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July 4, 2011

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RE: Final Environmental Impact Statement and
Section 4(f) and 6(f) Evaluations
SR 520, I-5 to Medina: Bridge Replacement and HOV Project

Dear Secretary Donovan, Administrator Mendez, Directors Taylor and Mainella, and Regional EPA Director and Directors McBride and Mathis:

The United States should reject the 4(f) Evaluation for the SR 520, I-5 to Medina, Bridge Replacement and HOV Project as failing to comply with **23 United States Code** ("USC") **§ 138** and its counterpart, **49 USC § 303,** and with their implementing regulations, **23 Code of Federal Regulations** ("CFR") **§ 774.** It makes these three egregious errors:

1) It excludes several acres of "4(f) property" from its 4(f) protection, namely the section labeled the "Canal Reserve," and portions of Lake Washington and it downplays other segments, namely, Lake Washington Boulevard from its intersection with the current arboretum ramps to SR 520 (just west of Foster Island Drive) westerly;

2) It greatly understates the full impact of the SR 520 project on the Arboretum by confining its discussion of mitigation measures to the core in its master plans, limiting the impacts of the project to those both caused by and occurring within that actively-planned core, and failing to discuss various elements of the project's impact; and

3) Except for park land taken under Section 106 (f) and the Bagley viewpoint, the Section 4 (f) evaluation contains no discussion or promise of replacement for park land taken and thereby diminishes the environment, the neighborhood and the patrimony of parks to be passed on to future generations. It presumes that an unspecified amount of cash will be an adequate replacement, although state law permits a municipal conversion of donated and dedicated park lands to other uses only upon replacement in kind, and Initiative 42 of The City of Seattle (Ordinance 118477) specifies replacement of any park land taken in kind and in its recitals makes particular reference to the I-5 corridor.

To remedy these failures, all regulatory agencies need to require that the Washington State Department of Transportation ("WSDOT") make an irrevocable commitment of the area, which is now occupied by the freeway ramps to be removed and the 4(f) Evaluation calls the "WSDOT Peninsula," to "Arboretum and Botanical Garden purposes" or to convey the same to the City and/or the University of Washington for such purposes; and the Federal Highway Administration ("FHWA") needs to include such a commitment as part of its Record of Decision on the Project.

Applicable Statutes and Rules

Federal laws and regulations ---

23 USC § 138 (a) and **49 USC § 303** declare a national policy to preserve "public park and recreation lands." It forbids the Secretary of Transportation from approving any program or project ... "which requires the use of any publicly owned land from a public park... unless (1) there is no feasible and planning alternative to the use of such land, and (2) such program includes **all possible planning** to minimize harm to such park, recreational area, wildlife and waterfowl planning refuge, or historic site resulting from such use." (emphasis supplied).

In *Monroe County Conservation Council v. Volpe,* 472 F. 2d 693,700 (2nd Cir. 1972), the U.S. Second Circuit Court of Appeals stated that both conditions (1) and (2) in the statute, quoted above, are independent and cumulative. It stated:

"Even if there is no feasible and prudent alternative to the taking of parkland, the Secretary [of Transportation] still may not give his approval until there has been 'all possible planning to minimize harm to such park.' This requirement also has not been met in this case."

It went on to say at 472 F.2d 700-701:

> The Secretary has nowhere made the actual implementation of these suggestions a condition of his approval, cf. *San Antonio Conservation Society, supra,* 446 F.2d at 1016-1017. Rather, several times he has refused to impose conditions because he claims that he is confident that the state officials will do all they can to minimize damage to the park; and in his statement approving the use of the park, the Secretary refers to studies underway that will determine what type of highway structure will enhance rather than detract from the park. He concluded that 'all possible planning to minimize harm has been and *will continue to* be exercised by the responsible officials.' (Emphasis added.). The statutory mandate is not fulfilled by vague generalities or pious and self-serving resolutions or by assuming that someone else will take care of it. The alternative duty to minimize the damage to parkland is a condition precedent to approval for such a taking for highway purposes where federal funds are involved; and the Secretary must withhold his approval unless and until he is satisfied that there has been in the words of the statute, 'all possible planning to minimize harm to such park..' and that full implementation of such planning to minimize is an obligated condition of the project, *see D.C., Federation, supra*, 459 F.2d at1239." *(Italics are courts)*

In the latter case, *D.C. Federation of Civic Assoc. v. Volpe*, 459 F.2d 1231 (D.C. Cir. 1971), the D.C. Circuit Court held that the secretary's approval was premature since the plans were not specific enough.

The Secretary must make an independent review of significance and adequacy of mitigation. *LaRaza Unida v. Volpe,* 337 F. Supp. 221, 488 F.2d 559 (cert den. 417 U.S. 968, 41 L.Ed 2d 1138, 93 SCt. 105, states:

> "23 USC § 138 is a solemn determination by Congress that beauty and health-giving facilities of our parks are not to be taken away for public roads without hearings, fact finding and policy determinations under the supervision of a cabinet officer --- the Secretary of Transportation."

The Secretary of Transportation can not make the federal determination and finding dependent on affirmative or negative requests of local officials. *Harrisburg Coalition Against Ruining Environmental v. Volpe*, 330 F. Supp. 918 (D.C. Pa. 1971 D.C.) The U.S. Supreme Court gave little significance to the preference of local officials to use parklands for a highway in the Overton Park case, *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 411, 91 SCt. 814, 821, 28 L.Ed.2d 136 (1971). Accord: *Citizens etc. v. Volpe,* 335 F. Supp. 873, supp. Op. 357 F. Supp. 845 (D.C. Tenn.); *Pennsylvania Environmental Council v. Bartlett*, 454 F.2d 613 (3rd Cir. 1971); *San Antonio Conservation Society v. Texas Highway Department*, 446 F.2d 1013 (5th Cir. 1971) *cert den.* 406 U.S. 933, 32 L.Ed. 2d 136.

Section 4(f) applies to publicly owned land functioning as park; it need not be formally designated as park, *Stewart Park & Rescue Coalition, inc. v. Slater*, 352 F3rd 545 (2nd Cir. 3003), on remand 358 F.3d 83. *Arizona Wildlife Federation v. Volpe*, 4 ERC 1637 (D. Ariz. 1972). 23 CFR 774.11 (d).

Size is not important. The District Court of the Eastern District of Arkansas in *Arkansas Community Organization for Reform Now v. Brinegar*, 398 F. Supp. 685 affirmed 531 F.2d 864 (E.D. Ark 1975) stated:

> "The duty to make 4(f) findings does not depend on the size or nature of the park. If the park is a public park, it simply can not be used actually or constructively for federal highway purposes until a proper statutory finding has been made."

The existence of a public park presumes that it is significant unless an affirmative determination is made otherwise. *Arlington Coalition on Transportation v. Volpe*, 458 F.2d 1323 (4th Cir. 1972*) cert. den.* 409 US 1000, 34 L.Ed 2nd 261, 93 S Ct 312. The principles applicable to significance also apply to the determination of whether an area is parkland under Section (f).

23 CFR 774 repeats and implements the statutory language. 23 CFR § 774.17 Definitions, defines "*all possible planning*" as "... all reasonable measures identified in the Section 4(f) evaluation to minimize harm or mitigate for adverse impacts and effects must be included in the project." It sets a baseline. Whatever avoidance or mitigation measures are identified and reasonable must be implemented. It does not allow the highway authorities pick and choose from among the several mitigation measures identified in the Section 4(f) evaluation, nor as the foregoing cases indicate, let state and/or local officials exclude parkland or a reasonable mitigation measure from the Section 4(f) Evaluation and thereby disregard it.

23 CFR § 774.17 illustrates measures to minimize or mitigate harm as follows:

> "(1) With regard to public parks, recreation areas, and wildlife and waterfowl refuges, the measure may include (but are not limited to) design modifications or design goals; **replacement of land or facilities of comparable and function**; or monetary compensation to enhance the remaining property or to mitigate the adverse impacts of the project in other ways." (emphasis supplied)

The listing makes avoidance prime, then replacement of land, then money to enhance the remainder of the park, and finally use of funds elsewhere to offset the impact of the project. The goal appears in 23 CFR § 774.3 (c) to cause the "lease overall harm in light of the statute's preservation purposes."

Replacement of park land with other land suitable for park in the immediate neighborhood clearly best serves the statutory purpose of preserving park land. Significantly, the courts opinions in the *Overton Park* case and several of the others cited stress the importance of park as recreational open space and thereby implicitly the inadequacy of cash as a substitute. To comply with the "just compensation" clause of the 5th Amendment to the United States Constitution as applied to the states through the 14th Amendment, the highway authorities were obliged to pay the local authorities "monetary compensation."

The National Environmental Policy Act of 1969, 42 U.S.C. 4332, ("NEPA") seeks to promote beneficial effects and to prevent or eliminate damage to the environment and biosphere. It directs agencies to use all practical means and measures

... to improve and coordinate plans, functions, programs, and resources in a manner calculated to the end of fulfilling ".. the responsibilities of each generation as trustee of the environment for succeeding generations;" assure all people safe, healthful, productive, and esthetically and culturally pleasing surroundings; and attain the widest range of beneficial uses of the environment without degradation, among other goals. The Congress authorizes and directs that "to the fullest extent possible (1) The policies, regulations and laws ... shall be interpreted and administered in accordance with the policies set forth..." The State Environmental Policy Act, RCW 43.21C, replicates NEPA on a state level, and the City of Seattle has an implementing ordinance.

State laws and the common law ---

State laws and Seattle ordinances are pertinent because NEPA directs coordination with state and local governments to achieve environmental goals; federalism contemplates a comity among governments at all levels; state and local laws set policy that guides their government's actions; and in the absence of an express, direct legislative action, the statutes and ordinances often control.

In Washington, a municipality holds title to parks on behalf of the public at large. A dedication or donation of land to a municipality for only park purposes prohibits diversion of the park for other uses.[1] At least a half dozen published opinions of the Seattle City Attorney spanning several decades lay out the law against diversion of dedicated and donated park for roadway and other purposes, and are available upon request to the office. A dedicated park thereby differs from general municipal purpose property, *cf. Powell v. Walla Walla,* 64 Wash. 582, 117 Pac. 389 (1911). A municipality may change or permit the use of a dedicated or donated park only when and as explicitly authorized by statute.[2] Owners in a plat may enforce the restriction of use.[3]

RCW 35.22.280(1) allows for an exchange of a dedicated park when a reversion exists in favor of a grantor or another and the grantor can no longer be found. Accord: RCW 35.23.010 and RCW 79.125.710-.720. Then the right of the public is transferred

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[1] *Mulvey v. Wengenheim*, 23 Cal App. 268, 137 Pac. 1106 (1913); *Riverside v. Macleen,* 210 Ill. 308, 71 N.E. 408 (1904); *Alton v. Unknown Heirs,* 95 Ill App. 3rd 1072, 424 N.E. 2nd 1155 (1981). *In re Wellington,* 33 Mass 87 (1834); *Baldwin Manor, Inc. v Birmingham*, 341 Mich 423, 67 N.W. 2d 812 (1954); *Price v. Thompson*, 48 Mo. 361 (1871) and *S. Louis v. Bedal,* - Mo., 394 S.W.2d 391 (1965); *State v. Orange*, 59 NJL 331, 35 S. 799 (1896); *Porter v. International Bridge Co.*, 200 N Y 234, 93 N.E. 716 (1910); *Buffalo v.* Day, 8 Misc. 2d 14, 162 NYS 2nd 817 (1957); *Dallas v. Etheridge*, - Tex -, 253 SW 2d 640 (1952); *State v. Clark*, 161 Tex. 10, 336 S.W.2d 612; *Raynor v. Cheyenne,* 63 Wyo 72, 178 P.2d 115 (1947); *Lancaster v. Columbus*, 333 F. Supp. 1012 (D.C. Miss 1971); *Torrington v. Coles*, 155 Conn. 199, 230 A.2d 550 (1967).

[2] *Brooklyn Bridge Park Legal Defense Fund, Inc. v. New York State Urban Development Corp.*, 825 NYS 2d 347 (2006); Rhyne, *Municipal Law* (1980) 474 § 21-7.

[3] *San Antonio v. Congregation of Sisters of* Charity, 360 S.W.2d 580 (Tex, Civ. App. 1962) *cert* den 372 U.S. 967, 10 L.Ed.2d 131, 83 SCt 1093.

and preserved with like force and effect to the property received by the city in exchange. It is the only statutory authorization for converting such parks to another use. The principles that apply to a voluntary alienation apply to an involuntary transaction as well. The statutes and the common law have the effect of making replacement of land taken from a donated or dedicated park the primary remedy for the taking of park land. The statute and common law apply whether the grantor of the park land acts voluntarily or responds to an exercise of the power of eminent domain for a priority use. It pertains to the acreage taken from the Arboretum, McCurdy and East Montlake Park by SR 520.

City Ordinances ---

Initiative 42 (Ordinance 118477) of The City of Seattle—cited in the FEIS at 5-4-16 requires replacement of park land taken or use for a public project. It is attached as Enclosure "A." Its first Whereas Clauses a firm public policy against any alienation of park lands:

> ...
>
> Whereas, some of our parks are protected by bond covenants that require an equivalent replacement if those parks are taken or converted to another use; and
>
> Whereas, all of our parks need such protection in order to be preserved for public purposes and for our legacy of parks to be passed on to future generations; and
>
> Whereas, this ordinance would continue and strengthen a City policy against diversion of park lands and facilities contained in Resolution 19689, passed in 1963;"

Note: Resolution 19689 was passed in anticipation of construction of the R.H. Thomson Expressway and SR 520 through the Arboretum and called for land or funds sufficient to buy land as replacement for the property taken. The City replaced some of the land lost, which became the "Pinetum" at the westerly edge of the Arboretum. The only substantial open space land in the vicinity was the Broadmoor Golf Course, and that acreage was neither available nor acquiring it practical.

> Section 1 gives Initiative 42 its wallop. It states:
>
> "All lands and facilities held now or in the future by The City of Seattle for park and recreation purposes, whether designated as park, park boulevard, or open space, shall be preserved for such use; and no such land or facility shall be sold, transferred, or changed from park use to another usage, unless the City shall first hold a public hearing regarding the necessity of such a transaction and then enact an ordinance finding that the transaction is necessary because there is no reasonable and practical alternative and **the City shall at the same time or before receive in exchange land or a facility of equivalent or better size, value, location and usefulness in the vicinity, serving the same community and the same park purpose."** (emphasis supplied)

By Ordinance 123408 (Council Bill 116955), the City purported to "supersede" Initiative 42) within a tract described in the City's agreement with the Museum of History and

Industry ("MOHAI") as the "MOHAI Use Area" in order to divert 40% of funds received for the land to MOHAI for its new museum in South Lake Union. The validity and/or efficacy of that ordinance is questionable: the "MOHAI Use area" consists of a part of McCurdy Park, (a part of the Old Canal Reserve) conveyed by the State to the University of Washington); acreage identified in the FEIS as belonging to the Department of Natural Resources; a chunk of the southerly part of East Montlake Park (a park dedicated by the plat and a portion donated by the state under statutory stipulations restricting its use to Arboretum and Botanical Garden purposes) and street area.

Initiative 42 still applies fully to the remainder of those park properties in the Montlake neighborhood, in which the City has ownership or an ownership interest: East Montlake Park, sections of Foster and Marsh Islands in the Arboretum, portions of Montlake Playfield and Montlake Boulevard, and Lake Washington Boulevard.

OMITTED 4(f) PARK LANDS – CANAL RESERVE

The 4(f) Evaluation errs in denying 4(f) protection as park land to (a) Old Canal Reserve and (b) Lake Washington Boulevard, at least west of its intersection with the arboretum ramps. Both are part of the Arboretum and are publicly owned park that should be counted as park land taken for the project. Both that warrant replacement in kind.

4(f) Evaluation ---

The 4(f) Evaluation at page 9-30 discusses the Old Canal Reserve very curtly at page 9-30 as follows:

> "The undeveloped property north of SR 520 behind the houses facing East Hamlin Street is what remains of the Canal Reserve Land, the location of the original log canal between Lake Union and Lake Washington. This piece of land was not included in the Olmsted plans for the park, but was one of the first areas formally planted. Frederick W. Leissler, Jr., who was appointed assistant director of the Arboretum in 1936, directed WPA crews in planting Yoshino cherry trees and incense cedars on this land during the winter of 1935-1936 (BOLA and Kiest 2003). In 1963, the state Department of Highways condemned approximately 47 acres of Arboretum property for SR 520, including ost of the Canal Reserve Land. What remains of the Canal Reserve Land is located within the boundaries of the Montlake Historic District, north of SR 520, and is a contributing element to the district, but is not a part of the Arboretum."

Table 9-1, p. 9-52, captioned "Section 4(f) Uses in the Montlake Historic District under the Preferred Alternative," identifies the Canal Reserve as one acre used.

A repetitive footnote in the summaries and charts states: "The boundaries of the historic Arboretum are larger than the current park property. This use does not affect the recreational use of the Arboretum, and is only recognized as a Section 4(f) use of

Arboretum as a historic property." e.g. Table 9-2," Summary of Section 4(f)...", p. 9-58; Table 9-3. "Summary of Section 4(f) Uses under Option A". p. 9-72; Table 9-6, "Summary of Uses of Section 4(f) ....", p. 9-101 and 9-103r The text lists the 9.5 acres of the WSDOT Peninsula as affected. See also text under "Washington Park Arboretum, p. 9-68; WSDOT's analysis may apply the first sentence of the footnote to the Canal Reserve also.

Almost all the maps in the 4(f) Evaluation show the Canal Reserve as taken for the project, e.g. Exhibit 9-8, "Properties with a Section 4(f) Use..., "p. 9-44; Exhibit 9-10, "Historic Properties with a Section 4(f) Use...", p. 9-49; Exhibit 9-15, "Properties with a 4(f) Use under Option A..", p. 9-61; Exhibit 9-17, "Historic Properties with a Section 9 (f) Use under Option A, p. 9-65; Exhibit 9-20, "Section 4(f) Uses under the Preferred Alternative and Option A, p. 9-142 and 9-143, Options K and L . The Charts and text exclude its acreage from the count of park lands taken, e.g. Page 9-46 states that just 0.5 acres are taken --- a figure that necessarily excludes the acre plus taken from the Canal Reserve, Table 9-1, p. 9-52. Accord: p. 9-55. It is not listed as a park and recreation resource, p. 9-13; p. 9-21; p. 9-40 through 9-48; p. 9-159; or shown as affected park/Open space, e.g. Exhibit 9-3, Overview Map of Properties with a Section 4(f) Use ..., p. 9-17; Table 9-2, "Summary of Section 4(f) Uses...", p. 9-58; p/ 9-59 though 9-63.

FEIS References ---

The Final Environmental Impact Statement ("FEIS") takes almost the same approach as the 4(f) Evaluation. The maps and charts show the Canal Reserve as taken for the project, e.g. Exh. 5.2-4 "Right of Way Acquisitions..", p. 5-2-7; Exh. 5.4-3 "Permanent Park Acquisition..." p. 5.4-6[4]; Exh. 5.6-4 "Effects on NOAA..", p.5.6-8; Exh. 5.6-5 "Effects on Historic Properties..". p. 5.6-10; Exh. 5.6-9 "Effects on Historic Properties...", p. 5.6-17; and Exh.6.2-3 "Property Affected...". P. 6-2-4. The FEIS also omits it from the area colored green as park land under Section 4(f), e.g. Exh. 3-3 "Potential Haul Routes...", p 3-7; Exh 4.1-2 "Montlake Boulevard...", p. 4-1-2; Exh .4-1-4 "Existing Transit and HOV Facilities..", p. 4-1-7; Exh. 4-1-8 "SR 520 Montlake Interchange Area...", p. 4.1-13; Exh. 4-3-1 "Neighborhoods and Community Facilities", p. 4-3-1; Exh. 4.3-3 "Major Utilities ...", p. 4.3-8; 4.4-1 "Parks and Recreation Facilities..", p. 4.4-2; Exh. 4.6-2 "Historic Properties..", p. 4.6-4; Exh. 6.1-1 "Lake Washington Boulevard Ramp Detours", p. 6-1-4; and Exh. 6.1-2 "Road Closures..", p.6.1-5. Exhibit 4.2-1, "Existing Land Use in Seattle," p. 4.2-2 I 2 colors it grey indicating "vacant." Accord: Exhibit 5.4-4 "Permanent Park Acquisition....", p. 5-4-8. However, the University of Washington open space across the canal is colored green as park, e.g. Exh. 3-3, 4-1-7, 4.1-8; 4.2-1; 4-3-1; 4.3-8; 4.4-1, 4.4-9, 6.2-3, 5.4-5 "Permanent Park Acquisition.." p. 5.4-10; and Exh. 6.3-1 "Community Resources..", p. 6.3-2. It is omitted from acreage tabulations in Table 4.4-1 "Summary Information..." p.4.4-3, Exh. 4.6-1 "Listed and Individually Eligible Historic Properties..." , p.4.6-5,

[4] Exhibit 5.4-3 mistakenly shows the Canal Reserve as "existing right of way." It most certainly is not that. See discussion under Canal Reserve History at pages 10-13 below.

Table 5.4-1 "Permanent Park Acquisitions" p. 5-4-1 and Table 5.16-1 "Summary Comparison..", p. 5-16-4. The text, p. 4.4-1 through 4.4-10 and at 5.4-11, and 5.5-22 through 5.5-26 ignores the Canal Reserve in both its discussion of Seattle parks and University of Washington Campus Recreational Facilities, although it regards it as a contributing element in the Montlake Historic District. The FEIS Section 8.4, p. 8.4-1, even omits it and the commitment of the WSDOT Peninsula for arboretum and park use from its discussion of "unresolved controversy" although many community groups (including the Seattle Community Council Federation, the North East District Council, the University District Community Council, the Ravenna-Bryant Community Association and Friends of Olmsted Parks) have called for and still call for restoration of the WSDOT Peninsula to permanent Arboretum use.

