

## APPEAL FORM

You do not have to use this form to file an appeal. However, if you do not use it, please make sure that your appeal includes all the information requested on this form. The appeal, along with any required filing fee, must reach the Office of Hearing Examiner, no later than 5:00 p.m. of the last day of the appeal period.

### APPELLANT INFORMATION (Person or group making appeal)

#### 1. Appellant:

If several individuals are appealing together, list the additional names and addresses on a separate sheet and identify a representative in #2 below. If an organization is appealing, indicate group's name and mailing address here and identify a representative in #2 below.

Name R. Bruce Struthers

Address 10514 Riviera Place NE

Seattle, WA 98125

Phone: Work: \_\_\_\_\_

Home: 206-552-9615

Fax: \_\_\_\_\_

Email Address: bruce.struthers@comcast.net

#### 2. Authorized Representative:

Name of representative if different from the appellant indicated above. Groups and organizations must designate one person as their representative/contact person.

none

### DECISION BEING APPEALED

1. **Decision appealed** (Departmental File or Reference #.): Analysis and Substantive Conditioning of the Director of the Department of Planning and Development, DPD Project # 3013236.
2. **Address** (if any) connected to decision being appealed:  
Several, including 3600 NE 105<sup>th</sup> Street, 10700 36<sup>th</sup> Avenue NE, 10515 39<sup>th</sup> Avenue NE and 10514 Riviera Place NE.
3. **Type of issue/decision being appealed if known** (ask for assistance if unknown):  
Land Use, SEPA.

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## APPEAL INFORMATION

Answer each question as completely and specifically as you can. Attach separate sheets if needed and refer to questions by number.

1. **What is your interest in this appeal?** (State how you are involved or affected by it)

My residence is directly south of the Meadowbrook Outfall, the eastern terminus of the Sand Point Tunnel. The Sand Point Tunnel receives diverted storm water flows from Thornton Creek at the bypass inlet of the Meadowbrook Pond, and the overflow manhole in the northeast cell of Meadowbrook Pond. I am one of many neighbors who enjoy the passive recreational opportunities offered by Meadowbrook Pond in its existing, mature, configuration. I am affected by chronic flooding on 35<sup>th</sup> Avenue NE which has not been adequately addressed by the Meadowbrook Detention Pond. I would be affected by short and long-term degradation of the environment, the vitality of the neighborhood and the potential vitality of the neighborhood resulting from the decisions of the Director of Planning and Development in this case. I am a party intended by law to enjoy the benefits and protection of Seattle's Shoreline Management Act and (Federal) Environmental Protection Act.

2. **What are your objections to the issue being appealed?** (List and describe what you believe to be the errors, omissions, or other problems and issues involved.)

In the Land Use Application submitted to the Seattle Department of Planning and Development (DPD), Seattle Public Utilities (SPU) described the boundaries of the proposed project to be a two acre area bounded by 35<sup>th</sup> Avenue NE, 39<sup>th</sup> Avenue NE, NE 105<sup>th</sup> Street and NE 110<sup>th</sup> Street. SPU notified immediate neighbors of the two acres as required by DPD as part of the Land Use application. In the related JARPA applications to the Washington Department of Ecology and Army Corp of Engineers the SPU included Magnuson Park as an area affected by the project, as surviving fish captured in the Pond might be relocated to Lake Washington at Magnuson Park. This acknowledgement extends the boundaries of the project. In all permit filings, SPU calls out the 72" bypass pipe as a structure within the project area. SPU proposes modification to that structure. The bypass pipeline was originally built as the Sand Point Tunnel as part of the decommissioned Lake City Sewage Treatment Plant. SPU has redeployed this structure to divert flows from Thornton Creek under Meadowbrook Pond. It is a structural component critical to operation of the existing, and proposed Meadowbrook Diversion Pond. SPU omitted the Meadowbrook Outfall and Sand Point Tunnel in permit applications to all regulating bodies.

The Director of DPD erred in not requiring that applicant SPU restate the boundaries of the project to include **all** areas affected by the construction and operation of the modified Pond, under liberal construction guidelines (**SMC 23.60.012**). Once liberal construction was applied the project would be partially within a shoreline. The resulting proposal would meet the threshold of a substantial

development under **SMC 23.60.030**. The Director of DPD erred by not requiring an application for a shoreline substantial development permit (**SMC 23.60.022**). If any conflicts arose between the Seattle Shoreline Master Program and Seattle Municipal Code Chapter 25.09, the most restrictive requirements should apply (**SMC 23.60.014**).

