



State of Utah

SPENCER J. COX
Governor

DEIDRE HENDERSON
Lieutenant Governor

Department of
Environmental Quality

Kimberly D. Shelley
Executive Director

DIVISION OF WATER QUALITY
John K. Mackey, P.E.
Director

October 11, 2023

VIA EMAIL
(Read Receipt Requested)

CERTIFIED MAIL
(Return Receipt Requested) 1) Tracking # 7012 0470 0000 3376 8273

Bird Homes LLC
Attn: Jacob Bird, Assistant
980 East 800 North, #102
Orem, Utah 84097
jake@birdhomes.net

CERTIFIED MAIL
(Return Receipt Requested) 2) Tracking # 7012 0470 0000 3376 8266

Pelican Pink, LLC
Attn: Jacob Bird, Assistant
1187 North 300 West, STE 300
Orem, Utah 84057

Subject: Expedited Settlement Offer (ESO)
Sawmill Condos, UPDES Permit No. UTRC06130
Located in Heber City, Utah

Dear Mr. Bird:

On August 09, 2022 the Utah Division of Water Quality (Division) performed a storm water compliance evaluation inspection at the above referenced site and identified violations of the UPDES General Permit for Storm Water Discharges from Construction Activities (Permit). In accordance with Utah Administrative Code R317-1-8.6, this enforcement case has been determined eligible for an Expedited Settlement Offer (ESO) in lieu of the standard penalty process under R317-1-8.3.

The Division is offering you the opportunity to voluntarily enter into the attached agreement to resolve the violations identified in the attached Expedited Settlement Offer Deficiencies Form. In order to accept this ESO please sign and return the agreement to the Division within **30 days** of the received date.

If you have any questions regarding this ESO or other information contained therein, please contact Eric Castrejon at 385-341-3503 or ecastrejon@utah.gov.

Sincerely,



10/11/2023

Samantha K. Heusser
Manager, Compliance & Enforcement Section
Utah Division of Water Quality

SKH:EC:mh

Enclosures: 1) Expedited Settlement Offer (DWQ-2023-002352)
 2) Expedited Settlement Offer Deficiencies Form (DWQ-2023-002404)
 3) ESO Instruction Sheet (DWQ-2023-002351)

Cc: Via Email
 Kimberly D. Shelley, Executive Director, Department of Environmental Quality
 John K. Mackey, Director, Division of Water Quality
 Leanna Littler-Woolf, Division of Water Quality
 Eric Castrejon, Division of Water Quality
 Jeanne Riley, Division of Water Quality
 David Smith, Division of Water Quality
 Haley Sousa, Assistant Attorney General
 Dwight Hill, Wasatch County Health Department

DWQ-2023-002401
EQ_Docs/DWQ/Compliance and Enforcement/Bird Homes LLC/2023 ESO Sawmill Condos
UTRC06130/2023-02 ESO Issuance Bird Homes LLC UTRC06130



EXPEDITED SETTLEMENT OFFER

This Expedited Settlement Offer (“ESO”), is entered into by and between the Director of the Division of Water Quality (“Director”) and Bird Homes LLC (“Operator”), jointly referred to herein as the “Parties,” pursuant to the Director’s authority under the Utah Water Quality Act, Utah Code §§ 19-5-111, 19-5-115, Utah Administrative Code (UAC) R317-1-8 and R317-8-3.9.

1. Operator is a “person” as that term is defined in Utah Code § 19-1-103(4).
2. Operator is conducting “construction activity” at Sawmill Condos (the “Project”).
3. The Director issued the General Permit for Storm Water Discharges from Construction Activities UTRC00000 authorizing owners/operators of construction activities to discharge in accordance with specific terms, conditions and best management practices as provided for in the Permit and UAC R317-8-11. Operator obtained coverage for the Project under UTRC00000 and was assigned UPDES permit No. UTRC06130, making the Operator responsible for compliance with UTRC00000. (UTRC00000 and the Owner’s/Operator’s specific coverage are referred to collectively herein after as “the Permit”).
4. An ESO may be used in enforcement cases in lieu of the penalty process in when violations are readily identifiable, readily correctable, and do not cause significant harm to human health or the environment. *See* UAC R317-1-8.3 and -8.6.
5. The attached Expedited Settlement Offer Deficiencies Form (“ESODF”), incorporated herein by reference, includes findings which specify the conditions in violation of the Permit observed at the Project during an on-site inspection conducted on 8/9/2022. The ESODF is in lieu of an initial order, notice of violation or notice of agency action to facilitate the purposes described hereinafter.
6. The Parties voluntarily enter into this ESO in order to: identify the actions necessary to correct the deficiencies observed at the Project; determine the amount of the civil penalty appropriate for the violation(s) based on the deficiencies alleged; and to conclude this matter without the necessity of further administrative or judicial proceedings.
7. Operator agrees that a penalty in the amount of \$4,734.00 is appropriate based on the circumstances specified herein. This ESO is subject to a thirty (30) day notice and comment period as provided for in UAC R317-8-1.9. The Parties each reserve the right to withdraw from this ESO if comments received during the notice period result in a modification to the terms and conditions.
8. By accepting this ESO, Operator neither admits nor denies the findings, violations or deficiencies specified herein.
9. Operator agrees to the terms, conditions and requirements of this ESO. By signing this ESO, Operator understands, acknowledges and agrees that it waives: (1) the opportunity for an



