### CALIFORNIA COASTAL COMMISSION OUTH CENTRAL COAST AREA SOUTH CALIFORNIA ST., SUITE 200 VENTURA, CA 93001 (805) 641-0142

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#### PETE WILSON, Governor



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### STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 4-97-060

APPLICANT: Monika Miehle AGENT: Brent Schnieder

PROJECT LOCATION: 6091 De Butts Terrace, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Construct 28 ft. high, 2 story, 5900 sq. ft. single family residence with detached garage, septic system, and 667 cu. yds. of grading (337 cu. yds . cut and 330 cu. yds. fill).

Lot Area Building Coverage Pavement Coverage Landscape Coverage Parking Spaces Plan Designation Project Density Ht abv fin grade 87,082 sq. ft. 3,286 sq. ft. 5,887 sq. ft. 56,139 sq. ft. 4 covered Rural Land III, 1 du/2 ac .5 du/ac 28 feet

LOCAL APPROVALS RECEIVED: City of Malibu: Geology and Geotechnical Review Sheet, dated 11/6/97; Planning Department, Approval in Concept, dated 2/24/97; Environmental Health Department, In-concept Approval, January 24, 1997.

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu/Santa Monica Mountains Land Use Plan; West Coast Geotechnical: Percolation Test Investigation, April 29, 1996; and Update Geotechnical Engineering Report, February 18, 1995; Mountain Geology, Inc.: Engineering Geologic Investigation Report, December 6, 1997; and Supplemental Engineering Geologic Report, April 24, 1996; Coastal development permits 5-90-921 (Landgate), 5-97-179 (De Butts Associates) and 4-95-119 (Chyton).

#### SUMMARY OF STAFF RECOMMENDATION:

The proposed development site is located below on secondary ridge line adjacent to an old landslide. Staff recommends approval of the proposed project with four (4) Special Conditions addressing landscape and erosion control plans, plans conforming to the consulting geologist's recommendations, assumption of risk, and a wild fire waiver of liability.

# I. STAFF RECOMMENDATION

### Approval with Conditions

The Commission hereby <u>grants</u> a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

### II. <u>Standard Conditions</u>

- <u>Notice of Receipt and Acknowledgment</u>. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. <u>Expiration</u>. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. <u>Compliance</u>. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
- 4. <u>Interpretation</u>. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 5. <u>Inspections</u>. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
- 6. <u>Assignment</u>. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 7. <u>Terms and Conditions Run with the Land</u>. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. <u>Special Conditions</u>

# 1. LANDSCAPE AND EROSION CONTROL PLANS

Prior to issuance of permit, the applicant shall submit a landscape plan prepared by a licensed landscape architect for review and approval by the Executive Director. The plans shall incorporate the following criteria:

a) All disturbed areas on the subject site shall be planted and maintained for erosion control and visual enhancement purposes. To

minimize the need for irrigation and to screen or soften the visual impact of development all landscaping shall consist primarily of native, drought resistant plants as listed by the California Native Plant Society, Los Angeles - Santa Monica Mountains Chapter, in their document entitled <u>Recommended Native Plant Species for Landscaping in</u> <u>the Santa Monica Mountains</u>, dated October 4, 1994. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.

- b) All disturbed areas shall be stabilized with planting at the completion of construction. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within 2 years and shall be repeated, if necessary, to provide such coverage.
- c) Should construction take place during the rainy season (November 1 -March 31), sediment basins (including debris basins, desilting basins, or silt traps) shall be required on the project site prior to or concurrent with the initial site preparation and maintained through the development process to minimize sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved disposal location.

# 2. PLANS CONFORMING TO GEOLOGIC RECOMMENDATION

Prior to the issuance of the permit the applicant shall submit, for the review and approval by the Executive Director, evidence of the geology consultant's review and approval of all project plans. All recommendations contained in the reports, West Coast Geotechnical, Update Geotechnical Engineering Report, February 18, 1995 and Mountain Geology, Inc., Engineering Geologic Investigation Report, December 6, 1997 including issues related to <u>site</u> <u>preparation. foundations.</u> and <u>drainage</u>, shall be incorporated in the final project plans. All plans must be reviewed and approved by the geologic consultants.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

# 3. APPLICANT'S ASSUMPTION OF RISK

Prior to issuance of the Coastal Development Permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from landsliding and from erosion and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest.

## 4. WILD FIRE WAIVER OF LIABILITY

Prior to the issuance of the coastal development permit, the applicant shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents and employees against any and all claims, demands, damages, costs, expenses, of liability arising out of the acquisition, design, construction, operations, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wild fire exists as an inherent risk to life and property.

