#10
117266

Chip Nevins
DPR Cheasty DOR Transfer ORD
June 26, 2011
Version #2

ORDINANCE _____

AN ORDINANCE relating to State of Washington restrictions on the use of certain property under the jurisdiction of the Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to grant to the State of Washington a Deed of Right limiting the use of certain property in the Duwamish Head Greenspace to conservation purposes and to accept the release of a Deed of Right limiting the use of certain property in the Cheasty Greenspace to public recreation purposes.

WHEREAS, on March 18, 1991, the City of Seattle ("City") acquired .73 acres of real property in an area now known as the Cheasty Greenspace, as more fully described in the Warranty Deed dated March 18, 1991, and recorded in King County Recorder's Office in File No. 199104180655, King County, Washington ("Cheasty Property"); and

WHEREAS, the Cheasty Property was purchased, in part, using Washington State Outdoor Recreation funding ("State Funding"); and

WHEREAS, as a condition of using the State Funding, the City was required to grant to the State of Washington ("State") a Deed of Right restricting the use of the property for public recreation purposes in perpetuity; and

WHEREAS, the alignment of the light rail system, as described in the Central Link Light Rail Beacon Hill Tunnel Plans (Contract # C710), passes below the surface of the Cheasty Property; and

WHEREAS, in order to meet Central Puget Sound Regional Transit Authority's ("Sound Transit") construction schedule, Sound Transit and the City entered into a Right of Entry Agreement (BH009) on March 30, 2004, as extended by letter agreement on November 3, 2004, for the temporary occupancy of surface portions of the Cheasty Property and construction of a subsurface tunnel for the light rail system, as described in the Central Link Light Rail Beacon Hill Tunnel Plans (Contract # C710); and

WHEREAS, Sound Transit has finished construction and currently operates its light rail system known as the Central Link Light Rail Project; and

WHEREAS, the City has agreed to convey a subsurface tunnel easement to Sound Transit for operation of the Central Link Light Rail Project; and

WHEREAS, before conveying the subsurface tunnel easement to Sound Transit, the City must receive from the State a release of the Deed of Right restricting the use of the Cheasty Property to public recreation purposes; and

COUNCIL CLERK

WHEREAS, the State has agreed to release the Deed of Right restricting the Cheasty Property to public recreation purposes, on the condition that the City grant a Deed of Right to the State imposing restrictions on other City park property of equal or greater value; and

WHEREAS, on June 30, 2010, the City acquired .70 acres of real property in an area known as the Duwamish Head Greenspace, as more fully described in the Warranty Deed dated June 30, 2010, and recorded in King County Recorder's Office in File No. 20100630002218, King County, Washington ("Duwamish Head Property"); and

WHEREAS, prior to closing on the Duwamish Head Property, the City received a waiver of retroactivity from the State that kept it eligible to be used as a replacement property [for Deed of Right purposes]; and

WHEREAS, the City has selected the Duwamish Head Property for the new Deed of Right; and

WHEREAS, independent appraisers were hired to determine the fair market value of the Cheasty Property and the Duwamish Head Property; and

WHEREAS, the value of the Duwamish Head Property is greater than the value of Cheasty Property; and

WHEREAS, it is in the best interests of the City to facilitate the conveyance of the subsurface tunnel easement to Sound Transit by accepting a release of a Deed of Right on the Cheasty Property and granting a Deed of Right on the Duwamish Head Property; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation ("Superintendent") or his designee is hereby authorized to accept, for and on behalf of the City of Seattle ("City"), a Release of Deed of Right from the State of Washington ("State") in a form substantially similar to Attachment 1 to this ordinance for the real property in the Cheasty Greenspace that is legally described in Attachment 1. The Superintendent is further authorized to make minor deletions and revisions to Attachment 1 as may be required by the State so long as the Superintendent determines that the revisions are for accuracy and are in the best interest of the City.

COUNCIL CLERK

Section 2. For and on behalf of the City, the Superintendent or his designee is authorized to execute and grant to the State a Deed of Right in a form substantially similar to Attachment 2 to this ordinance, promising to use and maintain, exclusively for conservation purposes, the real property in the Duwamish Head Greenspace that is legally described in Exhibit A to Attachment 2. The Superintendent is further authorized to make minor deletions and revisions to Attachment 2 as may be required by the State so long as the Superintendent determines that the revisions are for accuracy and are in the best interest of the City.

