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U.S. EPA REGION IX
REGIONAL HEARING CLERK

NANCY MARVEL
Regional Counsel
United States Environmental Protection Agency, Region 9

RICH CAMPBELL
Assistant Regional Counsel
United States Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3870

Attorneys for Complainant

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In re the Matter of:

Docket No.: CWA-09-2007-0003

Frank Coluccio Construction Company,
and Castle Family LLC,

CONSENT AGREEMENT AND PROPOSED FINAL ORDER

Respondents.

Proceedings Under Section 309(g) of the Clean Water Act, as amended, 33 U.S.C. § 1319(g).

CONSENT AGREEMENT

1. Frank Coluccio Construction Company and Castle Family LLC (formerly known as the Castle Family Limited Partnership) (“Respondents”) and the Environmental Protection Agency (“Complainant”) seek approval of their agreement to settle this proceeding pursuant to 40 C.F.R. § 22.18(b), and move for issuance of the accompanying Proposed Final Order. Respondents and Complainant (the “Parties”) agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public interest, that it is consistent with the provisions

1 and objectives of the federal Clean Water Act ("CWA") and applicable regulations, and that
2 entry of this Consent Agreement and Proposed Final Order ("CA/FO") is the most appropriate
3 means of resolving such matters.

4 **Respondents' Admissions**

5 2. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
6 Respondents (a) admit that Complainant has jurisdiction over the subject matter of this CA/FO
7 and over Respondents; (b) admit the jurisdictional allegations contained in the attached
8 "Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil
9 Penalty, and Notice of Opportunity to Request a Hearing Thereon" ("Complaint"), Docket No.
10 CWA-09-2007-0003; (c) neither admit nor deny any other allegation, finding of fact, or
11 conclusion of law asserted by Complainant; and (d) waive any right to contest the Complainant's
12 allegations or the right to appeal the Proposed Final Order.

13 **Civil Administrative Penalty**

14 3. Pursuant to CWA § 309(g)(3), 33 U.S.C. § 1319(g)(3), in assessing penalties, EPA must
15 take into account the nature, circumstances, extent and gravity of the violations, and, with respect
16 to the violator, ability to pay, any prior history of CWA violations, the degree of culpability, the
17 economic benefit or savings (if any) resulting from the violations; and such other matters as
18 justice may require.

19 4. On consideration of the factors under CWA § 309(g)(3), 33 U.S.C. § 1319(g)(3), EPA
20 has determined that it is appropriate to assess, and Respondents have agreed to pay to the United
21 States, a civil administrative penalty in the amount of sixty-eight thousand dollars (**\$68,000.00**).

22 5. Payment of penalty must be received on or before thirty (30) calendar days after the
23 effective date of the CA/FO. The date by which payment must be received by the United States
24 shall be the "due date" for the payment.
25

1 6. Respondents shall make payment under this CA/FO in accordance with any of the
2 acceptable methods of payment listed in **Exhibit A**, "EPA Region 9 Collection Information,"
3 which is incorporated by reference as part of this CA/FO. Concurrent with payment of the
4 penalty, Respondents shall provide written notice of payment, referencing the title and docket
5 number of this case and attach a photocopy of the penalty payment, via certified mail to each of
6 the following:

7 Danielle Carr, Regional Hearing Clerk,
8 EPA Region 9
9 75 Hawthorne Street (mail code: ORC-1)
 San Francisco, California, 94105

10 and

11 Jason Brush
12 Wetland Regulatory Office
13 EPA Region 9
 75 Hawthorne Street (mail code: WTR-8)
 San Francisco, California, 94105.

14 7. If the penalty is not paid when due, interest shall accrue on any overdue amount from the
15 first date after the due date through the date of payment, at the interest rate established by the
16 Secretary of the Treasury under 31 U.S.C. § 3717. In addition, a late payment handling charge
17 of fifteen dollars (\$15.00) will be assessed for each thirty-(30) day period (or any portion
18 thereof) following the due date in which the balance remains unpaid. Payment of any interest
19 and late handling charges shall be made in accordance with paragraph 6 above.

20 8. Failure by Respondents to pay the full penalty when due entitles EPA and the United
21 States to bring a civil action to recover the amount assessed. In such an action, the validity,
22 amount, and appropriateness of such penalty shall not be subject to review. In such an action,
23 Respondents shall pay (in addition to any assessed penalty, interest, and monthly handling
24 charges) attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty for
25 each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an

1 amount equal to twenty percent (20%) of the aggregate amount of Respondents' penalties and
2 nonpayment penalties which are unpaid as of the beginning of such quarter. CWA § 309(g)(9);
3 33 U.S.C. § 1319(g)(9).

4 9. Respondents shall not deduct the civil penalty, or any interest, late penalty payment and
5 administrative handling fees, from their federal, state or local income taxes.

6 **Retention of Rights**

7 10. In accordance with 40 C.F.R. § 22.18(c), this CA/FO only resolves Respondents'
8 liability for federal civil penalties for the violations and facts specifically alleged in the attached
9 Complaint. Nothing in this CA/FO is intended to or shall be construed to resolve (i) any civil
10 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
11 ordinance, or permit not specifically alleged in the attached Complaint; or (ii) any criminal
12 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
13 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
14 any violation of this CA/FO or any violation not specifically alleged in the attached Complaint.

