

Steve Roy

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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
)
 Cy Frick, Dunes Estates, Inc., and)
)
 John R. and Ellen Hunter,)
 Richard E. Kinssies,)
 Patrick and Carmela Koeplin,)
 Martin Levy and Sara Ciuzio,)
 Jerrold and Romina Levy,)
 Brian and Katherine McIntosh,)
 Timothy and Christine McKee Trust,)
 Kent D. and Susan D. Nugen,)
 Glenn A. Jr. and Julie A. Pope,)
 John T.H. Tran and C.J. Wareing Tran,)
)
 Respondents.)

Docket No. CWA-10-2007-0033

CONSENT AGREEMENT
AND FINAL ORDER

I. AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10.

1.2. Respondents are Cy Frick, Dunes Estates, Inc., John R. and Ellen Hunter, Richard E. Kinssies, Patrick and Carmela Koeplin, Martin Levy and Sara Ciuzio, Jerrold

DUNES ESTATES CONSENT
AGREEMENT AND FINAL ORDER

and Romina Levy, Brian and Katherine McIntosh, Timothy and Christine McKee Trust, Kent D. and Susan D. Nugen, Glenn A. Jr. and Julie A. Pope, and John T.H. Tran and C.J. Wareing Tran (jointly referred to as "Respondents").

1.3. Pursuant to Section 309(g)(1) and (g)(2)(A) of the CWA and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Respondents hereby agree to the issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes final.

2.2. A concise statement of the factual basis for alleging violations of the Act, together with specific references to the provisions of the Act and implementing regulations Respondents are alleged to have violated, appears in Part III of this CAFO.

III. EPA'S ALLEGATIONS

3.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants to navigable waters by any person, except as authorized by a permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1342 or 1344. Each discharge of pollutants from a point source that is not authorized by such a permit constitutes a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

3.2. Dunes Estates, Inc. is a corporation incorporated in the State of Washington, and is a "person" within the meaning of Sections 301(a) and 502(5) of the Act, 33 U.S.C. §§ 1311(a) and 1362(5).

3.3. Cy Frick is an officer of Dunes Estates, Inc. and is a "person" within the meaning of Sections 301(a) and 502(5) of the Act, 33 U.S.C. §§ 1311(a) and 1362(5).

3.4. At times relevant to this enforcement action, Dunes Estates, Inc. owned a 27-lot subdivision known as Dunes Estates. Dunes Estates is located north of Ocean

Shores, Washington, in Grays Harbor County, at Section 15, Township 18 North, Range 12 West, Willamette Meridian (“the Site”).

3.5. John R. and Ellen Hunter, Richard E. Kinssies, Patrick and Carmela Koeplin, Martin Levy and Sara Ciuzio, Jerrold and Romina Levy, Brian and Katherine McIntosh, Timothy and Christine McKee Trust, Kent D. and Susan D. Nugen, Glenn A. Jr. and Julie A. Pope, and John T.H. Tran and C.J. Wareing Tran owned property at Dunes Estates at times relevant to this action. Each is a “person” within the meaning of Sections 301(a) and 502(5) of the Act, 33 U.S.C. §§ 1311(a) and 1362(5).

3.6. The property described in paragraph 3.4 above contains wetlands that are adjacent to the Pacific Ocean. The property also contains wetlands that are adjacent to Connor Creek, a tributary to the Pacific Ocean.

3.7. The Pacific Ocean, Connor Creek, and their adjacent wetlands are “navigable waters” and “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), 33 C.F.R. § 328.3(a), and 40 C.F.R. § 232.2.

3.8. From approximately 1998 through at least 2001, Respondents and/or persons acting on their behalf discharged dredged and/or fill material into approximately 4.43 acres of wetlands at Dunes Estates.

3.9. Respondents and/or persons acting on their behalf used heavy equipment to dredge wetlands and place the dredged and/or fill material into wetlands for the placement of septic tanks, construction of septic drain fields, and construction of housing building pads. The heavy equipment used to fill the wetlands is a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

3.10. The fill material that Respondents and/or persons acting on their behalf caused to be discharged includes, among other things, dirt, spoil, rock, and sand, each of

which constitutes a “pollutant” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

3.11. By causing such fill material to enter waters of the United States, Respondents have engaged, and are continuing to engage, in the “discharge of pollutants” from a point source within the meaning of Sections 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

3.12. Respondents’ discharges of fill material described above were not authorized by any permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1312 or 1314, and Respondents are therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

3.13. Each day the material remains in the wetlands without the required permit constitutes an additional day of violation of Section 301 of the Act, 33 U.S.C. § 1311(a).

