



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**April 17, 2001**

**Motion 11168**

**Proposed No. 2001-0163.1**

**Sponsors Phillips**

1           A MOTION authorizing an interlocal agreement between  
2           King County, the city of Des Moines, the city of SeaTac,  
3           the Washington state Department of Transportation and the  
4           Port of Seattle, for the purpose of preparing the final design  
5           for, and permitting of, projects to implement the Des  
6           Moines Creek Basin Plan.

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WHEREAS, King County, the city of Des Moines, the city of SeaTac, the  
Washington state Department of Transportation and the Port of Seattle ("the parties")  
share interests within the Des Moines Creek Basin ("basin") and recognize that it  
contains an extensive natural resource system including streams, lakes, and wetlands  
which is worthy of restoration and protection to promote water quality, fish habitat,  
recreation and flood storage values in the basin, and

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WHEREAS, the parties desire to address drainage, flooding, erosion and  
sedimentation, fish habitat degradation and water quality problems throughout the basin,  
and

18           WHEREAS, existing and proposed development in the basin threatens the  
19 stability and function of the natural resource system of the basin and is likely to  
20 exacerbate flooding, erosion and sedimentation problems, fish habitat degradation and  
21 water quality problems, and

22           WHEREAS, the parties recognize that cooperative effort is the most effective and  
23 efficient way to protect the basin's natural resource system and to address surface water-  
24 related problems, and

25           WHEREAS, through previous interlocal agreements, King County, SeaTac, Des  
26 Moines and the Port formed the Des Moines Creek Basin Committee ("basin committee")  
27 to jointly address stream issues and to develop and implement the Des Moines Creek  
28 Basin Plan ("basin plan") which was endorsed by the pertinent legislative bodies,  
29 including the metropolitan King County council, and

30           WHEREAS, the basin plan proposed the construction of capital projects to control  
31 damaging stream flows and improve water quality and fish habitat in the basin, and

32           WHEREAS, the parties previously authorized preparation of a preliminary design  
33 report, which identified a series of capital projects to address surface water needs  
34 identified in the basin plan, and

          WHEREAS, the Washington state Department of Transportation wishes to  
contribute to Des Moines creek basin planning efforts to reduce the effects of surface  
water runoff from State Routes 509 and Interstate Route 5, which it owns and maintains,  
and SR 99, which it previously developed, and the effects of future improvements to  
those routes, and

40 WHEREAS, the parties wish to cooperate to prepare a final design report and  
41 financing plan to identify project details, costs and funding mechanisms for proposed  
42 capital projects, and to secure necessary permits for project implementation, and

43 WHEREAS, the parties wish to have the King County department of natural  
44 resources assist in conducting the activities called for by providing staff persons and  
45 expertise under the direction of the basin committee, and the King County department of  
46 natural resources wishes to provide such assistance on a cost share basis, and

47 WHEREAS, under chapter 39.34 RCW, the Interlocal Cooperation Act, the  
48 parties are each authorized to enter into an agreement for cooperative action;

49 NOW, THEREFORE, BE IT MOVED by the Council of King County:

**Motion 11168**

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50           The county executive is hereby authorized to enter into an interlocal agreement, in  
51 substantially the same form attached, for the purpose of preparing the final design for,  
52 and permitting of, projects to implement the Des Moines Creek Basin Plan.

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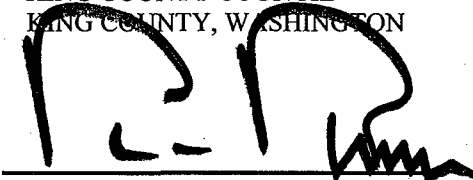
Motion 11168 was introduced on 3/12/01 and passed by the Metropolitan King County Council on 4/16/01, by the following vote:

Yes: 12 - Mr. von Reichbauer, Ms. Miller, Ms. Fimia, Mr. Phillips, Mr. Pelz, Mr. McKenna, Ms. Sullivan, Mr. Nickels, Mr. Pullen, Mr. Gossett, Ms. Hague and Mr. Thomas

No: 0

Excused: 1 - Mr. Irons

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON



Pete von Reichbauer, Chair

ATTEST:



