Act; or (4) distribute the trust assets as provided by law. On such distribution and delivery, the trust shall terminate. The trustee shall not be liable or responsible to any person for its action nor for its failure or refusal at any time to terminate the trust as authorized in this paragraph.

**4.28. BORROWING AUTHORITY:** To borrow funds from any person, including the fiduciary, guarantee indebtedness, or indemnify others in the name of the estate or the trust and to secure any such obligation by mortgage, pledge, security interest or other encumbrance, and to renew, extend or modify any such obligation for a term within or extending beyond the administration of the estate or the term of the trust. No lender shall be bound to see to or be liable for the application of the proceeds of any obligation, and no fiduciary shall be personally liable for any obligation.

**4.29. TOXIC CLEAN-UP:** The trustee shall have the power to invade the trust in order to pay for toxic clean-up on trust property or to retain legal counsel with regard to toxic problems involving trust property.

**ARTICLE 5****Contest, Disinheritance, Definitions**

**5.01. NO CONTEST - CONTESTANT DISINHERITED:** If any beneficiary in any manner, directly or indirectly, contests or attacks this instrument or any of its provisions, any share or interest in the trust given to that contesting beneficiary under this instrument is revoked and shall be disposed of in the same manner provided herein as if that contesting beneficiary had predeceased **GEORGE LELAND JOHN HINNENKAMP**.

**5.02. SURVIVORSHIP REQUIREMENT:** For all gifts under this instrument, the beneficiary must survive **GEORGE LELAND JOHN HINNENKAMP** for sixty (60) days before entitlement to such gifts.

**5.03. TRUSTEE POWERS SURVIVE:** All of the trustee's powers, duties, and immunities shall continue after termination of any trust until the successor trustee has made actual distribution of the trust estate.

**5.04. RULE AGAINST PERPETUITY:** Unless sooner terminated in accordance with other provisions of this instrument or the provisions of any trust created by the exercise of any power of appointment conferred in this instrument, all trusts created under this instrument and each trust created by the exercise of any such power of appointment shall terminate twenty-one (21) years after the death of the last survivor of the settlors or their issue living on the date of the death of the first settlor to die. The principal and undistributed income of a terminated trust shall be distributed to the then income beneficiaries of that trust in the same proportion that the beneficiaries are entitled to receive income when the trust terminates. If at the time of such termination the rights to income are not fixed by the terms of the trust, distribution under this clause shall be made, by right of representation, to the persons who are entitled or authorized, in the trustee's discretion, to receive trust payments.

**5.05. DEFINITIONS - TRUST:** As used in this instrument, the terms are defined as follows:

"BENEFICIARY'S OTHER RESOURCES" shall include the beneficiary's employable skills and a third party's support obligations.

"BROTHERS AND SISTERS" shall include half-brothers and half-sisters if those persons are lineal descendants of GEORGE LELAND JOHN HINNENKAMP.

"CORPORATE TRUSTEE" shall mean a trust company or a bank with trust powers authorized to act within the United States.

"DEATH TAXES" shall include federal, foreign, state, and local estate and inheritance taxes, including penalties and interest, but not generation-skipping or special valuation recapture taxes or marital deduction qualified terminable interest attribution.

"DESCENDANTS" shall mean lineal descendants in any degree of the ancestor designated and shall include persons adopted during minority.

"DISCLAIMER" or "QUALIFIED DISCLAIMER" has the same meaning that "qualified disclaimer" has under the Internal Revenue Code and supporting regulations.

"EDUCATION EXPENSES" shall include the cost of elementary, secondary, college, university, post-graduate study, seminars, individual or independent research or study, and travel or foreign study. The successor trustee may also consider the beneficiary's related living expenses to the extent they are reasonable.

"PRIMARY BENEFICIARY" is a beneficiary whose interests and needs the trustee shall consider to be paramount over the other designated beneficiaries in the class.

"TRUST", "TRUSTS", and "TRUST ESTATE" shall be interpreted in the singular or plural as the context indicates.

