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

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| IN THE MATTER OF THE CLAIM FOR<br>COMPENSATION UNDER ORS 197.352<br>(BALLOT MEASURE 37) OF<br>Paul Stadelman, CLAIMANT | )<br>)<br>)<br>) | FINAL ORDER<br>CLAIM NO. M118387 |

Claimant: Paul Stadelman (the Claimant)

Property: Tax lot 901, T 2N, R 3W, S 23, 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 ORS 197.352. 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) attached to and by this reference incorporated into this order.

## ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Paul Stadelman's establishment of a single-family dwelling on the subject property: applicable provisions of Statewide Planning Goal 3, ORS 215, and OAR 660 division 33 enacted after April 3, 1981. These land use regulations will not apply to Paul Stadelman's use of his property only to the extent necessary to allow him the use described in this report, to the extent that use was permitted at the time he acquired the property, on April 3, 1981.

2. The action by the State of Oregon provides the state's authorization to the claimant to use his property for the use described in this report, subject to the standards in effect on April 3, 1981. On that date, the property was subject to applicable provisions of Goal 3 and ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such

requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.

4. Any use of the property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the property, it may be necessary for him to obtain a decision under ORS 197.352, from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352, from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimant.

This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND CONSERVATION AND DEVELOPMENT COMMISSION:

Lane Shetterly

Lane Shetterly, Director
DLCD
Dated this 13th day of March, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 13th day of March, 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 ORS 197.352: 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)

## FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

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

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

March 13, 2006

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| **STATE CLAIM NUMBER:** | M118387 |
| **NAME OF CLAIMANT:** | Paul Stadelman |
| **MAILING ADDRESS:** | 16805 Northwest Corey Road<br>North Plains, Oregon 97133 |
| **PROPERTY IDENTIFICATION:** | Township 2N, Range 3W, Section 23<br>Tax lot 901<br>Washington County |
| **OTHER CONTACT INFORMATION:** | Ryan Stadelman<br>PO Box 1478<br>North Plains, Oregon 97133 |
| **DATE RECEIVED BY DAS:** | May 5, 2005 |
| **180-DAY DEADLINE:** | March 20, 2006[1] |

## I. SUMMARY OF CLAIM

The claimant, Paul Stadelman, seeks compensation in the amount of $250,000 for the reduction in fair market value as a result of certain land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to build one dwelling on his 9.85-acre property. No street address has been assigned for the property. The property is located at the geographical 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 the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department

[1] This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of Measure 37 was suspended during the pendency of the appeal of Macpherson v. Dep't of Admin. Servs., 340 Or __, 2006 Ore. LEXIS 104 (February 21, 2006).

not apply to Paul Stadelman's establishment of one dwelling on the property: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands), ORS 215, and OAR 660 division 33 enacted after April 3, 1981. These laws will not apply to the claimant only to the extent necessary to allow Paul Stadelman the use of the property described in this report, to the extent that use was permitted at the time he acquired the property on April 3, 1981. (See the complete recommendation in Section VI. of this report.)

## III. COMMENTS ON THE CLAIM

**Comments Received**

On May 25, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. In response to the 10-day notice[2], DAS received one comment letter that is relevant to whether a state law restricts the claimant's use of the property and whether the restriction of the claimant's use of the property reduces the fair market value of the property. The comment has been considered by the department in preparing this report. (See comment letter 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 the Measure (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 the Measure (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 May 5, 2005, for processing under OAR 125 division 145. The claim identifies county zoning code AF-20 and the $80,000 income test for high-value farmland under HB 3661 and Ordinance 453 as the basis for the claim. Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37, are the basis for this claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

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[2] The 10-day notice period was suspended for 139 days during the pendency of the Macpherson v. Dep't of Admin. Servs., 340 Or ___, 2006 Ore. LEXIS 104 (February 21, 2006), which suspended all Measure 37 deadlines.

**Conclusions**

The claim has been submitted within two years of December 2, 2004; the effective date of Measure 37, based on land use regulations 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, Paul Stadelman, acquired the subject property on April 3, 1981, by a Warranty Deed included with the claim (Washington County Deed Records 81-11958). According to Washington County's Notice of Director's Measure 37 Decision, dated August 10, 2005, Mr. Stadelman is the current owner of the subject property (Washington County Claim No. 37CL0098/Stadelman).

