

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS-CIVIL
PROPOSAL 2025-011**

March 6, 2025

The Uniform Jury Instructions-Civil Committee has recommended amendments to UJI 13-719 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's website at <https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
rules.supremecourt@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 5, 2025, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

13-719. Access; loss of.

The _____ (*insert name of condemning authority*) may control, regulate, and designate reasonable access to and from the owner's property, but, if such control, regulation, or designation is unreasonable, the owner is entitled to compensation for such limitation of this access.

USE NOTES

~~[If the court finds a fact issue present on the question of reasonableness, then the above instruction would appear to be proper.] This instruction should be given in cases in which no land is taken but the landowner seeks damages for lost or impaired access, if the court determines that a question of fact exists regarding the reasonableness of the limitation on access. The instruction should not be given in cases involving partial takings.~~

~~[As amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]~~

~~**Committee commentary.** — [With one exception, no New Mexico case is to be found allowing compensation for loss of access to an existing highway system. The exception is *Board of County Comm'rs v. Harris*, 69 N.M. 315, 366 P.2d 710 (1961), where a change of a highway grade, making access difficult, was held compensable. Nevertheless, in the decision next~~

discussed, denying compensation, the court announced the principle contained in the above instruction on "Access".

Board of County Comm'rs v. Slaughter, 49 N.M. 141, 158 P.2d 859 (1945), holds that damage to defendant's business, resulting from a change of a highway, diverting traffic away from defendant's property, is noncompensable.

A series of recent cases, developing as a result of interstate highway projects, uniformly holds that the right of direct access to the highway is subject to reasonable traffic regulations. As long as there is access to the highway system, although involving circuitry of travel (which may be considerable), no damage results. As above mentioned, however, the court in these cases recognizes the principle that an "unreasonable interference" with the property owner's access, under the circumstances of a particular case, might become compensable. *See State ex rel. State Hwy. Comm'n v. Mauney*, 76 N.M. 36, 411 P.2d 1009 (1966); *State ex rel. State Hwy. Comm'n v. Lavasek*, 73 N.M. 33, 385 P.2d 361 (1963); *State ex rel. State Hwy. Comm'n v. Danfelter*, 72 N.M. 361, 384 P.2d 241 (1963), cert. denied, 375 U.S. 969, 84 S. Ct. 487, 11 L. Ed. 2d 416 (1964); *State ex rel. State Hwy. Comm'n v. Silva*, 71 N.M. 350, 378 P.2d 595 (1962); and *State ex rel. State Hwy. Comm'n v. Brock*, 80 N.M. 80, 451 P.2d 984 (1968); *Hill v. State Hwy. Comm'n*, 85 N.M. 689, 516 P.2d 199 (1973).] In *City of Albuquerque v. Tecolote Resources, Inc.*, 2024-NMCA-029, 544 P.3d 321, cert. dismissed (S-1-SC-40268, Mar. 4, 2024), the Court of Appeals reviewed the law governing compensation for limitation on access to a landowner's property in light of Supreme Court precedents as affected by the Legislature's enactment of NMSA 1978, § 42A-1-26 (1981). The Court concluded that, while earlier precedent "commonly formulated the rule to make the compensability of access damages hinge on whether post-taking access was reasonable," the Legislature "clarif[ied] that precedents on compensability do not apply in partial takings cases" and "dispensed with the reasonableness test in those cases." *Id.* ¶ 20. The Court therefore held that "if an owner in a partial takings case proves that the taking caused access to their remaining property to be lost or impaired such that the fair market value of their remaining property diminished, . . . the owner need not prove that the government's regulation of traffic is unreasonable or that the adverse impact of that regulation on the owner's access is unreasonable." *Id.* ¶ 24. This instruction therefore is not applicable where a landowner seeks compensation for limitation of access to the landowner's remaining property following a partial condemnation. But "in cases in which no land was taken from the landowner, but the landowner seeks compensation for interference with their right of access, damages may only be awarded if the interference is unreasonable." *Id.* ¶ 23; see *Hill v. State Hwy. Comm'n*, 1973-NMSC-114, 85 N.M. 689, 516 P.2d 199.

[As amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

**No Comments
Received**