EXPEDITED SETTLEMENT OFFER

administrative hearing pursuant to Utah Code § 19-1-301; (2) the right to contest the finding(s) in the ESODF and the penalty amount specified herein; and (3) the opportunity for judicial review.

10. Operator certifies that all deficiencies identified herein have been corrected and that the Project is currently in full compliance with the terms and provisions of the Permit. Additionally, Operator has attached to this ESO: (1) a written description detailing how the deficiencies were corrected; and (2) representative photographs documenting the current conditions and the associated Best Management Practices implemented at the Project.
11. The Parties mutually agree that this ESO is entered in good faith and is an appropriate means to resolve the matters specified herein.
12. This ESO will be final after the thirty (30) day notice and comment period on the date the Director signs the ESO, at which time the civil penalty takes effect.
13. Operator agrees that within thirty (30) calendar days of receiving the signed and final ESO and invoice information from the Division of Water Quality ("Division"), Operator shall submit payment in accordance with the instructions attached to the invoice, in the amount specified in paragraph 7 above.
14. The violations described herein will constitute part of Owner's/Operator's compliance history where such history is relevant, including any subsequent violations. Operator understands and agrees that this ESO is not and cannot be raised as a defense to any other action to enforce any federal, state or local law.
15. This ESO, when final, is binding upon Operator and any corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrants that it is authorized to legally bind their respective principals to this ESO.



UTAH DEPARTMENT of
ENVIRONMENTAL QUALITY
**WATER
QUALITY**

STATE OF UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY

EXPEDITED SETTLEMENT OFFER

ACCEPTED BY OPERATOR:

Name (print) Jacob Bird

Title (print) Office Admin

Signature 

Date 11/9/23

DIVISION OF WATER QUALITY

Date _____
John K. Mackey, P.E.
Director

DWQ-2023-002352



EXPEDITED SETTLEMENT OFFER INSTRUCTION SHEET

The Expedited Settlement Offer ("Offer") is the preferred option to resolve non-compliance. If you choose to sign and return the Offer, you waive your opportunity for a hearing and to appeal pursuant to the Utah Water Quality Act, Title 9, Chapter 5, Section 112. If you choose not to sign and return the Offer within **THIRTY (30) DAYS**, the Offer will be automatically withdrawn, without prejudice to the ability of the Utah Division of Water Quality (Division) to file an enforcement action for the violations alleged herein or any other violations. The Division may choose to pursue more formal enforcement measures to correct the violation(s) and seek penalties of up to a maximum penalty of \$10,000 per day per violation.

To accept and proceed you must:

- (1) **Correct all deficiencies** identified by the Division in the Deficiencies Form (enclosed). **Email photographic proof** and a description of the remedy to demonstrate correction of the deficiencies.
- (2) You will receive two copies of the Offer, one hard copy via certified mail and a second electronic copy via email. **Sign a copy of the Offer sent within thirty (30) days of receipt. DO NOT SUBMIT PAYMENT AT THIS TIME.**
- (3) **Wait for the 30-day public notice** to be completed and for the Director of the Division to sign the Offer.
- (4) **After** the Division has sent you a copy of the Offer signed by the Director with an invoice you will have **thirty (30) days** to submit payment for the penalty to the Division of Water Quality. Payment cannot be accepted before this time and will be returned if sent prior to the invoice being generated.

Please retain copies of the signed Offer, the report detailing your corrective actions and the penalty checks for your own records.