IV. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

4.1. Respondents admit the jurisdictional allegations contained in Part I of this CAFO.

4.2. Respondents neither admit nor deny the allegations contained in Part III of this CAFO.

4.3. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), the nature, circumstances, extent, and gravity of the alleged violations, Respondents’ economic benefit of noncompliance and ability to pay the proposed penalty, and other relevant factors, EPA has determined and Respondents agree that an appropriate penalty to settle this action is in the amount of EIGHT THOUSAND DOLLARS (\$8,000).

4.4. Respondents consent to the issuance of the Final Order in Part V below and to payment of the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the Final Order.

DUNES ESTATES CONSENT
AGREEMENT AND FINAL ORDER

4.5. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

U.S. Environmental Protection Agency
Region 10
P.O. Box 371099M
Pittsburgh, PA 15251

Respondents shall note on the check(s) the title and docket number of this case.

Respondents may also pay the penalty by wire transfer in accordance with instructions provided by EPA.

4.6. Respondents shall serve photocopies of the check described above on the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

Office of Ecosystems and Communities
U.S. Environmental Protection Agency
1200 Sixth Avenue, Mail Stop ECO-083
Seattle, Washington 98101
Attn: Richard Clark

4.7. Should Respondents fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondents may be subject to a civil action to collect the assessed penalty under the Clean Water Act. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.8. Should Respondents fail to pay the penalty assessed by this CAFO in full by its due date, Respondents shall also be responsible for payment of the following amounts:

1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.

§ 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at the

rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order contained herein.

2. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), should Respondents fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, Respondents shall pay (in addition to any assessed penalty and interest) attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondents' penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.9. Respondents waive their right to an adjudicatory hearing on any issue addressed in this CAFO.

4.10. The provisions of this CAFO shall bind Respondents and their agents, servants, employees, successors, and assigns.

4.11. Each party shall bear its own costs, fees, and disbursements in this action.

4.12. Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasury.


4.13. The parties represent that they are duly authorized to execute this CAFO and that the person signing this CAFO on each of their behalf is duly authorized to bind them to the terms of this CAFO.

4.14. This Agreement may be executed in any number of counterparts, the originals of which together shall constitute one enforceable agreement binding on all of the parties hereto.

STIPULATED AND AGREED:

RESPONDENTS:


Dated: 12/3/06, 2006



Cy Frick

For DUNES ESTATES, INC.

Dated: 12/3/06, 2006



Cy Frick, President

Dated: _____, 2006

John R. Hunter

Dated: _____, 2006

Ellen Hunter

Dated: _____, 2006

Richard E Kinssies

Dated: _____, 2006

Patrick Koeplin

Dated: _____, 2006

Carmela Koeplin

Dated: _____, 2006

Martin Levy

Dated: _____, 2006

Sara Ciuzio

DUNES ESTATES CONSENT
AGREEMENT AND FINAL ORDER

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RESPONDENTS:

Dated: _____, 2006

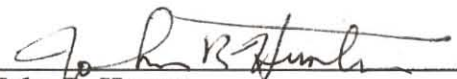
Cy Frick

For DUNES ESTATES, INC.

Dated: _____, 2006

Cy Frick, President

Dated: 12/5, 2006



John R. Hunter

Dated: 12/5, 2006



Ellen Hunter

Dated: _____, 2006

Richard E Kinssies

Dated: _____, 2006

Patrick Koeplin

Dated: _____, 2006

Carmela Koeplin

Dated: _____, 2006

Martin Levy

Dated: _____, 2006

Sara Ciuzio



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Dated: _____, 2006

Cy Frick, President

Dated: _____, 2006

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Dated: _____, 2006

Ellen Hunter

Dated: _____, 2006



Richard E Kinssies

Dated: _____, 2006

Patrick Koeplin

Dated: _____, 2006

Carmela Koeplin

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Martin Levy

Dated: _____, 2006

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Dated: _____, 2006

Cy Frick, President

Dated: _____, 2006

John R. Hunter

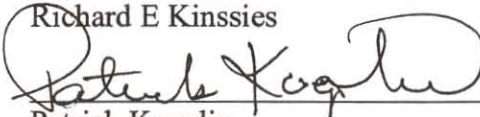
Dated: _____, 2006

Ellen Hunter

Dated: _____, 2006

Richard E Kinssies

Dated: Dec. 1, 2006



Patrick Koeplin

Dated: DEC. 1, 2006



Carmela Koeplin

Dated: _____, 2006

Martin Levy

Dated: _____, 2006

Sara Ciuzio

DUNES ESTATES CONSENT
AGREEMENT AND FINAL ORDER

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Cy Frick

For DUNES ESTATES, INC.