The FEIS and the 4(f) Evaluation thereby treat the "Canal Reserve" as an orphaned bastard scarcely to be acknowledged. However, the neighborhood and parks people embrace it as park with an honorable history as part of the Arboretum and to be treated as such.

Status as parkland and part of the Arboretum ---

Black's Law Dictionary (4th Ed. 1957) p. 1271 defines "park" as "an enclosed pleasure ground in or near a city, set apart for the recreation of the public." Accord: *Batchelor v. Madison* Park, 25 Wn.2d 907, 172 P.2d 268 (1946). Webster's *Collegiate Dictionary* (1958) defines "park" as "... a piece of ground, in or near a city or town kept for ornament and recreation.." *The American College Dictionary* (1969) by Random House defines "Park" as "a tract of land set apart as by a city or a nation for the benefit of the public; a tract of land set apart for recreation, sports..."

The Canal Reserve qualifies as "park:"

+ It is open space used by the public for recreation. It is open to the public as a matter of right. The immediate neighbors use it for walking dogs and sometimes as an informal off leash area.

+ The aerial views in the FEIS and the Section 4(f) Evaluation show it as green space with trees, the traditional City park. See photographs, Enclosure "B" of ground level views. It looks like a park with neglectful maintenance.

+ It is a continuous tract. It is set apart from the homes on the north by an alley and Jersey barriers. No parking signs forbid vehicle entry beyond the alley right-of-way. Fencing, a tree-lined border, and elevation changes separate it SR 520 and the Montlake off ramp of SR 520. 26th Avenue East marks its east boundary and the Montlake off ramp and Montlake Boulevard mark its west. No fences disrupt the interior expanse.

+ Government crews mow the open space from time to time. Government signs forbid dumping and say violators will be subject to fine under RCW 70.93.060.

+ It is continuous with McCurdy Park and part of the "historic Arboretum" in the text of the 4(f) Evaluation and FEIS.

+ It has a pedigree as good as McCurdy Park and the sections of the Arboretum protected by Section 6(f). RCW 28B.20.350-.356, Chapter 45, Laws of

1947, Enclosure "C", deeded the old Canal Reserve (including this tract) to the University of Washington for "arboretum and botanical garden purposes and no other purposes." . RCW 28B.20.356 reverts the land to the State of Washington should the University divert use of the property to another usage. The University maintains an inventory of all the trees and shrubs on site. The University has never repudiated that limitation nor has the State claimed that the University is in default. The letter of the State of Washington, Recreation and Conservation Office, dated July 28, 2008, Attachment "A", Attachment "Arboretum Park Draft Boundary", contained in Attachment 2 of the SDEIS shows the former Canal Reserve easterly of 24th Avenue East as part of the Arboretum. The University in its comment on the Supplemental Draft Environmental Impact Statement (S-002) Comment #5 by Arborist Fred Hoyt noted "The plant collections at the Canal Reserve Property should be noted in the document;" and Comment # 25 states that "The Canal Reserve is unique open space property that should be called out." Each seeks 4(f) recognition.

+ The records of the King County Assessor, East ½ of Section 21-25-4 show it as owned by the University of Washington for arboretum and botanical garden purposes. Maps of Seattle, bicycle maps, trail walking maps, and park guides show a continuous green from Madison St. north to Lake Washington (save for the WSDOT wedge) and label it "Arboretum" without breaking out McCurdy Park. The grand vision of the Arboretum at the reception desk at the Graham Visitor Center includes the canal reserve as part of the Arboretum. The Don Sherwood Portfolio, Data on the History of Seattle Parks, in the Seattle Central Library, shows the Canal Reserve west of 24th Avenue East as "Arboretum – U.W." (Enclosure "D").

These factors, taken together, establish the Canal Reserve as 4(f) parkland. There's an adage that goes like this: "If it looks like a duck, it waddles like a duck, and it quacks like a duck,... it's a duck."

Canal Reserve History —-

As explained above RCW 28B.20.350 - .356 (Chapter 45, Laws of 1947) (Enclosure "C") conveyed the old Canal Reserve --- including the area renamed as McCurdy Park -- to the University of Washington for "arboretum and botanical garden purposes and for no other purposes."[5] It reflected the usage then in effect.

At that time, Washington Park extended from East Madison Street to Montlake Boulevard. In 1934, Ordinance 65130 approved an agreement with the Board of Regents of the University of Washington granting the University the right to use "all or any portion of said Washington Park" for planning, developing and maintaining an arboretum

[5] The conveyance included the portion of McCurdy Park soon to be occupied by the Museum of History and Industry. The University was authorized to reconvey possession of a portion of the tract 120' by 400' to The City of Seattle for use by the Museum of History and Industry with a reversion to the University should museum use cease, RCW 28B.20.354 (Enclosure "C") The FEIS, p. 9-20, errs in stating that this property "... is now owned by the City." The City has a right of use of a portion of the premises for the duration of the museum's occupancy.

and botanical garden with the University empowered "... to designate in writing from time to time the exact areas which it desires to devote to such use." It attached a map showing the boundaries of Washington Park. The map included the Canal Reserve area. In 1936, the Olmsted Brothers completed a plan for the University of Washington Arboretum in Washington Park. The plan, entitled "General Plan for the Seattle Arboretum," file # 2669, Plan # 73, March 1936," included the area of the Canal Reserve (Enclosure "E").[6] The University Library contains an Aerial View of Montlake, Interlaken Park, and the Arboretum taken on January 30, 1937. It shows the arboretum as extending from Madison Street to Montlake Boulevard. A 1939 aerial photograph (Enclosure "F") shows the Canal Reserve as woodsy toward the west and marshy in the east. Before SR 520 was built, Seattle residents and visitors could walk from Madison Street on the east to the Montlake Bridge on the northwest without leaving Washington Park and its plantings.

In 1961, the City and the University reached an agreement on partition of the portion of Washington Park that had been the Canal Reserve west of 24th Avenue East. The City had started condemnation proceedings for the R.H. Thomson Expressway, also known as the Empire Expressway. King County Superior Court Cause No. 566846. The area contained 141,888 square feet. The City would take 81,860 on the south for the interchange off ramp; the University would retain the remaining 60,278 square feet. The agreement was authorized by Ordinance 90723. The agreement did not remove the University portion from the restriction of use to "arboretum and botanical garden purposes." RCW 28B.20.350 still applies. For that reason, the agreement required the City to landscape areas apportioned to the University, which were disturbed by construction, up to park standards.

In 1963, the State of Washington condemned about 47 acres of Arboretum land for SR 520. The state's acquisition included the portions of the Arboretum that the City had acquired for the R.H. Thomson interchange; a portion is now called the "WSDOT Peninsula," *State vs. City of Seattle, et al.*, King County Superior Court Court No. 597685.

Resolution 24646 of the City Council of Seattle, passed August 12, 1974, adopted a "letter of clarification" of the 1934 Agreement with the University. The second paragraph of the letter "agreed that the arboretum and botanical gardens "should continue to be maintained within the confines of Washington park as provided for in the 1934 agreement and as more specifically set forth in this letter of clarification." It attached a map showing the area of Washington Park subject to the 1934 agreement. The third paragraph of the "letter of clarification" stated that "..the area 'to be designated" pursuant to the provisions of that paragraph 1 has been designated as shown on the map..." The area of the 1974 map is more limited to reflect the ballfield on the south east retracted by the City, the State's acquisitions for SR 520, and the City deed authorized by Ordinance 90723 (Enclosure "G"). After the "letter of clarification," the University could --- and

[6] The 4(f) Evaluation, page 9-30, second sentence, second full paragraph, errs. Enclosure "G" shows the Canal Reserve at the far right.

can --- develop the Canal Reserve **for arboretum purposes and no other** in any manner that the University Board of Regents decide. (emphasis supplied, citing statutory text). It no longer needs to consult with the City with respect to those 60,278 square feet of the Canal Reserve.

The 4(f) Evaluation assumes that the "letter of clarification" removed this site from the Arboretum. WSDOT staff point to City sponsored 1978 Master Plan Update and the more recent ones that omit that section from the planning area[7]. Limiting joint planning to the core area no more severs them from arboretum usage than lines on a zoning ordinance would do. All that the Master Plans really show is the scope of joint planning and management. The effect of the exclusion is to reserve the University's 60,278 square feet of the Canal Reserve segment for future "arboretum and botanical garden use" with minimum development for now.[8] My research in the records of the Board of Regents, *University of Washington, Board of Regents Records, 1861-1998,* at the University's Special Collections in the Suzallo-Allen Library of the University uncovered no document by the University to change the status of the premises from "arboretum and botanical garden" purposes or to make a formal severance of the area from the Arboretum.

For those not familiar with Seattle history, a bit of background may be helpful. Before World War I, King County had planned to build a canal through the isthmus Montlake using the route of a ditch dug earlier for floating logs from Lake Washington to Portage Bay during high water. It acquired some rights from the adjoining owners. The rights of King County were subordinate to those of the State of Washington in the marsh. Article XVII, Section 1 of the Washington Constitution asserted state ownership up to the "line of ordinary high water within the banks of all navigable rivers and lakes." When the United States announced its intention to build the Lake Washington Ship Canal, King County deeded its rights to the United States; and the State also authorized the canal. The United States, Army Corps of Engineers, chose a straight more northerly route where the canal now lies. It became known as the "Montlake Cut." The United States did not use the right of way which King County had acquired. The Ship Canal lowered the level of Lake Washington so that marsh and bog rose above Lake level and the U.S. added soil from its cut to further raise the elevation of the land.

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[7] WSDOT staff may also cite two other arguments: (a) the maintenance lags and (b) the City's 4(f) correspondence omitted it. The responses are (a) both the City and the University leave property untended, and encroachments occur into under-tended sections of parks from time to time.; and (b) The City's Parks Department letters listed only City-owned properties; its letters also omitted the University open space identified in the 4(f) Evaluation.

[8] This strategy may also reflect Ordinance # 103667 that forbids fencing, entrance fees, and construction in park lands owned by the City of Seattle. According to a UW retiree, during and after the 1990's, the UW anticipated SR 520 expansion northward and therefore left the tract alone.

In 1946, the United States deeded the property rights from King County back to King County as surplus property, (Seattle Comptroller's Files # 190837 and 194885), and the United States returned to the State of Washington all that marsh lakeside of the "line of ordinary high water" at the time of statehood. King County conveyed its property rights by quit claim deed to the City, By RCW 28B.20.350, enacted as Laws of 1947, Chapter 45, the State conveyed the old canal reserve to the University of Washington. The partition authorized by Ordinance 90723 conveyed the City's rights to the University.

Chapter 164, Laws of 1959 granted the University authority to reconvey to the state such portion of its Arboretum properties as needed for state highway purposes, the funds to be used strictly for arboretum purposes. The University did so for SR 520 construction. It is codified as the provided clause of RCW 28B.20.356.

Use of the old canal reserve for plantings dates back over a century. As part of its beautification for the Alaska –Yukon-Pacific Expedition in 1909, the Seattle Board of Park Commissioners (which managed the City's park system autonomously of the City Council) had landscaped Montlake Boulevard – then the south east entrance to the AYP Expedition grounds and extended its plantings into the Old Canal Reserve. The 4(f) Evaluation, p. 9-19, correctly states that "In the 1920's, [1925] the federal government leased a portion of the old canal right-of-way (originally reserved for the Lake Washington Ship Canal) for 99 years to the City for park use ..." It should have continued with the information contained in the Seattle Department of Transportation Records section, commonly called "the Vault." The Vault contains a copy of plats of property within the City limits; until recently, City staff would mark modifications of the original plan on the blue print to alert the researcher. A copy of an extract of Blocks 9,10, and 11 of Lake Washington Shore Lands, page 6, (Enclosure "H") shows the old Canal Reserve east of Montlake Boulevard East. It carries the annotation "Revocable license, dated June 14, 1926 revoked by license dated April 20, 1929 to use for park." If the United States had an outstanding lease or license on the premises to The City of Seattle, the 1946-47 documents would make reference to it. They don't. Neither City records at the City Clerk's office nor the Kroll maps of the 30's to the 50's at the Central Library in downtown Seattle, Seattle room make any mention of a lease or later license to the City. Rather, the area is ascribed to usage by the University. The Canal Reserve was one of the first sections replanted..[9] The public enjoyed until SR 520 construction began. The SR 520 Project guarantees that this segment will not be able to enjoy it for park or arboretum purposes again for the foreseeable future.

Law applied ---

The Canal Reserve is parkland related to, if not part of the Arboretum, and protected by Section 4(f) as such. According to the cases and regulations cited at pages

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[9] *Washington Park Arboretum History* by BOLA Archiecture and Planning and Karen Kiest (2003). Figure 21 shows the work as completed to date, April 25, 1938; and it is shown on Figure 4, p. 50 and Figure 20, p. 81.

1-5, 23 USC § 138 and 49 USC § 303 and its implementing regulation, public ownership and use as a matter of right for recreational purposes creates a presumption of parkland for Section 4(f) purposes. NEPA requires that federal laws be interpreted and administered to accomplish its policies and goals. Which best achieves the statutory purpose? That which protects the Canal Reserve as 4(f) property, honoring the statutory dedication? Or that which treats it as vacant land available for other uses irrespective of the state's donation? If the former, WSDOT's 4(f) Evaluation errs and must be corrected.

OMITTED PROEPRTY: LAKE WASHINGTON BOULEVARD

Effect of Project on westerly segment of Lake Washington Boulevard ---

The SR 520 Project will replace the arboretum ramps between SR 520 and Lake Washington Boulevard with a westbound off-ramp further west. In doing so, it converts the westerly section of Lake Washington Boulevard lying between Montake Boulevard and approximately Foster Island Road (where the arboretum ramps now are) into a freeway access roadway. The high volumes will strip away its parklike character.

When the arboretum ramps are removed, the westbound ramp from SR 520 will exit to 24th Avenue East, approximately the site of the current overpass over SR 520. At that point, 24th Avenue East will cross the east end of the lid to be constructed and connect to Lake Washington Boulevard. The design allows a left (south) turn for exiting traffic of all vehicles 24 hours per day every day, except those times that Lake Washington Boulevard is closed for a special event, such as a marathon race or a bicycle Sunday. The left turn accommodates traffic destined to the easterly neighborhoods (e.g. Madison Park and Madison Valley, Denny Blaine) and those more southerly (Madrona, Harrison and Dorfel Drive, Mount Baker and sections of the Central area). If the left turn were restricted to HOV usage, general purpose traffic would travel to Montlake Boulevard and other arterials.

The FEIS, p. 5-1-133 states: "Access to and from the south would be relocated from the Lake Washington Boulevard ramps to 24th Avenue East; this would result in an increase in trips along Lake Washington Boulevard between Montlake Boulevards and the area of the existing Lake Washington Boulevard ramps." The Transportation Discipline Report accompanying the FEIS p. 6-15 states:

> "About half of the trips that had used the Lake Washington Boulevard ramps from the south to head eastbound would move over to Montlake Boulevard. In the westbound direction, trips head south would exit at 24th Avenue East and have the option to head south along Lake Washington Boulevard or Montlake Boulevard. Similar to the shift in travel south along Montlake Boulevard and half on Lake Washington Boulevard. This pattern would be consistent in the morning and afternoon commute periods."

Exh. 5-1-23 and 5-1-24, "Traffic Volume Changes", p. 5.1-32. show an increase in the AM peak of 480 and in the PM peak of 400 in that westerly segment of Lake Washington Boulevard as compared to "No Build" In 2030. The Exhibits anticipate 850 vehicles per

hour during the AM peak and during 1010 PM peak hour under the "No Build" alternative; the increase would therefore be 56.47% and 39.6% in this segment.

Exhibits 6-1 and 6-2, "SR 520/Montlake Boulevard Interchange Area.." AM and PM peak periods respectively, show projected traffic volumes for 2030 at two locations: one east of Montlake Boulevard, the other east of 24th Avenue East. This stretch of Lake Washington Boulevard runs east-west south of and parallel with SR 520. The projections are:

		East of Montlake Blvd	East of 24th Ave. E.
AM Peak	Existing	760	840
	No Build	850	850
	Pref. Alt.	1400	1330
PM Peak	Existing	840	840
	No Build	1010	1010
	Pref. Alt	1410	1430

"Pref. Alt." abbreviates "Preferred Alternative.". The increase of traffic during the A.M. peak is 64.7% on Lake Washington Boulevard east of Montlake Boulevard and 56.47% east of 24th Avenue East. The PM figures show an increase of 39.6% and 41.58% respectively. Removal of the arboretum ramps decreases traffic volumes east and south of the WSDOT Peninsula.

The Final Environmental Impact Statement for the Washington Park Arboretum Master Plan (January 2001) in Appendix C, Figure 2, contained actual traffic counts on the vehicular volumes on Lake Washington Boulevard. In the morning, 74% of the traffic going northbound from Madison St. on Lake Washington Boulevard turned off to go to SR 520 at the arboretum ramps; the other 26% continued to Montlake Boulevard; and 35% of the traffic on Lake Washington Boulevard south of the arboretum ramps were commuters coming from SR 520. In the PM peak, 53% of the southbound traffic came from SR 520, and 45% of the traffic came from the south at Madison St. and went eastbound on SR 520. Less than one motorist in three exiting at the arboretum ramps turned west and one-seventh of the motorists using that westerly section of Lake Washington Boulevard.

4(f) Evaluation –

The 4(f) Evaluation does not consider the segment of Lake Washington Boulevard west of the WSDOT Peninsula to be a "park resource." It is omitted from the listing on p. 9-13 and the tabulations of park land taken in the same tables and exhibits as the Canal Reserve is. It lacks the green shading of parks in Exh. 9-13, "Overview Map of Properties with a 4(f) Use," p 9-17, Exh. 9-9, "Effects on the Washington Park Arboretum..", p. 9-4; Exh. 9-13, "Effects on the Washington Park Historic Park Arboretum..." p. 9-54; Exh. 9-16, "Effects on the Washington Park Arboretum under Option A," p/ 9-64; Exh. 9-18, "Effects on the Washington Park Arboretum Historic Property," p. 9-89; and Exhibit 9-29, "Section 4(f) Uses under the Preferred Alternative...", p. 9-142.

The FEIS has the same pattern of exclusion, e.g. Exh. 2-13, "Montlake Area.." p. 2-47; Exh. 3-3 "Potential Haul Routes", p. 3-7; Exh. 4.4-1 "Parks and Recreation Facilities ..", p. 4-4-2; Exh. 5-4-6 "Permanent Acquisition," p. 5-4-12. Its tables and exhibits also omit this segment from the count of park lands taken. Chapter 6, "Effects During Construction of the Project" shows increased traffic volumes for several years, Exh. 6-1-3, "Expected Traffic Volumes...", p. 6-1-3, its use as a detour, "Exh. 6.1-1 "Lake Washington Boulevard Ramp Detours," p. 6.1-4; construction truck volumes, "Estimated Daily Construction Truck Volumes...," p. 6.1-13; a construction easement, Exh. 6.2-3 "Property Affected by Construction," p. 6.2-4; and use for construction staging, Exh. 6.3-1., "Community Resources...", p. 6-3.2 and Exh. 6.4-1 "Construction Effects on Parks", p. 6.4-2. Traffic almost doubles on the westerly segment for several years of construction during the AM peak period; it increases 60% during the evening peak. Transportation Discipline, Exh 10-4, "Lake Washington Boulevard Access During Construction," p. 10-9 and Exh. 10-5, p. 10-9, and Exh. 10-10, p. 10-14. This segment is shown as eligible within the Montlake Historic District, Exh. 5.6-9, "Effects on Historic Properties," p. 5.6-17, and therefore on some exhibits shaded with a greenish tint.

The 4(f) Evaluation, "Constructive Use," p. 9-6 cites 23 CFR § 774.15 that a finding of constructive use of a 4(f) property requires a determination that the protected features are "substantially impaired." At page 9-32, it concludes that the entire length of Lake Washington Boulevard in the area of potential affects is eligible for listing on the national register of historic places. The very first sentence on page 9-33 makes this key characterization: "Lake Washington Boulevard is a transportation facility and it has served that function since its construction." WSDOT's responses to the comments of the Parks Department (L-008-008) calls it an arterial and its response to the "Coalition for Sustainable 520" (C-021-021) states that is .." not a park property because its primary use is not as a park." The 4(f) Evaluation concludes its reply by citing approval of its use as a SR 520 access roadway with modifications by the State Historic Preservation Officer. That approval may settle the matter with respect to its classification as a historic property eligible for listing. It does not resolve the issue from a park perspective. In its comment on the SDEIS, the Seattle Parks Department asked for its consideration as a 4(f) park property, (S-008-008) and so had the Arboretum Foundation, Part V, page 9 (C-037-004) and page 21 (C-037-060).

Lake Washington Boulevard as a linear park ---

Lake Washington Boulevard was designed and intended for leisurely travel in the manner of a park roadway --- not as a throughway for commuting. It is two lanes, lined with trees and ornamental old style lighting to match, and narrow as carriageways were at the turn of the century. It winds like a serpentine; there are two intersections east of the WSDOT Peninsula, and one at the 24th Avenue East overpass. Neighborhood Streets that connect to 26th Avenue East next to Lake Washington Boulevard are closed to cut through traffic. Street signs on the segment north of the intersection with East Calhoun St. are brown for park –rather than the traditional green for street. The signs say Lake

Washington Boulevard – not 26th Ave E. At East Lynn St., projected northward, the Arboretum Aqueduct, a pedestrian overpass with a drainage line, crosses over the boulevard; it is brick, arched, and so low that that truck tops sometimes bang against it.[10] The overpass is a designated City Landmark and on the National Register of Historic Places, 4(f) Evaluation 9-29.

