CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ORDER NO. R9-2011-0056

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER RORIPAUGH VALLEY RESTORATION, LLC

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulation") is entered into by and between the San Diego Regional Water Quality Control Board Prosecution Staff ("Prosecution Staff") and Roripaugh Valley Restoration, LLC ("Settling Respondent") (collectively "Parties") and is presented to the San Diego Regional Water Quality Control Board ("San Diego Water Board" or "Regional Water Board") for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. Ashby USA, LLC previously owned the 662-acre residential development known as the Roripaugh Ranch Residential Development Project (or "Roripaugh Ranch Project"), located near Murietta Hot Springs Road and Butterfield Stage Road in the City of Temecula, Riverside County, California. Judicial foreclosure proceedings were initiated to foreclose on approximately 360.6 acres of the Roripaugh Ranch (the "Property"). Subsequent to that filing, on or about May 13, 2011, AmT CADC Venture LLC accepted a deed in lieu of foreclosure from Ashby USA, LLC. The deed was conveyed to a wholly-owned subsidiary to AmT CADC Venture LLC, the single purpose entity Roripaugh Valley Restoration, LLC.

2. The Settling Respondent is a limited liability company (California Secretary of State entity number 201114010058) whose sole member is AmT CADC Venture, LLC ("AMT CADC"). The members of AmT CADC are PMO Loan Acquisition Venture, LLC and the FDIC.

3. AMT CADC and Settling Respondent Roripaugh Valley Restoration, LLC, were formed as part of the FDIC's receivership of AmTrust Bank (Ashby USA, LLC's lender for the Roripaugh Ranch Project) in an effort to recover AmTrust Bank's assets. In December 2009, the FDIC placed AmTrust Bank into receivership. In August 2010, the FDIC, in its capacity as receiver for AmTrust Bank, assigned the Ashby USA, LLC loan to AMT CADC.

4. Ashby USA, LLC, has conveyed by warranty deed to Roripaugh Valley Restoration, LLC its interests in the Property and associated privileges and entitlements. Roripaugh Valley Restoration, LLC has informed the San Diego Water Board that all bond agreements remain in place and Roripaugh Valley Restoration, LLC has agreed to accept all obligations with respect to waste discharge requirements and other environmental resource agency privileges issued to Ashby USA, LLC by the California Water Boards, U.S. Army Corps of Engineers, and other resource agencies.

5. The Property was subject to the requirements set forth in National Pollutant Discharge Elimination System General Permit No. CAS000002, Waste Discharge Requirements) for Discharges of Storm Water Runoff Associated with Construction Activity, State Water Resources Control Board Order No. 99-08-DWQ ("1999 General Construction Permit"). Previous owner Ashby USA , LLC filed a Notice of Intent for coverage under the General Construction Permit on or about March 20, 2003. The 1999 General Construction Permit was revised and reissued as Order No. 2009-0009-DWQ, effective July 1, 2010 ("2010 General Construction Permit"; collectively "General Construction Permits") (amended by Order No. 2010-0014-DWQ on February 14, 2011). No person or entity re-certified the Roripaugh Ranch Project under the 2010 General Construction Permit.

6. On or about August 20, 2001, Ashby USA, LLC submitted an application to the San Diego Water Board for a Clean Water Act section 401 Water Quality Certification and Waiver of Waste Discharge Requirements for Discharge of Dredged and/or Fill Materials for the Roripaugh Ranch Project. On December 11, 2002, the San Diego Water Board issued 401 Certification No. 01C-091 Order for Technically-Conditioned Certification and Waiver of Waste Discharge Requirements ("401 Certification") for the Project.

7. On December 12, 2007, the San Diego Water Board imposed $434,561 in administrative civil liability against Ashby USA, LLC for violating the 401 Certification in Order No. R9-2007-0221. Since then, Ashby USA, LLC made one payment of $46,411. An unpaid balance of $388,150 remained outstanding.

