

## CALIFORNIA COASTAL COMMISSION

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 the report addendum.



# Items Th 11.1, 11.2, & 11.3

**Staff:** Elijah Davidian-SF  
**Staff Report:** January 27, 2011  
**Hearing Date:** February 10, 2011

## STAFF REPORT AND FINDINGS FOR CONSENT CEASE AND DESIST AND CONSENT RESTORATION ORDERS

### 11.1. CEASE AND DESIST ORDER

**TO NATALIE SOLOWAY:** CCC-11-CD-01

### 11.2. RESTORATION ORDER

**TO NATALIE SOLOWAY:** CCC-11-RO-01

### 11.3. CEASE AND DESIST ORDER

**TO GARETH DAVIES:** CCC-11-CD-02

**RELATED VIOLATION FILE:** V-04-09-024

**PROPERTY LOCATION:** 3525 Encinal Canyon Road, Malibu, unincorporated Los Angeles County (APN: 4472-028-028)

**PROPERTY DESCRIPTION:** An approximately 3.38 acre property, adjacent to Encinal Canyon Creek, located in the Santa Monica Mountains region of unincorporated Los Angeles County

**PROPERTY OWNER:** Natalie Soloway

**VIOLATION DESCRIPTION:** Channelization of a blue-line stream (Encinal Canyon Creek); construction of stone and concrete block walls within and adjacent to the stream channel; grading and placement of fill within and adjacent to the stream channel; installation of a dam and sluice gate in the stream channel; construction of a barn and subsequent conversion to a guest house; construction of a patio, septic tank, storage shed, and parking area in very close proximity to the stream channel; and removal of major vegetation in an environmentally sensitive habitat area.

**PERSONS SUBJECT TO THESE ORDERS:**

1. Natalie Soloway as to CCC-11-CD-01 & CCC-11-RO-01
2. Gareth Davies as to CCC-11-CD-02

**SUBSTANTIVE FILE  
DOCUMENTS:**

1. Public documents in violation file V-4-09-024
2. Appendices A and B
3. Exhibits 1 through 11 of this staff report
4. Staff Report for CDP Application Nos. 4-04-074 and 4-04-076

**CEQA STATUS:**

Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308 and 15321)

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## **I SUMMARY OF STAFF RECOMMENDATION**

### **A) Overview**

Staff recommends that the Commission approve Consent Cease and Desist Orders No. CCC-11-CD-01 and CCC-11-CD-02, and Consent Restoration Order No. CCC-11-RO-01 (collectively, the “Consent Orders”) to address development undertaken in violation of the Coastal Act on property located at 3525 Encinal Canyon Road, Malibu, Los Angeles County, and identified by the Los Angeles County Assessor’s office as Assessor Parcel Number (APN) 4472-028-028 (“subject property”). The location of the subject property is depicted on the map in Exhibit 1. The proposed Consent Orders are included as Appendices A and B of this staff report.

The persons subject to the proposed Consent Orders include the present owner of the subject property, Natalie Soloway (CCC-11-CD-01 and CCC-11-RO-01), and her predecessor in interest, Gareth Davies (CCC-11-CD-02), both of whom have admitted to undertaking development on the subject property in violation of the Coastal Act. The development at issue in this matter (hereinafter referred to as the “Unpermitted Development”) includes, but may not be limited to the following: channelization of a blue-line stream (Encinal Canyon Creek); construction of stone and concrete block walls within and adjacent to the stream channel; grading and placement of fill within and adjacent to the stream channel; installation of a dam and sluice gate in the stream channel; construction of a barn and subsequent conversion to a guest house; construction of a patio, septic tank, storage shed, and parking area in very close proximity to the stream channel; and removal of major vegetation in an environmentally sensitive habitat area.

Commission staff has worked closely with Ms. Soloway and Mr. Davies (hereinafter collectively referred to as “Respondents”) to reach agreements on the proposed Consent Orders and appreciates their cooperation. Through the proposed Consent Orders, Respondents have agreed to resolve all Coastal Act violation matters addressed herein, including resolving both claims for injunctive relief, through restoration and mitigation, and claims for civil liability.

### **B) Description of Property**

The subject property is located in the Santa Monica Mountains area of unincorporated Los Angeles County. The landscape in the vicinity of the site is characterized by large tracts of mostly undeveloped, densely vegetated and rugged terrain, including dramatically steep ridges

and deep canyons, many of which contain ephemeral creeks. The subject property is situated between two such ridges within the Encinal Canyon watershed. The east fork of Encinal Canyon Creek, a U.S. Geological Survey (USGS) blue-line stream, traverses the subject property in a southerly direction, dividing it into eastern and western portions. The western portion is densely vegetated, mostly undeveloped, and rises steeply out of the creek to the west. The eastern portion is mostly developed, more sparsely vegetated (i.e., covered mostly by lawn), with the exception of the area in the immediate vicinity of the residence and Creek, and slopes gently upwards from the creek to the east (see Exhibit 2).

The vegetative communities within and surrounding the subject property are part of the Mediterranean shrub ecosystem that is characteristic of the Santa Monica Mountains. This ecosystem type is found in only five distinct coastal regions around the world (the west coasts of California, Chile, South Africa, the Mediterranean, and south and southwest Australia), and encompasses a mere two percent of the earth's total land area.<sup>1</sup> Moreover, in the Santa Monica Mountains, less than 1% of the land area consists of riparian plant communities and associated wetlands; however, approximately 20% of the native vascular plant species have their primary habitat there<sup>2</sup>. In the context of the City of Malibu's Local Coastal Program (LCP), as well as numerous permit and enforcement actions, the Commission found that the Mediterranean shrub ecosystem in the Santa Mountains is rare and especially valuable because of its relatively pristine character, physical complexity, and biological diversity; and that areas of undeveloped native habitat may meet the definition of environmentally sensitive habitat (ESHA) by virtue of their important roles in that ecosystem.

The subject property hosts coastal sage scrub, oak and sycamore woodlands, and associated riparian plant communities. The Commission has consistently found these plant communities and riparian areas within the Santa Monica Mountains to be ESHA. In fact, the Commission has previously identified as ESHA the east fork of Encinal Canyon Creek, along with the coastal sage scrub, and oak and sycamore woodlands, on property immediately adjacent to the property at issue in this matter (see Coastal Development Permit Application Nos. 4-04-074 and 4-04-076). Finally, Los Angeles County's Land Use Plan (LUP) for the Malibu/Santa Monica Mountains region, which is treated as guidance by the Commission since there is not yet a certified LCP for this area, identifies Encinal Canyon Creek as ESHA.

