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FAX COVER SHEET

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Date: July 10, 2012

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Re: ORDER ON MOTION TO BIFURCATE, AND AFFIRM IN PAR ,MUP-12-016(W)

Urgent

For Review

Please Comment

Please Reply

I was not able to fax a copy to Mr. Struthers so I emailed him a scanned copy. - Alvia

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

BRUCE STRUTHERS

from a SEPA decision issued by the
Director, Department of Planning
and Development

Hearing Examiner File:
MUP-12-016(W)

**ORDER ON MOTION
TO BIFURCATE AND
AFFIRM IN PART**

The Director of Seattle Public Utilities (SPU) issued a determination of nonsignificance (DNS) pursuant to the State Environmental Policy Act, Chapter 43.21C RCW (SEPA), as adopted at Chapter 25.05 Seattle Municipal Code (SMC). The DNS was issued for a proposal to expand the capacity of SPU's Meadowbrook Pond stormwater management facility and associated work. The Director of the Department of Planning and Development issued an "Analysis and Substantive Conditioning" decision (Decision), imposing certain SEPA-based conditions on the project. Bruce Struthers (Appellant) timely filed an appeal of the Decision.

On July 9, 2012, the Appellant and SPU filed a "Joint Motion to Bifurcate and Affirm the Decision in Part". The motion states that the project that is the subject of the Decision consists of two parts, one of which is not disputed by the Appellant and should proceed immediately because of certain time constraints. The motion asks that the Hearing Examiner modify the Decision by bifurcating the project into two discrete proposals and issuing a final order affirming the Decision regarding the undisputed work, thereby enabling it to proceed via a Master Use Permit. *See 23.76.028.A.2.*

The motion is **GRANTED**. It is **ORDERED** that:

1. The June 14, 2012 Decision is bifurcated into two discrete decisions on two discrete proposals. The two decisions are alike in every respect except that one decision authorizes the dredging work for the project (Dredging Work), and the other decision authorizes all other work (Other Work). The Dredging Work includes only the following activities:

- a. Dredge accumulated sediment from four areas of the Pond known as Cells 1-3 and the Forebay;
- b. construct an access ramp to the south shore of the Forebay;
- c. temporarily divert Thornton Creek around the work area to a point downstream of the Forebay;
- d. install temporary erosion and sediment control and tree protection along equipment access routes, and restore all areas disturbed by equipment access; and

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- e. erect temporary fencing to secure construction areas for public safety as needed;

all as depicted on Exhibit 1 to the motion. The Other Work includes, but is not limited to:

- a. enlarging the Pond;
- b. modifying the diversion structures at the west terminus of the 72" concrete pipe line directly north of the 48" sewer main separating Cell 2 from Cells 1 and 3;
- c. replacing an existing access route to the diversion structures with a wider access route;
- d. constructing an access ramp to the northeast shore of the enlarged Pond;
- e. constructing an access ramp west of the Forebay (shown as "Access Ramp #3" on Exhibit 1 to the motion);
- f. modifying the trash rack at the inlet of the diversion structure; and
- g. undertaking various habitat improvement work.

The handwritten notes on Exhibit 2 to the motion highlight certain elements of the project that are also part of the Other Work.

- 2. The Director's decision on the Dredging Work is **AFFIRMED**.
- 3. The Examiner retains jurisdiction over the appeal of the Director's decision on the Other Work.

Entered this 10th day of July, 2012.


 Sue A. Tanner, Hearing Examiner
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Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner affirming the Director's decision on the Dredging Work in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within

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twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

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