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OFFICE OF  
HEARING EXAMINER

BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

In re: Appeal of Bruce Struthers

No. MUP-12-016

JOINT MOTION TO BIFURCATE  
AND AFFIRM THE DECISION IN  
PART

**I. INTRODUCTION AND RELIEF REQUESTED**

This appeal involves a project that can be divided into two independent parts. One part is not in dispute and the parties to this dispute ("Parties") would like it to proceed promptly during the short construction window available this summer. The other part can continue to be the focus of this appeal. The Parties therefore respectfully ask the Examiner to bifurcate the decision into two decisions on the two parts of the project, affirm the decision with respect to the part that is not disputed, and proceed with the appeal of the part that is in dispute.

**II. STATEMENT OF FACTS**

Seattle Public Utilities ("SPU") proposes to expand the capacity of, and make certain other changes to, its Meadowbrook Pond storm water management facility ("Project").

The Project may be described as consisting of two parts.

1 One part may be described as the "Dredging Work." The Dredging Work includes only  
2 the following activities:

- 3 1. dredge accumulated sediment from four areas of the Pond known as Cells 1-3 and the  
4 Forebay;
- 5 2. construct an access ramp to the south shore of the Forebay;
- 6 3. temporarily divert Thornton Creek around the work area to a point downstream of the  
7 Forebay;
- 8 4. install temporary erosion and sediment control and tree protection along equipment  
9 access routes, and restore all areas disturbed by equipment access; and
- 10 5. erect temporary fencing to secure construction areas for public safety as needed.

11 Details of the Dredging Work are depicted on the Exhibit to this motion.

12 All other work included in the Project may be described as the "Other Work." The  
13 Other Work includes, but is not limited to:

- 14 1. enlarging the Pond;
- 15 2. modifying the diversion structure at the west terminus of the 72" concrete pipeline  
16 directly north of the 48" sewer main separating Cell 2 from Cells 1 and 3;
- 17 3. replacing an existing access route to the diversion structure with a wider access route;
- 18 4. constructing an access ramp to the northeast shore of an enlarged Pond;
- 19 5. constructing an access ramp west of the Forebay (shown as "Access Ramp #3" on the  
20 Exhibit to this motion);
- 21 6. modifying the trash rack at the inlet of the diversion structure; and
- 22 7. undertaking various habitat improvement work.

23 The handwritten notes on the Exhibit to this motion highlight certain elements of the Project that  
are excluded from the Dredging Work, and thus are part of the Other Work.

SPU issued a Determination of Nonsignificance ("DNS") for the Project on or about  
March 8, 2012.

1 On June 14, 2012, the Department of Planning and Development ("DPD") issued an  
2 Analysis and Substantive Conditioning decision for the Project ("Decision").

3 Bruce Struthers ("Appellant") filed a timely appeal of the Decision with the Examiner.

4 Appellant challenges only the Other Work. For example, Appellant's references to the  
5 "improvements" in the relief requested in his appeal are references to what this motion is calling  
6 the Other Work.

7 Appellant specifically asks the Examiner to affirm the Decision with respect to the  
8 Dredging Work, "as this is a maintenance best practice for storm water detention ponds."  
9 Appeal Statement at 6.

10 According to SPU, it must begin any authorized work by July 16, 2012, if the work is to  
11 be completed during the period in which fish-protection regulations allow such activity.

12 Also according to SPU, undertaking the Dredging Work offers utility independent of the  
13 Other Work. SPU is willing to proceed with Dredging Work this summer even if an appeal, as a  
14 practical matter, prevents SPU from undertaking the Other Work this summer.

### 15 III. EVIDENCE RELIED UPON

16 The Parties rely on the Statement of Facts above and the other papers on file with the  
17 Examiner for this matter.

### 18 IV. AUTHORITY

19 "The Hearing Examiner may affirm, reverse,...or modify the Director's decision."  
20 SMC 23.76.022.C.10. Until an appeal of the Decision is concluded, DPD may not issue a MUP  
21 for this Project. See SMC 23.76.028.A.2 (limiting the issuance of Type II permits until the  
22 conclusion of any administrative appeal) and SMC 25.05.070.E (similar limitation in the context  
23 of administrative SEPA appeals).

1 Because the Parties agree that the Dredging Work may proceed lawfully and should  
2 proceed this summer, the Parties respectfully ask the Examiner to do the following:

- 3 1. Modify the Decision by bifurcating the Project into two discrete proposals: the  
4 Dredging Work and the Other Work.
- 5 2. Issue an order affirming the Decision regarding the Dredging Work, including the  
6 SEPA conditions listed at the end of the Decision. The order should state that, with  
7 respect to the Dredging Work, the order is final and conclusive and subject to judicial  
8 appeal.
- 9 3. Retain jurisdiction over the appeal of the Decision as it relates to the Other Work.
- 10 4. Conduct a prehearing conference to discuss a schedule through which the Parties may  
11 contest the appeal of the Decision as it relates to the Other Work.

