



ASHBY USA, LLC

Mailing Address: 39252 Winchester Rd. #107-393, Murrieta CA 92563

Site Address: 39600 Pourroy Rd., Temecula CA 92591

Phone: (951) 699-0207 Fax: (951) 699-0209

December 5, 2007

Rebecca Stewart
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123-4353

Re: Administravive Civil Liability Complaint No. R9-2007-0064
File No. CA: 18-2001091.02:Rstewart

Dear Rebecca:

In response to the ACL Complaint No. R9-2007-0064, enclosed for your review is Ashby USA, LLC's Settlement Offer.

It was Ashby USA, LLC's intent to have staff's substantial concurrence of the conditions provided in the Settlement Offer prior to the hearing date. Since there was insufficient time to complete the negotiation, Ashby USA, LLC respectfully requests the opportunity to further discuss the attached Settlement Offer with the Water Board at the December 12, 2007 hearing.

Sincerely,

ASHBY USA, LLC

Peter M. Olah
Project Manager

Enclosure

SETTLEMENT OFFER

Ashby USA, LLC (Ashby) desires to settle the Administrative Civil Liability (ACL) Complaint No. R9-2007-0064 issued by the California Regional Water Quality Control Board (CRWQCB), subject to the following conditions set forth herein.

In consideration of Ashby's promises and agreements contained in this Settlement Offer, for other good and valuable consideration, the sufficiency of which is acknowledged, Ashby USA, LLC agrees to the following:

1. Settlement Conditions:

1.1. Ashby agrees to pay the sum of \$46,411.00 to CRWQCB for its efforts in preparing the ACL and negotiating this settlement.

1.2. Ashby agrees to meet the following conditions as required by the various resources agencies for the mitigation criteria tied to the onsite (Certification O1C-091) and the pending offsite permit identified as WPN:1B2006073:kschwall:

1. Create 6.2 Acres of Wetlands (Waters of U.S.) within the existing project to satisfy the no net loss requirement.
2. Provide 2.1 Acres of creation and/or restoration (Waters of U.S.) to mitigate for project channel maintenance requirements.
3. Fund the purchase of approximately 128 acres of upland and 23 acres of riparian land, totaling approximately 151 acres within the Johnson Ranch Reserve and at a cost of approximately \$1,208,000.00 to compensate for all additional mitigation, temporal losses, and penalties. Ashby shall facilitate a deed restriction or a conservation easement on the subject property. Ashby is currently finalizing its negotiations with the University of California Regents to complete the purchase.

1.3. Ashby agrees to proceed with the mitigation on the following schedule:

1. Within 120 days of the release of the Community Facilities District (CFD) reimbursements (anticipated in June 2008) Ashby shall provide a Habitat Mitigation and Monitoring Plan (HMMP) to the agencies for approval based on the current conceptual plan.
2. Within one year of the approval of the HMMP by the regulatory agencies, Ashby will have closed escrow on the required land necessary for the mitigation solution and completed the mitigation construction.

2. Confirmation of Financial Abilities:

2.1. Ashby has posted a Performance Bond (Bond Number 834487C), issued by Developers Surety and Indemnity Company, in the amount of \$550,000.00, to the U.S. Army Corps of Engineers (USACOE) for permit number 199915459-RRS. This Bond is firmly bound to the USACOE to secure the construction of the required mitigation.

2.2. The Roripaugh Ranch project is being partially funded by the public financing of Communities Facilities District 03-02, which was established by the City of Temecula Public Financing Authority to provide reimbursements of certain priority improvements to be constructed by Ashby. Since the site mitigation is a priority item, the CFD budget allocates reimbursements of \$1,030,706.25 for the installation of the environmental mitigation. Currently, funding of CFD reimbursements will not be available until after June 01, 2008.

2.3. Roripaugh Ranch's current construction lender, AmTrust Bank, has tentatively agreed to fund the project mitigation costs, as necessary, for the project to meet its obligations tied to the resource agency's permitting requirements. However, bank funding will be contingent upon the release of CFD reimbursements and other considerations. Ashby is diligently negotiating with AmTrust Bank to restructure project financing and confirm funding of the improvements necessary to fulfill the conditions set forth in this Settlement Offer.

2.4. Ashby will use its best efforts to provide sufficient evidence from AmTrust Bank and the City of Temecula that funds will be made available for implementation of this Settlement Offer.

3. Impact of the ACL, if imposed

3.1. Resulting from the housing industry down turn, Roripaugh Ranch, as well as the majority of all development projects in California and nationwide, has suffered loss of overall project value. Due to the changes in the market conditions, Ashby is renegotiating its position with the project financing and entitlements which will modify the development's business plan. Ashby's success in negotiating this Settlement Offer and other repositioning on the project will entice AmTrust to fund an additional \$32,000,000 for construction. However, if Ashby is not successful with its negotiating efforts, the alternative is a foreclosure action by AmTrust. Therefore, acceptance of this Settlement Offer, by the CRWQCB, is a necessary component for Ashby's success in facilitating financial restructuring of the development.

3.2. Should the project become insolvent through a foreclosure action, the current bond issued to USACOE will be sufficient to mitigate for the current project impacts as the total impacts to date are less than 1 acre.

This Settlement Offer submitted this 5th day of December 2007.

Ashby USA, LLC,
a California Limited Liability Company

By: 

Justin K. Ashby, President