**27.07A EASEMENT – DEFINITION**

The government has taken an easement in [a portion of the] land owned by the defendant. The term "easement" means a right to use the land of another for specific purposes. After an easement has been taken, the property owner has the right to use the land covered by the easement for any purpose not inconsistent with the easement.

In order to compute just compensation in this case, you must determine the fair market value of the easement as of the date of taking. [You must also determine whether the owner is entitled to severance damages [and whether these damages should be offset by special benefits].]

Use Note

This instruction should follow Article 27.01 (Legal Right to Take – Just Compensation) when an easement is taken rather than a fee interest. It should be followed by Article 27.02 (Fair Market Value) and Article 27.07B (Easement – Nominal Damages). It should also be followed by Article 27.06 (Severance Damages) if the owner is claiming severance damages and by Article 27.06B (Special Benefits) if the government claims that severance damages are offset by special benefits.

If there is a dispute over the scope of the easement or the uses remaining to the property owner after the taking, the court should give an additional instruction interpreting the intent of the easement.

Special Verdict Form 27.11 should be used with this instruction.

Comment

AS 09.55.250(2) states that easements may be taken for public use. The taking of an easement constitutes an appropriation of the owner's property that must be compensated. Scavenius v. City of Anchorage, 539 P.2d 1181, 1186 (Alaska 1975). Accord Wickwire v. City & Borough of Juneau, 557 P.2d 783 (Alaska 1976).

The owner is entitled to the loss in fair market value of the property caused by the taking of an easement. See City of Anchorage v. Nesbitt, 530 P.2d 1324, 1332-34 (Alaska 1975).

Easements can be taken by inverse condemnation. Wickwire v. City of Juneau, 557 P.2d at 764.