

Initial correspondence with Eileen Eakins, 30 March 2016

Hello Eileen,

I am the President of the South Beach Road Association (SBRA) in Neskowin. The SBRA was formed for the purpose of maintaining the roads in our neighborhood. Our community was not a planned development. We do not have binding CC&R's. As a result, the assessments for road maintenance that we levy are essentially donations. In the past 5 years our unpaid assessments have been as high as 30% of the total billed assessments. Our association is considering forming a special road district, as per ORS 371, as a means by which all property owners would share the expense of maintaining our roads.

The properties of the SBRA are accessed by a single road, South Beach Road, that connects with Highway 101. The SBRA properties are isolated to the east by Neskowin Creek and can only be accessed by means of a bridge on South Beach Road that crosses the creek. All roads within our development dead end in the ocean, national forest, or private property. There are no thoroughfares. All of our roads are privately owned. All property owners in the neighborhood own an easement, deeded right, to use the private road between their property and Highway 101. Currently there is a gate at the bridge over Neskowin Creek, and we want to retain that gate.

The question that has arisen is: Will we be able to retain our access gate if we form a special road district? Does forming a special road district and having Tillamook County collect funds from our property owners for maintaining the roads make our roads public roads, essentially transforming our private easements into public access easements? We have property owners who are concerned that people outside our area might sue our proposed road district for removal of the current gate so that they could access the beach using the "public roads".

The SBRA is seeking a legal opinion that would help resolve our questions about retaining our access gate and would like to know if you could provide such an opinion.

Thank you.

Bill Busch

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LAW OFFICES OF EILEEN EAKINS, LLC

April 4, 2016

BY EMAIL

South Beach Road Association
c/o Bill Busch, President
P.O. Box 354
Neskowin, OR 97149

RE: Legal Opinion – Road District

Dear Bill:

This provides the legal opinion you requested to address questions relating to forming a road district.

I reviewed ORS chapter 371 and other authorities (including ORS chapter 368 relating to county roads) with respect to: (1) whether forming a special road district would necessarily require allowing the general public to use the roads that are currently private, and (2) whether the gate that currently limits access to the development would have to be removed. In my opinion, the answer to both questions is “possibly,” depending on whether the County chooses to require this.

This opinion assumes that the entity proposed is a “special road district” under ORS 371.305-371.385, and not a “county road district” under 371.055-371.110. According to ORS 371.336, a special road district may be formed for the purpose of improving roads “within the District.” The boundaries of the proposed special road district would, presumably, include only those properties that are currently in the development. Only the owners of the included properties would be eligible to vote in the formation election. If the proposed special road district included a permanent tax rate (property tax), the tax would be imposed only on those properties located within the District boundaries. If the proposed special road district will be governed by an elected board, only electors within the District are eligible to serve on the governing board, and only those within the District are eligible to elect them.

If the District is formed, roads within the District that are currently private will become public roads in the sense that they will be owned and controlled by the road district. ORS 371.336 includes, in the powers granted to the District, the power to “acquire, hold, receive and dispose of real and personal property,” and “to do any other act necessary to carry out the purposes of (the statute).” But I see nothing in ORS chapter 371 that necessarily requires the residents of a District to allow use of the roads by the general public, and it appears to be within the authority of the District to limit access to the roads to certain authorized users. Although the county assessor would be involved in the collection of taxes, this does not “convert” the roads within the District to county roads.

However, once the District is formed, the roads will meet the definition of “local access roads” in ORS 368.001(3): “Local access road’ means “a public road that is not a county road, state highway or federal road.”

