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Public Forum

J is for Junk

Proponents of Moraga Measure J continue to spread the half-truths heard from the paid signature-gatherers who got it on the ballot last Spring, with odd new twists. Ignore the signs-- "J" does not help and is not endorsed by the Acalanes High School District. Neither "J" nor "K" have anything to do with low income housing requirements, which are imposed by state law. And if you are worried about proposed development at the Moraga Center, you should vote against "J," not for it.

In fact, "J" is a Trojan horse: its "gifts" are not what they seem, and may be entirely illusory. Inside "J" lurk enemies that will harm the Town.

Measure J will clog our roads. With only two narrow commuter routes out of Moraga--both of which are sporadically at a standstill during peak hours now--our infrastructure cannot sustain massive development without harm to our property values and lifestyles. The Town has recently approved 200 new houses, which will mean 2000 more daily car trips on Moraga roads, using standard planning assumptions. Around sixty more homes are in process. Through zoning, "J" creates a theoretical potential for 276 additional houses in Bollinger Canyon, and 120 in Indian Valley. ("Summary" on Town website, pp. 2-3) The Town is legally required to approve all that meet regulatory standards: probably around 300, but potentially more. "J" thus imposes 3000-3960 additional daily car trips on Moraga roads, above the 2000-2600 new development already guarantees.

In thinking about traffic, we need to consider proposed development at Moraga Center, some of which is inevitable. As currently zoned, Moraga Center development will add 3720-4600 daily car trips to our roads, based on housing alone. (Draft Moraga Specific Plan, Figure 2-7) One proposal would add a total of 720 dwelling units, for 7200 additional daily car trips. (Id. P. 35) This does not even count all the traffic that will be generated by 140,000 square feet of proposed additional retail/office space, a 75 unit hotel, 150 senior care units, a Town recreation center, and a 10 room bed and breakfast, assuming all are approved. (Id.) Add development in Orinda and Lafayette to that--something we cannot control -- and we could easily have traffic gridlock.

Passing "J" would make all this development more likely, because the additional houses it authorizes provide a rationale for additional retail and office space. It also provides capital to the Bruzzones, who own most of the Moraga Center land and are reportedly behind the high density option.

"J" also represents a significant transfer of political power to developer(s). It prohibits changes in local building standards on "J" property for at least twenty-five years, even by initiative. (Exhibit C to the Initiative -henceforth "C"-at 1.2-3 and 2.3-4.) Lawmaking powers instead shift to the landowner(s), who can simply make a deal with the Town Council if they want changes in the development agreement, even though "J" elevates it to an ordinance. (Initiative-henceforth "I"-at Section 5; C 5.2)

And "J" freezes local developer fees -which help compensate for development costs--at December, 2007 levels for "J" property, for at least twenty-five years--a serious financial blow to our cash-strapped town. (I Sect. 8A; C 2.2, 2.6.)

When all the bad things have crawled out of the Tro"J"an horse, what is left? Supposedly, \$7 million in "gifts" to the Town--but these "gifts" are not what they seem.

Don't vote for "J" If you like the idea of a Town recreation center and athletic fields- unless you would sign a lease for a building that may never exist, without knowing what the rent will be. "J" offers only to rent 2.5 identified acres for a yet-to-be negotiated fee, sometime in the next twenty-five years . (C3.2(a).) The landowner will then spend \$2 million to build athletic fields on its own property, and \$4 million to partially fund a Town recreation center on it. (C3.2(b) and 3.3.) By definition, this so-called "gift" will eventually be recouped in rent. The \$1 million "gift" for roads is unnecessary, because Moraga Code 8.84.030 already requires developers to pay for improvements made necessary by development. And there are so many contingencies tied to these "gifts" that Moraga may never see the money at all.

Perhaps you feel the Bruzzones will make these "gifts" because they are trusted locals-even though the lawyers who drafted "J" have largely protected them from having to do so. But what if the Bruzzones sell some of this land-made enormously more valuable by "J"-- in order to fund the development they are contemplating? "J" guarantees their successors the same rights and (non) obligations the Bruzzones enjoy . (C 5.8.) Moragans will then have multiple developers dominating the debates in our Town Council and planning sessions, instead of just one. These new Trojan horses may have no local ties, and lawyers even more aggressive than the ones who wrote "J." Welcome to the Trojan War.

