

April 6, 2017

Reference Number: 16-0165

Ms. Susan Lucas
President
Northwest Rubber Extruders, Inc.
redacted
Beaverton, OR 97008

Dear Ms. Lucas:

This letter responds to the September 1, 2016 letter in which Northwest Rubber Extruders, Inc. (Northwest Rubber) appeals the Colorado Department of Transportation's (CDOT) denial of its application for interstate certification as a Disadvantaged Business Enterprise (DBE) under 49 C.F.R. Part 26 (the Regulation). After considering all the facts in the record viewed as a whole, as required by §26.61(e), the U.S. Department of Transportation, Departmental Office of Civil Rights (the Department) affirms CDOT's decision under §26.89(f)(1) of the Regulation.

Facts

Northwest Rubber is a DBE firm certified in its home state of Oregon. The firm is also certified in Arizona, California, Indiana, New York, and Texas. Joseph Lucas, who is presumed socially and economically disadvantaged (SED) under the Regulation, founded Northwest Rubber in 1978 as the sole shareholder and President.

In 1997, Northwest Rubber reclassified its common stock into Class A (voting) and Class B (nonvoting) shares. Simultaneously, Mr. Lucas gave a majority interest (51%) of his Class A shares to his wife, Susan Lucas, and retained 49% for himself. In 2013, Mr. and Ms. Lucas transferred their Class A shares to the Joseph and Susan Lucas Revocable Trust. Through this grantor trust, Ms. Lucas continues to hold 51% of the Class A shares and Mr. Lucas holds 49%. Currently, Ms. Lucas is Northwest Rubber's President and Mr. Lucas is Vice President and Secretary.

Northwest Rubber manufactures plastic and rubber products at **REDACTED** (Denney Road) in Beaverton, OR. In addition to owning Northwest Rubber, the Joseph and Susan Lucas Revocable Trust also owns The Lucas Group, LLC, which, in turn, owns the Denney Road manufacturing facility.

Procedural History

Northwest Rubber applied to CDOT for interstate DBE certification in July 2015.¹ CDOT sent Northwest Rubber a notice of intent (NOI) to deny the firm's application on May 26, 2016.² Northwest Rubber responded to CDOT's NOI on June 6, 2016.³ CDOT issued its final denial letter to Northwest Rubber on July 6, 2016.⁴ The firm appealed to the Department on September 1, 2016.

Issues Presented

The issues presented are twofold: First, did CDOT comply with the Regulation's interstate certification rules when it denied Northwest Rubber's application for interstate DBE certification? Second, does the Regulation permit Mr. and Ms. Lucas's exclusion of their equity interest in The Lucas Group on their PNW statements?

Summary of Arguments

I. CDOT

In its denial letter, CDOT explained that Northwest Rubber was ineligible for interstate certification in Colorado in light of new information that was not available to Oregon (the firm's home state) at the time of initial certification, citing §26.85(d)(2)(ii) of the Interstate Certification rules in the Regulation:

(d) As State B, when you receive from an applicant firm all the information required by paragraph (c) of this section, you must take the following actions:

(1) Within seven days contact State A and request a copy of the site visit review report for the firm (*see* §26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As State A, you must transmit this information to State B within seven days of receiving the request. A pattern by State B of not making such requests in a timely manner or by "State A" or any other State of not complying with such requests in a timely manner is noncompliance with this Part.

(2) Determine whether there is good cause to believe that State A's certification of the firm is erroneous or should not apply in your State. Reasons for making such a determination may include the following:

(i) Evidence that State A's certification was obtained by fraud;

(ii) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;

(iii) State A's certification was factually erroneous or was inconsistent with the requirements of this part;

(iv) The State law of State B requires a result different from that of the State law of State A.

In citing §26.85(d)(2)(ii), CDOT explained that Mr. and Ms. Lucas are no longer eligible for DBE certification because they each have exceeded the Regulation's personal net worth (PNW) cap of \$1.32M. Consequently, they cannot be considered economically disadvantaged under the

¹ *See* Interstate Application (July 1, 2015).

