

ORDINANCE NO. 1460

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, vacating City rights-of-way commonly referred to as South 208th Street, South 209th Street, 18th Avenue South, 17th Avenue South, and 16th Avenue South located in the area commonly referred to as the "SCORE Condemnation Area" within the City of Des Moines, subject to the Applicant's compliance with requirements set forth herein. Further an easement is hereby granted to the Highline Water District.

WHEREAS, the Des Moines City Council by legislative action initiated the vacation of certain City rights-of-way within real property which had been acquired by the Port of Seattle (hereinafter "POS") and the State of Washington (hereinafter "WSDOT") for the construction of State Route 509. All of these real properties are now subject to a eminent domain action by the City of Des Moines under King County Superior Court Cause Number 09-2-09463-2 KNT to facilitate the construction of a misdemeanor jail facility to be operated by the South County Correctional Entity (hereinafter "SCORE"), a Public Development Authority formed by an interlocal agreement between the cities of Auburn, Burien, Des Moines, Federal Way, Renton, SeaTac and Tukwila; (hereinafter "Member cities"), and

WHEREAS, once the City has acquired fee interest in the property subject to the eminent domain action from the POS and the WSDOT, the City will transfer the property to SCORE, and

WHEREAS, when the City transfers the property to SCORE, the City will retain control over the rights-of-way described in section 2 of this Ordinance, and

WHEREAS, SCORE requires a consolidated site not bisected by rights-of-way to construct the proposed misdemeanor jail facility and the City no longer requires the use of the property as right-of-way, and

WHEREAS, Highline Water District has existing facilities in South 208th Street which will continue to provide service to other properties and require easements to be granted to allow for their continued use, and

WHEREAS, no utilities are located in the portions of South 209th Street, 18th Avenue South, 17th Avenue South, and 16th Avenue South further described in section 2, and

WHEREAS, DMMC 12.12.040 adopts the street vacation procedures of chapter 35.79 RCW, and

WHEREAS, RCW 35.79.010 authorizes the City Council to initiate such street vacation procedures by resolution, and

WHEREAS, RCW 35.79.010 also requires that the City Council set the public hearing and date by resolution which was, in this case, established by Resolution No. 1103 fixing the public hearing for July 9, 2009, to be followed by City Council action, and

WHEREAS, notice of the public hearing was given in accordance with RCW 35.79.020 and the public hearing was held

before the Des Moines City Council on July 9, 2009, and all persons wishing to be heard were heard, and

WHEREAS, no objections to the vacation were filed by any abutting property owners prior to the hearing, and the City Council finds that no person has demonstrated special injury due to substantial impairment of access to such person's property, and

WHEREAS, the Council finds that vacation of the rights-of-way legally described in Section 2 of this Ordinance and labeled as delta 1,3, and 5 on the map marked Exhibit "A" to this Ordinance, is in the public interest; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. Findings adopted. Based on the evidence presented, the City Council adopts the following findings of fact:

(1) The public rights-of-way which are the subject of this Ordinance consist of segments of public rights-of-way (South 208th Street, South 209th Street, 20th Avenue South, 18th Avenue South, 17th Avenue South, and 16th Avenue South) located within the "SCORE Condemnation Area" which is generally geographically bounded on the north by the Des Moines city limits, on the east by the SR-509 right-of-way, on the south by Des Moines Creek Park and its associated slopes and open spaces, and on the west by Lots 5 - 8 of the Cordell Tract Plat; and

(2) The public rights-of-way described in Section 2 of this Ordinance are improved for transportation purposes and dedicated by the Cordell Tracts and Glen Echo plats approved in 1960 and 1954 respectively under the Platting and Subdivision Act of 1937 and as such are not subject to vacation by operation of law under the Laws of 1889-90; and

(3) The public right-of-way described in Section 2 of this Ordinance that was dedicated by the Amended Plat of Part of Seeley's Addition was dedicated to the public in 1890; and

(4) The public right-of-way described in Section 2 of this Ordinance that was dedicated by the Amended Plat of Part of Seeley's Addition is improved for transportation purposes, has previously been opened for transportation purposes, and is not subject to vacation by operation of law under the Laws of 1889-90; and

(5) The public rights-of-way which are described in Section 2 of this Ordinance are not necessary for present and future use by public utilities or for native growth protection because present and future needs for use by public utilities will be met by appropriate easements retained by the City; as further described in Section 3; and