12 Granting this relief will allow DPD to issue a MUP for the Dredging Work—which all  
13 Parties agree should occur this summer. This relief would also allow the appeal to proceed while  
14 focused on the aspects of the Project of concern to Appellant.

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V. CONCLUSION

For the reasons stated above, the Parties respectfully ask the Examiner to grant the requested relief.

Respectfully submitted July 9, 2012.

Appellant Bruce Struthers:

Applicant Seattle Public Utilities:

\_\_\_\_\_

*Greg Stevens*  
\_\_\_\_\_

Bruce Struthers

Greg Stevens

Respondent Seattle Department of Planning and Development

\_\_\_\_\_

Lucas Deherrera

V. CONCLUSION

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Respectfully submitted July \_\_\_\_, 2012.

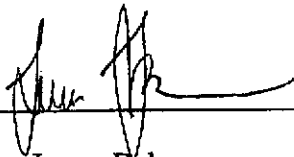
Appellant Bruce Struthers:

Applicant Seattle Public Utilities:

Bruce Struthers

Greg Stevens

Respondent Seattle Department of Planning and Development

  
\_\_\_\_\_  
Lucas Deherrera

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Respectfully submitted July \_\_\_\_, 2012.

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Applicant Seattle Public Utilities:

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Bruce Struthers

Greg Stevens

Respondent Seattle Department of Planning and Development

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Lucas Deherrera

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this date, I caused a copy of this document to be sent via electronic mail attachment and by U.S. Mail and interoffice mail (as indicated) to the following:

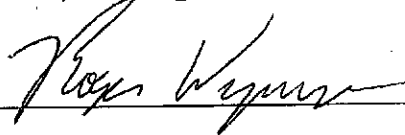
**Appellant (via U.S. Mail):**  
R. Bruce Struthers  
10514 Riviera Place NE  
Seattle, WA 98125  
Email: bruce.struthers@comcast.net

**Applicant (via interoffice mail):**  
Greg Stevens  
SPU  
PO Box 34018 (SMT-49-00)  
Seattle, WA 98124-4018  
Email: greg.steven@seattle.gov

**Department (via interoffice mail):**  
Lucas Deherrera  
Planning and Development  
PO Box 34019 (SMT-18-00)  
Seattle, WA 98124-4019  
Email: lucas.deherrera@seattle.gov

the foregoing being the last known addresses of the above-named parties.

DATED this 9th day of July, 2012, at Seattle, Washington.