Anne Noris, Clerk of the Council

**Attachments**   A. Des Moines Creek Basin Plan Implementation Interlocal Agreement, B. Des Moines Creek Regional CIP Final Design Plan Cost Summary, C. Easement, Right of Way Map

**DES MOINES CREEK BASIN PLAN**  
**IMPLEMENTATION INTERLOCAL AGREEMENT**

This agreement is entered into by King County, Washington, (hereinafter "King County"), the City of Des Moines ( hereinafter "Des Moines"), the City of SeaTac (hereinafter "SeaTac"), the Washington State Department of Transportation (hereinafter "WSDOT"), and the Port of Seattle (hereinafter the "Port"), collectively referred to as the "Parties," for the purpose of preparing the final design for and for permitting of projects to implement the Des Moines Creek Basin Plan ("Agreement").

WHEREAS, the Parties share interests within the Des Moines Creek Basin ("Basin") and recognize that it contains an extensive natural resource system including streams, lakes, and wetlands which is worthy of restoration and protection to promote water quality, fish habitat, recreation, and flood storage values in the Basin, and

WHEREAS, the Parties desire to address drainage, flooding, erosion and sedimentation, fish habitat degradation, and water quality problems throughout the Basin, and

WHEREAS, existing and proposed development in the Basin threatens the stability and function of the natural resource system of the Basin and is likely to exacerbate flooding, erosion and sedimentation problems, fish habitat degradation, and water quality problems, and

WHEREAS, the Parties recognize that cooperative effort is the most effective and efficient way to protect the Basin's natural resource system and to address surface water-related problems, and

WHEREAS, through previous interlocal agreements, King County, SeaTac, Des Moines and the Port formed the Des Moines Creek Basin Committee ("Basin Committee") to jointly address stream issues and to develop and implement the Des Moines Creek Basin Plan ("Basin Plan") which was endorsed by the pertinent legislative bodies, and

WHEREAS, the Basin Plan proposes the construction of capital projects to control damaging stream flows and improve water quality and fish habitat in the Basin, and

WHEREAS, through a previous agreement, King County, SeaTac, Des Moines and the Port authorized preparation of a Preliminary Design Report, which identified a series of capital projects to address surface water needs identified in the Basin Plan, and

WHEREAS, WSDOT wishes to contribute to Basin Planning efforts to reduce the effects of surface water runoff from State Routes 509 and Interstate Route 5, which it owns and maintains, and SR 99, which it previously developed, and the effects of future improvements to those routes, and

WHEREAS, the Parties wish to cooperate to prepare a Final Design Report and Financing Plan to identify project details, costs and funding mechanisms for proposed capital projects, and to secure necessary permits for project implementation, and

WHEREAS, the Parties wish to have the King County Department of Natural Resources ("KCDNR") assist in conducting the activities called for by providing staff persons and expertise under the direction of the Basin Committee, and

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, the Parties are each authorized to enter into an agreement for cooperative action;

NOW THEREFORE, the Parties agree as follows:

**I. Purpose of Agreement**

The purpose of this Agreement is to provide the means by which the Parties, acting as the Basin Committee, shall cooperate to conduct and fund the following Basin Plan implementation activities (hereinafter referred to collectively as the "Project"):

- A. Project management activities including day-to-day administration of project tasks and overall project management by the Committee; and
- B. Preparation of a Final Design Report, Financing Plan and Environmental Documentation and the securing of necessary permits for capital facilities that address surface water and fish habitat issues within the Basin. Specific facilities include the Regional Detention Facility, the By-pass Pipeline, the Flow Augmentation Facility, and the Habitat Enhancement and Restoration Projects.

**II. Project Administration and Coordination**

- A. Overall project management and direction shall be performed by the Basin Committee, which shall meet regularly to review project work products and approve any necessary changes to project activities, including amending the Scope of Work.