The westerly segment of Lake Washington Boulevard lies outside the current limited access lines. It actually includes sections of roadway that are labeled on some of the FEIS exhibits as 26th Avenue East. The platted 26th Avenue East runs north and south with its most northerly end at its intersection with East Calhoun St. Washington Park Master Plan, Draft Environmental Impact Statement, Figure 10, p. 124 (May 2000). St *Montlake: An Urban Eden* by Eugene Smith in Chapter 11 describes the development of the Arboretum and Lake Washington Boulevard at pages 113-117 and 128-129. Enclosure "I" is an extract from the book. The Board of Park Commissioners laid it out within and as part of Washington Park. See the 1912 map on page 114 of the extract. It remains under the jurisdiction of the Parks Department. Various ordinances accepting deeds recite their acceptance for park purposes. The whole array may be examined in the City Clerk's office. Lake Washington Boulevard was never dedicated as street and it is subject to Initiative 42.

In some cases, Seattle created boulevards by condemning the rights from abutters, changing the right-of-way from "commercial street" to "park, drive and boulevard purposes", e.g. portions of Queen Anne Boulevard. In contrast, Lake Washington Boulevard has a park underlay throughout, and especially as part of Washington Park. As shown on Enclosures "D", "E" and "I," Washington Park extended from East Madison St. to Montlake Boulevard.

Rebuttal to WSDOT's Arguments ---

The City's street classifications as of 2002 appear on its website,www.seattle.gov/transportation/streetclassmaps. Lake Washington Boulevard is classified as a "collector arterial." That category is below "Principal Arterial" and above "access street."[11] Its function is described as ".. collects and distributes traffic from principal and minor arterials to access streets or directly to local destinations. Collector arterials are typically located within neighborhood boundaries and serve small groups of stores, schools, small apartment complexes, and residential land use." It is not a major truck street or authorized for transit. Large tracts commonly have more than one entrance and a roadway connecting them. Those large tracts include national parks,

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[10] A photograph appears in the FEIS, p.4.6-17. During public meetings for developing the Arboretum Impact Plan, citizens had asked that signage on 24th Avenue East warn motorists about the low clearance of the aqueduct over Lake Washington Boulevard. Trucks turning left on to Lake Washington Boulevard eastbound from the 24th Avenue East overpass face a dilemma: either go under the aqueduct or traverse narrow tree-lined neighborhood streets with low overhanging branches.

[11] The Recreation Discipline Report Addendum, p. 13, errs in classifying it as a "major arterial."

military posts, college campuses, and cemeteries. For example, Stevens Way makes a loop from N.E. 40th St. to N.E. 45th St. by way of Memorial Way. Those roadways were built to accommodate traffic that seeks a location in the tract a destination and in some cases for the pleasure of slow, leisurely and travel and enjoying nature. Such roads are still part of the park, post, campus or cemetery. To say otherwise, as WSDOT does with Lake Washington Boulevard, takes all together too narrow a perspective --- like having one's nose on the centerline and one's peripheral vision confined to the curbline.

The SR 520 Project escalates the westerly segment to a freeway access roadway and overshadows it park boulevard character. By analogy, on a national level the Natchez Trace fits the concept of scenic park roadways; superimposing a freeway would be a change of use. The bulge between East Louisa St. and E. Miller St. might be compared to the look-outs and picnic stops along the Natchez Trace. Making the Trace into a freeway access roadway would impose a additional servitude because the more intensive usage differs so much in degree that it amounts to a change in kind, especially at turn-out locations.

Law and common sense ---

The 4(f) Evaluation, p. 9-31, cites 23 CFR §774.11(h) that "property formally reserved for a future transportation facility" and used in the interim as park, however long the duration, does not receive 4(f) status as park. The converse should also be true. A boulevard in a park ought not to lose its 4(f) protection because commuter traffic adopts it as a short cut. Denying 4(f) status is especially inappropriate to the westerly segment where the preferred alternative makes the boulevard its prime entry and exit from SR 520. Since the 1960's, the City has prohibited left turns by eastbound traffic on Lake Washington Boulevard to the arboretum ramps and thereby kept the westerly segment from becoming a freeway access roadway.

23 USC § 138 and 49 USC § 303 require ".. all possible planning to minimize harm to such park." Supporters of the Arboretum proposed restricting the left turn at 24th Avenue East to HOV vehicles, and if that were not acceptable, to allowing usage by general purpose traffic only during peak hours. WSDOT and the City chose to allow general usage 24 hours per day seven days per week. These restrictions qualify as within a "reasonable measure" that should have been identified in the FEIS and the 4(f) Evaluation, and when so identified, adopted as part of the project. The 4(f) Evaluation at pages 9-37 and 9-38 promises "traffic calming measures and a traffic management plan..." Those elements are laid out in the Arboretum Impact Plan and in a Memorandum of Understanding with the Arboretum and Botanical Gardens Committee. These measures slow traffic speeds; they do not avoid many of the impacts from the greatly increased volume. To offset the impacts and preserve the integrity of the park, the WSDOT Peninsula needs to be committed to arboretum use.

Assuming *arguendo* that it had became a "transportation facility," the greatly increased traffic volumes to be generated by the 24th Avenue East exit amount to a

"constructive use" of the landscaped periphery to the paved lanes. That greenery should still be treated as Section 4(f) park. Between the intersection of East Louisa St. and East Miller St. projected, Lake Washington Boulevard has over one hundred feet of park width lying east of the curbline of the roadway and west of the WSDOT Peninsula right-of-way. See Exh. 9-9 "Effects on the Washington Park Arboretum...", p. 9-47. The depth equals that of an old-style Seattle City lot. Motorists can see folks relaxing or playing Frisbee or catch there. *Adler v. Lewis*, 675 F2d 1085 (9th Cir. 1982) held that a "use" occurred off-site if the project "... would substantially impair the value of the site in terms of its prior significance and enjoyment. " *Brooks v. Volpe*, 460 F.2d 1193 (9th Cir. 1972) on remand 350 F. Supp. 269 and 287, *aff'd* 487 F.2d 1344. upheld a ruling that widening I-90 west of Snoqualmie Pass had make a "use" of the Denny Creek Campground by surrounding it.

Common sense supports committing the WSDOT Peninsula to Arboretum use as compensation and mitigation for traffic rerouted by removing the arboretum ramps. After SR 520 construction is complete, the westerly segment of Lake Washington Boulevard will be serving the same function as the Arboretum ramps did. The noise and traffic that had been on the ramp closed will be moving to the boulevard that is still open. Changes will also be made at its Montlake Boulevard intersection to accommodate the traffic flow. A commitment of the WSDOT Peninsula to Arboretum use mitigates the impact on the neighborhood. The spirit of NEPA requires it.

UNDERSTATED ENVIRONMENTAL IMPACTS

The 4(f) Evaluation and the FEIS understate the full environmental impact of Seattle's park system in the "area of potential effects."

1) Each omits consideration of certain factors and impacts. For example, the detailed comments on the SDEIS of the University of Washington, the Arboretum Foundation, the Montlake Community Council, and others identify concerns that were not discussed in the supplemental draft environmental impact statement. The environmental impact statement process anticipates that drafters will lack information and knowledge known by the public and seeks to elicit it. This oversight ought to be remedied in the response to comments -- if not, it festers;

2) The responses to public comments in the FEIS and 4(f) Evaluation attempt to finesse deficiencies in the SDEIS. . The authors of the FEIS seem to feel that their initial paragraphs in the SDEIS were adequate unless there is clear error. [12] Many of WSDOT's FEIS responses cite earlier responses and/or the sections in the FEIS, which

[12] For example, the FEIS and the 4(f) Evaluation use the legislative bill numbers without identifying the session. My comment supplied the citation in the Revised Code of Washington ("RCW") and the Chapter and session used in the published session laws. These citations would assist readers and researchers, and speed finding the section on the state legislative website or code indexes. WSDOT's response replied that its bill number are accurate and made no change.

replicate the draft document. It's an implicit rejection of the comments received. A good FEIS strives to inform the decision-makers with clear, accurate, important information and where deficiencies are cited, to supply more helpful information. This FEIS aims to justify its earlier draft, making changes primarily when and where the design has been refined.

3) Both the 4(f) Evaluation and the FEIS confine discussion of mitigation to impacts of the new SR 520 bridge to those that are (a) generated by the project in the Arboretum, as constricted; (b) occur within that confined area; and (c) can be mitigated by measures there. It should, but fails to consider, impacts from outside or to the Arboretum as part of a contiguous park system. WSDOT staff set these ground rules for the Arboretum Impact Plan and its recommendations are limited accordingly.

The first failure is self-evident by reading the comments received next to the SDEIS and the FEIS and the respective 4(f) Evaluations side by each, e.g. the commentaries show how truly unique the Arboretum is and the fragility of its wetlands: 80 different species of waterfowl and 50 species of other birds use it as their habitat, and a watchful eyes can spot a bald eagle on Foster Island.[13] The prosaic text does not do justice to the sparkle of life or the beauty of the Arboretum, its serenity away from SR 520 where visitors may enjoy the sounds of nature in a crowded metropolis, and its ambience that captures and delights visitors. To do that takes a photographic essay like *The Wild Within, Wetlands of the Washington Park Arboetum* (2007), available from the Arboretum Foundation. Making the side-by-side comparison of text, comment, and FEIS response is a tedious process. It would make this letter too long to list instances. The process highlights the second error: the authors' reluctance to make corrections or to better the text in order to help decision makers and guide those who implement the plan in the course of implementing the project – the very goal of the EIS process.

The second failure alerts the reviewer to study the comments for information that ought to have been added to the text or the accompanying disciplinary studies. Take two examples from my comment letter (I-093). On page 4, I requested advance acquisition of fisheries resources for mitigation as recommended by the representative of the National Oceanic and Atmospheric Administration during the mediation process. The response I-093-063 discusses design of the Montlake lid over SR 520. Page 4 of my comment discusses the crow colony on Foster Island, one of nature's wonders:

> "Foster Island is a prime roosting area for crows, and, the place that they congregate at night. The *Street Smart Naturalist: Field Notes from Seattle*, p. 197 describes Foster Island at dusk in these vivid terms:
>
> 'I am in the center of a cosmic maelstrom. Birds arrive from the north, east, and west. Most come in groups. Many are playing, chasing each other, dive-bombing their roostmates, enjoying the last flight of the day, ... wave upon flying wave, the birds starting high above the water, then swooping low before a final climb into the leafless trees dotting the shoreline.

[13] Final Environmental Impact Statement, Washington Park Arboretum Master Plan, Jan.2001,p. 109; FEIS, Table 4.11-12, "Occurrence of Federally .. Protected Wildlife.." p 4.11-10.

'The winter dispersal and return of crows is perhaps Seattle's grandest daily natural-history display. Nowhere else in the city can one see so many wild, large, living beings at one time, except at certain sporting events.'"

The response I-093-009 refers to I-093-007, which in turn states that WSDOT formed a Park Technical Working Group relating to Bagley Viewpoint. In neither case is the FEIS response relevant to my comment. Neither the FEIS in its wildlife discussion (5.11-5.17) nor its Ecosystem Discipline Report makes any reference to the crows or bats.

The University's comment on the SDEIS (S-002) raised many issues that were not resolved. For example, Item 29 on page 3 states in part as follows:

"... The extended duration of these construction impacts, particularly those in the Arboretum strongly indicate that such impacts cannot be considered 'temporary' or 'minor.' And therefore should not be considered exceptions under 23 CFR 774.13(d) – and should be mitigated for accordingly."

It is part of a series of Items (including Items 25, 31, and 42) that explain the Arboretum wetlands are fragile and a complex ecosystem, and that construction, even with great care, by its very duration can have impacts that will take a very long time for nature to return to its earlier condition. The response S-002-079 refers to the responses S-002-025 and S-002-067 that temporary uses do not become permanent if the conditions of 23 CFR 774.13 (d) are satisfied and it is working on it. The response does not describe those impacts, their duration, or effect on the ecology, nor does it suggest mitigation by substituting other land during the period until recovery occurs. Item # 42 on indirect effects on wetland recovery receives a curt brush off. (S-002-091).

The Arboretum Foundation comment at several places expressed concern about the impact of the SR 520 structure on the ambience of the Arboretum,e.g. C-037-022. The new bridge will loom over Foster Island like a concrete overpass. The FEIS, p. 5.5-5 acknowledges that the new bigger, bulkier bridge would be "somewhat more dominant," but it opines that the new structure "would not affect overall visual quality since the bridge is already a dominant feature of the view..." The very dominance of the structure probably prompted the Arboretum Foundation's plea for extraordinary sensitivity in design and landscaping. In response the FEIS at page 5.5-26 and the 4(f) Evaluation, p. 9-7 and at p.9-125 and Arboretum Impact Plan, Attachment 9 of the FEIS, at pages 17-19, promise undisclosed "aesthetic enhancements" to address adverse effects. WSDOT has shown the Arboretum and Botanical Gardens Committee design concepts for the treatment of the bridge pylons on Foster Island and the landscaping of the trail. All the design drawings shown so far fall far short and bode ill. They're like dusting powder over a big, ugly scar: it does a little, but not much.

Blinders on the Arboretum Analysis - - -

The Arboretum is an ecological island/refuge in Seattle. The wetlands and upland are a fabric of life, rent mainly by SR 520, but still contiguous. Cutting away McCurdy Park, East Montlake Park, and the Canal Reserve affects the whole. Both the 4(f) Evaluation and the FEIS rule those impacts out of their analysis of Arboretum impacts.

limits its consideration of mitigation measures for the Arboretum to those impacts both caused by and occurring with the actively-planned areas of the Arboretum. In doing so, it excludes from consideration elements that would be considered "severance damages" under eminent domain law. 23 USC. § 138 and 49 USC § 303 were enacted to supplement eminent domain law and provide parks with added protection.

The 4(f) Evaluation takes a dual view of the Arboretum. The historic analysis discusses the Arboretum as originally laid out, FEIS p. 9-29 through 9-31 and FEIS 9-58, footnote b; the park analysis limits the Arboretum to the "main portion" of the 1977 Master Plans and its successors, excluding McCurdy Park, East Montlake Park, the Canal Reserve, and Lake Washington Boulevard. FEIS p. 9-21 and 22; pp. 9-29 through 9-33. 9-49 through 9-49. At p. 9-37, the 4(f) Evaluation refers to the Arboretum Impact Plan and a Memorandum of Understanding with the Arboretum and Botanical Gardens Committee. The 4(f) Evaluation, p 9-46 through 9.46, and at 9-53 through 9-55, acknowledges only the taking of 0.5 acres of land and 0.1 acres of submerged shoreline as do the various tabulations of acreage, FEIS p. 9-58, 9-72, 9-85 and 9-86, 9-98 and 9-99. The 4(f) Evaluation cites the measures in the Arboretum Impact Plan and the Memorandum of Understanding as providing the mitigation due. The Plan focuses on the traffic problems, which are generated by allowing all westbound traffic on SR 520 to go south on the 24th Avenue East bridge over SR 520 and then to turn east (left) and use Lake Washington Boulevard (discussed above at pages 14-19).

The FEIS Ecosystems Chapter 4, p. 4.11-3-4, describes the environment of the study area as a whole and focuses on endangered and protected species, FEIS 4-11-10, Table 4.11-2, "Occurrence of Federally Listed or Protected Wildlife ..." p. 4.11-10 through 4.11-12. It mentions only the bald eagle among avian life. The Ecosystems Discipline Report applies a very broad brush treatment. In its mitigation discussion, the 4(f) Evaluation, p. 124-5, states that WSDOT has ... identified appropriate replacement property for *part of* the land used in the Arboretum (emphasis supplied). See Chapter 10 of the Final EIS for more information." Chapter 10 contains the Section 106(f) analysis and provides for the Bryant Marina site as a substitute for the Ship Canal and Arboretum Waterfront Trail. What about the other part --- the Section 4(f) properties outside the Section 6(f) area and in the Union Bay drainage area?

This letter and its analysis does not discuss the 4(f) properties in the Portage Bay drainage basin. The Portage Bay/Roanoke Park Community Council and the Montlake Community Council, supported by the North East District Council, seek shoreline property at the south west edge of Portage Bay to replace land taken from the Montlake Playfield and its shorelands and to mitigate the adverse impacts of the SR 520 Project on the Montlake Playfield. It is called the "Frolund site." It is the remainder of several lots, which WSDOT is acquiring for the SR 520 Portage Bay Bridge; that remainder lies south of the limited access line. The request has merit. It is a separate topic from the replacement of land to the Arboretum.

Severance Damages ---

SR 520 takes 6.1 acres from the contiguous ecological Arboretum: 2.8 from East Montlake Park; 1.4 from McCurdy Park; 0.5 from Foster Island; and 1.4 acres from the Canal Reserve (60,278 square feet). This excludes Lake Washington Boulevard's conversion to freeway access, WSDOT current right-of-way, construction easements, and submerged shoreland. It does not count the 0.1 acre of the Montlake Cut that connects to East Montlake Park. These figures are taken from the 4(f) Evaluation of Table 9.2, "Summary of Section 4(f) Uses Under the Preferred Alternative, pp 9-57 and 9-58. McCurdy Park, Foster Island and the Canal Reserve were donated for "arboretum and botanical garden purposes and no other" and contain a reversion; East Montlake Park was dedicated and donated for park purposes. The shrinkage of 6.1 acres affects the remainder. Some of the area is marsh. Some waterfowl are very choosy about their habitat; reducing their specialized habitat may cause those to forego the Arboretum or reduce in their numbers. An absence of a species or drop in population may leave a niche unfulfilled or alter the ecological balance in other ways. Size, itself, is important because it provides a greater diversity and a larger population that has more in reserve for the hard times that may come. Size also matters in evaluating the development potential. Large parks commonly need space for administration, storage of equipment, or nursing plantings. The Canal Reserve acreage was available for that usage as ancillary to the Arboretum; now, making space for such ancillary activities will displace natural areas devoted to plantings.

The Section 6(f) Evaluation offers the Bryant Marina site north of the Lake Washington Ship Canal on the University campus as a replacement for the Section 6(f) properties. It is the best substitution available under Section 6(f). Nonetheless, it leaves the adverse impacts on the Arboretum cited in the previous paragraph and can not replicate an experience of wandering through a marsh on a boardwalk.

In taking McCurdy park, the SR 520 Project takes away 124 parking spaces there. FEIS Table 1-15, "Potentially Affected Parking Areas," p 5..1-64. Footnote "e" states that due to "removal of the facility that requires the parking spaces ... there would be no net loss at these locations..." Page 5.1-67 and 5.1-68 states that WSDOT is coordinating with the City for replacing parking lost at Bagley viewpoint --- no mention is made of similar replacement for the Arboretum. The parking in McCurdy Park served users of the Arboretum Waterfront Trail as well. 4(f) Evaluation, p. 9-22. Many of the strollers wandered deeper into the Arboretum. The loss of its ancillary parking affects the Arboretum.

The 4(f) Evaluation should have --- but failed --- to address the potential impact of the re-use of the WSDOT Peninsula for highway-related usage and/or commercial purposes. This is a looming threat unless WSDOT commits the site to permanent arboretum and park uses. After the arboretum ramps are removed, WSDOT obliges itself to restore the area as wetland. Federal policies forbid any loss of wetland. FEIS, p. 5.11-20 and 21. Once the wetlands are restored, WSDOT procedures require it to make use of the premises for highway purposes or surplus that area according to its procedures. In November 2010, WSDOT representatives told the Arboretum and Botanical Gardens Committee that the WSDOT Peninsula is an asset of the Transportation Fund (established

by Amendment 18 of the Washington Constitution) and that it can convey the property only in exchange for full value in money or "credits" from a land exchange. The Arboretum Mitigation Plan, p. 29, states in part, as follows: "Should all or part of the property need to be surplused, Arboretum owners would be offered an opportunity to purchase it as a contiguous landowner." The City is cutting its budgets and lacks ready capital. Within the current zoning, WSDOT could lease or sell its peninsula for concessions, such as equipment rental or refreshments or parking on days of Husky events at the nearby UW football stadium. The MOHAI lot was almost always full on days of Husky home games.

The 4(f) Evaluation should – but did not --- consider the impacts on the Arboretum of the possible use of the SR 520 right-of-way for commuter rail. SR 520 is being designed to accommodate light rail when the time comes. RCW 47.56.870 and RCW 47.01.405 (Chapter 517, Laws of 2007, §§ 2 (5) and 6. e.g. FEIS 1-12, 1-17, 2-16, 2-21 through 2-26, 2-28, and 2-32. among others. The FEIS, p. 2-60 states, in part, as follows:

> "The westbound and eastbound bridges would have a gap between the structures to be compatible with potential future light rail infrastructure, should Sound Transit determine that a light rail crossing of SR 520 is desirable at some point in the future. (No light rail crossing is currently planned or proposed as part of the SR 520, I-5 to Medina project.) ... the design would allow a potential future rail link to rise over SR 520 to connect with the University Link station at Husky Stadium."

The light rail structure would be almost entirely within the WSDOT right-of-way. The 4(f) Evaluation does not mention light rail at all. Under eminent domain law, a condemnee has one day in court and must raise all concerns at that time that would affect the property if the right-of-way were used to the fullest. The FEIS currently excludes from consideration all park land within the SR 520 right of way. 4(f) Evaluation, p 9-31. Unless the record of decision explicitly excludes impacts and damages that occur when light rail is constructed, mitigation and compensation must be provided for the Arboretum for the additional servitude of the light rail line.

