

Oregon Revised Statutes

“The following are all, or portions of, ORS that dictate what ODOT is required to do when accessing private property”.

281.010 (Repealed and replaced with 35.220)

“281.010. Entry on, survey and selection of property to be appropriated by state, county or public corporation; mode of proceeding; deposit of compensation. Whenever the law authorizes private real property to be appropriated to public uses, the property may be entered upon, examined, surveyed and selected, in the mode prescribed by the statute giving such authority. Thereafter, the state, county or other municipal or public corporation, seeking and authorized to make such appropriation, may proceed as prescribed in ORS chapter 35 to have such property condemned and the compensation therefor determined and paid, and not otherwise unless otherwise provided by law. The compensation in the case of such condemnation by the state, county, municipal or public corporation shall be paid by the deposit in court of an order duly drawn upon the treasurer thereof for the amount of such compensation.

PERMANENT EDITION ANNOTATIONS:

CASENOTES:A verdict awarding compensation in condemnation proceedings by a city and empowering the city to condemn property, is a "general verdict." Skelton v. City of Newberg, (1915) 76 Or 126, 132, 133, 148 P 53. LAWREV--CITATIONS: 46 OLR 128, 133.”

366.365 (Old amended Right of Entry for ODOT surveyors)

“366.365 Going upon private property. The Department of Transportation may go upon private property for the purpose of examination, inspection, or survey to determine the advisability or practicability of locating and constructing a highway thereover, or the source, suitability of road-building materials thereon. The department may exercise this authority prior to the filing or commencement of condemnation proceedings, but in the exercise of such authority no damage shall be done the property nor shall the owner be unnecessarily inconvenienced or disturbed in the use and enjoyment of the property of the owner. [Amended by 1953 c.252 §2]”

366.365 (Current Right of Entry for ODOT surveyors)

“366.365 Going upon private property. The Department of Transportation may go upon private property in the manner provided by ORS 35.220 to determine the advisability or practicability of locating and constructing a highway thereover or the source, suitability or availability of road-building materials thereon. [Amended by 1953 c.252 §2; 2003 c.477 §5]Definition for 35.220”

35.215 (Definition for 35.220)

“35.215 Definitions for chapter. As used in this chapter, unless the context otherwise requires:”

“(1) “Condemner” means the state, any city, county, school district, municipal or public corporation, political subdivision or any instrumentality or any agency thereof or a private corporation that has the power to exercise the right of eminent domain.”

35.220 (New Right of Entry for all Condemners)

“35.220 Precondemnation entry on real property. (1) Subject to the requirements of this section, a condemner may enter upon, examine, survey, conduct tests upon and take samples from any real property that is subject to condemnation by the condemner. A condemner may not enter upon any land under the provisions of this section without first attempting to provide actual notice to the owner or occupant of the property. If the condemner has not provided actual notice, written notice must be posted in a conspicuous place where the notice is most likely to be seen. The posted notice must give the condemner’s name, address and telephone number and the purpose of the entry. A condemner may conduct tests upon or take samples from real property only with the consent of the owner or pursuant to an order entered under subsection (2) of this section. All testing and sampling must be done in conformity with applicable laws and regulations. Testing and sampling results shall be provided to the owner upon request.

(2) If the owner of property objects to examination or survey of the property under this section, or does not consent to the terms and conditions for testing or sampling of the property, the condemner may file a petition with the court seeking an order providing for entry upon the property and allowing such examination, survey, testing or sampling as may be requested by the condemner. The court may enter an order establishing reasonable terms and conditions for entry and for any examination, survey, testing or sampling of the property requested by the condemner. Reasonable compensation for damage or interference under subsection (3) of this section may be established in the proceeding either before or after entry is made upon the property by the condemner.

3) An owner is entitled to reasonable compensation for:

(a) Any physical damage caused to the property by the entry upon or examination, survey, testing or sampling of the property, including any damage attributable to the diffusion of hazardous substances found on the property; and

(b) Any substantial interference with the property’s possession or use caused by the entry upon or examination, survey, testing or sampling of the property.

(4) If a condemner is required to pay compensation to an owner in a proceeding under subsection (2) of this section, and the condemner thereafter seeks condemnation of the same property, the owner is not entitled to any payment of compensation in the condemnation action that would result in the owner receiving a second recovery for the same damage or interference.

(5) Nothing in this section affects any liability under any other provision of law that a condemner may have to an owner or occupant of property by reason of entry upon or examination, survey, testing or sampling of property. [2003 c.477 §2]

Note: Section 3, chapter 477, Oregon Laws 2003, provides:

Sec. 3. Section 2 of this 2003 Act [35.220] applies only to the entry upon or examination, survey, testing or sampling of the property by a condemner that occurs on or after the effective date of this 2003 Act [January 1, 2004]. [2003 c.477 §3]”

672.047 (Right of Entry for private surveyors, also applies to ODOT)

“672.047 Right of entry by land surveyor; compensation for damages caused; notice; removal of survey markers. (1) Subject to subsection (4) of this section, a registered professional land surveyor, or any employee or agent of the surveyor, may enter on foot, where practicable, upon

any land for the purpose of surveying or performing any survey work and may establish permanent survey monuments as allowed by rule of the State Board of Examiners for Engineering and Land Surveying.

(2) Any person exercising the right of entry granted under subsection (1) of this section shall do so with no unnecessary damage to the land entered upon. Damages to trees, shrubs and other vegetation intentionally caused by the surveyor shall be subject to compensation and penalties as provided in ORS 105.810. The surveyor shall compensate the landowner for all other actual monetary damages, or \$100, whichever is greater. Actual monetary damages may include but are not limited to all costs in time, labor and materials incurred by the property owner to return the property to the condition it was in prior to the damage.

(3) If a request is made in writing in a timely manner, a copy of the survey shall be provided in a timely manner to any landowner who owns property that is outside an urban growth boundary and is affected by subsection (4) of this section.

(4) A registered professional land surveyor, or any employee or agent of the surveyor, shall not enter upon or establish any permanent survey monument upon any land without first attempting to provide notice to the landowner or occupant of the property in person. When the landowner or occupant is not available, written notice shall be posted in a conspicuous place where it is most likely to be seen. The posted notice shall give the professional land surveyor's name, address, telephone number, purpose, availability of the survey and the presence of any temporary or permanent monuments or other markers left on the property.

(5) A registered professional land surveyor, or any employee or agent of the surveyor, who enters land as allowed under this section is owed no greater duty of care than that owed by a landowner to a trespasser.

(6) Notwithstanding the provisions of subsection (1) of this section, a registered professional land surveyor, or any employee or agent of the surveyor, may use a vehicle to enter upon land provided that the vehicle remains on existing roadways where practicable.

(7) The surveyor shall remove all flagging, stakes and other temporary materials that are above ground if leaving them in place creates an unreasonable risk of harm to persons or property. Except for forestland as defined in ORS 527.620, the surveyor shall remove all temporary above ground materials within 60 days of placement unless written authorization to leave the materials in place is received from the landowner or occupant. [1995 c.382 §13; 1997 c.743 §1]"