

## Comments, questions, and answers concerning Special Road Districts

The replies of the South Beach Road Association Board are printed in magenta.

*Steve Beckham, 17 September 2016*

Please explore the legal means by which an Oregon Special Road District can be dissolved when it has been created under ORS 371.366. The powers, selection of commissioners, and other items are spelled out in the Oregon Revised Statutes. Where is the provision for dissolution? How is that accomplished under Oregon law? [The answers to these two questions are provided by the 2 May 2016 message from attorney Eileen Eakins \(page 8 of the Legal Opinion of Eileen Eakins, posted on the SBRA website\). A special district can be dissolved pursuant to ORS 198.920, \*et seq.\* The situation may arise where someone sues the Special Road District to demand removal of the gate for free passage on the road system because the road commissioners have been appointed by Tillamook County and because the Tillamook County Treasurer is collecting and disbursing the ad valorem tax revenues. These are clearly public functions assumed by the county for a Special Road District and altogether different from the present SBRA. The Board asked Ms. Eakins several times about the possibility of the South Beach roads being opened to the public for beach access \(the original 30 March 2016 correspondence and follow-up questions in the 12 April, 30 May, and 21 August 2016 correspondences\). The answer to the 21 August questions \(see page 13 of the Legal Opinion\) provides the most direct answer to the question. The response includes the statement: “The county would have to be REALLY motivated if they wanted to try” ... to open the roads to the public. One of the things that the Board needs to learn from the County Commissioners in the coming year is what their response would be to an outside request to open the roads.](#)

In light of the creation of 82 Special Road Districts in Oregon under ORS 371.366 for ungated, public thoroughfares it is important to ascertain when and how a Special Road District has been dissolved. If there is no provision for dissolution, then the matter becomes yet another concern for South Beach and Proposal Rock Neighborhood residents.

*Ric Bailey, September 17*

Thank you for responding to Mr. Beckham’s message and copying to his list. We now have an opportunity to openly air the controversy over the proposed Special Road District (SRD) for the Neskowin South Beach Road. I am one of many property owners who has a number of questions, but having a permanent residence far from Neskowin is rarely able to attend the annual meeting.

Our primary concern is over the SRD proposal possibly resulting in the gate at the bridge being removed and South Beach Road becoming a public road. Your response to all property owners would be gratefully received.

1) While it is apparent that the vast majority of property owners, as well as owners on the

Proposal Rock Loop, oppose creation of the Special Road District (SRD), why does the SBRA Board continue to pursue it, or decline to drop the proposal? It is not apparent to the Board that the vast majority of property owners oppose formation of a special road district. There are a significant number of property owners that support the proposal. A vote at the 2015 annual meeting unanimously approved further investigation of the special road district issue.

2) If you doubt the large majority opposed to the SRD, why not conduct a vote? The Board has not yet decided whether to recommend forming a special road district or continuing with the present means of collecting assessments. We have learned much through the research carried out prior to the March 12<sup>th</sup> special meeting and the opinions provided by the legal consultant, Eileen Eakins. At this point in our investigation we need the input of the County Commissioners to answer questions raised by our research and the legal opinion.

3) Is there a legal requirement that all property owners must pay the annual SBRA fee? If so, why do some property owners get away with not paying? The legal basis for the collection of the SBRA assessment is ORS 105.175 (3). This statute describes maintaining an easement in the absence of a binding legal instrument. ORS 105.175 is vague, particularly in its application to undeveloped lots. The SBRA has not tested the statute in court (small claims court). There would be costs to the SBRA to do so and, more significantly, personal costs to the Board members, in terms of time and money, to make appearances before the court in Tillamook.

4) Can you explain in detail in what ways the SRD will benefit the majority of property owners? The benefits of a special road district to South Beach property owners is described on Slides 25 through 35 of the [Special Meeting Presentation](#). The link to the presentation is posted on the website homepage under the heading **South Beach Road Association Special Meeting, 12 March 2016**. Also useful are Slides 20 to 24 that describe the millage calculation and how assessments would be collected. Slides 5 through 19 provide background information for why a special road district is being considered. The audio recording of the meeting is also posted on the website.

5) As you know, most property owners are seriously concerned about the consequences to our privacy and property values if the road becomes public. You have said that creation of the SRD will not result in the removal of the gate and cause our road to become a public road. Can you cite laws that support your assertion? The specific statute that provides for having a gate on roads of a special district is ORS 368.056. For a complete understanding of the issue, please read the legal opinion and answers to follow-up questions provided by Eileen Eakins (posted on the website). The questions of keeping the gate, limiting access to the roads, and what is meant by public roads are discussed in detail in the document.

As you know, the property owners pay the SBRA to represent our interest, understand our concerns and clearly explain its actions. Yet many of us have been forced to retain an attorney at great expense to ourselves in order to understand the SRD proposal. Your answers to these questions will go far toward better understanding.