Law applied ---

23 USC § 138 and 49 USC § 303 were enacted to supplement eminent domain law. These statutes increase the protection given to park land. Each recognized that cash compensation would not be sufficient alone. As supplemental, remedial legislation, these statutes contemplate that the transportation authorities will take into account at least all the elements that eminent domain law would consider. Under eminent domain law, property is considered a unitary tract when all the parcels (or portions thereof) are contiguous, used for a common purpose, and under common or affiliated ownership. 8A *Nichols on Eminent* Domain (3rd Ed. 2010) § G16.02; *State v. Windermere Co.*, 89 Wn Ap[. 369, 949 P.2d 392 (Div. 3, 1997), *rev. den.* 135 Wn.2d 1012, 960 P.2d 939; *State v. McDonald*, 98 Wn.2d 521, 656 P.2d 1043 (1983). When a portion of a unitary tract is taken, damages are due to the remainder. Here, the 6.1 acres of East Montlake Park, McCurdy Park, Foster Island, and the Canal Reserve are part of a unitary tract and the

Arboretum must be compensated, preferably in replacement property. The Section 6(f) exchange removes from this equation the acreage of Section 6(f) properties, but not the impact of their severance from the remainder of the Arboretum.

WSDOT staff may cite the Arboretum Mitigation Plan as a comprehensive resolution of remedial measures. It is not.[14] WSDOT set the ground rules for that study. By excluding severance damages and replacement land from its scope, WSDOT implicitly reserved them for further consideration through administrative processes.

WSDOT PENINSULA NEEDED AS REPLACEMENT LAND

To make the Arboretum whole, the Record of Decision must specify that the WSDOT Peninsula be committed for Arboretum use either through an easement or perpetual covenant or by conveyance of the site to the University of Washington, the City of Seattle, and/or the Washington State Department of Natural Resources for "arboretum and botanical garden purposes and no other." This restrictive use and reversion apply to almost all the properties being taken for the SR 520 project that lies north of the current SR 520 right-of-way, except East Montlake Park; and the latter was dedicated and donated for park purposes.

The WSDOT Peninsula is currently a wedge into the Arboretum that divides the area covered by the Arboretum Master Plan. If the area is returned to Arboretum use, the amount of acreage devoted to wildlife would remain or increase. Pedestrian could make a loop trip alongside the lagoon viewing the Lake Washington Ship Canal, the broad open water of Lake Washington, and a quiet cove; the vegetation, bird, and animal life differ. It would provide growing room for water loving trees and other specimens. (The lagoon could host boxes for bats; those little, flying critters gobble insect pests and spare using insecticides.) The WSDOT Peninsula would get the expert management of the Arboretum and the expertise of the University. At a meeting on June 8th 2011 at the Graham Visitor's Center in the Arboretum, the Seattle Parks Department presented three alternate concepts to the public showing how the area could be integrated into the Arboretum Master plan. About one hundred people attended and public opinion was strongly in favor of its return to Arboretum use.

The added park land would benefit not only the Arboretum. It would also help offset the adverse impact of the much heavier traffic flow on Lake Washington Boulevard to its immediate west both for the abutters on that boulevard segment and for the Montlake neighborhood. As shown on page 22 above, the SR 520 project takes at least six acres of park land from the immediate Montlake neighborhood. This total does not count the taking from the Montlake Playfield or Montlake Boulevard. The SR 520 project returns to the Montlake neighborhood use of the surface of a lid to be built

[14] RCW 47.56.870(4)(b)(v) required the Plan not only to mitigate, but to "emhance the Washington Park Arboretum." The latter assignment remains undone without returning the WSDOT Peninsula to the Arboretum.

between 24th Avenue East and 26th Avenue East. Although very beneficial, the Montlake lid does not equalize Arboretum parkland: its north and south sides will be busy freeway access roadways, and it will serve multiple purposes, such as traffic signage; a roadside bus stop, waiting areas for bus passengers and pedestrian pathways between stops and bicycle (and possibly motor scooter and motorcycle) parking for commuters and Husky stadium events. The 4(f) Evaluation offers the immediate Montlake area no park land in exchange for the acreage taken. That is a major blow to the community. Almost since its creation, Montlake has enjoyed a crescent of parks on its south; and a like crescent of lake front on its north to complete a circle. This periphery of nature and open space makes Montlake a desirable residential neighborhood despite its proximity to SR 520, the congested connecting arterials, and the nuisance of bumper-to-bumper parking on both sides of the street end-to-end on days with events at Husky Stadium and at the Hec Edmundson Pavilion. Without is parks, Montlake would not have preserved its homes and maintained its yards to merit eligibility to become a historic district.

The FEIS and 4(f) Evaluation ---

The 4(f) Evaluation identifies the Bryant Marina site as replacement for the Section 6(f) property taken for the Ship Canal and Arboretum Waterfront Trail, e.g. 4(f) Evaluation, p. 9-124 and Section 10. It serves as replacement for "part of the land used in" the Arboretum, and for a "portion of " East Montlake Park. That's good as far it goes. The 4(f) Evaluation, p. 9-124, also acknowledges that portions of East Montlake Park and the Arboretum are outside the Section 106(f) properties. The 4(f) Evaluation also identifies a replacement site for the Bagley Viewpoint,

The FEIS, p. 5.3-5, under the caption, "recreation," states that " WSDOT has made every effort to avoid permanent effects on parks..." and promises that "All loss of park acreage would be mitigated." At p 5-3-13, it boasts: "The project also would enhanse parks, particularly the Arboretum as mitigation for the increased width and bulk of the highway in this area." At p. 9-38, the 4(f) Evaluation limits mitigation to measures in the Arboretum Impact Plan: "Those mitigation measures agreed upon for the Arboretum through the consultation process with ABGC [the Arboretum and Botanical Gardens Committee] serve as Section 4(f) mitigation measures." No replacement land is offered as mitigation for the taking of the Canal Reserve or impacts on Lake Washington Boulevard although identified as contributing elements to the Montlake historic district. FEIS, pp.9-120 and 121, 9-136 through 9-139.

The 4 (f) Evaluation does not make any commitment of returning the WSDOT Peninsula for Arboretum purposes. It promises no perpetual easement nor any conveyance to the City and/or the University. The 4(f) Evaluation at p. 9-125 merely states:

> "WSDOT is evaluating the **possibility** of transferring property from the WSDOT peninsula to the Arboretum after the R.H. Thomson Expressway ramps and SR 520 ramps are removed and the area is restored to its natural condition." (emphasis supplied)

Page 9-124, under the caption, "University of Washington Open Space," states:

> "WSDOT is **proposing** to use a portion of the WSDOT Peninsula as part of a wetland mitigation project and is **exploring the feasibility** of using the remainder of the WSDOT-owned land in the peninsula area for mitigation for effects on parks in the project area." (emphasis supplied)

There is a telling contrast between "**proposing**" and "**exploring the feasibility**" of using the area as mitigation.. The UW Open Space on campus *north* of the Lake Washington Ship Canal. The return of the WSDOT Peninsula to arboretum or park use is not among the proposals "... to avoid or minimize harm" or mitigate for impacts and effects listed for Historic properties or park properties *south* of the Ship Canal. 4(f) Evaluation pp 9-126 through 9-140.

The FEIS, p. 5-11-20, and both the Arboretum Impact Plan and the Memorandum of Understanding call for restoration of the wetland after the arboretum ramps are removed. Pages 5.11-20 and -21 identify the WSDOT Peninsula as compensatory wetland under the federal policies of "no net loss" of wetland. The Arboretum Impact Plan (December 22, 2010) at p. 28 offers the City a preferential right to purchase as an abutter before placing the site on the real estate market should the area be surplussed. The Memorandum of Understanding was silent upon its ultimate disposition. Neither makes any permanent commitment of it for park or arboretum purposes. The responses to the comments of the University, Item # 28, and the Arboretum Foundation cite the 6(f) Replacement and are silent as to the WSDOT Peninsula, e.g. S-002-059 and -088; C-037-037; and I-093-063 and -155 and -156 respectively.

The University in its comment on the SDEIS, Items 28 and 37 through 39, called for replacement land for property taken. The Arboretum Foundation comment, p. 6 (C-037-015 and -016) and p. 18 (C-037-037), asked that the WSDOT Peninsula continue to be used as park land and properly protected. WSDOT's response referred to the sections on measures to protect historic properties and the Section 106(f) substitution. It elicited no commitment to using the WSDOT Peninsula as replacement land. My comment called for return of the WSDOT Peninsula to arboretum use in multiple places. The responses (I-093-009, -155, and -156) are essentially same: each cites the Section 6(f) exchange and claims a net gain of park land. More than a dozen citizens and organizations asked for permanent use of the WSDOT Peninsula for arboretum and botanical garden purposes and got similar responses. It shows public support for re-integration of the WSDOT Peninsula into the Arboretum inasmuch as the focus of WSDOT's public presentations and the SDEIS was at selecting among alternative designs and on traffic planning. Section 8.4 of the FEIS, p. 8.4 et seq. should have listed it as a controversy yet to be resolved, but failed to do so. This failure is likely to arise in litigation contesting the project.

Need for Commitment ---

The laws to protect the environment and parks aim to make the area of potential effects whole from the project. Replacement land can do so. Here, the replacement is at the doorstep and available. Nothing else is of "comparable value and function.." to the

4(f) properties being taken in the Montlake area. This is true from the perspective of wildlife habitat, from the perspective of neighborhood impact, and from the perspective of recreational experience --- each as described earlier in my letter. A cash payment won't do so for several reasons:

a) Cash is not land. It erodes with time just as the Arboretum Capital Improvement Fund established by Ordinance 92511 for proceeds from the building of SR 520 did.

b) The responsibility rests with WSDOT. Paying money shifts implementation to other governments. To achieve compliance, WSDOT would need to impose strict and enforceable conditions, such as a precise exchange as done with the Section 106(f) properties. Otherwise, parks and the environment would have little less protection than that prevailing under eminent domain and the common law without 23 USC § 128 and USC § 303. Nothing in the 4(f) Evaluation suggests that WSDOT plans such stipulations.

c) If cash were paid, the City and the University would then have to buy the WSDOT Peninsula. Unfortunately, by Ordinance 123408 and 123132 the City has already committed 40% of the cash received from the SR 520 proceeds of the "MOHAI use area" to the Museum of History and Industry for use in South Lake Union. The "MOHAI Use Area" lies largely within the 6(f) properties of McCurdy Park, but extends into East Montlake Park. This commitment was made despite the fact that WSDOT paid MOHAI for its museum and relocating its exhibits and that MOHAI has no ownership in any of the land in the so-called MOHAI use area. That's a bad precedent for relying on the City, especially since City officials say it lacks money to maintain its park buildings.

d) The allocation process of cash proceeds subjects the Montlake community and friends of the Arboretum to the vagueries of Citywide budgeting. The 4(f) properties are coming from Montlake and/or for Arboretum purposes The funds would replace parks dedicated or donated for the use and enjoyment of the public *in Montlake and/or arboretum uses.* The funds are imbued with a trust for the public with a particular emphasis on the Montlake region and/or arboretum purposes. Experience with the METRO's payment and Ordinances 123408 and 123132 casts doubt on whether the City would implement the trust by acquiring the whole WSDOT Peninsula. When METRO paid Seattle for a large section of the Elliott Bay beach in order to expand its sewerage treatment plant at Discovery Park, the City dispersed the funds for waterfront capital "improvements" scattered throughout the parks system. Many of them have passed their functional life. Land is permanent and would be part of the patronage passed on to future generations; and

e) Initiative 42 (Ordinance 118477) cited at page 6, contemplates replacement land for park land taken.

A permanent commitment of the WSDOT Peninsula to arboretum uses serves ancillary advantages:

+ It fulfills the promises at 5.3-5 that " WSDOT has made every effort to avoid permanent effects on parks..." and promises that "All loss of park acreage would be mitigated." It carries out the implication of this quotation in the SDEIS, Draft Parks Mitigation Technical Memorandum (December 2009) WSDOT Response to the Seattle Board of Park Commissioners, Answer to Question 1: "WSDOT proposes to exchange

this property with the Seattle Department of Parks and Recreation as part of the mitigation for both alternatives.;"

+ It was an assumed premise during the mediation process from September 2007-December 2008. Advocates for Alternative A cited that return as a major of advantage for that design, e.g. Westside Project Impact Plan (December 2008), p. 5-3, 6-3, 6-9, 6-11; Statement of the University District Community Council, p. 1. It was probably a factor in evaluation of the alternatives in the local decision making process, e.g. Seattle City Councilmember Richard Conlin in his comment on the 2006 DEIS called for its return;

+ It removes a source of controversy. As knowledge of WSDOT's retention and potential use or disposition for other uses spreads, the public will demand action for its commitment. It's usually better to anticipate and then react and repair afterward.

+ Litigation on the project is likely. Removing this issue helps WSDOT's case., e.g. *Brooks v. Volpe*, 460 F2d 1193 (9th Cir. 1972) stated that substituting 180 acres of greenbelt was important as a measure to minimize harm. A settlement now moots the failure of the 4(f) Evaluation on the issues raised in this letter and averts the possibility that the citizen organizations in the lawsuit may prevail. If the plaintiffs were to prevail, their attorneys would likely seek an award of attorneys' and expert witness' fees. That could be costly.

The Law applied ---

As stated at pages 2 and 3, 23 USC § 138 and 49 USC § 303 condition federal approval on a program that "...includes **all possible planning** to minimize harm to such park, recreational area, wildlife and waterfowl planning refuge, or historic site resulting from such use." "Possible" means "feasible to minimize and mitigate harm to the park, and that "full implementation of such planning is an obligated condition of the project. Vague generalities and reliance on the good faith of state and local officials will not suffice. *Monroe County Conservation Council v. Volpe,* 472 F. 2d 693,700 (2nd Cir. 1972). Except for the Bagley Viewpoint and the Section 106(f) properties, the 4 (f) Evaluation offers little more. The 4(f) Evaluation , p. 9-117, purports to discuss "reasonable measures carried forward for consideration to minimize harm or mitigate for adverse impacts." The "consideration" will extend to "evaluating the possibility" and "exploring the feasibility." That is not a plan; it's preliminary thinking. There's no committing to take action on the ground nor any serious discussion of the benefits of committing the site to arboretum use or what might happen without such a commitment. Moreover WSDOT's ground rules for the Arboretum Impact Plan put transfer of the WSDOT Peninsula as replacement land outside the scope of analysis, although it did mention allowing the City/University/Department of Natural Resources a prior right to purchase as an abutter.

23 CFR § 774.17, quoted in the 4(f) Evaluation at pp. 9-116 and 9-117, states that "... all reasonable measures identified in the Section 4(f) evaluation to minimize or mitigate for adverse impacts and effects must be included in the project." This regulation implicitly assumes --- and thereby requires --- that "all reasonable measures" must be

described in full. If a measure is reasonable, an agency may not exclude it's consideration and its implementation by taking it off the table when preparing its 4(f) Evaluation and in its procedures leading up to it. The return of the WSDOT Peninsula to arboretum use is the best mitigation measure available. It can't be put off as the 4(f) Evaluation tries to do. It is too obvious a remedy, too important to the Arboretum, too much sought after by the neighborhood and friends of the Arboretum, and too necessary in order to comply with federal, state, and local policies and public. The 4(f) Evaluation simply can not be approved on the current record.

Perhaps, WSDOT has concerns about making a commitment for arboretum use, e.g. determining when restoration is complete, getting recognition for off-setting value in eminent domain proceedings and negotiations, defining the exact boundary of the area to be conveyed, possible hazardous wastes on site, and so on. The Record of Decision may recognize and identify those concerns, e.g with language such as "... on the understanding that...." or "it is assumed that..." Such a list of qualifications or reserved items may modify the commitment, but are not an excuse for refusing to make it all. The stipulation may request the affected parties to work the implementation out in good faith negotiations. "Good faith" would apply to all parties: WSDOT, the City, the University, and the State Department of Natural Resources. So far, the interagency discussions have been primarily in private and the actions of those other agencies (e.g. Ordinance 123408 and 123132) may have influenced WSDOT's stance. If the Record of Decision follows my recommendation, both the Arboretum and Botanical Gardens Committee and the Arboretum Foundation should be invited to participate in the resolution of the matter.

CONCLUSION

The Record of Decision must stipulate that WSDOT must either (a) commit the WSDOT Peninsula to Arboretum use through an easement or perpetual covenant or (b) convey the premises to the City, the University of Washington and/or the Washington State Department of Natural Resources for arboretum and botanical garden purposes. The conveyance must describe the entire excess area; it may name the grantees as tenants in common as their respective interests may appear in the property taken for the project. The record of decision my qualify this stipulation by reserving to WSDOT the ability to set the conveyance off as special benefits from the project under RCW 8.04.080 or in a settlement, its functional equivalent, and allowing other administrative details to be worked out in good faith negotiations.

This letter asks for a final result: the return of the Arboretum *south of the SR 520 right-of-way* insofar as practical to its condition before SR 520 was first built. The responsibility rests on government officials for finding the manner of achieving that goal. The mediation process persuaded most of its participants that the current SR 520 is a festering sore; the preferred alternative with the WSDOT Peninsula would still be a scar in Montlake as freeways are, but it would be built and mitigated to the state of the art.

If you need more references or documents, please write me at the addesss on my letterhead or call me at (206) 525-9070.

Yours truly

Jorgen Bader

List of Enclosures

A Initiative 42 (Ordinance 118477)
B Photographs of Canal Reserve
C RCW 28B.20.350-.356 (Chapter45, Laws of 1947)
D Don Sherwood's Portfolio, Extract, History of Seattle Parks
E Olmsted Brother's sketch of Arboretum (1936)
F 1939 Aerial Photo
G Ordinance 90723. Partition of westerly portion of Canal Reserve
H Extract of Plat, Blocks 9, 10,and 11, Lake Washington Shorelands
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For more information, call
323-1562 or 324-5218, or write:

P.O.P.
2102–24th Ave. S.
Seattle, WA 98144

Please mail by Nov. 18, 1996

INITIATIVE MEASURE NO. 42

AN ORDINANCE REQUIRING PRESERVATION OF ALL LANDS AND FACILITIES HELD NOW OR IN THE FUTURE BY THE CITY OF SEATTLE FOR PARK AND RECREATION PURPOSES; STIPULATING THAT SUCH LANDS AND FACILITIES MAY ONLY BE CHANGED FROM PARK USE AFTER A PUBLIC HEARING AND THE ENACTMENT OF AN ORDINANCE FINDING THAT SUCH ACTION IS NECESSARY, AND PROVIDING FOR A SIMULTANEOUS EXCHANGE OF LAND OR FACILITIES OF EQUAL OR BETTER VALUE.

WHEREAS, developers and others are making demands on City officials to take over our parks for other uses; and
WHEREAS, some of our parks are protected by bond covenants that require an equivalent replacement if those parks are taken or converted to another use; and
WHEREAS, all of our parks need such protection in order to be preserved for public purposes and for our legacy of parks to be passed on to future generations; and
WHEREAS, this ordinance would continue and strengthen a City policy against diversion of park lands and facilities contained in Resolution 19689, passed in 1963;
NOW THEREFORE,

BE IT ORDAINED BY THE THE CITY OF SEATTLE, AS FOLLOWS:

SECTION 1.
All lands and facilities held now or in the future by The City of Seattle for park and recreation purposes, whether designated as park, park boulevard, or open space, shall be preserved for such use; and no such land or facility shall be sold, transferred, or changed from park use to another usage, unless the City shall first hold a public hearing regarding the necessity of such a transaction and then enact an ordinance finding that the transaction is necessary because there is no reasonable and practical alternative and the City shall at the same time or before receive in exchange land or a facility of equivalent or better size, value, location and usefulness in the vicinity, serving the same community and the same park purposes.

SECTION 2.
Within thirty days of the effective date of such an ordinance, any person may seek review in the Superior Court. The Superior Court shall set aside the proposed transaction if it is not necessary or the proposed substitution is not equivalent or better than the park exchanged. The Superior Court shall make its decision on the evidence as an issue of fact.

SECTION 3.
Section 1 permits by duly enacted ordinance after a public hearing: a boundary adjustment of equivalents with an adjoining owner; or the transfer of a joint use agreement with Seattle School District No. 1 to another school site. Section 1 also permits by duly enacted ordinance after a public hearing and without providing replacement property: a transfer to the federal, state, or county governments for park and recreation uses; the reversion of right–of–way continuously owned by a City utility; the opening of an unimproved street for street use; a sub–surface or utility easement compatible with park use; and franchises or concessions that further the public use and enjoyment of a park.

SECTION 4.
This ordinance shall take effect as provided by Article IV, Section 1 of the City Charter. However, if the City should sell, transfer, or change the use to a non–park use of any park property held on or after May 17, 1996 (including Bradner Playfield), the City shall replace it in kind with equivalent or better property or facilities in the same vicinity, serving the same community, unless the City has already received as good or better land and facilities for park use in the same vicinity, serving the same community, in exchange for that transaction.

ENCLOSURE A

City of Seattle Legislative Information Service

Information retrieved on October 3, 2010 6:45 PM

Council Bill Number: 111606
Ordinance Number: 118477

AN ORDINANCE adopting Initiative 42, enacting it as an ordinance of the City of Seattle.