COUNCIL CLERK

Section 3. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2011, and signed by me in open session in authentication of its passage this _____ day of _____, 2011.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2011.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2011.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Release of Deed of Right

Attachment 2: Deed of Right
Exhibit A to Attachment 2: Legal Description of Duwamish Head Property

Chip Nevins
DPR Cheasty DOR Transfer ORD ATT 1
June 22, 2011
Version #2

AFTER RECORDING RETURN TO:
Seattle Department of Parks and Recreation
800 Maynard Avenue S
Seattle, WA 98104
ATTN: Property Management

RELEASE OF DEED OF RIGHT

Reference number of related documents: 199110300646

Grantor: State of Washington through its Recreation and Conservation Office

Grantee: The City of Seattle

Abbreviated Legal Description: lots 3 through 10, inclusive, block 32, T. Hanford's Addition, v. 1, pg. 205, in King County, WA

Tax Parcel Numbers: 3085001995

WHEREAS, by instrument dated and recorded on October 22, 1991, Auditor's File No. 199110300646 ("Deed of Right"), the City of Seattle, a municipal corporation of the State of Washington ("City"), committed the lands described herein to public recreation purposes forever, pursuant to provisions of the Project Agreement, (entitled Cheasty G.B/N.A./Mt. View N.A.), RCO #91-246 A, and as thereafter amended, entered into between the City and the State of Washington through its Recreation and Conservation Office[1] ("State"), and

WHEREAS, the City needs to convey a subsurface tunnel easement to Puget Sound Regional Transit Authority's for operation of the Central Link Light Rail Project that runs underneath the real property restricted by the Deed of Right ("Cheasty Property"); and

[1] On July 1, 2007, the name of the Interagency Committee for Outdoor Recreation changed to the *Recreation and Conservation Funding Board* and the office name changed to the *Recreation and Conservation Office.*

COUNCIL CLERK

WHEREAS, before the City can convey the subsurface tunnel easement, the State must release the Deed of Right from the Cheasty Property, which requires the property to be used exclusively for public recreation purposes; and

WHEREAS, the State, through its Recreation and Conservation Office, has agreed to release the Deed of Right on the Cheasty Property on the condition that the City impose Deed of Right restrictions on property of equal or greater value.

NOW THEREFORE, the State does hereby relinquish all rights, title and interest in and to the following described lands, and forever releases said lands from the restrictions and covenants contained in the aforesaid instrument recorded under Auditor's File No. 199110300646, legally described as follows.

LOTS 3 THROUGH 10, INCLUSIVE, BLOCK 32, T. HANFORD'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 205, IN KING COUNTY, WASHINGTON.

COUNCIL CLERK

Dated this _____ day of _____, 2011

STATE OF WASHINGTON

By: _____
Kaleen Cottingham, Director, Recreation and Conservation Office

ATTEST: _____

Dated this _____ day of _____, 2011

STATE OF WASHINGTON)
)SS
COUNTY OF _____)

THIS IS TO CERTIFY that on this _____ day of _____, 2011, before me the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____. This individual is known to me to be the _____, of the _____ that executed the foregoing deed and acknowledged to me that ____ signed and sealed the same as the free and voluntary act and deed of said _____ and on oath stated that ____ was authorized to execute said instrument and that the seal affixed is the seal of said

_____.

WITNESS my hand and official seal the day and year in this certificate first above written.

_____,

Notary Public in and for the State of Washington, residing in _____County.

My commission expires _____.

AFTER RECORDING RETURN TO:
The Recreation and Conservation Office
Natural Resources Building
P.O. Box 40917
Olympia, WA 98504-0917
ATTN: Laura Moxham

DEED OF RIGHT TO USE LAND FOR CONSERVATION PURPOSES

Reference number of related documents: 20100630002218

Grantor: The City of Seattle

Grantee: State of Washington through the Recreation and Conservation Funding Board

Abbreviated Legal Description: lots 18 through 27, inclusive, Blk 85, Replat of West Seattle Land & Improvement Company's Third Plat, v. 9, pg. 58, in King County, WA

Tax Parcel Numbers: 9275702865, 9275702885, 9275702905, 9275702915

The Grantor enters this Deed for and in consideration of monies coming in whole or in part from the Urban Wildlife Account. Such grant is made pursuant to the project agreement entered into between the Grantor and the Grantee entitled Cheasty G.B/N.A./Mt. View N.A.: RCO #91 246 A, signed by the Grantor on October 16, 1991 and by the Grantee on September 30, 1991 and supporting materials, which are on file with the Grantor and the Grantee in connection with the project agreement.

