

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

IN THE MATTER OF THE CLAIM ) FINAL ORDER  
FOR COMPENSATION UNDER ) CLAIM NO. M118352  
BALLOT MEASURE 37 (CHAPTER 1, )  
OREGON LAWS 2005) OF )  
A. Joel Neuschwander, CLAIMANT )

Claimant: A. Joel Neuschwander (the Claimant)

Property: Tax Lots 900, 901, 902, 903, and 904, T.4S, R.1E, Section 32, W.M., Clackamas County

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) 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:

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

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to A. Joel Neuschwander's division and development of the 96.52 acre property: applicable provisions of Statewide Planning Goal 3, ORS 215 and applicable provisions of OAR 660, division 33, enacted after January 25, 1988, for tax lot 900; June 28, 1993, for tax lot 901; January 25, 1988, for tax lot 902; March 3, 1988, for tax lot 903; April 26, 1988, for 1.65 acres of tax lot 904; and March 20, 1990, for 0.42 acres of tax lot 904 acquired through lot line adjustment from tax lot 901. These laws will not apply to the claimant only to the extent necessary to allow Mr. Neuschwander a use of the property permitted at the time he acquired it on January 25, 1988 (tax lot 900); June 28, 1993 (tax lot 901); January 25, 1988 (tax lot 902);

March 3, 1988 (tax lot 903); April 26, 1988 (1.65 acres of tax lot 904); and March 20, 1990 (0.42 acres of tax lot 904 acquired through lot line adjustment from tax lot 901).

2. The action by the State of Oregon provides the state's authorization to the claimant to use his property subject to the standards in effect on January 25, 1988, for tax lot 900; June 28, 1993, for tax lot 901; January 25, 1988, for tax lot 902; March 3, 1988, for tax lot 903; April 26, 1988, for 1.65 acres of tax lot 904; and March 20, 1990, for 0.42 acres of tax lot 904 acquired through lot line adjustment from tax lot 901. On those dates, the property was subject to applicable provisions Statewide Planning Goal 3, ORS 215, and OAR 660 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 Measure 37 including, without limitation, those laws exempted under section (3) of the Measure.

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 Measure 37, 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 Measure 37, 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 Deputy 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 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 125, division 145, and ORS 293.

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



George Naughton, Deputy Director  
DLCD

Dated this 14<sup>th</sup> day of October, 2005.

FOR the DEPARTMENT OF ADMINISTRATIVE  
SERVICES:



David Hartwig, Administrator  
DAS, State Services Division

Dated this 14<sup>th</sup> day of October, 2005.

### **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)

### **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 (CHAPTER 1, OREGON LAWS 2005)  
CLAIM FOR COMPENSATION**

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

October 14, 2005

**STATE CLAIM NUMBER:** M118352

**NAME OF CLAIMANT:** A. Joel Neuschwander

**MAILING ADDRESS:** 6097 South Whiskey Hill Road  
Hubbard, Oregon 97032

**PROPERTY IDENTIFICATION:** Township 4S, Range 1E, Section 32  
Tax Lots 900, 901, 902, 903, and 904  
Clackamas County

**OTHER INTEREST IN PROPERTY:** Neuschwander Living Trust  
A. Joel Neuschwander and  
Carolyn R. Neuschwander, Trustees

**DATE RECEIVED BY DAS:** April 25, 2005

**180-DAY DEADLINE:** October 22, 2005

**I. SUMMARY OF CLAIM**

The claimant, A. Joel Neuschwander, seeks compensation in the amount of \$1,223,874 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 divide the approximately 96.52-acre property into approximately 20-acre parcels with a single-family dwelling on each parcel. The property is located at 29385 and 29435 South Needy Road, near Canby, in Clackamas 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 not apply to Mr. Neuschwander's division of the property into 20-acre parcels and construction of a single-family dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands) ORS 215 and OAR 660, division 33, enacted after 1988, for tax lots 900,

902, 903, for 1.64-acres of tax lot 904; after March 20, 1990, for .042 acres of tax lot 904 acquired through a lot line adjustment from tax lot 901; and after 1993, for tax lot 901. These laws will not apply to the claimant only to the extent necessary to allow Mr. Neuschwander a use of the subject property permitted at the time he acquired the property on January 25, 1988 (tax lot 900); June 28, 1993 (tax lot 901); January 25, 1988 (tax lot 902); March 3, 1988 (tax lot 903); April 26, 1988 (1.65 acres of tax lot 904); and March 20, 1990 (0.42 acres of tax lot 904 acquired through lot line adjustment from tax lot 901). (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On May 27, 2005, pursuant to 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, evidence or information were received in response to the 10-day notice.

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

#### **Requirement**

Ballot Measure 37, Section 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 April 25, 2005, for processing under OAR 125, division 145. The claim identifies Clackamas County's Exclusive Farm Use (EFU) zone as the law that restricts the use of the property 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.)