# IV. <u>Findings and Declarations</u>.

### A. <u>Project Location and Description</u>

The proposed development is to construct a 28 ft. high, 2 story, 5900 sq. ft. single family residence with detached garage, septic system, and 667 cu. yds. of grading (337 cu. yds. cut and 330 cu. yds. fill). (Exhibits 1 and 2)

The project site is located on a secondary ridge line and uphill and west of De Butts Terrace and Escondido Canyon Creek. (Exhibit 3) The site sits on the ridge line, and will be visible from the south, east and west. The lot is not visible from the Escondido Falls Trail.

The parcel ranges from approximately 500 to 560 feet in elevation while the building site is at the approximate 540 foot elevation. The project site is near an old landslide which requires installation both caisons both underneath and adjacent to the house. The proposed development will be slightly keyed into the side of the hill and stepped along the hillside. Several pads will be constructed for building pads, terraces and parking. The general appearance from all directions is that of a two story residence.

The site is presently vacant with a graded driveway and concrete bank protection adjacent to the entrance. At the time of the staff site visit the site was overgrown with deep ruderal vegetation.

The subject parcel is not located within any Environmentally Sensitive Habitat Area (ESHA). However, the parcel is across the street from the headwaters of a USGS intermitent blueline stream.

## B. <u>Water Quality and Stream Protection</u>

Section 30250(a) of the Coastal Act provides that new development be located within or near existing developed areas able to accommodate it, with adequate public services, where it will not have significant adverse effects, either individually or cumulatively, on coastal resources:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

The Malibu/Santa Monica Mountains Land Use Plan is used as guidance in Commission permit decisions in the City of Malibu. In its findings regarding the Land Use Plan, the Commission emphasized the importance placed by the Coastal Act on protecting sensitive environmental resources. The Commission found in its action certifying the Land Use Plan in December 1986 that:

...coastal canyons in the Santa Monica Mountains require protection against significant distribution of habitat values, including not only the riparian corridors located in the bottoms of the canyons, but also the chaparral and coastal sage biotic communities found on the canyon slopes.

The Certified Malibu/Santa Monica Mountains Land Use Plan also contains a number of policies aimed at the protection of resources and stream protection and erosion control: P82: Grading minimized to minimize potential negative effects of runoff and erosion; and P96: Not degrade water quality of groundwater basins, nearby streams, or wetlands from development of the site; and not allow pollutants to discharge into or alongside coastal streams or wetlands.

Section 30231 of the Coastal Act requires that the biological productivity of streams be maintained through, among other means, minimizing waste water discharges and entrainment, controlling erosion,...and minimizing alteration of natural streams. In this case, the proposed project will significantly increase the amount of impervious surfaces on the subject site. The impervious surfaces created by the building will increase both the volume and velocity of storm water runoff from the site. If not controlled and conveyed off-site in a non-erosive manner this runoff will result in increased erosion on and off site. Increased erosion in addition to raising issues relative to geologic stability as addressed above, also result in sedimentation of the nearby stream. The increased sediments in the water course can adversely impact riparian systems and water quality. These impacts include:

- 1. Eroded soil contains nitrogen, phosphorus, and other nutrients. When carried into water bodies, these nutrients trigger algal blooms that reduce water clarity and deplete oxygen which lead to fish kills, and create odors.
- 2. Erosion of stream banks and adjacent areas destroys streamside vegetation that provides aquatic and wildlife habitats.
- 3. Excessive deposition of sediments in streams blankets the bottom fauna, "paves" stream bottoms, and destroys fish spawning areas.
- 4. Turbidity from sediment reduces in-stream photosynthesis, which leads to reduced food supply and habitat.
- 5. Suspended sediment abrades and coats aquatic organisms.
- 6. Erosion removes the smaller and less dense constituents of topsoil. These constituents, clay and fine silt particles and organic material, hold nutrients that plants require. The remaining subsoil is often hard, rocky, infertile, and droughty. Thus, reestablishment of vegetation is difficult and the eroded soil produces less growth.
- 7. Introduction of pollution, sediments, and turbidity into marine waters and the nearshore bottom has similar effects to the above on marine life. Pollutants in offshore waters, especially heavy metals,

> are taken up into the food chain and concentrated (bioaccumulation) to the point where they may be harmful to humans, as well as lead to decline of marine species.

In the case of this project, the applicant has provided a grading and drainage plan which includes splash walls, swales, berms, wall drains and subdrains, and rip-rap energy dissipators. These measures are adequate to ensure that runoff will be conveyed off-site in a non-erosive manner and minimize erosion on and off site. Consequently, the grading and drainage plan controls sedimentation and hydrological impacts, to protect against disruption of habitat values and protect biological productivity.