Dated: _____, 2006

Cy Frick, President

Dated: _____, 2006

John R. Hunter

Dated: _____, 2006

Ellen Hunter

Dated: _____, 2006

Richard E Kinssies

Dated: _____, 2006

Patrick Koeplin

Dated: _____, 2006

Carmela Koeplin

Dated: November 29, 2006

Martin B Levy

Martin Levy

Dated: November 29, 2006

Sara Ciuizio

Sara Ciuizio

DUNES ESTATES CONSENT
AGREEMENT AND FINAL ORDER

Dated: 4 DEC, 2006

Jerrold Levy
Jerrold Levy

Dated: 4 DEC, 2006

Romina Levy
Romina Levy

Dated: _____, 2006

Brian McIntosh

Dated: _____, 2006

Katherine McIntosh

Timothy and Christine McKee Trust, a Washington Trust

Dated: _____, 2006

By _____
Its _____

Dated: _____, 2006

Kent D. Nugen

Dated: _____, 2006

Susan D Nugen

Dated: _____, 2006

Glenn A. Pope Jr.

Dated: _____, 2006

Julie A. Pope

Dated: _____, 2006

John T.H. Tran

Dated: _____, 2006

C.J. Wareing Tran

U.S. ENVIRONMENTAL PROTECTION AGENCY

DEBORAH E. HILSMAN
Assistant Regional Counsel

Dated: _____

DUNES ESTATES CONSENT
AGREEMENT AND FINAL ORDER

Dated: _____, 2006

Jerrold Levy

Dated: _____, 2006

Romina Levy

Dated: 12/2, 2006

Brian McIntosh

Brian McIntosh

Dated: 12/2, 2006

Katherine McIntosh

Katherine McIntosh

Timothy and Christine McKee Trust, a Washington Trust

Dated: _____, 2006

By _____
Its _____

Dated: _____, 2006

Kent D. Nugen

Dated: _____, 2006

Susan D Nugen

Dated: _____, 2006

Glenn A. Pope Jr.

Dated: _____, 2006

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Dated: _____, 2006

John T.H. Tran

Dated: _____, 2006

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Assistant Regional Counsel

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Dated: _____, 2006

Romina Levy

Dated: _____, 2006

Brian McIntosh

Dated: _____, 2006

Katherine McIntosh

Timothy and Christine McKee Trust, a Washington Trust

Dated: 9 DEC, 2006

By  
Its TRUSTEE TRUSTEE

Dated: _____, 2006

Kent D. Nugen

Dated: _____, 2006

Susan D. Nugen

Dated: _____, 2006

Glenn A. Pope Jr.

Dated: _____, 2006

Julie A. Pope

Dated: _____, 2006

John T.H. Tran

Dated: _____, 2006

C.J. Wareing Tran

U.S. ENVIRONMENTAL PROTECTION AGENCY

DEBORAH E. HILSMAN
Assistant Regional Counsel

Dated: _____

DUNES ESTATES CONSENT
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Jerrold Levy

Dated: _____, 2006

Romina Levy

Dated: _____, 2006

Brian McIntosh

Dated: _____, 2006

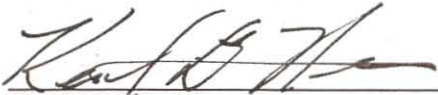
Katherine McIntosh

Timothy and Christine McKee Trust, a Washington Trust

Dated: _____, 2006

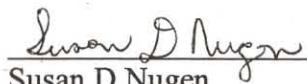
By _____
Its _____

Dated: 12/5, 2006



Kent D. Nugen

Dated: 12/5, 2006



Susan D Nugen

Dated: _____, 2006

Glenn A. Pope Jr.

Dated: _____, 2006

Julie A. Pope

Dated: _____, 2006

John T.H. Tran

Dated: _____, 2006

C.J. Wareing Tran

U.S. ENVIRONMENTAL PROTECTION AGENCY

DEBORAH E. HILSMAN
Assistant Regional Counsel

Dated: _____

DUNES ESTATES CONSENT
AGREEMENT AND FINAL ORDER

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Jerrold Levy

Dated: _____, 2006

Romina Levy

Dated: _____, 2006

Brian McIntosh

Dated: _____, 2006

Katherine McIntosh

Timothy and Christine McKee Trust, a Washington Trust

Dated: _____, 2006

By _____
Its _____

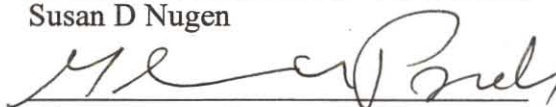
Dated: _____, 2006

Kent D. Nugen

Dated: _____, 2006

Susan D Nugen

Dated: 11/23/06, 2006



Glenn A. Pope Jr.