## **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**

Ballot Measure 37 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in the Measure. Ballot Measure 37, Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

### **Findings of Fact**

The claimant, A. Joel Neuschwander, acquired the subject property on January 25, 1988, for tax lot 900; June 28, 1993, for tax lot 901; January 25, 1988, for tax lot 902; March 3, 1988, for tax lot 903; April 26, 1988, for 1.65 acres of tax lot 904; and March 20, 1990, for 0.42 acres of tax lot 904 acquired through lot line adjustment from tax lot 901, as reflected by several deeds included with the claim, and additional deed information furnished by Clackamas County. The claimant subsequently transferred tax lots 900, 901, 902 and 904 to the Neuschwander Living Trust, a revocable family trust established by the claimant and his wife, Carolyn R. Neuschwander, on February 14, 1994. The claimant is a Trustee of that Trust.<sup>1</sup>

Copies of current year tax assessments from Clackamas County indicate that the Neuschwander Living Trust is the owner of tax lots 900, 901, 902 and 904, and that claimant, in his individual capacity, is the current owner of tax lot 903. (See claim file.)

### **Conclusions**

Based on information included in the state claim file and in the Clackamas County claim decision, the claimant, A. Joel Neuschwander, is an “owner” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37, as of January 25, 1988, (tax lot 900); June 28, 1993, (tax lot 901); January 25, 1988, (tax lot 902); March 3, 1988, (tax lot 903); April 26, 1988, (1.65-acres of tax lot 904); and March 20, 1990, (0.42 acres of tax lot 904 acquired through lot line adjustment from tax lot 901).<sup>2</sup>

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<sup>1</sup> It is not clear from the material in the claim if the property was transferred to the trust on the date of its formation or at some later date.

<sup>2</sup> Although Carolyn R. Neuschwander appears to have an interest in the subject property, there is nothing in the record to indicate that she is a claimant for purposes of this Measure 37 claim.

## **2. The Laws that are the Basis for this Claim**

In order to establish a valid claim, Section 1 of Ballot Measure 37 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 the current Clackamas County EFU zoning with its 80-acre minimum lot size prevents further division of the property. It appears from the materials submitted with the claim that the claimant desires to divide the 96.52 acre property into approximately 20-acre parcels and develop a single-family dwelling on each parcel.

The claim is based, generally, on Clackamas County's current Exclusive Farm Use (EFU) zone, which requires an 80-acre minimum lot size, and the applicable provisions of state law that require such zoning. The claimant's property is zoned EFU as required by Statewide Planning Goal 3, in accord with OAR 660, division 33, and ORS 215 because the claimant's property is "Agricultural Land" as defined by Goal 3.<sup>3</sup> 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 state land use regulations, particularly ORS 215.263, 215.284, 215.780 and OAR 660, division 33, as applied by Goal 3, do not allow the subject property to be divided into parcels less than 80-acres and establish standards for allowing the existing or any proposed parcel(s) to have farm or non-farm dwellings on them.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective November 4, 1993 (Chapter 792, Oregon Laws 1993). Clackamas County's EFU zone now has an 80-acre minimum lot size for the EFU zone, adopted in 1996, to meet the requirements of HB 3661. ORS 215.263 (2003 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f).

OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. Subsequent amendments to comply with HB 3326 (Chapter 704, Oregon Laws 2001, and effective January 1, 2002,) were adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, -0130 and -0135.)

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<sup>3</sup> The claimant's property is "Agricultural Land" because it contains NRCS (Natural Resources Conservation Service) Soils: McBee silty clay loam, 0 – 3% slopes, Class IIw; Wapato silty clay loam, 0 - 3% slopes, Class IIIw; Woodburn silt loam, 3 – 8% slopes, Class IIe; Woodburn silt loam, 8 – 15% slopes, Class IIIe, and Aloha silt loam 3 – 6% slopes, Class IIw.

Clackamas County's EF-20 (now EFU) zone was acknowledged by the Commission by order on December 31, 1981. The acknowledged EF-20 zone allowed 20-acre zoning for farm dwellings and parcel size until the passage of HB 3661 in 1993. Clackamas County subsequently made changes to the EF-20 zone in 1996 to meet HB 3661 requirements, including renaming it to EFU. In 1988, 1990, and June 1993, when the claimant acquired the various tax lots of the subject property, division of the property into smaller 20-acre lots and placement of residential farm dwellings would have been governed by the acknowledged Clackamas County EF-20 zone and statutory provisions then in effect, including the then applicable portions of ORS 215.

