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7 IN THE CIRCUIT COURT OF THE STATE OF OREGON
8 FOR THE COUNTY OF CLACKAMAS

9 CITY OF OREGON CITY, an Oregon
10 municipal corporation,

11 Plaintiff,

12 v.

13 KATHLEEN ANN BERGE, Trustee of the
14 Kathleen Ann Berge Revocable Living Trust;
and TERRY W. EMMERT, an individual,

15 Defendants.

Case No. 19CV19265

SETTLEMENT AGREEMENT

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17 Plaintiff City of Oregon City and Defendants Kathleen Ann Berge, Trustee of the Kathleen
18 Ann Berge Revocable Living Trust and Terry W. Emmert have agreed to and entered into a
19 settlement of all claims in the above-captioned matter. Attached hereto and by this reference made
20 a part hereof, is a true and correct copy of the Complaint filed in this matter describing the
21 acquisition of defendants' property by plaintiff. (Exhibit A). This settlement is for a sum total of
22 \$120,000.00 (One Hundred and Twenty Thousand Dollars) and includes just compensation and
23 damages if any for the above entitled case and also includes just compensation and damages, if
24 any, for the closure of the access at engineering station "STA 272+20 East Side" Highway 213 as
25 depicted on drawing file 9499001. (Exhibit B). The parties acknowledge that the State of Oregon,
26 by and through the Oregon Department of Transportation (ODOT) in the name of the City of

Oregon City, made an offer of just compensation for this property for \$500 and that by acceptance of this settlement offer, the separate offer by ODOT is no longer available and is part of this global resolution of any all claims. Pursuant to an Agreement between the City of Oregon City and Clackamas Community College ("CCC") dated July 5, 2018, CCC shall convey a cross-access easement of necessity for the City to construct a vehicular access to Meyers Road as part of the Improvements that will serve 19842 Molalla Avenue (Highway 213) Property. Located to the south of the CCC property. The driveway access apron on the easement to Defendants property will be constructed at a width of 40 feet, the easement will be 60 feet in width. (Exhibit C).

The settlement is inclusive and includes any and all costs, attorney fees and expenses as defined by ORS 35.335(2). No attorney fees, costs or expenses are allowed to either party. The defendants agree to waive the right of repurchase pursuant to ORS 35.385.

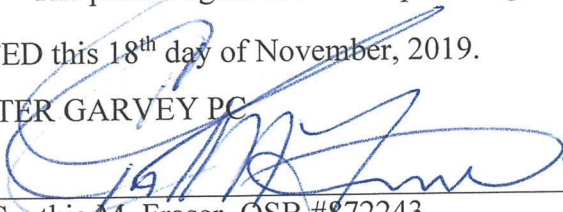
The parties agree to file a stipulated general judgment within the next thirty (30) days.

DATED this 18th day of November, 2019.

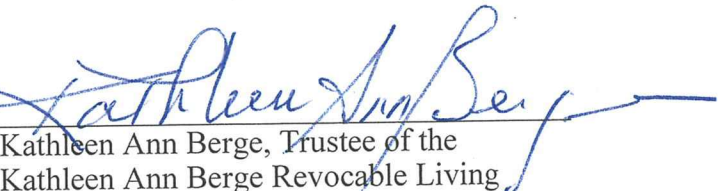
DATED this 18th day of November, 2019.

FOSTER GARVEY PC

By


Cynthia M. Fraser, OSB #872243
E-mail: cynthia.fraser@foster.com
121 SW Morrison Street, 11th Floor
Portland, OR 97204
Telephone: (503) 228-3939

By


Kathleen Ann Berge, Trustee of the
Kathleen Ann Berge Revocable Living
Trust

Appearing and acting as the Trustee

Of Attorneys for Plaintiff City of Oregon
City

DATED this 18th day of November, 2019.