**Conclusions**

The claimant, Paul Stadelman, is an "owner" of the subject property, as that term is defined by ORS 197.352(11)(C). Mr. Stadelman acquired the subject property on April 3, 1981.

**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.

**Findings of Fact**

The claim states that "Rural Zoning Code AF-20 – The law enacted after purchase of the property. Prior zoning was AF-10" and "HB 3661 Ordinance 453 - The income standard of $80,000 is not realistic in today's agriculture, especially on non-irrigated farm land."

The claim is based on Washington County's current Agricultural and Forest (AF-20) District and the provisions of state law that require such zoning. The claimant's property is zoned AF-20 as required by Statewide Planning Goal 3 (Agricultural Lands) in accord with OAR 660 division 33 and ORS 215 because the claimant's property is "Agricultural Land" as defined by Goal 3.[3] The

[3] The claimant's property is "Agricultural Land" because it contains NRCS (Natural Resources Conservation Service) Capability Class III and IV Soils. (See NRCS Soil Survey of Washington County, Oregon (July 1981).

AF-20 District is an Exclusive Farm Use (EFU) Zone. Goal 3 became effective on January 25, 1975, and required that Agricultural Lands as defined by the Goal be zoned EFU, pursuant to ORS 215.

Current land use regulations, particularly ORS 215.213 and OAR 660 division 33, as applied by Goal 3, establish standards for allowing farm or non-farm dwellings.

OAR 660-033-0130(4)(e) (applicable to non-farm dwellings in marginal lands counties) became effective on August 7, 1993.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in the County's AF-20 zone under ORS 215.213 on high-value farmland.[4]

The claimant acquired the subject property on April 3, 1981, when it was zoned by the County as Agriculture and Forestry District (AF-10) (adopted January 1, 1974) and allowed dwellings without application of the income test. However, at the time, the County's AF-10 zone was not acknowledged by the Commission under the standards for state approval of local comprehensive plans and land use regulations pursuant to ORS 215.250 and 197.251. Because the Commission had not acknowledged Washington County's comprehensive plan and land use regulations, including the AF-10 zone that applied to the subject property, certain site-specific Goal provisions, including Statewide Planning Goal 3, applied directly to the property when the claimant acquired it in 1981.

Statewide Planning Goal 3 became effective on January 25, 1975, and was applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of local plans.[5] Washington County's AF-20 (Agriculture and Forestry District) zone was acknowledged on July 30, 1984. Until the County's land use regulations were acknowledged by the Commission, the use of the property was subject to both the County's ordinances and the applicable Statewide Land use Planning Goals.[6]

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The property is located on Sheet #16. Soil map units 11C, 11D and 11E (Cornelius and Kinton silt loams) are found on page 18.

[4] The subject property is composed predominately of "high-value farmland" soils. (Source: www.websoilsurvey.nrcs.usda.gov).

[5] See *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 569 (1977), *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978), *Jurgenson v. Union County*, 42 Or App 505 (1979), *Alexanderson v. Polk County*, 289 Or 427, *rev den*, 290 Or 137 (1980) and *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985). After the County's plan and land use regulations were acknowledged by the Commission, the Statewide Planning Goals and implementing rules no longer directly applied to such local land use decisions (See *Byrd v. Stringer*, 295 Or 311 (1983). However, the applicable statutes continue to apply and insofar as the local implementing provisions are materially the same as the rules, the local provisions must be interpreted consistent with the substance of the rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

[6] The subject property was zoned AF-10 until it was ultimately rezoned on July 5, 1982, to AF-20, about fifteen months after the claimant acquired the property. On April 27, and May 31, 1984, the Commission determined that the County's AF-20 Zone complied with Statewide Planning Goal 3 (LCDC Acknowledgment Order, 84-ACK-103, issued July 30, 1984).

Statewide Goal 3 (Agricultural Lands) as adopted in 1975 required that agricultural land be "preserved and zoned for Exclusive Farm Use (EFU) pursuant to ORS 215.

For the dwellings allowed under EFU zoning as required by Goal 3, on the date of the claimant's acquisition of the subject property in 1981, farm dwellings were allowed if determined to be "customarily provided in conjunction with farm use," under ORS 215.213(1)(e) (1979 edition), and non-farm dwellings were subject to ORS 215.213(3) (1979 edition).

