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.

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

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

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

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

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

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.

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

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

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

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

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

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

III. EVIDENCE RELIED UPON

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

IV. AUTHORITY

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

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

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

Granting this relief will allow DPD to issue a MUP for the Dredging Work—which all Parties agree should occur this summer. This relief would also allow the appeal to proceed while 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:

_____

Bruce Struthers

Applicant Seattle Public Utilities:

_____

Greg Stevens

Respondent Seattle Department of Planning and Development

_____

Lucas Deherrera

V. CONCLUSION

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

Respectfully submitted July _____, 2012.

Appellant Bruce Struthers:

_____

Bruce Struthers

Applicant Seattle Public Utilities:

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Greg Stevens

Respondent Seattle Department of Planning and Development

_____

Lucas Deherrera

V. CONCLUSION

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

Respectfully submitted July _____, 2012.

Appellant Bruce Struthers:

Bruce Struthers

Applicant Seattle Public Utilities:

Greg Stevens

Respondent Seattle Department of Planning and Development

Lucas Deherrera

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):
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Lucas Deherrera
Planning and Development
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the foregoing being the last known addresses of the above-named parties.

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

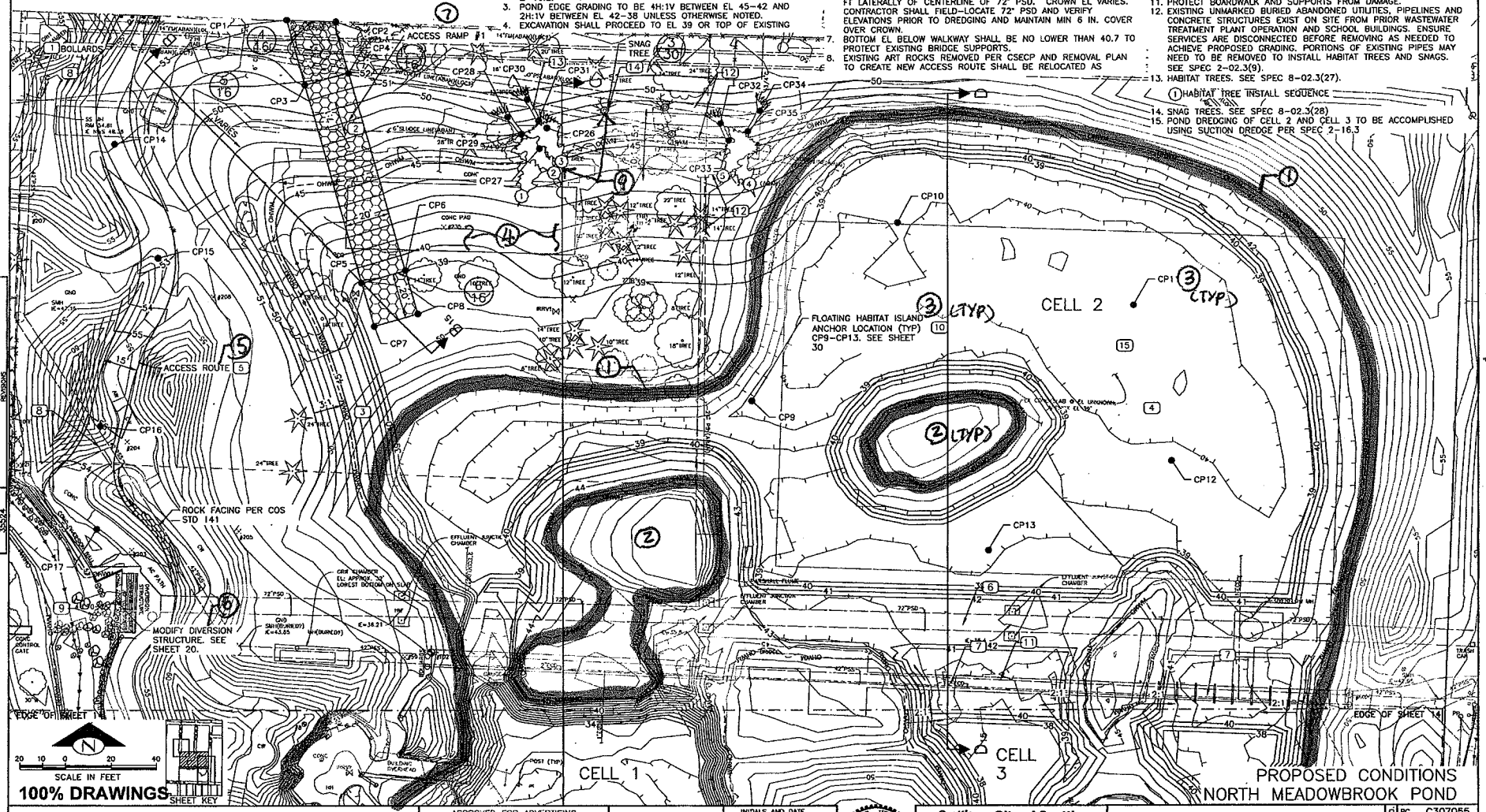
Roger Wynne

NOTES:

1. INSTALL FOUR REMOVABLE TYPE A BOLLARDS EACH 5 FT ON CENTER PER COS STD 463.
2. ACCESS RAMP TO BE CONSTRUCTED IN DRY CONDITIONS. CONTRACTOR TO DESCRIBE APPROACH AND SEQUENCE PER SPEC 2-16.2.
3. POND EDGE GRADING TO BE 4H:1V BETWEEN EL 45-42 AND 2H:1V BETWEEN EL 42-38 UNLESS OTHERWISE NOTED.
4. EXCAVATION SHALL PROCEED TO EL 39 OR TOP OF EXISTING CONCRETE SLAB, WHICHEVER IS HIGHER.
5. EXISTING ACCESS ROUTE TO BE REMOVED AND REPLACED WITH WIDER ACCESS ROUTE AS SHOWN. EXISTING BERM GRADING TO BE ADJUSTED AS SHOWN.
6. CONTRACTOR TO PROTECT EXISTING 72" PSD AND SUPPORTS FROM DAMAGE. NO DREDGING BELOW EL 42 SHALL OCCUR WITHIN 10 FT LATERALLY OF CENTERLINE OF 72" PSD. CROWN EL VARIES. CONTRACTOR SHALL FIELD-LOCATE 72" PSD AND VERIFY ELEVATIONS PRIOR TO DREDGING AND MAINTAIN MIN 6 IN. COVER OVER CROWN.
7. BOTTOM EL BELOW WALKWAY SHALL BE NO LOWER THAN 40.7 TO PROTECT EXISTING BRIDGE SUPPORTS.
8. EXISTING ART ROCKS REMOVED PER CSECP AND REMOVAL PLAN TO CREATE NEW ACCESS ROUTE SHALL BE RELOCATED AS DIRECTED BY ENGINEER.
9. REMOVE EXISTING BOULDERS AS NEEDED TO INSTALL TRASH RACK. RE-LOCATE BOULDERS AS SHOWN, WITH MIN 1/3 DIAMETER INSTALLED BELOW CHANNEL BED.
10. FLOATING HABITAT ISLAND ANCHORS TO BE INSTALLED AT ELEVATION AND LOCATION AS NOTED ON SHEET 12.
11. PROTECT BOARDWALK AND SUPPORTS FROM DAMAGE.
12. EXISTING UNMARKED BURIED ABANDONED UTILITIES, PIPELINES AND CONCRETE STRUCTURES EXIST ON SITE FROM PRIOR WASTEWATER TREATMENT PLANT OPERATION AND SCHOOL BUILDINGS. ENSURE SERVICES ARE DISCONNECTED BEFORE REMOVING AS NEEDED TO ACHIEVE PROPOSED GRADING. PORTIONS OF EXISTING PIPES MAY NEED TO BE REMOVED TO INSTALL HABITAT TREES AND SNAGS. SEE SPEC 2-02.3(9).
13. HABITAT TREES. SEE SPEC 8-02.3(27).