  
\_\_\_\_\_  
Roger Wynne



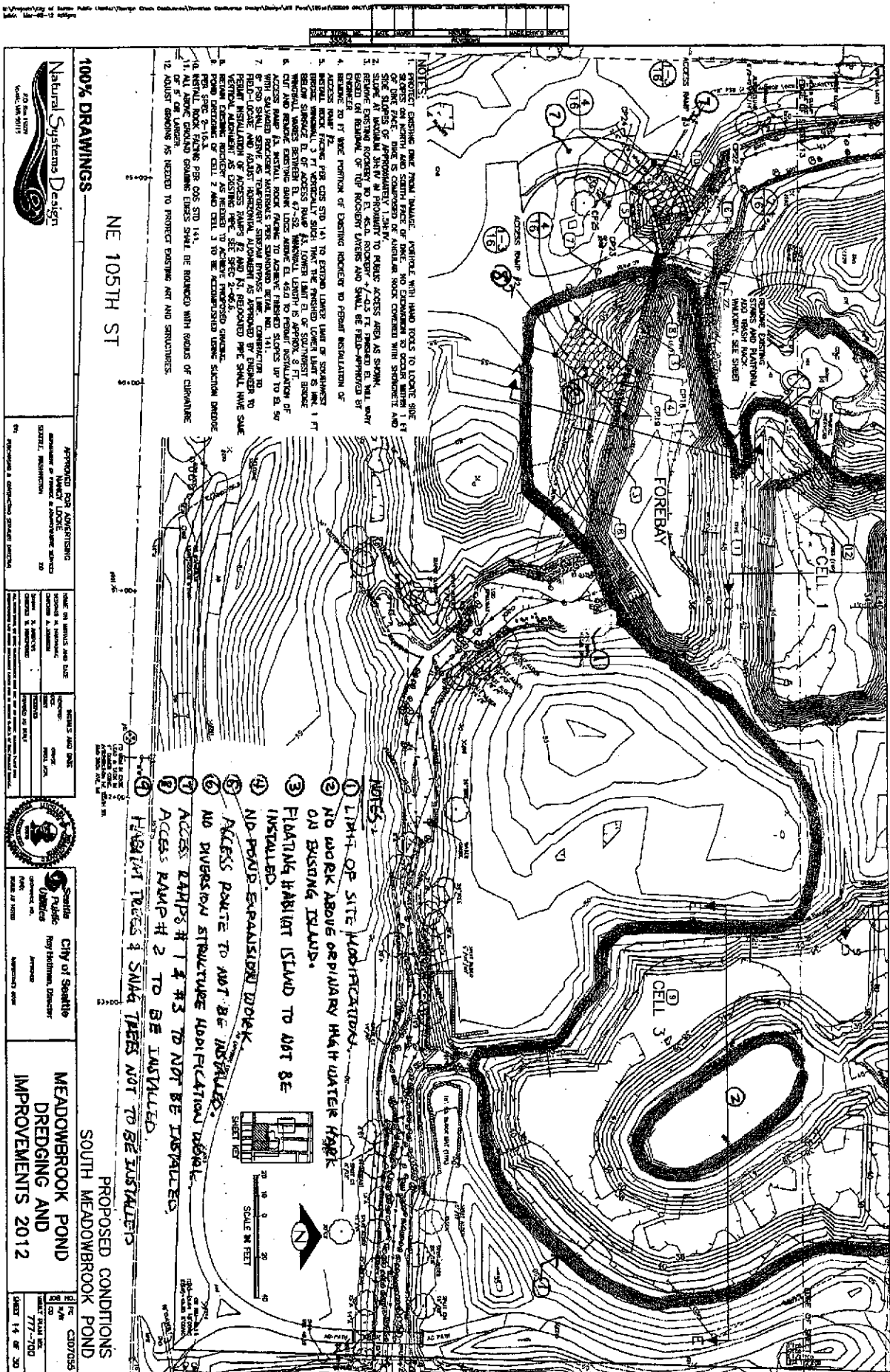


EXHIBIT (p.2 of 2)

**100% DRAWINGS**

**Natural Systems Design**  
 200 1st Ave S  
 Suite 100  
 Seattle, WA 98101

**PROPOSED CONDITIONS**  
**SOUTH MEADOWBROOK POND**  
**MEADOWBROOK POND**  
**DREDGING AND**  
**IMPROVEMENTS 2012**

DATE: 07/09/12  
 SHEET: 14 OF 20

APPROVED FOR CONSTRUCTION  
 MEADOWBROOK POND  
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 SEATTLE, WA 98101

**NOTES:**

1. PROTECT EXISTING AND NEW UTILITIES. VERIFY WITH HAND TOOLS TO LOCATE SIZE AND DEPTH. ONE IS CALLED OUT AS APPROXIMATE. VERIFY WITH SHOWN. ONE IS CALLED OUT AS APPROXIMATE. VERIFY WITH SHOWN. ONE IS CALLED OUT AS APPROXIMATE. VERIFY WITH SHOWN.
2. SIDE SLOPES OF APPROXIMATELY 1:1 TO BE MAINTAINED AS SHOWN.
3. REMOVE EXISTING ROCKS AND FLAT ROCKS 4'-6" TO 6'-12" IN DIAMETER OR MORE BASED ON REMOVAL OF TOP ROCKY LAYERS AND SHALL BE FIELD-APPROVED BY ENGINEER.
4. REMOVE 20% OF EXISTING ROCKS TO BE MAINTAINED AS SHOWN.
5. REMOVE ROCKS FROM THE PERIMETER OF EXISTING ROCKS TO BE MAINTAINED AS SHOWN.
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**NOTES:**

1. LIMIT OF SITE MODIFICATION.
2. NO WORK ABOVE OR PRIMARY HIGH WATER MARK ON EXISTING ISLAND.
3. EXISTING HABITAT ISLAND TO NOT BE INSTALLED.
4. NO POND EXPANSION WORK.
5. ACCESS ROUTE TO NOT BE INSTALLED.
6. NO DIVERSION STRUCTURE MODIFICATIONS.
7. ACCESS RAMP # 1 & # 3 TO NOT BE INSTALLED.
8. ACCESS RAMP # 2 TO BE INSTALLED.
9. HABITAT TREES & SAND TREES NOT TO BE INSTALLED.

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# Seattle City Attorney

Peter S. Holmes

## FAX COVER SHEET

TO: Sue Tanner, Hearing Examiner FAX NO. 206-684-0536

FROM: Roger Wynne  
Assistant City Attorney  
Land Use Section Director

DATE: July 9, 2012

CASE OR PROJECT NAME: Hearing Examiner File No.: MUP-12-016  
*In re: Appeal of Bruce Struthers*

NUMBER OF PAGES (including cover sheet): 11

If you have any problems receiving this transmission, please contact Debra Hernandez, Legal Assistant, at 206-684-8201.

MESSAGE: Attached for filing in the above-referenced case, please find the following document:

- **Joint Motion to Bifurcate and Affirm the Decision in Part.**

**FAX: (206) 684-8284**

[Revised 2/27/04]

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