By


Craig D. Curtright, OSB #822317
E-mail: craigcurtright@gmail.com
2567 SW Kilkenny Court
West Linn, Or 97068
Tel 503-709-6030

Of Attorney for Defendant Terry W.
Emmert

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

CITY OF OREGON CITY, an Oregon
municipal corporation,

Plaintiff,

v.

KATHLEEN ANN BERGE, Trustee of the
Kathleen Ann Berge Revocable Living Trust;
and TERRY W. EMMERT, an individual,

Defendants.

Case No.

COMPLAINT
PROCEEDINGS IN EMINENT DOMAIN

(12-Person Jury Trial Requested)

Claim Not Subject to Mandatory Arbitration

(No filing fee required for City)

Plaintiff City of Oregon City hereby alleges against Defendants Kathleen Ann Berge,
Trustee of the Kathleen Ann Berge Revocable Living Trust and Terry W. Emmert (collectively
“Defendants”) as follows:

1.

Plaintiff is the City of Oregon City, a municipal organization organized and existing under
the laws of the State of Oregon and situated in Clackamas County, Oregon.

2.

Plaintiff has authority to condemn private property for certain public purposes pursuant to
the Oregon City Charter of 1982, Section 36, provisions of ORS Chapter 223 and ORS Chapter
35.

///

Page 1 - COMPLAINT

GARVEY SCHUBERT BARER, P.C.

eleventh floor
121 s.w. morrison street
portland, oregon 97204-3141
503 228 3939

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8 3.

Plaintiff seeks to acquire defendants' property to extend Meyers Road, located between High School Avenue and Highway 213. The extension planned for this project is necessary to provide safe transportation routes for commerce, convenience and to adequately serve the safety of the traveling public. Acquisition of defendants' property is required for the construction of this public project. The project is planned and located in a manner that is the most compatible with the greatest public good and the least private injury.

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16 4.

Prior to commencing this action, plaintiff, by Resolution No. 16-15, dated July 7, 2016, declared the necessity of the hereinafter described acquisition and the public use to be made thereof in connection with the Meyers Road Extension project described in paragraph 3. Thereafter, on November 7, 2018, prior to commencing this action, plaintiff adopted Resolution No. 18-38 which restated the public need for the Meyers Road Extension project and a need to acquire a portion of defendants' property by condemnation in the event the parties were unable to reach an agreement on the acquisition of defendants' property by plaintiff.

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23 5.

The legal description of the property being acquired is set out in Exhibit A, attached hereto and by this reference made a part hereof. Any and all described acquisition is necessary for the construction and related transitional work to defendants' property.

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26 6.

The acquisition is described below and set out in Exhibit A and depicted, in part, on Exhibit B:

PARCEL 1 (RIGHT-OF-WAY DEDICATION)

A parcel of land situated on the southwest one-quarter of Section 9 and the Robert Caulfield DLC No. 53 in Township 3 South, Range 2 East of the Willamette Meridian, Clackamas County, Oregon and being a portion of that property conveyed to Kathleen Ann Berge, Trustee of the Kathleen Ann Berge Revocable Living Trust in that Warranty Deed, recorded August 24, 2015 as Document No.

2015-056847, Clackamas County Deed Records; said parcel being that portion of said property included in a strip of land 93.00 feet wide, 43.00 feet lying on the northerly side and 50.00 feet lying on the southerly side of the centerline of Meyers Road, which centerline is described below.

CENTERLINE DESCRIPTION OF A PORTION OF MEYERS ROAD

A road centerline situated in the southwest and southeast one-quarters of Section 9, the Andrew Hood DLC No. 44 and the Robert Caufield DLC No. 53, Township 3 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon.