The masculine, feminine, or neuter gender and the singular or plural number shall each include the others whenever the context indicates.

Clause headings are for reading convenience and shall be disregarded when construing this instrument.

ARTICLE 6

Execution and Acknowledgment

6.01. SIGNATURE CLAUSE - GEORGE LELAND JOHN

HINNENKAMP: GEORGE LELAND JOHN HINNENKAMP certifies that GEORGE LELAND JOHN HINNENKAMP has read the foregoing Declaration of Trust and that it correctly states the terms and conditions under which the trustee is to hold, manage, and distribute the trust estate. GEORGE LELAND JOHN HINNENKAMP approves the Declaration of Trust in all particulars.

Dated: August 9, 1996

George Hinnenkamp

GEORGE LELAND JOHN HINNENKAMP, Settlor and Trustee

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY,  
OREGON**

**ORDER No.**

) IN THE MATTER OF CONSIDERING A BALLOT  
) MEASURE 37 CLAIM AND DECIDING  
) WHETHER TO MODIFY, REMOVE OR NOT  
) APPLY RESTRICTIVE LAND USE  
) REGULATIONS IN LIEU OF PROVIDING JUST  
) COMPENSATION ( PA05-5680/George Hinnenkamp  
) Trust)

**WHEREAS**, the voters of the State of Oregon passed Ballot Measure 37 on November 2, 2004, which added provisions to Oregon Revised Statutes (ORS) Chapter 197 to require, under certain circumstances, payment to landowners if a government land use regulation restricts the use of private real property and has the effect of reducing the property value; and

**WHEREAS**, the Board of County Commissioners of Lane County enacted Ordinance No. 18-04 on December 1, 2004, to establish a real property compensation claim application process in LC 2.700 through 2.770 for Ballot Measure 37 claims; and

**WHEREAS**, the County Administrator has reviewed an application for a Measure 37 claim submitted by George Hinnenkamp (PA05-5680) as trustee of the George Hinnenkamp Trust, the owner of real property located at Territorial Highway and Hamm Road and more specifically described in the records of the Lane County Assessor as map 19-04-30, tax lot 300, and map 19-05-25, tax lot 600, of approximately 159 acres in Lane County, Oregon; and

**WHEREAS**, the County Administrator has determined that the application appears to meet all of the criteria of LC 2.740(1)(a)-(d), appears to be eligible for just compensation and appears to require modification, removal or not applying the restrictive land use regulations in lieu of payment of just compensation and has referred the application to the Board for public hearing and confirmation that the application qualifies for further action under Measure 37 and LC 2.700 through 2.770; and

**WHEREAS**, the Board has confirmed the application appears to qualify for compensation under Measure 37 but Lane County has not appropriated funds for compensation for Measure 37 claims and has no funds available for this purpose; and

**WHEREAS**, the County Administrator has determined under LC 2.740(4) that modification, removal or not applying the restrictive land use regulation is necessary to avoid owner entitlement to just compensation under Ballot Measure 37 and made that recommendation to the Board; and

**WHEREAS**, on November 8, 2005, the Board conducted a public hearing on George Hinnenkamp's Measure 37 claim (PA05-5680), and has now determined that the current restrictive Impacted Forest Land (F-2) and Exclusive Farm Use zones (E-40) minimum land division sizes and dwelling requirements of Lane Code 16.211 and Lane Code 16.212 that were made applicable to the property prevent George Hinnenkamp from developing the property as



may be allowed under the Lane County Subdivision Ordinance #3 in effect at the time George Hinnenkamp acquired the property and that the public benefit from application of the current F-2 and E-40 regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

**WHEREAS**, George Hinnenkamp requests \$240,000 compensation for reduction in the fair market value of his property as a result of Lane County's enforcement of the minimum land division size and forest dwelling standard of the Forest Lands Rule (OAR 660-06), and the minimum land division size and farm income standard of the Agricultural Land Rule (OAR 660-33); and

**WHEREAS**, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the current F-2 and E-40 zones to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow George Hinnenkamp to make application to develop the subject property under those regulations; and