(6) The dedication statement on the plats for the Cordell Tracts and Glen Echo limited the dedication of the land for "public highway purposes", defined in RCW 46.04.194 as the

entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel; and

(7) The public rights-of-way or "public highways" which are described in Section 2 are no longer needed to provide vehicular access to the previous residential lots; and

(8) The rights-of-way are not required for the present and future needs of the citizens of the City of Des Moines for vehicular transportation purposes; and

(9) It is in the public interest to vacate these rights-of-way, and to aggregate these properties along with surrounding properties to provide for the construction of the proposed SCORE Facility, regional misdemeanor jail facility; and

(10) The City Council found as part of Ordinance 1456 that the acquisition of the properties adjacent to the rights-of-way described in Section 2 of this Ordinance are critical to the construction and maintenance of the SCORE Facility, that will provide correctional services to the Member Cities, and it is in the public interest to acquire such properties; and

(11) The removal of the rights-of-way is necessary to complete the construction of said SCORE Facility; and

(12) Said SCORE Facility is a superior use to the current unused rights-of-way; and

(13) The eminent domain action under King County Superior Court Cause Number 09-2-09463-2 KNT included the north half of South 208th Street condemning the adjacent property owner's (POS) interest in that portion of the Amended Plat of Part of Seeley's Addition; and

(14) Once the City completes the eminent domain process it will obtain the fee interest to the property that was dedicated by the Amended Plat of Part of Seeley's Addition.

Sec. 2. Right-of-way vacation. Subject to the requirements set forth in this Ordinance, the following legally described public rights-of-way labeled as delta 1, 3, and 5 depicted on the attached map (incorporated herein by this reference) entitled Exhibit "A" are vacated and the property within the rights-of-way so vacated shall belong to the respective abutting property owners, one-half to each as required by RCW 35.79.040; except that portion of the South 208th Street labeled as delta 3 on Exhibit "A" which shall be owned by the City of Des Moines upon successful completion of the eminent domain action under King County Superior Court Number 09-2-09463-2-0KNT, subject to the conditions set forth in Section 3 of this Ordinance:

SOUTH 208th STREET: That portion of South 208th Street as shown on Glen Echo Addition, according to the Plat thereof filed in volume 53 of Plats, Page 91, Records of King County, Washington, Lying

Westerly of SR 509 Right-Of-Way as shown on Washington State Department Of Transportation Right-Of-Way Plan SR 509 MP 19.43 To MP 23.87, Dated December 1, 1969; Together with that portion of South 208th Street as shown on Amendatory Plat of Part of Seeley's Addition according to the Plat thereof filed in volume 6 of Plats, Page 66, Records of King County, Washington lying easterly of the westerly line extended northerly of Lots 1 - 4 of Cordell Tracts according to the Plat thereof filed in volume 64 of Plats, Page 70, Records Of King County, Washington.

SOUTH 209th STREET: That Portion of South 209th Street as shown on Glen Echo Addition, according to the Plat thereof filed in volume 53 of Plats, Page 91, Records Of King County, Washington, Lying Westerly of SR 509 Right-Of-Way as shown on Washington State Department Of Transportation Right-Of-Way Plan SR 509 MP 19.43 To MP 23.87, Dated December 1, 1969.

16th AVENUE SOUTH: All that portion of 16th Avenue South as shown on Glen Echo Addition, according to the Plat thereof filed in Volume 53 Of Plats, Page 91, Records Of King County; Together with that portion of 16th Avenue South as shown on Cordell Tracts according to the Plat thereof filed in volume 64 of Plats, Page 70, Records Of King County, Washington.

17th AVENUE SOUTH: All that portion of 17th Avenue South as shown on Glen Echo Addition, according to the Plat thereof filed in Volume 53 of Plats, Page 91, Records of King County, Washington.

18th AVENUE SOUTH: All that portion of 18th Avenue South as shown on Glen Echo Addition, according to the Plat thereof filed in Volume 53 of Plats, Page 91, Records of King County, Washington.

Sec. 3. Conditions of right-of-way vacation. The rights-of-way subject to vacation under this Ordinance shall be subject to the following conditions:

(1) SCORE shall be required to compensate the City of Des Moines for vacation of the Class A rights-of-way, pursuant to DMMC 12.12.050(2)(a).

(2) For properties subject to this street vacation Ordinance the parties agree that the fair market value for the vacated roadways is a fixed value of \$6.36 per square foot. This valuation was established in accordance with the methodology adopted in the "Summary Appraisal Report of The Proposed SCORE Jail Site - Port of Seattle Properties" and in the "Summary Appraisal Report of The Proposed SCORE Jail Site - WSDOT Properties" both prepared by Allen Brackett Shedd.