15 11. This CA/FO is not a permit or modification of any permit. It shall not affect
16 Respondents' obligations to comply with all applicable federal, state, local laws, ordinances,
17 regulations, permits, and orders, including but not limited to any CWA requirements, permits or
18 orders, including the wetland restoration activities included in the administrative order for
19 compliance issued by EPA to Respondents on April 24, 2006, EPA Docket No. CWA-404-
20 309(a)-06-007.

21 12. This Consent Agreement may be executed and transmitted by facsimile, email or other
22 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all
23 of which shall constitute one instrument. If any portion of this Consent Agreement is determined
24 to be unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining
25 portions shall remain in full force and effect. This is the Parties' complete agreement concerning

1 the subject matter hereof, and no modification of this Consent Agreement shall be valid or
2 binding unless the same be in a signed writing of the Parties.

3 13. This CA/FO shall in no way affect the right of EPA or the United States against
4 any third party (person/entity not a party to this CA/FO) or the right of any third party against
5 Respondents. This CA/FO does not create any right in or grant any cause of action to any third
6 party.

7 **Attorneys' Fees and Costs**

8 14. Unless otherwise specified, the Parties shall each bear their own costs and attorneys fees
9 incurred in this proceeding.

10 **Binding Effect**

11 15. This CA/FO shall be binding upon Respondents, their officers, directors, agents,
12 servants, employees, successors, assigns and subsequent purchasers. Changes in ownership,
13 including but not limited to any transfer of assets of real or personal property, shall not alter
14 Respondents' status or responsibilities under this CA/FO.

15 16. The undersigned representative of each of the Parties certifies that he or she is fully
16 authorized to execute and legally bind that party to this CA/FO.

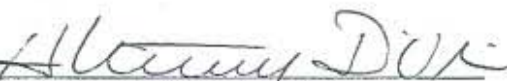
17 **Effective and Termination Dates**

18 17. This CA/FO shall take effect on the date the Final Order is filed with EPA Region 9's
19 Regional Hearing Clerk, and shall terminate when Respondents have complied with this CA/FO
20 in full.

21 **CONSENTING PARTIES:**

22 For Respondent Castle Family LLC, a Hawaii limited liability company

23 By Kaneohe Ranch Management Limited, its Manager

24
25 By 
H. Mitchell D'Olier, President

Date: January 8, 2008

and

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James Steinwascher, Vice-President

Date: January 9, 2008

For Respondent Frank Coluccio Construction Company:

By: _____
Franco Coluccio, Vice-President

Date: January _____, 2008

For Complainant U.S. Environmental Protection Agency, Region 9:

By: _____
Alexis Strauss, Director
Water Division

Date: January _____, 2008

James Steinwascher, Vice-President

Date: January ____, 2008

For Respondent Frank Coluccio Construction Company:

By: Frank Coluccio
Frank Coluccio, Vice-President

Date: January 8, 2008

For Complainant U.S. Environmental Protection Agency, Region 9:

By: _____
Alexis Strauss, Director
Water Division

Date: January ____, 2008

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James Steinwascher, Vice-President

Date: January ____, 2008

For Respondent Frank Coluccio Construction Company:

By: _____
Franco Coluccio, Vice-President

Date: January ____, 2008

For Complainant U.S. Environmental Protection Agency, Region 9:

By: Alexis Strauss
Alexis Strauss, Director
Water Division

Date: January 15, 2008

U.S. DISTRICT COURT
REGIONAL HEARING CLERK

1 **EXHIBIT A**

2 In the Matter of

3 Frank Coluccio Construction Company and the Castle Family LLC

4 EPA Docket No. CWA-09-2007-0003

5 **EPA REGION 9 COLLECTION INFORMATION:**

6 **ELECTRONIC FUNDS TRANSFERS**

7
8 Federal Reserve Bank of New York
9 ABA = 021030004
10 Account = 68010727
11 SWIFT address = FRNYUS33
12 33 Liberty Street
13 New York, NY 10045
14 Field Tag 4200 of the Fedwire message should read:
15 "D 68010727 Environmental Protection Agency "
16

17 **CHECK PAYMENTS**

18 If payment is made by check, the check should be made payable to the
19 "Treasurer, United States of America"

20 U.S. Environmental Protection Agency
21 Fines and Penalties
22 Cincinnati Finance Center
23 P.O. Box 979077
24 St. Louis, MO 63197-9000

25 **OVERNIGHT MAIL:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

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Frank Coluccio Construction Company and the Castle Family LLC

Administrative Complaint,
Findings of Violation,
Notice of Proposed Assessment of a Civil Penalty, and
Notice of Opportunity to Request a Hearing Thereon

EPA Docket No. CWA-09-2007-0003

1 **CERTIFICATE OF SERVICE**

2 In the Matter of

3 Frank Coluccio Construction Company and the Castle Family LLC

4 EPA Docket No. CWA-09-2007-0003

5 I hereby certify that the original of the foregoing Consent Agreement and ~~Proposed~~ Final Order
6 was filed with the Regional Hearing Clerk, Region 9, and that a copy was sent, certified mail,
7 return receipt requested, to:

8
9 Christopher A. Coluccio
10 Law Offices of Christopher A. Coluccio PLLC
11 14900 Interurban Ave. S, Suite 274
Seattle, Washington 98168

12 and

13 Lisa Woods Munger
14 Goodsill Anderson Quinn & Stifel
15 1099 Alakea Street, 18th Floor
Honolulu, Hawaii 96813

16
17
18
19 Jan. 31, 2008
20 Date

21 Danielle E. Carr
22 Name

23 Regional Hearing Clerk
24 Title
25