- B. One representative to the Basin Committee shall be appointed by each party, as follows: for King County, by the Manager of the County's Water and Land Resources Division; for Des Moines, by the City Manager; for SeaTac, by the City Manager; for the Port, by the Director of Aviation Facilities; for WSDOT, by the South King Area Administrator. Attendance of additional staff from any of the Parties in support of the Basin Committee is welcome.
- C. King County shall serve as facilitator for the Basin Committee and shall schedule, facilitate, and provide summaries of Basin Committee meetings.
- D. The Basin Committee shall reach its decisions by consensus. Issues that cannot be resolved by the Basin Committee shall be referred as needed to the Manager of King County's Water and Land Resources Division, appropriate City Manager(s), South King Area Administrator, and Director of Aviation Facilities, or their designees, for resolution.

### **III. Description of Project Activities:**

#### **A. Project Management**

As described in the Scope of Work and Agreement Section IV., the following tasks shall be performed by KCDNR staff persons:

- 1. Support and facilitate the Basin Committee, including conducting and facilitating regular meetings, preparing materials and agendas for meetings, preparing and distributing meeting minutes, and providing necessary coordination among the Parties outside of meetings; and
- 2. Manage project tasks on a day-to-day basis.

#### **B. The Final Design Report, Financing Plan, and Environmental Documentation**

- 1. As detailed in the Scope of Work attached to this Agreement as Exhibit One and incorporated herein and made a part hereof, the tasks described below shall be performed by KCDNR staff persons and/or consultants as engaged by KCDNR:
  - (a) Prepare the Final Design Report for the proposed Regional Detention Facility, the By-pass Pipeline, the Flow Augmentation Facility, and the Habitat Enhancement and Restoration Projects as described in the Basin Plan, including: detailed project plans with sufficient detail to prepare permit applications and construction bid

documents; technical studies to determine specific construction details; and recommendations on sequencing of facility construction;

- (b) Prepare a financing plan for the proposed facilities identifying the available and potential sources of funding for implementation of capital projects;
- (c) Prepare and complete necessary environmental documentation for the project to ascertain compliance with applicable regulations such as the Endangered Species Act, the Clean Water Act, the National Environmental Policy Act, and the State Environmental Policy Act; and
- (d) Make reasonable efforts to obtain necessary permits to allow construction of proposed basin plan projects.
  - (i) Where King County is authorized under applicable law for permitting purposes to act as the project proponent on behalf of the Basin Committee and chooses to do so, King County shall perform all permit preparation work to the extent possible.
  - (ii) In all other instances King County shall perform all permit preparation work to the extent allowed by applicable law on behalf of the Basin Committee and the Party identified as the project proponent for permitting purposes.

#### **IV. Responsibilities**

##### **A. King County shall:**

- 1. Complete the work activities described in the attached Scope of Work;
- 2. As described in Agreement Section III., serve as facilitator for the Basin Committee and schedule, facilitate, and provide summaries of Basin Committee meetings. King County shall also perform day-to-day management of project tasks, including coordination with the other Parties; and
- 3. Provide a representative to serve on the Committee and any necessary staff support needed by its Committee member.

##### **B. Des Moines, SeaTac, and the Port shall each:**

- 1. Provide a representative to serve on the Basin Committee and any necessary staff support needed by the Basin Committee member;
- 2. Provide water quality, fisheries and stream flow data that is collected in the normal course of business and that is relevant to preparing the Final Design Report; and



3. Provide assistance and technical staff guidance for obtaining any permits which are required to be issued for project implementation.

C. WSDOT shall:

1. Provide a representative to serve on the Basin Committee and any necessary staff support needed by the Basin Committee member;
2. Provide water quality, fisheries, and stream flow data that is collected in the normal course of business and that is relevant to preparing the Final Design Report; and
3. Provide the Basin Committee with all relevant and timely information relating to the potential design and construction of proposed extension of State Route 509 in the vicinity of the Regional Detention Facility for the purpose of coordinating construction and operation of surface water management facilities.

V. **Costs**

The Parties agree to share costs incurred by King County to prepare the Final Design Report, the Financing Plan, and environmental documentation, to secure project permits, and to provide project management.