The County has limited jurisdiction over local access roads, per ORS 368.031:

A local access road that is outside a city is subject to the exercise of jurisdiction by a county governing body in the same manner as a county road except as follows:

- (1) A county and its officers, employees or agents are not liable for failure to improve the local access road or keep it in repair.
- (2) A county governing body shall spend county moneys on the local access road only if it determines that the work is an emergency or if:
 - a) The county road official recommends the expenditure;
 - b) The public use of the road justifies the expenditure proposed; and
 - c) The county governing body enacts an order or resolution authorizing the work and designating the work to be either a single project or a continuing program

Furthermore, pursuant to ORS 368.016, “the exercise of governmental powers relating to a road within a county is a matter of county concern,” and the county governing body “may by resolution or order make any public road within its jurisdiction a county road.” Thus, if the County were so inclined – such as if pressured to do so by members of the public – it is likely the County could declare the local access roads within the District “county roads,” and thus permit public access as the County deems appropriate.

With respect to the gate, ORS 368.056 requires a county permit to install a gate, and the county “may impose any conditions or specifications on the permit it determines advisable to preserve the purposes of the public road. Conditions on a permit under this section may include a requirement that the person issued the permit shall bear all costs of construction and maintenance of the gate or stock guard.”

In summary, in my opinion formation of a special road district will not automatically require removal of the gate or access by the public to roads within the development. But, it is within the authority of Tillamook County to require this if it chooses, either at the time of formation of the District or at some future date.

Let me know if you have questions or need more.

Sincerely,



Eileen G. Eakins

Follow-up questions to April 4th legal opinion, 12 April 2016

Our Board has reviewed your opinion has questions about the following points:

1. Road ownership. In paragraph 4 you state that the roads would be "owned and controlled by the road district". I have spoken with officers of 21 of the special road districts in Oregon. Road ownerships was one of topics that I discussed with them. Out of the 21 people that I spoke with, only one person said that their road district owned the roads. The other people stated that their roads were privately owned, county owned, public access roads, or some combination of the preceding. Currently three individuals own 91% of our roads (68%, 14%, and 9%) with the remaining 9% being individual property owners who own the road in front of their house. None of the property owners are electors within the boundaries of the proposed district. To say that the roads would be owned by the road district sounds very much like a taking and may not be received well by the property owners. For the special road district to take ownership of the road would you have to go through regular land transfer proceedings? Would the current owners have to be compensated for their loss of ownership of the road?

2. Road district commissioners. In the final sentence of paragraph 3, page 1, you state that "only those within the District are eligible to elect them [the board]. It was our understanding that road districts have the option of electing their commissioners (ORS 371.323) or having them appointed by the County Commissioners (ORS 371.330). All of the road districts representatives that I spoke with said that they had their commissioners appointed. The Three Rivers Ranch Road District, the only current special road district in Tillamook County, elects a slate of commissioners at an annual meeting at which all property owners, electors and non-residents, have a vote. The slate is then sent to the Tillamook County Commissioners and is routinely approved. We hope to follow this model as it will allow all property owners to participate in the governance of the district. Currently electors own roughly 10% of the property in our proposed district. Do you see a problem with following the example of the Three Rivers Ranch district?

3. County jurisdiction. In your discussion of County jurisdiction you mention that the County has the power to spend moneys on the local access roads and under some circumstances take ownership of the roads. Again, referring to my conversations with other road district representatives, all of them stated that their counties had no role in the management of their districts. Is this just a matter of situations never arising that might necessitate the County to step in?

Other jurisdiction questions are:

In Item (2) b) by public in "public use of the road" do you mean the residents of the district or people from within and outside the district?

Regarding the County assuming ownership, is this an example of using eminent domain to take ownership of the property and would the road owners be compensated for the loss of ownership?

In paragraph 3 on page 2 you state "if the County were so inclined - such as if pressured to do so by members of the public - it is likely..." who do you mean by "public" (again, residents of the

district or people from within and outside the district)?

If the property owners did not want the County to assume ownership of the roads, could the electors vote to dissolve the special road district?

Eakins response to April 12th questions, 13 April 2016

Your board raises good questions that require some verbiage to address. Bear with me.