Date introduced/referred: Jan 21, 1997
Date passed: Jan 27, 1997
Status: PASSED
Vote: 9-0
Date filed with the City Clerk: Feb 5, 1997
Date of Mayor's signature: Feb 4, 1997
(about the signature date)

Committee: Full Council
Sponsor: DONALDSON

Index Terms: PARKS, LAND-ACQUISITION, SALES, INITIATIVES-AND-REFERENDA

Fiscal Note: *(No fiscal note available at this time)*

Text

Note to users: {- indicates start of text that has been amended out
-} indicates end of text that has been amended out
{+ indicates start of text that has been amended in
+} indicates end of text that has been amended in

AN ORDINANCE adopting Initiative 42, enacting it as an ordinance of the City of Seattle.

WHEREAS, citizens of the City of Seattle circulated petitions seeking the enactment of Initiative 42 into law; and

WHEREAS, King County certified to the City of Seattle that Initiative 42 bore a sufficient number of validated signatures to qualify for transmittal to the City Council; and

WHEREAS, the City Council received Initiative 42 on December 16, 1996; and

WHEREAS, City Charter Article IV provides that the City Council may enact or reject such an initiative; and

PM

TWO-SIDED

transfer, or change the use to a non-park use of any park property held on or after May 17, 1996 (including Bradner Playfield), the City shall replace it in kind with equivalent or better property or facilities in the same vicinity, serving the same community, unless the City has already received as good or better land and facilities for park use in the same vicinity, serving the same community, in exchange for that transaction.

Section 5. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 1997, and signed by me in open session in authentication of its passage this _____ day of _____, 1997.

_____

President _____ of the City Council

Approved by me this _____ day of _____, 1997.

_____

Mayor

Filed by me this _____ day of _____, 1997.

_____

City Clerk

(Seal)

January 22, 1997

GEKgh
111606.DOC
(Ver. 1)

ENCLOSURE B

twenty-nine degrees six minutes fifty-three seconds (29°06'53") east, a distance of nine hundred twenty-four and twenty-four one-hundredths (924.24) feet to the beginning of a curve to the left having a uniform radius of one hundred fifteen (115) feet; thence southeasterly along the arc of said curve, a distance of one hundred twenty and fifty-one one-hundredths (120.51) feet to the point of beginning. [1969 ex.s. c 223 § 28B.20.340. Prior: 1913 c 24 § 1. Formerly RCW 28.77.280.]

28B.20.342 University site dedicated for street and boulevard purposes—Local assessments barred against site. No assessments for the opening, improvement or maintenance of any public street upon the tracts of land described in RCW 28B.20.340 shall ever be levied, assessed or collected upon any portion of section 16, township 25 north, range 4 east, W.M., or upon any portion of blocks 7 and 8 Lake Washington shorelands. [1969 ex.s. c 223 § 28B.20.342. Prior: 1913 c 24 § 2. Formerly RCW 28.77.290.]

28B.20.344 University site dedicated for street and boulevard purposes—Eminent domain may not be exercised against site. The power of eminent domain of any municipal or other corporation whatever is hereby declared not to extend to any portion of said section 16, township 25 north, range 4 east, W.M., and blocks 7 and 8 of Lake Washington shorelands. [1969 ex.s. c 223 § 28B.20.344. Prior: 1913 c 24 § 3. Formerly RCW 28.77.300.]

28B.20.350 1947 conveyance for arboretum and botanical garden purposes—Description. There is hereby granted to the University of Washington the following described land, to wit:

Lots two (2) and three (3), Block eleven-A (11-A) of the supplemental map of Lake Washington shorelands, filed September 5, 1916 in the office of the commissioner of public lands, to be used for arboretum and botanical garden purposes and for no other purposes, except as provided in RCW 28B.20.354. [1969 ex.s. c 223 § 28B.20.350. Prior: 1947 c 45 § 1. Formerly RCW 28.77.310.]

28B.20.352 1947 conveyance for arboretum and botanical garden purposes—Deed of conveyance. The commissioner of public lands is hereby authorized and directed to certify the lands described in RCW 28B.20.350 to the governor, and the governor is hereby authorized and directed to execute, and the secretary of state to attest, a deed of said shorelands to the university. [1969 ex.s. c 223 § 28B.20.352. Prior: 1947 c 45 § 2. Formerly RCW 28.77.315.]

28B.20.354 1947 conveyance for arboretum and botanical garden purposes—Part may be conveyed by regents to city of Seattle. (1) The board of regents of the University of Washington is hereby authorized to convey to the city of Seattle that portion of said lot three (3) of the shorelands described in RCW 28B.20.350 which is within the following described tract, to wit:

A rectangular tract of land one hundred twenty (120) feet in north-south width, and four hundred (400) feet in east-west length, with the north boundary coincident with the north boundary of the old canal right-of-way, and the west boundary on the southerly extension of the west line of Lot eleven (11), Block four (4), Montlake Park, according to the recorded plat thereof, approximately five hundred sixty (560) feet east of the east line of Montlake Boulevard.

(2) The board of regents is authorized to convey to the city of Seattle free of all restrictions or limitations, or to incorporate in the conveyance to the city of Seattle such provisions for reverter of said land to the university as the board deems appropriate. Should any portion of the land so conveyed to the city of Seattle again vest in the university by reason of the operation of any provisions incorporated by the board in the conveyance to the city of Seattle, the University of Washington shall hold such reverted portion subject to the reverter provisions of RCW 28B.20.356. [1969 ex.s. c 223 § 28B.20.354. Prior: 1947 c 45 § 3. Formerly RCW 28.77.320.]

28B.20.356 1947 conveyance for arboretum and botanical garden purposes—Reversion for unauthorized use—Reconveyance for highway purposes. In case the University of Washington should attempt to use or permit the use of such shorelands or any portion thereof for any other purpose than for arboretum and botanical garden purposes, except as provided in RCW 28B.20.354, the same shall forthwith revert to the state of Washington without suit, action or any proceedings whatsoever or the judgment of any court forfeiting the same: PROVIDED, That the board of regents of the University of Washington is hereby authorized and directed to reconvey to the state of Washington block eleven-A (11-A) of the supplemental map of Lake Washington shorelands, filed September 5, 1916 in the office of the commissioner of public lands, or such portion thereof as may be required by the state of Washington or any agency thereof for state highway purposes. The state of Washington or any agency thereof requiring said land shall pay to the University of Washington the fair market value thereof and such moneys paid shall be used solely for arboretum purposes. Such reconveyance shall be made at such time as the state or such agency has agreed to pay the same. [1969 ex.s. c 223 § 28B.20.356. Prior: 1959 c 164 § 2; 1947 c 45 § 4; No RRS. Formerly RCW 28.77.330.]

28B.20.360 1939 conveyance of shorelands to university—Description. The commissioner of public lands of the state of Washington is hereby authorized and directed to certify in the manner now provided by law to the governor for deeding to the University of Washington all of the following described Lake Washington shorelands, to wit: Blocks sixteen (16) and seventeen (17), Lake Washington Shorelands, as shown on the map of said shorelands on file in the office of the commissioner of public lands. [1969 ex.s. c 223 § 28B.20.360. Prior: 1939 c 60 § 1; No RRS. Formerly RCW 28.77.333.]

28B.20.362 1939 conveyance of shorelands to university—Deed of conveyance. The governor is hereby autho-

ENCLOSURE C

rized and directed to execute, and the secretary of state to attest, a deed conveying to the University of Washington all of said shorelands. [1969 ex.s. c 223 § 28B.20.362. Prior: 1939 c 60 § 2; No RRS. Formerly RCW 28.77.335.]

28B.20.364 1939 conveyance of shorelands to university—Grant for arboretum and botanical garden purposes—Reversion for unauthorized use—Reconveyance for highway purposes. All of the shorelands described in RCW 28B.20.360 are hereby granted to the University of Washington to be used for arboretum and botanical garden purposes and for no other purposes. In case the said University of Washington should attempt to use or permit the use of said shorelands or any portion thereof for any other purpose, the same shall forthwith revert to the state of Washington without suit, action or any proceedings whatsoever or the judgment of any court forfeiting the same: PROVIDED, That the board of regents of the University of Washington is hereby authorized and directed to reconvey to the state of Washington blocks 16 and 17 of Lake Washington shorelands, or such portions thereof as may be required by the state of Washington or any agency thereof for state highway purposes. The state of Washington or any agency thereof requiring said land shall pay to the University of Washington the fair market value thereof and such moneys paid shall be used solely for arboretum purposes. Such reconveyance shall be made at such time as the state or such agency has agreed to pay the same. [1969 ex.s. c 223 § 28B.20.364. Prior: 1959 c 164 § 1; 1939 c 60 § 3; No RRS. Formerly RCW 28.77.337.]

28B.20.370 Transfer of certain Lake Union shorelands to university. Block 18-A, Second Supplemental Maps of Lake Union Shore Lands, as shown on the official maps thereof on file in the office of the commissioner of public lands, is hereby transferred to the University of Washington and shall be held and used for university purposes only. [1969 ex.s. c 223 § 28B.20.370. Prior: 1963 c 71 § 1. Formerly RCW 28.77.339.]

28B.20.381 "University tract" defined. For the purposes of this chapter, "university tract" means the tract of land in the city of Seattle, consisting of approximately ten acres, originally known as the "old university grounds," and more recently referred to as the "metropolitan tract," together with all buildings, improvements, facilities, and appurtenances thereon. [1999 c 346 § 2.]

Purpose—Construction—1999 c 346: "The purpose of this act is to consolidate the statutes authorizing the board of regents of the University of Washington to control the property of the university. Nothing in this act may be construed to diminish in any way the powers of the board of regents to control its property including, but not limited to, the powers now or previously set forth in RCW *28B.20.392 through 28B.20.398." [1999 c 346 § 1.]

*Reviser's note: RCW 28B.20.392 was repealed by 1999 c 346 § 8.

Effective date—1999 c 346: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 17, 1999]." [1999 c 346 § 9.]

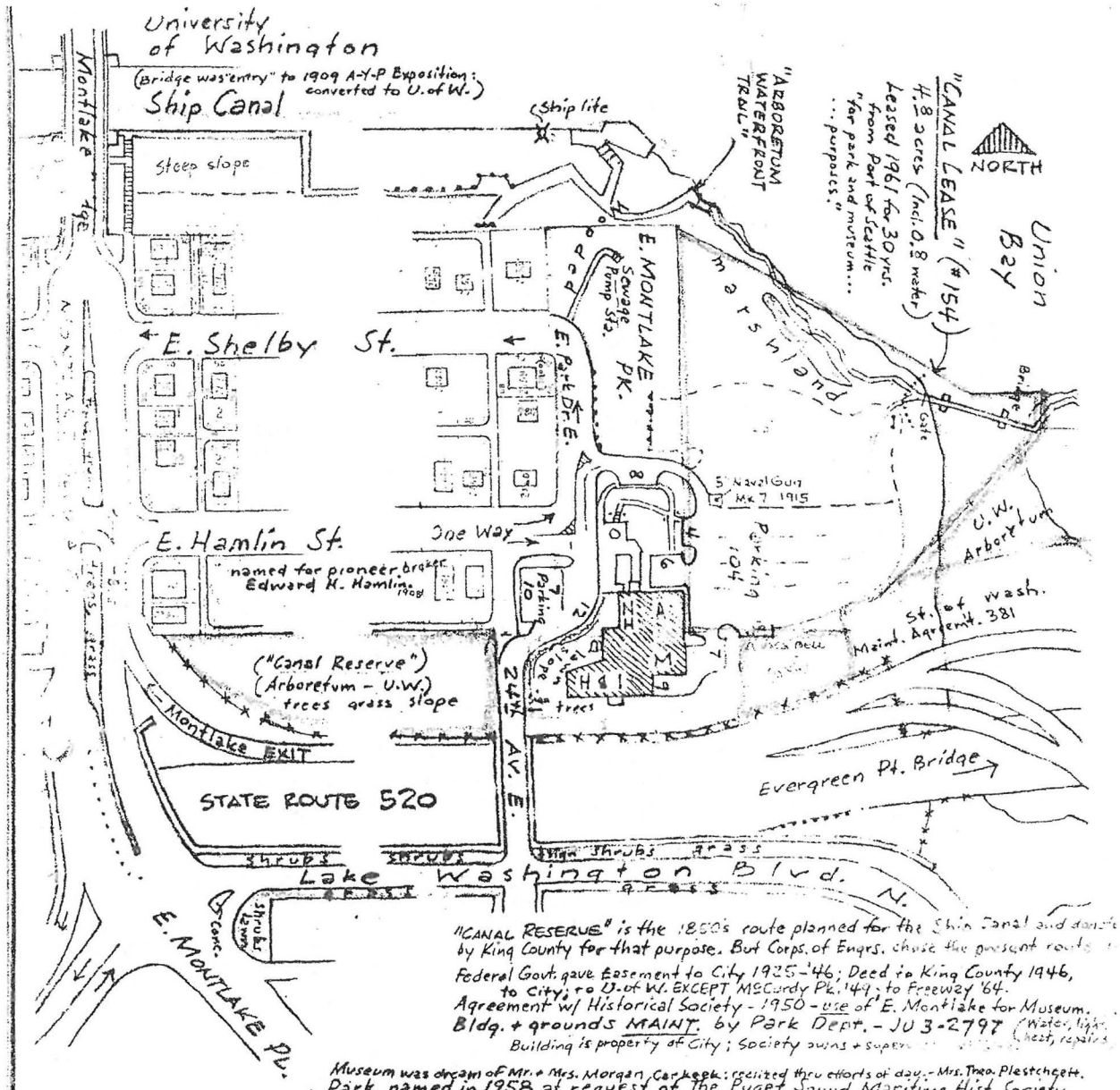
28B.20.382 University tract—Conditions for sale, lease, or lease renewal—Inspection of records—Deposit of proceeds—University of Washington facilities bond retirement account. (1) Until authorized by statute of the legislature, the board of regents of the university, with respect to the university tract, shall not sell the land or any part thereof or any improvement thereon, or lease the land or any part thereof or any improvement thereon or renew or extend any lease thereof for a term of more than eighty years. Any sale of the land or any part thereof or any improvement thereon, or any lease or renewal or extension of any lease of the land or any part thereof or any improvement thereon for a term of more than eighty years made or attempted to be made by the board of regents shall be null and void until the same has been approved or ratified and confirmed by legislative act.

(2) The board of regents shall have power from time to time to lease the land, or any part thereof or any improvement thereon for a term of not more than eighty years. Any and all records, books, accounts, and agreements of any lessee or sublessee under this section, pertaining to compliance with the terms and conditions of such lease or sublease, shall be open to inspection by the board of regents, the ways and means committee of the senate, the appropriations committee of the house of representatives, and the joint legislative audit and review committee or any successor committees. It is not intended that unrelated records, books, accounts, and agreements of lessees, sublessees, or related companies be open to such inspection. The board of regents shall make a full, detailed report of all leases and transactions pertaining to the land or any part thereof or any improvement thereon to the joint legislative audit and review committee, including one copy to the staff of the committee, during odd-numbered years.

(3) The net proceeds from the sale or lease of land in the university tract, or any part thereof or any improvement thereon, shall be deposited into the University of Washington facilities bond retirement account hereby established outside the state treasury as a nonappropriated local fund to be used exclusively for the purpose of erecting, altering, maintaining, equipping, or furnishing buildings at the University of Washington. The board of regents shall transfer from the University of Washington facilities bond retirement account to the University of Washington building account under RCW 43.79.080 any funds in excess of amounts reasonably necessary for payment of debt service in combination with other nonappropriated local funds related to capital projects for which debt service is required under section 4, chapter 380, Laws of 1999. [1999 c 346 § 3; 1998 c 245 § 17; 1996 c 288 § 27; 1987 c 505 § 13; 1980 c 87 § 10; 1977 ex.s. c 365 § 1; 1974 ex.s. c 174 § 1.]

Purpose—Construction—Effective date—1999 c 346: See notes following RCW 28B.20.381.

28B.20.394 University tract—Powers of regents—Agreements to pay for governmental services. In addition to the powers conferred upon the board of regents of the University of Washington by RCW 28B.20.395, the board of regents is authorized and shall have the power to enter into an agreement or agreements with the city of Seattle and the county of King, Washington, to pay to the city and the county such sums as shall be mutually agreed upon for governmental services rendered to the university tract, which sums shall not exceed the amounts that would be received pursuant to limitations imposed by RCW 84.52.043 by the city of Seattle and



"CANAL RESERVE" is the 1800's route planned for the Ship Canal and donate by King County for that purpose. But Corps. of Engrs. chose the present route.
Federal Govt. gave Easement to City 1925-'46; Deed to King County 1946, to City; to U. of W. EXCEPT McCurdy Pk. 1.44; to Freeway '64.
Agreement w/ Historical Society - 1950 - use of E. Montlake for Museum.
Bldg. + grounds MAINT. by Park Dept. - JU 3-2797 (Water, light, heat, repairs
Building is property of City; Society owns + supp

Museum was dream of Mr. + Mrs. Morgan Carkeek; realized thru efforts of day. - Mrs. Theo. Plestcheeff.
Park named in 1958 at request of The Puget Sound Maritime Hist. Society C.F. Clise, v.p., to honor Horace W. McCurdy, prominent civic + business leader; Puget Sound Bridge + Drydock, Lockheed Aircraft, P.S. Dredging + Pacific Nat. Bank; const. projects incl. first Lk. Wash. Floating Bridge; his artifacts in Maritime Wing.
Holder of a B.S. degree in Mech. Engineering from M.I.T., Cambridge, Mass., he was named "Construction Man of the Year" (1969), "Maritime Man of the Year" (1951), "Civil Engineer of the Year" (1969) and honored with "First Citizen Award" of Seattle-King Co. Board of Realtors.

= Seattle Fire Bell

HISTORICAL MUSEUM
2161 E. HAMLIN ST.
EA 4-1125
98102

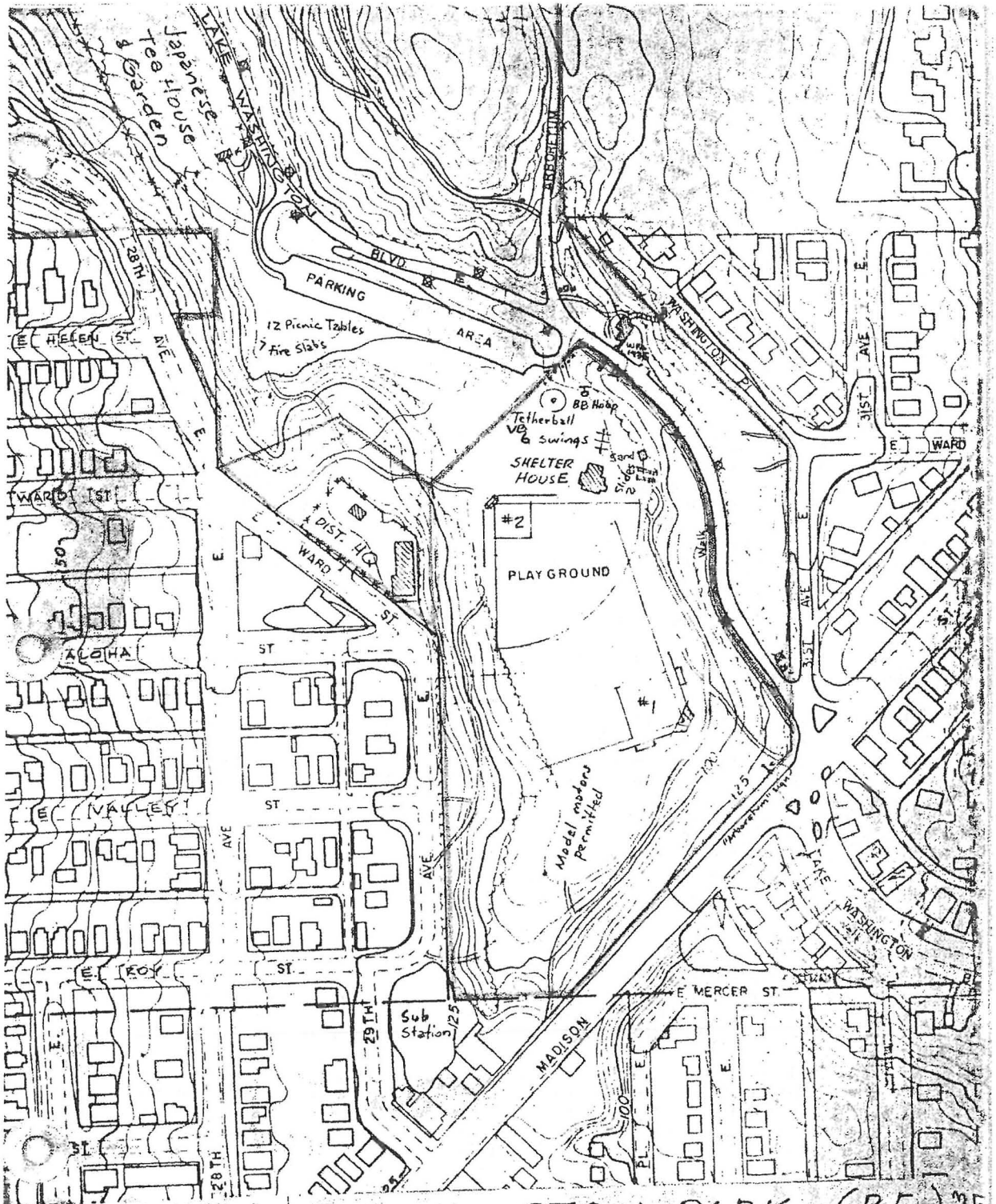
History + Industry (1952)
Maritime (1958)
Natural History (1961)
Auditorium (500 seat) (1971)