Dated: 11/23/06, 2006



Julie A. Pope

Dated: _____, 2006

John T.H. Tran

Dated: _____, 2006

C.J. Wareing Tran

U.S. ENVIRONMENTAL PROTECTION AGENCY

DEBORAH E. HILSMAN
Assistant Regional Counsel

Dated: _____

DUNES ESTATES CONSENT
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Jerrold Levy

Dated: _____, 2006

Romina Levy

Dated: _____, 2006

Brian McIntosh

Dated: _____, 2006

Katherine McIntosh

Timothy and Christine McKee Trust, a Washington Trust

Dated: _____, 2006

By _____
Its _____

Dated: _____, 2006

Kent D. Nugen

Dated: _____, 2006

Susan D Nugen

Dated: _____, 2006

Glenn A. Pope Jr.

Dated: _____, 2006

Julie A. Pope

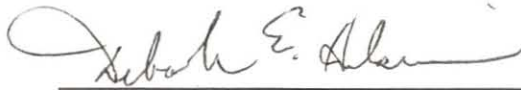
Dated: 11/19/06, 2006

John T.H. Tran

Dated: 11-19-06, 2006

C.J. Wareing Tran

U.S. ENVIRONMENTAL PROTECTION AGENCY



DEBORAH E. HILSMAN
Assistant Regional Counsel

Dated: 12/27/06

DUNES ESTATES CONSENT
AGREEMENT AND FINAL ORDER

V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondents are hereby ordered to comply with the foregoing terms of settlement.

5.2. Respondents are hereby assessed a penalty in the amount of EIGHT THOUSAND DOLLARS (\$8,000).

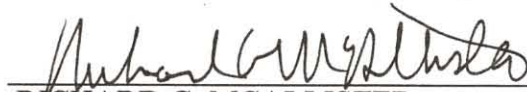
5.3. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 309(g) of the CWA for the violations alleged in Section III above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondents' obligations to comply with all applicable provisions of the CWA and regulations issued thereunder.

5.4. In accordance with Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Washington Department of Ecology has been given an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondents.

5.5. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA has published public notice to inform the public of its intent to assess an administrative penalty against Respondents and to invite public comment in accordance with 40 C.F.R. § 22.45. More than 40 days have elapsed since the issuance of this public notice, and EPA has received no petitions to set aside the Consent Agreement contained herein.

5.6. This Final Order shall become effective upon filing.

SO ORDERED this 3rd day of January, 2007.



RICHARD G. MCALLISTER
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Cy Frick, Dunes Estates, Inc., and et al**, **DOCKET NO.: CWA-10-2007-0033** was filed with the Regional Hearing Clerk on January 03, 2007.

On January 03, 2007 the undersigned certifies that a true and correct copy of the document was delivered to:

Deborah Hilsman, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on January 03, 2007, to:

Brent Carson
Buck & Gordon LLP
2025 First Avenue, Suite 500
Seattle, WA 98121-3140

John R. Hunter
Ellen Hunter
c/o William J. Stewart
Stewart & Stewart Law Office
101 First Street South
Montesano, WA 98563

Richard E. Kinssies
8307 Linden Avenue North
Seattle, WA 98103

Patrick Koeplin
Carmela Koeplin
11714 176th Avenue NE
Woodinville, WA 98072

Martin Levy
Sara Ciuzio
97 S. Jackson #505
Seattle, WA 98104

Jerrold Levy
Romina Levy
631 Esplanade
Pelham Manor, NY 10803

Brian McIntosh
Katherine McIntosh
c/o William J. Stewart
Stewart & Stewart Law Office
101 First Street South
Montesano, WA 98563

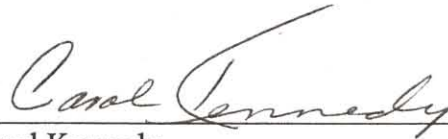
Timothy and Christine McKee Trust
c/o Beth Prieve
Short Cressman & Burgess, PLLC
999 Third Avenue, Suite 3000\
Seattle, WA 98104

Kent D. Nugen
Susan D. Nugen
3205 Woodland Drive S.W.
Tumwater, WA 98512

Glenn A. Pope, Jr.
Julie A. Pope
163 Sand Dune Avenue SW
Ocean Shores, WA 98569

John T.H. Tran
C.J. Wareing Tran
7716-B Seward Park Avenue
Seattle, WA 98118

DATED this 03rd day of January 2007.



Carol Kennedy
Regional Hearings Clerk
EPA Region 10