### **C) Summary of Violation and Proposed Resolution**

Much of the development at issue was undertaken by Gareth Davies in the mid-1980s, during the time he owned the subject property. However, Ms. Soloway, the current owner of the subject property, not only maintained the work performed by Mr. Davies, despite learning of the unpermitted nature of some of the development at the time she purchased the property in 1988, but also undertook additional unpermitted development in subsequent years. Commission staff

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<sup>1</sup> National Parks Conservation Association. 2008. State of the Parks: Southern California's Mediterranean Biome Parks. Accessible Online: [www.npca.org/stateoftheparks/mediterranean\\_biome/biome-intro.pdf](http://www.npca.org/stateoftheparks/mediterranean_biome/biome-intro.pdf)

<sup>2</sup> Nilsson, C. and M. Svedmark. 2002. Basic Principles and Ecological Consequences of Changing Water Regimes: Riparian Plant Communities. *Environmental Management* 30: 468-480.

first learned of the Unpermitted Development in mid-2009. All of the Unpermitted Development at issue herein remains on the property at present. Photographs of some of the Unpermitted Development are included as Exhibit 3.

Ms. Soloway and Mr. Davies have been cooperative and proactive in their efforts to comply with the Coastal Act since Commission staff formally notified them, on October 20, 2010 and December 17, 2010, respectively, that the development at issue was undertaken without permits, in violation of the Coastal Act. In addition, Ms. Soloway did not object to the Executive Director's recordation of a Notice of Violation (NOVA) against the title to the subject property. Respondents' cooperation has made possible the expeditious resolution of this matter through the proposed Consent Orders, which Ms. Soloway signed on January 5, 2011 and Mr. Davies signed on January 20, 2011.

By signing the proposed Consent Cease and Desist Order No. CCC-11-CD-01 and Consent Restoration Order No. CCC-11-RO-01, Ms. Soloway has agreed to, among other things: (1) cease and desist from maintaining any development on the subject property not authorized pursuant to the Coastal Act; (2) cease and desist from engaging in any further development on the subject property unless authorized pursuant to the Coastal Act; (3) remove all development that required a permit from the Commission, but for which no permit was obtained; (4) restore and revegetate the impacted areas of the subject properties, pursuant to a restoration plan approved by the Executive Director; (5) as additional mitigation and in order to facilitate dominance of native vegetation in the area, remove from the property up to 13 mature eucalyptus trees, with the actual removal being limited to those that do not provide nesting habitat for native raptors, and revegetate the removal area with native plants; (6) take all steps necessary to ensure compliance with the Coastal Act; and (7) pay a penalty of \$20,000 into the Coastal Conservancy's Violation Remediation Account to resolve civil liability under the Coastal Act.

Similarly, by signing the proposed Consent Cease and Desist Order No. CCC-11-CD-02, Mr. Davies has agreed (1) to cease and desist from maintaining or undertaking any unpermitted development on property located within the Coastal Zone; (2) to refrain from interfering with implementation of Commission Cease and Desist Order No. CCC-11-CD-01 and Commission Restoration Order No. CCC-11-RO-01; and (3) to pay a penalty of \$60,000 into the Coastal Conservancy's Violation Remediation Account to resolve his civil liability under the Coastal Act.

**D) Commission's Authority**

The Commission can issue a Cease and Desist Order under Section 30810 of the Coastal Act in cases where it finds that the activity that is the subject of the order has occurred either without a required CDP or in violation of a previously granted CDP. The Commission can issue a Restoration Order under section 30811 of the Coastal Act if it finds that development: (1) has occurred without a coastal development permit; (2) is inconsistent with the Coastal Act; and (3) is causing continuing resource damage. These criteria have all been met in this case, as summarized briefly here, and discussed in more detail on pages 10-19, below.

The unpermitted activity that has occurred on the subject property clearly meets the definition of “development” set forth in Section 30106 of the Coastal Act. Development is defined broadly under the Coastal Act, and includes, among many other actions, the “placement of any solid material or structure;... change in the density or intensity of use of land;... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition or alteration of the size of any structure...; and the removal or harvesting of major vegetation other than for agricultural purposes...” All non-exempt development in the Coastal Zone requires a CDP. No exemption from the permit requirement applies here. The development was undertaken without a CDP, in violation of Coastal Act Section 30600. Furthermore, the unpermitted development is: (1) inconsistent with the policies in Chapter 3 of the Coastal Act, including: Section 30231 (protection of biological productivity and water quality); Section 30236 (limiting alterations of rivers and streams); Section 30240 (protection of environmentally sensitive habitat); and Section 30253 (minimization of hazards), which require protection of coastal resources within the Coastal Zone; and (2) causing continuing resource damage, as discussed more fully below.

The Unpermitted Development within and adjacent to the east fork of Encinal Canyon Creek has substantially altered and significantly impacted the resources associated with one of the most diverse and species rich ecosystems in the Santa Monica Mountains<sup>3</sup>. Such impacts meet the definition of damage provided in Section 13190(b) of Title 14 of the California Code of Regulations (14 CCR), which defines “damage” as, “any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.” Development within and adjacent to the Encinal Canyon Creek riparian corridor has fundamentally altered the stream’s morphology, destroyed in-stream and adjacent upland vegetation, induced in-stream and upland habitat fragmentation, provided conditions favorable for the establishment of non-native and invasive species, and generally disturbed and/or displaced all flora and fauna dependent upon that portion of the riparian corridor. If the Unpermitted Development is allowed to persist, and in the absence of restoration and mitigation, additional impacts are expected to result (including the temporal continuation of the existing impacts) to the resources protected under Chapter 3 of the Coastal Act.

The Unpermitted Development and the impacts therefrom remain on the subject property. The continued presence of the Unpermitted Development on the subject property, as described below, will exacerbate adverse impacts to resources protected under the Coastal Act. Thus, without remediation, the violation is causing continuing resource damage, as defined in 14 CCR Section 13190. Therefore, the Commission has the authority to issue both a Cease and Desist and a Restoration Order in this matter.

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<sup>3</sup> Dixon, J. (CCC). March 25, 2003. Memo to Ventura Staff, re: Designation of ESHA in the Santa Monica Mountains. Pp. 6-7. Accessible Online: <http://www.coastal.ca.gov/ventura/smm-esh-memo.pdf>

## **II HEARING PROCEDURES**

The procedures for a hearing on a Cease and Desist Order and Restoration Order are outlined in Title 14, Division 5.5, Section 13185 of the California Code of Regulations.

For a Cease and Desist Order and Restoration Order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff then presents the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons, after which time staff typically responds to the testimony, to any new evidence introduced, and to any questions posed by Commissioners.