Seattle Public Utilities issued a SEPA Determination of Non-Significance (DNS) and executed an Environmentally Critical Area (ECA) exemption of its own capital improvement project. DPD accepted the analysis and decision of applicant SPU based on the boundaries of the project as provided by SPU. There is no indication that any unbiased third party review of applicant SPU's claims was performed. Relying on the information provided by the applicant SPU on environmental impacts, Director Sugimura found:

"However, due to their temporary nature and limited effects, the impacts are not expected to be significant"

The Director erred in not requiring applicant SPU to prepare a comprehensive environment impact statement (**SMC 25.09.300**). Her analysis focused on short-term construction impacts of localized dredging and construction on the immediate neighborhood. The director erred in not considering the long term effects on the environment on the completed, operational Meadowbrook Pond, and the broader geographical scope of those effects.

The Director could have become aware of those effects if she had received public comment. DPD reports that no public comment was received by the cutoff of April 18<sup>th</sup>. The public had little to comment on, as little information on the details of the project had been made available to the public. A public meeting was held at Nathan Hale High School on June 15, 2011. The public's questions were posted on an SPU project website, but no answers have yet been made available. A follow-up public meeting was held eleven months later, at a May 15, 2012 meeting of the Meadowbrook Community Council, held with two days notice. Details of the project were presented by SPU staff at that time. Public comment was overwhelmingly negative. Simple questions regarding the number of trees to be removed were deflected. These questions not answered until required by DPD to complete the land use application. The resulting enumeration of proposed tree removals, prepared on May 23<sup>rd</sup> in response to DPD's Correction Notice 1 of May 1, 2012, was not made available to the general public until after DPD had approved the Land Use Application on June 14, 2012. Two days later, SPU hosted a "question and answer drop-in session", where finally, the details of the already approved project were presented to the public.

Meadowbrook Pond under low flow conditions is a pleasant place. Meadowbrook Pond under flood conditions which occur several times each year has a high impact on the immediate neighbors, motorists on 35<sup>th</sup> Avenue NE, users of the Meadowbrook Community Center, and students attending Nathan Hale High

School and Jane Adams Elementary School. The proposed development has a broad public significance on most residents of North Seattle. The Director erred in relying only on the applicant's optimistic view of public reaction to the proposed improvements to Meadowbrook Pond. The Director erred by not requiring a public meeting on a project proposal of broad public significance that should require a shoreline conditional use or shoreline variance **(SMC 23.76.015)**.

The ECA exemption and SEPA DNS prepared by applicant SPU in this case is not an "impartial discussion of significant environmental impacts ... (informing) the decision makers and the public of reasonable alternatives, including mitigation measures, that would avoid or minimize adverse impacts or enhance environmental quality. **(SMC 25.05.400)**.

The Director of the Department of Planning and Development, by ignoring the potential and planned environmental impact of this project, erred in her recommendation, violated her obligation under the State Environmental Policy Act and the Seattle Municipal Code to give actual consideration to environmental factors, including the effect of increased development bulk and scale, including the effects of increased maintenance vehicle traffic and other environmental factors resulting from the proposed development, and consideration to reasonable alternatives that would have less environmental impact.

SPU acknowledges that a 48" main sewer line bisects the existing Meadowbrook Pond. SPU also acknowledges that the project is within a liquefaction zone. There are periodic incidents where high storm water levels trigger wastewater overflow into Meadowbrook Pond. As a result, the facility is a Combined Sewer Overflow and should be required to have the same monitoring and instrumentation that is being instituted for the citywide CSO Long Term Control Plan. The ECA exemption prepared by applicant SPU is inadequate in that it does not reflect current best science and practical experience from the effect of recent earthquakes in Japan and New Zealand on storm water and sewer conveyance. The Director of DPD erred in not requiring comprehensive soil engineering studies of core samples taken in the immediate vicinity of the 42" sewer main that bisects Meadowbrook Pond and imposing conditions that would mitigate the effect of development in immediate vicinity of this line **(SMC 25.09.100)**.

The proposed plan of Seattle Public Utilities recommended for approval by the Director, includes expansion of boundaries and expansion of development standards, with insufficient quantification of the benefits to be derived from the expanded facility.

This project plan should not be adopted without the preparation and consideration of an Environmental Impact Statement that provides evidences and discusses meaningful alternatives that could allow future development with less boundary expansion, less long-term environmental impact, and more inclusive public comment from the neighboring public.

Applicant SPU proposes to remove trees, shrubs and other native plants to build a 15' wide impermeable asphalt maintenance road between 36<sup>th</sup> Avenue NE and the high flow bypass inlet on Thornton Creek. SPU has disingenuously described this as an "access path for utility vehicles", but it is an extension of an existing street. Applicant SPU states that a 15' wide street is required to accommodate large vector trucks. The appellant has witnessed SPU vector trucks regularly, and easily negotiating Riviera Place NE, a one-lane road with a paved surface 11' wide. SPU has acknowledged the proposed development will be in a riparian management area and flood zone. SPU stated in page 3 of its ECA exemption that:

"This project meets the exemption criteria of SMC 25.09.045.H.3.e because the proposed activity meets these criteria established at SMC 25.09.045.H.1:

a. **The work is not a prerequisite to other development;**

b. **No practicable alternative to the work with less impact on the ECA or buffer exists; and**

c. The work does not pose an unreasonable threat to the public health, safety, or welfare on or off the parcel".

