



## BOARD OF COMMISSIONERS

# AGENDA REQUEST & STAFF REPORT

**MEETING DATE:** January 26, 2026

**SUBJECT:** Consideration of Gate Permit No. G-25-01

**RECOMMENDED MOTION:**

None at this time—information only. At a future date, staff will recommend that the Board deny Gate Permit No. G-25-01 and rescind Resolution No. 90-081.

**BACKGROUND AND POLICY IMPLICATIONS:**

Oregon Revised Statute (ORS) 368.056 authorizes a county governing body to issue a permit allowing a person to construct a gate on a public road under the jurisdiction of the county governing body. The Board of County Commissioners adopted Resolution No. 90-081 to establish standards and procedures for issuing gate permits.

Jason and Kerianne Bether, owners of Eastbourne LLC and developers of the Eastbourne Subdivision (formerly Tax Lots 100 and 800 on Tax Map 17-13-18C0), have submitted an application to the Road Department for the installation of a gate on Conquest Road, north of the southernmost cul-de-sac bulb, approximately 1,800 feet north of its intersection with NE Butler Market Rd; the application includes a single signature by Jason Bether. The subdivision includes eight lots, all accessed by Conquest Road, with the proposed gate fully restricting access to Lots 2 through 6, partially restricting access to Lots 1 and 7, and leaving Lot 8 unaffected. As of December 31, 2025, County records indicate ownership of Lots 1 through 7 as follows:

Partial frontage behind proposed gate:

- Lot 1 (Tax Lot 171318C000102) - Eastbourne LLC (listed for sale)
- Lot 7 (Tax Lot 171318C000103) – SGS Development LLC

Full frontage behind proposed gate

- Lot 2 (Tax Lot 171318C000101) - Eastbourne LLC
- Lot 3 (Tax Lot 171318BD00400) – Wheir, William H III and Julie A
- Lot 4 (Tax Lot 171318BD00100) – Jason K and Kerianne K Bether Trust
- Lot 5 (Tax Lot 171318BD00200) – Donald A Bliss and Karen M Bliss Trust
- Lot 6 (Tax Lot 171318BD00300) – Pickerill, Luke and Martinique

The segment of Conquest Rd that the proposed gate would obstruct is a local access road, ending within the subdivision boundaries approximately 3,300 feet north of NE

Butler Market Rd. The property owners adjoining this segment are the owners of the referenced lots. The application proposes a recorded agreement documenting the full consent of adjacent property owners for gate installation and maintenance.

Unlike previous gate approvals on dead-end streets in recent years (administered under current Road Department staff in the last 10+ years), which aimed to restrict unauthorized access to adjacent federally owned or EFU-zoned lands under one-party ownership, this proposal effectively creates a private road for the seven residential lots mentioned. Under current County land division processes, private roads within subdivisions are allowed only through cluster developments (DCC 18.128.200), planned unit developments (PUDs) (DCC 18.128.210), or within Destination Resort (DR) (DCC 18.113) and Westside Transect (WTZ) (DCC 19.22.070) zoned lands.

Cluster developments, PUDs, and Destination Resorts are designed to concentrate lodging, residential amenities, recreational facilities, and visitor accommodations in a manner that preserves the rural character and resource qualities of surrounding properties. All three of these land use categories require the legal creation of management entities such as Home Owner Associations (HOAs). These entities are responsible for the provision of public safety services, utilities, open space management, and road maintenance, among other considerations. These responsibilities must be outlined in a legal written agreement deemed adequate by Deschutes County Legal Counsel and the Road Department. Without such agreements in place, the County risks potential claims for compensation by affected property owners should the gate installation be perceived as a public access restriction, negation of reasonable ingress and egress, or a misapplication of enforceable standards for road management and public use as outlined in state statute<sup>1</sup> and case law<sup>2</sup>.

The proposed gate would bypass these regulations, making a de facto private road through a physical barrier. In executing the current subdivision plat, the subject property has not been reviewed for compliance with cluster development, PUD, or Destination Resort approval criteria, and no private roads have been considered or approved during the land use review process. Road Department and Community Development Department staff described to the applicant throughout the subdivision land use permit process and prior to submission of their gate permit application that private roads in the Eastbourne subdivision would only be considered if the subdivision was proposed as a PUD or cluster development. Procedurally, the applicant (and owners) would need to reapply for land use review under the category of a cluster development or PUD then petition for public right-of-way vacation in order for staff to consider the possibility of designating Conquest Road as a private road and to assign legal responsibility of the roadway to the developer through legal agreements.

The applicant caused for the recording of a Road and Gate Maintenance Agreement in the Official Records at the Deschutes County Clerk's Office (Instrument No. 2025-

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<sup>1</sup> ORS 374.309(2)

<sup>2</sup> *Aylett v. Mardis* (1982); *Curran v. Dept of Transp.* (1992); *Pritchard v. City of Portland* (1990)

21405). This instrument was recorded on August 13, 2025, without review by Road Department or County Legal Counsel staff. The instrument states that “...the Developer intends to install a permanent gate on Conquest Road north of the above-described turnaround area that is adjacent to Lots 1 and 7...”, memorializing the intention to construct a gate while the lots were being marketed and prior to any decision by the County as the road authority.