1.1 Acres
Deed: 1946 "to the City"
Use since 1925

H. W. McCURDY PARK

ENCLOSURE D

Two-sided

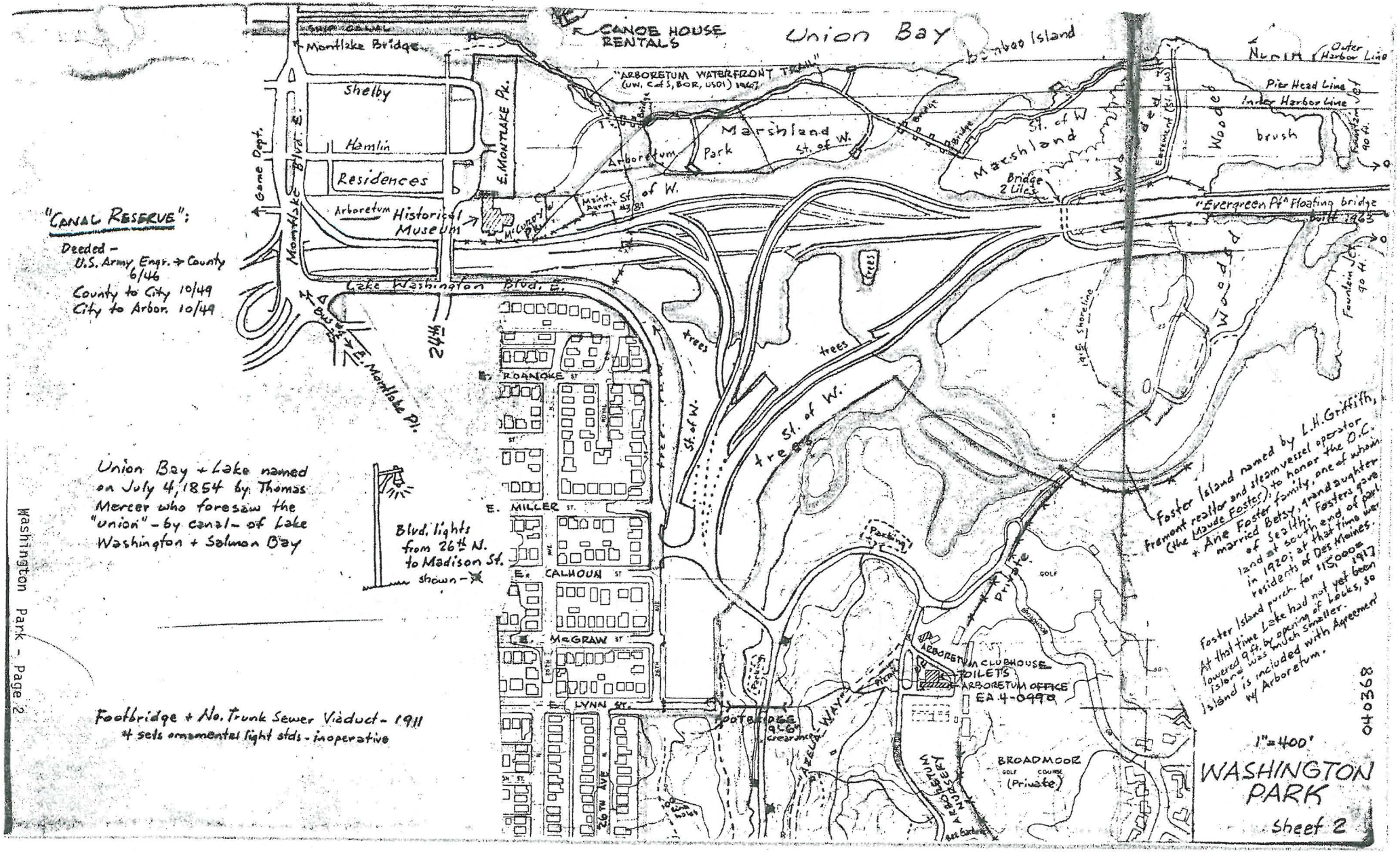


WASHINGTON PARK (P.F.)

Dist. H.Q. 1.5 Ac. ← (Modification Agreement 12¼ Ac) → 10.6 A.

Sheet 3

0714-67



"CANAL RESERVE":

Deeded -
U.S. Army Engr. → County 6/46
County to City 10/49
City to Arbor. 10/49

Union Bay + Lake named on July 4, 1854 by Thomas Mercer who foresaw the "union" - by canal - of Lake Washington + Salmon Bay

Blvd. lights from 26th N. to Madison St. shown - ⊗

Footbridge + No. Trunk Sewer Viaduct - 1911
4 sets ornamental light stds - inoperative

FOSTER ISLAND: Purchased in 1917 for $15,000; it was considerably smaller for the lake was 9' higher prior to the opening of the Ship Canal and locks. During dredging of the canal, nsiderable filling was done (with approval) "in the marshy areas, amongst the reeds d cattails." The Island was named by a Fremont realtor who also operated a steam vessel, The Maude Foster, which he named to honor O. C. and Ane Foster, one of whose family married Betsy, the grand-daughter of Chief Sealth. In 1920 the Fosters were residents of Des Moines and gave some property at the south end of the park. (Off Vancouver Island is a Foster Island which was named in 1865 by Captain Pender to honor British Major George Foster.) In 1963 the Evergreen Point floating bridge bisected the Island, and intended to slice off the park's west side with Thomson Expressway (first proposed as "Empire Way" in 1930) but vigorous continuous lawsuits resulted in voter rejection of the project in 1972. The freeway to the north under Union Bay - - -

In 1967 "the marshy areas, reeds and cattails" were recognized as a valuable resource and the "Arboretum Waterfront Trail" was established by the U.W., B.O.R., Department of Interior, and City of Seattle.

BOULEVARD LIGHTING: Rustic cedar poles and fixtures were made as a WPA project in 1936. By 1944 operation and maintenance were a problem that worsened until a new system was installed in 1970; a compromise in design and illumination level by the University of Washington, Traffic Department, City Light, Parks Department and Design Commission.

HISTORY

Travel northward by land from the pioneer town of Seattle was squeezed between Union Bay, Lake Union and Salmon Bay, and the wagon road along the "Montlake Ridge" became the latter-day Montlake Boulevard. Just south of Union Bay on the shore of Lake Washington, a pioneer judge, John J. McGilvra, staked his land claim in the 1880s and cut a road on n almost straight line "through the wilderness" to the town on Elliott Bay, the road hat became Madison Street. At best the roads were rough, dusty or muddy, and the journey long beset with the danger of bears or other wild animals. To promote the sale of real estate "so far from town" the judge gave 21 acres for a park at the foot of Madison Street and formed a company to build one of the "new toy" cable cars from town to Madison Park. It became a very popular Sunday summer outing. The Puget Mill Co. owned property in this area and, having logged the best timber, wished to sell their real estate. Improvements like the cable car were a big inducement to sales, so they made a deal with the City wherein they would give 62 acres of ravine for (Washington) park in exchange for $35,000 worth of watermain work in an adjacent subdivision they were developing.

This was 1900. The new park land was a rough ravine sloping abruptly to the "living stream of water running the entire length", from about 33rd Avenue into Union Bay. It was necessary for McGilvra's road to ford the creek, but upon construction of the cable car, a trestle bridge crossed the ravine. (The trestle was replaced with a fill about 1915.) The ravine was covered with a dense growth typical of Northwest forests with trees that had survived the loggers or second growth. About 1896 a system of bicycle paths was developed around the town, one route from Lake Union following the contours along the bluff that became Interlaken Park and boulevard, but it did not enter this ravine, staying at a higher contour so as to intercept Madison Street at the west end of the bridge over the Washington Park Creek (29th Avenue). At Madison Street it was a 50' deep ravine! (City Engineer contour map 7003/1903.)

At the time of acquisition there was a private park named "Washington" which was bought by J. M. Frink and later given to the City and, about 1910, renamed Frink Park. Bu 1902 this park was identified as WASHINGTON PARK. (In 1889 the Congress chose to honor GEORGE WASHINGTON as the name for the new (42nd) state on the 150th anniversary of his birth. The lake whose Union Bay forms the north end of the park was named for Washington

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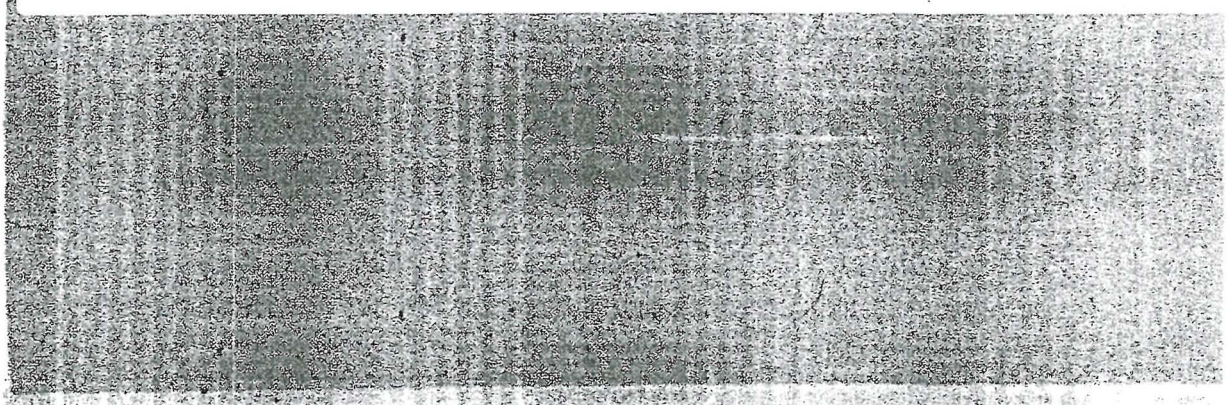

(boulevard) system will be." It was so popular for automobiles, carriages, horsemen and pedestrians that a mounted patrolman was necessary - the Park Department furnishing the horse and the Police Department the officer: the next year the horse had to be replaced with a motorcycle!

The automobile was still a novelty for the rich and the "sports", so the still numerous horse owners formed a Speedway Organization which raised $9,520 toward development of a public course for the "speeding" of harness horses (Azelia Way) together with sheds for cooling the horses and a barn. Horsepower was still the backbone of the Department's work force and since Washington Park was then "the center of the Boulevard System", a stable for 8 horses plus accommodations for steam rollers and other tools and a headquarters "barn" was built in 1909.

By this time a huge fill had been placed across the ravine, north from Madison Street, and an "athletic field" (baseball) had been established, the sloping sides of which made an ideal natural grandstand. (The pro-ballfield was nearby, at Madison Park.) "Games of the Bank League and numerous commercial teams are pulled off on (Washington Park) grounds." (It was a sanitary fill by the City Garbage Department.)

The 1913 Report notes a decline in the demand for the Speedway - "due to the advance of the automobile." Meanwhile, the sanitary fill continued, being done now in the marsh area near Union Bay; when dredging operations began for the new Ship Canal more fill was placed in the marsh, reeds and cattails around Foster Island, originally a small island until the dredging and lowering of the lake level by 9' upon the opening of the Ship Canal in 1917. (The island was owned by a Fremont Realtor who operated the steamer The Maude Foster, named to honor the daughter of O. C. and Ane Foster; one of the family married Betsy, the granddaughter of Chief Sealth. (Near Vancouver Island is a Foster Island named in 1865 by Captain Pender to honor British Major Foster.) In 1920 residents of DesMoines named Foster gave property to the south end of the park.) Foster Island was purchased in 1917 ($15,000).

Excepting for the foregoing improvements noted, this "huge ravine" had been left in a natural state. "Considerable work had been done adjacent to the driveway in the way of walks, lawn areas, flowers and shrubs, etc." So in 1915 came a surge of interest in the game of golf. The first municipal course in Seattle had just opened on Beacon Hill: Jefferson Park. Now came the proposal for a course in the north end at this "undeveloped" park. In 1919 "certain gentlemen of this city" offered to form a corporation to lease and develop a course in Washington Park. The Board questioned the legality of such use and held the park development should be for "the general public." Soon after this property along the east boundary of the park was resubdivided as the exclusive Broadmoor development with a private golf course around three sides. An easement for a roadway across shorelands to permit the development and public use of Foster Island had been granted by the State in 1917; that road was along the northeast edge of the park, so it was quite convenient to locate a north entry to Broadmoor onto this "public road". There were proposals to develop the "Lakeside Boulevard" along the shoreline from 43rd to the University, but much filling was required to accomplish it. So the roadway across the north end of Washington Park became the north access route for Broadmoor.

Horseriding facilities continued in the park but with decreasing popularity until 1935, the surrendering of the concession contract of the riding academy. The old Speedway had been abandoned by 1919, "closed on account of the rotting away of a bridge." Before long it was replaced with grass and became "Azelia Way" (W. C. Hall, Park Engineer.) The barn (minus cooling sheds?) was leased by concession for riding clubs and academies. The park barn and service yard, located in the meadow below Helen Street, was relocated in 1950 upon the request of the Arboretum Board which planned to build an exhibition hall there. The new site was up the hill from there, fronting on Ward Street. But the new site was found to be composed of 325,000 cobblestones from Madison Street

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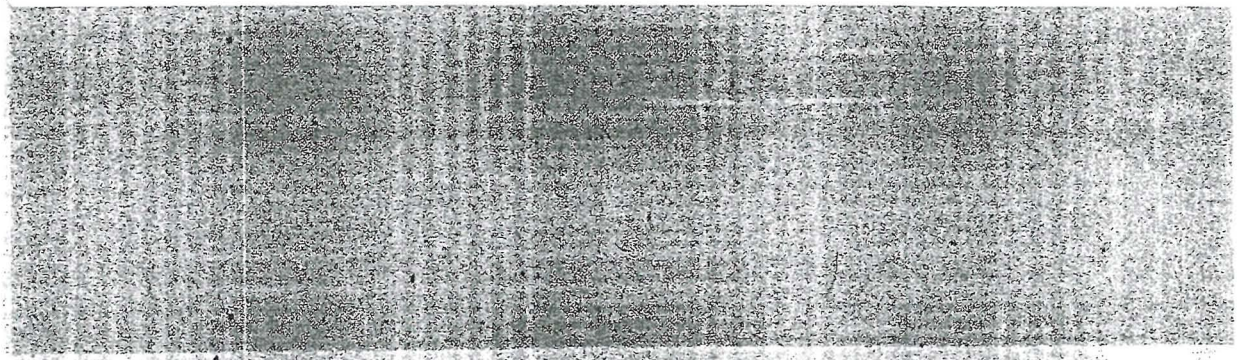

arterial traffic off the Park boulevard.); the fence to prevent theft of rare plants and to protect wildlife from dogs. A great controversy arose (1936): Park Board Chairman H. M. Westfall declared "it was all a hoax to crystallize public opinion." A "temporary" fence was built along the east boundary (and golf course) to remain until the thickly planted hedge grew as high as the fence. Fencing for the Arboretum became another hotly contested controversy after the State Legislature in 1972, faced with the necessity to cut the University budget, recommended relief from the management of the Arboretum. The U.W. declared that the use of the Arboretum was that of a public park rather than a scientific classroom. As such, the area received abuse not related to an arboretum. But the City declared it did not have funds to maintain the park as an arboretum. The U.W. proposed fending the arboretum - east of the boulevard. The opposition was heated. The U.W. objected to placing a unit of the reactivated mounted police (in an effort to cope with increased muggins, rapes, without assurance that the frail plant and soil conditions would be protected from the horses). (Pat Hemenway had been shot by a robber, causing a spinal injury that made her totally disabled, unable to find any financial support; the State Legislature listened to her plea for recompense for all victims of such attacks and authorized such legislation. Despite her great courage, she lost her fight for life.)

Meanwhile, the "tug of war" continued to rage until a settlement was reached in 1974 with the Letter of Clarification wherein total maintenance of the 1974 level "or better" would be financially shared equally by the U.W. and the City. The Seattle Times editorialized that the U.W. position had softened with a change in policy under the new U.W. president, Dr. John Hogness.

Among the first visitors to the Arboretum (in 1938) were two distinguished ones and 600 unique ones: the mother and the wife of President Roosevelt who also visited another WPA project - West Seattle Golf and Recreation Area - and of course visiting the wife of the P.I. editor, Anna Roosevelt Boettiger, daughter of the "First Family"; the unique visitors were 2000 larvae from which 600 fireflies matured - these immigrants from the east coast were an attempt to transplant the fascinating insects into the Arboretum and the northwest - the suggestion of an invalid daughter of a Department of Agriculture official who was honored at the ceremony releasing the fireflies.

The entire Washington Park (including Foster Island) was included in the origianl Agreement with the Arboretum (U.W.) in 1934. When it became known to the ballplayers that the athletic field was about to be replaced with a rose garden, another storm of disapproval arose. The result was modification of the agreement, in which the playfield as well as the proposed new service use were excluded from Arboretum use (1948).

Efforts to establish a Japanese Teahouse and Garden began as early as the 1909 AYP Exposition. It was a logical part of the Pacific Rim celebration and its contribution to northwest culture and trade. After the Expo the Teahouse was purchased by Emma Watts and "placed in Madison Park." 10 years later a $5,000 teahouse existed at the southwest corner of 5th and University. A request was made to the Department to permits its relocation in Volunteer Park or elsewhere as a concession sponsored by the Japan Central Tea Association. In 1937 the Arboretum Society renewed the dream, but it did not take form until 20 years later when Mrs. Neil Haig went to the Japanese Consul, Yoshiharu Takeno, who sought aid from cities in Japan. The first response came from Kobe, Seattle's sister city. Tokyo gave enormous gifts - the work of the eminent designers, Mr. K. Inoshita and his associate Mr. Juki Iida, and a magnificent teahouse. Funds for the work came mainly from a generous Arboretum member. The value of all gifts and work was $200,000. Seattle craftsmen performing the work, supervised by Mr. Iida and Mr. Kitamura, were the Yorozu Co., Ishimitsu Co. and Yamasaki and Kubota. The garden was dedicated in 1960.

Arsonists completely destroyed the teahouse in 1973.

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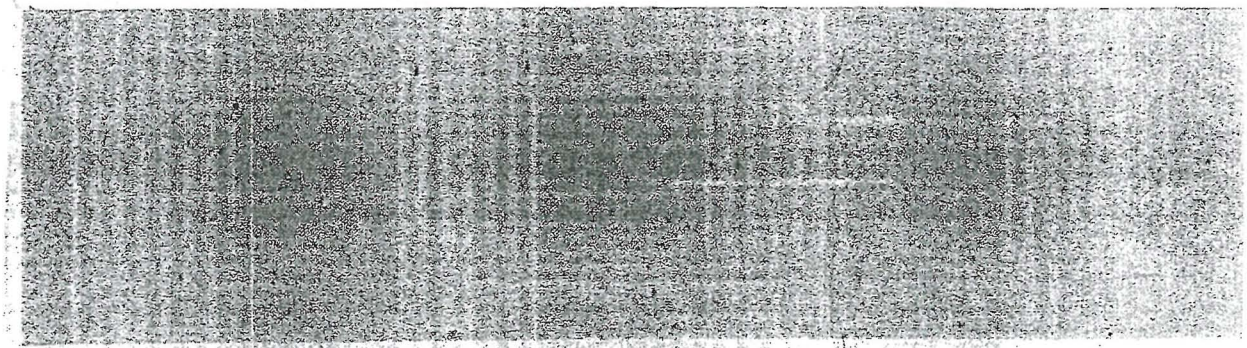
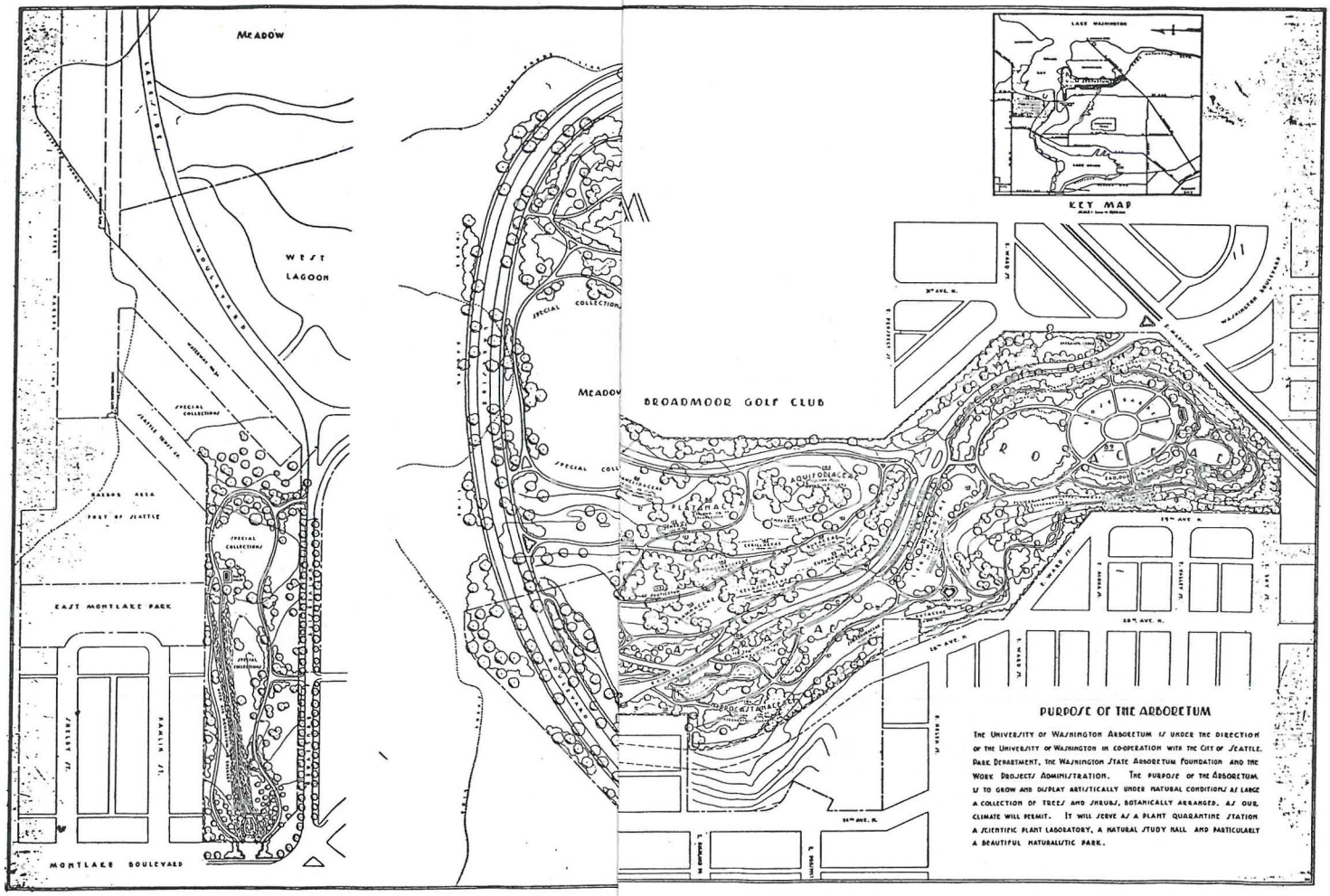


WASHINGTON PARK - History (continued) AND ARBORETUM

The growth of suburbia east of Lake Washington demanded relief from the crowded Mercer Island Floating Bridge, so another one was constructed in 1963 from the Evergreen Point across the north end of the park - mainly Foster Island - creating a new "Bamboo Island" and a wide interchange of ramps intended to connect with the north/south Expressway known in 1928 as Empire Way and later proposed as the Thomson Expressway. Empire Way had been proposed along the west side of Washington Park, taking the whole side from Ward to Lynn Streets, and/or the strip of residences along 26th, at least. But the community and residents had long ago stopped Empire Way at Madison Street with a series of vigorous and continuous lawsuits. So the 1963 interchange ramps deadended abruptly at the north end of the park onto Lake Washington Boulevard. Further construction into the park waited . . . until 1972 when the voters rejected the Expressway. But the expectant bulldozers had excavated for the Expressway to Lynn Street, and it remained as a blighted scar where little would grow except parking for cars, especially during football games. Some homes had been bought and boarded up until . . . . .

