

Memorandum of Understanding ("MOU")

Between Carol and Roosevelt McGee ("McGees") and the City of Calabasas ("City")

WHEREAS, Carol and Roosevelt McGee submitted an application to construct two single family homes on two adjacent lots on Dorothy Road in the Old Topanga community in August 1999; and

WHEREAS, the Old Topanga area of the City is a mountainous area where the majority of the lots are narrow and deep and not served by sewers; and

WHEREAS, the two lots owned by the McGees are narrow (40 feet wide) and deep (277 ft.) with over half of the depth of the lot located on a steep hillside; and

WHEREAS, while the McGees were proceeding through the City review process, the City Council approved a moratorium for the Old Topanga and Calabasas Highlands neighborhoods in May 2000 in order to create new development standards to ensure that the scale of residential development was in reasonable proportion to the size of building sites and reflective of environmental constraints affecting various sites; and

WHEREAS, the City Council approved new Old Topanga development standards in November 2000; and

WHEREAS, the McGees, at considerable expense, redesigned the two homes in an effort to meet the new standards and the Planning Commission approved one of the homes and denied a variance needed to construct the second home in June, 2003; and

WHEREAS, although the McGees designed the two houses in an effort to comply with the City's zoning requirements, the community expressed concern about building one house on each of the two lots because the minimum required side yard setback on a 40 foot wide lot is eight (8) feet which community members believe will place the houses too close together and change the rural character of the area and limit Fire Department access to the rear of the homes; and

WHEREAS, although the projects have been reviewed by the City's geologist and environmental staff, the community is further concerned that due to a water well located across the street and within 150 feet of the two homes, the septic systems will need to be placed on the hillside behind the homes and there is concern, due to at least one septic system failure in the neighborhood, that there is an increased risk of septic system failure and/or slope failure impacting a neighboring property if the septic system is placed on the hillside as presently proposed; and

WHEREAS, the City acknowledges the McGees claim that they are legally entitled to build one house on each of the two lots; and

WHEREAS, the McGees and the community wish to reach a solution that benefits both parties and the community; and

WHEREAS, the City and McGees desire to diligently address issues of mutual concern to the parties and the community,

WHEREAS, in recognition and appreciation of the McGees' willingness to work with the City to favorably and amicably resolve issues relating to their development project, the City agrees to be assist the McGees in the development of their project;

NOW, THEREFORE, the McGees and the City of Calabasas agree as follows:

I. The McGees Shall Implement and Comply with the Following:

A. Lot Merger

The McGees agree to seek and obtain approval from City to merge their two existing adjacent lots located at Dorothy Drive in the Old Topanga community into one single lot, and further agree to donate to the City or to a conservancy or other non-profit organization any and all rights they possess to construct a second house on these lots in return for the right to construct one larger house on the new merged lot, preserving the rural character of the area. The maximum size of the new house shall be based upon the combined rights from the two pre-existing lots and-consistent with Section 17.18.020(C)(1) of the Calabasas Municipal Code (applicable to the Old Topanga neighborhood) unless the City grants a variance for greater floor area in the manner required by law.

B. Access Easement

The McGees agree to an easement for the present (Moeller) and future owners of the adjoining property and the Fire Department in order to allow reasonable access to the rear of the home for hillside brush clearance (not including the use of tractors or other mechanical brush clearance equipment) and fire prevention as is required by the Los Angeles County Fire Code, any Fire Code adopted by the City of Calabasas and other applicable law.

C. Septic System

If feasible and if permits can be obtained, after best efforts to do so, from the City of Calabasas and the County of Los Angeles, the McGees agree to locate the septic system for the single house in the area where the septic system for the previously planned second house is currently located, which is that portion of the hillside furthest from the adjoining neighbor's property (Moeller property), or elsewhere on the property so as to reduce the risk of slope failure impacts to the Moeller property.

II. The City of Calabasas Agrees to the Following:

A. No more requests

Other than mutually agreed modifications necessary for the implementation of the agreed upon terms and conditions of this MOU and the related land use approvals to be issued in the implementation of this MOU, the City will honor the land use entitlements **already** granted and will not make additional requests or seek to impose additional conditions on those land use entitlements.

B. Expedite Approval Process

The City shall act in Good Faith and use Best Efforts to: (1) facilitate and expedite final approvals for the McGees Project; (2) limit the need for the McGees to utilize additional consulting services; (3) to the maximum extent possible, make full use of existing studies and prevent additional cost to be incurred by the McGees.