(1) HABITAT TREE INSTALL SEQUENCE

14. SNAG TREES. SEE SPEC 8-02.3(28)
15. POND DREDGING OF CELL 2 AND CELL 3 TO BE ACCOMPLISHED USING SUCTION DREDGE PER SPEC 2-16.3



PROPOSED CONDITIONS
NORTH MEADOWBROOK POND

EXHIBIT (1 of 2)

Natural Systems Design
P.O. Box 15609
Seattle, WA 98115

APPROVED FOR ADVERTISING
NANCY LOCKE
DEPARTMENT OF FINANCE & ADMINISTRATIVE SERVICES
SEATTLE, WASHINGTON 20
BY: PURCHASING & CONTRACTING SERVICES DIRECTOR

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DESIGNED M. HRACHOVEC
CHECKED A. JOHNSON
DRAWN K. ANDREWS
CHECKED M. HRACHOVEC

INITIALS AND DATE
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ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE CITY OF SEATTLE STANDARD PLANS AND SPECIFICATIONS AND OTHER DOCUMENTS CALLED FOR IN SECTION 0-01.3 OF THE PROJECT MANUAL.

Seattle Public Utilities
City of Seattle
Ray Hoffman, Director
ORDINANCE NO.
APPROVED
FUND:
SCALED AS NOTED
INSPECTOR'S BOOK

MEADOWBROOK POND DREDGING AND IMPROVEMENTS 2012

JOB NO. PC C307055
R/W
CO
VAULT PLAN NO. 777-700
SHEET 13 OF 30

H:\Projects\City of Seattle Public Utilities\Thornton Creek Confluence\Thornton Confluence Design\Design\MB Pond\100pct\C0109 ONLY\C-3 PROPOSED CONDITIONS-NORTH MEADOWBROOK POND.dwg
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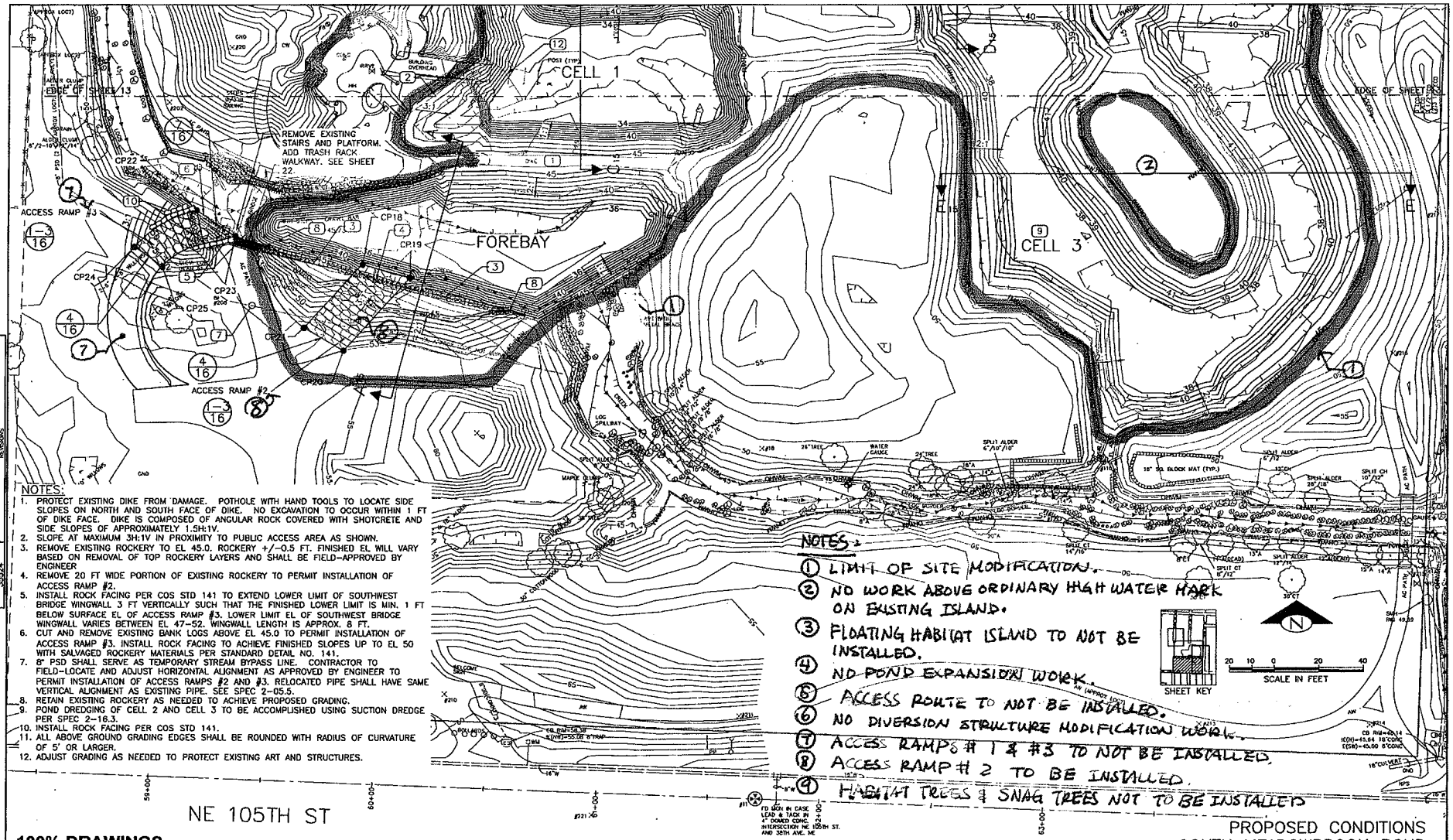
EXHIBIT (2 of 2)