You may contact Eric Castrejon at 385-341-3503 or ecastrejon@utah.gov to request an extension. DWQ will consider whether to grant an extension on a case-by-case basis. If you believe that the alleged violations are without merit (and you can provide evidence contesting the allegations) you must provide such information to DWQ as soon as possible but no later than **THIRTY (30) DAYS** from your receipt of the Offer.

DWQ-2023-002351

Last Revised: 8/16/2022

**Expedited Settlement Offer
Deficiencies Form**
Consult instructions regarding eligibility criteria
and procedures prior to use

Version 2.1 (Rev. 02/2023)



UTAH DEPARTMENT of
ENVIRONMENTAL QUALITY
**WATER
QUALITY**

LEGAL NAME AND MAILING ADDRESS OF OPERATOR Bird Homes LLC Attn: Jacob Bird 980 East 800 North, #102 Orem, Utah 84097	Inspector Name:	Kelsee York
	Inspector Name:	N/A
	Inspection Date:	8/9/2022
	UPDES Program:	Construction Storm Water
	UPDES Permit Number:	UTRC06130
LOCATION AND ADDRESS OF SITE Sawmill Condos 1218 South Sawmill Boulevard Heber City, Utah 84032	Inspection Report Issue Date:	9/12/2022
	Compliance Date:	N/A

FACILITY DESCRIPTION / CONTACT NAMES	
Name & Telephone Number of Site Contact (ESO Worksheet recipient):	Jacob Bird (801) 472-1107
Name of Authorized Official (UT CGP Appendix G.16):	Brian Bird
Start Construction Date:	12/01/2022
Estimated Completion Construction Date:	05/01/2024
Name of Receiving Water Body (Indicate whether 303(d) listed or high quality):	Humbug Canal - 303(d) Listed: E. Coli, pH
Acres Currently Disturbed Acres to be Disturbed in Whole Common Plan:	3.00 4.30
Has Operator Requested a Low Erosivity Waiver?	No

PERMIT COVERAGE	FINDINGS	Citation Reference	DEFICIENT	AMOUNT	TOTAL
1 Project Unpermitted	Operator had not obtained permit coverage.	UAC R317-8-3.1(1)(a)	Yes	\$750.00 =	\$750
2 Lapse in coverage (was permitted, failed to renew)		UT CGP 1.4.2.		\$180.00 =	\$0

SWPPP REVIEW					
3 No SWPPP If No SWPPP, do not also count missing SWPPP contents.	SWPPP was not created for this project.	UT CGP 7.1.	Yes	\$1,200.00 =	\$1,200
4 Erosion & Sediment Control Plan but no SWPPP.		UT CGP 7.3.3.		\$300.00 =	\$0
5 SWPPP prepared after construction start.		UT CGP 7.1., 1.4.		\$180.00 =	\$0
6 SWPPP missing identification of all potential sources of pollution to include: portable toilet, fuel tanks, egress points, staging areas, waste containers, chemical storage areas, concrete washout, paints, solvents, etc.		UT CGP 7.3.2.		\$60.00 =	\$0
7 SWPPP missing identification of project owner and operator for the project site		UT CGP 7.3.1		\$60.00 =	\$0
8 SWPPP missing site description - nature of activity in description (including disturbed & total acres).		UT CGP 7.3.2.a., 7.3.2.b., 7.3.2.c.		\$60.00 =	\$0
9 SWPPP missing site description - intended sequence of major activities.		UT CGP 7.3.2.e.		\$60.00 =	\$0
10 No Site Map If No Site Map, do not also count missing site map contents.		UT CGP 7.3.3.		\$240.00 =	\$0
11 Site map missing - boundaries of project, disturbances, drainage patterns, slopes, stockpiles, egress points, structures to be constructed, offsite staging, waste bins, equipment and supply storage areas, borrow areas (including off-site locations).		UT CGP 7.3.3.		\$60.00 =	\$0
12 Site map missing - surface waters, inlets, storm water control measures, stabilization practices, discharge points, areas of final stabilization.		UT CGP 7.3.3.		\$60.00 =	\$0
13 SWPPP missing natural buffers description and locations of natural buffer or compliance alternative by water body(ies).		UT CGP 7.3.5.b.(1)		\$120.00 =	\$0
14 SWPPP missing location/description of industrial activities including concrete, asphalt batch plants, staging areas, equipment or supply storage, borrow areas (including those that are off-site).		UT CGP 7.3.2.d.		\$60.00 =	\$0
15 SWPPP missing description of all pollution control measures (e.g. BMPs), and show details and specifications for proper installation.		UT CGP 7.3.5.a.		\$180.00 =	\$0
16 SWPPP missing description of permanent and interim stabilization practices.		UT CGP 7.3.5.b.(6)		\$120.00 =	\$0
17 SWPPP missing identification of non-storm water discharge sources and locations.		UT CGP 7.3.4.		\$60.00 =	\$0
18 SWPPP missing spill prevention and response procedures.		UT CGP 7.3.5.b.(7)		\$60.00 =	\$0