² *See* Notice of Intent to Deny (NOI) (May 26, 2016).

³ *See* Northwest Rubber Rebuttal (June 6, 2016).

⁴ *See* Denial Letter (July 6, 2016).

Regulation. The excess PNW is the “new information” under §26.85(d)(2)(ii) to which CDOT referred.⁵

CDOT correctly acknowledged that the Regulation permits the exclusion of an individual's ownership interest in the applicant firm. §26.67(a)(iii)(A) provides:

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm[.]

CDOT determined that Mr. and Ms. Lucas exceeded the PNW cap because of the equity Mr. and Ms. Lucas have in The Lucas Group, which owns Denney Road. CDOT explained that Mr. and Ms. Lucas incorrectly excluded The Lucas Group's equity in Denney Road in the assets column on their PNW forms.⁶ They contend that they should have included it because Northwest Rubber does not have any ownership interest in Denney Road and therefore does not qualify for exclusion under §26.67(a)(iii)(A).⁷

CDOT concluded that Northwest Rubber incorrectly asserted that, because Denney Road is the location where Northwest Rubber conducts its manufacturing, the property should have been excluded from the PNW calculation as part of Mr. and Ms. Lucas's ownership interest in the firm.⁸

II. NORTHWEST RUBBER

Northwest Rubber explained that Mr. and Ms. Lucas created The Lucas Group to offset the financial risk they would have faced by purchasing Denney Road.⁹ Northwest Rubber's original manufacturing location was destroyed by arson. The firm procured a **REDACTED** loan to renovate the property. The bank was unwilling to loan the firm the additional funds that would have been necessary for Northwest Rubber to purchase Denney Road as a new manufacturing location. Thus, Mr. and Ms. Lucas decided to create The Lucas Group as a financial vehicle for purchasing Denney Road.¹⁰

Mr. and Ms. Lucas formed the Joseph and Susan Revocable Trust to offset the impact of estate taxes and probate. As the sole grantors and trustees of the trust, they maintain the power and liability over all of the trust's assets – including Denney Road.

⁵ See *id.*

⁶ See Denial Letter at 2.

⁷ See *id.*

⁸ CDOT also asserted that Mr. and Ms. Lucas erroneously listed real estate properties owned by the Joseph and Susan Revocable Trust as properties personally owned, rather than assets held in trust, on their PNW statements

⁹ See Appeal Letter (Sept. 2, 2016) at 2.

¹⁰ See *id.*

Northwest Rubber contends that the Regulation permits Mr. and Ms. Lucas to exclude their ownership interest in Denny Road from their PNW calculations. They argue that their re-calculated PNW puts them below the Regulation's PNW cap of \$1.32M.

The Department's Decision

I. INTERSTATE CERTIFICATION

Section 26.85 of the Regulation lists the rules for interstate certification. CDOT relied on §26.85(d)(2)(ii) to make its ineligibility determination. This portion of the interstate certification rules lists the five “good cause” reasons under which a DBE certifying agency may deny certification to a DBE firm already certified in its home state.

§26.85 Interstate Certification:

- (a) This section applies with respect to any firm that is currently certified in its home state.
- (b) When a firm currently certified in its home state (“State A”) applies to another State (“State B”) for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures.
 - (1) To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A.
 - (2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A's electronic directory or obtaining written confirmation from State A.
- (c) In any situation in which State B chooses not to accept State A's certification of a firm as provided in paragraph (b) of this section, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of this section to State B.
 - (1) **You must provide to State B a complete copy of the application form, all supporting documents, and any other information you have submitted to State A or any other state related to your firm's certification.**¹¹ This includes affidavits of no change (*see* §26.83(j)) and any notices of changes (*see* §26.83(i)) that you have submitted to State A, as well as any correspondence you have had with State A's UCP or any other recipient concerning your application or status as a DBE firm.
 - (2) You must also provide to State B any notices or correspondence from states other than State A relating to your status as an applicant or certified DBE in those states. For example, if you have been denied certification or decertified in State C, or subject to a decertification action there, you must inform State B of this fact and provide all documentation concerning this action to State B.
 - (3) If you have filed a certification appeal with DOT (*see* §26.89), you must inform State B of the fact and provide your letter of appeal and DOT's response to State B.
 - (4) You must submit an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.
 - (i) This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the

¹¹ Northwest Rubber did not provide CDOT a copy of the PNW forms for Mr. and Ms. Lucas that it submitted with its DBE certification application to Oregon.

case of the information required by §26.85(c)(1), is an identical copy of the information submitted to State A.

