Right of Entry for Environmental and Technical Investigations in Project Development

Why & How

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POSITIVE EFFECTS OF ENVIRONMENTAL DESTRUCTION

HEY, MY ALLERGIES ARE GONE!
The purpose of this procedure is to establish accountabilities, roles, responsibilities for obtaining a temporary Right of Entry (ROE) from a property owner for various environmental and technical investigations as a part of the project development process.
Background

ROE are used to gain access to private & public property.

Compensation is not offered.

ODOT may be held responsible for damages caused by the investigations.
Background

Most property owners will and have allowed entry.

Dept. of Justice will assist ODOT when owners decline entry or are non-responsive.

ODOT team members may be required to testify in a court hearing.
Scope & Statute

The requirements and guidelines of this procedure apply to all projects and assignments that involve the need to enter private and/or public property to perform environmental or technical investigations.

All work is done in compliance with ORS 35.220.
Accountabilities

The Region Project Leader (PL) ensures the team members perform on schedule.

The Region Environmental Coordinator (REC) coordinates most of the requests, and works with each of the Technical Specialists (TECH).
Accountabilities

The REC & each TECH comply with all conditions of the Right of Entry, including providing notice prior to entry onto the property.

The Senior Right of Way Agent (ROW) coordinates with the Technical Specialists and Regional Environmental Coordinator in drafting the ROE, for example the wording of what type of investigation and how it is performed.
Accountabilities

The Senior Right of Way Agent (ROW) prepares, mails, tracks the ROE.

ROW communicates with the property owners.

24-hr notice must be given to the property owner prior to entry, usually by the TECH or REC.
Roles & Responsibilities

The PL is a facilitator.

Ensures that team members needing to enter the property perform & stay on schedule.

The REC role is to manage dates and people involved in the investigations.
Roles & Responsibilities

The REC and or TECH will obtain the following:

Identify the properties that need ROE and the Technical Specialists needed to perform the investigations.

A description of the work to be done.

The boundaries of the work area.

Schedule for the work/investigations to take place.
Roles & Responsibilities

The REC forwards this information to ROW.

ROW provides the following:

Prepares the Right of Entry for each property owner.
Roles & Responsibilities

Mails the ROE to property owners via certified mail, return receipt requested.

Makes follow-up contact as needed & tracks comments.

Provides signed copies of ROE to team members, which they should carry with them when performing the investigation.
Roles & Responsibilities

ROW Advises team members if ROE can not be obtained.

60 day window for obtaining ROE. If ROE refused or non responsive owner, ROW requests written justification for investigation from Technical Specialist. Justification submitted to DOJ. DOJ obtains court order for entry.
Modified Method-USFS/BLM

Team member notifies USFS/BLM verbally or via e-mail.

If verbal, write e-mail documenting permission to do non-invasive work in lieu of ROE.
RIGHT OF ENTRY

(insert owner name(s) _______ hereinafter referred to as "Grantor", does hereby grant to the State of Oregon, by and through the Department of Transportation, its employees, agents, or contractors, the right to enter upon the real property described below for the following purpose(s) as described in the attached Exhibit A, pages ___ through ___.

Property Description: Township __, Range __, Section __, Lot __________ County, Oregon.
(Subject area is outlined in yellow on the attached map).

IT IS UNDERSTOOD AND AGREED: That this right shall continue until the work is completed unless expressly revoked by grantor before completion. It is further understood that all liabilities, releases, waiver of claims, indemnifications, save or hold harmless, defense obligations and warranties assumed by the Oregon Department of Transportation, as stated in this right of entry, shall be limited to the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act.

Grantor(s) hereby represent(s) and warrant(s) that he/she/they is/are the owner(s) of said real property or otherwise have the right to grant this right of entry.

Dated this ___________ day of ___________ 201___

Signature: ____________________________

Please provide contact information below and any comments you wish to make.

Contact telephone numbers: __________________________

Email address: __________________________

Comments: _______________________________________

_________________________________________________

_________________________________________________
The Right of Entry Form

RIGHT OF ENTRY
EXHIBIT A
Page __ of __

Name: Grantor’s Name
File Number: (if one exists)
Section: Project Name
Highway: Highway Name
County: County

Property entry is needed to perform preliminary project-related research in each of the following specialty areas listed. Photography to document observations may be required by each individual discipline performing these investigations and is authorized by Grantor.

Archaeological Investigations and Curation of Specimens: ODOT archaeologists or their consultants will conduct archaeological investigations, including test excavations as described in the Archaeological Permits for this project (pursuant to ORS 358). The soil will be returned to each hole immediately upon completion. If deemed necessary, investigations may remove specimens and samples recovered during the excavations (pursuant to ORS 358).

Start Date: ____________  End Date: ____________

Please check one of the options below:

___ I authorize the Oregon State Museum of Anthropology (OSMA), pursuant to ORS 390, to permanently curate any such materials;

___ I choose to retain possession of the recovered materials after the appropriate laboratory analysis has been conducted. Government agencies cannot choose this box.

I understand that if any human remains, funerary objects, sacred objects, or objects of cultural patrimony are discovered during excavation that ODOT shall report the discovery to the appropriate Native American Tribe(s), the Commission on Indian Services, and the State Historic Preservation Office to arrange for the return of any human remains or sacred objects to the appropriate Native American Tribe as required by state laws and regulations (ORS358.905-358.961 and ORS97.740-97.760).

Biological: Botanist(s) will walk the project area up to three times during various blooming seasons looking for Endangered Species Act listed and sensitive plant species. Multiple walk-throughs are needed because different plants bloom at various times of the year.

Start Date: ____________  End Date: ____________

Historic Resources: Inspection for cultural resources (buildings and other features, such as rock walls, that are 50 years old or older) entail visual assessments and may require field staff to enter and walk around your property.

Start Date: ____________  End Date: ____________
Archaeology - Culturally Modified (Peeled) Trees
Archaeology - Rock Cairns
Archaeology - Lithic Scatter
Archaeology - Rock Art
Historic Resources/Artifacts
Hazardous Materials
Wetlands
Rare Plants

Tygh Valley Milkvetch

Peck’s Milkvetch

Pumice Grape-fern
Tree Art
Petroglyph
Hart Mountain
Small Rock Circle
Large Rock Ring
Petroglyph
Tree Pamphleteering
Arborglyph