

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,  
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT,  
THE BOARD AND DEPARTMENT OF FORESTRY OF  
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR )	FINAL ORDER
COMPENSATION UNDER ORS 197.352 )	CLAIM NO. M124867
(BALLOT MEASURE 37) OF )	
Bonita Sahnaw, CLAIMANT )	

Claimant: Bonita Sahnaw (the Claimant)

Property: Township 1N, Range 4W, Sections 16 & 17, Tax lot 01401  
Washington County (the Property)

Claim: The demand for compensation and any supporting information received  
from the Claimant by the State of Oregon (the Claim).

Claimant submitted the Claim to the State of Oregon under Ballot Measure 37 (2004) (Oregon Laws 2005, Chapter 1) (hereafter, Measure 37). Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) and the Oregon Department of Forestry (the ODF Report) both attached to and by this reference incorporated into this order.

ORDER

The Claim is denied as to laws administered by the Oregon Department of Forestry or the Oregon Board of Forestry, for the reasons set forth in the ODF Report.

The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under Measure 37, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under Measure 37, OAR chapter 125, division 145 and ORS chapter 293.

This Order is entered by the Oregon Board and Department of Forestry as a final order of the Board under Measure 37 and OAR Chapter 125, division 145.

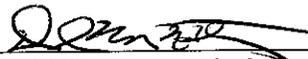
FOR DLCD AND THE LAND  
CONSERVATION AND  
DEVELOPMENT COMMISSION:  
Lane Shetterly, Director

  
Michael Morrissey, Manager  
DLCD, Measure 37 Division  
Dated this 3<sup>rd</sup> day of October, 2006.

FOR THE OREGON BOARD OF  
FORESTRY AND THE OREGON  
DEPARTMENT OF FORESTRY:  
Marvin Brown, State Forester

  
Clark Seely, Acting State Forester  
ODF  
Dated this 3<sup>rd</sup> day of October, 2006.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 3<sup>rd</sup> day of October, 2006.

### NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to the following judicial remedies:

1. Judicial review under ORS 293.316: Judicial review under ORS 293.316 may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review under ORS 293.316 is pursuant to the provisions of ORS 183.482 to the Court of Appeals.
2. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County and the Circuit Court in the county in which you reside.
3. A cause of action under Oregon Laws 2005, chapter 1 (Measure 37 (2004)): A present owner of the property, or any interest therein, may file a cause of action in the Circuit Court for the county where the property is located, if a land use regulation continues to apply to the subject property more than 180 days after the present owner made a written demand for compensation.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**  
**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**  
**Final Staff Report and Recommendation**

October 3, 2006

**STATE CLAIM NUMBER:** M124867

**NAME OF CLAIMANT:** Bonita Sahnnow

**MAILING ADDRESS:** 6167 NW Gales Creek Road  
Forest Grove, Oregon 97116

**PROPERTY IDENTIFICATION:** Township 1N, Range 4W, Sections 16 & 17  
Tax lot 01401  
Washington County

**DATE RECEIVED BY DAS:** April 11, 2006

**180-DAY DEADLINE:** October 8, 2006

**I. SUMMARY OF CLAIM**

The claimant, Bonita Sahnnow, seeks compensation in the amount of \$200,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict her use of certain private real property. The claimant desires compensation or the right to develop a dwelling on the subject property. The subject property does not have a street address, but is located along Gales Creek Road, at the locational coordinates listed above, in Washington County. (See claim.)

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the 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 that she is a current owner of the property. (See the complete recommendation in Section VI of this report.)

**III. COMMENTS ON THE CLAIM**

**Comments Received**

On August 9, 2006, pursuant to Oregon Administrative Rule (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, no written comments were received in response to the 10-day notice.

## 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 criteria, whichever is later.

### Findings of Fact

This claim was submitted to DAS on April 11, 2006, for processing under OAR 125, division 145. The claim identifies “any land use regulation enacted since SB 100, OAR 629 and 660 and ORS 92, 215, 227, 526 and 527” as the basis for the claim.<sup>1</sup> Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

### Conclusion

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, Bonita Sahnaw, along with her now deceased husband, Merton B. Sahnaw, acquired an interest in the subject property on December 10, 1975, as reflected by a land sale contract included with the claim. That contract indicates that the claimant and Merton Sahnaw leased the property at some date prior to December 10, 1975.