(ii) If the on-site report from State A supporting your certification in State A is more than three years old, as of the date of your application to State B, State B may require that your affidavit also affirm that the facts in the on-site report remain true and correct.

(d) As State B, when you receive from an applicant firm all the information required by paragraph (c) of this section, you must take the following actions:

(1) Within seven days contact State A and request a copy of the site visit review report for the firm (*see* §26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As State A, you must transmit this information to State B within seven days of receiving the request. A pattern by State B of not making such requests in a timely manner or by “State A” or any other State of not complying with such requests in a timely manner is noncompliance with this Part.

(2) Determine whether there is **good cause** to believe that State A's certification of the firm is erroneous or should not apply in your State. Reasons for making such a determination may include the following:

(i) Evidence that State A's certification was obtained by fraud;

(ii) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;

(iii) State A's certification was factually erroneous or was inconsistent with the requirements of this part;

(iv) The State law of State B requires a result different from that of the State law of State A.

(v) The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.

(3) If, as State B, unless you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice that it is certified and place the firm on your directory of certified firms.

(4) If, as State B, you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice stating the reasons for your determination.

(i) This notice must state with particularity the specific reasons why State B believes that the firm does not meet the requirements of this Part for DBE eligibility and must offer the firm an opportunity to respond to State B with respect to these reasons.

(ii) The firm may elect to respond in writing, to request an in-person meeting with State B's decision maker to discuss State B's objections to the firm's eligibility, or both. If the firm requests a meeting, as State B you must schedule the meeting to take place within 30 days of receiving the firm's request.

(iii) The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this Part with respect to the particularized issues raised by State B's notice. The firm is not otherwise responsible for further demonstrating its eligibility to State B.

- (iv) The decision maker for State B must be an individual who is thoroughly familiar with the provisions of this Part concerning certification.
 - (v) State B must issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.
 - (vi) The firm's application for certification is stayed pending the outcome of this process.
 - (vii) A decision under this paragraph (d)(4) may be appealed to the Departmental Office of Civil Rights under s§26.89 of this part.
- (e) As State B, if you have not received from State A, a copy of the site visit review report by a date 14 days after you have made a timely request for it, you may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, you must, no later than 30 days from the date on which you received from an applicant firm all the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.
- (f) (1) As a UCP, when you deny a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, you must make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. You must enter the following information:
- (i) The name of the firm;
 - (ii) The name(s) of the firm's owner(s);
 - (iii) The type and date of the action;
 - (iv) The reason for the action.
- (2) As a UCP, you must check the DOCR Web site at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list.
- (3) For any such firm that is on the list, you must promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, you must provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the UCP receiving the decision, you must then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.
- (g) You must implement the requirements of this section beginning January 1, 2012.

(Emphasis added).

In reviewing the materials that Northwest Rubber submitted under §26.85(c)(1), CDOT determined that the firm did not provide a copy of the PNW forms it provided as part of its DBE certification application to Oregon. CDOT accordingly requested that Northwest Rubber submit new PNW statements for Mr. and Ms. Lucas.¹² The firm complied with CDOT's request. Upon reviewing the newly submitted PNW forms, CDOT concluded that Mr. and Ms. Lucas' presumption of economic disadvantage had been rebutted because their PNWs exceeded \$1.32M.¹³ CDOT further concluded that Oregon's certification of the firm should not apply in Colorado under §26.85(d)(2). CDOT classified the new PNW information as "new information

¹² See Appendix G to 49 C.F.R. 26, providing a blank PNW form and explaining that each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, must fill out a PNW form. We stress that the package that Northwest Rubber provided CDOT under §26.85(c) did not include the original PNW statements on which the home state relied in certifying Northwest Rubber.

