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# Making Sense of Land Use in Moraga: MOSPRO, MOSO, and MOSO 1986

*By Sophie Braccini*

Many in Moraga believe that the election of November 2008 will shape the future of our little town for many years to come. The electorate will vote for or against different views of open space land use and this vote will have a lasting impact on development in the town. Either of the two initiatives on the ballot would amend the Moraga Open Space Initiative of 1986 (MOSO 1986), under which much of Moraga's open space is currently protected. At the same time, but not related to the two proposals on the ballot, the Town is developing a specific plan for the center of the town (in and around the present Moraga Center) that proposes zoning allowing the building of new multi-family units. The Town Council and the community will continue these discussions into the fall. In order to clarify the choices for voters, Planning Director Lori Salamack was asked to produce a document comparing both land use initiatives and MOSO 1986. We have attempted to summarize some of this information, but we encourage voters to read the full Frequently Asked Questions document prepared by Salamack. It can be found online at: http://moraga.ca.us/agendas_minutes/TC/Packets%202008/82708/consent22.pdf Here are some of the questions Moragans have been asking: Which is which? The first initiative that qualified for the November ballot is the Moraga Initiative Expanding Open Space and Residential Land Use Designation and Adopting Development Agreement, also known as MOSPRO, and is ballot Measure J. The second to qualify is the Moraga Initiative Expanding Open Space and Imposing Development Restrictions, also known as MOSO 2008, and is ballot Measure K. What areas of Moraga are affected by the initiatives? The three main areas are the Rheem Ridge (where the Rancho Laguna development has been proposed), Indian Valley and Bollinger Canyon. Other ridge areas are also affected and are currently protected under MOSO `86: the Campolindo Ridge, the Sanders and Larch Ridge and the Mulholland Ridge. Is there any multi-family housing proposed by the initiatives? No, the two initiatives are unrelated to the potential development of Moraga's downtown; they specifically address the open space areas listed above. Will the initiatives increase the amount of protected open space? As of today the Town of Moraga has designated approximately 1,500 acres as open space. Some of the Rheem Ridge and Indian Valley are already part of this space. Bollinger Canyon, on the other hand, is currently a "study area." Both initiatives add part or all of these areas to Moraga open space, but their definitions of open space are different. What would happen in each area? In Bollinger Canyon, Measure J defines 254 acres of that area as MOSO 1986, and designates 128 acres as residential with 2 dwelling units per acre. Measure K designates the whole 427 acres as MOSO 2008 with restriction of development to 1 dwelling unit per 20 acres. Both initiatives define 5 acres as community facility areas. In Indian Valley, measure J would not alter significantly the present land use rules with 80 acres being designated for development. On the other hand, measure K would extend MOSO 2008 rules to the entire 489 acres, restricting development there, too. For the four remaining ridge areas that are already protected, both initiatives would regulate the whole land under a definition of open space, measure J would apply the MOSO 1986 rules to all of the land and measure K would apply the MOSO 2008 rules. What rules would change under MOSO 2008 compared to MOSO 1986?

MOSO 1986 allows density of one dwelling per 20, 15 or 5 acres (so far, the town has never authorized more than 1 unit per 10 acres); MOSO 2008 would restrict the density to 1 unit per 20 acres, with some cases of 1 unit per 10 acres. The minimum lot area in both MOSO 1986 and MOSO 2008 is 40,000 square feet (can be reduced to 15,000); however, in Bollinger Canyon MOSO 2008 defines the minimum lot area as 5 acres. Both MOSO 1986 and MOSO 2008 prohibit development within 500 feet of major ridgelines and on minor ridgelines. MOSO 2008 expands the restriction to the area within 150 feet of minor ridge lines and redefines a minor ridgeline as a ridge with an elevation of 700 feet above sea level instead of 800 feet under MOSO 1986. Both texts prohibit development on slopes 20% or more. MOSO 2008 aims at further protecting areas of special environmental concern such as wet lands, riparian corridors and critical wildlife habitat, and appears to offer a wider range of uses to the landowner than MOSO 1986. What impact will the initiatives have on the Town's finances? According to the reports produced by the town's staff both initiatives would produce additional revenues for the town in increased sales, property and other taxes. Measure J allowing more development would generate roughly an additional $400,000 yearly revenue, while Measure K would generate $60,000 in increased revenue. Additionally, Measure J, in the development agreement that's attached to the initiative, promises the Town $7 million to help offset the cost of recreation, transportation and a gymnasium to be built at a specific location. These donations would occur within a 25 year period once development is approved, and do not deed the land (currently owned by the Bruzzone family) on which the gymnasium would be built to the Town. What happens if both initiatives pass? If neither passes? It is unlikely that both initiatives will pass, most people have realized that they represent a quite different view of what open space should be in Moraga. If both of them obtain more than 50% of the votes it was first thought that they would have to be harmonized and would both apply. At this time, the latest official comment was that the one with the most votes would apply alone. If both get less than 50% of the vote, then nothing will change; the MOSO 1986 rules will continue to apply and each new development will undergo the same planning procedure. What are the legal risks for the town? As with any legislation, either initiative could be challenged in court and the Town would have the legal obligation to defend it. MOSO 1986 was no exception in its time. The absence of initiative does not guarantee against lawsuits either. Every major development project carries that risk. In the 9212 report that assesses the consequence of each initiative for the Town, the Town's attorney wrote about Measure J "the most critical question raised by the initiative is whether the adoption of development agreement is a proper subject for an initiative." The attorney didn't find cases that would serve as a precedent for development agreements being a legislative act (subject to initiative) or an administrative act (beyond its scope). The attorney concluded, "This legal uncertainty tends to portend an ultimate resolution through the courts." Regarding Measure K the staff report reads, "MOSO 2008 amends the Town's General Plan, and thus is a proper exercise of the initiative power." Property owners could claim a "taking" depriving them of their Constitutional rights. According to the Town's attorney "a court is unlikely to find there has been a taking unless no economically viable use exists." In the case of MOSO 2008, the attorney states, ".(such a) claim is likely to be difficult to prove because of the Initiative's provision, which allows both residential development as well as other uses." Who is behind the initiatives? Measure J is sponsored by the Bruzzone family, which owns land in Indian Valley and Bollinger Canyon. Measure K was crafted by the "Friends of Moraga Open Space" a group composed of Moraga and Bollinger Canyon residents.

Reach the reporter at: sophie@lamorindaweekly.com



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