Beginning at the intersection of Cascade Highway (OR 213) and the centerline of Meyers Road, being Station 268+29.93 on Cascade Highway and being Station 50+62.02 for the purpose of this description, said point which bears North 59° 05' 23" West 2535.44 feet from the south one-quarter corner of said Section 9; thence North 72° 11' 51" East 173.70 feet to a point of curvature (Station 52+35.72); thence on the arc of a 1000.00 foot radius curve to the right, through a central angle of 56° 55' 36", an arc distance of 993.56 feet (the long chord of which bears South 79° 20' 21" East 953.19 feet) to a point of tangency (Station 62+29.28); thence South 50° 52' 33" East 98.90 feet to a point of curvature (Station 63+28.18); thence on the arc of a 1200.00 foot radius curve to the left, through a central angle of 39° 23' 50", an arc distance of 893.90 feet (the long chord of which bears South 70° 34' 28" East 876.39 feet) to a point of tangency (Station 72+22.08); thence North 89° 43' 36" East 62.14 feet to the terminus of this description (Station 72+84.22), said point which bears North 07° 26' 30" West 832.65 feet from said south one-quarter corner of Section 9.

The parcel of land to which this description applies contains 11,718 square feet, more or less.

PARCEL 2 (PERMANENT SLOPE AND PUBLIC UTILITY EASEMENT)

A parcel of land situated in the southwest one-quarter of Section 9 and the Robert Caufield DLC No. 53 in Township 3 South, Range 2 of the Willamette Meridian, Clackamas County, Oregon and being a portion of that property conveyed to Kathleen Ann Berge, Trustee of the Kathleen Ann Berge Revocable Living Trust in that Warranty Deed, recorded August 24, 2015 as Document No. 2015-056847, Clackamas County Deed Records; said parcel being that portion of said property included in a strip of land 60.00 feet in width and lying between lines at right angles to Stations 56+50.00 and 57+00.00 on the southerly side of the centerline of Meyers Road, which centerline is described above.

The parcel of land to which this description applies contains 15 square feet, more or less.

PARCEL 3 (PERMANENT SLOPE AND PUBLIC UTILITY EASEMENT)

A parcel of land situated in the southwest one-quarter of Section 9 and the Robert Caufield DLC No. 53 in Township 3 South, Range 2 East of the Willamette Meridian, Clackamas County, Oregon and being a portion of that property conveyed to Kathleen Ann Berge, Trustee of the Kathleen Ann Berge Revocable

Living Trust in that Warranty Deed, recorded August 24, 2015 as Document No. 2015-056847, Clackamas County Deed Records; said parcel being that portion of said property included in a strip of land variable in width and lying on each side of the centerline of Meyers Road, which centerline is described above.

The widths in feet of the strip of land above referred to are as follows:

Station	to	Station	Width on the Northerly Side of Centerline
62+84.00		63+28.18	56.40 in a straight line to 58.00
63+28.18		63+50.00	58.00

The widths in feet of the strip of land above referred to are as follows:

Station	to	Station	Width on the Southerly side of Centerline
61+75.00		64+40.00	65.00

EXCEPT therefrom that portion lying within the above-described Parcel 1 (Right-of-Way Dedication).

The parcel of land to which this description applies contains 3,771 square feet, more or less.

7.

Ownership of the acquisition described in paragraph 6 hereof is part of a contiguous and abutting larger tract of real property, title to which is claimed by defendants Kathleen Ann Berge, Trustee of the Kathleen Ann Berge Revocable Living Trust and Terry W. Emmert.

8.

The true value of the acquisition being appropriated by plaintiff and the estimated damages, if any resulting from the appropriation thereof, is the sum of \$66,262.00.

9.

Prior to commencing this action, plaintiff attempted to negotiate an agreement to purchase the acquisition and conveyed to defendants a written offer accompanied by an appraisal to purchase the property for \$70,000 as just compensation. Plaintiff is unable to reach an agreement with defendants as to the compensation to be paid for the acquisition and, therefore, prosecutes this action.

///

10.

Plaintiff has immediate need for the possession of defendants' property.

WHEREFORE, plaintiff prays that a judgment be given, vesting in plaintiff, the City of Oregon City, the acquisition described in paragraph 6 hereof, awarding plaintiff its reasonable costs and disbursements incurred herein and awarding such other relief as the Court finds appropriate.