The marshy areas, reeds and cattails on the north side of the Freeway were recognized (finally) as a valuable wildlife resource and the Arboretum Waterfront Trail was built on pontoons by the U.W., Bureau of Outdoor Recreation and City Arboretum Trust Fund. Completion of the Waterside Trail along the Canal in 1971 caused it to become a National Recreation Trail.

DS:d
9/20/74


MEADOW
WEST LAGOON
BOULEVARD
SPECIAL COLLECTIONS
MEADOW
BROADMOOR GOLF CLUB
KEY MAP
LAKE WASHINGTON
AQUIFOLIACEAE
ROSACEAE
EAST MONTLAKE PARK
MONTLAKE BOULEVARD
PURPOSE OF THE ARBORETUM
THE UNIVERSITY OF WASHINGTON ARBORETUM IS UNDER THE DIRECTION OF THE UNIVERSITY OF WASHINGTON IN CO-OPERATION WITH THE CITY OF SEATTLE, PARK DEPARTMENT, THE WASHINGTON STATE ARBORETUM FOUNDATION AND THE WORK PROJECTS ADMINISTRATION. THE PURPOSE OF THE ARBORETUM IS TO GROW AND DISPLAY ARTISTICALLY UNDER NATURAL CONDITIONS AS LARGE A COLLECTION OF TREES AND SHRUBS, BOTANICALLY ARRANGED, AS OUR CLIMATE WILL PERMIT. IT WILL SERVE AS A PLANT QUARANTINE STATION A SCIENTIFIC PLANT LABORATORY, A NATURAL STUDY HALL AND PARTICULARLY A BEAUTIFUL NATURALISTIC PARK.

ENCLOSURE E

THE

UNIVERSITY NATIONAL BANK

OF SEATTLE

Member Federal Deposit Insurance Corporation

it has been (privilege to
and have the confidence c
University of Washington a
residents of the great dist
which surrounds it.

U N I V E R S I T Y O F W A S H I N G T O N C A M P U

ENCLOSURE #2

Ordinance No. 90723

AN ORDINANCE providing for the acquisition of certain real property from the University of Washington for the Montlake Interchange by the exchange of property with, and payment of consideration to, said University, and making an appropriation from the Seattle General Arterial Improvement Bonds 1954 Fund in connection therewith.

FILE NO. 241473

Council Bill No. 82196

INTRODUCED: NOV 13 1961	BY: Parks and Public Grounds, Streets & Sewers, Finance
REFERRED: NOV 13 1961	TO: Finance, Parks & Public Grounds, ~~Streets & Sewers~~
REFERRED:	
REPORTED: NOV 20 1961	SECOND READING: NOV 20 1961
THIRD READING: NOV 20 1961	SIGNED: NOV 20 1961
PRESENTED TO MAYOR: NOV 20 1961	APPROVED: NOV 20 1961
RETD. TO CITY CLERK: NOV 20 1961	PUBLISHED:
VETOED BY MAYOR:	VETO PUBLISHED:
PASSED OVER VETO:	VETO SUSTAINED:
ENGROSSED: VOL..... PAGE.....	BY:

SM 10-59 HALL

MCG

GGW:EM
11-13-61

ORDINANCE 90723

AN ORDINANCE providing for the acquisition of certain real property from the University of Washington for the Montlake Interchange by the exchange of property with, and payment of consideration to, said University, and making an appropriation from the Seattle General Arterial Improvement Bonds 1954 Fund in connection therewith.

WHEREAS, the City requires certain property hereinafter described for construction of the Montlake Interchange contemplated by Ordinance 90098 and the University of Washington has offered to convey its interest in such property to the City for a consideration including the payment of Thirteen Thousand Four Hundred Seventy Three Dollars ($13,473), the conveyance to said University of the city's interest in certain property hereinafter described and certain other conditions and the City Engineer in C. F. 241873 has recommended acceptance of such offer; Now, Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. That upon receipt of a quitclaim deed from the University of Washington to The City of Seattle, conveying to the city the University's interest in the following described real property to wit:

That portion of Old Canal right of way (Canal Reserve) in Section 21, Township 25 North, Range 4 East, W.M., described as follows: Beginning at a point on the east margin of Montlake Boulevard distant 155.93 feet south of its intersection with the center line of Hamlin Street; thence south 1° 25'23" west along said east margin 213.94 feet; thence south 42°28'57" east 150.11 feet; thence south 88°33'57" east along the north margin of Lake Washington Boulevard a distance of 590.23 feet; thence north 0°43'27.5" east 202.22 feet; thence north 88°34'37" west 131.88 feet to the production south of the east line of the north and south alley as platted in Block 4, Montlake Park Addition, according to plat thereof recorded in Volume 18 of Plats, page 20, Records of King County, Washington; thence north 1°25'23" east along said produced line 120.00 feet to the south line of the east and west alley in said block; thence north 88°34'37" west along said south line 15.00 feet; thence south 17°48'44" west 88.60 feet; thence south 1°25'23" west 76.50'; thence north 86°21'37" west 34.18 feet to a point of curvature; thence westerly along the arc of a curve to the right, having a radius of 400 feet, an arc distance of 49.68 feet to a point of tangency; thence north 79°14'37" west 255.24 feet to a point of curvature; thence westerly and northwesterly along the arc of a curve to the right, having a radius of 220 feet, an arc distance of 199.22 feet to a point of tangency; thence north 27°21'37" west 3.00 feet; thence north 88°34'37" west 26 feet to the point of beginning.

Containing an area of 141,404 square feet more or less.

together with a conveyance of a temporary easement over the following described real property for use during construction of the Montlake Interchange under Ordinance 90098:

Ordinance No. 90723

AN ORDINANCE providing for the acquisition of certain real property from the University of Washington for the Montlake Interchange by the exchange of property with, and payment of consideration to, said University, and making an appropriation from the Seattle General Arterial Improvement Bonds 1954 Fund in connection therewith.

11/14/61 - Pass

FILE NO. 241973

Council Bill No. 82196

INTRODUCED: NOV 13 1961	BY: Parks and Public Grounds, Streets & Sewers, Finance
REFERRED: NOV 13 1961	TO: Finance, Parks & Public Grounds, ~~Streets & Sewers~~
REFERRED:	
REPORTED: NOV 20 1961	SECOND READING: NOV 20 1961
THIRD READING: NOV 20 1961	SIGNED: NOV 20 1961
PRESENTED TO MAYOR: NOV 20 1961	APPROVED: NOV 20 1961
RETD TO CITY CLERK: NOV 20 1961	PUBLISHED:
VETOED BY MAYOR:	VETO PUBLISHED:
PASSED OVER VETO:	VETO SUSTAINED:
ENGROSSED: VOL..... PAGE.....	BY:

BM 10-59 HALL

MCL

PUB
A. A. (BS
BLDG
ENG.
R. C.
L. & E.
C. O.
LIGHT

BALANCES AS NOTED ORD. 93220

Deck #15863

ENCLOSURE G

That portion of Old Canal right of way (Canal Reserve) in Section 21, Township 25 North, Range 4 East, W.M., described as follows: Beginning on the east margin of Montlake Boulevard distant 155.93 feet south of its intersection with the center line of Hamlin Street; thence south 88°34'37" east 26 feet to the true point of beginning; thence south 27°21'37" east 3.00 feet to a point of curvature; thence southeasterly and easterly along the arc of a curve to the left having a radius of 220 feet, an arc distance of 199.22 feet to a point of tangency; thence south 79°14'37" east 255.24 feet to a point of curvature; thence easterly along the arc of a curve to the left having a radius of 400 feet, an arc distance of 49.68 feet to a point of tangency; thence south 86°21'37" east 34.18 feet; thence north 1°25'23" east 61.50 feet; thence south 89°54'26" west 334.72 feet; thence westerly and northwesterly along the arc of a curve to the right, having a radius of 215 feet and the center of said curve bearing north 10°45'23" east, an arc distance of 194.94 feet; thence north 88°34'37" west 5.71 feet to the true point of beginning.

Containing an area of 12,380 square feet more or less.

the Mayor and City Comptroller are authorized and directed to execute and deliver to the University of Washington a quitclaim deed, subject to easements for such sewer and water pipelines as now exist, of the city's interest in the following described real property to wit:

That portion of the Old Canal right of way (Canal Reserve) in Section 21, Township 25 North, Range 4 East, W.M., described as follows:
Beginning at a point on the east margin of Montlake Boulevard East 155.93 feet south of its intersection with the center line of Hamlin Street; thence south 88°34'37" east 26 feet to the true point of beginning; thence south 27°21'37" east 3.00 feet to a point of curvature; thence southeasterly along the arc of a curve to the left, having a radius of 220 feet, an arc distance of 199.22 feet to a point of tangency; thence south 79°14'37" east 255.24 feet to a point of curvature; thence easterly along the arc of a curve to the left, having a radius of 400 feet, an arc distance of 49.68 feet to a point of tangency; thence south 86°21'37" east 34.18 feet; thence north 1°25'23" east 76.50 feet; thence north 17°48'44" east 88.60 feet to the south line of the east and west alley in Block 4, Montlake Park Addition as recorded in Volume 18 of Plats, at Page 20, Records of King County, Washington; thence north 88°34'37" west along said south line and same produced to the true point of beginning.

said property being a portion of that heretofore authorized to be conveyed to the University of Washington by Ordinance 78354.

Section 2. As further compensation to the University of Washington for the conveyance to the City contemplated in Section 1 hereof, there is hereby appropriated from the Seattle General Arterial Improvement Bonds 1954 Fund the sum of Thirteen Thousand Five Hundred Dollars

($13,500) or so much thereof as may be necessary for the removal of shrubbery and other botanical specimens from the property to be used by the City for highway purposes, and the City Comptroller is authorized to draw and the City Treasurer to pay the necessary warrants, as recommended by the City Engineer in C. F. 241873.

Section 3. And as a part of the consideration to said University for the conveyance to the City contemplated in Section 1 hereof the City Engineer and Board of Public Works are authorized and directed to provide for the relandscaping of the University property to be used by the City as a temporary construction easement for the preservation or relocation of sewer and water lines serving the property herein authorized to be conveyed to the University of Washington, and for the disposal of excavation waste material, all as contemplated by C. F. 241873.

(To be used for all Ordinances except Emergency.)

Section 4. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 20 day of November, 19 61

and signed by me in open session in authentication of its passage this 20 day of November, 19 61.

Elmira Larsen
President of the City Council.

Approved by me this 20 day of November, 19 61.

Gordon A Clinton
Mayor.

Filed by me this 20 day of November, 19 61.

Attest: O. H. Richardson
City Comptroller and City Clerk.

(SEAL)

Published

By W. A. Perino
Deputy Clerk.

The City of Seattle--Legislative Department

MR. PRESIDENT:

Date Reported and Adopted

Your Committee on Finance, Parks & Public Grounds, and Streets & Sewers

to which was referred C.B. 82196, NOV 20 1961

providing for the acquisition of certain real property from the University of Washington for the Montlake Interchange by the exchange of property with, and payment of consideration to, said University, and making an appropriation from the Seattle General Arterial Improvement Bonds 1954 Fund in connection therewith,

RECOMMEND THAT THE SAME DO PASS.

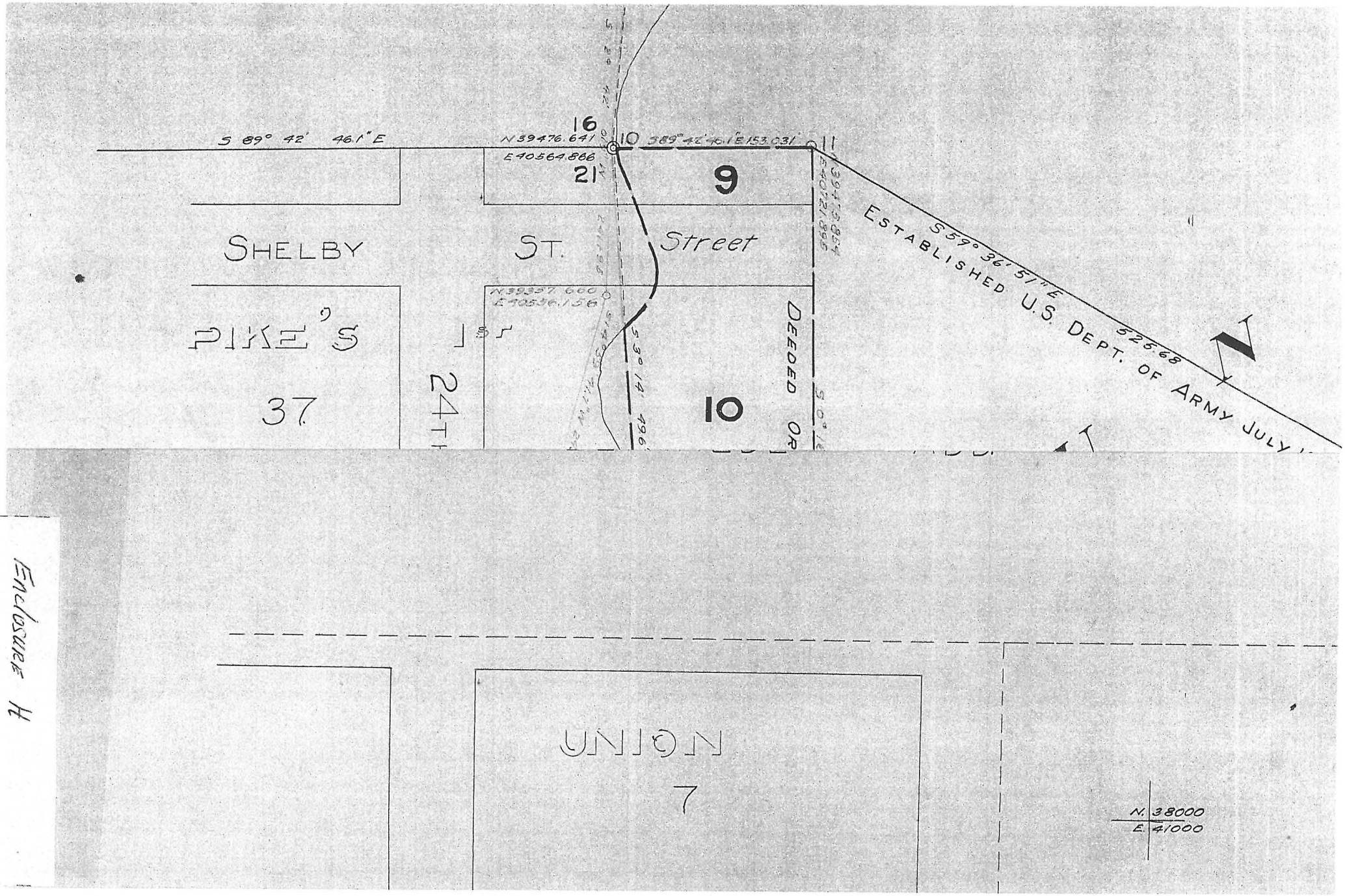
Fin. Chairman

Committee

P&PG Chairman

S&S

Committee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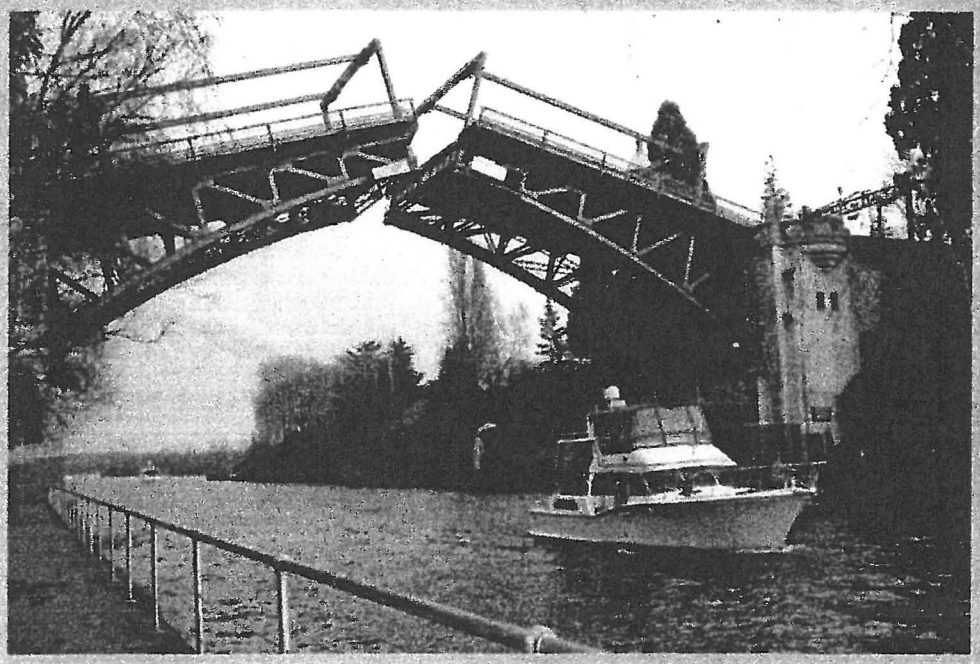
Enclosure H

MONTLAKE: AN URBAN EDEN



A History of the Montlake Community of Seattle

EUGENE SMITH

ENCLOSURE I

CHAPTER 11

Parks and Garbage--Within and Nearby

As real estate agents are fond of pointing out to prospective buyers--who may not already have discovered it for themselves--Montlake abounds with parks. The two largest, Interlaken and Washington, are not actually within the loose Montlake boundaries, though they seem so near physically and psychologically that most Montlake residents have historically treated them as integrally connected. The smaller areas designated as parks or parkway function as pleasant open spaces--dividers between lake and residence and between busy lanes of car and truck traffic. The creators of these spaces seem to have had exactly these purposes in mind.