8. On November 23, 2009, the Superior Court of the State of California issued a judgment for the State Water Resources Control Board to recover the unpaid balance from Ashby USA, LLC (case number 37-2009-00102581-CU-PT-CTL). The judgment serves as a lien on the Property.

9. Since the San Diego Water Board issued Administrative Civil Liability Order No. R9-2007-0021, there have been violations on the Property of the General Construction Permit and the 401 Certification. Such violations are subject to administrative enforcement, including civil liabilities pursuant to California Water Code (CWC) sections 13385 and 13350, by the San Diego Water Board. A list of violations is contained in Attachment A, incorporated herein by reference.

10. To resolve by consent and without further administrative proceedings certain alleged violations of the CWC for violating the General Construction Permit and the 401 Certification, the Parties have agreed to the imposition of $418,150 against the Settling Respondent, which includes $30,000 for staff costs, the Settling Respondent shall, by September 14, 2011 have a compliant storm water pollution prevention plan in place and be diligently taking steps to achieve full compliance with the 2010 General Construction Permit, and the Settling Respondent shall comply with the requirements contained in the existing 401 Certification Order No. 01C-091. The Prosecution Team shall recommend to the San Diego Water Board releasing the lien on the Property, and forgoing additional administrative civil liability orders during the ownership transition period from June 1, 2011 through September 14, 2011.

11. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the San Diego Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Staff avers that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

Section III: Stipulations

The Parties stipulate to the following:

12. **Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the unpaid portion of administrative civil liability in Order No. R9-2007-0221 and staff costs associated with oversight activities between January 2008 and the date the Parties sign this Stipulation, totaling $418,150 as set forth in Section II herein. On June 10, 2011, MDI Asset Management, acting on behalf of the Settling Respondent, submitted a cashier's check in the amount of $388,150 to the San Diego Water Board, payable to the State Water Resources Control Board. This payment shows good-faith in resolving outstanding water code violations concerning the Roripaugh Ranch Project. As such, this amount was intended to pay the unpaid liability from ACL Order No. R9-2007-0221. The amount remaining for the Settling Respondent to pay is the $30,000 representing staff costs. Payment of $30,000 to the State Water Resources Control Board Cleanup and Abatement Account is due no later than 30 days following the San Diego Water Board's execution of this Order.

13. **General Construction Permit:** The Settling Respondent hereby agrees to, by September 14, 2011, have a compliant storm water pollution prevention plan in place and be diligently taking steps to achieve full compliance with the General Construction Permit Order Nos. 2009-0009-DWQ and 2010-0014-DWQ.

14. **401 Certification:** The Settling Respondent hereby agrees to meet the requirements contained within the 401 Certification for the Roripaugh Ranch Project as described in 401 Certification No. 01C-091, including any amendments. The Parties agree to recommend to the Executive Officer that responsibility for implementing the existing 401 Certification be transferred to the Settling Respondent. The Parties also anticipate a proposed new amendment will be submitted by the Settling Respondent for review and consideration.

15. **Release Lien:** Once the amount in Paragraph 12, Section III is paid in full, the San Diego Water Board, within 15 days of the payment, will request that the California Attorney General release the lien on the Property for the unpaid liability associated with administrative civil liability Order No. R9-2007-0221.

16. **Additional Administrative Civil Liability:** Once the amount in Paragraph 12, Section III is paid in full and terms of Paragraphs 13 and 14, Section III have been met, the San Diego Water Board will waive any additional administrative civil liability for violating the 2010 General Construction Permit or 401 Certification Order No. 01C-091 during an ownership transition period from June 1, 2011 to September 14, 2011.

17. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in Attachment A may subject them to further enforcement, including additional administrative civil liability.

18. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

19. **Matters Addressed by Stipulation:** Upon adoption by the San Diego Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action contained in Attachment A which could have been asserted against the Settling Respondent as of December 13, 2007 through the date the Parties sign this Stipulation based on the specific facts alleged in this Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability and staff costs by the deadlines specified in Paragraph 10, Section II, and the Settling Respondent's full satisfaction of the obligations described in Paragraphs 12, 13, and 14, Section III.