19	SWPPP missing description of measures that will be used to control waste on the site including: demolition debris, spoils (unwanted dirt), construction waste, hazardous or toxic waste, and sanitary waste.		UT CGP 7.3.5.b.(8)		\$60.00	=	\$0
20	SWPPP missing inspection procedures, inspectors (and certs), inspection schedules, inspection forms/checklists and procedures for corrective action.		UT CGP 7.3.6.		\$60.00	=	\$0
21	SWPPP missing description training of personnel responsible for conducting inspections, taking corrective action, applying or storing treatment chemicals, and those involved with design; installation; maintenance; and repair of storm water control measures.		UT CGP 7.3.7		\$60.00	=	\$0
22	SWPPP missing copy of permit, authorization to discharge form, and/or NOI.		UT CGP 7.3.10.		\$60.00	=	\$0
23	SWPPP missing revisions to match corrective actions and modifications made on the site.		UT CGP 7.5.		\$120.00	=	\$0
24	SWPPP copy not retained on site.		UT CGP 7.4.1.		\$60.00	=	\$0
25	SWPPP not made available per DWQ request.		UT CGP 4.8.2.		\$60.00	=	\$0
26	SWPPP Missing signature/certification by authorized representative.		UT CGP 7.3.9, 9.16		\$60.00	=	\$0
Subtotal Permit Coverage & SWPPP Deficiencies						=	\$1,950
INSPECTIONS							
27	Inspections: 10% or less not conducted (or not documented).		UT CGP 4.2.		\$300.00	=	\$0
28	Inspections: Greater than 10% Not conducted (or not documented).		UT CGP 4.2.		\$525.00	=	\$0
29	Inspections: No inspections conducted.	No inspections of the site had been performed.	UT CGP 4.2.	Yes	\$750.00	=	\$750
30	Inspections: Not conducted by qualified personnel.		UT CGP 4.1.a.		\$60.00	=	\$0
31	Inspections: Missing disturbance areas, areas with sw control measures, construction support areas, areas exposed to precipitation with storm water flows, temporarily stabilized areas, and storm water discharge points.		UT CGP 4.5		\$60.00	=	\$0
32	Inspections: Incomplete site inspection reports including associated corrective actions (date, name and qualifications of inspector, weather information, location of sediment/pollutant discharge, BMP(s) requiring maintenance, BMP(s) that have failed, BMP(s) that are needed, corrective action required including changes/updates to SWPPP and schedule/dates, and not properly signed).		UT CGP 4.5, 4.6., 5.1		\$120.00	=	\$0
Subtotal Inspection Deficiencies						=	\$750
AVAILABILITY OF RECORDS							
33	Sign/Notice not posted. <small>If no sign/notice, do not also count missing contents.</small>	No signage had been installed onsite.	UT CGP 1.5.	Yes	\$120.00	=	\$120
34	Sign/Notice missing copy of complete NOI.		UT CGP 7.3.10		\$60.00	=	\$0
35	Sign/Notice missing contact information.		UT CGP 1.5.2.		\$60.00	=	\$0
Subtotal Records Deficiencies						=	\$120
BEST MANAGEMENT PRACTICES							
36	Control measures not installed (1)	Onsite inlets were unprotected.	UT CGP 2.1.3.	Yes	\$180.00	=	\$180
37	Control measures not installed (2-3)		UT CGP 2.1.3.		\$240.00	=	\$0
38	Control measures not installed (4+)		UT CGP 2.1.3.		\$300.00	=	\$0
39	Control measures not properly installed/designed/selected (1)	Portable toilets were not secured	UT CGP 2.1.2.	Yes	\$120.00	=	\$120
40	Control measures not properly installed/designed/selected (2-3)		UT CGP 2.1.2.		\$180.00	=	\$0
41	Control measures not properly installed/designed/selected (4+)		UT CGP 2.1.2.		\$240.00	=	\$0
42	Maintenance not performed to maintain effectiveness of BMPs (1-3)	Silt fence required maintenance.	UT CGP 2.1.4.	Yes	\$60.00	=	\$60
43	Maintenance not performed to maintain effectiveness of BMPs (4-5)		UT CGP 2.1.4.		\$120.00	=	\$0
44	Maintenance not performed to maintain effectiveness of BMPs (6+)		UT CGP 2.1.4.		\$180.00	=	\$0