East and West Montlake Parks and Montlake Boulevard Centerstrip

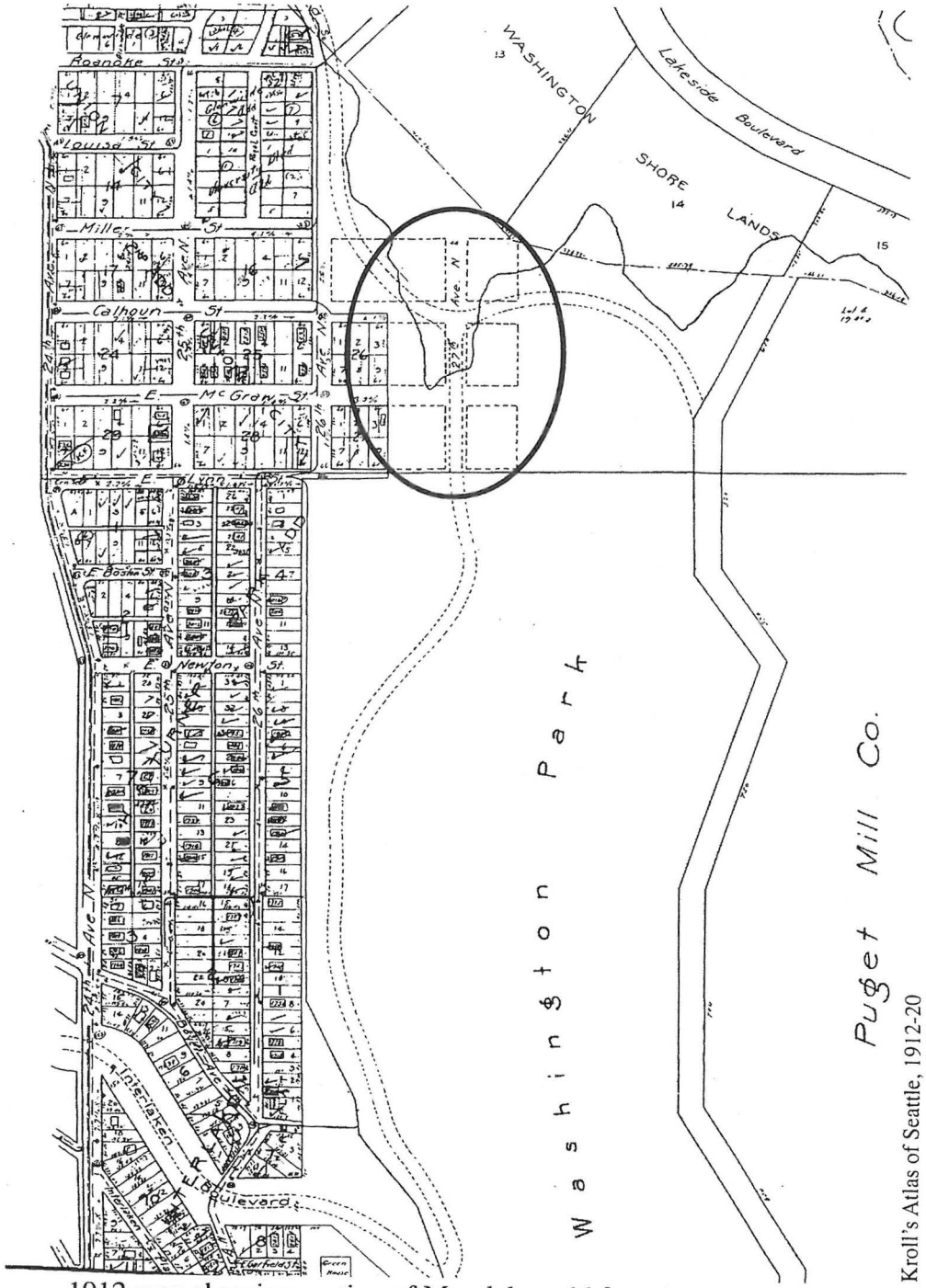
Even before Hagan and Hagan submitted their Montlake Park Addition plat in 1909, negotiations had begun with the Seattle Park Board to connect the early version of Lake Washington Boulevard--from Washington Park at the south--to the university grounds. John C. Olmsted--who, in 1903, had laid out a comprehensive park and boulevard system for Seattle and had strongly recommended a parkway connection between Washington Park and university grounds--reiterated that recommendation with greater force in 1906: ". . . this project will be of greater value to the Park system than any other which has been contemplated."[1] His proposal assumed greater urgency as planning for the Alaska Yukon Pacific Exposition accelerated because several city officials were looking for a graceful and efficient south entrance. The first plan was to extend the boulevard northward, along the Union Bay shore (on the east side of the isthmus). To that end, Ramsey and Baillargeon, owners of three acres of land in the Montlake Park Addition, proposed to sell at $4,000 per acre.[2] The Park Board, meeting in 1907, offered $10,000. (The Panic of 1907 had hit.) A month later, one of the Hagan brothers met with the board, doubtless with their projected replatting in mind. Though the minutes of the meeting did not quote him directly, they stated that he "protested the taking of land for the carrying out of the route chosen by the Board" and "offered a plan whereby another route than that which had been selected might be secured."[3] Furthermore, he said, he represented "the holdings of Messers. Baillargeon and Ramsay." Hagan evidently stated his case vigorously, causing the board members to go into executive session. When they emerged, they passed a motion reaffirming their decision and directing continuation of condemnation proceedings.

At the same time, additional land south of the Montlake Park Addition (formerly, Pike's First Addition to Union City) was needed for the projected boulevard extension. This major purchase, at $500 per lot,[4] took out two and a half blocks of what could have been Montlake, projected farther into Washington Park Arboretum than it now is. Perhaps subsequent Montlake residents have a better historic claim on Washington Park Arboretum than they had suspected! As the map on page 116 shows--with dotted lines indicating blocks in original plat of Pike's Second Addition to Union City--the gently curving Lake Washington Boulevard that came to occupy land that had been owned by the Union Trust Company; 12 lots in Block 15, 6 lots in Block 26 and 27, all east of 26th Avenue N., became park property.

Hagan had reason to mistrust the board's decision when he learned of ship-canal-superintendent Major Chittenden's edict about location of a bridge across the government canal: "a bridge across the canal at 22nd Avenue will be the only one allowed by the government."[5] That meant that the Union Bay-hugging route was out of the question. Hagan, seeing an advantage for his proposed Montlake Park Addition, came up with an offer impossible to resist: he would donate enough land on the isthmus ridge to accommodate a 150 foot-wide boulevard--no mere street. Not only that, he offered to donate land for parks fronting both

lakes at each end of the new addition. Faced with the Chittenden decision and this magnanimous offer, the board accepted the Hagans' proposition, which would include 75 feet in the center of the boulevard for park land. Furthermore, the two parks--later named West and East Montlake Parks--"[give] the Park Board the entire water front of Lake Washington and Lake Union without any expense to the Park Board . . ."[6] The board also agreed to dismiss condemnation proceedings for the previous route.

When the Hagans submitted their plat plan a few months later, it showed the two parks--still mostly un-

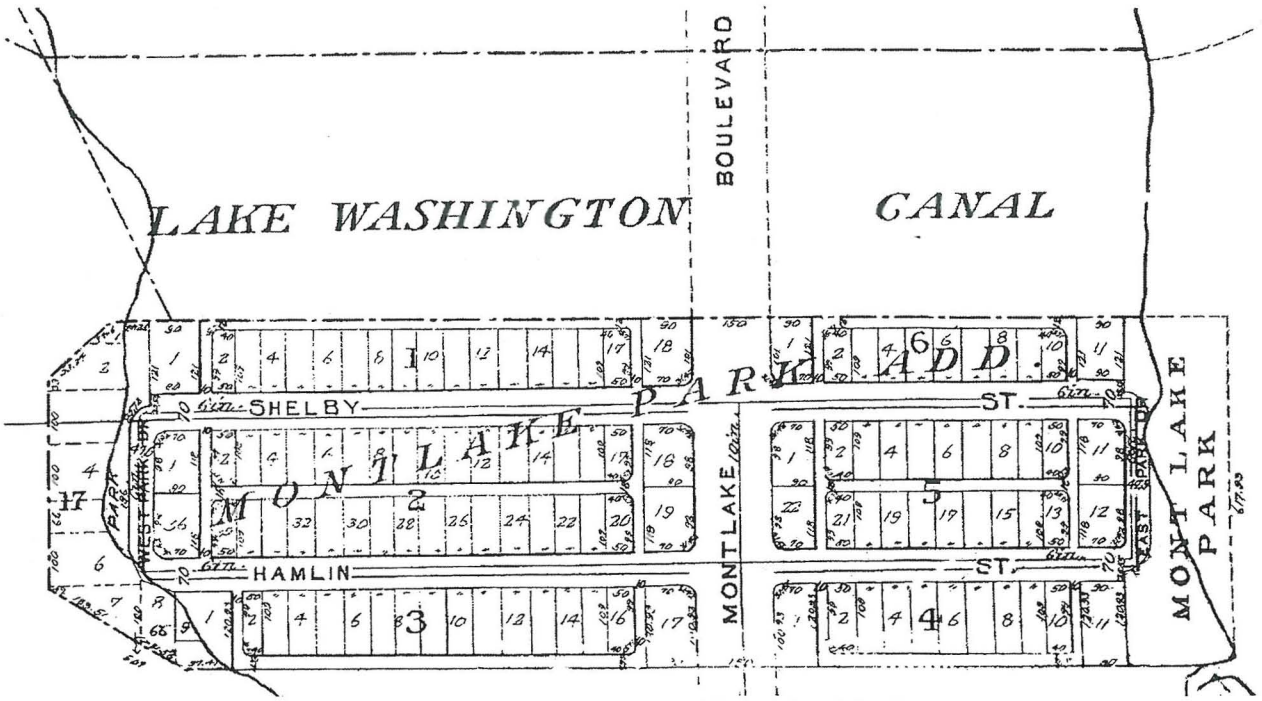


Kroll's Atlas of Seattle, 1912-20

1912 map showing portion of Montlake sold for arboretum use (blocks with dotted lines in circle)

der water--approached by East and West Park Drives, both extensions in the form of parentheses of Shelby and Hamlin Streets. On city maps, the centerstrip of Montlake Boulevard was clearly marked as parkway, though that term did not necessarily imply protection from other uses. The City Engineer, indeed, thought it would be an excellent spot for street cars that would transport A-Y-P visitors; he presented that proposal to the park commissioners, who approved it.[7] However, two months later, they reconsidered that action, deciding that parkway was parkway and that a commercial enterprise--the street railway was under private ownership at that time--should be "outside of this strip."[8] John C. Olmsted, active in planning Washington Park and the A-Y-P grounds, caused them to reverse their position once again: he recommended that "the street railway tracks [two tracks with poles for trolleys] occupy the central parkway strip, with the commercial roadway on the west side and boulevard on the east side."[9] His report, with obvious sensitivity to aesthetics, also proposed grass to be planted on top of the sleepers (or, railroad ties), four rows of tulip trees and shrubbery on the central and side strips, as well as vines up the trolley and lighting poles. To assure that overzealous owners of property adjoining the boulevard did not spoil his vision, he further proposed that nothing should be built less than 40 feet from the boulevard, that no commercial uses should be permitted, and that any house should be no more than two stories--these restrictions to apply for 99 years. As a final touch and an eye to the future, he urged that the Parks Department should care for the plantings in the centerstrip and the trees on the east side. The board adopted that report.

As grading, laying of tracks, and paving proceeded in 1909, the Parks Department somewhat ungenerously presented the Hagans with a bill for $2,280 for boulevard grading--probably determining that this work was a necessary part of the Hagans' preparing the area for sales of real estate. They couldn't pay, however, because incomplete utilities had retarded or prevented sales. When the property owner, James M. Corner, and the Hagans countered with a request to use the Park Department dock on Union Bay for unloading sidewalk-construction materials[10]--part of utilities construction--the park superintendent refused permission because of the unpaid claim. Legal complications lasted into the 1920s, when Hagan and Corner lost title to some of the property in order to satisfy the debt.[11]



1912 map of Montlake Park Addition showing area of East Montlake Park that was then submerged

Another facet of readying Montlake Boulevard for use was construction in 1916 of a timber bridge across the old canal site[12]--later replaced with fill and even later breached for a freeway. The contract for another timber bridge--the first Montlake Bridge--was let in April, 1909 (just two months before A-Y-P opened[13]) over the on-going dig, then called the Erickson Cut (later Montlake Cut). The cost, $7004.58, was borne by the Park Board, Seattle Electric Co. (i.e., the street railway system), and the city's general fund. That bridge must have accommodated only street cars, however, because in March, 1910, Hagan & Hagan requested the Park Board to appropriate $238.50 for building a suspension bridge over the canal-to-be.[14] The total cost of that bridge was to be $1090, with remaining funds to come from the city's general fund and from owners of adjoining property. The combination of streetcar and pedestrian bridges was evidently unsatisfactory since just a few years later a clamor arose for replacing both with the present Montlake Bridge.

Don Sherwood, the most prolific historian of Seattle's parks, has written that development of West Montlake Park was closely tied to the desires of the Seattle Yacht Club, which a few years later had bought the former "Casino Grounds" (probably not intended for gambling) of A-Y-P for their building. He stated that, "[s]ince most of the Park area was in the water, the State deeded that portion to the city in 1909. . . . A wooden bulkhead was built out in the water on the Pierhead Line and filling began behind it, using cinders [probably residue from coal and wood fuel] from various public buildings."[15] Over the next 10 or 15 years, "the fill material had changed to refuse [Montlake's first city dump?] and there were objections to 'the stench' created." Furthermore, in 1918 construction of a series of moorage piers abutting the park bulkhead, including a boathouse, caused neighbors to object to blockage of their view. The boathouse was moved to the south pier, and 13 poplar trees were planted along the shoreline, giving the area a more parklike feel. In 1932, the Parks Department constructed a concrete seawall and completed the fill,[16] presumably with something other than garbage.

In contrast with the park on the west, East Montlake Park simply emerged--its existence dependent on the lowering of the water level of Lake Washington. Baist's map of 1912 (five years before the lowering; see p. 115) shows its supposed rectangular shape. When the canal finally opened in 1917, the park land became an object of contention between the city and the federal government because of its location on or near the government canal reserve. The city wanted to use the newly dried-out land as an extension of Washington Park[17]; the government asserted that it must be a separate park with no permanent structures. But the area in the 1920s must have looked somewhat unpromising as a park because of its boggy, cattail-ridden quality, not to mention debris from the time when logs had been assembled there for floating through the old canal. That very quality of wildness was to become, in later years, its most desirable aspect as a takeoff point for a waterfront trail, with rustic log walkways covering the bogginess and making it possible to walk comfortably through the cattails and other plants.

By 1931, though, its future was problematic. A Park Department plan for the next ten years, a depression period, assessed East Montlake Park as unimproved. It had been recommended by anonymous sources as "a neighborhood bathing place,"[18] but the board concluded that "[i]ts improvement should await the development of . . . [the] adjoining lands." In contrast, the same report noted that West Montlake Park "is fully improved with lawn and flowers" and that, because railway tracks still ran through the centerstrip of Montlake Boulevard, that area "will not permit of any further improvement beyond the lawn and trees which are now maintained there."

Though the 1.1-acre East Montlake Park had been deeded to the city in 1946,[19] it became a focal point for visitors in the early 1950s, when an immediately adjacent part of the old canal right-of-way became the home of the Museum of History and Industry, which includes a maritime collection. From its earliest days, the museum included a home for the Puget Sound Maritime Historical Society, one of whose heroes was Horace W. McCurdy.[20] A past commodore of the nearby Seattle Yacht Club, he had been head of Puget Sound Bridge and Dredging Company since 1922 and had made himself beloved of people who were

Seattle Municipal Archives, Don Sherwood History Collection, photo by Olmsted Brothers, 1903

1903 photo of area that was to become East Montlake Park at east end of Montlake Park Addition

thus allowing for the later creation of the Broadmoor golf course, which was not only a nice amenity for residents but also protected them from the intrusion of whatever activities--several of a decidedly lower class type--might occur in Washington Park.

With this entirely untamed chunk of prime property in hand, the Park Commissioners felt pressure to start planning exactly what to do with it--hence their decision to hire the Olmsted Brothers to create a comprehensive park and parkways plan that would capitalize on the "existing long, narrow Washington Park."[62] Olmsted's 1903 report, adopted by the Park Board, said, tactfully but forthrightly, that the board hadn't acquired enough land; the potential park needed to be enlarged by widening on the west side and by acquiring frontage on Union Bay west of the park, all of Foster Island, and a narrow piece through Union City that would connect Washington Park with the university grounds. All of these acquisitions, he pointed out, would bring plentiful returns to the city because of "the increased valuation and taxes . . . from the adjoining private lands," on both east and west sides. He also wanted the borders of Washington Park to be "curvilinear" so that "a graceful border street or a parkway" could more or less follow the western boundary--what later became Lake Washington Boulevard. Slashing and clearing for this parkway began right after Olmsted submitted his report, with an amazing $200,000 appropriation. A revised plan for this road by Olmsted became the basis for further work "in conformity with the contour of the ground," and by June, 1905, the mile-long, metalled roadway was "thrown open to the public."

Olmsted was struck by what remained of native forest ("only in places are there groups of very large firs and cedars") and the brook, "derived mainly from springs," that he hoped could be kept in very good condition by augmenting its sources. Most of the land needed to be partially or wholly cleared, he suggested, "and the surface covered with grass . . . so as to adapt it for use by large crowds." Though not much money was available to develop the park and no thought had apparently been given to developing it as an arboretum,* by 1907 the road designated by Olmsted had been macadamized from Madison Street to the fork with Interlaken Boulevard and graveled to Union Bay in a "very satisfactory" way,[63] according to the Park Commissioners. Through private contributions from horse owners, a 3/4-mile speedway was also under construction at the north end; other parts of the driveway through the park had become "more and more popular for automobiles, carriages, horse men, and pedestrians," so popular that the Park Board supplied a horse and the police department a patrolman. Clearing continued, much of it done by the otherwise unemployed of Seattle[64] (a practice that continued during the 1920s and peaked in the 1930s with the federal Civil Works Administration and the later Works Progress Administration[65]), and the park became headquarters for maintenance of the boulevard system, requiring a barn for steamrollers and other tools and a stable for eight horses.

More ominously, the board's 1907 report notes that a "garbage crematory" would most likely be constructed within Washington Park "on account of the scarcity of sites available."[66] Later records of the use of two areas of Washington Park for garbage disposal refer to them as "sanitary fills,"[67] with no reference to burning that the word *crematory* suggests. At the north end, the fill extended from 26th Avenue and East Miller, immediately adjacent to Montlake, to the marshes of Union Bay. (In the 1970s, this dump was discovered by neighborhood kids and adults and for a few months was both an exciting place to explore and the source of saleable old bottles and other memorabilia.[68]) At the south end, just north of Madison Street, "a huge fill had been placed across the ravine" by 1909; that fill presently serves as a soccer field.

While garbage was going in at the south end, the other end of Washington Park was being prepared as a

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*The idea for an arboretum in Washington Park began to develop in the early 1920s, when the University of Washington proposed that all of the park should be given to the university for use as an arboretum. The Board of Park Commissioners accepted this proposal in 1924, but lack of funding prevented the transfer from happening. [Guide to papers on University of Washington Arboretum, "History," <www.lib.washington.edu/specialcoll/manuscripts. arbor. html>]

suitable entrance to the Alaska-Yukon-Pacific Exposition, though it had to pass over declivities that would make travel awkward. The commissioners, working hard to do their part in assuring a successful exposition, reported in 1908, about a year before the June, 1909 opening, that the road was being hurried:

> It has been necessary to cross some of this low ground on bridges supported by piling and these are in place, and the grading of the balance is well under way. The road branches off Washington Park Roadway about one-eighth of a mile from the end at Union through the center of the recently platted Montlake Addition to the Plaza, the south entrance of the A.Y.P. Exposition.[69*]

Whatever increase in development momentum occurred because of A-Y-P had slowed by 1931, though land acquisitions had increased the size of the park to 197.05 acres.[70] A large part remained undeveloped--"in much the same condition as when acquired, a tract of logged-off land covered with second growth timber and brush." Furthermore, the equipment barn was "an eyesore" and must be replaced. Montlake residents were less concerned about that than about the need for a children's play area near the intersection of 26th Avenue N. and E. Lynn--the site of the present Tot Lot. By 1931, Park Commissioners had confirmed that "the area is now used rather extensively by the children of the neighborhood. It is recommended [to Mayor Frank Edwards] that a children's playground be developed there."

Even more noteworthy is the recommendation in this report that at least 85% of the park "be set aside for use as an arboretum." Ideas for development had been actively circulating in the city since at least 1924. In that year the Park Commissioners established "a botanical garden of trees, shrubs and flowers . . . in the north end of Washington Park"[71] in cooperation with the Chamber of Commerce and U.W. faculty in botany and forestry. The Chamber saw this project as a way to attract worldwide attention to Seattle, perhaps rivaling botanical gardens in St. Louis, Boston, and London.[72] Additionally, U.W. faculty needed a place for scientific plant study, as Edmond Meany had suggested when he promoted the university's relocation from downtown; their first garden, near the present Drumheller fountain on the campus, had been destroyed in 1909 to make way for A-Y-P.[73**]

Seattle's mayor in 1927, Bertha K. Landes, lent her support to the arboretum idea when she declared Washington Park "an ideal site for an arboretum, otherwise known as a botanical garden."[74] She also referred to "some talk" of a university-city joint effort to combine park and arboretum. This talk had a solid basis of planning at high levels within the university, city, and state, extending over about a decade. Tracing their inspiration to Professor Edmond Meany, they incorporated the Arboretum and Botanical Society of Washington with the aim of creating "gardens which will be second to none in the world."[75] With much of the enthusiasm coming from a sub-committee of the Seattle Chamber of Commerce--who knew a potential revenue-enhancing tourist attraction when they saw it--these gardens were to be kept open to the public, subject only to conditions necessary to caring for and preserving the plant collections.

According to *The Seattle Times*, "the first public meeting [April, 1930] at which the plans of the recently organized Arboretum and Botanical Society of Washington"[76] were announced occurred before the Montlake-Interlaken Community Club. Speakers included Hugo Winkenwerder, Dean of the U.W. College of Forestry, and R.J. Fisher of the Seattle

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*The building of an aqueduct bridge across Lake Washington Boulevard at E. Lynn Street probably occurred in this same decade. Called the Arboretum Aqueduct, it was constructed to support the North Trunk Sewer [City Engineer's Plan 782-5]; it is now a pedestrian overpass. Because of its architectural/engineering distinction and the influence of its designer, in 1976 it was officially designated as a Seattle Landmark. [Seattle City Ordinance 106070, December 13, 1976]

**Meany is reported to have said in 1895, "I want this land [immediately north of Union City and its first addition] for the University because we want an Arboretum." No one disagreed because few people knew what an arboretum is. To Meany's disappointment, the arboretum idea became "lost in the shuffle" as the university developed in its first few years. ["Hearing All About," *The Seattle Times*, June 13, 1935]