The Commission should receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Section 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order and Restoration Orders, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of the motions below, per staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order and Restoration Order.

## **III STAFF RECOMMENDATIONS**

Staff recommends that the Commission adopt the following two motions:

### **A) Motion No. 1:**

*I move that the Commission issue Consent Cease and Desist Order No. CCC-11-CD-01 pursuant to the staff recommendation.*

### **Staff Recommendation of Approval:**

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Consent Cease and Desist Order for real property at 3525 Encinal Canyon Road, in Los Angeles County. The motion passes only by an affirmative vote of a majority of Commissioners present.

**Resolution to Issue Consent Cease and Desist Order:**

The Commission hereby issues Consent Cease and Desist Order No. CCC-11-CD-01, as set forth below, and adopts the findings set forth below on grounds that development has occurred at 3525 Encinal Canyon Road, in Los Angeles County, without a coastal development permit, in violation of the Coastal Act, and that the requirements of the Consent Order are necessary to ensure compliance with the Coastal Act.

**B) Motion No. 2:**

*I move that the Commission issue Consent Restoration Order No. CCC-11-RO-01 pursuant to the staff recommendation.*

**Staff Recommendation of Approval:**

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Consent Restoration Order for real property at 3525 Encinal Canyon Road, in Los Angeles County. The motion passes only by an affirmative vote of a majority of Commissioners present.

**Resolution to Issue Restoration Order:**

The Commission hereby issues Consent Restoration Order No. CCC-11-RO-01, for real property at 3525 Encinal Canyon Road, in Los Angeles County, as set forth below, and adopts the findings set forth below on the grounds that: 1) development has been conducted without a coastal development permit; 2) the development is inconsistent with the Coastal Act; and 3) the development is causing continuing resource damage.

**C) Motion No. 3:**

*I move that the Commission issue Consent Cease and Desist Order No. CCC-11-CD-02 pursuant to the staff recommendation.*

**Staff Recommendation of Approval:**

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Consent Cease and Desist Order related to development on real property at 3525 Encinal Canyon Road, in Los Angeles County. The motion passes only by an affirmative vote of a majority of Commissioners present.

**Resolution to Issue Consent Cease and Desist Order:**

The Commission hereby issues Consent Cease and Desist Order No. CCC-11-CD-02, as set forth below, and adopts the findings set forth below on grounds that development has occurred at 3525 Encinal Canyon Road, in Los Angeles County, without a coastal development permit, in

violation of the Coastal Act, and that the requirements of the Consent Orders are necessary to ensure compliance with the Coastal Act.

#### **IV FINDINGS FOR ISSUANCE OF THE PROPOSED CONSENT CEASE AND DESIST AND RESTORATION ORDERS<sup>4</sup>**

##### **A) Description of Property**

The subject property is located off of Encinal Canyon Road, north of the City of Malibu, in the Santa Monica Mountains area of unincorporated Los Angeles County, approximately 1.2 miles north of the Pacific Ocean (Exhibit 1). The property is situated in a small valley between two north-south trending ridgelines. The east fork of Encinal Canyon Creek, a U.S. Geological Survey (USGS) blue-line stream, bisects the property. With the exception of the areas impacted by the Unpermitted Development and associated disturbance areas, the portion of the riparian corridor that traverses the subject property is characterized by mature oak and sycamore woodlands. The mostly-undeveloped steeply sloping hillside to the west of the Creek is characterized by densely vegetated Coast live oak and California sycamore woodlands, which give way to coastal sage scrub plant communities towards the western ridgeline. The more gently sloping area of the property to the east of the Creek hosts the permitted residence, along with many of the concrete block walls, and unpermitted guest house and associated infrastructure. The eastern portion of the property, beyond the riparian corridor, appears to have been disturbed historically, and is now dominated by exotic grasses (Exhibit 2). The property and those in the immediate vicinity comprise a small colony of low-density residential developments, surrounded by vast tracts of undeveloped coast live oak, coastal sage scrub, and mixed chaparral-covered canyons and valleys.

##### **B) Description of Coastal Act Violation**

The violations at issue in this matter include, but may not be limited to, the following: channelization of a blue-line stream (Encinal Canyon Creek); construction of concrete block walls within and adjacent to the stream channel; grading and placement of fill within and adjacent to the stream channel; installation of a dam and sluice gate in the stream channel; construction of a barn and subsequent conversion into a guest house; construction of a patio, septic tank, storage shed, and parking area in very close proximity to the stream channel; and removal of major vegetation in an environmentally sensitive habitat area (ESHA). Photographs of some of the Unpermitted Development are included in Exhibit 3.

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<sup>4</sup> These findings also hereby incorporate by reference Section I of the January 27, 2011 staff report (“Staff Report and Findings for Consent Cease and Desist and Consent Restoration Orders”) in which these findings appear, which section is entitled “Summary of Staff Recommendation.”

**C) History of Development and Commission Action on Subject Property**

On December 21, 1978, the South Coast Regional Commission issued to Charles Randolph Nauert coastal development permit (CDP) A-78-4473 to replace an approximately 2,300 square-foot single-family residence and detached two-car carport, both of which were destroyed in the October 1978 Malibu fire. The 1978 CDP was the first and only CDP issued for development on the subject property. By 1980, Mr. Nauert had completed reconstruction of the residence and carport. He sold the property four years later.

In 1984, Mr. Gareth Davies purchased the property from Mr. Nauert. During the four years that the subject property was in Mr. Davies' possession, he undertook a substantial amount of Unpermitted Development on the subject property. For example, between 1984 and 1988, Mr. Davies reportedly contracted with his neighbor, Robert Witham, a mason and general contractor, to construct several hundred linear feet of concrete block retaining walls throughout the subject property, including within (e.g., dam and channel walls) and adjacent to Encinal Canyon Creek. During this time, Mr. Davies also constructed a barn on a concrete slab foundation with stone pillars supporting a Spanish tile roof (see Exhibit 4). The barn was erected adjacent to the Creek, approximately 55 feet to the north of the permitted residence, in the present location of the unpermitted guesthouse.