A key step to addressing the confusion will be to make sure that everyone is talking about the same animal, each of which works a little differently and which may explain the diverse information you're getting. [I applaud you for doing your research, however. J] There are, essentially, four types of local government entities in Oregon that may be formed for the sole purpose of managing local roads. I have summarized each method later in this email.

But first, with respect to "road ownership," you discovered in your conversations the very gray area that exists with respect to local roads, i.e., there is not always a clear delineation between public and private, and "ownership" can be a source of debate. A strictly "private" road is just that – it is clearly owned by a private party (person, business, or private association), who is responsible for maintaining it and improving it, and who can freely limit access to it or even remove it altogether. When a "private" road is formally dedicated to a city or county, however, it becomes a public right of way that isn't really "owned" by anyone (or we could say it's owned by everyone), but it is controlled by the entity having jurisdiction. Therefore, no individual person can limit access or interfere with others' use of it. My somewhat confusing reference to the road district "owning" the roads was an attempt to extend this analysis to roads coming under road district jurisdiction, since road districts are a form of local government like a county or a city.

The formation process will include developing a map acceptable to the county assessor, which would draw the jurisdictional boundaries of the new district for assessment purposes, and all properties within that boundary will be presumed to be subject to road district authority. Although the statutes are not clear and I am not aware of any case law on the subject (and I don't want your Association to be break ground on this), in other contexts if the collective populace is paying to maintain the roads within a certain jurisdiction, these roads become public rights of way by operation of law, and individual landowners within the political subdivision yield control to the public entity, presumably for the common good. But it isn't a "taking" because the landowner is effectively granting an easement in perpetuity so that others may use the road. Based on my interpretation of Oregon law, upon formation of the district these become "local access roads," over which the County may assert jurisdiction if it chooses, as I explained in my earlier opinion.

Thus, it is likely that, through its overriding authority over local roads, the county could compel access by anyone desiring to use the roads, including those living outside the district. In other words, when it comes to roads (or most things that special districts can do), county authority trumps special district authority. They don't have to exert their authority, and they may not,

but legally they could. Again, this would not be a taking because the county would not be acquiring the real estate, just regulating access to a public right of way. Arguably a private landowner could claim a loss of value to their property if this happened, but the fact that the landowner presumably consented to forming the road district would probably work against him/her.

With respect to governance models and whether or not the county gets involved in district operations, here are the four possible ways to establish a local government entity to maintain roads:

1. A county service district (ORS chapter 451).

§ County service districts may be formed for a variety of reasons (water, sanitary, parks), including road construction and maintenance.

§ They are formed like other special districts, according to the procedures described in ORS chapter 198, i.e., formation may be initiated by citizen petition submitted to the county commissioners, or by resolution of the county board.

§ The county commissioners are the governing body for a county service district. Thus, no board election is required. The county board may establish a board or committee, or name a county staff person, to manage day-to-day operations of the district.

§ The district may be funded in any number of ways, including service fees, assessments, bonds, or ad valorem property taxes. If it is to be funded by property taxes, a formation election will be required.

2. A county road district (ORS 371.055-371.110)

§ Addresses improvements/maintenance on county roads, or within a city or drainage district

§ Formation initiated by landowner petition to the county

§ Created by resolution of the county

§ County assesses property taxes to fund road improvements/maintenance

§ County commissioners (or designee) governs operations of the district

§ No election required for either formation or governance

3. A special road district (ORS 371.305-371.385)

§ Initiated by citizen petition or by resolution of the county, per ORS chapter 198 (like other special districts)

§ County order states whether county will appoint the three-member board of commissioners or whether the electors of the district will elect them (ORS 371.318). [The county may also, for an existing district, adopt an ordinance changing the method of selecting commissioners.]

§ If the district will have a permanent tax rate, a formation election is required per ORS chapter 198. If there will be no property tax assessment, no formation election is required.