(3) The parties agree that the square footage for all vacated roadways is 149,498.41 square feet as provided on Exhibit "A".

(4) SCORE shall deposit \$950,809.89 (149,498.41 square feet multiplied by \$6.36) in an interest bearing escrow account with interest accruing to the City for the payment of land consisting of vacated streets legally described in this Ordinance within 90 days of Council action on this Ordinance. If the funds are not deposited by the close of business on the 90th day the City Council action on this Ordinance shall be deemed void and have no legal effect and the underlying rights of way vacation shall be deemed denied.

(5) The purchase of vacated rights-of-way under this Ordinance shall include ownership of all inactive and non-functioning improvements to city streets, including but not limited to pavement and drainage systems. It is the sole responsibility of the purchaser to remove and properly dispose of these inactive and non-functioning improvements.

(6) A simultaneous escrow closing will occur shortly after the City completes the eminent domain action under King County Superior Court Cause Number 09-2-09463-2 KNT to transfer the property acquired under said Cause Number to SCORE.

(7) The purchase of the vacated rights-of-way under this Ordinance shall be subject to the successful completion of the eminent domain action under King County Superior Court Cause Number 09-2-09463-2 KNT and the City's transfer to the property subject to eminent domain to SCORE. If the City is unsuccessful in obtaining the property under the pending eminent domain action this Ordinance shall be deemed void and have no legal effect and the underlying rights of way vacation shall be deemed denied.

(8) The City Manager is directed to finalize this street vacation ordinance and its recording only upon receipt of final payment by SCORE and fulfillment of all conditions set forth in this Ordinance.

(9) An easement is granted by the City of Des Moines to the Highline Water District and its successors and assigns for the operation, construction, repair, and maintenance of existing underground public water system improvements as constructed across and through the following described real property which is illustrated in Exhibit B:

A 15 foot wide easement in that part of the Southwest Quarter of Section 4, and the Southeast Quarter of Section 5, and the Northwest Quarter of Section 9, all in Township 22 North, Range 4 East, W.M., lying 7.5 feet on each side of the following described centerline:

Commencing at the Section Corner common to said Sections 4,5,8, and 9; thence North 85°30'23" West along the South line of said Southeast

Quarter of Section 5 a distance of 163.09 feet to the Northerly extension of the West line of Lot 1 of Cordell Tracts as recorded in Volume 64 of Plats, Page 70, records of King County, Washington; thence North 1°05'50" East along said West line extended 11.54 feet to the Point of Beginning of said centerline; thence South 84°57'22" East 93.89 feet; thence South 84°53'16" East 83.96 feet; thence South 1°38'47" West 27.73 feet; thence South 88°31 '58" East 768.51 feet to the terminus of said centerline.

The sidelines of said easement are to be extended and/or shortened so as to terminate at their respective intersections.

Sec. 4. Severability-Construction. If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction; such decision shall not affect the validity of the remaining portions of the Ordinance.

Sec. 5. Recordation. Upon satisfactory completion of the eminent domain action under King County Superior Cause Number 09-2-09463-2 KNT, the City Clerk shall cause a certified copy of this ordinance to be recorded in the records of the King County Recorder.

Sec. 6. Effective date. This Ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law subject to the City's completion of the eminent domain action under King County Superior Cause Number 09-2-09463-2 KNT and transfer of property subject to said eminent domain action to SCORE.

PASSED BY the City Council of the City of Des Moines this 9th day of July, 2009 and signed in authentication thereof this 9th day of July, 2009.

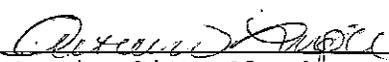

MAYOR

APPROVED AS TO FORM:



City Attorney

ATTEST:



Interim City Clerk

Effective Date: August 9, 2009

Published: July 14, 2009

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. 1460, Adopted July 9, 2009.