The site has been cleared of native vegetation. It is necessary to require the applicant to submit landscape plans for areas disturbed by grading operations and development activities. These plans must incorporate native plant species and illustrate how these materials will be used to provide erosion control to those areas of the site disturbed by development activities, to specify plant materials, plant coverage and replanting requirements, and additional measures if grading extends into the rainy season. Replacement plants, if provided in a landscape plan, will minimize and control erosion, as well as screen and soften the visual impact of the proposed development.

Special condition number one (1), recommended above, provides for such a landscape/erosion control plan prepared by a licensed landscape architect. The Commission finds that only as conditioned will the proposed project be consistent with the policies found in Sections 30231 and 30250(a) of the Coastal Act.

### C. <u>Geologic and Fire Hazards</u>

Section 30253 of the Coastal Act states, in part, that new development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

In addition, the certified Los Angeles County Land Use Plan includes the following policies regarding hazards, which are applicable to the proposed development. These policies have been applied by the Commission as guidance in the review of development proposals in the Santa Monica Mountains (paraphrased): Pl47: evaluate impact on, and from, geologic hazard; P 149: require a geologic report prior to approval; P 154: not generate excessive runoff, debris, and/or chemical pollution that would impact on the natural hydrologic system; and P 156: evaluate impact on fire hazard.

The proposed development is located in the Santa Monica Mountains area which is generally considered to be subject to an unusually high number of natural hazards. Geologic hazards common to the area include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides.

The Commission reviews the proposed project's risks to life and property for development such as proposed in this application in areas where there are geologic, flood and fire hazards.

Minimizing the erosion of the site is important to reduce geological hazards and minimize sediment deposition in nearby steam course. The proposed project will significantly increase the amount of impervious surfaces on the subject site. The impervious surfaces created by the residence will increase both the volume and velocity of storm water runoff from the site. If not controlled and conveyed off-site in a non-erosive manner this runoff will result in increased erosion on and off site. The geotechnical consultant in their December 6, 1995 noted that the site required drainage plans, including walls and impervious areas.

As noted above, the applicant has provided a grading and drainage plan which is adequate to ensure that runoff will be conveyed off-site in a non-erosive manner and minimize erosion on and off site. Further, as noted, a condition is necessary to require the applicant to submit landscape plans for areas disturbed by grading operations and development activities, to provide erosion control, as well as screen and soften the visual impact of the proposed development. Consequently, the grading and drainage plan controls sedimentation and hydrological impacts, to protect against disruption of habitat values and protect biological productivity, and ensure geologic stability and minimize risk.

The applicant has submitted a report -- Mountain Geology, Inc.: Engineering Geologic Investigation Report, December 6, 1997 -- which notes that:

Based upon our investigation, the proposed development is free from geologic hazards such as landslides, slippage, active faults, and undue differential settlement provided the recommendations of the Engineering Geologist and Geotechnical Engineer are complied with during construction. ... The proposed development and installation of the private sewerage disposal system will have no adverse effect upon the site or adjacent properties.

Based on the findings and recommendations of the consulting geologist, the Commission finds that the development is consistent with PRC Section 30253 so long as all recommendations regarding the proposed development are incorporated into project plans as noted in condition two (2).

The Commission notes, however, that the December 6, 1995 report described a large, active landslide present off-site and downslope of the property and that "...Continued landslide activity should be anticipated for the off-site landslide." Further, as discussed in the December 18, 1995 report, the site contains "creep-prone bedrock" which requires deep foundations and/or piles. These factors have caused revision to the project plans to show a system of soldier piles, adjacent to the structure, and soldier piles with grade beams underneath the structure, as included in the most recent project plans, received on November 20, 1997.

Due to the the unforeseen possibility of further erosion and slippage, the applicant shall assume these risks as a condition of approval. Because this risk of harm cannot be completely eliminated, the Commission is requiring the applicant to waive any claim of liability on the part of the Commission for damage to life or property which may occur as a result of the permitted development.

The applicant's assumption of risk, when executed and recorded on the property deed, will show that the applicant is aware of and appreciated the nature of the hazards which exist on the site and which may adversely affect the stability of safety of the proposed development. With the assumption of risk and the applicant's understanding of the nature of the hazard as found in condition three (3), the proposed development can be found consistent with PRC Section 30253 provisions to minimize risk to life and property, assure structural integrity, and not contribute to erosion or require construction of protective devices.

Additionally, due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes liability from the associated risks through condition four (4). Through the waiver of liability, the applicant acknowledges and appreciates the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development.

