

2017-014360
Klamath County, Oregon
12/18/2017 01:17:01 PM
Fee: \$77.00


NTC 138468 AM

PERMANENT FISH MITIGATION EASEMENT and SUBORDINATION

N & J FLYNN ENTERPRISES, LLC, an Oregon limited liability company, Grantor, for the true and actual consideration of **\$4,600.00**, does grant to the **STATE OF OREGON**, by and through its **DEPARTMENT OF TRANSPORTATION**, Grantee, its successors and assigns, a permanent easement for the purpose of preserving and enhancing the fish habitat and fish passage on, over and across the property described as **Parcel 1 on Exhibit "A" dated 7/17/2017**, attached hereto and by this reference made a part hereof.

IT IS UNDERSTOOD that the permanent easement is herein granted according to these terms:

- a) Grantee is granted the right to go onto the subject property at any time;
- b) Grantee is granted the right to implement such fish mitigation plan as may in Grantee's sole discretion conserve and enhance the subject property for fish habitat, including, but not limited to, the right to maintain, modify, and manage the vegetation and fish on the subject property. The rights hereby include, but are not limited to, the right (as applicable) to cut, trim, remove, plant breed, nest, monitor, or modify the condition of any and all vegetation, fish, and fish habitat;
- c) Grantee is granted the right to control access to the subject property. If necessary this right includes the right to completely exclude all others, including Grantor, its successors and assigns, from the subject property;

AFTER RECORDING RETURN TO:
OREGON DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY SECTION
4040 FAIRVIEW INDUSTRIAL DRIVE SE MS#2
SALEM OR 97302-1142

Map and Tax Lot #: 36 12 14 700

Property Address: 43405 E Hwy 140
Beatty, OR 97621

- d) Consistent with the purposes for which this easement is granted, and within Grantee's power to exclude others from the subject property, Grantor and all successors-in-interest are bound to forebear from doing any of the following: planting, removing or clearing vegetation or introducing or taking fish from the subject property, or otherwise undertaking to manage vegetation or fish on the subject property, except with Grantee's express permission; constructing anything on the subject property, including, but not limited to, roads, paths, ditches, fences, or buildings; placing debris on the subject property; conducting any filling or excavation on the subject property; applying pesticides, herbicides or any other chemical treatment of the subject property, except with Grantee's express permission; increasing or decreasing the amount of water entering or exiting the easement area; granting any right to others in the subject property similar or inconsistent with the rights granted herein, or in any other way taking actions on the subject property detrimental to the purposes of this easement.
- e) Any violation of the rights and responsibilities imposed by this easement shall be subject to legal and equitable remedies in a court of competent jurisdiction. Damages are not an adequate remedy for violation of the foregoing terms and the terms may be specifically enforced;
- f) Since fee simple title is not being acquired, any use may be made of the real property provided that such use shall not interfere with Grantee's rights under the terms of this easement.

IT IS UNDERSTOOD that the permanent easement herein granted does not convey any right or interest to the above-described parcel, except as stated herein, nor prevent Grantor from the use of said property; provided, however, that such use does not interfere with the rights herein granted.

Grantor also grants to Grantee, its successors and assigns, a permanent easement for the construction, operation, and maintenance of drainage facilities over, under, and across the property described as **Parcel 2 on Exhibit "A" dated 7/17/2017**, attached hereto and by this reference made a part hereof.

IT IS UNDERSTOOD that the easement herein granted does not convey any right or interest in the above-described Parcel 2, except for the purposes herein above stated, nor prevent Grantor from the use of said property; provided, however, that such use does not interfere with the rights herein granted.

Grantor also grants to Grantee, its successors and assigns, a temporary easement for a work area for construction purposes over and across the property described as **Parcel 3 on Exhibit "A" dated 7/17/2017**, attached hereto and by this reference made a part hereof.

IT IS UNDERSTOOD that the temporary easement rights herein granted shall terminate three (3) years from the date hereof or upon completion of the above-mentioned construction project, whichever is sooner.

IT IS ALSO UNDERSTOOD that the temporary easement herein granted does not convey any right or interest in the above-described Parcel 3, except as stated herein, nor prevent Grantor from the use of said property; provided, however that such use does not interfere with the rights herein granted.

Grantor covenants to and with Grantee, its successors and assigns, that Grantor is the owner of said property, and will warrant the easement rights herein granted from all lawful claims whatsoever.


Grantor agrees that the consideration recited herein is just compensation for the property or property rights conveyed, including any and all reduction in value to Grantor's remaining property, if any, which may result from the acquisition or use of said property or property rights. However, the consideration does not include damages resulting from any use or activity by Grantee beyond or outside of those uses expressed herein, if any, or damages arising from any negligence.

In construing this document, where the context so requires, the singular includes the plural and all grammatical changes shall be made so that this document shall apply equally to corporations and to individuals.

It is understood and agreed that the delivery of this document is hereby tendered and that terms and obligations hereof shall not become binding upon the State of Oregon Department of Transportation, unless and until accepted and approved by the recording of this document.