DATED this 29th day of April, 2019.

GARVEY SCHUBERT BARER, P.C.

By s/ Cynthia M. Fraser

Cynthia M. Fraser, OSB #872243

E-mail: cfraser@gsblaw.com

Paul H. Trinchero, OSB #014397

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Portland, OR 97204

Telephone: (503) 228-3939

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Of Attorneys for Plaintiff City of Oregon
City

EXHIBIT "A"

Meyers Road Extension
City of Oregon City
March 14, 2017
Revised July 21, 2017

Tax Map 3S2E9C
Tax Lot 00700

PARCEL 1 (RIGHT-OF-WAY DEDICATION)

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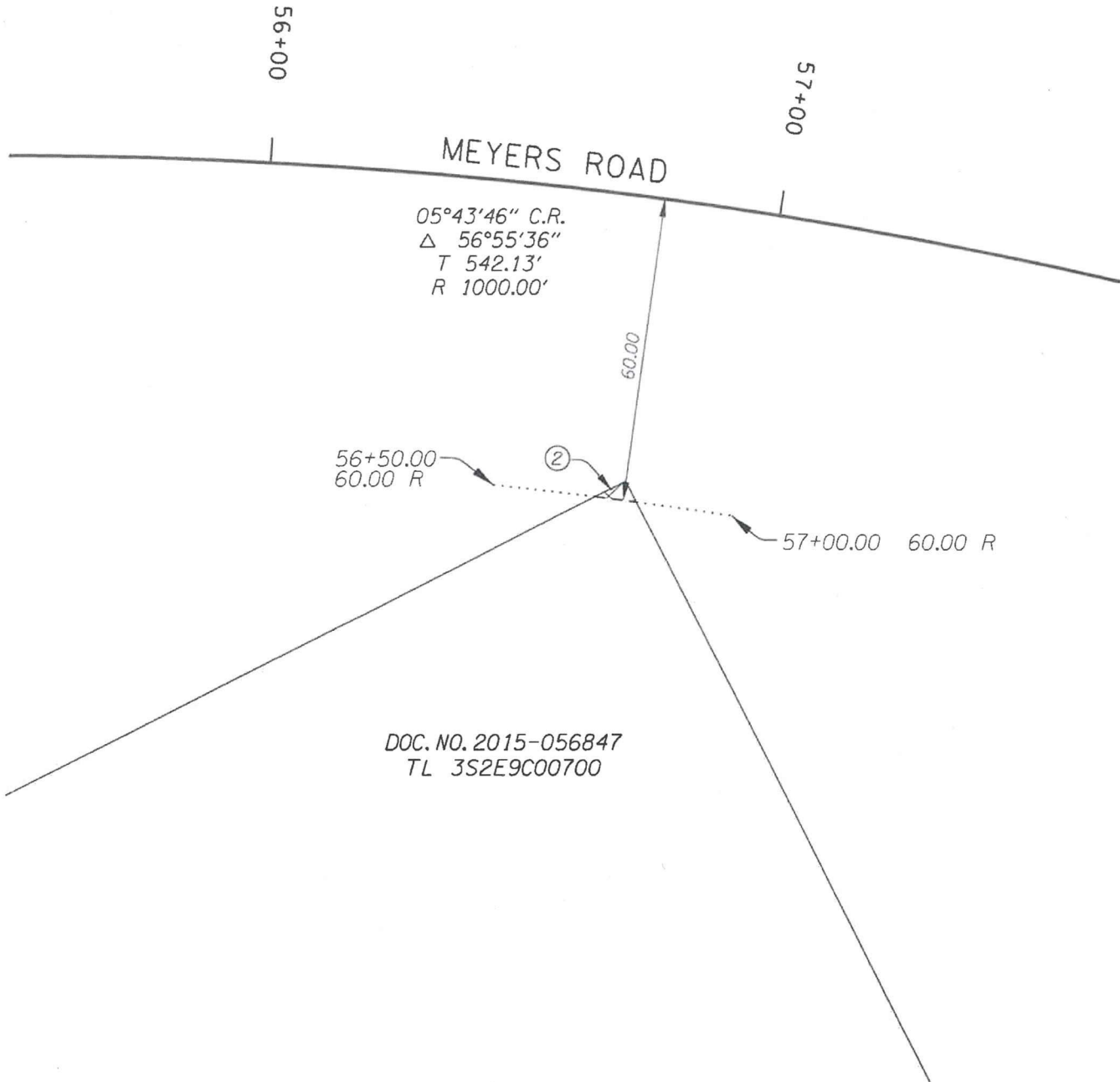
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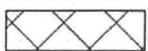