The Grantor hereby conveys and grants to the Grantee as the representative of the people of the State, the right to enforce the following duties:

1. The Grantor shall take such reasonable and feasible measures as are necessary to protect the Real Property as described in Exhibit A: Legal Description, in perpetuity. Such measures shall be consistent with the purposes in the project agreement, including protecting, preserving, restoring and/or enhancing the habitat functions on the Real Property, which includes forested habitat. This habitat supports or may support priority species.

2. The Grantor shall allow public access to the Property as provided in the project agreement. Such access shall be subject to the restrictions allowed under the project agreement, by written agreement with the Grantee, or under state law. This provision is not intended to prevent reasonable access or use restrictions that are necessary for safe and effective management of the property consistent with habitat conservation purposes and the project agreement.

3. The Grantor shall provide access by the Grantee to inspect the Real Property for compliance with the terms of this Deed and the applicable project agreement to which the Grantor is a

signatory. Such access shall be subject to the restrictions, if any, allowed under the project agreement, by written agreement with the Grantee, or under state law. The Grantor warrants it has and shall maintain the legal right and means to reach the property.

4. Without prior written consent by the Grantee or its successors, through an amendment to the project agreement or the process set forth below, the Grantor shall not use or allow any use of the Real Property (including any part of it) that is inconsistent with the conservation purposes herein granted and as stated in the project agreement. The Grantor shall also not grant or suffer the creation of any property interest that is inconsistent with the conservation purposes herein granted and as stated in the project agreement.

Grantee's consent to an inconsistent use or property interest under this Deed shall be granted only to the extent permitted by law and upon the following three conditions, which ensure the substitution of other eligible land. The conditions are: (1) the substitute conservation land must be of reasonably equivalent habitat qualities, characteristics and location for the conservation purposes as the Real Property prior to any inconsistent use; (2) the substitute conservation land must be of at least equal fair market value to the Real Property at the time of Grantee's consent to the inconsistent use; and (3) the fair market value of the Real Property at the time of the Grantee's consent to the inconsistent use shall not take into consideration any encumbrances imposed on or alterations made to that land as a result of the original state grant and other grants if such encumbrances or alterations reduce the value of the Real Property from what it would be without them.

For purposes of this Deed the project agreement includes any amendments thereto that occur prior to or subsequent to the execution of this Deed.

This Deed contains covenants running with the land and shall be binding upon the Grantor, its successors and assigns, and upon any person acquiring the Property, or any portion thereof, or any interest therein, including a leasehold interest, whether by operation of law or otherwise. If the Grantor sells all or any portion of its interest, the new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be subject to applicable covenants and requirements under the Deed.

This Deed may not be removed or altered from the Real Property unless specific approval has been granted by the Washington State Recreation and Conservation Office and/or the Washington State Recreation and Conservation Funding Board or its successors.

The Washington State Recreation and Conservation Office and the Recreation and Conservation Funding Board and/or its successors shall each have a separate and independent right to enforce the terms of this deed.

GRANTOR:

The City of Seattle, a Washington municipal corporation

By:_____
Christopher Williams, Acting Superintendent of Parks and Recreation

Dated this day _____ of _____, 2011

STATE OF WASHINGTON)
)SS
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Christopher Williams is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledge it as the Acting Superintendent of Parks and Recreation of the City of Seattle and to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

_____
Notary Public in and for the State of Washington,
residing at _____
My appointment expires _____

GRANTEE:

STATE OF WASHINGTON, acting by and through THE RECREATION AND CONSERVATION BOARD, administered by the RECREATION AND CONSERVATION OFFICE
By:
_____

Name:
_____

Title:
_____

Dated this day _____ of _____, 2011

GRANTEE ACKNOWLEDGMENT

STATE OF WASHINGTON)
)SS
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledge it as the _____ Director, _____ of the Recreation and Conservation Office and to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

_____
Notary Public in and for the State of Washington,
residing at _____
My appointment expires _____

EXHIBIT A
Legal Description

The real property covered by this deed is described as follows:

LOTS 18 THROUGH 27, INCLUSIVE, BLOCK 85, REPLAT OF WEST SEATTLE LAND & IMPROVEMENT COMPANY'S THIRD PLAT, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9 OF PLATS, PAGE 58, IN KING COUNTY, WASHINGTON.