§ If district commissioners are to be elected, they are elected at the same time the formation election is held (if any) per ORS chapter 255. If there is no formation election, they are elected at the soonest possible election after formation. Their initial terms are staggered, and they are elected for four-year terms thereafter.

§ If district commissioners are to be appointed, the county appoints three people and

designates their initial (staggered) terms. Terms thereafter are three years.

§ Only an “elector” of the district may serve on the board, and only “electors” within the district may vote in any election. ORS chapter 371 does not define “elector” for purposes of this statute, but it is typically either a resident or a landowner within the district. [This will need to be verified if the formation process moves forward.]

4. A road assessment district (ORS 371.405-371.535)

§ A road assessment district may be formed to provide for the improvement, repair or reconstruction of the public roads within such area of land.

§ It may be formed in any county having a population of 19,000 and not more than 25,000, as shown by the federal census, and shall consist of an area of more than 20,000 acres or an assessed valuation of taxable property of not less than \$1 million, according to the last county assessment roll.

§ A road assessment district “has authority over all roads and highways within the district, except state primary and secondary highways, and streets, alleys or public ways within a city within the district” (though it may contract with cities to manage these streets).

§ Board members are elected pursuant to ORS chapter 255. However, if only enough nominees are named to fill the existing positions, no election is required.

§ The board of directors consists of three members, who serve four year terms. However, the initial board draws lots to determine the initial (staggered) terms of each member.

§ Only “electors” are eligible to serve on the board. For this statute, “elector” means someone who is eligible to vote and who has resided within the district for at least 30 days prior to the election.

§ A road assessment district does not assess property taxes. Instead, it is funded by an annual assessment on taxable property within the District, according to an annual plan developed by the board of directors. The assessment may not exceed one-fourth of one percent (0.0025) of the real market value of the property, but voters may approve assessing twice this amount.

§ The district board adopts the assessment plan by resolution, and files the resolution with the county assessor. Though the assessment is not considered a “tax,” it is collected by the county in the same manner as property taxes, and the funds are kept by the county for use by the assessment district.

For purposes of your Association, I assumed that your board was interested in forming a special road district (#3), though a road assessment district (#4) might also be a good choice. In both of those cases, board members may be elected, though a special road district also may instead have its board appointed by the county. To address your second question, I don’t know specifically how the Three Rivers District operates, but it sounds as though the board is technically “appointed” by the county, but the county allows the district to propose its slate and the county just blesses it. If Tillamook County is okay with doing that, it could be an option for your proposed district. In my experience the county doesn’t really want to be in the business of governing local districts and may prefer to do it this way.

As you can see, as with any special district formation, the technical aspects of formation (which is what I do) are in most respects the easy part. The harder part may be making the plan work

in context with other political players (like the county), and getting buy-in from your public (who, ideally, would all be working together to make the district work). I don't know if you or anyone on your board has connections with the county commission or county staff, but it may be worth feeling out the commissioners on this subject to evaluate how they feel about it. Three Rivers could also give you the benefit of their experience.

Follow-up questions to April 4th opinion (continued), 30 April 2016

There was one question from our last exchange that I didn't see an answer for... Can a special road district be dissolved? It might be an option that some would like if things were not working out the way they wanted.

Eakins response to April 30th questions, 2 May 2016

Here are my preliminary thoughts, and the Board can decide how much more research it would like me to do on the question. [I feel like I'm doing lots of explaining – I feel for you and your board having to wade through all the words.]

Yes, a road district can be dissolved in the same manner as any special district, pursuant to ORS 198.920, et seq.

In summary, dissolution can be initiated either by voter petition or by resolution of the board. The board then must draft findings of fact and a dissolution plan addressing distribution of assets upon dissolution. The assets may be distributed to an entity “which has the authority to and agrees to assume the outstanding indebtedness of the dissolving district, if any, and to continue to furnish similar services to the inhabitants of the district.” Then, the dissolution must be approved by voters within the District. If the dissolution is approved, the board of directors becomes a board of trustees, responsible for wrapping up the district's affairs like any dissolving corporation.