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<sup>1</sup> This report addresses only those state land use regulations administered by the department. A separate report addressing ORS 526 and 527 will be prepared by the Oregon Department of Forestry (ODF).

The claim states that the subject property is currently in a trust, and the claim has been filed on behalf of both the claimant as an individual and on behalf of the trust. However, the claim submitted did not include a certificate of trust or other documentation establishing that the trust is revocable or the date the subject property was placed in the trust. Thus, the department is unable to determine whether the claimant, as an individual, still owns an interest in the subject property. In addition, the department is unable to determine whether the claimant, as trustee of a trust, owns an interest in the subject property and if so, when that interest was acquired. If, within the period provided for comments on this draft report, the claimant submits a certificate of trust or other substantial evidence that demonstrates either that she still owns an interest in the subject property as an individual or that she owns an interest as trustee of a revocable trust, the department will consider the information in its final determination of ownership.

### **Conclusions**

Based on the current record for this claim, the claimant, Bonita Sahnaw, has not established that she is 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) above, the claimant, Bonita Sahnaw, has not established that she is an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Without such demonstration, it is not possible to determine that any laws enforced by the Land Use Conservation and Development Commission (the Commission) or the department 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 may have acquired 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."

As explained in Section V.(1) of this report, the claimant, Bonita Sahnaw, has not established her ownership of the subject property. Without such demonstration, the department can make no determination on the effect of any land use regulations on the fair market value of the subject 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, Bonita Sahnaw, has not established that she is an "owner" of the subject property as that term is defined in ORS 197.352(1)(C). Without such demonstration, the department can make no determination as to whether any land use laws are exempt from ORS 197.352.

## **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 has not demonstrated her ownership of the subject property and the date the claimant acquired the property.

### **Conclusions**

Based on the record before the department, the claimant, Bonita Sahnaw, has not established that she 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. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on September 15, 2006. OAR 125-145-0100(3), provided 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. Comments received have been taken into account by the department in the issuance of this final report.

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

**OREGON DEPARTMENT OF FORESTRY**

**Final Staff Report and Recommendation**

October 3, 2006

**STATE CLAIM NUMBER:** M124867

**NAMES OF CLAIMANT:** Bonita Rae Sahnou,

**MAILING ADDRESS:** 6165 NW Gales Creek Road  
Forest Grove, Oregon 97116

**PROPERTY IDENTIFICATION:** Township 1N, Range 4W, Sections 16 & 17  
Tax lot 1401  
Washington County

**DATE RECEIVED BY DAS:** April 11, 2005

**180-DAY DEADLINE:** October 8, 2006

**I. SUMMARY OF CLAIM**

See Department of Land Conservation and Development (DLCD) Final Report.

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the findings and conclusions set forth below, the Department of Forestry (ODF) has determined that this claim is not valid because the claimant has not established that she is a current owner of the property. (See the complete recommendation in Section VI of this report.)

**III. COMMENTS ON THE CLAIM**

**Comments Received**

See DLCD Final Report.

**IV. TIMELINESS OF CLAIM**

ODF adopts the findings of fact and conclusions of law regarding timeliness contained in the DLCD Final Report for this claim.

## V. ANALYSIS OF CLAIM

### **1. Ownership**

ODF adopts the findings of fact and conclusions of law regarding ownership contained in the DLCDC Final Report for this claim.

### **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) above, the claimant, Bonita Sahnaw, has not established that she is an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Without such demonstration, it is not possible to determine that any laws enforced by the Board of Forestry (Board) or ODF 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 may have acquired 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."

As explained in Section V.(1) of this report, the claimant, Bonita Sahnaw, has not established her ownership of the subject property. Without such demonstration, ODF can make no determination on the effect of any land use regulations on the fair market value of the subject 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, Bonita Sahnaw, has not established that she is an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Without such demonstration, ODF can make no determination as to whether any land use laws are exempt from ORS 197.352.

## VI. FORM OF RELIEF

Based on the record before the department, the claimant, Bonita Sahnaw, has not established that she is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Board or ODF. Therefore, ODF recommends that this claim be denied.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on September 15, 2006. OAR 125-145-0100(3), provided 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. Comments received have been taken into account by the department in the issuance of this final report.