



## Road Department

61150 SE 27th St. • Bend, Oregon 97702  
(541) 388-6581 • FAX (541) 388-2719

# MEMORANDUM

**Date:** February 4, 2015

**To:** Board of County Commissioners

**From:** George Kolb, County Engineer

**RE:** Bike aid station on White Rock Loop

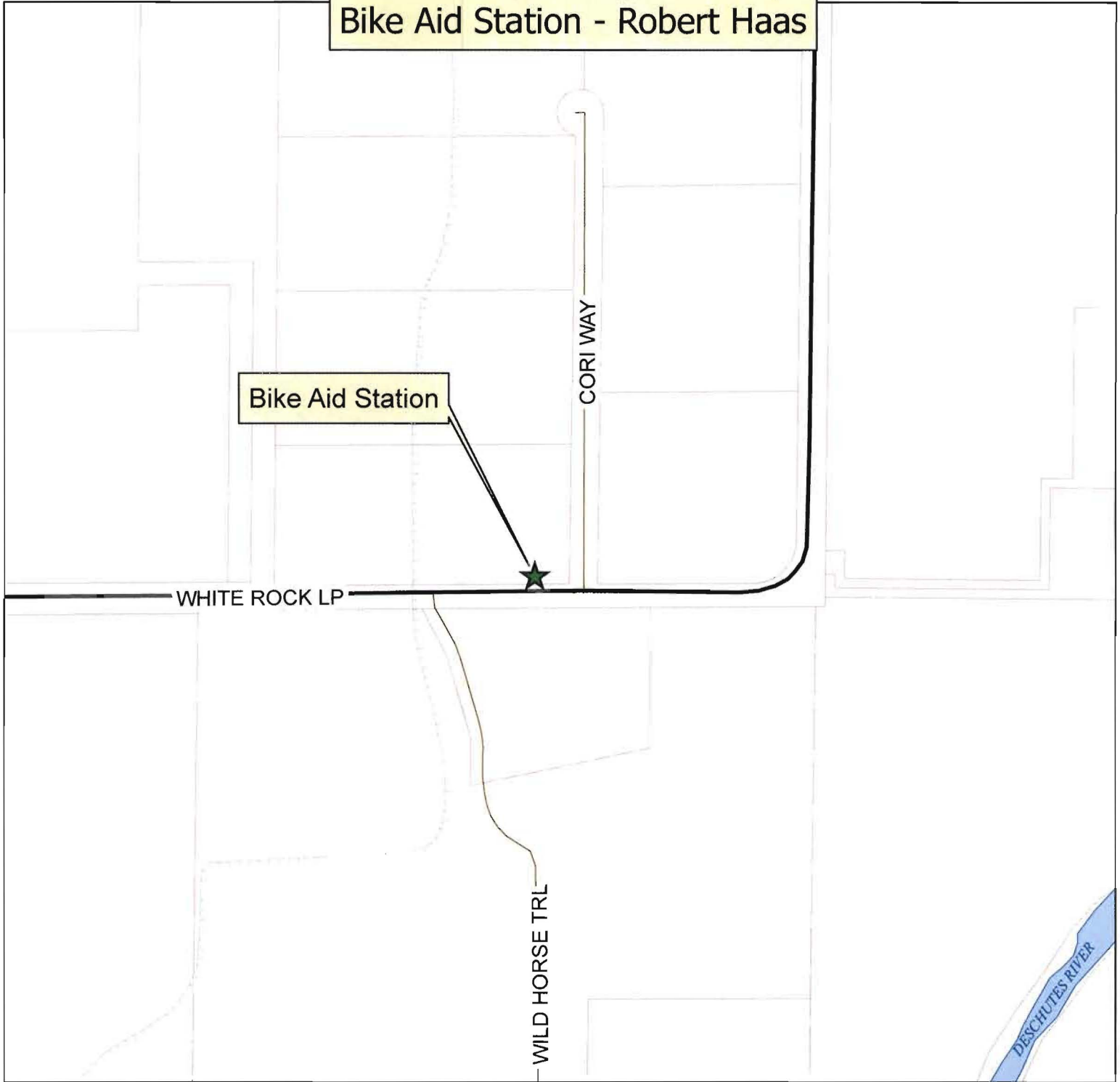
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A bike aid station was recently installed within the public right-of-way on White Rock Loop by a resident living on the property adjacent to the installation. The station is located outside of the required clear zone (see attached photos) for a County road (10 feet from edge of travel lane) so it does not present a danger to the road users but since it is in the public right-of-way, a License to Use the Right-of-Way would be required. The bicycling community is very excited about the installation of these bike aid stations on the area's scenic bike routes so we feel the License does need to be a requirement but it also has to be practical and applicable to the situation. The main points of the license are:

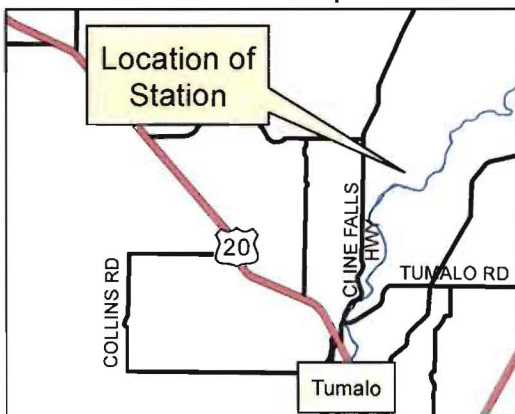
1. Location of the aid station will require review and approval of the Road Department prior to any installation.
2. The person who signs the license will be responsible for the upkeep of the station.
3. The station is required to be installed adjacent to the property of the license holder
4. If the person who installed the aid station moves from the present location, they will be required to remove the bike station right-of-way. If the person does not remove the station, it will be removed by County forces and become the property of the County.

The main issue that has come up with the license is the liability in case of an accident as a result of the installation. Paragraph number 11 of the agreement contains language concerning the Indemnification of the County in the event of an accident. Obtaining the required certificate of insurance would be large expense for a citizen and they are not willing to accept the liability for any type of accident. The Road Department has been working with Legal and Risk to come up with a solution to this issue and it was determined that since this is a very low risk installation and is enthusiastically endorsed by the bicycling community, the Indemnification of the Licensor could be removed from the license. Prior to removing this paragraph, we want to get the opinion and recommendation of the Board.

# License to use Right-of-Way Bike Aid Station - Robert Haas



Locator Map



Printed:  
1/7/2015

### Legend

- County Roads
- Other Roads
- Canals
- Deschutes River
- Taxlots

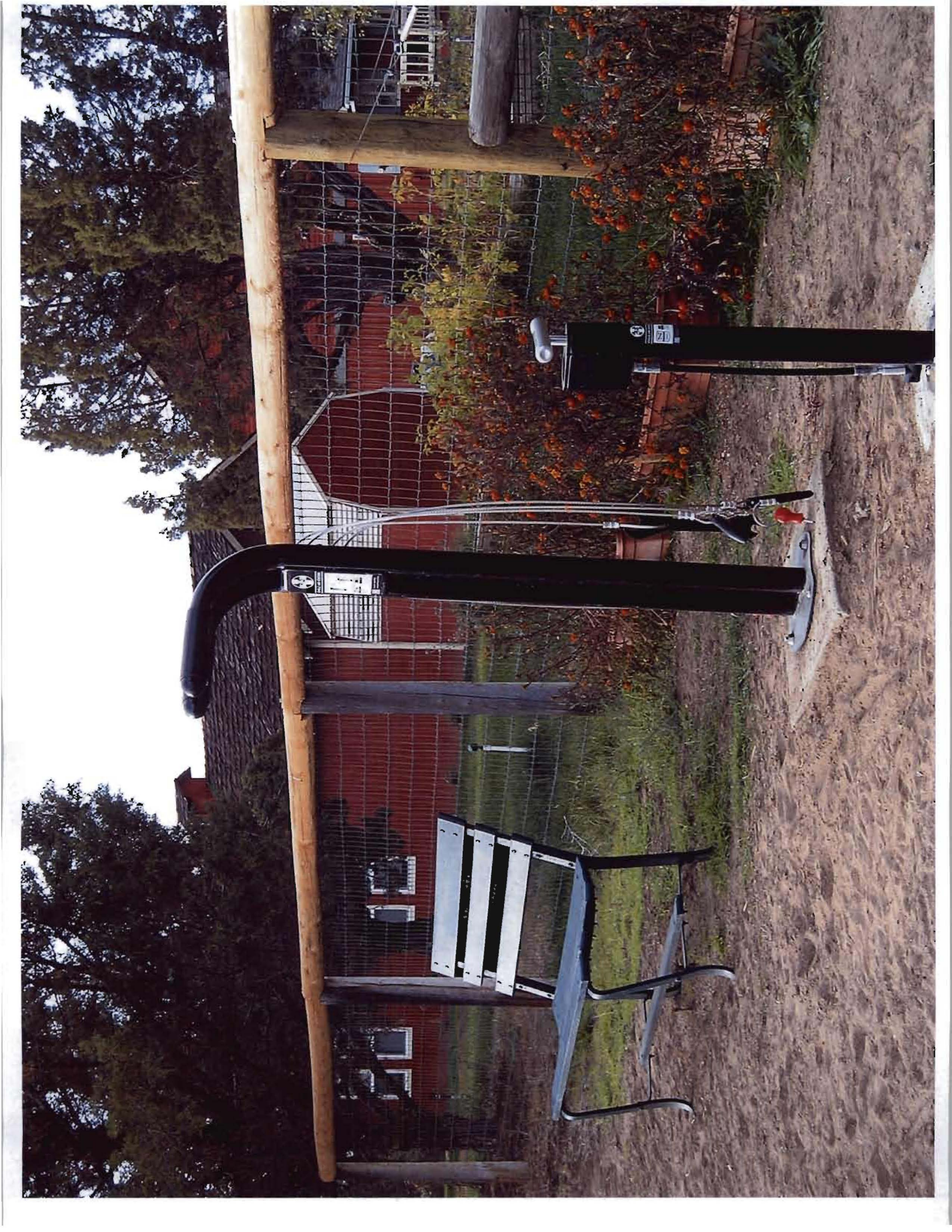
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map. Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy and, therefore, there are no warranties which accompany this product. However, notification of any errors will be appreciated.

**DESCHUTES COUNTY**  
 Mapping & GIS  
 John Anderson, GIS Analyst  
 Phone: (541) 322-7102  
 Email: john.anderson@deschutes.org  
 Address: 61150 SE 27th St.  
 Bend, OR 97702  
**Road Department**

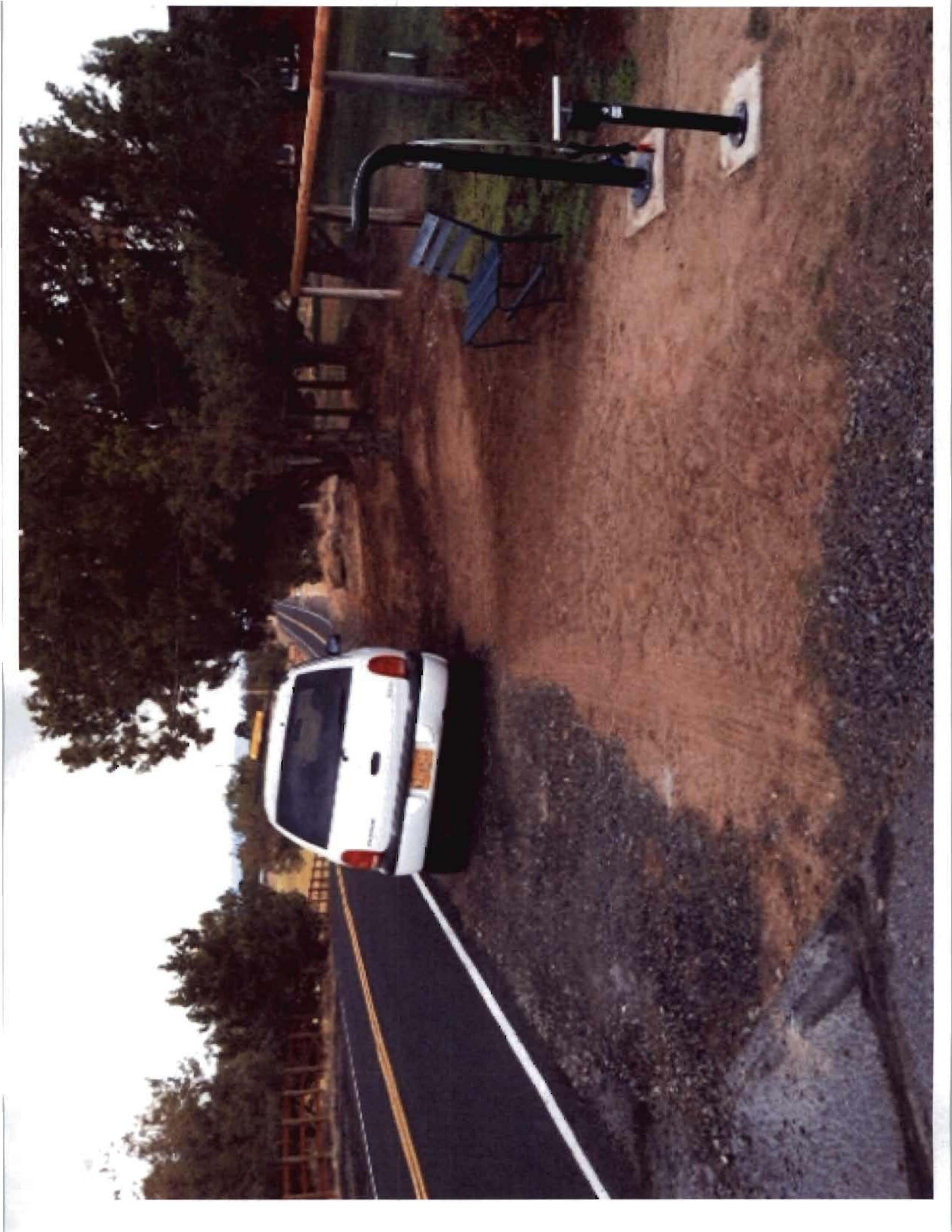


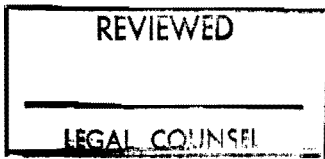












For Recording Stamp Only

**LICENSE**  
(TO USE RIGHT OF WAY)

THIS LICENSE, made and entered into by and between **Deschutes County**, herein called "Licensor," and **Robert Haas**, herein called "Licensee,"

**WITNESSETH:**

Licensee is hereby authorized to use the area as shown in Exhibit "A," attached hereto and by this reference incorporated herein and together referred to as the "Property," for the purpose of the installation and maintenance of a bike aid station for recreational purposes.

1. Term. The term of this License shall commence upon signature of all parties and continue until terminated or abandoned as provided herein.
2. Possession. Licensee's right to utilize the Property and obligations contained herein shall commence as of the date of this License. Pursuant to the terms and limitations of this license, Licensee shall have exclusive use and possession of the real property described in Exhibit "A" for the purposes set forth herein.
3. Condition of Property. Licensor represents that it has full right, power, and authority to enter into this License for the term herein granted and that the licensed real property may be used by the Licensee during the entire term for the purposes herein set forth. If it is determined that Licensor did not have the right, power or authority to enter into this License because of Licensor's failure to have properly acquired jurisdiction over, or the Property is under lease or license to another and Licensee has not acquired the leasehold interest of such other person(s), firm, or corporation, this License shall automatically terminate. In the event of termination under the circumstances set forth in this paragraph, Licensee shall waive any and all claims or causes of action against Licensor.
4. Consideration. The real property herein licensed is held by Licensor for the purpose of public interest and recreation. The consideration for said license is the payment of a one-time fee of \$1.00.
5. Additional License Fees. As additional license fees Licensee shall pay the following amounts:
  - A. All real property taxes and assessments payable on the licensed real property, as a consequence of this License.
  - B. All amounts which Licensee is required to reimburse Licensor for expenses incurred by Licensor in discharging Licensee's obligations.
  - C. All other amounts, which the Licensee is required to pay by any other provisions of this License.
6. Permitted Use. The Licensee may utilize the licensed real property described in Exhibit "A" attached hereto and by this reference incorporated herein, for the purpose of the installation



and maintenance of a bike aid station for recreational purposes in accordance with the laws of the State of Oregon.

7. Restrictions on Use. In connection with the use of the real property, Licensee shall:
  - A. Obtain a utility locate and all necessary approvals or permits prior to any uses of the property.
  - B. Maintain the real property to standards of repair, orderliness, neatness, sanitation and safety acceptable to Licensor.
  - C. Conform to all applicable laws and regulations of any public authority affecting the real property and the use after the date of this License, and correct at Licensee's own expense any failure of compliance created through Licensee's fault or by reason of Licensee's use if such failure of compliance arises as a result of conditions occurring after the date of this License.
  - D. Refrain from any use which would be reasonably offensive to the Licensor, or owners or users of adjoining real property, or which would tend to create a nuisance or damage the reputation of the real property.
  - E. Refrain from making any unlawful or offensive use of said property or to suffer or permit any waste or strip thereof.
  - F. Exercise diligence in protecting from damage the real property and property of Licensor covered by and used in connection with this License.
  - G. Install the bike aid station along the frontage of the Licensee's personal property within the public right of way. Location of the aid station will require review and approval by the Deschutes County Road Department
  
8. Licensee's Obligations. The following shall be the responsibility of the Licensee:
  - A. Any repairs necessitated by the negligence of Licensee, its agents, employees and invitees to the licensed real property.
  - B. Any repairs or alterations required under Licensee's obligation to comply with laws and regulations as set forth in "Restrictions on Use" above.
  - C. Real property at end of License period shall be in as good condition as it was in at the beginning of the term, reasonable wear and tear excepted.
  - D. Pay Licensor for any damage resulting from Licensee's negligence or from the violation of the terms of this License.
  
10. Inspection of Real Property. Licensor shall have the right to inspect the real property at any reasonable time without need for formal notice.
  
11. ~~Indemnification of Licensor. Licensee shall be responsible for any and all injury to any and all persons or property caused directly or indirectly by reason of any and all activities by Licensee or invitees on or in connection with the licensed property; and further agrees to indemnify, defend, and save harmless the Licensor, its officers, agents, and employees from and against all claims, suits, actions, damages, costs, losses and expenses in any manner resulting from, arising out of, or connected with any such injury.~~
  
12. Liens.
  - A. Except with respect to activities for which the Licensor is responsible, the Licensee shall pay as due all claims for work done on and for services rendered or material furnished to the licensed real property and shall keep the real property free from any liens. If Licensee fails to pay any such claims or to discharge any lien, Licensor may do so and collect the cost as additional license fees. Any amount so added shall bear

interest at the rate of nine percent (9%) per annum from the date expended by Licensor and shall be payable on demand. Such action by Licensor shall not constitute a waiver of any right or remedy, which Licensor may have on account of Licensee's default.

B. Licensee may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as Licensor's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Licensee shall, within thirty (30) days after knowledge of the filing, secure the discharge of the lien or deposit with Licensor cash or a sufficient corporate surety bond or other surety satisfactory to Licensor in an amount sufficient to discharge the lien plus any costs, attorney fees and other charges that could accrue as a result of a foreclosure or sale under a lien.

13. Continuing Obligation. Said License shall be an ongoing, continuous and binding obligation and privilege for Licensee.. The protections, rights and authority reserved to the Licensor herein shall inure to the benefit of any successor governmental authority.

14. Default. The following shall be events of default:

A. Abandonment of the licensed real property or the cessation of use of the real property described in Exhibits "A".

B. Upon sale or abandonment of the personal property owned and occupied by the Licensee,

C. Failure of Licensee to pay any license fees or other charge within thirty (30) days after it is due and written notice is given by Licensor to Licensee.

D. Failure of Licensee to comply with any term or condition or fulfill any obligation of the License within thirty (30) days after written notice by Licensor specifying the nature of the default with reasonable particularity. If the default is in such a nature that it cannot be completely remedied within the thirty (30) day period, this provision shall be complied with if Licensee begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

15. Termination. Said License shall terminate:

A. By mutual agreement of the parties;

B. Upon 30 days' notice by Licensor ;

C. Upon Licensee's written notice to Licensor;

D. Upon default which is not cured in accordance with the paragraph above entitled "Default";

E. Automatically upon vacation of the public right of way underlying the property.

16. Remedies on Default.

A. In the event of a default, the License may be terminated at the option of the Licensor by notice in writing to Licensee. The notice may be given at any time after the thirty (30) days grace period for default given under the paragraph entitled "Default." If the property is abandoned by Licensee in connection with a default, termination shall be automatic and without notice.

B. In any of the above set out cases or events, the Licensor, or those having the Licensor's estate in the real property, lawfully at its option may enter into and upon said real property and every part thereof, and repossess the same of Licensor's former estate, and expel said Licensee and those claiming by and through or under Licensee, and remove Licensee's effects at Licensee's expense, forcibly if necessary, and store the same, without being deemed guilty of trespass and without prejudice to any remedy



which otherwise might be used for arrears of license fees or preceding breach of covenant.

- C. The foregoing remedies shall be in addition to, and shall not exclude, any other remedy available to Licensor under applicable law.

17. Structures and Fixtures.

- A. All equipment or other personal property associated with the bike aid station that is placed upon the licensed real property during the term by Licensee shall remain the property of Licensee except as otherwise provided herein.
- B. Upon abandonment, termination, revocation, or cancellation of this License, the Licensee shall remove, within a reasonable time, all equipment and other personal property associated with the bike aid station except those owned by Licensor. If Licensee fails to remove all or part of such personal property and equipment within thirty (30) days, and such additional time as is reasonable and necessary to effect such removal as may be agreed upon by the parties, then upon election of Licensor they shall become the property of Licensor.
- C. Upon sale of the adjacent real property owned and occupied by the Licensee, the Licensee shall remove, within 30 days, all equipment and other personal property tied to the bike aid station except those owned by Licensor. If Licensee fails to remove all or part of the materials associated with the bike aid station within thirty (30) days, and such additional time as is reasonable and necessary to effect such removal as may be agreed upon by the parties, then upon election of Licensor the bike aid station shall become the property of Licensor.

18. Notices. Any notice by Licensee to Licensor or Licensor to Licensee must be served by certified or registered mail, postage prepaid, addressed to the other at the address given below or at such other address as either may designate by written notice.

Licensor:  
**Deschutes County**  
**1300 NW Wall Street**  
**Bend, OR 97701**

Licensee:  
**Robert Hass**  
**65821 Cori Lane**  
**Bend, OR 97701**

- 19. Nonwaiver. Waiver by either party of strict performance of any provision of this License shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
- 20. Partnership. Licensor is not by virtue of this License a partner or joint venturer with Licensee in connection with activities carried on under this License, and shall have no obligation with respect to Licensee's debts or any other liabilities of each and every nature.
- 21. Land Use Permit. This License does not constitute a land use permit, nor does acceptance of this License by Licensor constitute approval of any legislative or quasi-judicial action required as a condition precedent to use of the land for the intended purpose.
- 22. Licensor's Right to Cure Defaults. If the Licensee fails to perform any obligations under this License, the Licensor shall have the option to do so after thirty (30) days' written notice to the Licensee. All of the Licensor's expenditures to correct the default shall be reimbursed by the



Licensee on demand with interest at the rate of nine percent (9%) per annum from the date of expenditures by the Licensor.

- 23. Licensee Not An Agent of Licensor. It is agreed by and between the parties that Licensee is not carrying out a function on behalf of the Licensor, and Licensor does not have the right of direction or control of the manner in which Licensee transports or disposes of materials so long as Licensee meets criteria set forth herein.
- 24. Litigation Fees and Expenses. In the event an action, suit or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this License, each party shall be responsible for its own attorney's fees, expenses, costs and disbursements for said action, suit, proceeding or appeal.
- 25. Time is of the Essence. Time is of the essence in each and every provision of this License.
- 26. Severability. The parties agree that if any term or provision of this License is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the License did not contain the particular term or provision held to be invalid.
- 27. Authority. The signatories to this License covenant that they have the legal authority to bind their respective principals to the terms, provisions and obligations contained within this License.

**LICENSOR:** DATED this \_\_\_\_ day of \_\_\_\_\_, 2005.

**Deschutes County**

\_\_\_\_\_  
**Tom Anderson, County Administrator**

STATE OF OREGON            )  
  ) ss.  
County of Deschutes        )

Before me, a Notary Public, personally appeared []

DATED this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

State of Oregon            )  
  ) ss.  
County of Deschutes        )

**LICENSEE:** DATED this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
**Robert Haas**



SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_