The possibility of forming and then dissolving again, though, raises some legal uncertainties. The entity taking over after dissolution is presumed by statute (though not stated) to be a public entity, such as another road district, or the county, and the district's assets and service obligations must be conveyed to the new entity. They would not, under this statute, just revert back to private ownership and control on dissolution. I have no doubt that a private road association could re-form; the uncertainty comes from whether assets that are “owned” collectively by the public can be disseminated to a private entity that is NOT accountable to the public. Presumably, this would be allowed if the voters approved it, since they are the “public” of concern here. But technically, it could be a complicated business to “undo” the formation in a way that puts everything back the way it was.

Again, you may find contacts at the county who have seen this “privatization” process work successfully. I have helped several entities over the years convert from private to public, and I've done numerous special district dissolutions over the years. But I've never helped a public

entity go back to being a private one. I'm willing to try. But it's likely safest for the Board to assume that, if it forms a road district, it should be prepared to live with that decision for some time.

Additional questions from the Board, 30 May 2016

The South Beach Road Association board met a week ago and in the course of reviewing the opinion and answers that you provided us came up with a couple of additional questions.

1. If the proposed special road district has the authority "to limit access to the roads to certain authorized users" does that eliminate the original road owner's ability to grant easements for the use of the road? We are interested in an answer to this question because our development is bounded for part of its perimeter by a 100-lot RV park. We do not want the RV park patrons to walk across our properties to access the beach because of the congestion and safety hazards that it would cause on our narrow roads. The original developer for most of our properties owns the bulk (62%) of the roads in our development, including the road that runs along the boundary with the RV park. He currently does not want to grant easement rights to the RV park patrons, but it is possible that he might change his mind in the future if paid a sufficient amount of money by the RV park owner or for some other reason. So, back to the question, if the special district were to have jurisdiction over the roads, could it prevent the current road owner from granting an access easement to the RV park?

2. In your opinion you stated "if the County were so inclined - such as if pressured to do so by members of the public - it is likely the County could declare the local access roads within the District "county roads," and thus permit public access as the County deems appropriate". If the County were to make the roads county roads, would it then be responsible for the maintenance of the roads? If that was the case, what would be the purpose of having a special district because its responsibilities would have been usurped by the County? It seems like an unusual amount of power granted to the County.

Eakins response to May 30th questions, 1 June 2016

1. "If the special district were to have jurisdiction over the roads, could it prevent the current road owner from granting an access easement to the RV park?"

The answer is likely "yes." And I only say "likely" and not "definitely" because I've never seen anyone try, so I can only speculate about the outcome to a legal challenge. [Your road district contacts may have real-life stories.]

Once the road district is formed, it has exclusive jurisdiction to operate and maintain the roads. Thus, the landowner can't grant a competing easement to anyone else because it's not "their" road anymore. So, once the district is formed it will be up to the new board of directors to determine if or how to regulate access. As we discussed earlier, this includes the authority to put up gates, signs, etc., limiting access to the roads as they deem appropriate. As long as

the limitations are not based on some legally protected status – like race, gender, age, etc. – they are permissible. People living in an RV park don't have specially protected status, unless they all happen to be black, or women, or senior citizens, etc., in which case we'd have to rethink the approach.

2. If the County were to make the roads county roads, would it then be responsible for the maintenance of the roads? If that was the case, what would be the purpose of having a special district because its responsibilities would have been usurped by the County? It seems like an unusual amount of power granted to the County.

First, the County wouldn't be making the roads "county roads." If the District is formed, the roads would not be "county roads," they would be "local access roads," over which the County can exercise jurisdiction. Here are the relevant statutes:

368.001 Definitions. As used in this chapter:

(1) "County road" means a public road under the jurisdiction of a county that has been designated as a county road under ORS 368.016.

(3) "Local access road" means a public road that is not a county road, state highway or federal road.

(5) "Public road" means a road over which the public has a right of use that is a matter of public record.

368.031 County jurisdiction over local access roads. A local access road that is outside a city is subject to the exercise of jurisdiction by a county governing body in the same manner as a county road except as follows:

(1) A county and its officers, employees or agents are not liable for failure to improve the local access road or keep it in repair.

(2) A county governing body shall spend county moneys on the local access road only if it determines that the work is an emergency or if:

(a) The county road official recommends the expenditure;

(b) The public use of the road justifies the expenditure proposed; and

(c) The county governing body enacts an order or resolution authorizing the work and designating the work to be either a single project or a continuing program

Note that under 368.031(1) the County is not "liable for failure to improve" a local access road, and (2) says they can't spend county money to do so except in an emergency, or if it is formally approved. This can be interpreted to mean that county is very likely not going to try to improve a local access road. Particularly if there's already an entity (like a road district) that is already maintaining the roads.

The statute also says that a local access road outside the jurisdiction of a city is "subject to the exercise of jurisdiction by the county." This is why I gave my earlier advice that the

County could trump the District's authority regarding access to the roads if it chose to. As a practical matter, however, this would likely provoke a political controversy that, in my experience, the County won't want to take on. As I said earlier, in my experience counties really aren't looking to take over work that someone else is already doing.

Additional questions from the Board, 21 August 2016

There are several more items for which we would like further clarification.

1. Making local access roads county roads. ORS 368.016 states that "(2) A county governing body: (c) May by resolution or order make any public road within its jurisdiction a county road." Repeating, more or less, what I asked on May 30th, if the local access road became a county road, wouldn't the county be responsible for its maintenance and the role of the special road district would end? Or, are you suggesting that it would be a county road for which the county has no responsibility for maintenance because that responsibility would be borne by the special road district? Our situation is that Tillamook County does not have the finances to maintain its current county roads and has no incentive to acquire additional substandard roads, which should reduce the likelihood of a county takeover.

2. Extent of county jurisdiction. Does ORS 368.031 basically give the county full discretionary power to do what it wants with local access roads, with the exceptions as noted under items (1) and (2)? If the county wanted to declare the local access road open to anyone from outside the special road district, they could do so?

3. Permit for gate construction. If our existing access gate were allowed to remain under the auspices of a permit granted as per ORS 368.056, wouldn't opening the road to the outside public be an abrogation of that permit? Would you anticipate any time constraints for a permit? Could the permit be issued for something like 50 years?

Eakins response to August 21st questions, 22 August 2016

1. Making local access roads county roads. ORS 368.016 states that "(2) A county governing body: (c) May by resolution or order make any public road within its jurisdiction a county road." Repeating, more or less, what I asked on May 30th, if the local access road became a county road, wouldn't the county be responsible for its maintenance and the role of the special road district would end?

The general answer to your question is "yes." If the county makes a public road into a county road, the county is responsible for maintaining it. ORS 368.001(1) defines "County road" to mean "a public road under the jurisdiction of a county that has been designated as a county road under ORS 368.016." And, ORS 368.016(1) says, "Except as provided in this section or as otherwise specifically provided by law, the exercise of governmental powers relating to a road within a county is a matter of county concern." The statute then goes on to say what the

county DOESN'T have jurisdiction over (state highways, local access roads within cities), unless it takes action to make the road a county road.

Or, are you suggesting that it would be a county road for which the county has no responsibility for maintenance because that responsibility would be borne by the special road district? Our situation is that Tillamook County does not have the finances to maintain its current county roads and has no incentive to acquire additional substandard roads, which should reduce the likelihood of a county takeover.

As addressed in the earlier paragraph, if a road is a "county road," the county is responsible for maintaining it. Within the road district, the roads would not be county roads, they would be "local access roads," for which the road district is responsible. [But see the discussion below.]