Road Department staff generally object to permitting of gates on public roads under County jurisdiction that provide primary access to multiple residential lots or parcels for several reasons, including:

- Emergency Services Response – Even with approved rapid emergency services or code-pad entry systems, gates will significantly delay response times for emergency services responding to critical incidents behind a gate. Further, coordination in ensuring all emergency services have necessary information for gate access poses potential difficulties with serious risks.
- Public Right of Access – By accepting a right-of-way dedication on behalf of the public, the Board of County Commissioners has memorialized that the public is entitled to the full and free use of the right-of-way for ingress and egress. While state law authorizes a county governing body to permit the placement of gates on a public road, exercising that authority in an instance where no exceptional circumstances exist would be an undesirable precedent.
- Utilities – Similar to emergency services, utility providers could be significantly hindered by the gating of a public road, as it would encumber their right and ability to use a public right-of-way for installation, maintenance, and access of their facilities.
- Postal/Parcel Delivery – A gated public road would disrupt conventional postal, parcel, and other delivery services.

Staff are of the opinion that the County would be positioned to incur significant liabilities associated with the matters described above by authorizing the requested gate permit. It is important to note that, while emergency response agencies may be agreeable to the proposed gate installation, those agencies are not the road authority and would not incur the liabilities of a gated public road.

Further, Staff notes that an approval of this gate permit request would create a significant administrative burden to the Road Department by enabling similar requests in hundreds of locations within the county system with similar dead-end conditions. Additionally, a gate permit would require Board amendment every time a property changes ownership. Staff are generally only supportive of permitting gates on public roads under County jurisdiction when a right-of-way vacation for the proposed gate road segment would otherwise be found to be in the public interest or when exceptional circumstances exist, such as cases where a gate promotes public safety by restricting access to a hazard or promotes protection of an environmental concern on public lands. Staff believe that permitting of gates on public roads should be performed judiciously and only in cases where all (not just select) motor vehicle traffic is to be prohibited. Staff are not supportive of authorization of a gate permit on a public road within a residential zone for the sole purpose of providing an amenity for a new rural residential subdivision. In his application submittal email, the applicant provided the following as justification for

the proposed gate:

*We have experienced a range of issues, including theft, illegal dumping, trespassing, illegal drug use, unauthorized hot air balloon operations, and other unwanted activities within the development. Rather than relying on the Deschutes County Sheriff to respond to these recurring concerns, we believe installing a gate is a practical and effective solution. This measure will enhance security, preserve the integrity of our private property, and reduce the burden on public emergency services.*

Road Department staff do not find these concerns to be unique or compelling reasons to gate a public road, as these are concerns for all private property owners in rural Deschutes County. Further, these matters can or will be mitigated upon build-out of the Eastbourne subdivision and fencing and gating of private properties.

Staff acknowledges that, under prior Department leadership, gate permit applications under comparable conditions were occasionally approved after adoption of Resolution No. 90-081, likely based on the constricted interpretation of the discretion afforded by the approval criteria. Under the Department's current interpretation and practice, staff generally do not support approval of such applications for the reasons outlined in the preceding sections. Road Department records contain only one formal denial in the last 35 years because only submitted applications can be denied; many potential requests are discouraged during pre-application discussions and therefore are never submitted. Similarly in this matter, Road Department staff clearly indicated to the applicant through written and verbal correspondence prior to application submission that the Department would recommend denial of the proposed gate permit.

Upon reviewing the application and supporting documents according to the criteria in Resolution No. 90-081, the Road Department finds:

- Conquest Road is a dead-end road not maintained by Deschutes County.
- Conquest Road is a public road serving seven (7) developable residential lots beyond the proposed gate location.
- The proposed gate would restrict access to five (5) lots and partially restrict access to two (2) lots under ownership by parties who are not signatories to the gate permit application.
- Conquest Road will function as a de-facto private road north of the gate if installed, despite the absence of formal private road creation in the land use process.

Based on these findings and the staff commentary provided in this report, **the Road Department recommends that the Board of County Commissioners deny Gate Permit No. 25-001**, preventing the applicants from constructing, operating, and maintaining a gate on Conquest Road.

Staff also recommend that the Board of County Commissioners consider rescinding Resolution No. 90-081 until such time as staff can propose new, updated code language regarding permitting gates on public roads under County jurisdiction. Staff notes that the 36 year-old Resolution does not sufficiently address the concerns by staff

noted above, conflicts with current land use code, and provides for minimal public process in the consideration of public road gate permits.

**FISCAL IMPLICATIONS:**

*Denial of Gate Permit No. G-01-25:* Minimal fiscal impact. The applicants have submitted the required \$100 gate permit application fee. Staff notes that the cost in staff time required to process a gate permit application far exceeds the \$100 permit application fee implemented by Resolution No. 90-081.

*Approval of Gate Permit No. G-01-25:* Potential moderate fiscal impact and substantial staff time impact. As described in this report, staff believe approval of the gate permit application would set an untenable precedence and would create a significant administrative burden to the Road Department by enabling similar requests in hundreds of locations within the county system with similar dead-end conditions. Additionally, a gate permit would require Board amendment every time a property changes ownership.

**ATTENDANCE:** Cody Smith, County Engineer/Assistant Road Department Director