C. Fee Waiver

The City agrees to waive any further City-imposed fees for review, plan checks or other process required for final approval of the lot merger and construction of the house in an estimated amount of \$7,742 as detailed on Exhibit A hereto. This shall apply only to fees within the discretion of the City and shall not apply to fees incurred by the City for outside consulting services, fees of other jurisdictions or entities not within the control of the City; nor shall it constitute a waiver of any sum now due the City with respect to this project. The McGees will bear the cost of the City's outside consultants, in an amount not to exceed an estimated \$6,887 as detailed on Exhibit A, for geotechnical and other review of the one-house project and any cost associated with relocating the leach field for the septic system. Mountains Restoration Trust has agreed to fund the appraisal necessary to support a tax deduction for the donation of the conservation easement referenced above and to provide certain legal services with respect to that easement and the weed abatement easement referenced above.

D. Continuing Cooperation Clause

The City shall utilize best efforts to cooperate and assist the McGees in the implementation of their Project and the provisions of this MOU.

E. Community Outreach and Support

The City and the McGees will collaborate to educate the community regarding the Project and will utilize sufficient resources to minimize impacts and inconvenience during construction.

F. No Waiver of Development Code

The McGees acknowledge that the City is required by law to process its applications for the necessary development entitlements for a single, larger house on a combined lot in the manner required by the City of Calabasas Municipal Code and other applicable law. Accordingly, the City agrees to take all necessary steps to process those applications in the manner required by law in a timely manner so that the entitlements McGees seek may become vested. The City acknowledges that the McGees own the lots in question and have a right to seek development permits for those lots and that withdrawal, suspension or amendment of the McGees' applications for approval of two houses does not constitute a waiver of any rights the McGees may have to proceed with that application in the future.

III. Standstill and Preservation of Prior Rights:

The McGees shall not be deemed to forego the right to seek permits for two houses until the issuance of the final permits to permit construction of the new project described in Paragraph IA. Contemporaneous therewith the McGees will notify the City in writing that the applications for the two building permits is abandoned or withdrawn. Thus, neither the City nor the McGees waive any right or duty by the execution of this Agreement, but the rights and duties of each will be altered if this MOU is implemented as set forth here. The McGees current applications for approval to build two houses on the two lots will be placed in "inactive" status subject to McGees' right to have the current applications restored to the City Council Agenda within thirty (30) days of the City's receipt of their written request to do so; however, the current applications will be deemed "inactive" unless and until McGees, in their sole discretion, determine that it is in their best interest to abandon the procedures described in this MOU and, instead, advise the City in writing of their intention to abandon the MOU and go forward with the current applications to build two houses. McGees represent to the city that the key element of their agreeing to this MOU is an expectation that the process described herein can be accomplished in short order. By entering into this MOU and by suspending the pending applications, McGees shall not be deemed to waive any rights that they have to proceed with the current applications and the City hereby agrees not to reject the McGees two-house application on the ground that they failed to proceed with the applications with diligence or for any other reason related to the passage of time between the execution of this MOU and any decision by the McGees to abandon it as set forth herein. The McGees hereby agree to waive any rights they may have under the Permit Streamlining Act or other applicable law to compel the City to approve either version of their project due to the passage of time between the execution of this MOU and any decision by the McGees to abandon it as set forth herein.

Executed On August 31, 2003

Executed On _____, 2003

By Carol McGee
Carol McGee

By _____
City of Calabasas
Mayor

By Roosevelt McGee
Roosevelt McGee

Attest by: _____
City Clerk

Approved as to form and content by

Kent Leeds Vallette

Kent Leeds Vallette
Attorney for Carol & Roosevelt McGee

EXHIBIT A

Fees To Be Waived By The City:

1) Single Family Residence Permit Fee.....	\$3,970.00
2) Building and Safety Plan Check Fee.....	\$1,886.00
3) Traffic Mitigation Fee.....	\$1,230.00
4) Site Plan Review Fee.....	\$406.00
5) NPDES/SWPPP Fee.....	\$250.00
TOTAL WAIVED FEES.....	\$7,742.00

Consultant Review Fees NOT Waived By the City:

1) Grading Plan Check Fee.....	\$3,000.00
2) Lot Line Adjustment Fee.....	\$2,000.00
3) Building & Safety Plan Check Fee.....	\$1,887.00
TOTAL CONSULTANT FEES (NOT-WAIVED)...	\$6,887.00**

**The property owner is responsible to pay for the cost of City consultant fees up to this amount. Any additional consultant costs (for consulting engineers) exceeding this amount will be reimbursed by the City upon authorization by the City Council.

Cost Of Appraisal To Be Incurred By Mountains Restoration Trust Who In-Turn Will Be Reimbursed By The City:

1) Appraisal Cost.....	\$3,000.00
------------------------	------------