2. Extent of county jurisdiction. Does ORS 368.031 basically give the county full discretionary power to do what it wants with local access roads, with the exceptions as noted under items (1) and (2)?

According to ORS 368.031, a local access road outside a city is "subject to the exercise of jurisdiction by a county governing body in the same manner as a county road, except (exceptions listed)."

The best practical interpretation of his statute is that the count MAY spend money to maintain local access roads outside a city (or within a road district), but it doesn't have to. If it does, it may do so only in an emergency or if it takes formal action authorizing the expenditure for this purpose. As I addressed in an earlier email, if the road district is already taking responsibility for maintaining the roads within the district, it's hard to imagine why the county would decide to spend its money on the same thing. [To this end, see information on Local Access Roads at the following site: <http://www.co.tillamook.or.us/gov/pw/Roads.htm>.]

Even if it doesn't spend money on the roads, the county may still "exercise jurisdiction" over the local access roads, just like it may over county roads. For example, the county very likely can, and will, require compliance with its adopted road construction/maintenance standards. But to my knowledge (I could locate no cases on this question), no county has every tried to wrestle control of roads away from a road district. As I've mentioned in earlier emails, it's hard to imagine a scenario where they would want to, unless the road district was mismanaging the roads somehow. If, as you point out, the county can't afford to maintain the roads it already has, it seems highly unlikely it would "exercise jurisdiction" over roads that someone else is already maintaining.

Personally, I don't read this part of the statute to mean anything more than that county authority trumps special district authority. This is true of all kinds of special districts – water, fire, roads, parks, etc. – but in my experience there is very rarely a power struggle between counties and special districts. (Cities maybe, but that doesn't appear to be an issue here.) In an emergency, however, you can assume the county will be able to take charge of all roads if

needed.

If disputes between counties and special districts do come up, they are almost invariably political in nature, not practical. To this end, remember that the process of formation itself requires heavy county involvement (see my April 13 email describing the formation processes), so the county will have ample opportunity to consider whether forming the road district is a good idea or not. They won't be blindsided by it.

If the county wanted to declare the local access road open to anyone from outside the special road district, they could do so?

Theoretically, I'd say "yes." But it wouldn't be a fast or clean process, in that the lawyers on either side would likely haggle about whether the statute really extends this far. And it could be sticky politically. The county would have to be REALLY motivated if they wanted to try. Are they likely to be REALLY motivated?

The road district can help to avoid interference by the county if it adopts reasonable regulations for use of the roads. It's important to remember that a special road district is formed primarily for purposes of "improving roads." See ORS 371.336: "Powers of district. A special road district may be formed for the purpose of improving roads within the district. A special road district has the power:

- (1) To make contracts.
- (2) To acquire, hold, receive and dispose of real and personal property.
- (3) To sue and be sued.
- (4) To exercise the power of eminent domain.
- (5) To assess, levy and collect taxes on all taxable real property within the district.
- (6) To do any other act necessary to carry out the purposes of ORS 371.305 to 371.360."

Regulating use of, or access to, the roads, is really secondary to "improving" them. If I were representing the road district board, I would likely tell them that rules protecting the roads from overuse or damage are reasonable. Rules excluding people from using them at all will invite controversy. If the intention is really to create an exclusive community, the "cleanest" way to do this is likely to leave the area as a private HOA, and just deal with road maintenance through assessments.

3. Permit for gate construction. If our existing access gate were allowed to remain under the auspices of a permit granted as per ORS 368.056, wouldn't opening the road to the outside public be an abrogation of that permit? Would you anticipate any time constraints for a permit? Could the permit be issued for something like 50 years?

ORS 368.056 says, "The county governing body may impose any conditions or specifications on the permit it determines advisable to preserve the purposes of the public road." Thus, the county can attach conditions to its approval, like requiring the public access during certain hours, etc., if it chooses to. The term of the permit would likewise be within the county's discretion,

and they may already have a policy in place for this.