¹³ See §26.67(b)(i).

not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria.”¹⁴

CDOT complied with its obligations under §26.85(d)(4) by sending Northwest Rubber its NOI and the reasons supporting it. CDOT did so within the requisite 60 days of receiving Northwest Rubber’s application materials.¹⁵ Under §26.85(d)(4)(i), CDOT stated with particularity the specific reasons why it believed Northwest Rubber did not meet the requirements for DBE eligibility (i.e., excess PNW) and offered the firm an opportunity to respond. Under §26.85(d)(4)(ii), Northwest Rubber exercised its right to respond to CDOT’s NOI.¹⁶ Finally, CDOT’s denial letter complied with the requirements of the interstate certification rule. The record demonstrates that CDOT satisfied the substantive and procedural requirements of §26.85 in denying certification based on new information concerning excess PNW.

II. PERSONAL NET WORTH

§26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed \$1.32 million.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, you must use the DOT personal net worth form provided in appendix G to this part without change or revision. Where necessary to accurately determine an individual's personal net worth, you may, on a case-by-case basis, require additional financial information from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). Requests for additional information shall not be unduly burdensome or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. Recipients must ensure that home equity loan balances are included in the equity calculation and not as a separate liability on the individual's personal net worth form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest

¹⁴ See §26.85(d)(2)(ii).

¹⁵ See NOI.

¹⁶ See Northwest Rubber Rebuttal.

consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or State law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under §26.89 of this part or to any other State to which the individual's firm has applied for certification under §26.85 of this part.

(b) *Rebuttal of presumption of disadvantage.* (1) An individual's presumption of economic disadvantage may be rebutted in two ways.

(i) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

[...]

(Emphasis added).

Northwest Rubber does not dispute CDOT's valuation of The Lucas Group. The issue presented is simply whether that value is excludable under §26.67(a)(2)(iii)(A) (PNW exclusion for "an individual's ownership interest in the applicant firm").

Northwest Rubber correctly asserted that, under §26.67(a)(2)(iii)(A), an individual's ownership interest in the applicant firm is properly excluded from the owner's PNW calculation. However, a lease agreement in the record confirms that Northwest Rubber does not own Denney Road, showing that the firm leases it from The Lucas Group.¹⁷ CDOT reasoned that as a result, both Mr. and Ms. Lucas should have listed The Lucas Group's equity in Denney Road in the assets column ("Other Personal Property and Assets") on their PNW forms. The Department agrees with CDOT's determination that the value of Mr. and Ms. Lucas's equity interest in The Lucas Group is not excludable from their PNW statements, as The Lucas Group is not the applicant firm. The result is that Northwest Rubber is no longer eligible for DBE certification as its presumed economically disadvantaged owners exceed the Regulation's PNW ceiling.

The Lucas Group's 2015 tax return shows that Mr. and Ms. Lucas own a total equity of **REDACTED** in that firm.¹⁸ An equal division to reflect Mr. and Ms. Lucas's respective 50% ownership interest results in each of them possessing **REDACTED** of equity.^{19,20}

Susan Lucas Personal Net Worth (as submitted by Northwest Rubber)

ASSETS		LIABILITIES	
Cash and Cash Equivalents	REDACTED	Loan on Life Insurance	\$0

¹⁷ See Indenture of Lease (July 1, 2015).

¹⁸ See The Lucas Group, LLC, Form 1065, Schedule L, Line 21 (2015).

¹⁹ See Form 1065, Reconciliation of Partners' Capital Account Worksheet (2015).

²⁰ As the Joseph and Susan Lucas Revocable Trust owns The Lucas Group, both Mr. and Ms. Lucas should have reported **REDACTED** as "Assets Held in Trust," in Section 6, "Other Personal Property and Other Assets," on their PNW statements. In the accompanying table, however, the Lucases reported that amount in "Real Estate."