EXHIBIT "B"

SHEET 1 OF 2



LEGEND:



② PERMANENT SLOPE AND PUBLIC UTILITY EASEMENT
15 SQ. FT.± (0.0003 AC.±)

**MEYERS ROAD EXTENSION
OREGON CITY**



**DAVID EVANS
AND ASSOCIATES INC.**
2100 Southwest River Parkway
Portland Oregon 97201
Phone: 503.223.6663

FILE NO: BERGE	SUBMITTAL DATE: 3/14/17	REV'D: 7/24/17
TAX LOT: 00700	ADDRESS: 19842 Hwy 213	
TAX MAP: 3S2E9C		

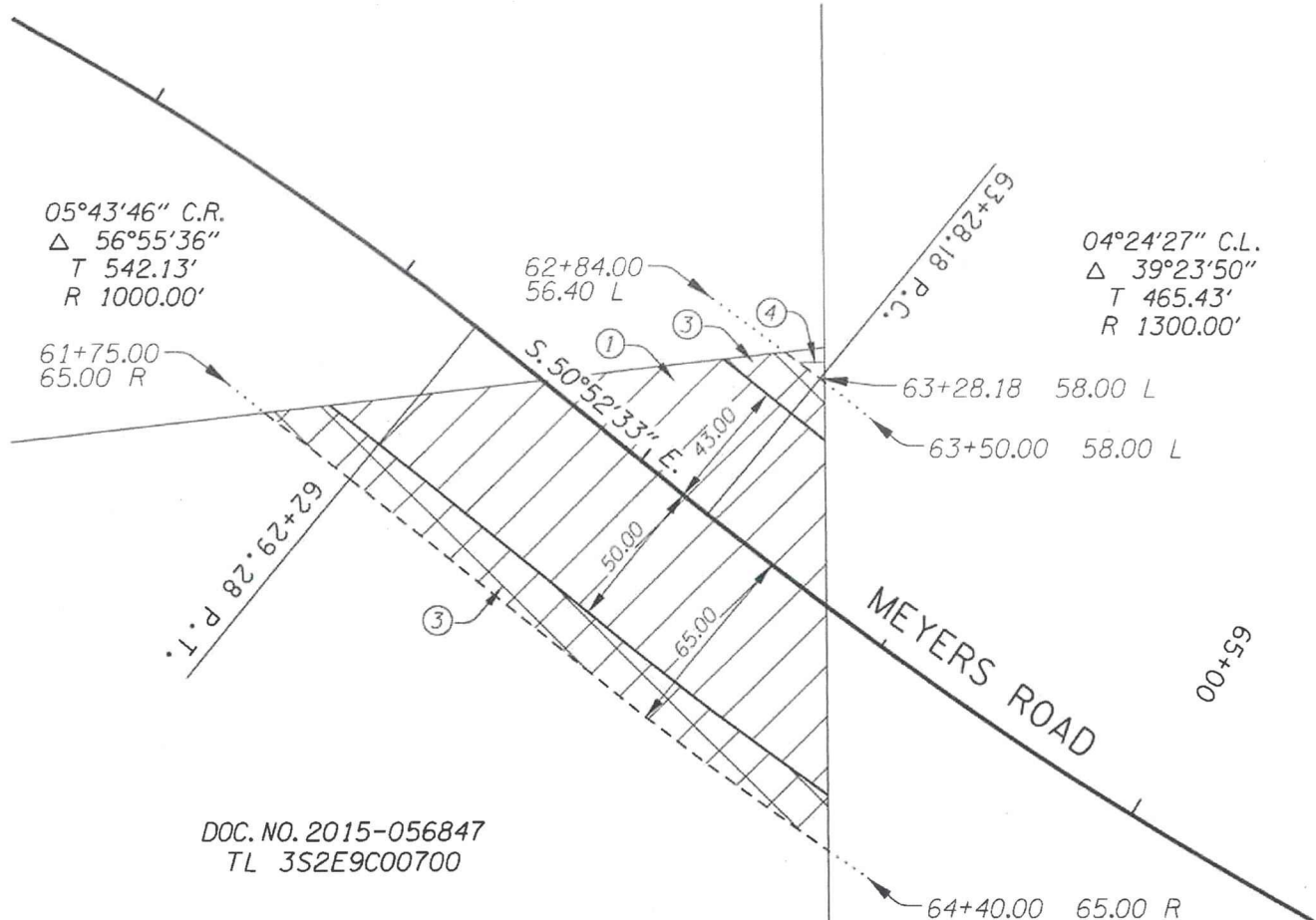
EXHIBIT A
Page 8 of 9

EXHIBIT B
Page 1 of 2

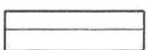


EXHIBIT "B"

SHEET 2 OF 2



LEGEND:

① RIGHT-OF-WAY DEDICATION
11,718 SQ. FT.± (0.269 AC.±)③ PERMANENT SLOPE AND PUBLIC UTILITY EASEMENT
3,771 SQ. FT.± (0.087 AC.±)④ BERGE REMNANT PARCEL
73 SQ. FT.± (0.002 AC.±)MEYERS ROAD EXTENSION
OREGON CITYDAVID EVANS
AND ASSOCIATES INC.
2100 Southwest River Parkway
Portland Oregon 97201
Phone: 503.223.6663

FILE NO: BERGE	SUBMITTAL DATE: 3/14/17	REV'D: 7/24/17
TAX LOT: 00700	ADDRESS: 19842 Hwy 213	
TAX MAP: 3S2E9C		