20. **Public Notice:** The Settling Respondent understands that the terms of this Stipulation and proposed Order must be noticed for a 30-day public review period prior to consideration by the San Diego Water Board. In the event objections are raised during the public comment period, the San Diego Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding the Stipulation and proposed Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.

21. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

22. **No Waiver of Right to Enforce:** The failure of the Prosecution Staff or San Diego Water Board to enforce any provision of this Stipulation and Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulation and Order. The failure of the Prosecution Staff or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.

23. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Settling Respondent is represented by counsel in this matter.

24. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties and approved the San Diego Water Board.

25. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations as listed in Attachment A, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

    a. Objections related to prejudice or bias of any of the San Diego Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the San Diego Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or

    b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

26. **Waiver of Hearing:** The Settling Respondent has been informed of the rights provided by CWC section 13323, subdivision (b), and hereby waives its right to a hearing before the San Diego Water Board prior to the adoption of the Order.

27. **Waiver of Right to Petition:** The Settling Respondent hereby waives its right to petition the San Diego Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

28. **Settling Respondent's Covenant Not to Sue:** The Settling Respondent covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.

29. **Necessity for Written Approvals:** All approvals and decisions of the San Diego Water Board under the terms of this Order shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions or comments by employees or officials of the San Diego Water Board regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval required by this Order.

30. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

31. **Effective Date:** The obligations under Paragraphs 12, Section III of this Stipulation are effective and binding on the Parties only upon the entry of an Order by the San Diego Water Board that incorporates the terms of this Stipulation.

32. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

33. **Counterpart Signatures:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

It is so stipulated.

California Regional Water Quality Control Board Prosecution Team
San Diego Region

By: _____
JAMES SMITH, Assistant Executive Officer

Date: 30 Aug 2011

Settling Respondent, Roripaugh Valley Restoration, LLC

By: _____

Date: 26 August 2011

Attachment A: Table of Violations

Order of the San Diego Water Board

34. This Order incorporates the foregoing Stipulation.

35. In accepting the foregoing Stipulation, the San Diego Water Board has considered, where applicable, each of the factors prescribed in CWC section 13385(e). The San Diego Water Board's consideration of these factors is based upon information obtained by the San Diego Water Board staff in investigating the allegations in Attachment A or otherwise provided to the San Diego Water Board.

36. This is an action to enforce the laws and regulations administered by the San Diego Water Board. The San Diego Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

The attached Agreement between the Assistant Executive Officer and the Settling Respondent is approved pursuant to Government Code section 11415.60 and is incorporated by reference into this Order.

I, David W. Gibson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on September 14, 2011.

David W. G

DAVID W. GIBSON
Executive Officer

Date: September 19, 2011

Attachment A
Tentative Order No. R9-2011-0056

Violations Occurring at Roripaugh Ranch Residential Construction Site Addressed by Settlement Agreement No. R9-2011-0056

Program	Permit Sections Violated	Days of Violation	Inspection Dates
Construction Storm Water (Order NO. 99-08-DWQ)	A.2 (discharges of sediment to waters or storm drains)	Numerous rain events since December 2007.	
	C.2 (failure to implement Storm Water Pollution Prevention Plan (SWPPP) by failing to implement and or maintain Best Management Practices (BMPs)	Continuous since December 2007.	November 2008 October 20, 2009 December 9, 2010 December 22, 2010 January 10, 2011 January 13, 2011 (City inspection) May 18, 2011
Construction Storm Water (Order No. 2009-0009-DWQ, and as amended by Order No. 2010-0014-DWQ)	II.B.4.b (failure to enroll by July 1, 2010)	July 1, 2010 to August 1, 2011 (WDID 9 33C361575)	
Clean Water Act section 401 Water Quality Certification (No. 01C-091, as amended)	Condition No. 2 of Minor Modification No. 2 (failure to complete mitigation by 10/20/2006)	Continuous since December 2007	November 2008 October 20, 2009 December 9, 2010 December 22, 2010 January 10, 2011 January 13, 2011 (City inspection) May 18, 2011