Ms. Soloway purchased the property from Mr. Davies in 1988. The unpermitted nature of the barn was disclosed in the real estate transfer disclosure statement for the sale (see Exhibit 5) governing Ms. Soloway's purchase of the subject property. The document makes no mention of the permissibility of the concrete block walls within and adjacent to the Creek. Shortly after purchasing the property, Ms. Soloway undertook several additions to the barn, with the intent of converting it into a guest house. Development associated with the barn conversion work included: the addition of windows, doors, and various interior and exterior improvements; expansion of the barn's footprint to add a guest house bathroom; expansion and reinforcement of a patio area extending into the Creek channel; installation of a septic holding tank that drains into the septic system for the existing approved residence; and vegetation clearance and grading for the extension and expansion of the driveway servicing the permitted residence, providing access to the guest house and parking for two cars side by side (approximately 40ft. x 40ft.). Ms. Soloway also placed a storage shed along the eastern exterior wall of the guest house (opposite the Creek). In addition, Ms. Soloway obtained income by renting out the illegal guest house between 1989 and 1998. Lastly, Ms. Soloway continued to maintain the other Unpermitted Development undertaken by Mr. Davies

In July of 2009, district enforcement staff was contacted by Los Angeles County Department of Regional Planning (DRP) staff who reported the presence of unpermitted development on the subject property, including, but not limited to, a guesthouse, masonry walls, and significant streambed alteration. During a site visit in November of 2009, district enforcement staff confirmed the presence of the development cited herein. Due to the extensive nature of the development at issue, it was determined that formal enforcement proceedings would be required for restoration of the site and resolution of the violation. Therefore, to expedite resolution, the case was elevated to the statewide enforcement unit for formal action in July of 2010.

During the months that followed, statewide enforcement staff contacted Ms. Soloway and Mr. Davies separately, via telephone, to discuss the Unpermitted Development at issue. During those conversations, staff explained that: (1) it had confirmed the presence of the walls, guest house (former barn) and associated infrastructure, and other work at issue herein on the subject property; (2) the actions constituted “development” as that term is defined under Section 30106 of the Coastal Act; (3) the development required a coastal development permit (and no exemption to such permit requirement applied to this development); (4) it was conducted in the absence of any coastal development permit; (5) the unpermitted activities constituted violations of the Coastal Act; and (6) the development impacted sensitive riparian and upland habitats, including oak and sycamore woodlands. After discussing the various avenues for resolving the violations, and the possibility of a Notice of Violation (NOVA) being recorded against the property’s title<sup>5</sup>, Respondents indicated that they were committed to working with staff to resolve these violations in a timely and cooperative manner.

On October 25, 2010 and December 17, 2010 the Executive Director mailed to Ms. Soloway and Mr. Davies, respectively, letters providing notice of his intent to commence cease and desist and restoration order proceedings and offering to work on a consensual resolution of this matter (Exhibit 6). The letter to Ms. Soloway also stated the Executive Director’s intent to record a NOVA against the title to the subject property. The letter explained that the purpose of the NOVA is to notify potential purchasers of the presence of violations on the property, and that it would be rescinded as soon as the violations were fully resolved. The letters to both parties were accompanied by Statement of Defense (SOD) forms and provided, in accordance with 14 CCR Sections 13181(a) and 13191(a) and Coastal Act Section 30812, deadlines for submittal of completed SOD forms and/or for an objection to the recordation of a NOVA. Neither party submitted a completed SOD form, or a written objection to the NOVA recordation<sup>6</sup>. Instead, Respondents cooperated in providing staff with the information necessary to expedite resolution of this matter, including access to the subject property. Staff has since worked with each party individually to craft the terms of the proposed Consent Orders. Ms. Soloway and Mr. Davies signed the proposed Consent Orders on January 5 and January 20, 2011, respectively.

#### **D) Basis for Issuance of Orders**

##### **1) Cease and Desist Order**

The statutory authority for issuance of the proposed Consent Cease and Desist Orders is provided in Section 30810 of the Coastal Act, which states, in relevant part:

*(a) If the commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that... requires a permit from the commission*

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<sup>5</sup> Commission staff discussed recordation of the NOVA exclusively with Ms. Soloway, as Mr. Davies presently has no ownership interest in the subject property.

<sup>6</sup> Therefore, on November 22, 2010, the Executive Director mailed to the Los Angeles County Recorder’s Office a letter requesting recordation of a NOVA against the subject property.

*without first securing the permit... the commission may issue an order directing that person...to cease and desist...*

...

*(b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...*

## **2) Restoration Order**

The statutory authority for issuance of the proposed Consent Restoration Order is provided in Section 30811 of the Coastal Act, which states, in relevant part:

*In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that [a] the development has occurred without a coastal development permit from the commission... [b] the development is inconsistent with this division, and [c] the development is causing continuing resource damage.*

The following paragraphs set forth the basis for the issuance of the proposed Consent Cease and Desist and Restoration Orders by providing substantial evidence that the development meets all of the required grounds listed in Section 30810 and 30811 for the Commission to issue a Cease and Desist Order and Restoration Order.

### **(a) Development has occurred without a Coastal Development Permit**

Development, including, but not limited to: channelization of a blue-line stream (Encinal Canyon Creek); construction of concrete block walls within and adjacent to the stream channel; grading and placement of fill within and adjacent to the stream channel; installation of a dam and sluice gate in the stream channel; construction of a barn and subsequent conversion into a guest house; construction of a patio, septic tank, storage shed, and parking area in very close proximity to the stream channel; and removal of major vegetation in an environmentally sensitive habitat area (ESHA), has occurred on the subject property. These activities all meet the definition of “development” as set forth in Section 30106 of the Coastal Act, and therefore required a coastal development permit. Respondents have admitted to collectively undertaking the Unpermitted Development at issue herein, and neither of them obtained a CDP prior to undertaking said development. Respondents do not dispute the fact that they collectively undertook the development without the necessary Commission approvals.

Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. “Development” is defined by Section 30106 of the Coastal Act as follows:

*“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land...; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....(emphasis added)*

The activities at issue in this matter, described previously, each meet the definition of development by virtue of being the placement or erection of solid materials and structures, but also because of their existence within and adjacent to the stream channel, and also because they have significantly altered the topography, vegetative composition, and intensity of use of the land and water. For these reasons, Respondents’ actions constitute “development” within the meaning of the above-quoted definition and therefore are subject to the Coastal Act permitting requirements set forth in Coastal Act Section 30600(a).

Commission staff has confirmed that the cited development on the property was conducted collectively by Respondents without a CDP. Thus, the standard for the Commission’s issuance of the proposed Cease and Desist Orders pursuant to Coastal Act Section 30810 and the first element of the standard for the Commission’s issuance of the proposed Restoration Order pursuant to Coastal Act Section 30811 have both been satisfied.

(b) Unpermitted Development is Inconsistent with the Coastal Act

As described below, the Unpermitted Development described herein is not consistent with multiple resource protection policies of the Coastal Act, including Section 30231 (protection of biological productivity and water quality); Section 30236 (limiting alterations of rivers and streams); Section 30240 (protection of environmentally sensitive habitat); and Section 30253 (minimization of hazards).