Statement a) directly contradicts with communications to the general public, and the inclusion of geotechnical engineering reports by SPU Materials Laboratory for the "35<sup>th</sup> Avenue Culvert Replacement Project" in the Project Manual provided to potential bidders. This project, now named the "Confluence Project", C3811, would involve modifications to Thornton Creek directly upstream from Meadowbrook Pond, and vacation of 36<sup>th</sup> Avenue NE. The follow-on Confluence Project is designed to allow flooding into the northern boundary of the expanded Meadowbrook Pond, over the proposed newly-constructed maintenance road. The Director of DPD erred in not imposing the requirements of construction in a flood zone and riparian management area imposed by **SMC 25.06.110, SMC 25.06.120 and SMC 25.09.200**. The 15' wide asphalt maintenance road will require removal of trees and native plants, which improve wildlife habitat and water quality. The Director of DPD erred in permitting the proposed development to occur in violation of multiple sections of **SMC 25.09.200**.

Seattle Public Utilities proposes replacement of the trash rack at the inlet of the high bypass pipeline. This modification does not prevent the entrance of fish during high flow conditions, in contrast to SPU's own instructions to potential bidders on the project:

"Dissipate flow at the outfall of the bypass system to diffuse erosive energy of the flow. Place the outflow in an area that minimizes or prevents damage to riparian vegetation. If the diversion inlet is a gravity diversion and is not screened to allow for downstream passage of fish, place diversion outlet in a location that facilitates gradual and safe reentry of fish into the stream channel".

The aggregate of the bypass inlet at Thornton Creek, the 72" and 96" segments of the Sand Point Tunnel, the diversion structure at Riviera Place NE and the Meadowbrook Outfall at Lake Washington comprise an environmentally critical area as defined in **SMC 25.09.020**. The Director of DPD erred by not requiring consideration and analysis of a proposal to daylight segment of the 72" diversion pipeline under the Meadowbrook Pond, and requiring the full water quality improvements of the Pond to be applied to all storm water flows from Thornton Creek (**SMC 25.09.200.A.4, SMC 25.09.200.D.6**).

Applicant SPU has acknowledged the presence of exceptional trees with this statement in the project description:

"The existing entrance kiosk and the dogwood trees comprising Annie's Memorial tree grove would be relocated to other locations on the project parcel;"

This is reinforced by applicant SPU's inventory of exceptional trees, as required in DPD's Correction Notice 1 (**SMC 25.11.050.A**). The Director of DPD erred by not requiring conditions to protect those trees as specified in **SMC 25.11.050.B**.

3. **What relief do you want?** (Specify what you want the Examiner to do: reverse the decision, modify conditions, etc.)

- a. Uphold the decision of the Director to permit dredging work of the existing Meadowbrook Detention Pond, as this is a maintenance best practice for storm water detention ponds.
- b. Remand all components of the project proposal described as "improvements" to the Director for further consideration after submission of a comprehensive environmental impact statement, and a compilation of all public comment that has been submitted to date to Seattle Public Utilities. The EIS should provide evidence and discussion, with significant public comment, sufficient to analyze the operational necessity for each proposed improvement, and evidence and discussion regarding reasonable alternatives for future development within the context of the Thornton Creek Confluence project, Capital Improvement Project 3811, currently in the design phase.
- c. Alternatively, if it is find that the submitted SEPA DNS is adequate, require additional conditions to mitigate the impacts of the actions associated with the "improvements" components of the SPU, specifically, all modifications of any structures outside the existing perimeter of Meadowbrook Detention Pond,
- d. Require enhanced instrumentation and monitoring of the operation of the Pond, including flow rate monitors and temperature gauges at all inlets and outlets,

- e. Require SPU to daylight the 72" concrete pipe from the bypass inlet and trash rack at Thornton Creek to the overflow manhole at the east corner of the Pond,
- f. Require SPU to remove the concrete foundation of the abandoned Lake City Sewage Treatment Plant from the northeast cell of Meadowbrook Pond,
- g. Prohibit construction of a superfluous 15' asphalt maintenance road between 36<sup>th</sup> Avenue NE and the bypass inlet at Thornton Creek, and
- h. Prohibit any modification or dredging of the inlet to high flow bypass.

Signature



Date June 27, 2012

**Appellant** or Authorized Representative R. Bruce Struthers