Form revised: December 14, 2010

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Parks and Recreation	Donald Harris / 684-8018	Amy Williams / 233-2651

Legislation Title:
AN ORDINANCE relating to State of Washington restrictions on the use of certain property under the jurisdiction of the Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to grant to the State of Washington a Deed of Right limiting the use of certain property in the Duwamish Head Greenspace to conservation purposes and to accept the release of a Deed of Right limiting the use of certain property in the Cheasty Greenspace to public recreation purposes.

Summary of the Legislation:
This proposed legislation authorizes the granting of a Deed of Right restricting the use of certain property in the Duwamish Head Greenspace to conservation purposes, in exchange for the release of a Deed of Right restricting use of a parcel in the Cheasty Greenspace. The legislation is necessary to allow the transfer of a subsurface tunnel easement for the Beacon Hill Light Rail tunnel to Sound Transit as described in companion legislation.

Background:
Companion legislation authorizes the Superintendent of Parks and Recreation to convey a subsurface tunnel easement beneath a parcel of property in the Cheasty Greenspace to Sound Transit for the operation of Sound Transit's Link Light Rail Project. The Cheasty Greenspace parcel was acquired using both Washington State Outdoor Recreation funds and King County Conservation Futures funds. Before the City can transfer the subsurface easement to Sound Transit, the City requires the consent of, and release of restrictions on the Cheasty Greenspace parcel imposed by the State of Washington through its Recreation and Conservation Office. Conveyance of a subsurface tunnel easement does not trigger replacement property requirements of the other funding source, King County Conservation Futures funds.

The State of Washington is willing to allow the removal of the restrictions on the Cheasty Greenspace parcel if similar restrictions are placed on another property of equal or greater value and similar utility. The State's replacement property conditions, unlike King County's replacement property conditions, do not require that the replacement property be located in the same area as the released property. The Department of Parks and Recreation (DPR) has suggested a replacement parcel, currently owned by the City and under the jurisdiction of DPR, in the Duwamish Head Greenspace. Before the City acquired the Duwamish Head property, it obtained a waiver of retroactivity from the State Recreation and Conservation Office that kept the Duwamish Head Greenspace property eligible as a replacement property.

With this proposed legislation, DPR will be able to obtain a release of restrictions from the Cheasty Greenspace parcel and will impose restrictions on the Duwamish Head Greenspace parcel. Based on recent appraisals, the Duwamish Head Greenspace parcel is more valuable than

COUNCIL CLERK

the Cheasty Greenspace parcel, and thus meets the State's requirement that the replacement property be of equal or greater value than the released property.

Please check one of the following:

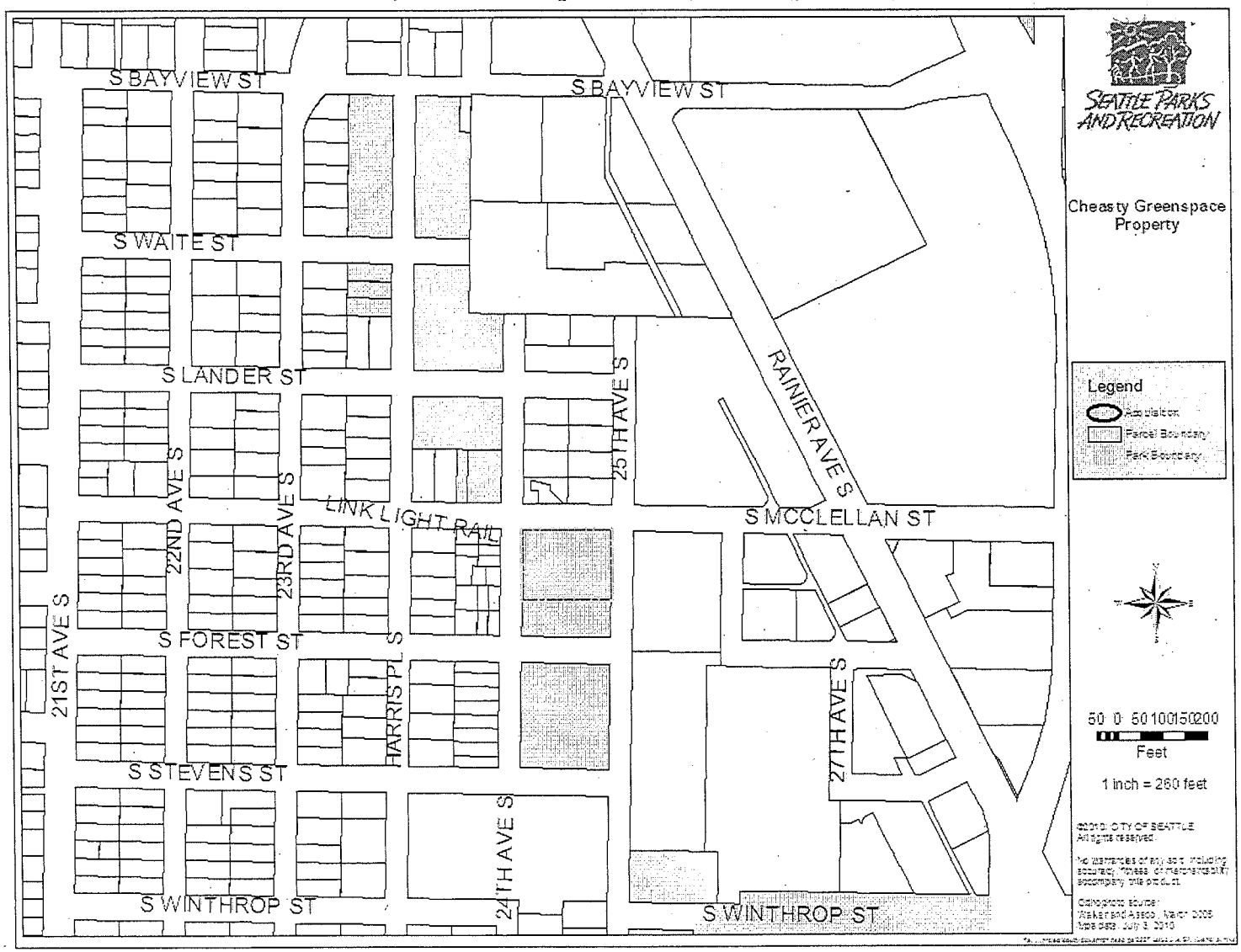
__X__ This legislation does not have any financial implications.

List attachments to the fiscal note below:
Attachment A: Map of Cheasty Greenspace Property
Attachment B: Map of Duwamish Head Greenspace Property