(i) Protection of Biological Productivity and Water Quality

The Unpermitted Development within and adjacent to Encinal Canyon Creek is inconsistent with Coastal Act Section 30231, which requires that the biological productivity and the quality of coastal waters and streams appropriate to maintain optimum populations of marine organisms and for the protection of human health be maintained and, where feasible, restored through, among other means, maintaining natural buffer areas that protect riparian habitats, preventing substantial interference with surface water flows, and minimizing alteration of natural streams.

Riparian vegetation plays a significant role in the regulation of water quality and maintenance of biological productivity, especially in small streams. Riparian buffer zones in upland areas help to protect water quality by slowing the rate and reducing the volume of surface runoff into the stream channel, thereby providing time for infiltration, deposition of suspended solids, filtration of suspended solids by vegetation, absorption to plant and soil surfaces, and adsorption of

pollutants by plants. Similarly, vegetation within and immediately adjacent to the stream channel helps to regulate nutrient levels through uptake, and minimizes erosion and sedimentation through bank stabilization<sup>7</sup>. Riparian vegetation also influences biological productivity. For example, riparian vegetation provides habitat, shades and moderates temperatures within the stream channel and riparian corridor, and serves as a primary source of energy (i.e., food) for aquatic organisms<sup>8</sup>. Because of its vast influence on the physical, chemical, and biological integrity of streams, the destruction of riparian vegetation can have cascading effects on water quality and biological productivity<sup>9</sup>.

The development at issue failed to prevent interference with surface water flows and minimize alteration of the natural stream. As evidenced by the photograph in Exhibit 7, prior to the construction of the block retaining walls and dam, Encinal Canyon Creek flowed across the subject property in a relatively natural and uninhibited state. However, as shown in Exhibit 8, the block walls and dam have clearly and substantially influenced surface water flows and altered the natural state of Encinal Canyon Creek. Such alterations caused the destruction of riparian vegetation, altered the fluvial processes (i.e., flooding, erosion and deposition); disrupted biotic communities dependent upon the fluvial and terrestrial exchanges; disrupted floral and faunal dispersal and movement patterns, and fragmented in-stream and upland habitats within the riparian corridor, among other detrimental impacts<sup>10</sup>.

The Unpermitted Development was undertaken without regard for the biological productivity and quality of Encinal Canyon Creek. The resulting impacts have disrupted important buffer areas surrounding the Creek and increased the volume, quality, and velocity of stormwater and other runoff into the Creek. For these reasons, the Commission finds that the development at issue is inconsistent with Coastal Act Section 30231.

#### (ii) Water Supply and Flood Control

The Unpermitted Development within Encinal Canyon Creek is also inconsistent with Section 30236, which specifies the types of alterations to streams that are allowable under the Coastal Act. Section 30236 states:

*Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

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<sup>7</sup> Barling, R. O. and I.O. Moore. 1994. Role of Buffer Strips in Management of Waterway Pollution: A Review. *Environmental Management* 18: 543-558

<sup>8</sup> Knight, A.W. and R.L. Bottorf. 1981. Importance of Riparian Vegetation to Stream Ecosystems. In *California Riparian Systems: Ecology, Conservation, and Productive Management*. (1984) Pp. 160-167

<sup>9</sup> California Coastal Commission. 2007. Policies in Local Coastal Programs Regarding Development Setbacks and Mitigation Ratios for Wetlands and Other Environmentally Sensitive Habitat Areas.

<sup>10</sup> Wetzel, R.G. 2001. *Limnology: Lake and River Ecosystems*, 3<sup>rd</sup> Ed. Pp. 832-835.

The block walls and dam within the stream channel appear to have been undertaken for aesthetic purposes only<sup>11</sup>. Respondents have offered no evidence, and staff was able to obtain no evidence, that would suggest that the development was undertaken for purposes of water supply; at the time the dam and block walls were constructed the subject property was equipped with a spring-fed well and a 5,000 gallon water storage tank. In addition, in 2000, a 10-inch water main was installed beneath Encinal Canyon Road, approximately 200 feet from the residence. Similarly, Respondents have offered no evidence, and staff obtained no evidence, that the project was undertaken for flood control purposes. According to the original permittee, Mr. Nauert, the residence was constructed outside of the 100-year flood zone. Moreover, the property is not identified on either County or Federal Emergency Management Agency (FEMA) flood maps as being within a flood hazard area. Finally, the channelization and damming of Encinal Canyon Creek clearly degraded the in-stream habitat, through both hardening of the stream channel and by creating a physical barrier to fish and other wildlife passage. Thus, it is equally unlikely that the development was undertaken for the benefit of fish and wildlife.

Development within the stream channel does not appear to have been undertaken for any of the reasons authorized under Section 30236. Moreover, the Commission has received no evidence of mitigation undertaken in association with the subject development, as is required under the statute for such developments. The Commission concludes, therefore, that the development within the stream channel is inconsistent with Coastal Act Section 30236.

### (iii) Environmentally Sensitive Habitat Areas

The Unpermitted Development is inconsistent with Coastal Act Section 30240, which requires protection of all environmentally sensitive habitat areas within the Coastal Zone and subject to regulation under the Coastal Act. Environmentally sensitive habitat areas are defined in Coastal Act Section 30107.5, as follows:

*"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

The subject property is located in the Santa Monica Mountains, amidst the Mediterranean shrub ecosystem type, which the Commission has consistently found to be rare and valuable because of

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<sup>11</sup> Natalie Soloway's geological consultant speculates that the walls may have been constructed to prevent stream bank erosion, possibly in conjunction with the original construction on this property. Alternatively, he claims they could have been constructed prior to 1952 when a ranch road followed the stream canyon bottom (see Exhibit 11). However, Mr. Nauert, owner of the property between 1974 and 1984, and the person who constructed the original residence on the subject property in 1976, has confirmed that the Creek was neither dammed nor channelized prior to the property's sale to Mr. Davies. In support of this claim, Mr. Nauert provided to staff photographs of the Creek taken around 1980 (Exhibit 7). It is clear from the photograph that no walls or dams were existent at that time. In any event, the Respondents have settled this matter and are not disputing the terms of the settlement.

its relatively pristine character, physical complexity, and resultant biological diversity. For example, in the Santa Monica Mountains, less than 1% of the land area consists of riparian plant communities and associated wetlands; however, approximately 20% of the native vascular plant species have their primary habitat there<sup>12</sup>. Similarly, the Commission has determined that specific plant communities that play an important role in the Mediterranean ecosystem, such as coastal sage scrub, sycamore and oak woodlands, and associated riparian communities – each of which is existent on the subject property – are especially valuable. It is a well documented fact, and one that has been long recognized by the Commission, that the Mediterranean shrub ecosystem in the Santa Monica Mountains – and especially those communities specifically noted herein – is easily disturbed by human activities and development<sup>13</sup>. More specifically, in 2006, the Commission identified as ESHA the east fork of Encinal Canyon Creek, along with coastal sage scrub, oak, and sycamore woodlands, on properties immediately adjacent to the subject property<sup>14</sup>. Finally, the County's LUP for the Malibu/Santa Monica Mountains region, identifies Encinal Canyon Creek as ESHA.