Ironically, "J" deprives town officials of leverage they could use to get a Town recreation center and athletic fields built where Moraga wants them, in a timely fashion, and at no expense to the Town. Here is why: zoning changes and accommodations are needed to allow developer(s) to build beyond current zoning at Moraga Center. Towns routinely extract concessions-such as a new Town recreation center-as the price for such changes. Voting against "J" does not guarantee a Town recreation center, of course-but then, neither does "J."

In contrast, Measure K is straightforward. It eliminates these large developments, and affects only defined ridge areas (no longer including the Country Club or St. Mary's). My guess is that "K" is the best way to minimize expensive litigation over open space. If "K" passes, the potential lawsuits will be consolidated into one that should be relatively cheap and easy to win, because "K" is so similar to the initiative in Hercules that was recently upheld without a trial. (Do you really think the Bruzzones would have funded "J" if they thought they had a viable lawsuit against "K"?) If "K" is defeated, at least four more open space developments will go through the Town process-and every time the Town grants or denies development permits, a lawsuit is possible and perhaps inevitable.

For further detail, citation to the specific section in "J" that create these problems and an abridged version of "J" that focuses on the offending language, go to moso2008.org, or DefeatJandK.com, and look for the "Trojan horse" references. If you read "J" yourself, be sure to start with the last exhibit, where most of the enemy soldiers are hiding.

The ballot is confusing, so remember this: "K" is for Kloser Kwestion. But "J" is for Trojan horse. "J" is for junk.

(Mary Ann Bernard is a Moraga resident and retired lawyer, who for 25 years advised and litigated civil cases for federal, state and local government entities. She is not working with the Town of Moraga on this or any other matter, nor is she affiliated with the MOSO initiative.)

Earlier this year I took a careful look at Measure K. I decided to vote for Measure K for three reasons. First, Measure K will preserve key features of Moraga and further goals that I think most Moragans support today and will support in the years ahead. Second, Measure K will allow reasonable development on the parcels to which it applies. Third, Measure K neither bars nor dictates development elsewhere in Moraga.

Measure K is the voters' chance to set clear ground rules that will protect the small-town qualities that Moragans value today and will value in the years to come. It is clear that most Moragans do not favor now, and will not favor in the future, development on ridgelines, new tracts of hundreds of homes at a time, or letting developers use leeway in existing development rules to tie up Town staff and the Council for years. We should address these clear priorities now, not put them off to

another day. Voters have the experience and foresight to conclude that adopting Measure K is a much better course than counting on Councils of the future to take timely and clear action.

Measure K protects ridgelines and promotes other sound development principles, while allowing its fiercest opponent to reap millions of dollars (even by its own calculations). This is not "condemnation." As for litigation threats, remember that Moraga has been there, done that, and has a Court of Appeal decision upholding MOSO 1986 to show for it.

Some opponents of Measure K are taking the "kitchen sink" approach in attacking Measure K. The voters who approved MOSO 1986 faced similar political tactics. Those voters, thankfully, stayed focused on the merits, and put on the books a set of much-needed rules that we now take for granted. But MOSO 1986, widely admired though it is today, gives only "Swiss cheese" protection to ridgelines around town, and no protection to other areas of concern. It is time to fill those holes.

To be clear, however, I support controls, not flat-out bars. Measure K's rules, including its provision that authorizes some flexibility on a case-by-case basis, set controls, not bars. I would not support Measure K if I thought it were a "no-growth" initiative. I want Moraga to keep its small-town feel, but I do not want it to stagnate.

It also is important to note that Measure K does not, in letter or spirit, force adoption of the draft specific plan for the Moraga Center. That proposal has no link to Measure K, and will rise or fall on its own merits.

Measure K will secure the best of Moraga – its open hills and ridgelines, and its small-town character – while keeping the door open for careful, modest, growth. Measure K will not stop Moraga from taking the important steps necessary to provide more opportunities for residents, a bigger pool of customers for businesses, and a boost to Town revenues. Measure K gives voters the chance to create fair and clear rules that will preserve key features of life in Moraga, while providing fair opportunity and reward to those who wish to develop their land. This is why I am voting Yes on Measure K.

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