Retirement Accounts	REDACTED	Mortgages on Real Estate	REDACTED
Brokerage, Investment Accounts	REDACTED	Notes, Obligations on Personal Property	REDACTED
Assets Held in Trust	\$0	Notes & Accounts Payable to Banks	REDACTED
Loans to Shareholders and Other Receivables	\$0	Other Liabilities	REDACTED
Real Estate	REDACTED	Unpaid Taxes:	\$0
Life Insurance	\$0		
Other Personal Property and Assets	REDACTED		
Other Business Interests	\$0		
Total Assets	REDACTED	Total Liabilities	REDACTED
NET WORTH	REDACTED		

Joseph Lucas, Jr. Personal Net Worth (as submitted by Northwest Rubber)

ASSETS		LIABILITIES	
Cash and Cash Equivalents	REDACTED	Loan on Life Insurance	\$0
Retirement Accounts	REDACTED	Mortgages on Real Estate	REDACTED
Brokerage, Investment Accounts	REDACTED	Notes, Obligations on Personal Property	REDACTED
Assets Held in Trust	\$0	Notes & Accounts Payable to Banks	REDACTED
Loans to Shareholders and Other Receivables	\$0	Other Liabilities	\$0
Real Estate	REDACTED	Unpaid Taxes:	\$0
Life Insurance	\$0		
Other Personal Property and Assets	REDACTED		
Other Business Interests	\$0		
Total Assets	REDACTED	Total Liabilities	REDACTED
NET WORTH	REDACTED		

The PNW statements above, as originally submitted by the firm, show that Mr. and Ms. Lucas exceed the Regulation's PNW cap of \$1.32M. Accordingly, CDOT denied the firm's application. After receiving CDOT's denial letter but before appealing to the Department, Northwest Rubber contacted CDOT to explain that Mr. and Ms. Lucas "erroneously" included their ownership interest

in Denney Road in their PNW statements.²¹ The Lucases adjusted their PNW statements accordingly, which resulted in a PNW of \$1,045,489 for Ms. Lucas and \$957,675 for Mr. Lucas.²²

Susan Lucas Personal Net Worth (as corrected by Northwest Rubber)

ASSETS		LIABILITIES	
Cash and Cash Equivalents	REDACTED	Loan on Life Insurance	\$0
Retirement Accounts	REDACTED	Mortgages on Real Estate	\$0
Brokerage, Investment Accounts	REDACTED	Notes, Obligations on Personal Property	REDACTED
Assets Held in Trust	\$0	Notes & Accounts Payable to Banks	REDACTED
Loans to Shareholders and Other Receivables	\$0	Other Liabilities	REDACTED
Real Estate	REDACTED	Unpaid Taxes:	\$0
Life Insurance	\$0		
Other Personal Property and Assets	REDACTED		
Other Business Interests	\$0		
Total Assets	REDACTED	Total Liabilities	REDACTED
NET WORTH	REDACTED		

Joseph Lucas, Jr. Personal Net Worth (as corrected by Northwest Rubber)

ASSETS		LIABILITIES	
Cash and Cash Equivalents	REDACTED	Loan on Life Insurance	\$0
Retirement Accounts	REDACTED	Mortgages on Real Estate	\$0
Brokerage, Investment Accounts	REDACTED	Notes, Obligations on Personal Property	REDACTED
Assets Held in Trust	\$0	Notes & Accounts Payable to Banks	REDACTED
Loans to Shareholders and Other Receivables	\$0	Other Liabilities	REDACTED
Real Estate	REDACTED	Unpaid Taxes:	\$0
Life Insurance	\$0		
Other Personal Property and Assets	REDACTED		
Other Business Interests	\$0		

²¹ See Northwest Rubber Rebuttal at 1.

²² See *id.* at 1-2.