Coastal Act Section 30240 states the following:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

Unpermitted Development within and adjacent to the stream channel, and beneath the drip-lines of mature oak, walnut, and sycamore trees, has significantly disrupted the habitat values of the riparian corridor that traverses the subject property. According to LUP Table 1, a minimum setback of 100 feet from the outer limit of the pre-existing riparian tree canopy is appropriate for any structure related to a permitted use. Undeveloped buffer areas protect sensitive habitats from human disturbance, such as noise and light pollution; predation and harassment by domestic animals; landscaping, polluted runoff, and the introduction of non-native and invasive species; among other impacts. Buffers allow organisms dependent upon such habitats to carry out their life cycles, drawing upon the ecosystem services that an in-tact natural habitat provides, while minimizing disturbance to their normal behavior patterns. Construction of the barn/guest house, patio, and associated infrastructure, in addition to the block walls and dam, beneath the riparian tree canopy and extending into the Creek channel, failed to maintain the natural buffer

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<sup>12</sup> Nilsson, C. and M. Svedmark. 2002. Basic Principles and Ecological Consequences of Changing Water Regimes: Riparian Plant Communities. *Environmental Management*. Vol. 30, No. 4, pp. 468-480.

<sup>13</sup> Dixon, J. (CCC). March 25, 2003. Memo to Ventura Staff, re: Designation of ESHA in the Santa Monica Mountains. Available Online: <http://www.coastal.ca.gov/ventura/smm-asha-memo.pdf>

<sup>14</sup> See Staff Report and Findings for CDP Application No. 4-04-074 and 4-04-076. Accessible Online: <http://documents.coastal.ca.gov/reports/2006/7/W8b-s-7-2006.pdf>

surrounding Encinal Canyon Creek, and, as a result, failed to protect an environmentally sensitive habitat area from disturbance.

Staff has obtained evidence of one mature sycamore tree death, resulting from construction of the guest house within the tree's drip-line, described below, and staff has also received reports of oak trees on the subject property dying as a result of the Unpermitted Development. However, the Commission has identified no evidence, and received no claims, that the development was placed in ESHA for a purpose that was dependent upon that ESHA, or otherwise consistent with the Coastal Act's Chapter 3 resource protection policies. As discussed in Section IV.D.2(b)(ii), above, the Unpermitted Development appears to have been undertaken for aesthetic purposes only, as no link could be established between the development and necessary water supply, flood control, or fish and wildlife habitat restoration projects, or any other purpose dependent upon the resources impacted. The development at issue failed to protect ESHA from disruption of habitat values, and is not a resource-dependent use, and therefore is inconsistent with Section 30240(a). Moreover, the continued presence of the Unpermitted Development is likely causing residual impacts to adjacent habitats, such as channel degradation (through accretion upstream and scour downstream) and the introduction of non-native and invasive species into adjacent in-tact oak and sycamore woodlands, in a manner that is not compatible with the continuance of these communities, in violation of Section 30240(b). Therefore, the Commission finds that the Unpermitted Development is inconsistent with Section 30240 of the Coastal Act.

(iv) Minimization of Hazards

The Unpermitted Development is inconsistent with Section 30253 of the Coastal Act, which requires new development to minimize impacts to the site's geologic stability. Section 30253 states:

*New development shall do all of the following:*

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

*(b) 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. (emphasis added)*

The Unpermitted Development has fixed the width and alignment of Encinal Canyon Creek at the base of a steeply sloping hillside. Construction of the concrete block walls appears to have involved cutting into the streambed, including possibly into the root zones of mature oak, walnut, and sycamore trees. Correspondingly, construction of these walls would have had to involve removal of riparian vegetation whose roots previously provided bank stabilization and support. For example, it is apparent from the photographs in Exhibit 9 that an ornamental rose garden, framed by stone and concrete block walls, was installed in an area previously containing a riparian walnut grove, in close proximity to the Creek. By virtue of cutting into the streambed, removing riparian vegetation, and impacting the root zones of mature trees, the Unpermitted

Development has compromised the stability of the stream bank and is undermining natural vegetative bank and slope stabilization potential by impeding the free growth of the remaining trees along the bank, but also by preventing the establishment of other native plants that would also serve to stabilize the stream bank and adjacent slopes.

Staff has confirmed the death of at least one mature sycamore tree on the subject property, resulting from Unpermitted Development beneath its drip-line and over its root zone, and has received reports of others. The sycamore tree caused significant damage to the unpermitted guest house when it fell in a windstorm (see Exhibit 10). There is clear evidence that the Unpermitted Development contributed to the death of that tree and caused damage to property. The continued presence of the Unpermitted Development beneath the riparian canopy and over the root zones of these trees is expected to further impact the stability of the banks, through similar impacts to those remaining trees that have managed to survive despite the presence of the Unpermitted Development.

Ms. Soloway's geological consultant, Donald B. Kowalewski, opined in a letter to Ms. Soloway, dated November 15, 2010, that removal of the walls would cause excessive erosion, failure of the adjacent slopes, and result in the loss of oak and sycamore trees located in close proximity to the stream course (see Exhibit 11). Mr. Kowalewski provides no calculations or other evidence to support his conclusion. Nonetheless, if Mr. Kowalewski's assertions were accurate, which Commission staff cannot evaluate absent supporting information, the purported risk of damage that he describes would be the result of the Unpermitted Development and would eventually occur with or without active removal; as the walls reach their design life, they will ultimately cease to serve any meaningful structural function, if they presently do at all. The proposed Consent Orders, to which Respondents have agreed, envision a proactive and thoughtful plan for removal of the Unpermitted Development, including mitigation for incidental impacts to coastal resources and restoration of all areas affected by the Unpermitted Development. Moreover, nothing in the proposed Consent Orders limits the ability of the present or future owners of the subject property to obtain a coastal development permit, should some alternative development become necessary to protect an existing structure.