- A. Total estimated costs for project activities are as shown on Exhibit One. It is the intent of all parties that project costs for this Agreement will not exceed \$926,509. The parties, however, agree that the uncertainties in permitting processes brought about by implementation of the Endangered Species Act and the complex nature of the projects proposed may produce unanticipated tasks which would need to be accomplished in order to fully execute the Scope of Work. If in the course of conducting project activities as outlined in the scope of work, King County identifies circumstances that may cause project costs to exceed \$926,509, King County will inform the other Parties as soon as practicable, in order that the need for additional funds may be addressed. It is anticipated that any increases in costs beyond the \$926,509 would require an amendment to this Agreement and to Exhibit One.
- B. WSDOT agrees to make a one time payment to support the ongoing work of the Basin Committee to address surface water issues in Des Moines Creek, and to offset costs associated with planning for the possible extension of State Route 509 in the immediate vicinity of the Regional Detention Facility. Should WSDOT wish to participate in the

construction and ongoing operation of the basin plan projects, the Parties shall negotiate an equitable fee to compensate for Basin Committee expenditures.

C. The Parties agree to pay the following shares of the total actual cost of project activities:

	Project Management Total estimated costs \$70,000	Final Design Report, Financing Plan, Environmental Documentation, Permitting Total estimated costs \$856,509
SeaTac	67%	67% (\$573,861)
Des Moines	15%	-0-
Port of Seattle	13%	13% (\$111,346) + \$58,476*
King County	5%	5% (\$42,825)
WSDOT	-0-	\$70,000

\*This amount plus \$70,000 is equivalent to a 15% contribution to the Final Design Report, Financing Plan, Environmental Documentation and Permitting.

The Parties recognize that any inequities among the Parties regarding relative contributions to work performed prior to and under this Agreement shall be addressed in subsequent agreements.

D. Total project activity costs shall include all those costs incurred by King County in completing the tasks listed in the Scope of Work, including costs for staff persons, overhead, supplies, consultants, and equipment. Except in the case of WSDOT, the Parties shall pay for project activity costs to execute the Scope of Work that were incurred prior to the execution of this Agreement. Total project costs do not include costs associated with participation in the Committee; these costs are not reimbursable.

## VI. Billing and Payment

A. King County shall bill the other Parties except for WSDOT on a quarterly basis on itemized invoices for their shares of the Project costs. The additional estimated \$58,476 to be paid by the Port as addressed in Section V. above shall be billed to the Port in

amounts not to exceed 25% of the total on each of the first four invoices submitted to the Port.

- B. King County shall bill WSDOT for its total share of project costs after King County has incurred at least \$70,000 in project costs after execution of this Agreement.
- C. The Parties shall review and approve the invoices and shall make payment to King County within 60 days of receipt of invoice.
- D. Nothing herein shall be construed as obligating the Parties to expend money in excess of appropriations authorized by law and administratively allocated for this work.

#### **VII. Future Project Implementation and Maintenance**

Once the Final Design Report and environmental documentation are completed, the Parties intend to provide for Project construction and long-term maintenance through a subsequent interlocal agreement which shall address responsibilities and cost shares for Project construction, construction management, and long-term maintenance and operation. The Parties intend to provide for long-term Project maintenance through a jointly developed, financed and managed maintenance program to be implemented by a service provider or providers as determined by the Committee, subject to resolution of any issues which may arise.

#### **VIII. Provision of Necessary Rights-of-Way and Easements**

- A. The Parties anticipate that the Project area will encompass lands owned by several of the Parties. SeaTac, Des Moines, King County, and the Port shall provide, to all other Parties to this Agreement and at no cost, whatever temporary and permanent easements and/or rights-of-way that are necessary for Project construction as described in the Des Moines Creek Basin Plan (in the alignment indicated by the Final Design Report and as agreed to by the Parties), and for ongoing facility operation and maintenance. Permanent easements requested for dedication by the Port may be subject to approval by the Federal Aviation Administration. WSDOT shall provide to all other Parties to this Agreement at no cost, whatever right-of-way use permits are necessary for Project construction as described in the Des Moines Creek Basin Plan (in the alignment indicated by the Final

Design Report and as agreed to by the Parties), and for ongoing facility operation and maintenance. Specifically:

