**27.01 LEGAL RIGHT TO TAKE – JUST COMPENSATION**

The [name of government authority] has a legal right to take property from its owner so long as the taking is for a public purpose and [name of government authority] pays just compensation. In this case, it is undisputed that [name of government authority] took the following property for a public purpose: [describe property]. You must decide how much [name of government authority] must pay as just compensation for taking this property.

**Use Note**

This instruction should introduce all eminent domain cases in which a declaration of taking has been filed, regardless of the characteristics or kind of property. It may also be used in traditional condemnation actions (i.e., "slow takes") in which the authority and necessity for the taking are not at issue.

**Comment**

One purpose of this instruction is to explain to the jury that the question of why property was taken or whether it was an appropriate taking is not for it to decide. *See, e.g., ARCO Pipeline Co. v. 3.60 Acres*, 539 P.2d 64 (Alaska 1975). The question for the jury is only just compensation under art. I, § 18 of the Alaska Constitution. In *ARCO*, which involved a taking under AS 09.55.420 - .450, the Court found that “the judicial role in examining such condemnation proceedings does not extend to determining whether the land sought is actually necessary to the project . . . . “ *Id*. at 69. Instead, the “court’s review power is limited to those cases where there has been some clear abuse of administrative discretion — where the officials making the administrative decisions have acted in bad faith or so capriciously and arbitrarily that their action was without adequate determining principle or was unreasoned.” *Id.* (citing *United States v. Certain Land in Borough of Manhattan,* 233 F.Supp. 899 (S.D.N.Y. 1964), aff’d, 336 F.2d 1021 (2d Cir. 1964)).

Applying this test, the Court has rejected a condemnation when it found the State’s action to be arbitrary. In *State, Dept. Trans. and Pub. Facilities v. 2.071 Acres, More or Less*, 652 P.2d 465 (Alaska 1980), the Court cited the requirements of AS 09.55.430(7):

The declaration of taking shall contain a statement that the property is taken by necessity for a project located in a manner that is most compatible with the greatest public good and the least private injury.

and AS 09.55.460(b):

The plaintiff may not be divested of [property] except where the court finds that the property was not taken by necessity for a public use or purpose in a manner compatible with the greatest public good and the least private injury.

In construing these provisions, the Court held that striking the ultimate balance between minimizing the injury to the property without impairing the integrity and function of the project is to be made by the condemnor, and that “a court should not substitute its judgment for that of the condemnor but may set aside the condemnor’s decision if it is ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.’” 652 P.2d at 466-67 (citing *State v. 0.644 Acres,* 613 P.2d 829, 832-33 (Alaska 1980)).

The Court in *0.644 Acres* further held that the State’s determination of the least private injury and the greatest public good must be a rational one, and that a decision must be considered arbitrary where the condemnor has failed to consider all important, relevant factors in making its determination. 613 P.2d at 831, 833.