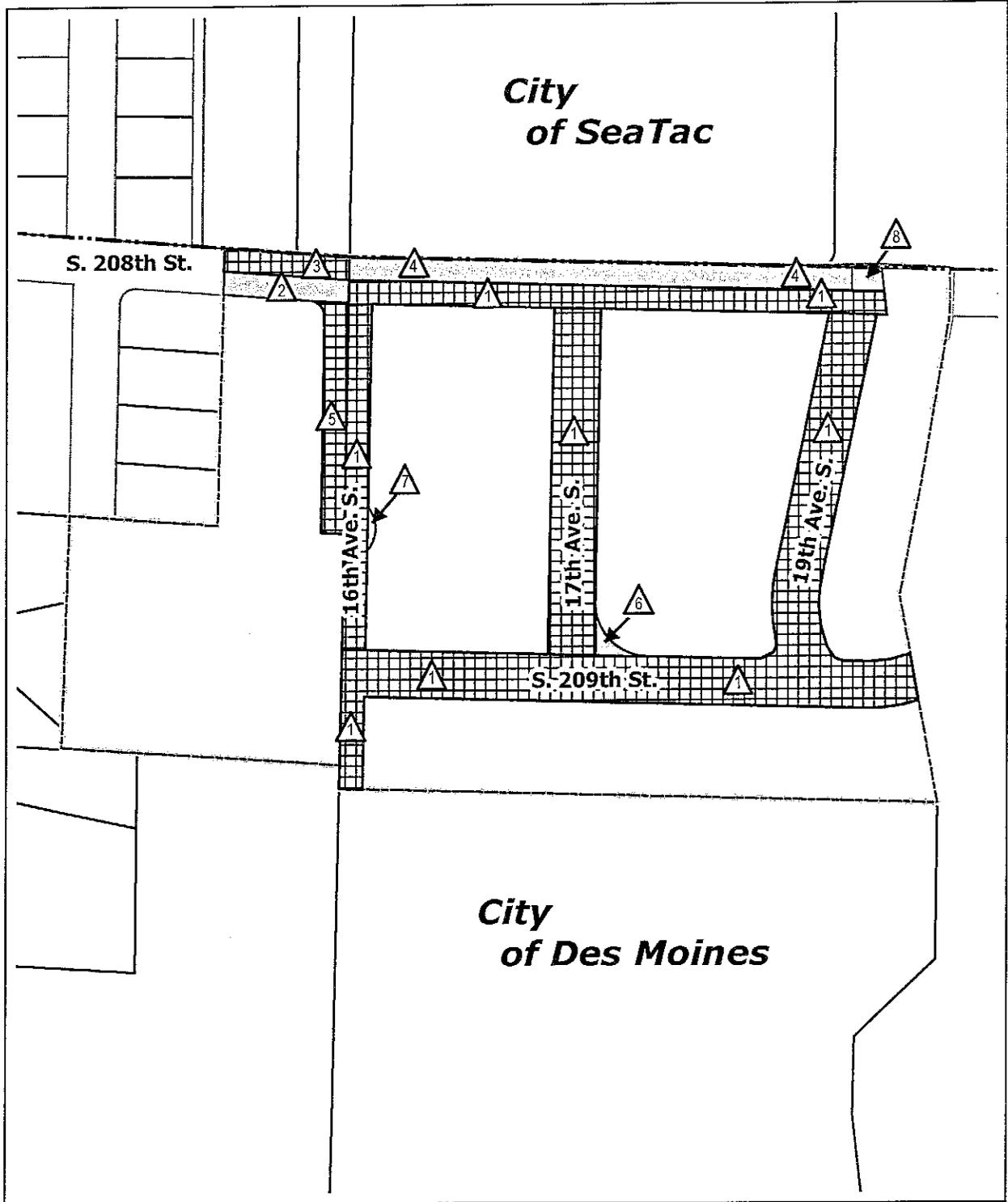
DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance vacates City rights-of-way commonly referred to as South 208th Street, South 209th Street, 18th Avenue South, 17th Avenue South, and 16th Avenue South located in the area commonly referred to as the "SCORE Condemnation Area" within the City of Des Moines, subject to the Applicant's compliance with requirements set forth herein; and further grants an easement to the Highline Water District.

The full text of the ordinance will be mailed without cost upon request.

Denis Staab
City Clerk

Published: July 14, 2009



*City
of SeaTac*

S. 208th St.

16th Ave. S.

17th Ave. S.

19th Ave. S.