1. For the Bypass Pipeline, the Flow Augmentation Facility, and the Marine View Drive Bridge, the Port, SeaTac and Des Moines shall provide necessary temporary and permanent easements and/or rights-of-way and WSDOT shall provide necessary temporary and permanent right-of-way use permits on their properties.
  2. For the Regional Detention Facility, the Port and SeaTac shall provide necessary temporary and permanent easements and/or rights-of-way and WSDOT shall provide necessary temporary and permanent right-of-way use permits on their properties;
  3. For the Habitat Enhancement and Restoration Projects, SeaTac and Des Moines shall provide necessary temporary and permanent easements and/or rights-of-way on their properties.
- B. Provision of rights-of-way, right-of-way use permits and easements as outlined above is subject to resolution of any outstanding issues that may arise in relation to such provision. A map depicting approximate locations of necessary rights-of-way and easements is attached to this Agreement as Exhibit Two and incorporated herein and made a part hereof.

#### **IX. Duration, Termination, and Amendment**

- A. This Agreement is effective upon signature by the Parties and remains in effect until December 31, 2005.
- B. A Party may end its participation in the Project and withdraw from this Agreement upon 30 days' written notice to the other Parties and upon paying its share of costs for the Project to the end of the quarter in which termination occurs.
- C. This Agreement may be amended, altered, clarified, or extended only by the written agreement of the Parties hereto, provided that changes to the Scope of Work may be made by consensus agreement of the Basin Committee. An equitable adjustment in cost or period of performance or both may be made if required by such change.
- D. This Agreement is not assignable by any Party, either in whole or in part.
- E. This Agreement is a complete expression of the intent of the Parties and any oral or written representations or understandings not incorporated herein are excluded. The Parties

recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the Parties which shall be attached to the original Agreement.

**X. Counterparts**

This Agreement may be executed in counterparts.

**XI. Indemnification and Hold Harmless**

The Parties agree to the following:

Each Party shall protect, defend, indemnify, and save harmless the other Parties, their officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, each Party's own negligent acts or omissions. Each Party agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this latter purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Parties only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that any Party incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this Article, all such fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's culpability.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the

\_\_\_\_\_ day of \_\_\_\_\_, 2001.

Approved as to Form

**King County:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Deputy Prosecuting Attorney

Title: King County Executive

Approved as to Form

**City of Des Moines:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form

**City of SeaTac:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form

**Port of Seattle:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form

**Washington State Department of  
Transportation:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

DES MOINES CREEK REGIONAL CIP  
FINAL DESIGN PLAN COST SUMMARY  
Exhibit 1

Regional Detention Facility		
Final Design	\$	207,701
Permitting/SEPA	\$	106,275.00
Construction Plans/Bid	\$	45,300.00
Bid Package	\$	22,063.00
Misc Contracting Services	\$	37,917.50
<b>SUBTOTAL</b>		<b>\$ 419,256.50</b>

Flow Bypass Pipeline		
Final Design	\$	107,591
Permitting/SEPA	\$	52,783
Construction Plans/Bid	\$	28,946
Misc Contracting Services	\$	18,932
<b>SUBTOTAL</b>		<b>\$ 208,252</b>

Flow Augmentation Well		
Final Design	\$	31,111
Permitting/SEPA	\$	14,764.00
Construction Plans/Bid	\$	7,766.00
Misc Contracting Services	\$	5,364.00
<b>SUBTOTAL</b>		<b>\$ 59,005.00</b>

Habitat Restoration Zone 1-3		
Final Design and Permits	\$	139,995

ESA Issues		
	\$	30,000

Program Management		
Project management/basin committee admin	\$	50,000
ESA management/support	\$	20,000
<b>SUBTOTAL</b>		<b>\$ 70,000</b>

