

Q. Why are there limitations on the compensation that the project can pay downtown businesses for project-related disruption?

A. There are two possible sources of legal authority for paying damages to a business affected by a federal-aid transportation project.

The first is state eminent domain law, which requires payment of “just compensation” *for the taking of private property* for public purposes.

Where the condemning authority acquires an entire parcel (sometimes called a “total take”), compensation is relatively straightforward, based on “fair market value” – that is, the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

However, where the condemning authority acquires only a portion of a parcel (sometimes called a “partial taking”), the value of the part taken is not the only measure of damages. The appraiser also must consider possible injury to the part of the property not taken – usually called “severance damage.”

Vermont highway condemnation law also allows for recovery of “business loss” under certain circumstances. Compensation is limited to business loss directly and proximately caused *by the physical loss of property* that are not already accounted for in the land award.

The second is a federal law known as the “Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970” (Uniform Act). The Uniform Act, provides important protections and assistance for people and businesses *required to relocate* because of federally funded projects. This law was enacted by Congress to ensure that such people and businesses will be treated fairly and equitably and will receive assistance in moving from the property they occupy.

Neither of these sources authorize payments for business loss resulting from general proximity to a construction site, traffic delays, traffic detours, etc.

Q. Why does Vermont Railway, Inc. seem to get special treatment?

A. Vermont Railway, Inc. is licensed by the federal government as a common carrier by railroad. Because the Railway is federally licensed and engaged in interstate commerce, it has certain rights under the Commerce Clause of the United States Constitution, as well as various federal statutes and regulations.

Moreover, the proposed project is a federal-aid project which will receive substantial funding through the Federal Highway Administration (FHWA). FHWA regulations

specifically provide that “projects for the reconstruction of existing grade separations” are deemed to generally be of no ascertainable net benefit to the railroad and there shall be no required railroad share of the costs...” See 23 C.F.R. § 646.210 (Classification of projects and railroad share of the cost). For federal-aid regulations affecting railroads, FHWA regulations further require the state highway agency to enter into a written agreement with the railroad addressing numerous issues, including the protection of railroad traffic during construction. See 23 C.F.R. § 646.216(d) (General procedures).

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