COUNCIL CLERK

Chip Nevins
DPR Cheasty DOR Transfer FISC ATT A
July 18, 2011
Version #1a

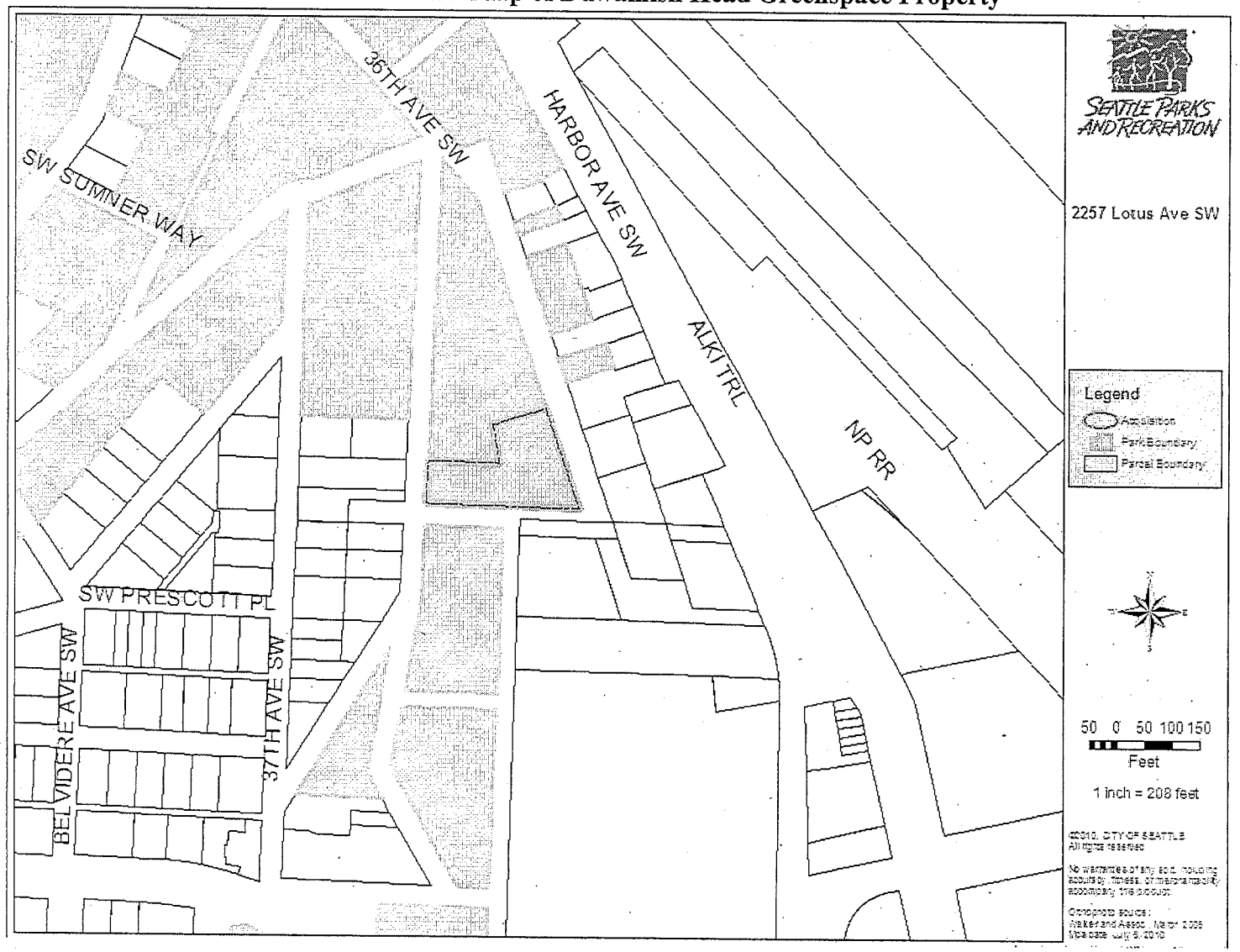
ATTACHMENT A: Map of Cheasty Greenspace Property



This map is intended for informational purposes only.

Chip Nevins
DPR Cheasty DOR Transfer FISC ATT B
July 18, 2011
Version #1a

ATTACHMENT B: Map of Duwamish Head Greenspace Property



This map is intended for informational purposes only.

City of Seattle
Office of the Mayor

July 26, 2011

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill authorizing the Superintendent of Parks and Recreation (DPR) to grant a Deed of Right to the State of Washington limiting the use of a parcel in the Duwamish Head Greenspace to conservation purposes in exchange for the removal of a similar Deed of Right from a Cheasty Greenspace parcel in the Rainier Valley.

The Sound Transit Beacon Hill Tunnel passes below the surface of a parcel in the Cheasty Greenspace, which is City-owned park property. Companion legislation authorizes the Superintendent of Parks and Recreation to convey a subsurface tunnel easement beneath the parcel of property in the Cheasty Greenspace to Sound Transit for the operation of Sound Transit's Link Light Rail Project. The Cheasty Greenspace parcel was acquired using both Washington State Outdoor Recreation funds and King County Conservation Futures funds. Before the City can convey the subsurface easement to Sound Transit, the City requires the consent of, and release of restrictions on the Cheasty Greenspace parcel imposed by the State of Washington, through its Recreation and Conservation Office. Conveyance of a subsurface tunnel easement does not trigger replacement property requirements of the other funding source, King County Conservation Futures funds.

The State of Washington will allow the removal of the restrictions on the Cheasty Greenspace parcel if similar restrictions are placed on another property of equal or greater value. The attached legislation will enable DPR to accept a release of Deed of Right restrictions on the Cheasty Greenspace parcel and, as required by the State of Washington, impose restrictions on a City-owned parcel of park property in the Duwamish Head Greenspace.

Thank you for your consideration of this legislation. Should you have any questions, please contact Donald Harris at 684-8018.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov