**27.00 EMINENT DOMAIN – INTRODUCTORY USE NOTE AND COMMENT**

Use Note

These instructions are not appropriate in every case. In some cases supplementary or cautionary instructions must be specially drafted and given.

Generally, the appropriate instructions should be given in numerical order. Thus, Instruction 27.01 should precede Instruction 27.02.

Special verdict forms should be used whenever the jury must compute more than one value. Recommended forms are included.

Comment

A. General Law. The Alaska Constitution provides that "[p]rivate property shall not be taken or damaged for public use without just compensation." Alaska Const. art. I, § 18. This provision provides broader protection for private property rights than the Fifth Amendment to the United States Constitution, State v. Doyle, 735 P.2d 733, 735-36 (Alaska 1987), and it is liberally construed in favor of the landowner. Alsop v. State, 586 P.2d 1236, 1239 (Alaska 1978); see also Kasnick v. State, 799 P.2d 777, 780 (Alaska 1990). The Alaska Statutes deal with the eminent domain power in the Code of Civil Procedure, AS 09.55.240 et seq. The Alaska Supreme Court's Civil Rule 72 governs eminent domain proceedings.

The following instructions may be used regardless of whether title is taken through (1) a traditional condemnation action (a "slow take") or (2) a declaration of taking (a "quick take"). In the third kind of taking, an inverse condemnation, some of these instructions may not apply and others may be needed. State v. Crosby, 410 P.2d 724, 728-29 (Alaska 1966). (Because "inverse condemnation" is an action in condemnation, the same instructions for determining condemnation apply as in the two statutory condemnation actions.). See generally Bakke v. State, 744 P.2d 655, 657 (Alaska 1987); State v. Doyle, 735 P.2d 733, 735-36 (Alaska 1987); State v. Lewis, 785 P.2d 24 (Alaska 1990) (similar instructions given in consolidated case involving inverse and statutory taking cases).

B. Burden of Proof. There is no burden of proof of just compensation for the value of real property taken. Ketchikan Cold Storage Co. v. State, 491 P.2d 143, 153 (Alaska 1971); State v. 45,621 Square Feet of Land, 475 P.2d 553, 554-55 (Alaska 1970), overruling Alaska State Housing Authority v. Vincent, 396 P.2d 531, 533 (Alaska 1964). However, there may be circumstances, such as when special damages are alleged, when a burden of proof may fall on the injured party. See State v. Hammer, 550 P.2d 820, 827 (Alaska 1976) (lost profits); State v. Ness, 516 P.2d 1212, 1214 n.11 (Alaska 1973) (damage to personal property).

C. Date of Taking. The court must determine the date of taking in order to establish the date of valuation. (The sections of the Alaska Statutes specifying jury responsibility do not mention a jury duty to find a date of taking. AS 09.55.310-.320; cf. AS 09.55.300.)

There are three alternative means of determining the date of taking. In "slow take" condemnation proceedings, the effective date of taking is the date of the "issuance of the summons." AS 09.55.330. The Alaska Supreme Court has never interpreted the precise meaning of "issuance of the summons." However, the court has held that just compensation is calculated from "the institution of condemnation proceedings." Stewart & Grindle, Inc. v. State, 524 P.2d 1242, 1248 (Alaska 1974). In a "quick take," the effective date of the taking is the date that the plaintiff files a declaration of taking and deposits the estimated compensation with the court. AS 09.55.440(a).

The issue becomes more complicated if the taking is by inverse condemnation. For "physical entry" cases, see Western Airlines, Inc. v. Lathrop Co., 535 P.2d 1209, 1211 n.4 (Alaska 1975); Stewart & Grindle, Inc. v. State, 524 P.2d 1242, 1246 (Alaska 1974); State v. Lewis, 785 P.2d 24, 28 (Alaska 1989); and Bakke v. State, 744 P.2d 655 (Alaska 1987). For "regulatory taking" cases, see Homeward Bound v. Anchorage School District, 791 P.2d 610 (Alaska 1990); and Ehrlander v. State, 797 P.2d 629 (Alaska 1990).