In sum, the development at issue was undertaken without adequate understanding of and/or regard for the potential geological impacts to the site or the property thereupon. The Unpermitted Development caused the destruction of at least one mature sycamore tree and its continued presence places others in jeopardy of failure; thereby placing the property and coastal resources at risk of additional impacts associated with falling trees, including associated geologic instability and erosion. For these reasons, the Commission finds that the development at issue is inconsistent with Section 30253 of the Coastal Act.

(v) Conclusion

For all the reasons stated above, the Unpermitted Development described herein is not consistent with the resource protection policies of the Coastal Act listed above (Sections 30231, 30236, 30240, and 30253). Therefore, the second element of the standard for the Commission's issuance of the Restoration Order pursuant to Coastal Act Section 30811 has been satisfied.

(c) Unpermitted Development is Causing Continuing Resource Damage

The Unpermitted Development is causing continuing resource damage, as defined in Title 14, California Code of Regulations, Section 13190, which states:

*'Continuing', when used to describe 'resource damage', means such damage which continues to occur as of the date of issuance of the Restoration Order.*

*'Resource' means any resource which is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.*

*'Damage' means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development. (emphasis added)*

The Mediterranean shrub ecosystem, including the riparian oak and sycamore woodlands that occur on the subject property – in addition to the habitats they provide, the soils they stabilize and the coastal waterways that flow through them – are afforded protection under Coastal Act Sections 30231, 30236, 30240 and 30253, and therefore constitute a “resource” as defined in Title 14, California Code of Regulations, Section 13190(a). The Unpermitted Development at issue herein has fundamentally altered the morphology of Encinal Canyon Creek, destroyed in-stream and adjacent upland vegetation, induced in-stream and upland habitat fragmentation, provided conditions favorable for the establishment of non-native and invasive species (e.g., an ornamental rose garden in place of a riparian canopy and understory), increased the volume and velocity of runoff entering into and flowing through the Creek, and generally disturbed and/or displaced the flora and fauna dependent upon that portion of the riparian corridor, thereby causing “damage” to the resource, as defined in Title 14, California Code of Regulations, Section 13190(b).

Without removal of the Unpermitted Development, restoration of the site's natural topography, revegetation, and careful monitoring, impacts, including but not limited to the following, will persist: the temporal loss of riparian ecosystem services (i.e., groundwater recharge, water purification, nutrient cycling, oxygenation, sediment exchange, etc.) resulting from the displacement of biotic communities and hardening of the stream channel; disruption of natural fluvial processes (i.e., flooding, erosion and deposition); loss of biodiversity and continued decline of plant and animal communities dependent upon a natural land-water interface (i.e.,

especially amphibians) fragmentation of in-stream and upland riparian habitats; disruption of floral and faunal dispersal and movement patterns; establishment of non-native and invasive species, which may delay or impede reestablishment of native plants within the impacted areas and degrade adjacent in-tact areas of sensitive riparian habitat; among others<sup>15</sup>. The persistence of these impacts constitutes “continuing” resource damage, as defined in Title 14, California Code of Regulations, Section 13190(c).

For the reasons stated above, the Unpermitted Development is causing continuing resource damage. Thus, the third and final element of the standard for the Commission’s issuance of the Restoration Order pursuant to Coastal Act Section 30811 has been satisfied. Therefore, the Commission has the authority under Coastal Act Section 30811 to issue a Restoration Order in this matter.

**E) Provisions of Consent Cease and Desist Orders Nos. CCC-11-CD-01 and CCC-11-CD-02, and Consent Restoration Order No. CCC-11-RO-01**

All of the activities set forth in the proposed Consent Orders are consistent with and are designed to further Chapter 3 resource protection policies. By signing the proposed Consent Cease and Desist Order No. CCC-11-CD-01 and Consent Restoration Order No. CCC-11-RO-01, Ms. Soloway has agreed to, among other things: (1) cease and desist from maintaining any development on the subject property not authorized pursuant to the Coastal Act; (2) cease and desist from engaging in any further development on the subject property unless authorized pursuant to the Coastal Act; (3) remove all development that required a permit from the Commission, but for which no permit was obtained; (4) restore and revegetate the impacted areas of the subject properties, pursuant to a restoration plan approved by the Executive Director; (5) as additional mitigation and in order to facilitate dominance of native vegetation in the area, remove from the property up to 13 mature eucalyptus trees, with the precise removal requirement being limited to those trees that do not provide nesting habitat for native raptors, and revegetate the removal area with native plants; (6) take all steps necessary to ensure compliance with the Coastal Act; and (7) pay a penalty into the Coastal Conservancy’s Violation Remediation Account to resolve civil liability under the Coastal Act, as discussed more fully in Section IV.F, below.

Similarly, by signing the proposed Consent Cease and Desist Order No. CCC-11-CD-02, Mr. Davies has agreed (1) to cease and desist from maintaining or undertaking any unpermitted development on property located within the Coastal Zone; (2) not to interfere with implementation of Commission Cease and Desist Order No. CCC-11-CD-01 and Commission Restoration Order No. CCC-11-RO-01; and (3) pay a penalty into the Coastal Conservancy’s

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<sup>15</sup> Knight, A. W. and R. L. Bottorf. 1981. Importance of Riparian Vegetation to Stream Ecosystems. In California Riparian Systems: Ecology, Conservation, and Productive Management. (1984) Pp. 160-167  
Nilsson, C. and M. Svedmark. 2002. Basic Principles and Ecological Consequences of Changing Water Regimes: Riparian Plant Communities. *Environmental Management* 30: 468-480.  
Wetzel, R. G. 2001. *Limnology: Lake and River Ecosystems*, 3rd Ed. Pp. 832-835.

Violation Remediation Account to resolve civil liability under the Coastal Act, as discussed more fully in Section IV.F, below.

**F) Consent Agreement: Settlement**

Chapter 9, Article 2, of the Coastal Act provides that violators may be civilly liable for a variety of penalties for violations of the Coastal Act, including daily penalties for knowingly and intentionally undertaking development in violation of the Coastal Act. Respondents have clearly stated their willingness to completely resolve the violations at issue herein, including any civil liability, administratively and amicably, through a settlement process. To that end, Respondents have committed to comply with all terms and conditions of the Consent Orders, and not to contest the issuance or implementation of the Consent Orders. Additionally, in light of the intent of the parties to resolve these matters in a timely fashion and through settlement, Respondents have also agreed to resolve their monetary liability under the Coastal Act (see the attached Consent Orders: Appendix A, Section 12.1 for Ms. Soloway; and Appendix B, Section 9.1 for Mr. Davies).