Dated this 6th day of November, 2017.

N & J FLYNN ENTERPRISES, LLC,
an Oregon limited liability company



Member(s) / Manager(s)

Member(s) / Manager(s)

SUBORDINATION OF INTEREST HOLDER

FLYNN & COMPANY, LLC, an Oregon limited liability company formerly known as FLYNN & SONS, LLC, an Oregon limited liability company, being the holder of a leasehold interest in the real property described, as said interest is set forth in that certain Memorandum of Lease recorded March 26, 2010, in Instrument No. 2010-003734, and that Memorandum of Lease recorded March 26, 2010, in Instrument No. 2010-003735, Records of Klamath County, Oregon. Flynn & Company, LLC, an Oregon limited liability company formerly known as Flynn & Sons, LLC, an Oregon limited liability company, does consent and subordinates to that permanent easement for fish mitigation (passage), and that permanent easement for drainage facilities, and that temporary easement for work area, the property described as Parcels 1, 2, and 3 on Exhibit "A" dated 7/17/2017, herein granted over said property by N & J Flynn Enterprises, LLC, an Oregon limited liability company, to the State of Oregon, by and through its Department of Transportation.

Dated this 6th day of November, 2017.

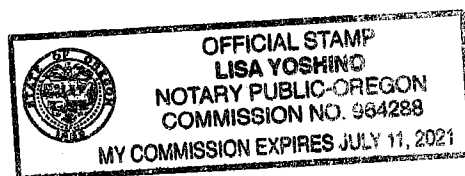
FLYNN & COMPANY, LLC, an Oregon limited liability company formerly known as FLYNN & SONS, LLC, an Oregon limited liability company

John C. Flynn
Member(s) / Manager(s)

Member(s) / Manager(s)

STATE OF OREGON, County of Deschutes

Dated Nov-30, 2017 Personally appeared the above named John C Flynn and _____, Member(s) / Manager(s) of Flynn & Company, LLC, an limited liability company, who acknowledged the foregoing instrument to be their voluntary act. Before me:



[Signature]
Notary Public for Oregon
My Commission expires 7/11/2021

Parcel 1 – Permanent Easement for Fish Mitigation (Passage)

A parcel of land lying in Government Lot 31 of Section 14, Township 36 South, Range 12 East, W.M., Klamath County, Oregon and being a portion of that property described in that Statutory Warranty Deed to N & J Flynn Enterprises, LLC, recorded October 9, 2006 as Instrument No. 2006-020255 of Klamath County Record of Deeds; the said parcel being that portion of said property lying between lines at right angles to the center line of the Klamath Falls-Lakeview Highway at Engineer's Stations 1517+32.00 and 1518+02.00 and included in a strip of land 64.00 feet in width, lying on the Northerly side of said center line, which center line is described as follows:

Beginning at Engineer's center line Station 1510+00.00, said station being 14.89 feet South and 2,559.49 feet West of the Southeast corner of Section 14, Township 36 South, Range 12 East, W.M; thence North 89°26'35" East 1,500 feet to Engineer's center line station 1525+00.00 on said center line.

Bearings are based on Klamath County Survey No. 4219.

This parcel of land contains 1,680 square feet, more or less.

Parcel 2 – Permanent Easement for Drainage Facilities

A parcel of land lying in Government Lot 31 of Section 14, Township 36 South, Range 12 East, W.M., Klamath County, Oregon and being a portion of that property described in that Statutory Warranty Deed to N & J Flynn Enterprises, LLC, recorded October 9, 2006 as Instrument No. 2006-020255 of Klamath County Record of Deeds; the said parcel being that portion of said property lying between lines at right angles to the center line of the Klamath Falls-Lakeview Highway at Engineer's Stations 1517+32.00 and 1518+02.00 and included in a strip of land 54.00 feet in width, lying on the Northerly side of said center line, which center line is described in Parcel 1.

This parcel of land contains 980 square feet, more or less.

Parcel 3 – Temporary Easement for Work Area (3 years or duration of Project, whichever is sooner)

A parcel of land lying in Government Lot 31 of Section 14, Township 36 South, Range 12 East W.M., Klamath County, Oregon and being a portion of that property described in that Statutory Warranty Deed to N & J Flynn Enterprises, LLC, recorded October 9, 2006 as Instrument No. 2006-020255 of Klamath County Record of Deeds, the said parcel being that portion of said property included in a strip of land variable in width, lying on the

Northerly side of the center line of the Klamath Falls-Lakeview Highway, which center line is described in Parcel 1.

The width in feet of said strip of land is as follows:

Station	to	Station	Width on Northerly Side of Center Line
1513+00.00		1517+21.00	50.00
1517+21.00		1518+24.00	90.00
1518+24.00		1521+60.00	50.00

This parcel of land contains 12,719 square feet, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

DIGITALLY SIGNED

OREGON
NOVEMBER 10, 2010
TIMOTHY JOHN HUTCHISON
72563

EXPIRES 6/30/19