Total Assets	REDACTED	Total Liabilities	REDACTED
NET WORTH	REDACTED		

Mr. and Ms. Lucas adjusted their PNW statements incorrectly. In addition to reporting their equity interest in The Lucas Group as assets on their PNW statements, they should have reported the following properties as “Assets Held in Trust” rather than “Real Estate Owned” on their PNW forms because they are owned by the Joseph and Susan Lucas Revocable Trust for the benefit of Joseph and Susan Lucas:²³

- 20316 Donkey Sled Road Bend, OR 97702
- 585 8th Street La Center, WA 98629
- 4009 SW Highway 101 Lincoln City, OR 97316
- Dividend Capitol REIT

Regarding the liabilities that Mr. and Ms. Lucas reported on their submitted PNW statements, CDOT correctly determined that the amount of \$199,450 listed as “Mortgages on Real Estate” should not have been counted in the PNW calculation. Based on the PNW statement, the listed amount is derived from the remaining balance on Denney Road’s mortgage account. As previously discussed, Denney Road is as an asset of The Lucas Group. Likewise, the remaining balance on the mortgage cannot be reported as a liability on the PNW statements because this amount is already accounted for when calculating equity in the partnership²⁴ and is reflected in the “Partners' Capital Accounts” as reported in the partnership returns.

In considering the above changes, CDOT calculated Mr. and Ms. Lucas’s PNW as follows:

Susan Lucas Personal Net Worth (as corrected by CDOT)

ASSETS		LIABILITIES	
Cash and Cash Equivalents	REDACTED	Loan on Life Insurance	\$0
Retirement Accounts	REDACTED	Mortgages on Real Estate	\$0
Brokerage, Investment Accounts	REDACTED	Notes, Obligations on Personal Property	REDACTED
Assets Held in Trust	REDACTED	Notes & Accounts Payable to Banks	REDACTED
Loans to Shareholders and Other Receivables	\$0	Other Liabilities	REDACTED
Real Estate	\$0	Unpaid Taxes:	\$0
Life Insurance	\$0		
Other Personal Property and Assets	REDACTED		
Other Business Interests	\$0		

²³ This adjustment is simply a change in character of the assets, not value. It does not affect the overall PNW numbers. *See generally* PNW Statements of Joseph F. Lucas, Jr. and Susan Lucas, Section 4, “Names on Deed” (April 14, 2016); §26.69(d)(1).

²⁴ *See* The Lucas Group, Form 1065, Reconciliation of Partners’ Capital Account Worksheet (2015).

Total Assets	REDACTED	Total Liabilities	REDACTED
NET WORTH	REDACTED		

Joseph Lucas, Jr. Personal Net Worth (as corrected by CDOT)

ASSETS		LIABILITIES	
Cash and Cash Equivalents	REDACTED	Loan on Life Insurance	\$0
Retirement Accounts	REDACTED	Mortgages on Real Estate	\$0
Brokerage, Investment Accounts	REDACTED	Notes, Obligations on Personal Property	REDACTED
Assets Held in Trust	REDACTED	Notes & Accounts Payable to Banks	REDACTED
Loans to Shareholders and Other Receivables	\$0	Other Liabilities	REDACTED
Real Estate	\$0	Unpaid Taxes:	\$0
Life Insurance	\$0		
Other Personal Property and Assets	REDACTED		
Other Business Interests	\$0		
Total Assets	REDACTED	Total Liabilities	REDACTED
NET WORTH	REDACTED		

Substantial evidence in the record supports CDOT's calculation of Mr. and Ms. Lucas's PNW and resulting ineligibility determination, which the Department affirms for the reasons stated. CDOT successfully rebutted Mr. and Ms. Lucas's presumption of economic disadvantage under the Regulation and correctly determined that Northwest Rubber did not prove, by a preponderance of the evidence, that a socially and economically disadvantaged individual owns and controls the firm.

The Department affirms CDOT's denial of Northwest Rubber's application for interstate DBE certification under §26.89(f)(1) of the Regulation, based on substantial evidence in the record.

This decision is administratively final and not subject to petitions for reconsideration.

Sincerely,

Samuel F. Brooks
DBE Appeal Team Lead
Disadvantaged Business Enterprise Division

cc: CDOT