**G) California Environmental Quality Act (CEQA)**

The Commission finds that the issuance of Consent Cease and Desist Orders Nos. CCC-11-CD-01 and CCC-11-CD-02, and Consent Restoration Order CCC-11-RO-01 to compel compliance with the Coastal Act, to restore resources impacted by the Unpermitted Development activities, and to mitigate the impacts that resulted from the Unpermitted Development are exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, and will not have any significant adverse effects on the environment, within the meaning of CEQA. The Consent Orders are exempt from the requirements for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2), 15060(c)(3), 15061(b)(2), 15037, 15038, and 15321 of the CEQA Guidelines.

**H) Summary of Findings of Fact**

1. Natalie Soloway is and has been the owner of real property located at 3525 Encinal Canyon Road, in unincorporated Los Angeles County (APN 4472-028-028), since July of 1988.
2. Gareth Davies was the owner of real property located at 3525 Encinal Canyon Road, in unincorporated Los Angeles County (APN 4472-028-028), between April 1984 and July 1988.
3. Natalie Soloway and Gareth Davies have undertaken and maintained development, as defined in Coastal Act Section 30106, without a coastal development permit, on the subject property.

4. Natalie Soloway and Gareth Davies undertook and maintained the development at issue in this matter (listed in Section I.A., supra) without obtaining a coastal development permit, in violation of the Coastal Act.
5. Natalie Soloway and Gareth Davies have admitted responsibility for undertaking and maintaining the Unpermitted Development at issue in this matter.
6. The results of that development remain on the subject property.
7. No Coastal Act permit exemption applied to the development at issue in this matter.
8. On July 28, 2009, Commission staff received a report from Los Angeles County Department of Regional Planning (DRP) staff indicating the presence of unpermitted development on the subject property.
9. On November 11, 2009, Commission staff viewed the subject property from an adjacent property and confirmed the presence of the Unpermitted Development cited herein.
10. On October 20, 2010, Commission staff contacted Natalie Soloway via telephone, explained that the activities at issue constitute “development” as that term is defined under Section 30106 of the Coastal Act, were conducted without the benefit of any coastal development permit, and therefore constitute violations of the Coastal Act. At that time, Commission staff informed Natalie Soloway of the possible avenues for resolution and the Executive Director’s intent to record a Notice of Violation against the subject property’s title.
11. On October 25, 2010, the Executive Director issued to Natalie Soloway a letter notifying her of his intent to commence cease and desist and restoration order proceedings and to record a notice of violation, pursuant to Title 14 California Code of Regulations Sections 13181(a) and 13191(a), and Public Resources Code Section 30812, to address the Unpermitted Development at issue herein.
12. Natalie Soloway did not submit to Commission staff a completed Statement of Defense Form or written objection to the Executive Director’s recordation of a notice of violation against the subject property.
13. On November 22, 2010, the Executive Director mailed to the Los Angeles County Recorder’s office a letter requesting the recordation of a Notice of Violation against the subject property.
14. Natalie Soloway has voluntarily executed Consent Cease and Desist and Restoration Orders Nos. CCC-11-CD-01 and CCC-11-RO-01 to address the Unpermitted Development described herein, and its ongoing impacts on the subject property.
15. On December 7, 2010, Commission staff contacted Gareth Davies via telephone regarding the matter and his involvement therein, and explained that the activities at issue constitute

“development” as that term is defined under Section 30106 of the Coastal Act, were conducted without the benefit of any coastal development permit, and therefore constitute violations of the Coastal Act.

16. On December 17, 2010, the Executive Director issued to Gareth Davies a Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings, pursuant to Title 14 California Code of Regulations Sections 13181(a) and 13191(a), to address the Unpermitted Development described herein.
17. Gareth Davies did not submit to Commission staff a completed Statement of Defense Form.
18. Gareth Davies has voluntarily executed a Consent Cease and Desist Order No. CCC-11-CD-02 to address the Unpermitted Development described herein in and its ongoing impacts on the subject property.
19. Encinal Canyon Creek and its associated riparian ecosystem, including the adjacent oak and sycamore woodlands, meet the definition of environmentally sensitive habitat areas, as defined in the Coastal Act.
20. The Unpermitted Development described herein had severe negative impacts on coastal resources protected under Coastal Act Sections 30231, 30236, 30240, 30253, and is inconsistent with those resource protection policies.
21. The impacts to the stream channel and adjacent riparian areas, including, but not limited to: the temporal loss of riparian ecosystem services; disruption of natural fluvial processes; loss of biodiversity and continued decline of plant and animal communities dependent upon a natural land-water interface; fragmentation of in-stream and upland riparian habitats; increased volume and velocity of runoff into the creek; and establishment and spread of non-native and invasive species within the impacted and adjacent areas are ongoing and will continue until restoration and revegetation activities resolve the violation.
22. The Unpermitted Development is causing “continuing resource damage” within the meaning of Coastal Act Section 30811 and Title 14, California Code of Regulations, Section 13190.
23. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order in these circumstances. Coastal Act Section 30811 authorizes the Commission to issue a restoration order in these circumstances.
24. The work to be performed under these Consent Orders, if completed in compliance with the Orders and the plans required therein, will be consistent with Chapter 3 of the Coastal Act.

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## **Appendices and Exhibits**

### **List of Appendices**

#### **Appendix Description**

- A. Proposed Consent Cease and Desist and Restoration Orders Nos. CCC-11-CD-01 & CCC-11-RO-01.
- B. Proposed Consent Cease and Desist Order No. CCC-11-CD-02.

### **List of Exhibits**

#### **Exhibit Description**

- 1. Map showing the location of the subject property.
- 2. Aerial photograph of the subject property.
- 3. Photographs of Unpermitted Development on the subject property, taken by Commission staff.
- 4. Photograph of unpermitted stone barn on the subject property.
- 5. Real Estate Transfer Disclosure Statement from 1988, disclosing the unpermitted nature of the stone barn constructed by Mr. Davies.
- 6. Letters from Commission staff to Natalie Soloway and Gareth Davies, dated October 25, 2010 and December 17, 2010, respectively, Re: Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings.
- 7. Photographs of Encinal Canyon Creek prior to installation of the concrete block walls and dam.
- 8. Photographs of Encinal Canyon Creek after installation of the concrete block walls and dam.
- 9. Photographs of the subject property before and after removal of walnut trees for construction of concrete block walls, and planting of ornamental rose garden and lawn area.
- 10. Photograph of fallen sycamore tree and damage to unpermitted guest house.
- 11. Letter from Donald B. Kowalewsky to Natalie Soloway, dated November 15, 2010, Re: Engineering geologic evaluation of concrete and stone retaining walls along Encinal Creek in the vicinity of 3525 Encinal Canyon Road, Malibu, California.