### **Conclusions**

Lot size and dwelling standards established by amendments to Statewide Planning Goal 3, amendments to ORS 215, and OAR 660, division 33, adopted since the claimant acquired the tax lots that comprise the subject property in 1988, 1990, and June 1993, do not allow the division of the property into parcels less than 80-acres in size as may have been possible in 1988, 1990, and 1993, respectively. Thus, land use laws adopted since the claimant acquired the property restrict the use of the property from what could have been done when he acquired it. However, it is unclear whether the claimant's requested level of development complies with the standards in effect when he acquired the property in 1988, 1990, and 1993.

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, Section 1 of Ballot Measure 37 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 includes an estimate of \$1,223,874 as the reduction in the property's fair market value, as a result of current regulations that prevent division and development of the property into approximately 20-acre parcels. This estimate is based on an assessment of the sale of buildable lots in the area. No appraisal has been submitted with the claim.

### **Conclusions**

As explained in Section V.(1) of this report, the current owner is A. Joel Neuschwander, who acquired the subject property in 1988, 1990, and 1993. Under Ballot Measure 37, A. Joel

Neuschwander 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, land use laws adopted since 1988, 1990, and June 1993, restrict the division and development of the subject property. The claimant estimates the reduction in fair market value due to land use restrictions to be \$1,223,874.

Without a certified appraisal or other documentation, it is not possible to substantiate the specific dollar amount the claimant demands for compensation. Nevertheless, based on the submitted information, 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 Section 3 of Measure 37**

Ballot Measure 37 does not apply to certain land use regulations. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

#### **Findings of Fact**

The claim is based on land use laws that have restricted use of the property and reduced its fair market value. These are Statewide Planning Goal 3 (Agricultural Lands), and applicable provisions of ORS 215 and OAR 660, division 33, which Clackamas County has implemented through its EFU zone. These laws are not exempt under Section 3(E) to the extent they were enacted after the date the claimant acquired the tax lots that comprise the subject property in 1988, 1990 and 1993. The applicable provisions of Goal 3, ORS 215, and OAR 660 in effect when the claimant acquired the individual tax lots are exempt under Section 3(E) of Ballot Measure 37, 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 Measure 37. 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 Section 3(E) of Measure 37, to the extent they were enacted after the claimant acquired the individual tax lots in 1988, 1990 and 1993. Provisions of Goal 3, ORS 215 and OAR 660 in effect when the claimant acquired the property in 1988, 1990, and June 1993, are exempt under Section 3(E) of the Measure and will continue to apply to the property.

Other laws in effect when the claimant acquired the property are also exempt under Section 3(E) of Measure 37, 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 Sections 3(A) to 3(D) of Measure 37.

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 Section (3) of Measure 37, 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**

Section 1 of Measure 37 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 division of the subject property into approximately 20-acre parcels, and the development of a residential dwelling on each resulting parcel. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by \$1,223,784. However, because the claim does not provide an appraisal or other specific documentation for how the specified restrictions reduce the fair market value of the property, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this 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, Ballot Measure 37 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow A. Joel Neuschwander to use the subject property for a use permitted at the time he acquired the property on January 25, 1988, for tax lot 900; June 28, 1993, for tax lot 901; January 25, 1988, for tax lot 902; March 3, 1988, for tax lot 903; April 26, 1988, for 1.65 acres of tax lot 904; and March 20, 1990, for 0.42 acres of tax lot 904 acquired through lot line adjustment from tax lot 901.

### **Conclusion**

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

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to A. Joel Neuschwander's division and development of the 96.52 acre property: applicable provisions of Statewide Planning Goal 3, ORS 215 and applicable provisions of OAR 660, division 33, enacted after January 25, 1988, for tax lot 900; June 28, 1993, for tax lot 901; January 25, 1988, for tax lot 902; March 3, 1988, for tax lot 903; April 26, 1988, for 1.65 acres of tax lot 904; and March 20, 1990, for 0.42 acres of tax lot 904 acquired through lot line adjustment from tax lot 901. These laws will not apply to the claimant only to the extent necessary to allow Mr. Neuschwander a use of the property permitted at the time he acquired it on January 25, 1988 (tax lot 900); June 28, 1993 (tax lot 901); January 25, 1988 (tax lot 902); March 3, 1988 (tax lot 903); April 26, 1988 (1.65 acres of tax lot 904); and March 20, 1990 (0.42 acres of tax lot 904 acquired through lot line adjustment from tax lot 901).

2. The action by the State of Oregon provides the state's authorization to the claimant to use his property subject to the standards in effect on January 25, 1988, for tax lot 900; June 28, 1993, for tax lot 901; January 25, 1988, for tax lot 902; March 3, 1988, for tax lot 903; April 26, 1988, for 1.65 acres of tax lot 904; and March 20, 1990, for 0.42 acres of tax lot 904 acquired through lot line adjustment from tax lot 901. On those dates, the property was subject to applicable provisions Statewide Planning Goal 3, ORS 215, and OAR 660 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 Measure 37 including, without limitation, those laws exempted under section (3) of the Measure.

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 Measure 37, 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 Measure 37, from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimant.