



Lieutenant Governor Byron Mallott  
STATE OF ALASKA

September 12, 2017

Mike Wood  
P.O. Box 773  
Talketna, Alaska 99676

Dear Mr. Wood:

On July 14, 2017, I received your application for the following initiative that you entitled:

***“An Act providing for the protection for wild salmon and fish and wildlife habitat.”***

I forwarded the application to the Division of Elections for verification of signatures and to the Department of Law for legal review.

The Division of Elections determined that 158 of the 162 signatures submitted were those of qualified voters. Therefore, the application had a sufficient number of sponsors to qualify for circulation of a petition under AS 15.45.030. The petition statistics report prepared by the Division of Elections is enclosed.

The Department of Law reviewed the application for compliance with AS 15.45.040 and recommends that I decline to certify this initiative on the grounds that the application does not comply with the specific constitutional and statutory provisions governing the initiative process. Based on this recommendation, and in accordance with AS 15.45.080, I am denying certification of your initiative application. A copy of the Department of Law opinion regarding the application is enclosed.

Please be advised that under AS 15.45.240, "any person aggrieved by a determination made by the lieutenant governor under AS 15.45.010 - AS 15.45.220 may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of the determination was given."

If you have further questions, please contact Scott Meriwether in my office at (907) 465-4081.

Sincerely,

A handwritten signature in blue ink, appearing to read "Byron Mallott".

Byron Mallott  
Lieutenant Governor



THE STATE  
of ALASKA  
GOVERNOR BILL WALKER

Department of Law

CIVIL DIVISION

P.O. Box 110300  
Juneau, Alaska 99811  
Main: 907.465.3600  
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September 6, 2017

The Honorable Byron Mallott  
Lieutenant Governor  
P.O. Box 110015  
Juneau, Alaska 99811-0015

Re: *17FSH2 Ballot Measure Application Review*  
AGO No. JU2017200457

Dear Lieutenant Governor Mallott:

You asked us to review an application for an initiative entitled: "An Act providing for protection of wild salmon and fish and wildlife habitat" (17FSH2). Because the application does not comply with the specific constitutional and statutory provisions governing the initiative process, we recommend that you decline to certify the application.

**I. The proposed initiative bill.**

The bill proposed by this initiative would amend, repeal, and reenact various provisions of AS 16.05 to protect water quality in anadromous fish habitat from the adverse effects of development and human activity. The bill is fourteen sections long, and provides as follows:

**Section 1** would add a statement of fish habitat policy to the uncodified law. The statement provides that because wild salmon are critically important to Alaska's communities, it is state policy to: ensure sustainable fisheries and fish and wildlife habitat; protect water resources and anadromous fish habitat; ensure that development in these habitats meets enforceable standards; and ensure the State meets its constitutional obligation to protect Alaska's fisheries.

**Section 2** would create new fish and wildlife habitat-protection standards under AS 16.05 and require the Commissioner of the Department of Fish and Game (Commissioner) to ensure the proper protection of fish and wildlife, including protecting anadromous fish habitat from significant adverse effects. To that end, this section would require the Commissioner to maintain certain standards when issuing permits for development in anadromous fish habitat with respect to: water quality and temperature;

stream flow; species passage; habitat-dependent connections; habitat bank and bed stability; aquatic diversity; and adjacent riparian areas. This section would also allow the Commissioner to adopt regulations to implement these standards.

**Section 3** would repeal and reenact existing AS 16.05.871. This section would require a person to get an anadromous fish habitat permit “before initiating any activity that may use, divert, obstruct, pollute, disturb or otherwise alter anadromous fish habitat.” The section would further allow the Commissioner to specify in regulation activities that do not require an anadromous fish habitat permit, provided the activity has only a *de minimis* effect on such habitat. This section contains a presumption and definition of what constitutes “anadromous fish habitat,” but allows the Commissioner to specify it further in regulation, and make site-specific exemptions to the presumption.

**Section 4** would create a new application process for anadromous-fish-habitat permits under AS 16.05. The Commissioner would create the application form and collect from applicants all information necessary to assess a proposed activity’s effects on anadromous fish habitat, and, in consultation with the applicant, determine whether the proposed activity has the potential to cause significant adverse effects on anadromous fish habitat, and issue a permit accordingly with public notice of his decision.

**Section 5** adds a new section to AS 16.05 requiring the Commissioner to “find the potential for significant adverse effects” where the activity may, alone or along with other factors: impair or degrade protected habitat characteristics; interfere with spawning, rearing, or migration of anadromous fish; increase mortality of anadromous fish; reduce aquatic diversity, productivity, or stability; or impair other criteria set in regulation. Under this section, the Commissioner must find that the proposed activity will cause substantial damage to anadromous fish and wildlife species if the habitat “will be adversely affected such that it will not likely recover or be restored within a reasonable period to a level that sustains the water body’s, or portion of the water body’s” fish and wildlife species. In making that determination, the Commissioner must account for various factors that impact the adversely affected species and habitat.

**Section 6** adds new sections to AS 16.05 that describe timeframes, public notice and bonding requirements, and detailed criteria that the Commissioner must consider when issuing, amending, or rescinding: (1) minor individual anadromous fish habitat permits; (2) general permits for minor activities; and (3) major anadromous fish habitat permits.

**Section 7** adds a new section to AS 16.05 that would require the Commissioner to “prevent or minimize significant adverse effects to anadromous fish habitat” by requiring certain permit conditions and mitigation measures. Under this section, the Commissioner may not permit an activity that would: cause substantial damage to anadromous fish habitat; fail to ensure the proper protection of fish and wildlife; store or dispose of mining waste or tailings in a way that could result in the discharge of certain acids, metals, pollutants, or other compounds “that will adversely affect, directly or indirectly, anadromous fish habitat, fish, or wildlife species that depend on anadromous fish habitat”; replace or supplement a wild fish population with a hatchery-dependent fish population; “withdraw water from anadromous fish habitat in an amount that will adversely affect anadromous fish habitat, fish, or wildlife species”; or “dewater and relocate a stream or river if the relocation does not provide for fish passage or will adversely affect anadromous fish habitat, fish, or wildlife species.” The Commissioner would require permittees to take steps to mitigate such adverse effects. The Commissioner could adopt regulations to implement this section.

**Section 8** would create a new process in AS 16.05 for reconsidering and appealing permit determinations. The section sets forth the timeframes and procedures through which “any interested person” could file a written request asking the Commissioner to reconsider a permit determination, and a process through which such persons could appeal the Commissioner’s final determination to superior court under the judicial review provisions of the Administrative Procedure Act.

**Section 9** would add a new process to AS 16.05 through which the Commissioner would notify a person in violation of statute, regulation, or permit and seek to have the permittee rectify any violation.

**Sections 10 and 11** would amend existing provisions of AS 16.05.901 making certain statutory violations of AS 16.05 a Class A misdemeanor. The section would penalize as Class A misdemeanors criminally negligent violations of AS 16.05.687-901, a regulation adopted under that statutory scheme, or a permit condition, order, or mitigation measure issued pursuant to those statutes and regulations. These sections would also allow the Commissioner to impose civil penalties on persons or entities that cause material damage to anadromous fish and wildlife habitat.

**Section 12** would define the scope of the Act. It would make the Act inapplicable “to existing activities, operations, or facilities that have received all required federal, state, and local permits, authorizations, licenses, and approvals for activities adversely affecting anadromous fish habitat, on or before the effective date” of the Act, until the permit, license, authorization or approval expires.

**Section 13** would repeal AS 16.05.851 and AS 16.05.896.

**Section 14** would add a severability clause to the uncodified law.

## II. Analysis.

Under AS 15.45.070, the lieutenant governor must review an application for a proposed initiative bill within sixty calendar days of receipt and either “certify it or notify the initiative committee of the grounds for denial.” The application for the 17FSH2 initiative was filed on July 14, 2017. The sixtieth calendar day after the filing date is September 12, 2017. Under AS 15.45.080, certification shall only be denied if: “(1) the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors.”

### A. Form of the proposed initiative bill.

In evaluating an application for an initiative bill, you must determine whether the application is in the “proper form.”<sup>1</sup> Specifically, you must decide whether the application complies with “the legal procedures for placing an initiative on the ballot, and whether the initiative contains statutorily or constitutionally prohibited subjects which should not reach the ballot.”<sup>2</sup>

The form of an initiative bill is prescribed by AS 15.45.040, which requires four things: (1) that the bill be confined to one subject; (2) that the subject be expressed in the title; (3) that the bill contain an enacting clause stating: “Be it enacted by the People of the State of Alaska”; and (4) that the bill not include prohibited subjects. An initiative includes a prohibited subject when it makes or repeals appropriations; enacts local or special legislation; dedicates revenue; or creates courts, defines their jurisdiction, or prescribes their rules.<sup>3</sup>

This initiative bill meets the first three requirements of AS 15.45.040. It is confined to one subject—protection of wild salmon and fish and wildlife habitat. The subject is expressed in the title and the bill has the required enacting clause.

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<sup>1</sup> Alaska Const. art. XI, § 2.

<sup>2</sup> *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 87 n.7 (Alaska 1988).

<sup>3</sup> AS 15.45.010; *see also* Alaska Const. art. XI, § 7 (prohibiting dedicating revenue, creating courts, defining court jurisdiction or prescribing court rules).

With respect to the final requirement, in determining whether an initiative bill contains a prohibited subject, the Alaska Supreme Court has adopted a “deferential attitude toward initiatives”<sup>4</sup> and has consistently recognized that the constitutional and statutory provisions pertaining to the use of the initiative should be liberally construed in favor of allowing an initiative to reach the ballot.<sup>5</sup> Indeed, the court has “sought to preserve the people’s right to be heard through the initiative process wherever possible.”<sup>6</sup> With respect to concerns “grounded in general contentions that the provisions of an initiative are unconstitutional,” you may deny certification only if “controlling authority leaves no room for argument about its unconstitutionality.”<sup>7</sup>

But even though liberal access to the initiative process is required, the constitutional restrictions on that process are nevertheless important conditions that require strict compliance.<sup>8</sup> For the following reasons, we conclude that the bill violates the appropriations restriction by depriving the legislature of its exclusive discretion to allocate state assets among competing needs.

In our letter of June 30, 2017 to the sponsors, we expressed our concerns with a prior version of this initiative bill designated by the Division of Elections as 17FSHB. In response to this letter, the sponsors withdrew the 17FSHB initiative bill and filed this one, which the Division subsequently designated as 17FSH2.

While 17FSH2 has several changes to the bill’s language, we believe that 17FSH2 still violates Article XI, section 7 of the Alaska Constitution for the same reasons we cited previously.

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<sup>4</sup> *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1181 (Alaska 1985).

<sup>5</sup> *McAlpine*, 762 P.2d at 91; *Yute Air*, 698 P.2d at 1181.

<sup>6</sup> *Hughes v. Treadwell*, 341 P.3d 1121, 1125 (Alaska 2015); *Pebble Ltd. P’ship ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1076 (Alaska 2009).

<sup>7</sup> *Id.* (internal citations and quotations omitted).

<sup>8</sup> *Citizens for Tort Reform v. McAlpine*, 810 P.2d 162, 168 n.14 (Alaska 1991).

As we noted earlier, the Alaska Constitution prohibits initiatives that make an appropriation of state assets, which include state resources such as anadromous waters.<sup>9</sup> This prohibition against appropriating public assets by initiative is meant to “re[tain] control . . . of the appropriation process *in the legislative body*.”<sup>10</sup> An initiative is unobjectionable as long as it grants the legislature sufficient discretion in executing the initiative’s purpose.<sup>11</sup> But an initiative that controls the use of public assets such that it essentially usurps the legislature’s resource allocation role runs afoul of article XI, section 7.<sup>12</sup>

17FSH2 clearly limits the legislature’s ability to decide how to allocate anadromous streams among competing uses. The initiative contains restrictions and directives that would require the Commissioner to reject permits for resource development or public projects in favor of fish habitat. Although 17FSH2 alters the language of 17FHSB slightly, the overarching concerns regarding legislative infringement that we noted in our letter of June 30, 2017 remain.

Specifically, despite the altered language, we remain concerned that 17FSH2 would, theoretically and/or in practice, categorically prohibit certain mines, dams, roadways, gaslines, and/or pipelines. In doing so, the measure would effectively set state waters aside for the specific purpose of protecting anadromous fish and wildlife habitat “in such a manner that is executable, mandatory, and reasonably definite with no further legislative action,”<sup>13</sup> while leaving insufficient discretion to the legislature or its delegated executives to use that resource in another way.

Among other things, the initiative’s provisions on disposal and storing of mining waste, stream dewatering and relocation, and adverse effects to anadromous fish habitat

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<sup>9</sup> Alaska Constitution, Art. XI, § 7; *Pebble Ltd. Partnership ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1074 (Alaska 2009).

<sup>10</sup> *Staudenmaier v. Municipality of Anchorage*, 139 P.3d 1259, 1263 (citing *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153, 1156 (Alaska 1991)). (Emphasis in original).

<sup>11</sup> *Staudenmaier*, 139 P.3d at 1263 (citing *McAlpine*, 762 P.2d 81 at 91).

<sup>12</sup> *Staudenmaier*, 139 P.3d at 1263 (citing *Alaska Action Ctr. v. Municipality of Anchorage*, 84 P.3d 989, 994-95 (Alaska 2004)).

<sup>13</sup> *City of Fairbanks*, 818 P.2d at 1157.

Among other things, the initiative's provisions on disposal and storing of mining waste, stream dewatering and relocation, and adverse effects to anadromous fish habitat would effectively preclude some uses altogether. It should not matter if the initiative deprives the legislature of such choices categorically or only in isolated cases, because, either way, the initiative would unconstitutionally restrict the legislature's ability to allocate state resources.<sup>14</sup>

In short, like 17FSHB, 17FSH2 would prohibit the use of anadromous waters for certain development purposes, leaving insufficient discretion to the legislature to determine how to allocate those state assets. We express no opinion whether 17FSH2 is good or bad policy. We simply find it to be inconsistent with what the people, by initiative, may do under the Alaska Constitution.

#### **B. Form of the application.**

The form of an initiative application is prescribed by AS 15.45.030, which provides that the application must include the

- (1) proposed bill;
- (2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and
- (3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

The application on its face meets the first and third requirements, as well as the latter portion of the second requirement regarding the statement on the signature page. With respect to the first clause of the second requirement, we understand that the Division of Elections has determined that the application contains the signatures and addresses of 158 qualified voters.

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<sup>14</sup> 17FSH2 does not appear to leave sufficient discretion to the legislature to save it—as did the *Pebble Ltd. Partnership* initiative (07WTR3) that allowed the legislature to determine the amounts of specific toxic pollutants that may or may not be discharged at a mining site. *See Pebble Ltd. Partnership*, 215 P.3d at 1077.



**C. Number of qualified sponsors.**

As noted above, AS 15.45.030(2) requires an initiative application to contain the signatures and addresses of not fewer than 100 qualified voters who sponsor the initiative. We understand that the Division of Elections has determined that 17FSH2 meets that requirement.

**III. Conclusion.**

The line between permissible regulation and unconstitutional appropriation by initiative—particularly in the area of natural resource management—is not always clear. That line is periodically refined by emerging caselaw from the Alaska Supreme Court. Our duty is to advise you to act in a manner that upholds the Alaska Constitution and adheres to existing Alaska Supreme Court precedent interpreting its provisions.<sup>15</sup> We do not believe that 17FSH2 meets constitutional mandates under existing precedent. For that reason, we find that the proposed bill is not in the proper form, and therefore recommend that you decline to certify 17FSH2.

If you decide to reject the initiative, we suggest that you give notice to all interested parties and groups who may be aggrieved by your decision.<sup>16</sup> This notice will trigger the 30-day appeal period during which these persons must contest your action.<sup>17</sup>

Please let us know if we can be of further assistance to you on this matter.

Sincerely,

JAHNA LINDEMUTH  
ATTORNEY GENERAL

By:



Elizabeth M. Bakalar  
Assistant Attorney General

EMB/akb  
Enclosure

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<sup>15</sup> See AS 44.23.020.

<sup>16</sup> AS 15.45.240

<sup>17</sup> AS 15.25.240; *McAlpine*, 762 P.2d at 86.



THE STATE  
of **ALASKA**

GOVERNOR BILL WALKER

**Department of Law**

CIVIL DIVISION

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June 30, 2017

Mike Wood  
P.O. Box 773  
Talkeetna, AK 99676

Brian Kraft  
5870 Alpine Woods Drive  
Anchorage, AK 99516

Gayla Hoseth  
P.O. Box 585  
Dillingham, AK 99576

Re: *Review of 17FSHB Initiative Application & Petition*  
AGO No. JU2017200303

Dear Initiative Committee Members,

Our office represents the Lieutenant Governor and assists him in determining the proper form of applications for ballot initiatives, including the constitutionality of all proposed initiative bills. When practicable and when circumstances warrant, we work with the sponsors of ballot initiatives prior to certification, to try to fix problems with the language of the ballot measure summary or with the form or substance of ballot initiative applications.

Lindsey Bloom and Valerie Brown have called us on your behalf; you thus are probably aware that we have been diligently reviewing your 17FSHB initiative application, "An Act providing for protection of wild salmon and fish and wildlife habitat." Under AS 15.45.070, the Lieutenant Governor must decide whether to certify the measure by July 17, 2017.

We are writing as a courtesy to inform you that we intend to recommend that the Lieutenant Governor deny certification of 17FSHB, and—barring your withdrawal of the application—we will issue an Attorney General Opinion to that effect. This intention is based on our belief that 17FSHB makes an appropriation, which cannot be done by initiative according to Article XI, section 7 of the Alaska Constitution.

Our analysis of the initiative indicates that the proposed law would make an appropriation by depriving the legislature of its exclusive discretion to allocate state assets among competing needs.

17FSHB is intended to support the protection of water resources and salmon habitat.<sup>1</sup> To this end, 17FSHB would require a permit for an activity that may use, divert, obstruct, pollute, disturb, or otherwise alter anadromous fish habitat.<sup>2</sup> The bill specifies certain activities that may not be permitted. Among other things, the initiative prohibits a permit for an activity that will:

- necessitate water treatment, groundwater pumping, or other means of mechanical, chemical, or human intervention, maintenance or care in perpetuity;<sup>3</sup>
- dewater anadromous fish habitat for any duration sufficient to cause permanent or long-lasting adverse effects to anadromous fish habitat or fish and wildlife species;<sup>4</sup>
- permanently relocate a stream or river if the relocation will disrupt fish passage between, or will cause permanent or long-lasting adverse effects to, anadromous fish habitat or fish and wildlife species;<sup>5</sup> or
- impair or degrade habitat; interfere with or prevent the spawning, rearing, or migration of anadromous fish at any life stage; result in conditions known to cause increased mortality of anadromous fish at any life stage; or lower the capacity of anadromous waters to maintain aquatic diversity, productivity or stability, *and* for any of these situations the habitat is not likely to recover or be restored within a reasonable period to a level that sustains the water body's natural and historic levels of anadromous fish, other fish, and wildlife.<sup>6</sup>

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<sup>1</sup> Initiative, section 1.

<sup>2</sup> Initiative, section 3. The initiative would allow the Commissioner of the Alaska Department of Fish and Game to specify in regulation activities that do not require a permit because they would have only a *de minimis* effect on anadromous fish habitat.

<sup>3</sup> Initiative, section 7.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Initiative, section 5.

You explained the purpose of the initiative in an op-ed that you authored, published in the *Alaska Dispatch News* on May 17, 2017 entitled “It’s up to us to protect Alaska Salmon now.” In that piece, you identify three projects that you suggest 17FSHB would prevent: the Pebble mine, the Susitna-Watana dam, and the Chuitna coal project. You identify these projects as a threat to salmon, and endorse the initiative as “a solution that puts everyday Alaskans in control of the state’s destiny.”

We agree that the initiative as written would likely prevent these projects, and therein lies the problem. The Alaska Constitution prohibits initiatives that make an appropriation of state assets, which include state resources such as anadromous waters.<sup>7</sup> This prohibition against appropriating public assets by initiative is meant to “re[tain] control . . . of the appropriation process *in the legislative body*.”<sup>8</sup> Generally speaking, an initiative is unobjectionable as long as it grants the legislature sufficient discretion in actually executing the initiative’s purpose.<sup>9</sup> But an initiative that controls the use of public assets such that the voters essentially usurp the legislature’s resource allocation role runs afoul of article XI, section 7.<sup>10</sup>

The prohibition on appropriation by initiative is designed to serve “two parallel purposes.”<sup>11</sup> First, it works to prevent the passage of popular programs that would give away state resources to members of the public because such measures could lead to rash, unwise spending that would threaten the state fisc.<sup>12</sup> Initiative 17FSHB does not raise this concern.

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<sup>7</sup> Alaska Constitution, Art. XI, § 7; *Pebble Ltd. Partnership ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1074 (Alaska 2009).

<sup>8</sup> *Staudenmaier v. Municipality of Anchorage*, 139 P.3d 1259, 1263 (citing *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153, 1156 (Alaska 1991)). (Emphasis in original).

<sup>9</sup> *Staudenmaier*, 139 P.3d at 1263 (citing *McAlpine v. University of Alaska*, 762 P.2d 81, 91 (Alaska 1988)).

<sup>10</sup> *Staudenmaier*, 139 P.3d at 1263 (citing *Alaska Action Ctr. v. Municipality of Anchorage*, 84 P.3d 989, 994-95 (Alaska 2004)).

<sup>11</sup> *Id.* at 1262 (citing *City of Fairbanks*, 818 P.2d at 1156).

<sup>12</sup> *Id.*

But more clearly applicable to 17FSHB is the second core purpose: to “preserve legislative discretion by ensuring that the legislature, and *only* the legislature, retains control over the allocation of state assets among competing needs.”<sup>13</sup> The “primary question” in assessing the second core objective “is whether the initiative narrows the legislature’s range of freedom to make allocation decisions in a manner sufficient to render the initiative an appropriation.”<sup>14</sup> An initiative makes an appropriation when it allocates public assets to or away from a particular purpose, because in both instances, the law would usurp the legislature’s exclusive power to allocate assets among competing uses.<sup>15</sup>

The key question in analyzing 17FSHB is whether it limits the legislature’s ability to decide how to allocate anadromous streams among uses—that is, to keep them untouched for fish habitat or to allow them to be used for other resource development or public projects. It should not matter if the initiative deprives the legislature of this choice categorically or only in isolated cases, because either way, the initiative would restrict the legislature’s ability to allocate state resources.

For example, the ballot measure in *Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough* would have required voter approval for capital projects above a specified cost.<sup>16</sup> The Alaska Supreme Court found the measure to effect an unconstitutional appropriation even though the measure did not appropriate assets directly; it only allowed for the possibility of a future infringement on the assembly’s ability to allocate resources among competing uses, because if the voters vetoed any particular project, the assembly could do nothing to appropriate money for that project.<sup>17</sup> The possibility that voters might never veto a project and the fact that the assembly

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<sup>13</sup> *All. of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough*, 273 P.3d 1128, 1137 (Alaska 2012) (citing *Anchorage Citizens for Taxi Reform v. Municipality of Anchorage*, 151 P.3d 418, 423 (2006)). (Emphasis in original).

<sup>14</sup> *All. of Concerned Taxpayers*, 273 P.3d at 1137 (citing *Pebble Ltd. P’ship ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1075 (Alaska 2009)).

<sup>15</sup> *All. of Concerned Taxpayers*, 273 P.3d 1128 presented the question whether an initiative may run afoul of the core objectives underlying the initiative restrictions when it allocates public assets *away from* a particular purpose, and the Court held that it could. *Pullen v. Ulmer*, 923 P.2d 54 (Alaska 1996) reaffirmed that principle.

<sup>16</sup> 273 P.3d 1127.

<sup>17</sup> *Id.* at 1138.

would have that money available for other projects did not save the ballot measure.<sup>18</sup> Granted, the court in *Alliance of Concerned Taxpayers* considered future veto of large capital projects to be likely—stating that the measure would “almost invariably result in voters ‘vetoing’ certain projects.”

This suggests that another question in the analysis of whether 17FSHB makes an appropriation is *how* likely a restriction must be on the legislature’s ability to allocate resources among competing uses when the measure does not do this directly. As part of our review, we consulted experts in the Department of Natural Resources, the Department of Environmental Conservation, the Department of Fish and Game, and/or the attorneys at the Department of Law who represent those agencies. Certain limitations seem very likely.

First, permits would be denied for some dams. Under section 7, a permit could not be issued for an activity that causes “substantial damage to anadromous fish habitat,” as a dam inevitably would.<sup>19</sup> Second, some large-scale hard rock mines could not be developed, because they would require “perpetual” water treatment, another basis for denying a permit. Depending on the location of a large-scale hard rock mine and other variables, long-term water treatment might be required for some mines. In addition, some roadways, gaslines, and pipelines are likely to require permanent re-routing of anadromous waters, as did the Trans-Alaska Pipeline System. These probably would not be the only types of projects that the initiative would prevent, but they are the most obvious to our agency representatives.

Given your stated purpose to prevent certain projects that will damage salmon habitat and given the likelihood that the 17FSHB initiative will require denial of a permit for these and similar projects, the initiative appears to deprive the legislature of the discretion to devote state waters to these uses. It does not appear to leave sufficient discretion to the legislature to save it—as did the *Pebble Ltd. Partnership* initiative (07WTR3) that allowed the legislature to determine the amounts of specific toxic pollutants that may or may not be discharged at a mining site,<sup>20</sup> or the part of the *McAlpine* initiative that left to the legislature’s discretion the amount of assets to devote to a community college system.<sup>21</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> Indeed, the sponsors’ op-ed states that the Susitna dam proposal would “completely block fish passage on the state’s fourth-largest king salmon producing river.”

<sup>20</sup> *Pebble Ltd. Partnership*, 215 P.3d at 1077.

<sup>21</sup> *McAlpine*, 762 P.2d at 91.

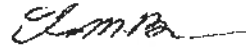
In short, 17FSHB would outright prohibit the use of anadromous waters for certain development purposes, leaving insufficient discretion to the legislature to determine how to allocate those state assets and thus appropriating them.

We are enclosing for your information correspondence our office has received from both fishing and development interests opposing 17FSHB. Please know that we reached the foregoing conclusions prior to receipt of this correspondence. Outside opinions have not influenced our analysis, which is wholly independent and based strictly on relevant statutes and case law as our office interprets them.

As noted above, should you choose to withdraw your application before the July 17, 2017 deadline, our office will not issue an Attorney General Opinion on 17FSHB. We will independently consider any subsequent initiative application that you may choose to file.

Sincerely,

JAHNA LINDEMUTH  
ATTORNEY GENERAL



By:

Elizabeth M. Bakalar  
Assistant Attorney General

EMB/akb  
Enclosures

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Nome 907-443-5285  
Mat-Su 907-373-8952

STATE OF ALASKA  
Division of Elections  
Office of the Lieutenant Governor

**MEMORANDUM**

**Date:** August 2, 2017  
**To:** Lt. Governor Byron Mallott  
**From:** Josie Bahnke, Director *J. Bahnke*  
**CC:** Carol A. Thompson, Absentee and Petition Manager  
Elizabeth M. Bakalar, Assistant Attorney General, Department of Law

**Subject:** **17FSH2 – An Act providing for protection of wild salmon and fish and wildlife habitat."**

The Division of Elections reviewed the sponsor signatures submitted in the application for the above referenced initiative petition.

We have determined that 158 of the 162 signatures submitted to be those of qualified voters. The application has a sufficient number of sponsors to qualify for circulation of a petition under AS 15.45.030.

A copy of the computer printout listing the status of each sponsor for this petition application is attached.

Attachment: Petition Statistics Report – 17FSH2



PETITION TYPE : I  
 PETITION ID :  
 PETITION NAME :  
 DATE APPLICATION RECEIVED :  
 LAST DATE PETITION CAN BE RECEIVED :  
 DATE APPLICATION ACCEPTED :  
 DATE PETITION CERTIFIED :  
 COMMENTS :  
 NUMBER OF VOTES CAST IN PREVIOUS GENERAL ELECTION : 0

ASCENSION #	SPONSOR NAME	MAILING ADDRESS	DISTRICT	ACCEPT/REJECT
652786	ADAMS JAMES W	833 W 13TH AVE ANCHORAGE AK 99501	20	A
721178	ANAYA SCOTT R	7631 GRIFFITH ST ANCHORAGE AK 99507	28	A
1181263	ANDERSON EVAN J	430 W 15TH AVE #B ANCHORAGE AK 99501	20	A
1175406	ASTALOS RYAN M	1565 SUNRISE DR	19	A
662325	AUSTIN MARK R	PO BOX 616 PALMER AK-99645	09	A
170614	AUTH MARGARET A	2621 MELVIN AVE ANCHORAGE AK 99517	21	A
366912	AUTH ROBERT C	2621 MELVIN AVE ANCHORAGE AK 99517	21	A
1180259	BAKER SAMANTHA R	3624 MATTHEWS DR ANCHORAGE AK 99516	28	A
1066128	BARNWELL ALLISON M	1115 W 12TH AVE	20	A
176959	BARRETT SUSAN M	PO BOX 70474 FAIRBANKS AK 0474-99707	03	A
1157936	BARTHOLOMAE LAURA E	4141 WORONZOF DR ANCHORAGE AK 99517	21	A
1234322	BAY MIRANDA	9808 E CHICHAGOF LP EAGLE RIVER AK 99577	14	A
751347	BLACK RAYMOND D	17955 E PURSER PL PALMER AK 99645	11	A
867255	BLAKE IAN D	2151 ALDER DR	19	A
747875	BLOOM LINDSEY A	16955 GLACIER HWY JUNEAU AK 99801	34	A
1160569	BOOTON BRITTNEY A	4208 GARFIELD ST	18	A
1154634	BOOTON ERIC R	1510 NUNAKA DR ANCHORAGE AK 99504	16	A

ASCENSION #	SPONSOR NAME	MAILING ADDRESS	DISTRICT	ACCEPT/REJECT
1146821	BCOTON SHAUNA C	840 W 20TH AVE	18	A
990250	BOSTROM SUZANNE A	2850 PRIBILOF ST ANCHORAGE AK 99517	21	A
1003546	BRADSHAW CASEY S	5600 S BODENBURG LP PALMER AK 99645	12	A
637100	BRISTOL TIMOTHY R	41193 CRESTED CRANE ST HOMER AK 99603	31	A
1169419	BROWN EDNA J	5600 S BODENBURG LP PALMER AK 99645	12	A
449804	BROWN VALERIE L	1412 W 15TH AVE ANCHORAGE AK 99501	20	A
690943	BUREK THOMAS	1322 N ST #A ANCHORAGE AK 99501	20	A
1221992	BUTTERS SHELLEY L	2909 ASPEN GROVE CT ANCHORAGE AK 99508	19	A
661239	CAMPFIELD HEATHER A	1675 N LAZY LN PALMER AK 99645	12	A
729615	CARR MARGARET N	7631 GRIFFITH ST ANCHORAGE AK 99507	28	A
1171085	CARRIGAN CIERRA J	11801 TOY DR	24	A
1111639	CARTER CHAD A	1010 ORCA ST ANCHORAGE AK 99501	20	A
1011703	CAVANAUGH MEGHAN	3100 WILLOW ST	18	A
1143613	CHON SU YUN	7531 GREY WOLF CIR ANCHORAGE AK 99507	25	A
223221	CLARK BRADFORD W	PO BOX 82307 FAIRBANKS AK-99708	04	A
890433	CLARK VICTORIA L	1026 W 4TH AVE #201 ANCHORAGE AK-99501	20	A
503977	CLYMER MARSHALL V	3733 HENDERSON LP ANCHORAGE AK 99507	25	A
605741	COLE TRAVIS S	1008 PEDRO ST FAIRBANKS AK 99701	01	A
1169794	COLLINS KRISTEN N	430 W 15TH AVE #B ANCHORAGE AK 99501	20	A
1214117	COOKSEY SUSAN J	1605 TANAGA AVENUE KENAI AK-99611	30	A
63811	COUMBE MICHAEL V	PO BOX 240343 ANCHORAGE AK 0343-99524	20	A
1218579	CULLINEY SUSAN M	1344 W 11TH AVE ANCHORAGE AK 99501	20	A
1149572	CURREY ALYSON J	2951 SIMPSON AVE JUNEAU AK 99801	33	A
1035903	CURRY JESSICA P	9161 N DOUGLAS HWY JUNEAU AK 99801	33	A

ASCENSION #	SPONSOR NAME	MAILING ADDRESS	DISTRICT	ACCEPT/REJECT
103741	DAHL NORMA L	565 MOUNTVISTA DR FAIRBANKS AK 99712	04	A
546589	DECCEUR HEIDI M	3951 E 86TH AVE ANCHORAGE AK 99507	25	A
754717	DELUCIA ROBERT S	2228 ALDER DR ANCHORAGE AK 99508	19	A
956945	DEMMEY JOY N	3321 MAX CIR #5 ANCHORAGE AK 99507	17	A
1233082	DENNIS CARLY C	18040 KAMKOFF AVE EAGLE RIVER AK 99577	13	A
1132583	EISCHEID HEDY M	410 MELLOW PL ANCHORAGE AK 99508	16	A
659423	ELLIOTT KIMBERLY A	PO BOX 616 PALMER AK 0616-99645	09	A
1200275	ERBEY JACLYN M	2678 ASPEN HEIGHTS LP ANCHORAGE AK 99508	16	A
1075208	ESTEY TODD M	PO BOX 1538 PALMER AK 1538-99645	12	A
1019683	FEHRENBACHER EMILY T	7170 DAWN DR	21	A
1197003	FISCHER JODI	PO BOX 1973 GIRDWOOD AK-99587	28	A
539537	FRANKEVICH JOAN	PO BOX 1001 GIRDWOOD AK 1001-99587	28	A
1194694	FROST JEANETTE L	611 E 10TH AVE #7 ANCHORAGE AK 99501	20	A
1059367	GASCA NICHOLAS J	PO BOX 74508 FAIRBANKS AK 4508-99707	01	A
1055132	GATTI HEATHER K	1831 E 56TH AVE ANCHORAGE AK 99507	17	A
181674	GERLEK KATHRYN L	3536 CARPENTERS CIR ANCHORAGE AK 99517	21	A
1234068	GIBBS ROBERT D	506 FISCHER AVE #B ANCHORAGE AK 99518	23	A
1231908	GONGORA KYLA L	3610 E 66TH AVE ANCHORAGE AK-99507	25	A
1046108	HALE EVERETT D	2228 ALDER DR ANCHORAGE AK 99508	19	A
476064	HARDCASTLE HEATHER A	4275 N DOUGLAS HWY JUNEAU AK 99801	33	A
852478	HAUSER ELISABETH M	15580 GLACIER HWY JUNEAU AK 99801	34	A
985995	HAYES JONATHAN L	1801 KUSKOKWIM ST ANCHORAGE AK 99508	19	A
948440	HAYES MOLLY E	1801 KUSKOKWIM ST ANCHORAGE AK 99508	19	A
1005192	HEUER JOSHUA J	300 BUNNELL ST	16	A

ASCENSION #	SPONSOR NAME	MAILING ADDRESS	DISTRICT	ACCEPT/REJECT
862897	HEUER MELISSA C	1510 NUNAKA DR ANCHORAGE AK 99504	16	A
1030231	HOESCHEL LAWRENCE H H	1442 H ST ANCHORAGE AK 99501	20	R
1120577	HOPSON KACEY	1414 W 26TH AVE	18	A
575598	HOSETH GAYLA M	PO BOX 585 DILLINGHAM AK 0585-99576	37	A
861606	HULTS AMANDA P	4864 MILLS DR ANCHORAGE AK 99508	16	A
832264	IVERSON MATTHEW R	5013 SILLARY CIR ANCHORAGE AK 99508	17	A
786450	JAMES GENISTA M	17858 E CONNIE KAY CIR PALMER AK 99645	12	A
1208071	JORGENSEN ALEXANDER H	12005 WOODWAY CIRCLE ANCHORAGE AK-99516	17	A
464805	JOSEPH VICTOR J	PO BOX 70566 FAIRBANKS AK 0566-99707	03	A
1036230	JUNGE LAURA A	1345 O ST #B ANCHORAGE AK 99501	20	A
1108708	KAROLY-LISTER IVA R	1142 MANSELL AVE APT # B AUSTIN TX-78721	25	A
1104904	KILCOYNE SHAINA R	2910 WENDYS WY ANCHORAGE AK 99517	21	A
1140069	KING PETER H	7611 MENTRA ST ANCHORAGE AK 99518	23	A
925158	KOHAN MICHAEL L	PO BOX 21555 JUNEAU AK 1555-99802	33	A
1200098	KOSEDNAR KYLA S	PO BOX 93701 ANCHORAGE AK 3701-99509	20	A
581065	KRAFT BRIAN W	PO BOX 231985 ANCHORAGE AK 1985-99523	26	A
1218445	KRAUSE DAVID R	2906 BARBARA ST ANCHORAGE AK 99517	21	A
970498	KUGEL ELIZABETH D	4141 WORONZOF DR ANCHORAGE AK 99517	21	A
1140597	KUPLACK CHEYENNA K	2342 RIDDLE CT	03	A
1170728	LACROIX JOHANNAH	13849 SCHUBERT CIR	28	A
1162113	LEAK EMILY B	PO BOX 230751 ANCHORAGE AK 0751-99523	26	A
1073599	LEBEAU MICHELLE E	2021 TRIBUTARY CIR ANCHORAGE AK 99516	26	A
473628	LEE STEPHANIE R	7328 NATHAN DR ANCHORAGE AK 99518	23	A
845314	LITMANS BRIAN A	2229 ALDER DR ANCHORAGE AK 99508	19	A

ASCENSION #	SPONSOR NAME	MAILING ADDRESS	DISTRICT	ACCEPT/REJECT
503627	LOHMAN TRACY L	4011 WINCHESTER LP ANCHORAGE AK 99507	25	A
223562	MADROS BEVERLY J	PO BOX 73664 FAIRBANKS AK 3664-99707	02	A
919701	MANNIX ZACHARY A	7170 DAWN DR ANCHORAGE AK 99502	21	A
1171000	MARRINAN SARAH J	2829 W 36TH AVE	21	A
931092	MAUS JOANNA L	1598 JUNEAU DR	20	A
100796	MAYO WILLARD G	PO BOX 10878 FAIRBANKS AK 0878-99710	04	A
1049047	MAYO-KIELY ANN M	8601 JUPITER DR ANCHORAGE AK 99507	25	A
1171050	MCCONNELL CHRISTOPHER J	2412 FOREST PARK DR ANCHORAGE AK 99517	18	A
706752	MCDONALD COLIN W	6857 BRITTANY ROCK WY ANCHORAGE AK 99504	27	A
1205288	MCQUEEN COSTIN J	5535 S HANSON LP	08	A
840768	MECUM BRIANNE A	4024 RIDGE WY JUNEAU AK 99801	33	A
47630	MITCHELL DEBORAH A	1743 BRIDGEWATER DR FAIRBANKS AK 99709	01	A
892523	MODEROW ANDREW A	717 W 19TH AVE	18	A
976166	MORTON MEGAN C	2611 MINNESOTA DR ANCHORAGE AK-99503	22	A
986574	MOSER CHAYLA A	5659 N PALMER FISHHOOK RD PALMER AK 99645	09	A
1011326	MOSER MATTHEW D	1518 COLUMBINE ST ANCHORAGE AK 99508	19	A
73688	MURPHY BLANCHE L	PO BOX 10636 FAIRBANKS AK-99710	04	A
933489	NICKEL STEPHEN K	6309 LIBRA PL ANCHORAGE AK 99518	23	A
380973	NIGH ROBERT W	1402 W 15TH AVE ANCHORAGE AK 4906-99501	20	A
968535	NIXON TIMOTHY P	840 W 20TH AVE ANCHORAGE AK 99503	18	A
129664	NORBY VIOLET M	23861 LENNIE CIR CHUGIAK AK 99567	12	A
936307	NYE MEAGAN E	PO BOX 34654 JUNEAU AK 4654-99803	34	A
984516	O'CONNOR AMY L	14958 E DANCER CIR PALMER AK 99645	12	A
973532	O'CONNOR PATRICK M	14958 E DANCER CIR PALMER AK 99645	12	A

ASCENSION #	SPONSOR NAME	MAILING ADDRESS	DISTRICT	ACCEPT/REJECT
910605	PARKS VICTORIA C	6001 MAXIMILIAN DR ANCHORAGE AK 99507	27	A
929987	PIATT AMANDA M	PO BOX 262 GIRDWOOD AK 0262-99587	28	A
574861	PROBERT JENNIFER L	1097 BRECKENRIDGE RD FAIRBANKS AK 6850-99709	04	A
837370	PUSTINA LINDSAY R	3441 CORONA CIR ANCHORAGE AK 99517	21	A
1102421	QUINN-DAVIDSON AUSTIN A	4110 WORONZOF DR ANCHORAGE AK 99517	21	A
1111925	QUINN-DAVIDSON STEPHANIE N	4110 WORONZOF DR ANCHORAGE AK 99517	21	A
429657	RAY HERBERT H JR	1412 W 15TH AVE ANCHORAGE AK 99501	20	A
1223636	RICHIE JORDAN K	1605 ELMENDORF DR ANCHORAGE AK 99504	16	A
716183	ROBERTS JOYCE M	1257 BROOKS CT FAIRBANKS AK 99701	02	A
485219	ROSE CHRISTOPHER W	PO BOX 111 SUTTON AK 0111-99674	09	A
1169177	ROSSI LYDA M	1029 DENALI ST	20	A
702436	SAMUELS JEFFREY D	PO BOX 1981 GIRDWOOD AK 1981-99587	28	A
911574	SANDERS ANDREA L	1129 W 20TH AVE #2 ANCHORAGE AK 99503	18	A
627871	SANFORD MARNA L	455 MCKINLEY VIEW DR FAIRBANKS AK 99712	04	A
398491	SAUNDERS PATTI J	3733 HENDERSON LP ANCHORAGE AK 99507	25	A
1014787	SCHAKE KATHERINE C	5013 SILLARY CIR ANCHORAGE AK-99508	20	A
1125445	SCHOESSLER ELIZABETH R	PO BOX 200708 ANCHORAGE AK 0708-99520	20	R
1088122	SCHRYVER RYAN W	2910 WENDYS WY ANCHORAGE AK 99517	21	A
298228	SEATON DEBORAH L	412 G ST ANCHORAGE AK-99501	18	A
1081541	SEGUINOT-MEDINA SAMARYS	8211 WISTERIA ST ANCHORAGE AK 99502	22	A
1229783	SHERIDAN CHRISTENE	1300 RANGE VIEW RD NORTH POLE AK 99705	02	A
1161000	SIMEONE JOHN C	531 W 15TH AVE ANCHORAGE AK 99501	20	A
844813	SIMON-CHAPEK KALYN	PO BOX 90743 ANCHORAGE AK 0743-99509	20	A
872659	SINGH NATASHA V	1233 O'CONNOR RD FAIRBANKS AK 99701	01	A

ASCENSION #	SPONSOR NAME	MAILING ADDRESS	DISTRICT	ACCEPT/REJECT
1201127	SINNOTT MICHELLE D	1508 E 41ST CT ANCHORAGE AK 99508	18	A
542396	SMITH DAWNELL L	2501 NORTHRUP PL ANCHORAGE AK 99508	18	A
1070101	SMITH MARY G	PO BOX 6014 SITKA AK 6014-99835	35	A
1251451	SMITH NICOLE J	2414 TULIK DR ANCHORAGE AK-99517	21	A
1091282	SNYDER ELIZABETH A H	6608 MINK AVE ANCHORAGE AK 99504	27	A
1062028	SNYDER SAMUEL D	6608 MINK AVE ANCHORAGE AK 99504	27	A
983649	SODEN KATHRYN A	431 W 7TH AVE #205 ANCHORAGE AK-99501	17	A
1075046	SODEN LUCAS D	3026 WENTWORTH ST ANCHORAGE AK 99508	17	A
1180074	SPEES BRENDAN P	20207 CONSTITUTION DR EAGLE RIVER AK 99577	14	A
1156692	STANDISH HAILEY R	3565 SHARON RD NORTH POLE AK 99705	03	A
1082409	STRONG KATHERINE G	1427 M ST ANCHORAGE AK 99501	20	A
1216591	STRUB SHANE D	8223 E 5TH AVE #B ANCHORAGE AK 99504	15	A
1206578	SULLENDER BENJAMIN K	3207 WOODLAND PARK DR ANCHORAGE AK 99517	18	A
455058	SUTCH ART G	5900 THANE RD JUNEAU AK 99801	33	A
686721	THOMAS ANNE M	10914 E JOHN HENRY CIR PALMER AK 99645	11	A
966150	VELDHUIS LUCAS A	11049 HANNAH JANE PL EAGLE RIVER AK 99577	14	A
1201945	VOLLERTSEN ANNE M	4871 RETRIEVER CIR	22	A
1153708	WEIS JENNIFER C	1565 SUNRISE DR ANCHORAGE AK 99508	19	A
1025257	WEITZ JILL M	1505 5TH ST APT A DOUGLAS AK-99824	33	A
706350	WILLETTE JENNIFER L	4210 WORONZOF DR ANCHORAGE AK 99517	21	R
706350	WILLETTE JENNIFER L	4210 WORONZOF DR ANCHORAGE AK 99517	21	A
606859	WILLIAMS DANIELLE S	2029 BLUEBERRY ST	18	A
857646	WILLINGHAM CAMERON B	1319 DENALI ST ANCHORAGE AK 99501	20	R
1228277	WILSON MARY E	506 FISCHER AVE #B ANCHORAGE AK 99518	23	A

ASCENSION #	SPONSOR NAME	MAILING ADDRESS	DISTRICT	ACCEPT/REJECT
624437	WOOD MICHAEL E	PO BOX 773 TALKEETNA AK 0773-99676	10	A

TOTAL ACCEPTED SPONSORS : 158

TOTAL REJECTED SPONSORS : 4



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BOOKLET ID	DATE ISSUED	DATE RECEIVED	NUMBER SIGNED	QUAL	DUP	NOT IN JURSDC	INACT	VOTER NOT REG	OTHER	WITH DRAWN
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TOTAL

TOTAL BOOKLETS ISSUED :  
TOTAL BOOKLETS RECEIVED :  
TOTAL BOOKLETS ENTERED :  
TOTAL SIGNATURES REQUIRED :  
TOTAL QUALIFIED :  
TOTAL UNQUALIFIED :  
TOTAL NUMBER OF SIGNATURES :

QUALIFIED SIGNATURES BY DISTRICT:

DISTRICT	# SIG REQUIRED	QUALIFIED
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