

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
Draft Staff Report and Recommendation**

August 24, 2006

**STATE CLAIM NUMBER:** M124495

**NAME OF CLAIMANT:** Nolan and Weigand Partnership

**MAILING ADDRESS:** 888 SW Evergreen Ave.  
Redmond, Oregon 97756

**PROPERTY IDENTIFICATION:** Township 14S, Range 12E  
Tax lots 1501, 1502, 1503, 1505 and 1600  
Deschutes County

**OTHER CONTACT INFORMATION:** Edward P. Fitch  
PO Box 457  
Redmond, Oregon 97756

**OTHER INTEREST IN PROPERTY:** Norman L. Weigand  
Franklin S. Nolan  
Doris Marie Nolan  
Robert L. Riemenschneider  
Ronald L. Riemenschneider  
Ronda G. Avery

**DATE RECEIVED BY DAS:** March 20, 2006

**180-DAY DEADLINE:** September 16, 2006

**I. SUMMARY OF CLAIM**

The claimant, Nolan and Weigand Partnership, seeks compensation in the amount of \$15 million for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the 513.61-acre subject property into one hundred 5-acre parcels and to develop a dwelling on each parcel. The subject property is located on Lower Bridge Road, near Terrebone, in Deschutes County. (See claim.)

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the preliminary findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that this claim is not valid

because the claimant has not established its ownership of the subject property. (See the complete recommendation in Section VI of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On June 30, 2006, pursuant to Oregon Administrative Rules (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, four written comments were received in response to the 10-day notice.

The comments are relevant to whether the claimant is an owner, whether a state law restricts the claimant's use of the subject property and whether the restriction of the claimant's use of the subject property reduces the fair market value of the property. The comments have been considered by the department in preparing this report. (See the comment letters in the department's claim file.)

### **IV. TIMELINESS OF CLAIM**

#### **Requirement**

ORS 197.352(5), requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criterion, whichever is later.

#### **Findings of Fact**

This claim was submitted to DAS on March 20, 2006, for processing under OAR 125, division 145. The claim identifies "all statewide regulations, ordinances and restrictions from 1977 which effect the ability to divide and develop the property" as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

#### **Conclusions**

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

## V. ANALYSIS OF CLAIM

### **1. Ownership**

ORS 197.352 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

### **Findings of Fact**

The claimant, Nolan and Weigand Partnership, first acquired the subject property on January 11, 1977, as reflected by a warranty deed included with the claim. According to a bargain and sale deed provided by public comment on January 11, 1994, the claimant transferred the subject property to Franklin S. and Doris Marie Nolan and Norman L. Weigand as individuals.<sup>1</sup>

The Deschutes County Assessor’s Office confirms that the individuals Robert L. and Ronald L. Riemenschneider, Rhonda G. Avery, Franklin S. and Doris Marie Nolan and Norman L. Weigand are the current owners of the subject property. The claimant, Nolan and Weigand Partnership, is not an owner of the subject property.

### **Conclusions**

The claimant, Nolan and Weigand Partnership, is not an “owner” of the subject property as that term is defined in ORS 197.352(11)(C).

### **2. The Laws That are the Basis for This Claim**

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimant’s use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant or a family member acquired the property.

As explained in Section V.(1), the claimant, Nolan and Weigand Partnership, is not an “owner” of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict the claimant’s use of private real property with the effect of reducing the fair market value of the property.

### **3. Effect of Regulations on Fair Market Value**

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (described in Section V.(2) of this report) must have “the effect of reducing the fair market value of the property, or any interest therein.”

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<sup>1</sup> On April 17, 2003, the claimant, Nolan and Weigand Partnership, failed to renew and was administratively dissolved by the Oregon Secretary of State, Corporation Division (ORS 60.647 to 60.657). The partnership remains dissolved as of the date of this report (August 24, 2006).

As explained in Section V.(1) of this report, the claimant, Nolan and Weigand Partnership, is not an “owner” of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict its use of the subject property with the effect of reducing the fair market value of the property.

#### **4. Exemptions Under ORS 197.352(3)**

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

As explained in Section V.(1) of this report, the claimant, Nolan and Weigand Partnership, is not an “owner” of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant.

### **VI. FORM OF RELIEF**

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

#### **Findings of Fact**

Based on the record, the department finds that the claim is not valid because the claimant is not an owner of the subject property.

#### **Conclusions**

Based on the record before the department, the claimant, Nolan and Weigand Partnership, has not established that it is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that this claim be denied.

### **VII. NOTICE OF OPPORTUNITY TO COMMENT**

This staff report is not a final decision by the department and does not authorize any use of the property that is the subject of this report. OAR 125-145-0100 provides an opportunity for the claimant or the claimant’s authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Such response must be filed no more than 10 calendar days after the date this report is mailed to the claimant and any third parties. Responses to this draft staff report and recommendation will be considered only as comments related to the claim described in this report. All responses must be delivered to the Oregon Department of Administrative Services (DAS), Measure 37 Unit, Risk Management–State Services Division,

1225 Ferry Street SE, U160, Salem, Oregon 97301-4292 and will be deemed timely filed if either postmarked on the tenth day, or actually delivered to DAS by the close of business on the tenth day. Note: Please reference the claim number, claimant name and clearly mark your comments as "Draft Staff Report comments." Comments must be submitted in writing only. Those comments submitted electronically or by facsimile will not be accepted.