Thus, the Commission finds that only as conditioned to require a landscape and erosion control plan, incorporate all recommendations by the applicant's consulting geologist, and provide for geologic hazard and wild fire waivers of liability, will the proposed project be consistent with Section 30253 of the Coastal Act.

### D. <u>Visual Impacts</u>

Section 30251 of the Coastal Act states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The proposed development is located in the City of Malibu. However, the Commission has used the certified Los Angeles County Land Use Plan as guidance in past Commission decisions. These policies protecting visual resources have been applied by the Commission in the review of development proposals in the Santa Monica Mountains (paraphrased): P 91: minimize impacts and alterations of physical features; P 129: attractive appearance and harmonious relationship with the surrounding environment; P 130: conceal raw-cut slopes, not significantly intrude into the skyline as seen from public viewing places; P 134: conform to the natural topography, as feasible, massive grading and reconfiguration discouraged.

The project site overlooks the coastline to the south and west, while visual impact toward the beach is blocked by an intervening ridge. As noted above, the appearance will result from a 28 ft. high, two story residence visible from surrounding areas.

In addition to Escondido Canyon, the potential impact on other views deserves consideration. The proposed site is located directly on the trail along the right-of-way of De Butts Terrace which was required as a condition for coastal development permit P-81-7713 (Los Angeles County Waterworks District), and is visible from this trail route. The project site is also visible from the Old Coastal Slope Trail located just off-site to the southwest. However, this route is no longer a County-designated trail. The project site is also visible from Pacific Coast Highway, a scenic highway.

The surrounding area is characterized by concentration of development to take advantage of views on or near the ridgeline. This site is located along the minor ridge line to take advantage of views of the surrounding development on views, which is consistent with existing development pattern in this area. The project location and development intensity is similar in character to such development in the surrounding area.

The view impact is further mitigated by the design which shows the residence being built partially into the hillside away from the ridgeline and which shows the residence, patios, terraces, and parking areas being stepped along the site. The size and height of the building at 5900 sq. ft. and 28 ft. high will not significantly result in adverse visual impacts. Further, the applicant has minimized landform alteration by limiting grading to 1,000 cu. yds. In summary, the proposed development site is consistent with development in the surrounding area, is the most suitable location for a residence on this site, and the building design conforms with the natural landform.

Although the site will be visible from Pacific Coast Highway, the view impact is minor and intermittent because of topography and vegetation. In similar locations, such as recently in the case of permit 4-97-010 (Wiffen), the Commission has not required conditions relative to visual impact. Consequently, there is no requirement for a limit on the future color of the residence to avoid adverse impacts on surrounding views or a deed restriction on future development.

In addition, the use of native plant material in suitable landscaping plans as required by condition one (1) can screen or soften the visual impact of the development and ensure that the natural appearance of the site remains after development.

In summary, the proposed development site is consistent with the surrounding area and has minimized the visual impact of the proposed development. Consequently, the project may be found consistent with PRC Section 30251.

# E. <u>Septic System</u>

The Commission recognizes that the potential build-out of lots in the Santa Monica Mountains, and the resultant installation of septic systems, may contribute to adverse health effects and geologic hazards. The Coastal Act includes policies to provide for adequate infrastructure including waste disposal systems. Section 30231 of the Coastal Act states that:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations

> of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30250(a) of the Coastal Act states in part that:

New residential, ... development, ... shall be located within, ... existing developed areas able to accommodate it ... and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

The proposed development includes constructing a new septic system. The proposal was subject to a percolation test and has been approved in concept by the City of Malibu Environmental Health Department. This approval indicates that the sewage disposal system for the project in this application complies with all minimum requirements of the City of Malibu Plumbing Code. The Commission has found in past permit actions that such compliance with the City of Malibu health and safety codes and will minimize any potential for waste water discharge that could adversely impact coastal waters and streams. Therefore, the Commission finds that the proposed septic system is consistent with Sections 30231 and 30250 of the Coastal Act.

### F. Local Coastal Program

Section 30604 of the Coastal Act states that:

(a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with Chapter 3 (commencing with Section 30200) and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200).

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City of Malibu's ability to prepare a Local Coastal Program for this area of the Santa Monica Mountains that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

# G. California Environmental Quality Act

The Coastal Commission's permit process has been designated as the functional equivalent of CEQA. Section 13096(a) of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of CEQA. Section 21080.5 (d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impacts that the activity may have on the environment.

As discussed above, the proposed project has been mitigated to require further Commission review for future improvements, restrict color, and incorporate landscape and erosion control plans, drainage plans, plans conforming to the consulting geologist's recommendations, and a wild fire waiver of liability. The proposed development, as conditioned, will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is consistent with the requirements of CEQA and the policies of the Coastal Act.

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