45	Prohibited discharges with potential impact to waters of the State. (1-3) Example: Impacts to storm water conveyances (catch basins, curbs, gutters)	•Storm drains impacted with construction debris. •Sediment was visible in the street and gutter. •Fuel had spilled on ground in several places.	UT CGP 1.2; 1.3; 2.3	Yes	\$180.00	=	\$180
46	Prohibited discharges with potential impact to waters of the State. (4-6)		UT CGP 1.2; 1.3; 2.3		\$240.00	=	\$0
47	Prohibited discharges with potential impact to waters of the State. (7-10)		UT CGP 1.2; 1.3; 2.3		\$300.00	=	\$0
48	Sediment Trackout. (1)		UT CGP 2.2.4.d.		\$120.00	=	\$0
49	Sediment Trackout. (2-3)		UT CGP 2.2.4.d.		\$180.00	=	\$0
50	Sediment Trackout. (4+)		UT CGP 2.2.4.d.		\$300.00	=	\$0
51	Natural vegetated buffer or alternative is not present adjacent to bordering water bodies (or substituted equivalent BMPs).	Failed to maintain 50 foot buffer.	UT CGP 2.2.1.	Yes	\$180.00	=	\$180
52	Discharge not treated prior to entering buffer.		UT CGP A.2.3.		\$120.00	=	\$0
53	Pollutant sources such as litter, construction debris, chemicals, spilled washout material are exposed to storm water. Pollutant Source exposed to storm water (1-3)		UT CGP 2.3.		\$120.00	=	\$0
54	Pollutant Source exposed to storm water (4-5)	•Concrete washout was uncontained. •Construction waste was uncontained. •Blowable waste was not appropriately contained. •Fuel not contained properly	UT CGP 2.3.	Yes	\$180.00	=	\$180
55	Pollutant Source exposed to storm water (6+)		UT CGP 2.3.		\$240.00	=	\$0
56	Stabilization measures not met.		UT CGP 2.2.14.		\$300.00	=	\$0
57	Sediment basin has inadequate capacity or is greater than 50% full.		UT CGP 2.2.12.		\$180.00	=	\$0
Subtotal BMP Deficiencies						=	\$900

NOT conditions not met

58	Failure to submit NOT		UT CGP 8.2		\$60.00	=	\$0
59	Final Stabilization Requirements Not Met		UT CGP 8.2.1.a		\$300.00	=	\$0
60	All waste, including potential pollutants, not properly removed and/or disposed of		UT CGP 8.2.1.b; UT CGP 8.2.1.d		\$120.00	=	\$0
61	All temporary stormwater controls (not associated with stabilization) not removed.		UT CGP 8.2.1.c		\$120.00	=	\$0
Subtotal NOT Deficiencies						=	\$0

ADDITIONAL FACTORS

62	The project is UPDES Common Plan Permit applicable. (True or False)	25% reduction of penalty				=	\$0
63	Is the project over 30 acres? (True or False)	15% applied to penalty				=	\$0
64	Is the project over 100 acres? (True or False). If over 100 acres, do not include fine for project being over 30 acres.	30% applied to penalty				=	\$0
65	Does the project border on a water body? (True or False)	20% applied to penalty		TRUE		=	\$744
66	Adjustment for Repeat Violator To adjust the settlement amount for repeat violators, the Total Expedited Settlement Amount is multiplied by the appropriate Escalation Factor.	Second formal enforcement issued over previous five years: 25% applied to penalty Third formal enforcement issued over previous five years: 50% applied to penalty				=	\$0
67	Cost Recovery: Labor costs for the preparation of the ESO	\$110 per hour		Hours:	2	=	\$220
68	Cost Recovery: Publication of Public Notice					=	\$50
TOTAL EXPEDITED SETTLEMENT						=	\$4,734.00

