

Right Of Entry

- Legislative Changes effective January 2004



WHY change?

- Many public agencies had their own statute
- Rights of entry varied dramatically
- Uncertainties related to scope
- Provide standard statute



Old Entry Authority

- ORS 281.010
- Entry by state, county or public corporation
- Each agency had their own statute



ODOT's Authority to Enter onto Private Property

- ORS 366.365
- Eminent Domain Group Commission to modify 2003 legislation.



House Bill 3372

- Replaces 281.010
- Consolidates existing rights of entry
- Provides standard statute for entry (ORS35.220).
- Rewrites 366.365 to include 35.220



New ORS 366.365

- 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]



ORS 35.220

- Condemner - Eminent Domain
- Eminent Domain- Right to take private property for public use

Provide notice

- Actual notice
- Post written notice



Scope of Entry Tests and Samples

- A condemner may enter upon
- examine, survey
- conduct tests and take samples
- any property subject to condemnation

Consent of Owner

- A condemner may conduct tests upon
- or take samples from real property
- only with the consent of the owner or
- pursuant to a court order

If the owner objects to entry or terms of examination

- File a petition
- Court may establish terms



Owner entitled to compensation for:

- Physical damage
- Interference with possession or use

This section has no effect on other provisions of law

- **ORS 672.047**
- Right of entry by private land surveyor
- As always, also applies to ODOT



As it was

- One ORS (281.010) gave right of entry
- Each group had their own statute



As it is now

- Still have our own special statutes
- Each statute directs to 35.220
- 35.220 contains rights common to all



What does this mean to us?

- Prefer to notify owner in advance
- Owner must consent for samples
- Occupant must be notified prior to entry
- Letter to owner not sufficient



What does this mean to us?

- If no one is around
- Must post notice in a conspicuous spot
- Note where and when posted
- If asked you must leave



Now hightail it outta here ya lowdown good fur nuthin varmints!!!!