<b>2000-2004 Grand Total</b>		<b>\$ 926,509</b>
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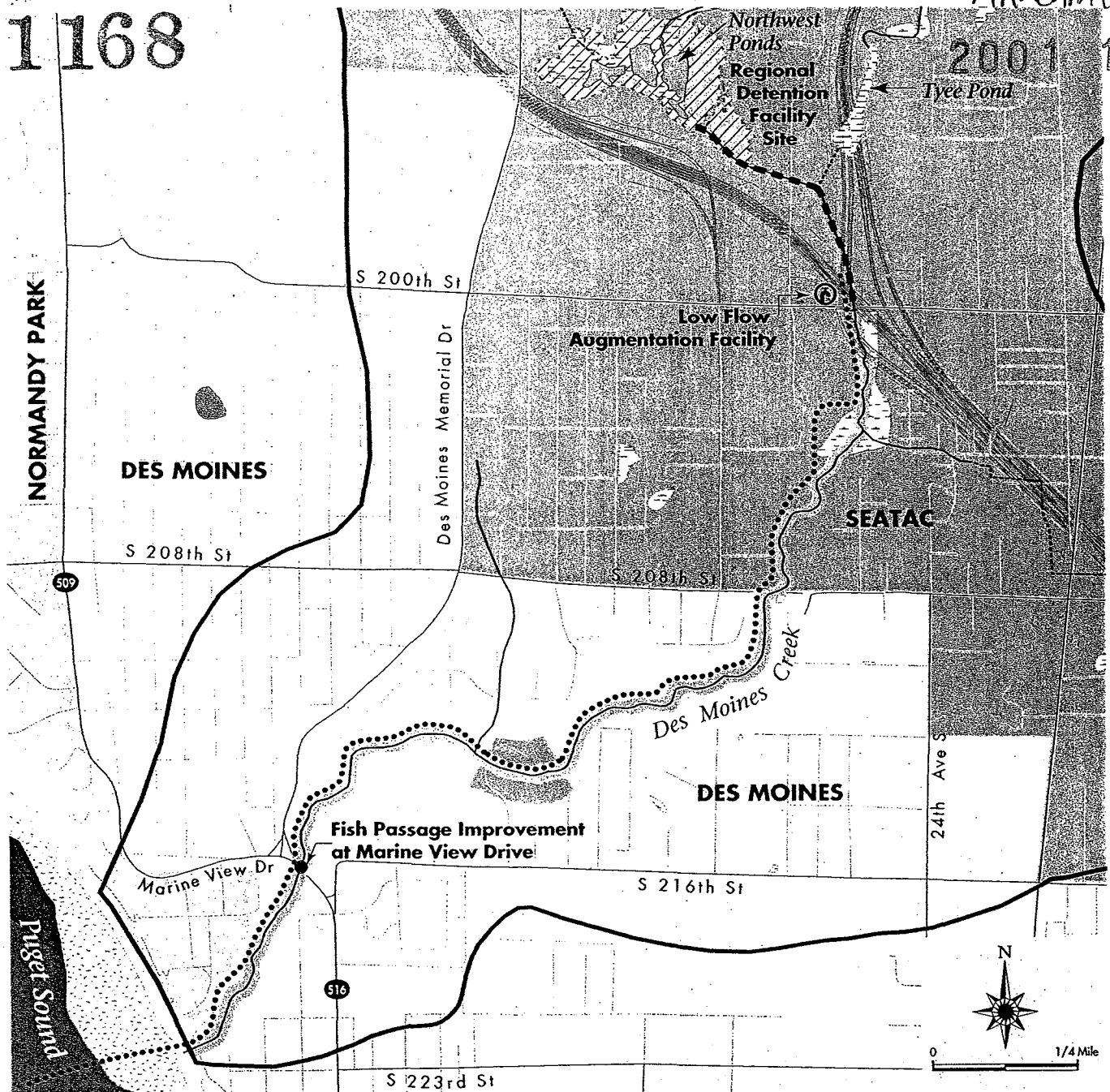


Exhibit 2  
**DES MOINES CREEK BASIN PLAN**  
 Rights-of-Way & Easements Necessary for Project Implementation - by Jurisdiction

Parties to Give Easements		Rights-of-Way and Easements needed for these Proposed Basin Plan Projects			
	City of Normandy Park		Fish Passage Improvement at Marine View Drive		Proposed SR 509 Extension
	City of Des Moines		Low Flow Augmentation Facility		Basin Boundary
	Midway Sewer District		In-stream Fish Habitat Improvements		Stream
	City of SeaTac		Stream Channel Reconstruction		Piped Stream
	Port of Seattle		Flow Bypass Pipe		Wetland
			Regional Detention Facility Site		R/D Facility
					Shoreline