**Conclusions**

Current dwelling standards established by Statewide Planning Goal 3 (Agricultural Lands) and provisions applicable to land zoned EFU in ORS 215 and OAR 660 division 33 were all enacted after Paul Stadelman acquired the subject property on April 3, 1981, and do not allow the development of a dwelling on the property, thereby restricting the use of the property relative to the uses allowed when the property was acquired. In 1981, the property was subject to both the County's ordinances and the requirements of Goal 3 and ORS 215 then in effect.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimant has identified. There may be other laws that currently apply to the claimant's use of the property, and that may continue to apply to the claimant's use of the property, that have not been identified in the claim. In some cases, it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

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

In order to establish a valid claim, ORS 197.352(1) requires that any land use regulation 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."

**Findings of Fact**

The claim states that the fair market value of the subject property has been reduced by $250,000 as a result of land use laws enacted since Mr. Stadelman acquired the property in 1981. This amount is based on value of the property, if buildable. The claim includes an appraisal of the property.

**Conclusions**

As explained in Section V.(1) of this report, the current owner is Paul Stadelman who acquired the property on April 3, 1981. Under ORS 197.352, Mr. Stadelman is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws adopted since the claimant acquired the property restrict the development or division of the

subject property. The claimant estimates the reduction in value due to the restrictions to be $250,000.

Based on the submitted information, including the appraisal, the department determines that it is more likely than not that there has been some reduction in the fair market value of the subject property as a result of land use regulations enforced by the Commission or the department.

**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.

**Findings of Fact**

The claim is based on Washington County's AF-20 District and the related provisions of state law that have restricted the use of the property and reduced its fair market value, including Statewide Planning Goal 3 (Agricultural Lands) and applicable provisions of ORS 215 and OAR 660, division 33. These laws are not exempt under ORS 197.352(3)(E) to the extent they were enacted or adopted after the claimant acquired the property in 1981. Provisions of Goal 3 and ORS 215 in place in 1981, when Mr. Stadelman acquired the property are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant acquired the property.

**Conclusions**

Without a specific development proposal for the property, it is not possible for the department to determine what laws may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It does appear that the general statutory, goal and rule restrictions on residential development and use of farm land apply to the claimant's use of the property. These laws are not exempt under ORS 197.352(3)(E), to the extent they were enacted or adopted after the claimant acquired the property in 1981. Provisions of Goal 3 and ORS 215 in effect when the claimant acquired the property in 1981 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimant acquired the property are also exempt under ORS 197.352(3)(E), and will continue to apply to the claimant's use of the property. There may be other laws that continue to apply to the claimant's use of the property that have not been identified in the claim. In some cases, it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. And, in some cases, some of these laws may be exempt under ORS 197.352(3)(A) to 3(D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimant has identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable given the information provided to the department in the claim. The claimant should

be aware that the less information he has provided to the department in his claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to his use of the property.

## 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 a law that restricts 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 current owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

### Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimant's ability to site a dwelling on the subject property. The claim asserts that the laws enforced by the Commission or department reduce the fair market value of the subject property by $250,000. Based on the record for this claim, including the appraisal submitted with the claim, the department acknowledges that the laws on which the claim is based likely have reduced the fair market value of the property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Paul Stadelman to use the subject property for a use permitted at the time he acquired it on April 3, 1981.

### Conclusion

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Paul Stadelman's establishment of a single-family dwelling on the subject property: applicable provisions of Statewide Planning Goal 3, ORS 215, and OAR 660 division 33 enacted after April 3, 1981. These land use regulations will not apply to Paul Stadelman's use of his property only to the extent necessary to allow him the use described in this report, to the extent that use was permitted at the time he acquired the property, on April 3, 1981.

2. The action by the State of Oregon provides the state's authorization to the claimant to use his property for the use described in this report, subject to the standards in effect on April 3, 1981. On that date, the property was subject to applicable provisions of Goal 3 and ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.

4. Any use of the property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the property, it may be necessary for him to obtain a decision under ORS 197.352, from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352, from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimant.

## VII. . COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on October 11, 2005. 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.