NOTES:

1. PROTECT EXISTING DIKE FROM DAMAGE. POTHOLE WITH HAND TOOLS TO LOCATE SIDE SLOPES ON NORTH AND SOUTH FACE OF DIKE. NO EXCAVATION TO OCCUR WITHIN 1 FT OF DIKE FACE. DIKE IS COMPOSED OF ANGULAR ROCK COVERED WITH SHOTCRETE AND SIDE SLOPES OF APPROXIMATELY 1.5H:1V.
2. SLOPE AT MAXIMUM 3H:1V IN PROXIMITY TO PUBLIC ACCESS AREA AS SHOWN.
3. REMOVE EXISTING ROCKERY TO EL 45.0. ROCKERY +/-0.5 FT. FINISHED EL WILL VARY BASED ON REMOVAL OF TOP ROCKERY LAYERS AND SHALL BE FIELD-APPROVED BY ENGINEER
4. REMOVE 20 FT WIDE PORTION OF EXISTING ROCKERY TO PERMIT INSTALLATION OF ACCESS RAMP #2.
5. INSTALL ROCK FACING PER COS STD 141 TO EXTEND LOWER LIMIT OF SOUTHWEST BRIDGE WINGWALL 3 FT VERTICALLY SUCH THAT THE FINISHED LOWER LIMIT IS MIN. 1 FT BELOW SURFACE EL OF ACCESS RAMP #3. LOWER LIMIT EL OF SOUTHWEST BRIDGE WINGWALL VARIES BETWEEN EL 47-52. WINGWALL LENGTH IS APPROX. 8 FT.
6. CUT AND REMOVE EXISTING BANK LOGS ABOVE EL 45.0 TO PERMIT INSTALLATION OF ACCESS RAMP #3. INSTALL ROCK FACING TO ACHIEVE FINISHED SLOPES UP TO EL 50 WITH SALVAGED ROCKERY MATERIALS PER STANDARD DETAIL NO. 141.
7. 8" PSD SHALL SERVE AS TEMPORARY STREAM BYPASS LINE. CONTRACTOR TO FIELD-LOCATE AND ADJUST HORIZONTAL ALIGNMENT AS APPROVED BY ENGINEER TO PERMIT INSTALLATION OF ACCESS RAMPS #2 AND #3. RELOCATED PIPE SHALL HAVE SAME VERTICAL ALIGNMENT AS EXISTING PIPE. SEE SPEC 2-05.5.
8. RETAIN EXISTING ROCKERY AS NEEDED TO ACHIEVE PROPOSED GRADING.
9. POND DREDGING OF CELL 2 AND CELL 3 TO BE ACCOMPLISHED USING SUCTION DREDGE PER SPEC 2-16.3.
10. INSTALL ROCK FACING PER COS STD 141.
11. ALL ABOVE GROUND GRADING EDGES SHALL BE ROUNDED WITH RADIUS OF CURVATURE OF 5' OR LARGER.
12. ADJUST GRADING AS NEEDED TO PROTECT EXISTING ART AND STRUCTURES.

NOTES:

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

PROPOSED CONDITIONS
SOUTH MEADOWBROOK POND

100% DRAWINGS

Natural Systems Design
P.O. Box 15507
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