SEC. 9, T. 35, R. 2E, W.M.

P.O.I. 269+93.66
20+00
80.41'

191.58'
+93.66
+00
59'
75'

Kathleen Ann Berge, Trustee
and Terry W. Emmert
R 2015-056847
R 91-591895

Robert Caulfield D.L.C. No. 53
Andrew Hood D.L.C. No. 44

United States of America
Perm. Easement - Electric Power Transmission Lines
273+25
274+80
35'


Cascade Highway South (OR213)
S 30°00'19" E
115'

Approximate C/L of Caulfield Creek

Proposed Closure of Access



ACTIVE DRAWING
THIS DRAWING SHOWS THE PROPOSED
R/W NEEDED TO BE ACQUIRED TO
SUPPORT THE PROJECT DESIGN
SUBJECT TO CHANGE

 OREGON DEPARTMENT OF TRANSPORTATION RIGHT OF WAY ENGINEERING SKETCH MAP	SECTION	MEYERS ROAD EXTENSION	SCALE	1" = 100'
	HIGHWAY	CASCADE HIGHWAY SOUTH	DATE	MAY, 2019
	COUNTY	CLACKAMAS COUNTY	FILE	9499001
	PURPOSE	ACCESS	SEE DRAWING 9B-17-19	

5/16/2019

Meyers_Rd_Ext.dgn :: Sketches 100ft

MEYERS ROAD EXTENSION PROJECT

Exhibit - Permanent Easement for Future Driveway South of Meyers

LEGEND
Driveway Perm Eas.
Dedication