S. 209th St.

*City
of Des Moines*

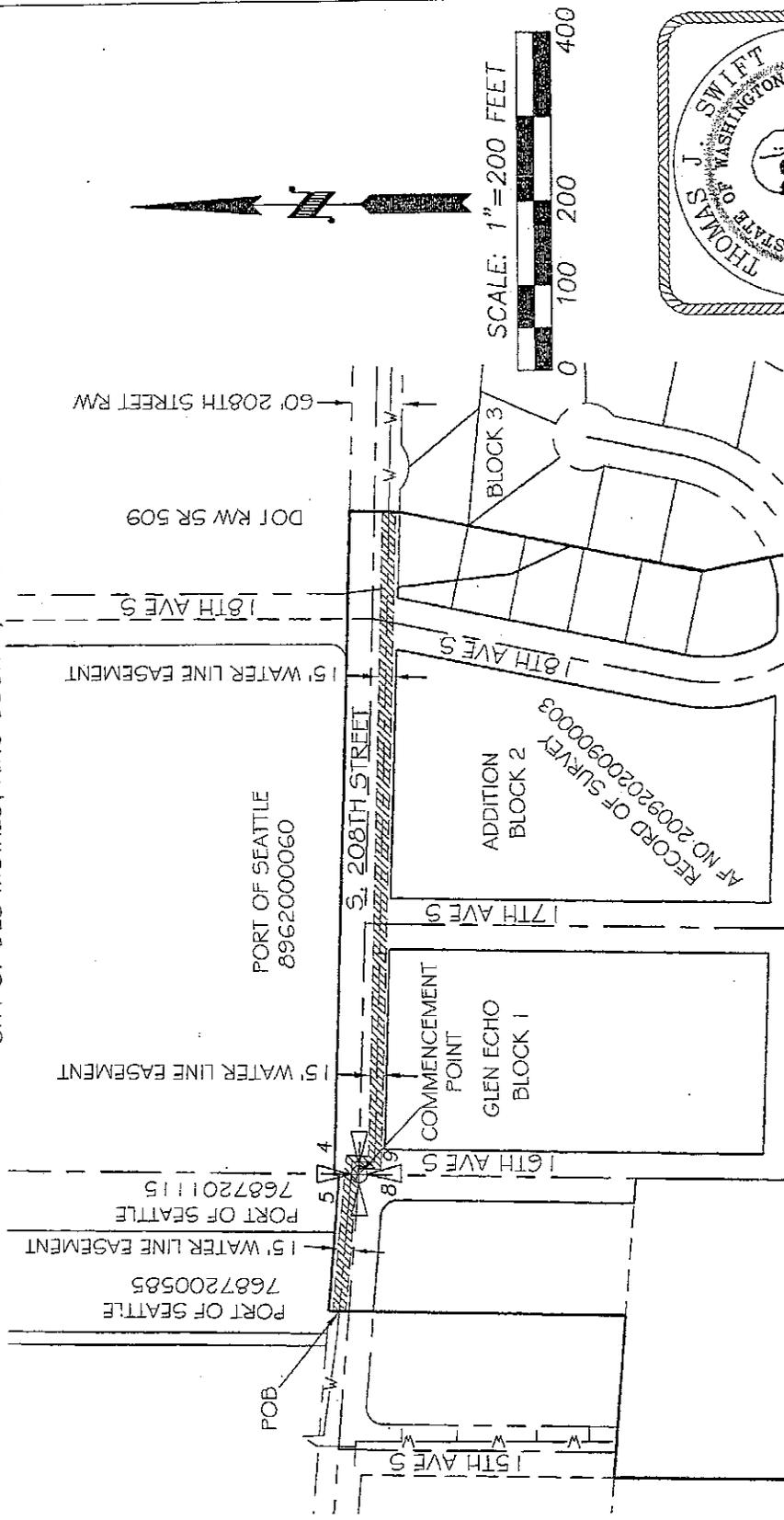


**Exhibit A
Ordinance 1460**



WATERLINE EASEMENT EXHIBIT

SECTIONS 4, 5, 8 & 9, TOWNSHIP 22N, RANGE 4 EAST, W.M.
CITY OF DES MOINES, KING COUNTY, WASHINGTON



CONSULTING ENGINEERS
4200 6TH AVENUE SE, SUITE 309
LACEY, WASHINGTON 98503
(360) 292-7230 FAX (360) 292-7231

LEGEND

-  15' WATERLINE EASEMENT
- NOTE:**
-  EASEMENT CENTERLINE =
-  EXISTING WATER LINE

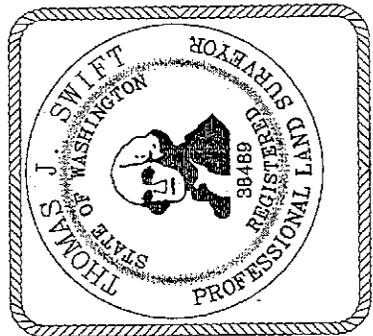


EXHIBIT B