**WHEREAS**, this matter having been fully considered by the Lane County Board of Commissioners.

**NOW, THEREFORE IT IS HEREBY ORDERED** that the applicant George Hinnenkamp made a valid claim under Ballot Measure 37 by specifying the amount of the claim, identifying the county land use regulations prohibiting that use, submitting evidence that those land use regulations have the effect of reducing the value of the property, showing evidence that he acquired the property before the restrictive county land use regulations were enacted or enforced and the Board hereby elects not to pay just compensation but in lieu of payment the Hinnenkamp request shall be granted and the current F-2 and E-40 restrictions for minimum lot sizes and dwellings in Lane Code 16.211(5)-(7) and (10), and Lane Code 16.212(5)-(7) and (9) that restrict the division of the property and the placement of dwellings shall not apply to George Hinnenkamp, so that he can make application for land divisions and dwellings on the property described as Assessors Map 19-04-30, tax lot 300, and Map 19-05-25, tax lot 600, in a manner consistent with the regulations of the Lane County Revised Subdivision Ordinance in effect when he acquired the property on May 11, 1967.

**IT IS HEREBY FURTHER ORDERED** that George Hinnenkamp will still need to make application and receive approval for a land division and dwellings under other land use regulations applicable to dividing land and placing dwellings on the property that were not specifically identified or established as restricting George Hinnenkamp's use of the property. To the extent necessary to effectuate the Board action to not apply the minimum land division size and dwelling restrictions of the applicable zone described above, the claimant shall submit appropriate applications for review and approval of a land division and any new dwellings to show the specific development proposal and in the event additional county land use regulations result in a restriction of those uses that has the effect of reducing the fair market value of the property, the County Administrator shall have the authority to determine those restrictive county land use regulations that will not apply to that development proposal. All other Lane Code land use and development regulations shall remain applicable to the subject property until such time

as they are shown to be restrictive and that those restrictions reduce the fair market value of the subject property.

**IT IS HEREBY FURTHER ORDERED** that this action making certain Lane Code provisions inapplicable to George Hinnenkamp' use of his property does not constitute a waiver or modification of any corresponding state law or administrative rules and does not authorize immediate division of land or construction of a dwelling. The requirements of state law, including ORS 215.705, ORS 215.720-750, Goal 4 and OAR chapter 660, division 6, containing specific standards regulating development on Forest Land, and ORS 215.213, Goal 3 and OAR chapter 660, division 33, contain specific standards regulating development on Exclusive Farm Use Land, and the applicant should contact the Department of Administrative Services (DAS - State Services Division, Risk Management - Measure 37 Unit, 1225 Ferry Street SE, U160, Salem, OR 97301-4292; Telephone: (503) 373-7475; website address: <http://www.oregon.gov/DAS/Risk/M37.shtml> ) and have the State of Oregon evaluate a claim for this property before seeking county land use approval.

**IT IS HEREBY FURTHER ORDERED** that the county land use regulations and other rules that still apply to the property require that land use, sanitation and building permits be approved by Lane County before any development can proceed. Notice of this decision shall be recorded in the county deed records. This order shall be effective and in effect as described in LC 2.770 and Ballot Measure 37 to the extent permitted by law. This order does not resolve several questions about the effect and application of Measure 37, including the question of whether the right of the applicant to build another dwelling can be transferred to another owner. If the ruling of the Marion County Circuit Court in *MacPherson v. Dept. of Administrative Services*, (Marion County Circ. Ct. Case No. 00C15769, October 14, 2005) becomes final and that decision or any subsequent court decision has application to Lane County in a manner that affects the authority of this Board to grant relief under Ballot Measure 37 and LC 2.700 through 2.770 then the validity and effectiveness of this Order shall be governed by LC 2.770 and the ruling of the court.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Anna Morrison, Chair  
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date \_\_\_\_\_ Lane County

\_\_\_\_\_  
*OFFICE OF LEGAL COUNSEL*